

IN THE  
INTERNATIONAL COURT OF JUSTICE

MARCH-APRIL, 1974

INDUSTRIA ..... APPLICANT

v.

LATIA ..... RESPONDENT

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MEMORIAL FOR APPLICANT

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TEAM NUMBER 18.

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- (2) LATIA'S UNILATERAL EXTENSION OF HER TERRITORIAL SEA TO 200 MILES IS A BREACH OF CUSTOMARY INTERNATIONAL LAW AND AN ENCROACHMENT ON THE FREEDOM OF THE HIGH SEAS:
- (3) THE AREA OF TRACT HI WHICH IS LOCATED 120 MILES OFF THE COAST OF LATIA IN WATER 2100 METRES IN DEPTH CANNOT BE CLAIMED BY LATIA AS ADJACENT TO ITS COAST:
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SUMMARY OF ARGUMENT

The Deep Ocean Mining Company of Industria was licensed under the Deep Ocean Mining Act (DOMA) passed by Industria's legislature to conduct deep sea mining in an area designated Tract HI. 120 miles off the coast of Latia. Latia protested both the passing of the DOMA and the granting of a mining license over Tract HI to Ocean Mining Company. Finally Latia forcefully seized the vessels and equipment involved in the mining operations claiming jurisdiction over the area covered by Tract HI.

But Latia should not be heard to make this claim since Tract HI is in the high seas and can only be possessed by the exercise of effective occupation, which Latia has not done. The claim by Latia is therefore a breach of international law and an encroachment on the freedom of the seas.

(iv)

Latia also cannot claim that the disputed area is adjacent to its coast. Besides, the DOME is in accord with international law.

Industria therefore contends that the pursuit and arrest of Carrier (of Industria's Flag), the seizure of Gatherer of Ocean Mining Company and the proposal by Latia to conduct mining operations beyond the national jurisdiction of states ~~are~~ unlawful. In consequence, Industria rightly seeks the return of Gatherer and its cargo and a declaration by this court that the mining operations by Ocean Mining Company ~~are~~ not unlawful.

A R G U M E N T

1. INDUSTRIA CONTENTS THAT LATIA COMMITTED A BREACH OF INTERNATIONAL LAW BY INTERFERRING WITH MINING OPERATIONS IN THE SUBSOIL AND SEABED OF THE HIGH SEAS:

Industria claims sovereignty over Tract HI. We therefore contend that Latia committed a breach of international law by interfering with Industria's sovereignty over Tract HI.

We are, of course, aware of the proposition that the high seas are open to all nations and that no State may validly purport to subject any part of them to its sovereignty. Industria has not claimed sovereignty over any part of the high seas. Industria claims sovereignty over the seabed and subsoil of the high seas within Tract HI. This claim arises from the fact that the freedom of the high seas is limited to the superjacent waters. It does not extend to the bed of the high seas nor to the sub-soil.

Freedom of the high seas is exercised under conditions laid down by the 1958 Geneva Convention on the High Seas.<sup>1</sup> Both Industria and Latia are parties to this Convention.

Freedom of the high seas comprises, inter alia, both for coastal and non-coastal States:

- (i) freedom of navigation
- (ii) freedom of fishing
- (iii) freedom to lay submarine cables and pipe-lines
- (iv) freedom to fly over the high seas.

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1. See Ian Brownlie: Basic Documents in International Law, 2nd Ed. (1972), p. 89.

(2)

From the foregoing, it is evident that the Convention is silent on the status of the seabed and sub-soil, thereby implying that the seabed and subsoil are not part of the high seas. They are regarded as ~~terri-~~ territory covered by the sea and therefore res nullius strictu sensu. Accordingly, sovereignty may be acquired over the seabed and sub-soil of the high seas as it may be over land by effective occupation without the acquiescence of other States. Almost all writers, whichever view they took of the status of the seabed itself, regarded the sub-soil as capable of "effective occupation" subject to no unreasonable interference with the free use of the high seas above.<sup>1</sup> Industria took appropriate measures under Section 4 (c) of DOMA to "prevent unreasonable interference with other ocean uses" in the area of Tract HI.

Industria further maintains that her appropriation of the seabed and sub-soil of the high seas is not an innovation. Such an appropriation has been carried out by other sovereign States.

