

Metalclad V. Mexico



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Overview



1990- Coterin authorized to operate a hazardous waste transfer station in San Luis Potosi

1991 & 1992- Coterin was denied municipal construction permit

1993- Metalclad, a California based corporation, bought Coterin

1994- Local municipality of Guadalucazar ordered Metalclad to cease construction

1995- Metalclad paid for an environmental assessment

1995, March- Construction project was completed

1995, December- Municipal government denied Metalclad's request for a permit

1996, October- Metalclad notified Mexico that it intended to sue under NAFTA's Chapter 11

Overview Cont.

1997, January- Metalclad sued the government of Mexico under NAFTA's investment provisions for \$90 million.

1997, September- Governor of San Luis Potosi declared the site a part of a special ecological zone

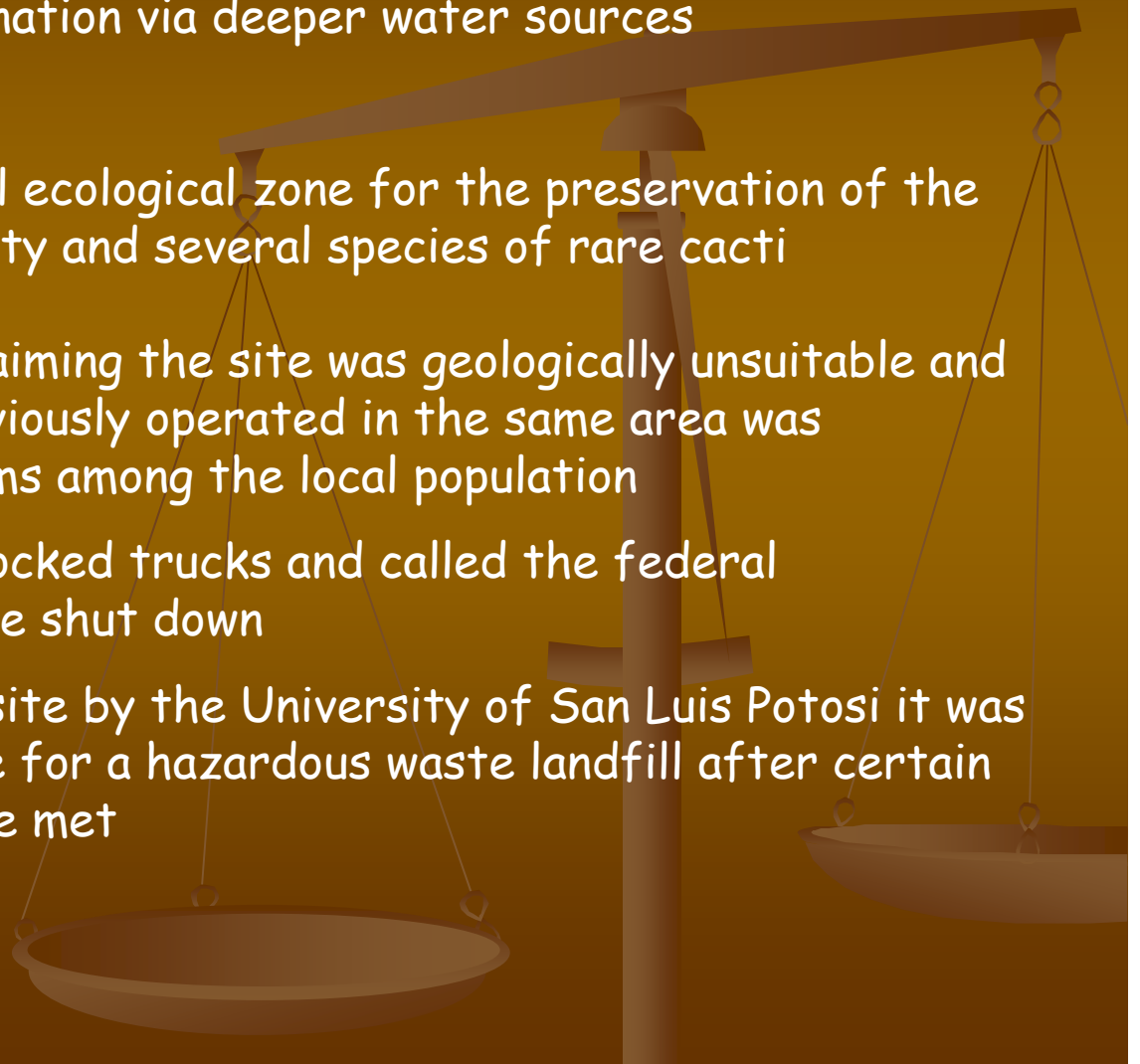
2000, August- Special NAFTA tribunal, operating under the rules of the World Bank's International Center for the Settlement of Investment Disputes (ICSID) Additional Facility Rules, awarded Metalclad \$16,685,000

