

United States (Thomas)
v.
Ecuador

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List of Abbreviations

International Court of Justice: ICJ

Law of the Seas III: LOS III

List of Sources

Geneva Convention

Law of the Seas III

The LaGrand Case (2001, ICJ)

Vienna Convention on Consular Relations

Statement of Relevant Facts

In early 2004, an American ship owner, Donald Thomas began sending his fishing boats near Ecuador's coastal waters in search of tuna. All 3 of his ships were registered under the United States flag and manned by American nationals. On February 17, 2004 his ships were allegedly fishing 185 miles offshore when an Ecuadorian naval vessel opened fire, after the Americans ignored a signal to be searched. The vessels headed out to sea and were chased by the naval vessels and gunboats. After a 20 mile chase, the naval vessels attacked and destroyed 2 of the American fishing boats, killing 1 crew member and wounding others. An Ecuadorian pursuer was killed in self-defence when an American resisted arrest. The Mercury, the only surviving boat, was confiscated; the crew was taken into custody and charged with resisting arrest and manslaughter. The

crew was imprisoned for 5 months while they awaited trial. The crew has been sentenced to 10-year terms. Thomas's holdings were confiscated by the government of Ecuador.

Issues

- Adherence to customary international law
- The right of hot pursuit
- Enforcement of international law
- A fair trial of foreign nationals
- Prompt release of detained foreign vessels and crews

Summary of Arguments

Ecuador did not attempt to settle the dispute peacefully. Ecuador did not have the right to pursue. Ecuador did not consistently enforce its 200-mile limit. Ecuador did not in good faith attempt to establish agreements with other nations to catch fish in excess of Ecuador's capacity. Thomas was not given a fair trial.

Jurisdiction of the Court

The International Court of Justice has jurisdiction in this case because it is a contentious case being brought by 2 members of the United Nations, who have both agreed to have the International Court of Justice, ICJ, hear the case. In addition the United States is representing one of its nationals, against another state, who have claimed to have been wronged by Ecuador.

Argument

The Law of the Seas III codifies customary international law in relation to the seas of the globe because 157 countries have ratified and 22 have signed but yet ratified. As further evidence that the Law of the Seas III establishes customary law, the preamble of the Law of the Seas states the intent of the convention is to establish “a legal order for the seas and oceans.”

Part XV of the LOS III establishes customary international law for states to settle disputes on the seas peacefully and provides provisions for states to follow. Ecuador did not try to settle the dispute peacefully instead gave hot pursuit and sunk two of the fleets ships. Ecuador used excessive force to stop the fleet. It is not customary international law to sink fishing vessels to get them to stop.

Ecuador did not even have the right to hot pursuit because under LOS III, which establishes customary international law in this area, 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 fleet was 185 miles from the coast, as established in the facts of the case, which is clearly not within internal waters, archipelagic waters, the territorial sea or the contiguous zone. Furthermore the Thomas fleet did not violate Ecuador’s customs, fiscal, immigration or sanitary regulations. So Ecuador does not have the right to pursue under Geneva Conventions Article 24.

As further evidence that Ecuador did not have the right of hot pursuit or to board the fishing vessels in question; the United States offers the LOS III, which establishes customary international law in this area, Part VII Article 87 which establishes the freedom

of the high seas and Article 88 which establishes that the high seas are to be used for peaceful purposes and Article 92 which establishes the exclusive jurisdiction of the flag state over the vessel. Ecuador violated the Thomas fleet's freedom and peace when they fired upon, sunk two vessels, and boarded the one remaining ship. The jurisdiction of the United States was also violated when Ecuador took these actions. 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. Ecuador violated customary international law by engaging in hot pursuit, sinking two vessels and boarding the ship of another state in the high seas without valid reason as provided by customary international law.

In addition Ecuador does not consistently enforce its 200-mile economic zone. It is customary international practice that states must consistently enforce their claims in order to expect other countries to recognize their claims. The United States has consistently only recognized the right of coastal states to a customary 12-mile coastal zone. So the Thomas fleet was within their rights to be fishing 185 miles from the coast.

According to LOS III, which establishes customary international law in this area, Article 62 coastal state are to make agreements with other states to fish their waters for the

amount of fish they cannot catch. So even if Ecuador can successfully establish their claim to the 200-mile limit they have not in good faith made attempts to establish an agreement with the United States to fish the waters for the tuna above Ecuador's capacity.

In 2001, the International Court of Justice (ICJ) in the LaGrand Case ruled that the Vienna Convention on Consular Relations granted rights to individuals, and that domestic laws could not limit the rights of those accused under the convention. In this case the ICJ decided that the LaGrand brothers' rights were violated because their country did not inform them of their rights under the Vienna Convention on Consular Relations. As a result of this violation, it can be argued that the brothers did not receive a fair trial due to the fact that they were possibly not represented to the fullest extent by their nation. The LaGrand Case applies to the current case because Thomas was not informed of his rights under the Vienna Convention on Consular Relations and did not receive a fair trial due to the fact that he was not represented to the fullest extent by his nation.

Also, Ecuador did not comply with customary international law by detaining the crewman for five months before trial. According to LOS III, which establishes customary international law in this area, Article 292 states the detaining state must release the crew and vessel(s) upon the posting of reasonable bond or other financial security. Ecuador failed to release the crew and vessel, thus violating international customary law. The United States feels that Ecuador cannot hold the crew liable for the death of Ecuador's personnel, because the death would not have occurred if Ecuador would not have been in violation of customary international law and pursuing the crew so aggressively. The American crew would have been acting in self-defence after being attacked by Ecuadorian

warships and having two of their own vessels sunk. Thus the crew can only have been held for possible violation of the 200-mile limit and should have been allowed prompt release upon the posting of reasonable bond or other financial security.

Submissions

The United States would like the court to find in favour of Thomas and his crew and grant the release of the crew and reparations for property loss and personal injury as well as restitution for improper confinement. The LOS III, which establishes customary international law in this area, Article 111.8 states that any ship that “has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.” The United States feels that the hot pursuit of Thomas by Ecuador was not justified and excessive. So, Thomas should be duly compensated for his property loss and personal injury as well as restitution for improper confinement and release of his crew.