International Law (January 13, 1973)

William & Mary Law School

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LJ5
INTERNATIONAL LAW

Prof. Williams
January 13, 1973

(50 Points)

Conglomerate, Inc., a wholly US owned Delaware corporation, owns 70% of the stock of El Primo Tuna Co., a Costa Rican corporation. Costa Rican stockholders own the other 30%. El Primo's fishing boats are registered under the Costa Rican flag and fish in the Pacific. One of these boats, the "Sic Semper Tyrannis" (hereafter, the "SST"), fishes off the coast of the South American State of Mañana. The SST was so named by its skipper, Red Firebrand, who, on the date of the incident to be related, was a Virginia-born US citizen, but who became a Costa Rican citizen one month later.

Five years ago, Mañana enacted legislation declaring its exclusive jurisdiction over fishing rights off its Pacific coast for a distance of 200 miles and established substantial criminal penalties for foreigners fishing in that zone. The Mañana fishing industry depends greatly on the fishing resources in that zone, and fishing revenue accounts for 5% of the country's GNP and 20% of its foreign currency income. Several other Central and South American States subsequently enacted identical legislation. Of the approximately 110 States in the world, 127 have made no comment on Mañana's action and 10 (mostly Latin American) have expressly approved. Japan has ordered its fishing vessels to stay out of the 200 mile zone. The Soviet Union denounced Mañana's action for 4 years as "an imperialist attempt to deprive other peoples of protein necessary for survival". However, following last year's successful coup by extreme leftist forces, a new government, "The People's Republic of Mañana" (hereafter, "PRON") was established; the Soviet Union negotiated a very favorable, special agreement for fishing rights, and thereafter supported the 200 mile zone as proper "revolutionary proletariat action". The US government consistently has denied Mañana jurisdiction to establish a 200 mile zone and conceded at the most the jurisdiction to establish a 20 mile zone to protect fishing rights. Many times, US flag or US owned fishing boats have been seized in the zone in an area between 20 and 200 miles off shore, and invariably, Mañana courts have levied fines, which the fishing companies paid and thereafter were reimbursed by the US government. Although the US always protested these fines, no economic or military action had been taken against Mañana due to these boat seizures and the fines. However, since PRON's establishment as the new government, relations between the two countries progressively had become most unfriendly.

On November 13, 1972, the SST was operating about 170 miles off the Mañana coast when a Mañana government patrol boat tried to seize the boat for fishing within the prohibited zone. After two previous seizures of his vessel, Skipper Firebrand had vowed "never again" and had secretly purchased and mounted a 50 caliber machine gun. Catching the patrol boat by surprise, he fired on it and disabled it, and then headed further out to sea to make good his escape. The patrol boat radioed the "El Presidente", a Mañana destroyer (the only one and the pride of the Mañana Navy), which sighted the SST and took up the chase about 165 miles out. At 196 miles out, a near miss from a warning round damaged the SST and at 205 miles out, another near miss did more damage to the boat and caused substantial injuries to Skipper Firebrand. Earlier, after running up a US flag he always carried, Skipper Firebrand had radiated for help from any US source, stating he was "being attacked on the high seas by a Commie Mañana destroyer". A US destroyer in the area arrived on the scene just as the El Presidente was preparing to seize the SST, and a confused tirade by radio began between the two destroyer commanders. Then, whether incidently or by someone's direction is unknown, El Presidente's main battery fired
at point blank range, killing the US destroyer commander and other personnel and destroying much of the central control area. In violation of express orders for no firing without order of the Gunnery Officer, who was unconscious and thus unable to intervene, one US gun turret returned the fire, hitting the EL Presidente's magazine (where the shells are kept). The resultant explosion totally destroyed the EL Presidente and killed all personnel aboard. Subsequently, the SST sank due to the damaged caused earlier by the EL Presidente.