For example, on August 2, 1858, a Royal Assent was given to "The Cornwall Submarine Mines Act" passed by the British Parliament under which the Crown claimed territorial right over the minerals lying beneath the water on the coast of Cornwall. Commenting on this Act, Cecil Hurst notes that:

"so far as Great Britain at any rate is concerned the ownership of the bed of the sea within the three mile limit is the survival of more extensive claims to the ownership of and sovereignty over the bed of the sea. The claims have become restricted by the silent abandonment of the more extended claims. Consequently, where effective occupation has been

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1. See 4 Whiteman 742.

(3)

long maintained of portions of the bed of the sea outside the three mile limit, those claims are valid and subsisting claims entitled to recognition by other states."<sup>1</sup>

Again, on 26th February 1942, a treaty was signed between the United Kingdom and Venezuela whereby the two countries divided the seabed and sub-soil of the submarine areas of the Gulf of Paria outside the territorial waters.<sup>2</sup>

Also on 28th September 1945, President Truman of the United States of America adopted a somewhat different approach to the claim of sovereignty over the sea-bed when he proclaimed that the United States -

"... regards the natural resources of the sub-soil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control."<sup>3</sup>

The Truman Proclamation not only underlines the distinction between the high seas and the seabed and sub-soil below them as we have pointed out but also shows as we have maintained that the seabed and sub-soil of the high seas are acquirable by effective occupation. Indeed, this Proclamation was accorded a "special status" in the North Sea Continental Shelf Case<sup>4</sup> by the International Court of Justice.

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1. Hurst, Cecil: "Whose is the Bed of the Sea?" IV, B.Y.B.I.L. (1923-4), pp. 39-43.
  2. See Wolfgang Friedmann and others: International Law Cases and Materials (1969), p. 559.
  3. See Ibid., pp. 557-8.
  4. North Sea Continental Shelf Case, I.C.J. Rep. 1969, p. 3, at p. 32; See also Stephen R. Katz: "Issues Arising in the Icelandic Fisheries Case" in Vol. 22, Part I, I.C.L.Q. (January 1973), pp. 83-108, at p. 101.

(4)

We concede that various resolutions of the United Nations<sup>1</sup> and of regional organisations as well as certain official pronouncements on the subject support the establishment of an international regime for the administration of the ocean floor, its seabed and sub-soil for the common good of mankind. For example, in the preamble to Resolution 2467 A (XXIII) of December 21, 1968, - a resolution passed by 112 votes to 0 with 7 abstentions - the General Assembly of the U.N. stated inter alia that:

"It is in the interest of mankind as a whole to favour the exploration and use of the sea-bed and their ocean floor and the sub-soil thereof beyond the limits of national jurisdiction for peaceful purposes;"

and that:

"such exploitation should be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states, taking into account the special interests and needs of the developing countries."<sup>2</sup>

Similarly, the General Assembly Resolution of December 17, 1970 affirms the principle that:<sup>3</sup>

(i) The seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction ... as well as the resources of the area, are the common heritage of mankind;

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1. See, for example, the U.S. "Draft United Nations Convention on the International Seabed Area 1970" in 9 Int. Leg. Mat. 1046 (1970), summarised in 65 AJIL 179 (1971).
  2. See Michael Akehurst: A Modern Introduction to International Law, London (1970), p. 235.
  3. See U.N. Doc. A/RES/2749 (XXV); 10 Int. Leg. Mat. 220 (1971); Vol. 65, No. 5 AJIL (1971), p. 757.

(5)

- (ii) The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.

But all these statements merely constitute some sort of recognition of what the law ought to be; there is no suggestion that they represent the existing law. And as Wolfgang Friedmann has rightly observed:

"A declaration of principles is fine as far as it goes, but it does not commit anybody to any specific action."<sup>1</sup>

Assuming, however, for purposes of argument that we also concede that these resolutions are persuasive, the Deep Ocean Mining Act (DOMA) does not go contrary to these UN Resolutions. In fact, the DOMA encourages scientific research under Section 3 and by section 6 it provides for the establishment of a fund for assistance to developing reciprocating states.

Latia, therefore, committed a breach of international law by interfering with the mining operations on the seabed and subsoil of the high seas. As we contended earlier, the seabed and subsoil of the high seas are regarded as res nullius and are subject to acquisition by States. Industria exercises sovereignty over Tract HI as a result of effective occupation which on the rules of effectiveness grounded by the Island of Palmas Case,<sup>2</sup> gives her right over that part of the territory covered by the high seas.

