



## 2009 Niagara International Moot Court Competition

### First Round Problem Clarifications

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1. *To whom did Prime Minister Harper make the August 27, 2008 announcement?*

**Answer:** This is publicly available information available on the Internet.

2. *At what latitude and longitude was the Bernier located when the Healy arrived in response to the distress call?*

**Answer:** Paragraph 6 clearly states that as a matter of fact that the location was 15 nautical miles east of the Canada/United States arctic waters border. All that is relevant for the purposes of the Compromis is that the Parties have agreed that the *Bernier* was outside U.S. territorial waters.

3. *Was the Bernier in disputed waters when it was found by the Healy?*

**Answer:** This is an issue for the ICJ to decide if it is raised.

4. *Is the third request from the United States supposed to be labeled "C"?*

**Answer:** Yes

5. *Can we have a copy of the TAA for the Lockheed Martin maritime system?*

**Answer:** No - It was subject to U.S. export controls laws. However, the TAA does indicate that BIS must be notified of any re-export or other transfer of the technical data to any person who is not covered by the May 17, 2007 Agreement, and that another license would be required prior to any re-export or other transfer.

6. *Did the U.S. Coastguard ship have to request entry into the Canadian waters before it approached the Bernier?*

**Answer:** This is an issue for the ICJ to decide if it is raised

7. *How did the Healy captain make a determination that the facilities at the Canadian ports were not adequate for Bernier repair?*

**Answer:** No facts are available

8. *Was the "extensive ice" such that it made the waters un-navigable for the Healy towing the Bernier, or did the Captain of the Healy feel that the "extensive ice" was un-navigable?*

**Answer:** There is no evidence that the *Healy* or the *Bernier* were prevented from moving as result of the extensive ice or that anyone determined that the ice made the waters un-navigable. The *Healy* towed the *Bernier* to Barrows, Alaska without getting stuck in the ice. However, the extensive ice could have caused the damage to the *Bernier* that ultimately resulted in the distress call being issued.

9. *Did the technical data on Mr. Chang's laptop concerning the various systems on the Bernier include the Lockheed Martin maritime system?*

**Answer:** Yes

10. *Did David St. John Williams, as an outside consultant, have at least a need-to-know and minimum security clearance?*

**Answer:** The Compromis provides the answer to this question. See paragraphs 15 and 16.

11. *Did the Canadian's consent to be towed to Barrow?*

**Answer:** There is no evidence of a specific request for consent or consent being specifically given.

12. *Did the CBP find evidence that Eve Chang actually accessed or emailed any of the data on Mr. Chang's computer?*

**Answer:** CBP did not find evidence that Eve Chang emailed any of the data. The data was password protected. However, the password was "Eve 1995".

13. *Why did the U.S. find it necessary to detain the four individuals? Were they chose randomly? Are there any other facts that lend to some sort of suspicion that these individuals were engaging in illegal behavior?*

**Answer:** There is no evidence that would lead to some sort of suspicion.

14. The Compromis states: On August 30, 2008, the *Bernier* was patrolling the Canadian arctic waters at a point within 200 nautical miles of Tuktoyaktuk and Sachs Harbour on Banks Island. According to the navigational equipment on the *Bernier*, it broke

down and started to take on water in the Beaufort Sea, 15 nautical miles east of the Canada/United States arctic waters border."

The Canadian position is that the maritime boundary/border should follow the land boundary. The American position is that the maritime boundary should extend along a path equidistant from the coasts of the two nations extending to the North Pole. When stated in the problem under # 6, "15 nautical miles east of the Canada/United States arctic waters border", which boundary does the problem refer to? In the alternative (or both if possible), may we have coordinates (latitude/longitude) as to the *Bernier's* exact location at the time the ship began to sink?

**Answer:** All that is relevant for the purposes of the Compromis is that the Parties have agreed that the *Bernier* was outside U.S. territorial waters.

15. *In paragraph 7, does terrorist refer to land or sea?*

**Answer:** Please rephrase the question.

16. *What were the coordinates for Bernier when distress signal sent out? Or distance from US coast and distance from Canada coast? (to determine if Bernier in Canadian waters).*

**Answer:** All that is relevant for the purposes of the Compromis is that the Parties have agreed that the *Bernier* was outside U.S. territorial waters.

17. *Can the location of the ship be specified, particularly with regards to the distances? For instance, was the ship found in the distributed boundary area of the Beaufort Sea?*

**Answer:** No

18. *Of the crew, who was granted entry after being secondarily searched?*

**Answer:** The Compromis contains the relevant facts.

19. *Paragraph 19, "they determined that the information gathered as a result of the detentions and searches was in violation of the May 17, 2007 Agreement." Is this sentence referring to the information found on the laptops or is it suggesting that the manner in which the U.S. collected this information, violated the May 17, 2007 Agreement.*

**Answer:** Secretary Michael Chertoff and Secretary Condoleezza Rice determined that the information gathered from the laptop searches demonstrated violations of the May 17, 2007 Agreement had occurred.

20. *Did Williams have no access or unauthorized access to the data in question?*

**Answer:** The Comprise provides the answer to this question. See paragraphs 15 and 16.

*21. Can there be more specificity about what Lockheed Martin maritime equipment was on board the Bernier?*

**Answer:** No - It was subject to U.S. export controls laws. However, the TAA does indicate that BIS must be notified of any re-export or other transfer of the technical data to any person who is not covered by the May 17, 2007 Agreement and that another license would be required prior to any re-export or other transfer.

*22. Is it to be assumed that at no time did the Canadian officials on board the Bernier object to the movement of the Bernier to Barrow, nor the movement of the crew to Anchorage? And that at no time was the consent requested of the Canadian officials.*

**Answer:** There is no evidence of a specific request for consent or consent being specifically given. However, the Canadian officials communicated that they appreciated the *Healy's* arrival and assistance and they wanted to be towed to the nearest Canadian port.