

## **United States Counter Memorial**

### **U.S. (Thomas) v. Ecuador**

#### **Maritime Boundaries**

While Ecuador alleges to have claimed a 200-mile territorial sea since 1952, they have not enforced this zone consistently. Apparently enforcement of this 200-mile zone is a matter of convenience for them; perhaps only choosing to enforce the zone when ships from certain states are in the zone. Ecuador has not signed the LOS III, contrary to what was stated in their memorial, so that leaves them in a position of not having the protection of the LOS III. LOS III is considered customary international law. Claims under customary international law need to be consistently enforced to be recognized by the international community. Ecuador had not consistently enforced their claim to the 200-mile zone and, as such, cannot claim protection under international law. The U.S. only recognizes a 12-mile zone and that is the only zone that Ecuador consistently enforces. So this 12-mile zone is the only sea zone that Ecuador can claim as being their sovereign territory. Surely Ecuador would not leave part of their landed territory unprotected at times. If Ecuador did not consistently enforce their land boundaries surely they would not be able to attack and kill those they felt were intruders.

The LOS III does not give states the same rights to the EEZ as it does to the 12-mile territorial sea. LOS III Section V Article 6 does indeed declare that the coastal state does have sovereign rights but nowhere does it proclaim that the coastal state has the right to fire upon and sink vessels thought to be violating their sovereign rights. They do not have this right on the sea no more than they do on land. Surely the fair and equitable state of Ecuador would not walk up to a suspected criminal who is not posing a threat in any way and shoot them. Instead Ecuador

should have followed the LOS III, which establishes in Part XV that states are to settle disputes on the seas peacefully and presents provisions for states to follow. Ecuador did not try to settle the dispute peacefully but instead gave hot pursuit and brutally attacked and sank two of the fleet's ships. Ecuador violated customary international law and used excessive force to stop the fleet. It is not customary international law to sink fishing vessels to get them to stop. Instead Ecuador should have contacted the flag state of the vessel in question to settle any disputes.

Further the United States contends that Ecuador has not acted in good faith by not making agreements with other states for the fish in their zone that exceeds their requirements or ability to catch and this is a violation of customary international law. Article 62 of the LOS III states coastal states are to make agreements with other states to fish their waters for the amount of fish they cannot catch. Perhaps Ecuador does not feel obligated to make agreements about a zone they do not consistently enforce.

### **Hot Pursuit and the Use of Force**

As to the subject of hot pursuit and the use of force, the United States feels that Ecuador is perhaps confused. The territorial sea is only 12 miles as defined by LOS III, Article 3 and not 200 miles as Ecuador claims in their memorial. Article 111 states that the coastal state can only pursue if the chase starts within internal waters, archipelagic waters, the territorial sea or the contiguous zone. The Thomas fleet was clearly not within internal waters, archipelagic waters, the territorial sea or the contiguous zone as it was 185 miles off shore. The incident did not occur within the 12-mile territorial sea or the 24-mile contiguous zone; therefore Ecuador violated customary international law and did not have the right to pursue. Furthermore, hot

pursuit is to be continuous; the fact that Ecuador had to catch up to the Thomas fleets indicates to the US that the hot pursuit was not continuous.

To the fact of the unfortunate death of one of the Ecuadorian attackers, Ecuador attacked and sunk two of the fleet's three fishing vessels and murdered one of the crew, the American crew would have felt they were under assault from the Ecuadorian attack ships. The American crew would have been acting in self-defence, in fear for their lives, when the Ecuadorian military personnel tried to board their one remaining vessel. Again Ecuador was in violation of customary international law because LOS III, Article 111 provides rules for boarding foreign vessels in the high seas. Those rules are (a) the ship is engaged in piracy; (b) the ship is engaged in the slave trade; (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109; (d) the ship is without nationality; or (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship. The Thomas fleet was not engaged in piracy, the slave trade, unauthorized broadcasting, was not without nationality, and was not of the same nationality as the warship. Therefore Ecuador was in violation of customary international law and the American crewman would have been within their rights to protect themselves. The United States asks the court to grant compensation for the illegal pursuit and sinking of the two fishing vessels as well as the murder of one of the crew as provided for in LOS III Article 111.8. Ecuador clearly violated customary international law by giving hot pursuit outside the 12-mile territorial sea.

### **Responsibility towards Aliens: Expropriation of Property**

According to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal of Investment, Ecuador did not follow

the steps in their expropriation of Mr. Thomas's property. "Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except: for a public purpose; in a nondiscriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment for in Article II.

The second point, "A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any associated compensation, conforms to the principles of international law", basically states that a national can appeal the expropriation of his property. Although Thomas's first objective was to secure the safe release of his crew, the compensation of his property is also important and of concern. Since Ecuador confiscated Thomas's property, the government owes him compensation.

### **Responsibility towards Aliens: Denial of Justice and Unlawful Detainment**

Ecuador kept the crew past the amount of time that Article 292 of LOS III states is lawful. Since over 150 nations have signed LOS III, it is understood to be customary international law and, therefore, all the articles should be followed.

### **Conclusion**

Ecuador claims protection under certain parts of LOS III but yet feels it right and necessary to violate other parts of LOS III. The United States contends that if Ecuador is going to claim protection under LOS III then Ecuador needs to consistently abide by all provisions and

perhaps actually sign and ratify the treaty. This case explicitly shows Ecuador's wilful disregard for customary international law; on one hand clearly violating customary international law and the other hand claiming rights and protection under customary international law.

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