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1. See Wolfgang Friedmann: "Selden Redivivus - Towards a Partition of the Sea?"
  2. Island of Palmas Case (1928), II U.N. Reports of International Arbitral Awards, 829; See also Green: International Law through the Cases (1959), pp. 349-365.

.../6.

(6)

2. LATIA'S UNILATERAL EXTENSION OF HER TERRITORIAL SEA TO 200 MILES IS A BREACH OF CUSTOMARY INTERNATIONAL LAW AND AN ENCROACHMENT ON THE FREEDOM OF THE HIGH SEAS:

At the 1930 Hague Codification Conference, the question of the proper breadth of the territorial sea was debated very vigorously, but with little concurrence of opinion, so much so that no single resolution proposing an appropriate breadth was even put to the vote.<sup>1</sup>

Since that time, the area of agreement has been further diminished by new claims by states to large areas of the High Seas. The problem was discussed at several meetings of the International Law Commission in preparation for the 1958 Conference at Geneva. Opinions were divided and suggestions for the breadth of the territorial sea ranging from three miles to several hundreds of miles were put forward but none was adopted.

Some members of the Commission suggested a rule that each nation should be free to fix its own territorial sea in accordance with its 'real needs'; that where the breadth adopted could be shown to be justified by such 'needs', the limit should be adopted as in accord with international law. Others urged the Commission to adopt a width of between 3 and 12 miles as the legal limit. Yet a fourth viewpoint would have allowed states to fix more than 3 miles enforceable on the basis of reciprocity.<sup>2</sup>

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1. Jesse S. Reeves, "The Codification of the Law of Territorial Waters," 24 A.J.I.L. 486, 492 (1930).
  2. See Commentary to Art. 3; International Law Commission Report U.N. General Assembly 11th Session; Official Records, Suppl. No. 9 at 12 (A/3159).

(7)

The Commission was however unable to come to a consensus on any of these proposals, or on any other. It contented itself with drafting for the Geneva Conference its Final Report with the following provisions:

- (1) "The Commission recognises that International practice is not uniform as regards the delimitation of territorial sea;
- (2) The Commission considers that International Law does not permit an extension of the territorial sea beyond 12 miles;
- (3) The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many states have fixed a breadth greater than 3 miles, and, on the other hand, that many states do not recognise such a breadth when that of their own territorial sea is less."<sup>1</sup>

In other words, the Commission adopted no provision which would alter the Customary rule that the maximum breadth of the territorial sea is 3 miles. While it did not suggest any particular extension of that breadth, it did commit itself to the proposition that, without prejudice to the legality of any lesser limit, any claim of more than 12 miles was clearly indefensible.<sup>2</sup> It did not however approve the 12 mile limit; rather, it left the question to the 1958 Geneva Conference on the Law of the Sea to determine.

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1. International Law Commission Report; 51 A.J.I.L., 161 (1957).  
2. Speech of Mr. Francois, Rapporteur of the International Law Commission to the 485th meeting of the Sixth Committee of the General Assembly, November 28, 1956, U.N. Doc. A/Conf. 13/19 at 9-10 (1956).

(8)

The United Nations Conference on the Law of the Sea which met in Geneva in 1958 adopted the findings of the International Law Commission and translated them into the four Geneva Conventions on the Law of the Sea.<sup>1</sup>

Professor Johnson in his International Law of Fisheries<sup>2</sup> says:

"The customary 3-mile rule relating to the breadth of the territorial sea has certainly not survived the 1958 and 1960 Geneva Conferences on the Law of the Sea, if general consent is the basis of custom, despite the fact that neither Conference could agree on a suitable substitute. Consensually, the result of these findings is no-law, not a reversion to the old customary rule."

As a political appraisal of the consequences of the failure of the Geneva conferences to agree to a rule this conclusion is just. But a postulate of "no-law" is not a permissible attitude for a court, or even for a lawyer, when faced with an actual question.<sup>3</sup> Although it may be tempting to evade the difficulty by saying that there is no clear rule, the temptation must be resisted.

