

The Law of State Responsibility: The Greenpeace Incident and the  
Claim of David McTaggart

In March of 1975 the Government of Canada formally espoused the claim of David McTaggart against the Government of France. The fact situation and the espousal have raised interesting questions concerning the "local remedies rule" in the public international law of state responsibility.

The facts upon which the claim is based are as follows. In the summers of 1972 and 1973, David McTaggart, a Canadian citizen, sailed his boat, the "Greenpeace III" into an area of the Pacific Ocean on the high seas which had been declared a restricted nuclear testing zone by the Government of France. The restricted zone consisted of an area within a radius of 60 marine miles of the French possession, Muroroa Atoll. The French Government stated that the purpose in restricting navigation in that area was to ensure the safety of vessels and those on board during its nuclear tests.

On June 30, 1972, the French minesweeper "Paimpolaise" collided with the "Greenpeace" on the high seas within the restricted zone. McTaggart subsequently sued the Government of France. On June 17, 1975, the Tribunal de Grande Instance de Paris (1ère Chambre, 3e section) a French civil court, gave judgment against the French Navy; the assessment of the quantum of damages was to be determined by further proceedings which should be completed shortly.

On August 15, 1973, French navy personnel boarded and seized the "Greenpeace III" while it was sailing on the high seas outside the 12-mile territorial limit of the atoll but within the restricted zone. Although there was initially a dispute concerning the facts of this incident it is clear that Mr. McTaggart suffered a serious injury to one eye which was caused by armed personnel of the French navy. McTaggart was held for treatment in a Tahitian medical centre until a Canadian diplomat secured his release. His crew was held for approximately eight days on the Hoa Atoll until their release through Papeete. The Canadian Government arranged for the return of the "Greenpeace III".

McTaggart sued the Government of France with respect of this incident in the French civil courts and both the court of first instance and the court of appeal held that they lacked jurisdiction over the case and suggested that he seek his remedy in the French administrative courts, specifically the "Conseil d'Etat". McTaggart has not pursued his remedy in the "Conseil d'Etat".