

International customs law case study



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Candoma and Rutamu are two neighbouring States along which the river Hope runs. This river contains a rare fish that both States regularly seek out. Due to the river being narrow, the two States have created a system that allows one State to fish, while the other waits until the first has left. One day, a vessel from Candoma was fishing when a vessel from Ruatmu approached. The latter vessel refused to halt, thus resulting in a collision of both vessels. The Rutamuan captain was arrested and tried in Candoman court (Abass, 2012, p. 66). The issue, in this case, is whether Rutamu breached International Customs Law when it's vessel encroached upon Candoma's vessel as the Candoman crew was fishing in the river Hope. The principles discussed within the chapter will be used as an aid in advising how both parties should argue their respective cases.

According to Article 38(1) of the International Court of Justice, the governing rule of law in this dispute is Customary International Law (Abass, 2012, p. 27). Customary International Law is defined as the general and consistent practice followed by States, from a sense of legal obligation (Abass, 2012, p. 34). The dispute between Candoma and Rutamu meet the criteria for customary international law, as without this custom, there were severe sanctions that followed. Consistent is defined as conforming to a regular pattern that is unchanging in agreement (Oxford Dictionary, 2010). In this case, consistency and uniformity of practice are required to prove custom (Abass, 2012, p. 39). Candoma constantly abided by the rules that were set out when the custom was created. Although, Rutamu, was not as consistent given the vessel breached waiting, a small degree or frequency will not

prevent the formation of this customary rule (Abass, 2012, p. 39). Therefore, the practice by Candoma and Rutamu over the course of several years demonstrates consistent behaviour.

The two criteria for proving the existence of customs in International law are general state practice and *opinio juris*. General state practice is defined as the total sum of how States behave in respect of a particular issue or situation (Abass, 2012, p. 37). In this case, the State of Candoma participated in general state practice. " The party which relies on a custom... must prove that this custom is established in such a manner that it has become binding on the other party" (Abass, 2012, p. 39). Since Candoma relied on this custom by practicing it, they proved to Rutamu that there was a custom to abide by. Therefore binding Rutamu to participate in the custom. Although it may be argued that, Rutamu did not participate in general state practice. According to Akehurst " a number of States participating is more important than the frequency or duration of the practice. Even a practice followed by a few States, on a few occasions and for a short period of time, can create a customary rule" (Abass, 2012, p. 38). In this case, both States needed to participate in the action of this custom in order for there to be a customary law. As this custom is a regional custom, all States against which a regional custom is claimed must have accepted it (Abass, 2012, p. 37). Therefore, this shows that general state practice has not been established.

Opinio Juris is defined as the psychological element underscoring States' belief that they are under a legal obligation to do, or to refrain from doing, an act (Abass, 2012, p. 42). Official statements are not required when determining *opinio juris*; rather it may be gathered from, acts or omissions

(Abass, 2012, p. 40). In this case, the State of Condoma expressed opinio juris through accepting the custom of waiting as law, believing that they were under a legal obligation to fulfill such an act. They reaffirmed opinio juris through general state practice. Although it may be argued, that Rutamu did not express opinio juris. This can be seen through the States' actions. Rutamu had previously objected once to the waiting custom by writing to Candoma. The act of writing justifies that Rutamu did not believe in the custom of waiting. In a regional custom, States must demonstrate customary acceptance. In other words, it can be considered as an “opt in” process. Meaning, a particular State must have demonstrated acceptance of this law through State practice and opinio juris to participate in such a custom (Braley – Rattai, 2017). Seeing that Rutamu did not express opinio juris, and wrote to Candoma justified the State was not bound to any law. This demonstrates that Rutamu did not breach waiting; therefore this shows that opinio juris has not been established.

In conclusion, both parties have strong cases in relation to this dispute. Although, Rutamu did not breach the custom of waiting as it failed to express opinio juris and general state practice, which are required in participating in a regional custom. Therefore, this State did not participate in the waiting custom and was thus not bound to it making them eligible to freely fish at any given time they want.

References (APA Style):

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Braley – Rattai, A. (2017, January 10). *International Law: Theories and Sources*. Lecture presented at University of Toronto, Scarborough.

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