Article 24 paragraph 2 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone carries with it the logical inference that the breadth of the territorial Sea may not exceed 12 miles. This is because the relevant provision says that the contiguous zone (that is, the zone between the territorial Sea and the high seas) may not

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1. Convention on the Territorial Sea and the Contiguous Zone, UN Doc.A/Conf. 13/L 52; Convention on the High Seas U.N. Doc. A/Conf. 13/L. 53; Convention on Fishing and Conservation of the ~~living~~ living resources of the high seas, U.N. Doc. A/Conf. 13/L.54; Convention on the Continental Shelf, UN Doc. A/Conf. 13/L.55 - all of 1958.
  2. Johnson: International Law of Fisheries (1965), at p. 118, note 26; See also Jennings: General Course on Principles of International Law in Recueil des Cours, Vol. II, 1967, pp. 327-600, at p. 382.
  3. Ibid., p. 382.

(9)

extend beyond 12 miles from the base line from which the territorial sea is measured. It follows logically that a state may not claim a territorial sea of more than 12 miles. It is in accordance with this guiding rule to which the disputants are signatories that the conduct of Latvia in extending her territorial sea to 200 miles must be judged.

And we are contending that since Latvia could not lawfully claim more than 12 miles as her territorial sea, her 200 mile claim is therefore contrary to international law. As Professor Sir Humphrey Waldock rightly observed:

"A modern claim in excess of the universal minimum of 3 miles is not ipso facto illegal, if it does not go beyond 12 miles. But the validity of such a claim is merely relative: it is valid only against those other States which have accepted or acquiesced in it. No State is therefore bound to respect a modern claim in excess of 3 miles to which it has not assented."<sup>1</sup>

Latvia, therefore, cannot justify her 200 mile territorial sea limit either in international law or on the ground of practice of States. In fact, states have always protested strongly against such unilateral and extravagant appropriation of the high seas.<sup>2</sup> For no state can indefinitely extend her jurisdiction and sovereignty in contravention of areas designated by international law as the high seas.

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1. Ibid., p. 383 (n 19), citing International Relations, Vol. 1 (1956), at p. 185.
  2. Article 1 of the Convention on the High Seas defines the term 'high seas' as "... all parts of the sea that are not included in the territorial sea or in the internal waters of a State."

In 1950, El Salvador increased her territorial sea to 200 miles. This was met by a strongly worded note of protest from many states including the United States of America which said that the extension would not be respected by her nationals, ships and aircrafts.

In 1950 and 1951, Honduras claimed control and jurisdiction over an area in the Atlantic Ocean extending 200 marine miles seaward from its coast. The United States of America, the United Kingdom and a host of other countries viewed this as an encroachment on the freedoms of the high seas and protested accordingly.

After their Santiago meeting of 18th August 1952, Chile, Ecuador and Peru proclaimed their sole jurisdiction and sovereignty over the area adjacent to and extending 200 miles from their coasts, including the sea floor and subsoil of that area.<sup>1</sup> This was again met with vigorous protests from many maritime nations.

A survey compiled by the Food and Agricultural Organisation shows that in 1968, 29 states (including most of the major maritime powers) claimed three miles territorial sea, 3 claimed four miles, 19 claimed between five and ten miles. and 30 claimed twelve miles; only 6 States, almost all of them in Latin America claimed more than twelve miles.<sup>2</sup>

From these data it is seen that very few States claim more than twelve miles, and when they do, there are protests from other States.

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1. See Vol. 65, No. 5, AJIL (October 1971) p. 763.
  2. See International Legal Materials, Vol. 8, 1969, p. 516.

(11)

Latia's claim of a 200 mile territorial sea is, therefore, already discredited by these protests which had questioned the validity in international law of similar extravagant claims.

We are also contending that the 200 mile claim by Latia is an encroachment upon the freedoms of the high seas provided for in Article 2 of the 1958 Geneva Convention on the High Seas which are:

- (i) Freedom of navigation
- (ii) Freedom of fishing
- (iii) Freedom to lay submarine cables and pipelines
- (iv) Freedom to Fly over the high seas.

Latia's action in appropriating large areas of the high seas will greatly handicap, slow down and subject to interminable disputes, mining and other commercial activities on the high seas. The effect of any such extension on sea navigation is bound to be adverse and the effect on air navigation is also bound to be catastrophic. With the increased speed of aircrafts, the widening of an individual states territorial sea would increase the possibilities of international disputes arising from the unintentional violation of nations airspace by unauthorised aerial overflight.