When the loss of the EL Presidente was learned by PROM, that government denounced the sinking as "an act of naked aggression", and, after severing diplomatic relations, enacted emergency legislation expropriating all US owned businesses and other economic interests on the ground that it was "necessary to protect the proletarian from exploitation and subversion by the American imperialist aggressors". PROM stated that, "Whatever compensation is owing, if any, will be paid when the socialist revolution is complete and when the United States has reimbursed the Mañanans people for damages caused by American aggression." One of the businesses expropriated was the Mañana Oil Co., a Mañana corporation wholly owned by Onglomerate, Inc. Also, 30 US personnel of a US fishing boat seized earlier were immediately placed on trial (with appointed counsel) and given the maximum sentence to confinement and the maximum fine was assessed against the fishing company. In the past, fines had been adjudged against fishing companies, but US fishermen had never been tried under the Mañana penal laws making their fishing within the prohibited zone a crime.

Due to Mañana governmental tirades in the news media, some 25,000 rioters took to the streets in the Mañana capital and attacked US public and private property, killing 7 Americans and wounding 23 and doing $500,000 property damage. Police urged the rioters to stop, but declared themselves unable to check "the righteous wrath of the people". The President of the United States, announcing his fears for the lives of over 200 Americans who had fled to the US Embassy in Mañana, declared an "air quarantine" over all Mañana territory and stated that, "Due to the apparent inability of the Mañanan government to protect American lives, it will be presumed that any non-US plane in the air over Mañana territory is acting against the combined interests of Mañana and the United States in safeguarding American citizens, and such plane will be fired upon". A 1000-man US Marine Combat Team was then flown in to hold the Embassy area until evacuation of US citizens was affected.

At this time, Mañana moderate and rightest forces, who had army but not air force support, launched a successful attack that overthrew POM, and by January 1, 1973, the political situation had reverted basically to that which had existed prior to POM's establishment, with the 200 mile zone maintained but with the Soviet Union's special agreement cancelled. However, as to US businesses expropriated, most were returned to their owners' control, but some of the larger ones (including the Mañana Oil Co.) were kept by the State "to protect natural resources". A 1970 US-Mañana agreement requires "prompt and full market value compensation" at the time of any expropriation by either State, and prior consultation before any expropriation, but Mañana maintains the agreement is invalid because it was never submitted to the Mañana legislature (The Mañana Supreme Court has so stated in an advisory opinion interpreting a general provision of the Mañana Constitution.). Further, Mañana argues the agreement has been terminated, because of (a) the later Mañana expropriation legislation, which supersedes earlier international agreements under Mañana law; (b) the "hostile" acts of the US in sinking the EL Presidente and declaring an "air quarantine" over Mañana and sending in the Marines; (c) the "drastically changed social conditions" in Mañana that have occurred in the last 2 years, and (d) the US Presidential Order in 1971, just after POM was established, that cut the Mañana sugar quota by 50%, which Mañana alleges is, in effect, an expropriation of a valuable economic interest in violation of the 1970 agreement. There is also
A 1965 US-Mañana Treaty of Friendship calling for the right of "national treatment" and containing a most-favored-nation clause, both of which provisions Mañana alleges to have no application to any of the events previously mentioned. Further, Mañana maintains that while it is quite willing to enter into a new Treaty of Friendship, the old one was terminated due to US actions in (b) and (d) above stated.

REQUIREMENT:

A. You are a lawyer in the Office of the Legal Adviser to the State Department tasked with preparing a memorandum stating the advocated US position and the anticipated Mañanaan position as to the law bearing on each of the problems raised in the foregoing statement of facts, and, as to each of the damages or injuries suffered, your impartial view as to which of the legal positions is controlling to provide ground for redress by the offending State. This IS YOUR FIRST DRAFT OF THE MEMORANDUM, THEREFORE, YOU MAY, IF YOU WISH, USE EXPANDED OUTLINE FORM (THE DAMAGE OR INJURY, A PARTICULAR ISSUE, SHORT PHRASES OF LAW SUPPORTING OPPOSING POSITIONS AND A BRIEF STATEMENT GIVING YOUR CONCLUSION AS TO PROPER OUTCOME AND WHY, THEN ON TO THE NEXT ISSUE, OR IF DONE, ON TO THE NEXT ISSUE.)

B. The Chief Counsel for Conglomerate, Inc., wishes to sue Mañana in US courts (there are Mañanaan assets he could reach) for damages for the expropriation of Mañana Oil Co. He asks for State Department advice. You would advise him about many aspects, but at this time briefly about the probable effect of the Sabbatino Case and the "Sabbatino Amendment" in his law suit.

