

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

FISHERIES JURISDICTION CASE

(UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND v. ICELAND)

REQUEST FOR THE INDICATION OF INTERIM
MEASURES OF PROTECTION

ORDER OF 17 AUGUST 1972

1972

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

**AFFAIRE RELATIVE À LA COMPÉTENCE
EN MATIÈRE DE PÊCHERIES**

(ROYAUME-UNI DE GRANDE-BRETAGNE ET
D'IRLANDE DU NORD c. ISLANDE)

DEMANDE EN INDICATION DE MESURES
CONSERVATOIRES

ORDONNANCE DU 17 AOÛT 1972

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FISHERIES JURISDICTION CASE

(UNITED KINGDOM OF GREAT BRITAIN AND
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REQUEST FOR THE INDICATION OF INTERIM
MEASURES OF PROTECTION

ORDER

Present: President Sir Muhammad ZAFRULLA KHAN; *Vice-President*
AMMOUN; *Judges* Sir Gerald FITZMAURICE, PADILLA NERVO,
FORSTER, GROS, BENGZON, PETRÉN, LACHS, ONYEAMA, DILLARD,
IGNACIO-PINTO, DE CASTRO, MOROZOV, JIMÉNEZ DE ARÉCHAGA;
Registrar AQUARONE.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court,

Having regard to Article 61 of the Rules of Court,

Having regard to the Application by the United Kingdom of Great
Britain and Northern Ireland filed in the Registry of the Court on 14
April 1972, instituting proceedings against the Republic of Iceland

in respect of a dispute concerning the proposed extension by the Government of Iceland of its fisheries jurisdiction, by which the Government of the United Kingdom asks the Court to declare that Iceland's claim to extend its exclusive fisheries jurisdiction to a zone of 50 nautical miles around Iceland is without foundation in international law,

Makes the following Order:

1. Having regard to the request dated 19 July 1972 and filed in the Registry the same day, whereby the Government of the United Kingdom, relying on Article 41 of the Statute and Article 61 of the Rules of Court, asks to the Court to indicate, pending the final decision in the case brought before it by the Application of 14 April 1972, the following interim measures of protection:

- “(a) The Government of Iceland should not seek to enforce the regulations referred to in paragraph 4 [of the request] against, or otherwise interfere or threaten to interfere with, vessels registered in the United Kingdom fishing outside the 12-mile limit agreed on by the parties in the Exchange of Notes between the Government of the United Kingdom and the Government of Iceland dated 11 March 1961 (as set out in Annex A to the said Application);
- (b) the Government of Iceland should not take or threaten to take in their territory (including their ports and territorial waters) or inside the said 12-mile limit or elsewhere measures of any kind against any vessels registered in the United Kingdom, or against persons connected with such vessels, being measures which have as their purpose or effect the impairment of the freedom of such vessels to fish outside the said 12-mile limit;
- (c) in conformity with sub-paragraph (a) above, vessels registered in the United Kingdom should be free, save in so far as may be provided for by arrangements between the Government of the United Kingdom and the Government of Iceland such as are referred to in paragraph 21 (b) of the said Application, to fish as heretofore in all parts of the high seas outside the said 12-mile limit, but the Government of the United Kingdom should ensure that such vessels do not take more than 185,000 metric tons of fish in any one year from the sea area of Iceland, that is to say, the area defined by the International Council for the Exploration of the Sea as area Va and so marked on the map attached [to the request] at Annex B2;
- (d) the Government of the United Kingdom and the Government of Iceland should each seek to avoid circumstances arising which are inconsistent with the foregoing measures and which

are capable of aggravating or extending the dispute submitted to the Court; and

- (e) in conformity with the foregoing measures, the Government of the United Kingdom and the Government of Iceland should each ensure that no action is taken which might prejudice the rights of the other party in respect of the carrying out of whatever decision on the merits the Court may subsequently render";

2. Whereas the Government of Iceland was notified of the filing of the Application instituting proceedings, on the same day, and a copy thereof was at the same time transmitted to it by air mail;

3. Whereas the submissions set out in the request for the indication of interim measures of protection were on the day of the request communicated to the Government of Iceland, by telegram of 19 July 1972, and a copy of the request was at the same time transmitted to it by express air mail, and in the telegram and the letter it was indicated that the Court, in accordance with Article 61, paragraph 8, of the Rules of Court, was ready to receive the observations of the Government of Iceland on the request in writing, and would hold hearings, opening on 1 August at 10 a.m., to hear the observations of the Parties on the request;