While minor increases made by states to their territorial sea for economic reasons may be justified by virtue of Article 4 paragraph 4 of the Convention on Territorial Sea and Contiguous Zone,<sup>1</sup> there

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1. Article 4(4) of 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone provides: "Where the method of straight baselines is applicable ... account may be taken, in determining particular base lines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

can be no justification for extensions which are as extravagant as 200 miles. No canon of interpretation appertaining to the said Article 4 paragraph 4 can justify such excessive claim on the part of any State, no matter the configuration of its coast. To concede otherwise is to acquiesce in the partitioning of the high seas with the attendant consequence of international anarchy.

In the Anglo-Norwegian Fisheries Case,<sup>1</sup> the International Court of Justice (ICJ) upheld the Norwegian system of straight base lines, which in the case did not follow the "sinuosities" of the extraordinarily indented Norwegian coast but which followed the general direction of the coast. The claim of Norway then was only 4 miles. It is clear that Article 4 paragraph 4 of the Convention on Territorial Sea which was a paraphrase of this I.C.J., decision did not contemplate such excessive extension of 200 miles nor indeed 300 miles for ~~any~~ purpose.

Latia's unilateral extension of her territorial sea to 200 miles is a breach of customary international law and an encroachment on the freedom of the high seas. From the above analysis we submit that the area of Tract HI is not within the territorial sea of Latia. It is part of the high seas. Latia, therefore, has no jurisdiction over the area and so the activities of the Deep Ocean Mining Company are in no way a violation of Latia's territorial sovereignty.

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1. Anglo-Norwegian Fisheries Case, (1951), I.C.J. Rep. 131.

3. THE AREA OF TRACT HI WHICH IS LOCATED 120 MILES OFF THE COAST OF LATIA IN WATER 2100 METRES IN DEPTH CANNOT BE CLAIMED BY LATIA AS ADJACENT TO ITS COAST:

The Proclamation of President Truman in 1945 by which the United States declared its interest in the continental shelf off its shores excited in other countries not protest but more or less parallel proclamations. Accordingly, a customary rule of international law on continental shelf quickly evolved from it, because several other States (such as Great Britain in respect of the Bahamas, and Saudi Arabia in respect of parts of the Persian Gulf) followed roughly the same course as the United States. When, however, some states such as the Latin and Central American Republics resorted to ambitious claims to areas quite unrelated to the width of the physical Shelf their exorbitant claims met with protests and resistance. For these States had claimed sovereignty not only over the sea-bed and sub-soil of the continental shelf, but also over the so-called "epicontinental sea" and the airspace above it.<sup>1</sup>

The idea of the right of coastal states over the animal and mineral resources of their continental shelf was the subject of vigorous debate in the preparatory conferences of the International Law Commission leading to the 1958 Geneva Conference on the Law of the Sea. To-day, states assert claims to their continental shelf<sup>2</sup> not only as a matter of custom but also by virtue of specific provisions of the 1958 Geneva Convention which codified the law on the subject.

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1. See 4 Whiteman 793, 797-8.

2. Lauterpacht: "Sovereignty over Submarine Areas," 27 B.Y.B.I.L., 376, 380-2 (1950).

(14)

We, therefore, do not intend to echo the misgivings of Lord Asquith of Bishopstone in the Abu Dhabi Arbitral Award<sup>1951</sup> where he asserted that:

"I am of opinion that there are in this field so many ragged ends and unfulfilled blanks, so much that is merely tentative and exploratory, that in no form can the doctrine claim as yet to have assumed hitherto the hard lineaments or the definitive status of an established rule of international law."<sup>1</sup>

But we do recognise the uncertainties inherent in the definition of the nature of Continental Shelf under Article 1 of the 1958 Geneva Convention on the Continental Shelf. By extending sovereign rights of the coastal state over the seabed and subsoil resources "to a depth of 200 metres, or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas," it left the limits of national jurisdiction open. The General Assembly resolution, by declaring that "the seabed and ocean floor ... beyond the limits of national jurisdiction... are the common heritage of mankind," leaves the question unresolved.<sup>2</sup>

We would like to point out here that although by virtue of Article 2 of the Continental Shelf Convention, a state may claim sovereign rights over its continental shelf, this right does not extend to the superjacent waters or airspace, nor does the Article grant to a State the right to extend the breadth of its territorial sea.<sup>3</sup>

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1. Wolfgang Friedmann and others: International Law Cases and Materials (1969), p. 558-561, at p. 560
  2. See Vol. 65, No. 5, AJIL (October 1971), at p. 759.
  3. Article 3, Convention on the Continental Shelf.

