

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

FISHERIES JURISDICTION CASE

(FEDERAL REPUBLIC OF GERMANY 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**

(RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE c. ISLANDE)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 17 AOÛT 1972

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FISHERIES JURISDICTION CASE
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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, BENZON, 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 Federal Republic of Germany filed in the Registry of the Court on 5 June 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 Federal Republic asks the Court to declare that Iceland's claim to extend its exclusive fisheries jurisdiction to a zone of 50 nautical miles around Iceland has no basis in international law and could therefore not be opposed to the Federal Republic and to its fishing vessels,

Makes the following Order:

1. Having regard to the request dated 21 July 1972 and filed in the Registry the same day, whereby the Government of the Federal Republic, relying on Article 41 of the Statute and Article 61 of the Rules of Court, asks the Court to indicate, pending the final decision in the case brought before it by the Application of 5 June 1972, the following interim measures of protection:

- “(a) The Federal Republic of Germany 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 Republic of Iceland should refrain from taking any measure purporting to enforce the Regulations issued by the Government of Iceland on 14 July 1972 against or otherwise interfering with vessels registered in the Federal Republic of Germany and engaged in fishing activities in the waters of the high seas around Iceland outside the 12-mile limit of fisheries jurisdiction agreed upon in the Exchange of Notes between the Government of the Federal Republic of Germany and the Government of Iceland dated 19 July 1961.
- (c) The Republic of Iceland should refrain from applying or threatening to apply administrative, judicial or other sanctions or any other measures against ships registered in the Federal Republic of Germany, their crews or other related persons because of their having been engaged in fishing activities in the waters of the high seas around Iceland outside the 12-mile limit as referred to in paragraph 22 (b) [of the request].
- (d) The Federal Republic of Germany should ensure that vessels registered in the Federal Republic of Germany do not take more than 120,000 metric tons of fish in any one year from the ‘Sea Area of Iceland’ as defined by the International Council for the Exploration of the Sea as area Va (as marked on the map [annexed to the request] as *Annex B*).
- (e) The Federal Republic of Germany 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 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 21 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 2 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 Federal Republic of Germany dated 19 July 1961;

5. Whereas by a letter dated 27 June 1972 from the Minister for Foreign Affairs of Iceland, received in the Registry on 4 July 1972, the Government of Iceland asserted that the agreement constituted by the Exchange of Notes of 19 July 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 5 June 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 Application of the Federal Republic 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 2 August 1972, there were present in court the Agent, counsel and other advisers, of the Government of the Federal Republic;

8. Having heard the observations of Professor Dr. Günther Jaenicke on behalf of the Government of the Federal Republic, 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 4 and 5 August 1972 by the Agent of the Government of the Federal Republic 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;

*

12. Whereas in its message of 28 July 1972, the Government of Iceland stated that the Application of 5 June 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 Federal Republic instituted proceedings, that Government requested the Court to declare that the contemplated measures of exclusion of foreign fishing vessels could not be opposed by Iceland to the Federal Republic and to its fishing vessels;

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 5 June 1972;

15. Whereas in its message of 28 July 1972, the Government of Iceland further recalled that the Federal Republic of Germany had only accepted the jurisdiction of the Court by its declaration of 29 October 1971, transmitted to the Registrar of the Court on 22 November 1971, after it had been notified by the Government of Iceland, in its aide-mémoire of 31 August 1971, that the object and purpose of the provision for recourse to judicial settlement of certain matters had been fully achieved;

16. 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;

17. Whereas paragraph 5 of the Exchange of Notes between the Governments of Iceland and of the Federal Republic dated 19 July 1961 reads as follows:

“The Government of the Republic of Iceland shall continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of the fishery jurisdiction of Iceland. However, it shall give the Government of the Federal Republic of Germany six months’ notice of any such extension; in case of a dispute relating to such an extension, the matter shall, at the request of either party, be referred to the International Court of Justice”;

18. 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;

19. Whereas the complaint outlined in the Application of the Federal Republic 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;

20. Whereas the contention of the Government of Iceland in its letter of 27 June 1972, that the above-quoted clause contained in the Exchange of Notes of 19 July 1961 has been terminated, and the question raised by that Government in its message of 28 July 1972 as to the date of the acceptance of the Court's jurisdiction by the Federal Republic, will fall to be examined by the Court in due course;

21. Whereas the decision given in 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;

22. 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;

23. Whereas the immediate implementation by Iceland of its Regulations would, by anticipating the Court's judgment, prejudice the rights claimed by the Federal Republic and affect the possibility of their full restoration in the event of a judgment in its favour;

24. Whereas it is also necessary to bear in mind the exceptional importance of coastal fisheries to the Icelandic economy as expressly recognised by the Federal Republic in its Note addressed to the Foreign Minister of Iceland dated 19 July 1961;

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

26. Whereas the total catch by vessels of the Federal Republic in that area in the year 1970 was 111,000 metric tons and in the year 1971 was 123,000 metric tons; and whereas the figure of 120,000 metric tons mentioned in the Federal Republic's request for interim measures was based on the average annual catch for the period 1960-1969;

27. 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 119,000 metric tons,

Accordingly,

THE COURT,

by fourteen votes to one,

(1) Indicates, pending its final decision in the proceedings instituted on 5 June 1972 by the Federal Republic of Germany against the Republic of Iceland, the following provisional measures:

- (a) the Federal Republic of Germany 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 Federal Republic of Germany 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 Federal Republic 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 sanctions or any other measures against ships registered in the Federal Republic, 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 Federal Republic should ensure that vessels registered in the Federal Republic do not take an annual catch of more than 119,000 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 Government of the Federal Republic 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 Federal Republic of Germany, 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.