2000, October- Government of Mexico challenged the NAFTA tribunal decision in a Canadian Court, alleging arbitral error

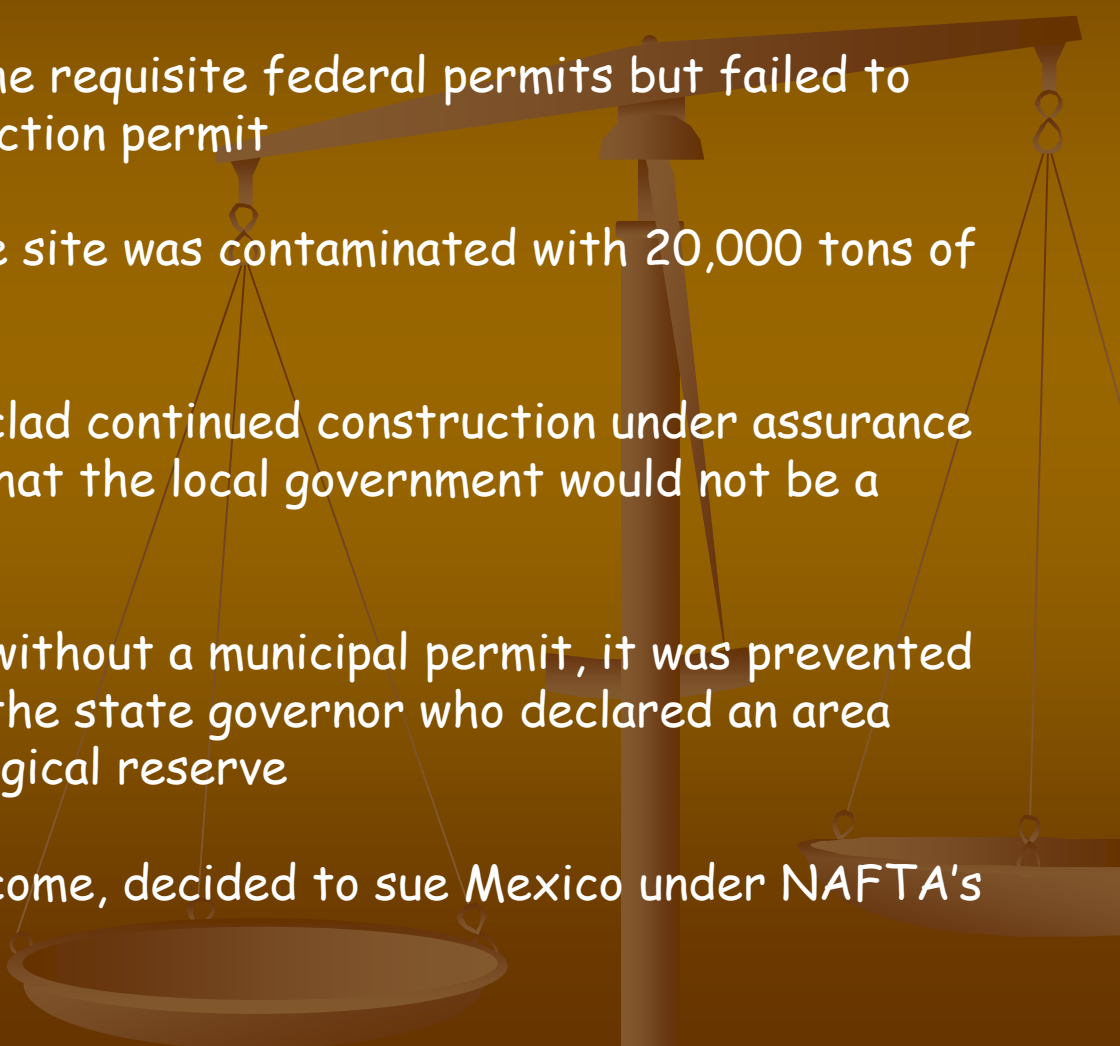
2001, June- Metalclad announced that Mexico agreed to pay the amount ordered by Judge Tysoe, \$15.6 million