4. Whereas the Application founds the jurisdiction of the Court on Article 36, paragraph 1, of the Statute and on an Exchange of Notes between the Governments of Iceland and of the United Kingdom dated 11 March 1961;

5. Whereas by a letter dated 29 May 1972 from the Minister for Foreign Affairs of Iceland, received in the Registry on 31 May 1972, the Government of Iceland asserted that the agreement constituted by the Exchange of Notes of 11 March 1961 was not of a permanent nature, that its object and purpose had been fully achieved, and that it was no longer applicable and had terminated; that there was on 14 April 1972 no basis under the Statute of the Court to exercise jurisdiction in the case; and that the Government of Iceland, considering that the vital interests of the people of Iceland were involved, was not willing to confer jurisdiction on the Court, and would not appoint an Agent;

6. Whereas by a telegram dated 28 July 1972, received in the Registry of the Court on 29 July, the Minister for Foreign Affairs of Iceland, after reiterating that there was no basis under the Statute for the Court to exercise jurisdiction in the case to which the United Kingdom Application referred, stated that there was no basis for the request for provisional measures and that, without prejudice to any of its previous arguments, the Government of Iceland objected specifically to the indication of provisional measures by the Court under Article 41 of the Statute and Article 61 of the Rules of Court in the present case, where no basis for jurisdiction was established;

7. Whereas at the opening of the public hearing which had been fixed for 1 August 1972, there were present in court the Agent, counsel and other advisers of the Government of the United Kingdom;

8. Having heard the observations of The Right Honourable Sir Peter Rawlinson, Q.C., M.P., Attorney-General, on behalf of the Government of the United Kingdom, on the request for provisional measures;

9. Noting that the Government of Iceland was not represented at the hearing;

10. Having taken note of the written replies given on 3 August 1972 by the Agent of the Government of the United Kingdom to questions put to him by the Court on 2 August 1972 on two points raised in the oral observations;

11. Whereas according to the jurisprudence of the Court and of the Permanent Court of International Justice the non-appearance of one of the parties cannot by itself constitute an obstacle to the indication of provisional measures, provided the parties have been given an opportunity of presenting their observations on the subject;

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12. Whereas in its message of 28 July 1972, the Government of Iceland stated that the Application of 14 April 1972 was relevant only to the legal position of the two States and not to the economic position of certain private enterprises or other interests in one of those States, an observation which seems to question the connection which must exist under Article 61, paragraph 1, of the Rules between a request for interim measures of protection and the original Application filed with the Court;

13. Whereas in the Application by which the Government of the United Kingdom instituted proceedings, that Government, by asking the Court to adjudge that the extension of fisheries jurisdiction by Iceland is invalid, is in fact requesting the Court to declare that the contemplated measures of exclusion of foreign fishing vessels cannot be opposed by Iceland to fishing vessels registered in the United Kingdom;

14. Whereas the contention of the Applicant that its fishing vessels are entitled to continue fishing within the above-mentioned zone of 50 nautical miles is part of the subject-matter of the dispute submitted to the Court, and the request for provisional measures designed to protect such rights is therefore directly connected with the Application filed on 14 April 1972;

15. Whereas on a request for provisional measures the Court need not, before indicating them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to act under Article 41 of the Statute if the absence of jurisdiction on the merits is manifest;

16. Whereas the penultimate paragraph of the Exchange of Notes between the Governments of Iceland and of the United Kingdom dated 11 March 1961 reads as follows:

“The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months’ notice of such extension and, in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice”;

17. Whereas the above-cited provision in an instrument emanating from both Parties to the dispute appears, *prima facie*, to afford a possible basis on which the jurisdiction of the Court might be founded;

18. Whereas the complaint outlined in the United Kingdom Application is that the Government of Iceland has announced its intention, as from 1 September 1972, to extend unilaterally its exclusive jurisdiction in respect of the fisheries around Iceland to a distance of 50 nautical miles from the baselines mentioned in the 1961 Exchange of Notes; and whereas on 14 July 1972 the Government of Iceland issued Regulations to that effect;

19. Whereas the contention of the Government of Iceland, in its letter of 29 May 1972, that the above-quoted clause contained in the Exchange of Notes of 11 March 1961 has been terminated, will fall to be examined by the Court in due course;

