



EXAMINATION IN THE COURSE
ENVIRONMENTAL LAW AND LAW OF THE SEA
JUR- 3603

SPRING 2006
8TH -12TH May

1. *The status of the precautionary principle under international law*

Discuss the legal status of the precautionary principle in view of the orders of ITLOS in the Southern Bluefin and Mox plant cases. Does the reference to “prudence and caution” in paragraph 77 in the Southern Bluefin case (Order of 27 August 1999) and in paragraph 84 in the Mox plant case (Order of 3 December 2001) imply an acceptance and application of the precautionary principle?

2. *Case*

Alexandra, a fishing vessel flying the flag of Georgia was observed fishing mackerel in the “Smuthavet”, an area of the high seas adjacent to the Norwegian EEZ. Thereafter the vessel sailed into the Norwegian EEZ where it continued fishing for mackerel. A Norwegian Coast Guard vessel patrolling the area approached the vessel and requesting it to stop for inspection. During the inspection of the vessel, which included documents, catches and fishing gears several serious infringements both of the NEAFC (North East Atlantic Fisheries Commission) and the Norwegian conservation measures were identified: *Alexandra* had not been allocated any quota for mackerel by the NEAFC. It was also fishing without a valid licence in the Norwegian EEZ.

Alexandra was ordered to proceed to Tromsø, a Norwegian port for further inspection and prosecution. Georgian authorities were immediately informed about the arrest. The vessel was charged with illegal fishing on the high seas as they violated the NEAFC regulations, and for illegal fishing in the Norwegian EEZ.

Shortly after the arrest of *Alexandra*, another Georgian flagged vessel, *Natasha* was arrested by the Norwegian Coast Guard in the Norwegian EEZ. This vessel was sighted in the EEZ when refuelling the *Alexandra* and providing it with other supplies. During the refuelling several hundred litres of heavy oil were accidentally spilled into the sea, requiring the Norwegian Coast Guard to take extensive measures to retrieve the oil. The *Natasha* was arrested and ordered to Tromsø, charged with illegal fishing in and pollution of the Norwegian EEZ.

Both vessels were to remain in arrest until the criminal proceedings.

The Georgian authorities protested against the arrest of *Alexandra* and *Natasha* and requested their immediate and unconditional release, or at least prompt release against posting of reasonable guarantees. Georgia argued that the actions taken by the Norwegian Coast Guard

in respect of the vessels was in violation of international law and the exclusive jurisdiction of the flag state.

The charges brought against Alexandra relating to the fishing on high seas were well beyond the scope of the jurisdiction of Norway as a coastal state. Alexandra was only enjoying the freedom of fishing on the high seas. Under any circumstances the arrest and prosecution had to be authorised by the flag state.

Norwegian authorities claimed on the other hand that the actions taken by the coast guard vessel in respect of Alexandra was well within international law. Norway had taken the measures necessary to exercise its sovereign rights under the law of the sea to conserve and manage the living marine resources of its EEZ. Since the mackerel fish stock is straddling between Norwegian EEZ and the adjacent areas of the high seas Norway has a legitimate interest and right in ensuring that fishing for the stock on the high seas does not undermine the conservation measures adopted by NEAFC and itself. Any unregulated fishery will have negative effects on Norway's sovereign rights over the stock while in its EEZ. The freedom of fishing is not unlimited. Georgia has obligations under the UN Law of the Sea Convention. Also Norway and Georgia are both parties to the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. Under this agreement the flag states are required to ensure that their vessels do not engage in activities undermining the measures adopted by regional fisheries organisations, such as NEAFC. Therefore Norway was in its full right also to enforce the conservation measures of NEAFC in respect of Georgian flagged vessels.

Georgia also protested against the actions taken against Natasha arguing that refuelling or bunkering of an vessel that engage in fisheries activities is within the right of navigation in the EEZ. Such activities do therefore not fall within the sovereign rights of the coastal state to "explore, exploit, conserve and manage the living resources in the exclusive economic zone". The coastal state doesn't enjoy any jurisdiction over the vessel on the basis of article 73. In support of this view Georgia also argued that bunkering is not included in the list of the conditions the coastal states may include in its law and regulations under Article 62 for foreign fishermen.

Concerning the pollution charge, Georgia argued that Norway did not have competence to take such measure since the oil spill did not cause a 'major damage or threat of major damage' under the UN Convention on the Law of the Sea, article 220 (6). It accepted that the pollution violated 'applicable international rules and standards' but the flag state was the competent state to enforce these rules and standards. Under any circumstances these charges could not be brought against the vessel since the arrest for violation of fisheries regulations was illegal and the presence of the vessels in the port was not voluntary.

Norway claimed the enforcement jurisdiction of the coastal state under article 73 also included measures regulating bunkering or refuelling. Norway held that bunkering is defined, as fishing activity under its legislation and therefore Natasha was required to have a valid licence to operate in the Norwegian EEZ. The vessel was also required to comply with the fisheries regulations in all other ways. Norway further argued that bunkering is an activity that falls within the sovereign rights of the coastal states in the EEZ since it must be assimilated with fishing activities. Refuelling is ancillary to the activities of the refuelled ship. The regulation of bunkering/ refuelling must therefore be considered to be within the sovereign rights of the coastal states when it comes to "conserving and managing the natural resources, whether living or non – living" in article 56 and therefore also within the conservation measures they may adopt according to article 62 (4), which are not exhaustively listed.

Norway further claimed that the judgement of ITLOS in the M/V “Saiga” case gives support for this view.

Norway also argued that the coastal state enjoys enforcement jurisdiction over the vessel, which has polluted in violation of accepted international rule and standards, as is the case here.

Norway also refused to release the vessels referring to the seriousness of their violations.

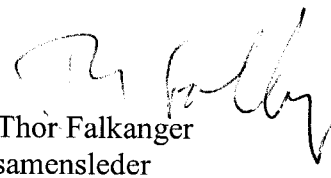
Discuss the claims from both states.

Both questions must be answered.

The paper is to be submitted to the reception for students, 2nd floor by Friday at 15.00 h at the latest. One copy of the paper must be sent by email to the following address:
merethe.simonsen@jus.uit.no

Preliminary examination results (passed/failed) will be published at 2 p.m on Tuesday 6 June at the reception for students, 2nd floor. Oral examination of candidates who passed the written examination, will take place Wednesday 7 June in room 4.404 at 08.00 a.m. The examination will take approximately 30 minutes.

Tromsø 5 May 2006


Aage Thor Falkanger
eksamensleder