

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

FISHERIES JURISDICTION CASE
(FEDERAL REPUBLIC OF GERMANY *v.* ICELAND)

CONTINUANCE OF INTERIM MEASURES
OF PROTECTION

ORDER OF 12 JULY 1973

1973

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE LA COMPÉTENCE
EN MATIÈRE DE PÊCHERIES
(RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE *c.* ISLANDE)

MAINTIEN EN VIGUEUR DE MESURES
CONSERVATOIRES

ORDONNANCE DU 12 JUILLET 1973

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ORDER

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FISHERIES JURISDICTION CASE

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CONTINUANCE OF INTERIM MEASURES
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ORDER

Present: President LACHS; Vice-President AMMOUN, Judges FORSTER, GROS, BENZON, PETRÉN, ONYEAMA, IGNACIO-PINTO, DE CASTRO, MOROZOV, JIMÉNEZ DE ARÉCHAGA, Sir Humphrey WALDOCK, NAGENDRA SINGH, RUDA; 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 1946 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,

Having regard to the request for the indication of interim measures of protection filed by the Federal Republic in the Registry on 21 July 1972,

Having regard to the Order of the Court dated 17 August 1972 by which the Court indicated interim measures of protection in this case,

Makes the following Order:

1. Having regard to the communication dated 22 June 1973 and filed in the Registry the same day, in which the Agent for the Applicant referred to operative paragraph (2) of the Court's Order of 17 August 1972, providing for review of the matter at the request of either Party, and asked the Court *inter alia* to confirm the opinion of the Government of the Federal Republic of Germany that the Order of 17 August 1972 will continue to be operative after 15 August 1973;

2. Whereas the Government of Iceland was forthwith notified by telegram of the communication of 22 June 1973, a copy of which was at the same time transmitted to it by express air mail;

3. Whereas the Government of Iceland has by a telegram of 2 July 1973 submitted observations on the request by the Agent for the Applicant in his communication of 22 June 1973, protesting against the continuation of the measures indicated, maintaining that highly mobile fishing fleets should not be allowed to inflict a constant threat of deterioration of the fishstocks and endanger the viability of a one-source economy, and concluding that to freeze the present dangerous situation might cause irreparable harm to the interests of the Icelandic nation;

4. Having regard to the Judgment of 2 February 1973 by which the Court found that it had jurisdiction to entertain the Application filed by the Government of the Federal Republic on 5 June 1972 and to deal with the merits of the dispute;

5. Having regard to the Order of 15 February 1973 by which the Court fixed time-limits for the written proceedings on the merits;

6. Having been informed by the Applicant's communication of 22 June 1973 that negotiations are taking place between the States concerned with a view to reaching an interim arrangement pending final settlement of the dispute;

7. Whereas the provisional measures indicated by the Court and confirmed by the present Order do not exclude an interim arrangement which may be agreed upon by the Governments concerned, based on catch-limitation figures different from that indicated as a maximum in the Court's Order of 17 August 1972 and on related restrictions concerning areas closed to fishing, number and type of vessels allowed and forms of control of the agreed provisions;

8. Whereas the Court, pending the final decision, and in the absence of such interim arrangement, must remain concerned to preserve, by the

indication of provisional measures, the rights which may subsequently be adjudged by the Court to belong respectively to the Parties;

Accordingly,

THE COURT,

by 11 votes to 3,

Confirms that the provisional measures indicated in operative paragraph (1) of the Order of 17 August 1972 should, subject to the power of revocation or modification conferred on the Court by paragraph 7 of Article 61 of the 1946 Rules, remain operative until the Court has given final judgment in the case.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twelfth day of July, one thousand nine hundred and seventy-three, 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) Manfred LACHS,
President.

(Signed) S. AQUARONE,
Registrar.

Judge IGNACIO-PINTO makes the following declaration:

I concurred in the Court's Orders of 17 August 1972 granting the United Kingdom in one case, and the Federal Republic of Germany in the other, the interim measures of protection they had requested in their dispute with Iceland; but I am unable to concur in the present Order. I have voted against it for reasons based on the following considerations:

1. The Court, in confirming the interim measures indicated in the earlier Order of 17 August 1972, has not, in my view, taken sufficient account of the circumstances that have arisen since that Order was made.

In my view, bearing in mind Article 61, paragraph 7, of its Rules, the Court ought first to have ascertained with care whether the new aspects of the situation did not necessitate either the revocation or, at least, the modification of the terms of the Order of 17 August 1972.

The reason is that, as no-one can be unaware, there have been numerous clashes in the disputed fishery-zone between Icelandic coastguard vessels and trawlers flying the British or Federal German flag. Some of these incidents, such as collision between two vessels or the firing of shells by Icelandic coastguard vessels, were in my view grave enough to warrant the exercise by the Court of its right to modify the terms of its original decision.

2. Furthermore, these incidents, in my judgment, constitute so many flagrant violations on either side of the operative part of the Orders of 17 August 1972. The measures should therefore be reviewed, and others indicated concerning *inter alia* the presence of warships.

It is true that the present Order is made "subject to the power of revocation or modification" conferred on the Court by Article 61, paragraph 7, of its Rules, but the renewal of the interim measures indicated on 17 August 1972 until the Court has given final judgment in the case is fraught with risk, given the prevailing tension between the disputants. If other, much graver incidents were to occur before final judgment was given, the Court would be open to criticism for failure to exercise vigilance.

Such are the considerations which precluded me from joining the majority of the Court in voting for the present Order.

Judges GROS and PETRÉN append dissenting opinions to the Order of the Court.

(Initialled) M.L.

(Initialled) S.A.