Environmental Issues

- Site's soils were very unstable which could permit toxic waste to infiltrate the subsoil and carry contamination via deeper water sources
- The site was part of a special ecological zone for the preservation of the area's unique biological diversity and several species of rare cacti
- Many opposed the landfill, claiming the site was geologically unsuitable and that the landfill that had previously operated in the same area was responsible for health problems among the local population
- Local community members blocked trucks and called the federal authorities to help get the site shut down
- After an assessment of the site by the University of San Luis Potosi it was confirmed that it was suitable for a hazardous waste landfill after certain engineering requirements were met



The Facts

- Metalclad took up Coterin's efforts to expand the transfer station into a toxic waste processing plant and landfill
 - However, Metalclad secured the requisite federal permits but failed to secure a local municipal construction permit
 - Under Coterin management the site was contaminated with 20,000 tons of toxic waste
 - Despite local opposition Metalclad continued construction under assurance from the Federal government that the local government would not be a problem
 - When the site was completed without a municipal permit, it was prevented from opening and operating by the state governor who declared an area including the site to be an ecological reserve
 - Metalclad, angry with this outcome, decided to sue Mexico under NAFTA's Chapter 11
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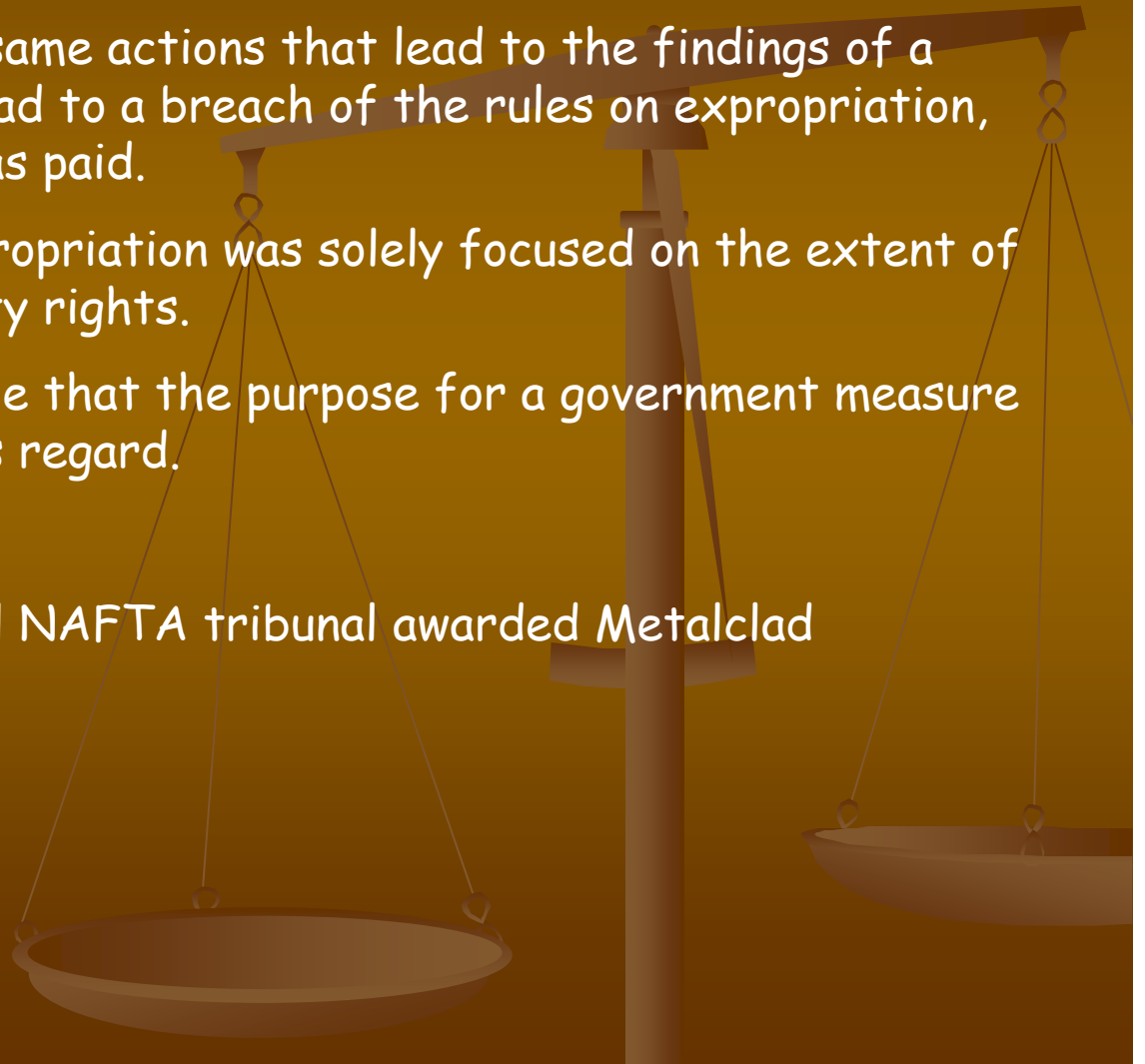
Outcome of suit



