

Alcog (3)

INTERNATIONAL LAW

Spring, 1989

Professor Watson

1. Answer all questions.
2. Staple this sheet to the front of your answers.
3. Enter your exam number in place indicated.
4. This exam will last 3 hours.

Question 1		
Question 2		
Question 3		
Total		
Raw Grade		

Grade _____

Exam Number _____

1. Comment on the I.C.J.'s reasoning in the following excerpt:

K "The Court finds that both Parties take the view that the principles as to the use of force incorporated in the United Nations Charter correspond, in essentials, to those found in customary international law. They therefore accept a treaty-law obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations (Art. 2, para. 4, of the Charter). The Court has however to be satisfied that there exists in customary law an *opinion juris* as to the binding character of such abstention. It considers that this *opinion juris* may be deduced from, *inter alia*, the attitude of the Parties and of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations". Consent to such resolutions is one of the forms of expression of an *opinion juris* with regard to the principle of non-use of force, regarded as a principle of customary international law, independently of the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter."

2. The concept of a legal right does not fit easily into a customary legal system. Discuss why this is so, with examples from two different areas of international law.

- Jurisdiction - owned by* 3. The "Marine Explorer" (hereinafter the 'M.E.') is a deep-sea mining vessel owned by an Italian corporation but registered in Vanuatu. In order to be registered there, the only requirement was a fee of \$210,000. There was no inspection of the ship, which has never been to Vanuatu. The crew of the M.E. is Chinese and the vessel is chartered to a second Italian corporation.

On January 10th, 1989, the M.E. started mining manganese nodules in the Indian Ocean in an area outside the continental shelves of any other country. This was discovered after a few weeks by an Indian naval vessel. The Indian vessel, on instructions from the Indian government, ordered the M.E. to stop mining on the ground that it was contrary to international law. The M.E. did not respond and several days later was forcibly towed into Indian internal waters.

This resulted in a protest from Vanuatu to India on the ground that the vessel's freedom of the sea had been interfered with and that substantial damages were due Vanuatu as a result. India responded that Vanuatu was not the proper state to represent the vessel at the international level and that mining on the deep seabed was clearly illegal and thus not protected by the doctrine of freedom of the high seas.

Having failed to achieve satisfaction at the diplomatic level, Vanuatu initiated proceedings in the International Court of Justice, seeking damages for India's violation of international law.

Assume the following:

1. India and Vanuatu have signed and ratified the 1982 Law of the Sea Convention.
2. The Law of the Sea Convention is not yet in force.
3. India voted in favor of the Seabed Principles and U.N. Moratorium resolutions (G.A. Res. 2749 & 2574D).
4. Vanuatu did not vote for either resolution because it was not a state at the time they were passed.
5. Both India and Vanuatu have made declarations accepting the compulsory jurisdiction of the I.C.J. only on condition of reciprocity.
6. India and Vanuatu both appear and argue their respective positions before the Court.
7. India and Vanuatu have signed and ratified the U.N. Charter, the Statute of the International Court of Justice, and the Vienna Convention on the Law of Treaties.

What should the Court decide and why?