II. (20 Points). Write on EITHER part A OR part B for the Full 20 Points.

A. A Soviet space agency established by the Soviet government to carry out non-military space research and related activities has launched a massive rocket, which in turn, is to place instruments in orbit to (a) facilitate radio and television reception among the Warsaw Pact nations (the Soviet Union, Poland, Romania, etc.) and (b) gather data about the possible use of solar radiation for industrial and commercial use. Consistent with past USSR practice, no prior announcement of the launch was made, but after the launch appeared to be a success, the UN Secretary General's office was informed pursuant to Art. 11 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (hereafter, "Space Treaty", a copy of which is attached hereto). Unfortunately, the rocket went out of control before establishing orbit and a still sizable portion of its burning hulk crashed into the Richmond home of your good client, Jim Beam, destroying the house and killing Jim. With the exception of the People's Republic of China, who has made two space "shots", all other States in several hundred instances have invariably given prior notice of space launches and representatives at several international conferences have favored such notice "to increase scientific cooperation". Assume that with prior notice of the launch US officials could have taken effective action to destroy the burning wreckage before it landed. Assume you can effect proper service of legal summons on the Soviet Government. Assume no similar accident has ever occurred in past space activities.

REQUIREMENT:

Mrs. Beam has retained you to seek legal redress for the above losses. There are, of course, many problems, but discuss briefly the following: (a) the issue of sovereign immunity from suit in this case; (b) the opposing principles of interpretation on the question of whether the Space Treaty requires prior notice of space launches and your explained conclusion as to which view would succeed in court; (c) whether under customary international law, the Soviet Union is obligated to give such notice and (d) the nature of liability provided for, if any, under the Space Treaty in this situation and whether the facts would support liability of the Soviet Union under the Treaty.
Question II continued. **REMEMBER**. You have the choice of writing on part A or part B.

B. Assume that once again, the North Vietnam-US Paris negotiations have broken down and US B52 bombers are again bombing Hanoi heavily. Joe Goodfellow, your long-time friend, is piloting one of those bombers. His plane is hit by anti-aircraft fire as it approaches Hanoi, causing a drastic loss of altitude and the destruction of the electronic bomb guidance system. Joe attempts to complete the mission (bombing the city's electric power plant) and drops his bombs by visual sighting, which is extremely difficult in view of the plane's rapid speed, the anti-aircraft fire and the thick smoke clouds over the city. Unfortunately, the bombs hit 1 mile off target and destroy a hospital, killing and wounding many of the personnel and patients. Joe then crash lands his plane in a large park surrounding an ancient Buddhist temple rather than landing in nearby rice paddies. The plane strikes the temple, severely damaging it. Joe stagers out of the plane and collapses. A North Vietnamese soldier rushes up and is preparing to drag Joe further away when Joe regains consciousness and in momentary panic kills the soldier with his service revolver. Seeing other soldiers coming, Joe drops his revolver and surrenders.

The North Vietnam Government has decided that there should be a Nürnberg-style trial of "American war criminals". Joe is to be tried for:

(a) participation in a war of aggression;
(b) participation in the mass bombing of civilians and their habitations, to wit: the city of Hanoi;
(c) the destruction of a prohibited target (the hospital) and the killing and wounding of noncombatants (the hospital personnel and patients);
(d) the damaging of a prohibited target (the temple), and
(e) the killing of the soldier.

**REQUIREMENT:**

Joe has been notified that he may have any counsel of his selection and he has sent word that he wants you to defend him. In a brief memorandum state your anticipated defense for each charge under the international law of war crimes.

III. (30 Points)

Give your opinion, with a full discussion in support of your opinion, concerning the validity of any 2 of the following statements:

a. International law consists of a body of rules governing the relations between States.

b. National law and international law are two separate legal systems, different in their sources, their substance and the relations they regulate, so that neither system can alter the other nor be a part of the other.

c. Under the US Constitution, international law is part of the "law of the land" and our courts must apply it.

d. There is no such thing as international law, because there is no supranational government enacting laws and enforcing them for all nations and persons. Instead, there is only the use of national force for national
Question III continued.

self-interest without regard to law.

The problem with international law is that there are no effective sanctions available to enforce obedience to the law or to deal with the international law breaker.

END OF EXAMINATION