- Metalclad claimed the actions of the municipal government amounted to expropriation without compensation forbidden under NAFTA Article 1110.
- Metalclad also claimed that the government of Mexico had failed to provide fair and equitable treatment in accordance with international law as required by NAFTA Article 1105
- The Tribunal ruled that Mexico violated its obligation to provide minimum standards of treatment in the following ways:
 - not living up to representations it ruled were made by Federal and State officials that the plant would be able to operate
 - not clarifying understanding of Mexican law
 - not having clear procedures for investors to easily know the rules on permits
 - ruling against Mexican government legal experts by requiring a municipal permit
 - not notifying Metalclad of the relevant town meeting concerning its permit

Outcome of suit cont.

- The Tribunal ruled that the same actions that lead to the findings of a breach of Article 1105 also lead to a breach of the rules on expropriation, given that no compensation was paid.
 - The Tribunal's test for expropriation was solely focused on the extent of the interference with property rights.
 - The Tribunal went on to rule that the purpose for a government measure need not be considered in this regard.
- On August 30, 2000 a special NAFTA tribunal awarded Metalclad \$16,685,000



Petition for Review and Appeal



- Unhappy with the dispute settlement Mexico challenged the NAFTA tribunal decision in a Canadian Court, alleging arbitral error

- The finding of the appeal was that Mexico had expropriated Metalclad, but the British Columbian court lowered the award from \$16 million only down to \$15.6 million due to the fact that Metalclad continued construction after the site was declared an ecological reserve

Trade Related Issues

- NAFTA Chapter 11

Ch. 11 establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties to the Agreement in accordance with the principle of international reciprocity and due process before an impartial tribunal.

- Federal vs Municipal Govt.

The federal and municipal governments conflicted on the issuing of land use permits.



