

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

**Judgment of 25 July 1974**

In its Judgment on the merits in the case concerning Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), the Court, by ten votes to four:

(1) found that the Icelandic Regulations of 1972 constituting a unilateral extension of the exclusive fishing rights of Iceland to 50 nautical miles from the baselines are not opposable to the Federal Republic of Germany;

(2) found that Iceland is not entitled unilaterally to exclude fishing vessels of the Federal Republic of Germany from areas between the 12-mile and 50-mile limits or unilaterally to impose restrictions on their activities in such areas;

(3) held that Iceland and the Federal Republic of Germany are under mutual obligations to undertake negotiations in good faith for an equitable solution of their differences;

(4) indicated certain factors which are to be taken into account in these negotiations (preferential rights of Iceland, established rights of the Federal Republic of Germany, interests of other States, conservation of fishery resources, joint examination of measures required);

(5) found that it is unable to accede to the submission of the Federal Republic concerning a claim to be entitled to compensation.

The Court was composed as follows: President Lachs; Judges Forster, Gros, Bengzon, Petrán, Onyeama, Dillard, Ignacio-Pinto, de Castro, Morozov, Jiménez de Aréchaga, Sir Humphrey Waldock, Nagendra Singh and Ruda.

Among the ten Members of the Court who voted in favour of the Judgment, the President and Judges Dillard and Nagendra Singh appended declarations; Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh (already mentioned) and Ruda appended a joint separate opinion, and Judges de Castro and Sir Humphrey Waldock appended separate opinions.

Of the four judges who voted against the Judgment, Judge Ignacio-Pinto appended a declaration and Judges Gros, Petrán and Onyeama appended dissenting opinions.

In these declarations and opinions the judges concerned make clear and explain their positions.

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*Procedure—Failure of Party to Appear*  
(paras. 1–19 of the Judgment)

In its Judgment, the Court recalled that proceedings were instituted by the Federal Republic of Germany against Iceland on 26 May 1972. At the request of the Federal Republic of Germany, the Court indicated interim measures of protection by an Order dated 17 August 1972 and confirmed them by a further Order dated 12 July 1973. By a Judgment of 2 February 1973 the Court found that it had jurisdiction to deal with the merits of the dispute.

The Court did not include upon the bench any judge of the nationality of either of the Parties. In a letter dated 25 September 1973 the Federal Republic informed the Court that, as Iceland was declining to take part in the proceedings and to avail itself of the right to have a judge *ad hoc*, the Federal Republic did not feel it necessary to insist on the appointment of one. On 17 January 1974 the Court decided by 9 votes to 5 not to join the proceedings to those instituted by the United Kingdom against Iceland. In reaching this decision the Court took into account the fact that, while the basic legal issues in each case appeared to be identical, there were differences between the positions of the two Applicants, and between their respective submissions, and that joinder would be contrary to their wishes.

In its final submissions the Federal Republic asked the Court to adjudge and declare:

(a) that the unilateral extension by Iceland of its zone of exclusive fisheries jurisdiction to 50 nautical miles from the baselines has, as against the Federal Republic of Germany, no basis in international law;

(b) that the Icelandic Regulations issued for this purpose shall not be enforced against the Federal Republic of Germany or vessels registered therein;

(c) that if Iceland establishes a need for conservation measures in respect to fish stocks beyond the limit of 12 miles agreed to in an Exchange of Notes in 1961, such measures may be taken only on the basis of an agreement between the Parties, concluded either bilaterally or within a multilateral framework, with due regard to the special dependence of Iceland on its fisheries and to the traditional fisheries of the Federal Republic in the waters concerned;

(d) that the acts of interference by Icelandic coastal patrol boats with fishing vessels registered in the Federal Republic are unlawful under international law and that Iceland is under an obligation to make compensation therefor to the Federal Republic.

Iceland did not take part in any phase of the proceedings. By a letter of 27 June 1972 Iceland informed the Court that it regarded the Exchange of Notes of 1961 as terminated; that in its view there was no basis under the Statute for the Court to exercise jurisdiction; and that, as it considered its vital interests to be involved, it was not willing to confer jurisdiction on the Court in any case involving the extent of its fishery limits. In a letter dated 11 January 1974, Iceland stated that it did not accept any of the statements of fact or any of the allegations or contentions of law submitted on behalf of the Federal Republic.