20. Whereas the decision given in the course of the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the merits themselves and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction or in respect of such merits;

21. Whereas the right of the Court to indicate provisional measures as provided for in Article 41 of the Statute has as its object to preserve the respective rights of the Parties pending the decision of the Court, and presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute in judicial proceedings and that the Court’s judgment should not be anticipated by reason of any initiative regarding the measures which are in issue;

22. Whereas the immediate implementation by Iceland of its Regulations would, by anticipating the Court’s judgment, prejudice the rights claimed by the United Kingdom and affect the possibility of their full restoration in the event of a judgment in its favour;

23. Whereas it is also necessary to bear in mind the exceptional dependence of the Icelandic nation upon coastal fisheries for its livelihood and economic development as expressly recognized by the United Kingdom in its Note addressed to the Foreign Minister of Iceland dated 11 March 1961;

24. Whereas from this point of view account must be taken of the need for the conservation of fish stocks in the Iceland area;

25. Whereas the total catch by United Kingdom vessels in that area in the year 1970 was 164,000 metric tons and in the year 1971 was 207,000 metric tons; and whereas the figure of 185,000 metric tons mentioned in the United Kingdom request for interim measures was based on the average annual catch for the period 1960-1969;

26. Whereas in the Court's opinion the average of the catch should, for purposes of interim measures, and so as to reflect the present situation concerning fisheries of different species in the Iceland area, be based on the available statistical information before the Court for the five years 1967-1971, which produces an approximate figure of 170,000 metric tons,

Accordingly,

THE COURT,

by fourteen votes to one,

- (1) Indicates, pending its final decision in the proceedings instituted on 14 April 1972 by the Government of the United Kingdom against the Government of Iceland, the following provisional measures:
 - (a) the United Kingdom and the Republic of Iceland should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court;
 - (b) the United Kingdom and the Republic of Iceland should each of them ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of whatever decision on the merits the Court may render;
 - (c) the Republic of Iceland should refrain from taking any measures to enforce the Regulations of 14 July 1972 against vessels registered in the United Kingdom and engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone;
 - (d) the Republic of Iceland should refrain from applying administrative, judicial or other measures against ships registered in the United Kingdom, their crews or other related persons, because of their having engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone;
 - (e) the United Kingdom should ensure that vessels registered in the United Kingdom do not take an annual catch of more than 170,000 metric tons of fish from the "Sea Area of Iceland" as defined by the International Council for the Exploration of the Sea as area Va;

- (f) the United Kingdom Government should furnish the Government of Iceland and the Registry of the Court with all relevant information, orders issued and arrangements made concerning the control and regulation of fish catches in the area.
- (2) Unless the Court has meanwhile delivered its final judgment in the case, it shall, at an appropriate time before 15 August 1973, review the matter at the request of either Party in order to decide whether the foregoing measures shall continue or need to be modified or revoked.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this seventeenth day of August, one thousand nine hundred and seventy-two, in four copies, one of which will be placed in the archives of the Court, and the others transmitted respectively to the Government of the Republic of Iceland, to the Government of the United Kingdom of Great Britain and Northern Ireland, and to the Secretary-General of the United Nations for transmission to the Security Council.

(Signed) ZAFRULLA KHAN,
President.

(Signed) S. AQUARONE,
Registrar.

Vice-President AMMOUN and Judges FORSTER and JIMÉNEZ DE ARÉCHAGA make the following joint declaration:

We have voted for this Order taking into account that the serious problems of the contemporary law of the sea which arise in this case are part of the merits, are not in issue at the present stage of the proceedings and have not in any way been touched upon by the Order. When indicating interim measures the Court must only take into account whether, if action is taken by one of the Parties pending the judicial proceedings, there is likelihood of irremediable damage to the rights which have been claimed before it and upon which it would have to adjudicate. It follows therefore that a vote for this Order cannot have the slightest implication as to the validity or otherwise of the rights protected by such Order or of the rights claimed by a coastal State dependent on the fish stock of its continental shelf or of a fishery zone. Those substantive questions have not been prejudged at all since the Court

will, if it declares itself competent, examine them, after affording the Parties the opportunity of arguing their cases.

Judge PADILLA NERVO appends a dissenting opinion to the Order of the Court.

(Initialed) Z. K.

(Initialed) S. A.