(15)

We concede that in the preparatory Articles for the 1958 Geneva conference, the International Law Commission placed particular ~~emphasis~~ on the exploitability rather than on the depth of the superjacent waters in determining the extent of the continental shelf.<sup>1</sup> That did not mean that the Commission was asking states to claim the high seas if they could show exploitability of the submarine areas; rather the intention of the Commission which appears to us to be rational and objective was ultimately reflected in Article 4 paragraph 4 of the Convention on the Territorial Sea and the Contiguous Zone.<sup>2</sup> to which we referred earlier.

While Latvia may because of her geographic and marine peculiarities claim up to 12 miles as territorial sea nothing in the provisions of Article 4 (4) of the Convention on Territorial Sea and Contiguous Zone (1958) could be read as giving Latvia right to claim unlimited zone of waters on account of her coastal peculiarities.

Since the area of Tract HI is in the high seas, Latvia's action against the Deep Ocean Mining Company of Industria is unjustifiable under any circumstances.

Even if Latvia avails herself of Article 4 (4) of the Convention on the Territorial Sea and the Contiguous Zone, this could not entitle her to the sovereignty granted in Article 1 (1) of that Convention.

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1. See Commentary to s. 67, International Law Commission Report, U.N. Gen. Ass., 11th Session, Official Records Supp. No. 9 (A/3159).
  2. U.N. Doc. A/Conf. 13/L 52 (1958).

.../16.

This is because Latia cannot claim that mineral resources have ever featured as part of her economic interests. There was hitherto no evidence of previous mining in the seabed on her part. It would have been otherwise if the claim had been to fishing in the area, the reality and importance of which only she could substantiate with evidence of long usage. This argument is borne out by the fact that Latia has no equipment for deep sea mining nor the technical know-how for such operation.

We wish to add that the test of "exploitability" beyond the depth of 200 metres should not be substituted for the test of "adjacency" which is part of the definition of "Continental Shelf" in Article 1 of that Convention. Adjacency does not seem to comprehend the idea of appurtenance as a prolongation of the land domain. Accordingly in the North Sea Continental Shelf Case, the International Court of Justice observed that -

"It is evident that by no stretch of imagination can a point on the continental shelf situated say a hundred miles or even much less, from a given coast, be regarded as "adjacent" to it, or to any coast at all, in the normal sense of adjacency, even if the point concerned is nearer to some one coast than to any other."<sup>1</sup>

In the light of this observation, we maintain that the area of Tract HI which is located 120 miles off the coast of Latia in water 2100 metres in depth cannot be claimed by Latia as adjacent to its coast. We, therefore, pray this honourable Court to condemn the actions

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1. North Sea Continental Shelf Cases, (1969) I.C.J. Rep. 3, 30

of Latvia against the Deep Ocean Mining Company of Industria because Tract HI is in the high seas which is subject to the control of no single state.

4. THE DEEP OCEAN MINING ACT (DOMA) DOES NOT VIOLATE INTERNATIONAL LAW:

The DOMA was promulgated for mining operations within the deep sea-bed as defined in Section 2 (b) of the Act. It contemplated mining operations in the seabed and subsoil of the high seas, outside the national jurisdiction of any State.

The DOMA does not interfere with the freedom of the high seas as contained in Article 2 of the Convention on the High Seas. It acknowledges the right of DOMA and non-DOMA States alike to those freedoms. Under Section 4 (a) of DOMA the freedom of scientific research is further preserved provided such activities did not interfere with development by the licensees. Moreover, the Act provides for an orderly development and conservation of the hard mineral resources and the deep seabed. This provision is intended to prevent the indiscriminate and wasteful mining of the immense wealth of the Sea.

The mining operations at Tract HI do not, therefore, violate international law.

It is our contention that the slow pace of achieving agreement on deep ocean mining at the current U.N. preparations for a comprehensive conference on the Law of the Sea was due to the intransigence of

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developing states like LATIA. Their negative response to DOMA which we submit is helping to fill the lacuna in this area of international law is particularly significant.

