

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROBERT J. MCLAUGHLIN, ADMINISTRATOR
OF THE ESTATE OF
GERALD R. MCLAUGHLIN, DECEASED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CN-2-014

Decision No. CN-2-045

Counsel for claimant:

W. Ralph Pew, Esq.
Killian, Legg & Nicholas

PROPOSED DECISION

This claim, in the amount of \$18,000, is based on the confiscation by the People's Republic of China of a yacht at Tamkan Island off the Pearl River estuary in Kwangtung Province, China, formerly owned by Gerald R. McLaughlin, Deceased.

The decedent was a national of the United States by birth in the United States on November 10, 1927. Robert J. McLaughlin, decedent's father and the administrator of his estate, is a national of the United States since birth on September 21, 1897.

Under Section 4 of Title I of the International Claims Settlement Act of 1949, as amended, the Commission is given jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of nationals of the United States included within the terms of any claims agreement concluded on and after March 10, 1954, between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II), arising out of the nationalization or other taking of property [22 U.S.C.A. Sec. 1623(a)]. In this section the Commission is directed to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law.

On May 11, 1979, an agreement was concluded between the Governments of the United States of America and the People's Republic of China (hereinafter referred to as the PRC) settling claims of nationals of the United States against the PRC arising from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States on or after October 1, 1949, and prior to the date on which the agreement was concluded.

Claimant asserts and the evidence established that the decedent owned a yacht, described on the Certificate of Registry issued by the Government of Hong Kong, as a (1) unit (weighing 7,850 lbs., approx. 3.507 L/T) Pleasure Craft, Hull No. 107, called WINNER 28. Claimant further asserts and the record also establishes that the decedent and others were aboard the yacht when it was confiscated by forces of the PRC on April 21, 1968, near Tamkan Island off the Pearl River estuary in Kwangtung Province. The decedent is asserted to have committed suicide on March 7, 1969, while held as a prisoner by the PRC.

The initial question to be resolved is whether the confiscation by the PRC was in violation of international law and thus, constitutes a valid claim under Title I of the Act and the China Claims Agreement of May 11, 1979.

One report indicates that the yacht in question, with 2 other yachts, was bound from Hong Kong to Macau, when it was intercepted by PRC authorities, and that there were fifteen persons aboard, including six American citizens, who were taken into custody.

In a news release on International Affairs issued by the PRC on December 13, 1971, announcing the release of an American citizen who had been detained since the yacht was confiscated, it was reported that the yacht had illegally intruded into Chinese waters on April 21, 1968, and that the yacht belonging to Gerald Ross McLaughlin (the decedent) was confiscated according to law.

In order for the claim to be found valid, it must be established that the yacht in question was confiscated by the PRC in violation of international law, of which the Commission must take cognizance in deciding claims under Title I of the Act.

Under generally accepted principles of international law, the sovereignty of a State extends beyond its land territory and its internal waters, to a belt of sea adjacent to its coast described as the territorial sea. [Article I Convention on the International Sea and the Contiguous Zone, April 9, 1958; 15 U.S.T. 1608; T.I.A.S. No. 5639.]

A State's sovereignty over its internal waters and territorial sea is not absolute. The sovereignty of a State over its internal waters is subject to the doctrine of right of entry in distress. [ALR Restatement (Second) Foreign Relations Law of the United States Sec.48 (1965)]. The sovereignty of State over its territorial sea is also subject to this limitation, and the doctrine of right of innocent passage. [Convention on the Territorial Sea and the Contiguous Zone, at 1610].

We must initially determine whether the subject vessel was seized in the internal waters or in its territorial sea of the PRC.

Article 5, Section 1 of the Convention on the Territorial Sea and the Contiguous Zone defines internal waters of a State as "waters on the landward side of the baseline of the territorial sea." [Convention on the Territorial Sea and the Contiguous Zone, at 1601.]

The extent of the territorial sea of a nation, however, is not so easily defined. There is no universal agreement that defines the exterior limit of the "belt of sea adjacent to the coast of a nation." ["Id.", at 1608.] The majority of nations have claimed a twelve mile breadth of territorial sea. The PRC has announced that its territorial sea extended to twelve miles in a declaration on September 4, 1954. [4

Digest of International Law 58 (1969)]. ["Id.", at 59]. However, the Commission adopts the three mile limit of territorial sea as recognized by the United States for the purposes of this claim.

An examination of maps of the area in which the vessel in question was seized, appears to lead to the conclusion that the seizure took place within the three mile limit of the territorial sea under the sovereignty of the PRC. This is the contention of the PRC and claimant has not alleged or produced any evidence to the contrary. Accordingly, it is concluded that the vessel was seized in PRC territorial sea.

Finally, it must be determined whether the doctrines of right of entry in distress or right of innocent passage apply in this claim.

As stated hereinbefore, the sovereignty of a State over its internal waters is subject to the doctrine of right of entry in distress. Claimant has not asserted and the record does not contain any information from which the Commission may conclude that the yacht entered the internal waters of the PRC in distress.

The announcement by the Office of International Affairs of the PRC issued on December 13, 1971, stated that an American woman aboard McLaughlin's yacht "illegally intruded into China territorial waters near Tamkan Island off the Pearl River estuary in Kwangtung Province...on April 21, 1968, and was promptly detained by China's people's police." It was also stated that "McLaughlin's yacht was confiscated according to law."

The Convention on the Territorial Sea and the Contiguous Zone, under "Section III. Right of Innocent Passage": "Sub-Section A. Rules Application to all Ships" includes the following provisions as Article 14:

"1. Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

"2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

"3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

"4. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules or international law.

Article 15 of the Convention contains the following text:

"1. The coastal State must not hamper innocent passage through territorial sea.

"2. The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

Article 16 of the Convention states:

"1. The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

"2. In the case of ships proceeding to internal waters, the coastal State will also have the right to take the necessary steps to prevent any breach of the conditions to which the admission of those ships to those waters is subject....

[Convention of the Territorial Sea and the Contiguous Zone, at 1610 and 1611.]

It must be noted that the Commission does not consider itself bound by the statements contained in the announcement by the PRC that the yacht "illegally intruded into China territorial waters" or that "McLaughlin's yacht was confiscated according to law." Nevertheless, this evidence was introduced in the record by the claimant and is properly considered. However, in order for the Commission to find this claim compensable, it must be shown that the vessel was seized in violation of international law.

The claimant has neither asserted nor offered any evidence to establish that the yacht was seized on the high

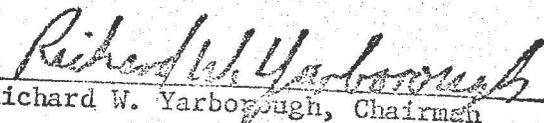
seas outside of China's internal waters or territorial sea or that the seizure occurred within such waters in violation of the right of entry in distress or innocent passage exceptions to a sovereign State's control over its internal waters and territorial sea.

After consideration of the record in this claim, the Commission finds that it has not been established that the Yacht was seized by the PRC in violation of international law.

Accordingly, the Commission concludes that this claim must be and it hereby is denied.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission

OCT 10 1979


Richard W. Yarborough, Chairman


Wilfred J. Smith, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on NOV 14 1979


Executive Director

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended.)