

Boid Island Dispute

Carman Neustaedter
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The Boid Island Dispute

Issue:

Does Mexico or France have jurisdiction to prosecute for a murder which occurred on the Boid Island?

Mexico's Argument:

Mexico bases their claim of jurisdiction and territory on the Mexican War of Independence and continuous acts of its sovereignty on the island thereafter. Mexico states that with independence in 1811 it received rights to all islands and waters that it had governed under Spanish rule. It argues this is according to the principle of *uti possidetis* that states you come to independence with your boundaries intact. It enforces this claim by noting that Spain was the original discoverer of the island in 1678 and on numerous occasions made claim to it prior to Mexico's independence. Discovery in international law, according to Mexico, allows land unclaimed by anyone to be claimed by the discovering state.

Moreover, Mexico argues that after receiving claim to the island from Spain, it enforced its sovereignty by visiting the island in 1832 and taking water. In 1925, Mexico asserted its sovereignty again by convicting a national on the island for murder. This it argues was uncontested by the French. Furthermore, Mexico again affirmed sovereignty with the issuing of seabed mineral exploitation licenses.

To further its contention of claim to the island, Mexico asserts a basis of contiguity. It states that the island is only 341.5 km away from Mexico, therefore being the closest lying country to the island, it should receive automatic claim to the territory. Mexico also points out that several Central American states have granted them *de jure* recognition of the Boid Island.

Based on their claim to the island, Mexico states it has jurisdictional rights under international law, based on subjective territoriality, whether or not an offender is a national or an alien.

France's Argument:

France argues its claim of jurisdiction and territory based on acts of sovereignty it pursued which were uncontested by Mexico. France states that in 1873 its warship claimed the Boid Island for France with no protest from Mexico. Furthermore, in 1905 it performed economic surveys of the island, again with no protest from Mexico. Until recently, it states that it has had its own fishing vessels dispersed throughout the area and has allowed Poland the right to fish in the area. France has also granted licenses to other French firms wishing to fish in the area.

France points to the principle of prescription and the fact that Mexico did not behave as though it had claim to the island. It argues that the land was *terra nullius* as a result and that its own acts of occupation provided a claim to the land. The *Island of Palmas Case*¹, it contends, gives a basis for territories in which an absence of acts of sovereignty may leave a territory open to claim. France also asserts that, as in the

*Eastern Greenland Case*², the state exercising greater control in a territory should be granted control and territorial jurisdiction, which would be in its favour.

Furthermore, France contends that the agreement with Poland asserted Poland's recognition of France's claim to the island. France also, based on subjective territoriality, claims to have jurisdiction over both nationals and aliens committing an offense on the island.

Judicial Decision:

The main contention of the case is over which state has a justified claim to the Boid Island, Mexico or France. It is uniformly recognized that, "Every state claims jurisdiction over crimes committed in its own territory, even by foreigners."³ It is thus a matter of the court to only decide which state has sovereignty over the territory. The nationality of the victim and the accused are irrelevant to the case.

General principles of international law regarding territorial jurisdiction exhibit that in jurisdictional disputes typically the state with a stronger claim to a territory is accepted as the sovereign state. With competing activities in a territory, the decision may hinge on the intensity or nature of the activities. State recognition and acquiescence may become important in instances where a physical territorial holding does not seem significant.

¹ Akehurst, p. 148.

² Akehurst, p. 150.

³ Akehurst, p. 110.

Spain's original discovery of the island reflects the idea of *terra nullius*. It is the opinion of the court that indeed the island was unclaimed at the time of discovery by Spain and that it received valid title to the territory. Mexico's assertion of its territorial claim based on the Mexican War of Independence, whereby Mexico received all lands and waters it had governed, falls under dispute however. There is no record of Mexico's control over the island while under Spanish rule. Furthermore, Spanish claims to the island prior to the War of Independence are weak with only one visit to the island in approximately 100 years. Despite this however, it is noted that no other visiting ships took claim to the territory or contested Spain's claim. A weak claim to territory defeats no claims by virtue of nullity. The court thus agrees with the Mexican argument that at the time of the Mexican War of Independence in 1811, Mexico had a valid claim to the Boid Island.

*The Island of Palmas Case*⁴, as presented by France, clearly outlines the principle of prescription. If a state fails to behave as though it has title to land and it does not assert sovereignty, it can effectively lose its title. France's claim of title in 1873 was clearly uncontested by Mexico. Mexico failed to assert its sovereignty over the area during a period of almost 100 years and lost territorial claim by virtue of prescription.

To determine whether or not France's claim remains, it is necessary to examine activities on the island from the time of France's claim in 1873 to the present. The first event noted is of French economic surveys of the island in 1905, which Mexico did not contest. Further uncontested French acts in the area regarding fishing vessels and licenses strengthen France's claim. The claims by Mexico of its acts of sovereignty are both weak and give little claim to Mexico. The issuing of seabed mineral exploitation

licenses by Mexico was clearly contested by the French and the 1925 criminal court case cited by Mexico was not an act of sovereignty. Conviction of a Mexican national outside Mexico borders is distinctly defined in Mexican Law and gives no act of sovereignty to Mexico. Evidently, Mexico did not act in a sovereign capacity within the territory of the Boid Island since its time of independence, leaving a valid territorial claim to France. French activities in the area asserted its sovereignty and France's claim to the island has thus remained undiminished since its original claim in 1873.

Mexico's final notable claim of territory rests on contiguity and the close proximity of the Boid Island to Mexican mainland territory. Learned writers discuss that "Contiguity is no more than evidence raising some sort of presumption of effective occupation – a presumption that may be rebutted by better evidence of sovereign possession by a rival claimant."⁵ France's claim and acts of sovereignty, as provided, outweigh any notion of contiguity. Latin American *de jure* recognition of Mexico's claims of territory also holds no weight against France's occupation and sovereignty.

As noted by France, in the *Eastern Greenland Case*⁶ the state exercising a stronger claim of territory was granted territorial jurisdiction. It is by this virtue that the court grants territorial jurisdiction to France and based on its argument of subjective territoriality, whereby the contested act was committed on French territory, France has the legal right to prosecute for murder. It is also the court's finding that because of Mexico's loss of territorial claim, Mexico does not have jurisdiction for criminal prosecution.

⁴ Akehurst, p. 148.

⁵ Akehurst, p. 158.

⁶ Akehurst, p.151.