Industria is capable of providing under DOMA the international market needs of copper, nickel, manganese, cobalt and other metals without facing the possibilities of prohibitive financial losses due to hostile policies ~~on~~ land based <sup>minerals by</sup> producer nations. We, therefore, submit that Latia should not be allowed to continue her interference with the mining operations in Tract HI.

Manganese, for instance, is a very strategic mineral. It is a very essential commodity for the manufacture of steel and it has few substitutes. It is used as a depolarizer for the manufacture of dry-cell batteries and the decolorisation of glass. It has been discovered that from the mining of nodules on the seabed and sub-soil it may soon be cheaper to obtain manganese and other metals from the sea than from land.

5. INDUSTRIA CONTENDS THAT THE PURSUIT AND ARREST OF CARRIER (OF INDUSTRIA'S FLAG) ON THE HIGH SEAS AND THE CONFISCATION OF ITS CARGO ARE UNLAWFUL:

It is a recognised rule of international law that the coastal State has certain powers of arrest over foreign merchant ships in its internal waters, territorial sea and contiguous zone. This is the basis of the right of hot pursuit in international law.<sup>1</sup>

But the right of hot pursuit is subject to certain restrictive conditions necessary to protect free navigation and commerce on the high seas. Article 23 of the Convention on the High Seas to which both Industria and Latia are parties regulates in some detail the exercise of this right by any State.<sup>2</sup>

It is our contention that Tract HI is on the high seas. Besides, the pursuit and arrest of Carrier by Latia's Interceptor took place beyond this area. Latia's action, therefore, violates Article 23 of the Convention on the High Seas 1958. The arrest of the Carrier cannot be justified. Nor can the confiscation of its cargo be explained on basis of international law. It is illegal, because Latia was not really exercising the right of hot pursuit recognised in international law.

6. THE SEIZURE OF GATHERER AND ITS ADJUDICATION IN PRIZE VIOLATE INTERNATIONAL LAW:

The open sea and the property in the subsoil under the bed of the sea belong to no State.

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1. See 4 Whiteman 677

2. See I'm Alone Case (1935) III U.N. Rep. of International Arbitral Awards, 829.

We concede that certain rights to exclusive claim have been recognised in cases where by means of ancient usage there exists justifiable claim to sedentary fisheries especially pearl banks, oyster beds and sponge fisheries outside the 3 mile limit. It carries with it the right of a State to legislate for the protection of the products derived from such soil.<sup>1</sup>

But Latia's conduct in positioning Interceptor in Tract HI cannot be explained on grounds of historic rights. Its presence at Tract HI was an unlawful interference with the freedom of navigation on the high seas. As in the arrest of Carrier, Latia also violated international law by seizing Gatherer on the high seas and adjudicating it in prize, because Latia ~~lacked~~ jurisdiction.<sup>2</sup> Therefore the purported transfer of title in the Gatherer to the Latian Government is invalid. Nemo dat quod non habet (No one gives what he does not possess).

The arrest of Carrier on the high seas and the confiscation of its cargo is an international wrong. Similarly, the seizure of the Gatherer and its adjudication in prize constitute international wrong.

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1. See "Sedentary Fisheries and the Convention on the Continental Shelf" in 1966 AJIL, 359.
  2. In the Behring Sea Fur Seal Arbitration of 1893, (1895) Moore I.A., p. 4761 the question was whether the United States could exercise jurisdiction over vessels engaged in fur seal fishery beyond the 3-mile distance of territorial sea. The claim of the United States was rejected by the Arbitral Tribunal, which held that the United States had no right of protection or property outside the ordinary 3-mile limit, and damages were awarded to various British ships which had been seized by the order of the American Government.

Also in the Costa Rica Packet (1897) Moore I.A., Vol. 5, p. 4943 de Martens, Sole Arbitrator held that Holland was not entitled to exercise any jurisdiction over a British vessel outside Dutch territorial seas.

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As the Permanent Court of International <sup>Justice</sup> ~~Law~~ (PCIJ) observed in the Chorzow Factory (Indemnity) Case,

"... it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."

We, therefore, pray this honourable Court to exercise her jurisdiction in favour of Industria by ordering the return of the cargo of nodules and Gatherer seized by Latia; the reimbursement of all fines and assessments and compensation for all other costs including lost profits on the mining operations.