In those circumstances, the Court, under the terms of Article 53 of the Statute, had to determine whether the claim was well founded in fact and law. The facts requiring the Court's consideration in adjudicating upon the claim were attested by documentary evidence whose accuracy there appeared to be no reason to doubt. As for the law, although it was to be regretted that Iceland had failed to appear, the Court was nevertheless deemed to take notice of international law, which lay within its own judicial knowledge. Having taken account

of the legal position of each Party and acted with particular circumspection in view of the absence of the respondent State, the Court considered that it had before it the elements necessary to enable it to deliver judgment.

*History of the Dispute—Jurisdiction of the Court*  
(paras. 20–40 of the Judgment)

The Court recalled that in 1948 the Althing (the Parliament of Iceland) passed a law concerning the Scientific Conservation of the Continental Shelf Fisheries which empowered the Government to establish conservation zones wherein all fisheries should be subject to Icelandic rules and control, to the extent compatible with agreements with other countries. In 1958 Iceland issued regulations extending the limits of its exclusive right of fishery round its coasts to 12 nautical miles, and in 1959 the Althing declared by a resolution "that recognition should be obtained of Iceland's right to the entire continental shelf area in conformity with the policy adopted by the Law of 1948". After refusing to recognize the validity of the new Regulations, the Federal Republic negotiated with Iceland and, on 19 July 1961, concluded with it an Exchange of Notes which specified *inter alia* that the Federal Republic would no longer object to a 12-mile fishery zone, that Iceland would continue to work for the implementation of the 1959 Resolution regarding the extension of fisheries jurisdiction but would give the Federal Republic six months' notice of such extension and that "in case of a dispute in relation to such an extension, the matter shall, at the request of either Party, be referred to the International Court of Justice".

In 1971 the Icelandic Government announced that the agreement on fisheries jurisdiction with the Federal Republic would be terminated and that the limit of Iceland's exclusive fisheries jurisdiction would be extended to 50 miles. By an aide-mémoire of 24 February 1972 the Federal Republic was formally notified of that intention and replied that, in its view, the measures contemplated would be "incompatible with the general rules of international law" and that the Exchange of Notes could not be denounced unilaterally. On 14 July 1972 new Regulations were introduced whereby Iceland's fishery limits would be extended to 50 miles as from 1 September 1972 and all fishing activities by foreign vessels inside those limits be prohibited. Their enforcement gave rise, while proceedings before the Court were continuing and Iceland was refusing to recognize the Court's decisions, to incidents, and to negotiations which did not lead to any agreement.

The Court, having in its Judgment of 1973 held the Exchange of Notes of 1961 to be a treaty in force, emphasized that it would be too narrow an interpretation of its compromissory clause (quoted above) to conclude that it limited the Court's jurisdiction to giving an affirmative or a negative answer to the question of whether the Icelandic Regulations of 1972 were in conformity with international law. It seemed evident that the dispute between the Parties included disagreements as to their respective rights in fishery resources and the adequacy of measures to conserve them. It was within the power of the Court to take into consideration all relevant elements.

*Applicable Rules of International Law*  
(paras. 41–70 of the Judgment)

The first United Nations Conference on the Law of the Sea (Geneva, 1958) had adopted a Convention on the High Seas, Article 2 of which declared the principle of the freedom of the high seas, that is to say, freedom of navigation, freedom of fishing, etc., to "be exercised by all States with reasonable

regard to the interests of other States in their exercise of the freedom of the high seas”.

The question of the breadth of the territorial sea and that of the extent of the coastal State’s fishery jurisdiction had been left unsettled at the 1958 Conference and were not settled at a second Conference held in Geneva in 1960. However, arising out of the general consensus at that second Conference, two concepts had since crystallized as customary law: that of a fishery zone, between the territorial sea and the high seas, within which the coastal State could claim exclusive fisheries jurisdiction—it now being generally accepted that that zone could extend to the 12-mile limit—and the concept, in respect of waters adjacent to the zone of exclusive fishing rights, of preferential fishing rights in favour of the coastal State in a situation of special dependence on its fisheries. The Court was aware that in recent years a number of States had asserted an extension of their exclusive fishery limits. The Court was likewise aware of present endeavours, pursued under the auspices of the United Nations, to achieve in a third Conference on the Law of the Sea the further codification and progressive development of that branch of the law, as it was also of various proposals and preparatory documents produced in that framework. But, as a court of law, it could not render judgment *sub specie legis ferendae* or anticipate the law before the legislator had laid it down. It must take into account the existing rules of international law and the Exchange of Notes of 1961.