Trade Related Issues



- **NAFTA Jurisdiction**

ICSID-Tribunal authority superseded Mexico's national, state, and municipal government legislature

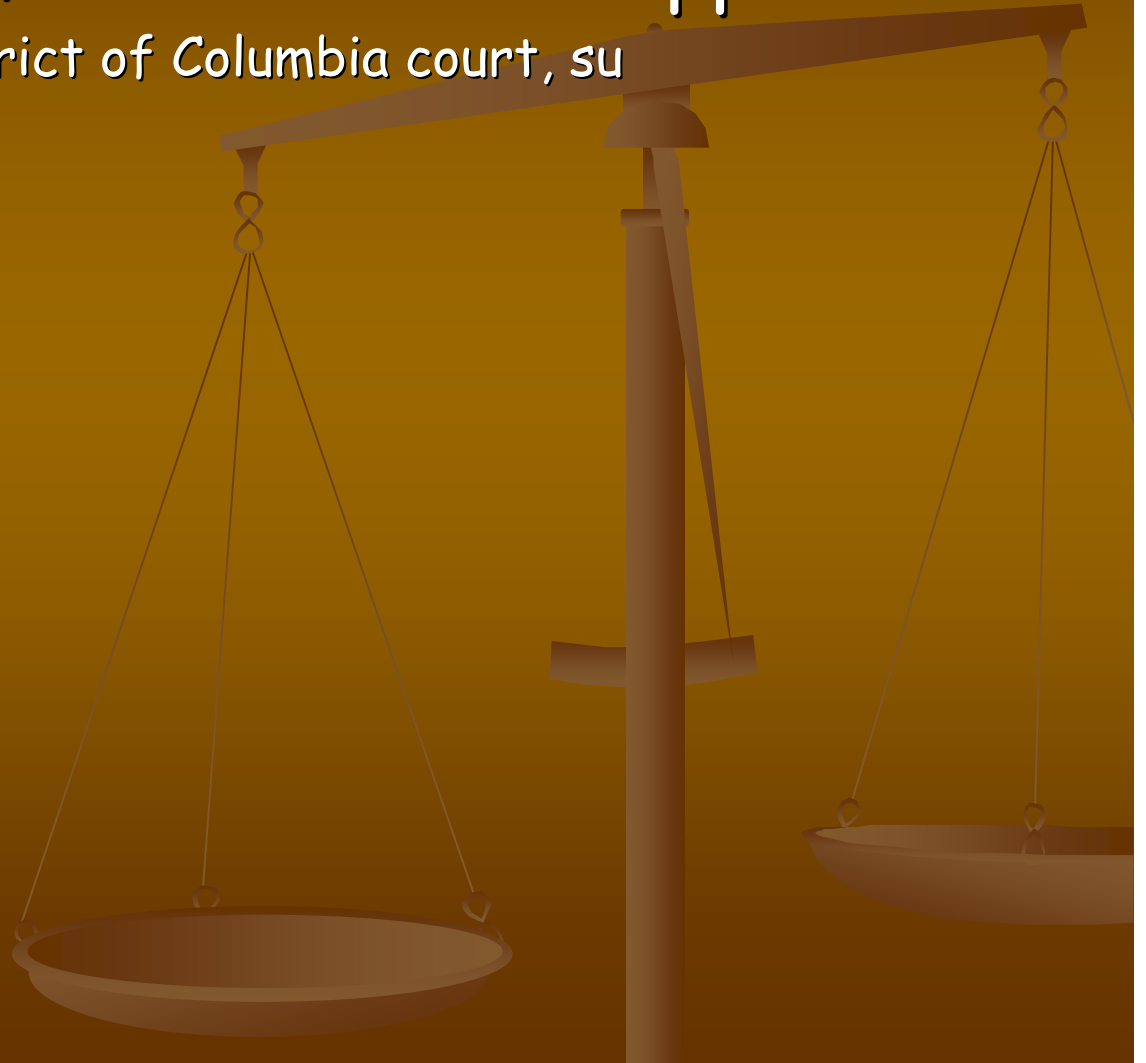
- **NAFTA & Ch 11 Interpretation**

ICSID- Tribunal defined NAFTA according to only the economic goals stated as objectives, and ignored considerations for environmental protection or sustainable development also included in NAFTA as priorities

Trade Related Issues

- Legal Recourse; International Appeal

Mexico appealed in District of Columbia court, su



Conclusion

- Transparency - Govt., NAFTA, Investors, Arbitration Rulings?
- Federal vs Municipal Govt.
- Did the Municipal Govt. end up doing more harm than good for the environment?