7. LATIA'S RECOURSE TO THE USE OF FORCE AGAINST CARRIER AND THE GATHERER VIOLATE INTERNATIONAL LAW:

Latia had used force against Carrier and the Gatherer, inkeeping with her threat to use force against Industria's nationals at Tract HI.

But her recourse to force violates fundamental norms of international law since disputes no matter their origin must now be settled by pacific means. According to Article 2 (3) <sup>and Article 2(A)</sup> of the United Nations Charter:

"All members shall settle their international disputes by pacific means in such a manner that international peace and security and justice, are not endangered."

Interceptor's aggressive behaviour in firing at men and equipments at Tract HI violates the said Article 2 (3) of the United Nations Charter.

It is a deliberate act of provocation aimed at Industria which had the necessary means to effect adequate reprisals. But Industria showed considerable restraint in the circumstances. Indeed, the reply warning

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1. Chorzow Factory (Indemnity) Case (1928), Ser. A, No. 17  
Green: International Law through the Cases (1959) .../22.  
pp. 515, 553.

(22)

shot by Gatherer was done in self-defence which is recognised by Article 51 of the United Nations Charter. Vessels on the high seas may use force to repel attack by another vessel or by an aircraft provided this is proportionate to the threat offered.<sup>1</sup>

Latia could not have been acting in self-defence since she initiated the use of force in an area of the high seas outside its jurisdiction. She had violated Article 11 (3) of the Convention on the High Seas by arresting a vessel ~~not~~ <sup>neither</sup> flying its flag nor a pirate vessel on the high seas.

Latia is the aggressor and should be condemned as such by this honourable court.

8. THE ANNOUNCEMENT THAT LATIA INTENDS TO CONDUCT DEEP OCEAN MINING BEYOND THE NATIONAL JURISDICTION OF STATES IN TRUST FOR ALL PEOPLES AND STATES ESPECIALLY THE DEVELOPING COUNTRIES IS AN AFTER THOUGHT

Latia is a poor and underdeveloped country. It is inconceivable that she can better than Industria meet up the considerable investment needed to conduct deep sea mining operation as in Tract HI. We contend that her announcement that mining operations (to be resumed in Tract HI) with equipments seized from Industria's Deep Ocean Mining Company will benefit all peoples and States particularly the developing countries was an after thought, a mere ruse for winning support for her illegal acts of aggression against Industria. Her intended mining operations surely cannot benefit any DOMA State.

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1. See Ian Brownlie: "The Use of Force in Self-defence" in (1961) B.Y.B.I.L., 183, at p. 250.

(23)

In fact, if her conduct is emulated by other developing countries, which may well happen, the world will be the worse for it because the dog-in-the manger posture of these States will completely neutralise the growing efforts by advanced nations to help mankind reach the wealth of the seabed and the sub-soil of oceans.

Latia has not acted in good faith and we therefore pray this court to declare that exploitation of Tract HI under DOMA is not unlawful.

C O N C L U S I O N

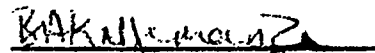
We have shown in the foregoing pages that Latia committed a breach of international law by interfering with mining operations in Tract HI, and by her unilateral extension of her territorial sea and her creation of an economic resource zone. We have also shown that the disputed area is not adjacent to Latia's coast and that DOMA is in accord with international law.

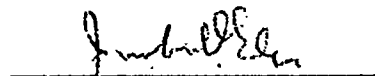
We have further amply proved Industria's contention that the pursuit and arrest of Carrier (of Industria's flag) in the high seas, the confiscation of its cargo, the adjudication in prize of Gatherer and Latia's recourse to the use of force violate international law. Consequently the announcement by Latia that she would constitute herself a trustee for the international community has easily been revealed to be an after thought.

We therefore, pray this court to rule that the nodules confiscated by Latia as well as the Gatherer she adjudicated in prize be returned to Industria. We are also asking this court to rule that Industria be reimbursed for all fines and assessments and be compensated for all lost profits on the mining operation. Finally, we pray this honourable court for a declaration that exploitation of Tract HI under DOMA would not be unlawful.

CERTIFICATION OF LENGTH

We certify that by our count, this memorial contains fewer than 4,500 words.

  
BENJAMIN A. NJEMANZE

  
JAMES C. EZIKE