The concept of preferential fishing rights had originated in proposals submitted by Iceland at the Geneva Conference of 1958, which had confined itself to recommending that:

“ . . . where, for the purpose of conservation, it becomes necessary to limit the total catch of a stock or stocks of fish in an area of the high seas adjacent to the territorial sea of a coastal State, any other States fishing in that area should collaborate with the coastal State to secure just treatment of such situation, by establishing agreed measures which shall recognize any preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of the other States”.

At the 1960 Conference the same concept had been embodied in an amendment incorporated by a substantial vote into one of the proposals concerning the fishing zone. The contemporary practice of States showed that that concept, in addition to its increasing and widespread acceptance, was being implemented by agreements, either bilateral or multilateral. In the present case, in which the exclusive fishery zone within the limit of 12 miles was not in dispute, the Federal Republic of Germany had expressly recognized the preferential rights of the other Party in the disputed waters situated beyond that limit. There could be no doubt of the exceptional dependence of Iceland on its fisheries and the situation appeared to have been reached when it was imperative to preserve fish stocks in the interests of rational and economic exploitation.

However, the very notion of preferential fishery rights for the coastal State in a situation of special dependence, though it implied a certain priority, could not imply the extinction of the concurrent rights of other States. The fact that Iceland was entitled to claim preferential rights did not suffice to justify its claim unilaterally to exclude fishing vessels of the Federal Republic from all fishing beyond the limit of 12 miles agreed to in 1961.

The Federal Republic of Germany had pointed out that its vessels started fishing in the Icelandic area as long ago as the end of the nineteenth century, and had further stated that the

loss of the fishing grounds concerned would have an appreciable impact on its economy. There too the economic dependence and livelihood of whole communities were affected, and the Federal Republic of Germany shared the same interest in the conservation of fish stocks as Iceland, which had for its part admitted the existence of the Applicant’s historic and special interests in fishing in the disputed waters. Iceland’s 1972 Regulations were therefore not opposable to the Federal Republic of Germany: they disregarded the established rights of that State and also the Exchange of Notes of 1961, and they constituted an infringement of the principle (1958 Convention on the High Seas, Art. 2) of reasonable regard for the interests of other States, including the Federal Republic.

In order to reach an equitable solution of the present dispute it was necessary that the preferential fishing rights of Iceland should be reconciled with the traditional fishing rights of the Federal Republic of Germany through the appraisal at any given moment of the relative dependence of either State on the fisheries in question, while taking into account the rights of other States and the needs of conservation. Thus Iceland was not in law entitled unilaterally to exclude fishing vessels of the Federal Republic from areas seaward of the limit of 12 miles agreed to in 1961 or unilaterally to impose restrictions on their activities. But that did not mean that the Federal Republic of Germany was under no obligation to Iceland with respect to fishing in the disputed waters in the 12-mile to 50-mile zone. Both Parties had the obligation to keep under review the fishery resources in those waters and to examine together, in the light of the information available, the measures required for the conservation and development, and equitable exploitation, of those resources, taking into account any international agreement that might at present be in force or might be reached after negotiation.

The most appropriate method for the solution of the dispute was clearly that of negotiation with a view to delimiting the rights and interests of the Parties and regulating equitably such questions as those of catch-limitation, share allocations and related restrictions. The obligation to negotiate flowed from the very nature of the respective rights of the Parties and corresponded to the provisions of the United Nations Charter concerning peaceful settlement of disputes. The task before the Parties would be to conduct their negotiations on the basis that each must in good faith pay reasonable regard to the legal rights of the other, to the facts of the particular situation and to the interests of other States with established fishing rights in the area.

The interim measures indicated in the Order of 17 August 1972 would cease to have effect as from the date of the Judgment, but the Parties would not therefore be at liberty to conduct their fishing activities in the disputed waters without limitation. They would be under the obligation to pay reasonable regard to each other’s rights and to conservation requirements pending the conclusion of the negotiations.

#### *Claim to Be Entitled to Compensation* (paras. 71–76 of the Judgment)

The fourth submission of the Federal Republic of Germany (see above) raised the question of compensation for alleged acts of harassment of its fishing vessels by Icelandic coastal patrol boats. Arising directly out of the question which was the subject-matter of the Application, that submission fell within the scope of the Court’s jurisdiction. However, it was presented in an abstract form and the Court was prevented from making an all-embracing finding of lia-

bility which would cover matters as to which it had only limited information and slender evidence.

For those reasons, the Court gave (Judgment, para. 77) the decision indicated above.

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