



INTERNATIONAL COURT OF JUSTICE

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Case concerning Fisheries Jurisdiction (Spain v. Canada)

Court declares that it has no jurisdiction to adjudicate upon the dispute

THE HAGUE, 4 December 1998. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today declared that it had no jurisdiction to adjudicate upon the dispute brought in 1995 by Spain concerning Fisheries Jurisdiction (Spain v. Canada).

The decision was taken by twelve votes against five. Since the Court included on the Bench no judge of the nationality of Spain or Canada, these two States had each appointed a judge ad hoc, bringing the total number of judges to 17.

Background information

On 28 March 1995, Spain filed an Application instituting proceedings against Canada following the boarding on the high seas by a Canadian patrol boat, on 9 March 1995, of a fishing boat, the Estai, flying the Spanish flag. The boarding was carried out in pursuance of the Canadian Coastal Fisheries Protection Act (as amended on 12 May 1994) and of its implementing regulations.

In its Application, Spain maintained that Canada had violated the principles of international law which enshrine freedom of navigation and freedom of fishing on the high seas, and had also infringed the right of exclusive jurisdiction of the flag State over its ships on the high seas. As a basis of the Court's jurisdiction, Spain relied upon the declarations by which both States accepted that jurisdiction as compulsory (Article 36, paragraph 2, of the Statute of the Court).

On 21 April 1995, Canada informed the Court that, in its view, it lacked jurisdiction to deal with the case by reason of a reservation made in its declaration of 10 May 1994. In this declaration, Canada stated that the Court had compulsory jurisdiction "over all disputes . . . other than . . . disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the [Northwest Atlantic Fisheries Organization's] Regulatory Area . . . and the enforcement of such measures".

Reasoning of the Court

The Court begins by noting that the Parties do not agree on the subject of the dispute. Spain contends that the dispute mainly relates to sovereignty issues: Canada has violated international law by seeking to apply its legislation against a third State (Spain) and by exercising its jurisdiction on the high seas over a ship flying the flag of that State. For Canada, on the other hand, the case arose out of and concerns conservation and management measures taken by it with respect to Spanish vessels fishing in the NAFO Regulatory Area and the enforcement of such measures.

After examining Spain's Application, as well as the written and oral pleadings presented by the Parties, the Court finds that "the essence of the dispute" is "whether" [the acts of Canada on the high seas in relation to the pursuit, the arrest and the detention of the Estai on the basis of certain enactments and regulations adopted by Canada] violated Spain's rights under international law and require reparation".

The Court must further establish whether the reservation contained in Canada's declaration applies or not to the dispute as thus characterized. It examines in detail the words used in the reservation and interprets them "in a natural and reasonable way, having due regard to the intention of [Canada] at the time when it accepted the compulsory jurisdiction of the Court". In doing so, the Court finds inter alia that the issue of the lawfulness of the Canadian acts, on which Spain insists, is an issue concerning the merits which has no relevance for the interpretation of Canada's declaration and the consequent decision on the Court's jurisdiction.

The Court concludes that the dispute between the Parties, as identified above, constitutes a dispute "arising out of" and "concerning" "conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area" and "the enforcement of such measures". It follows that the dispute comes within the terms of the reservation contained in Canada's declaration. The Court consequently has no jurisdiction to deal with the merits of the case.

Composition of the Court

The Court was composed as follows: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judges ad hoc Lalonde, Torres Bernárdez; Registrar Valencia-Ospina.

President Schwebel and Judges Oda, Koroma and Kooijmans have appended separate opinions to the Judgment. Vice-President Weeramantry, Judges Bedjaoui, Ranjeva and Vereshchetin, and Judge ad hoc Torres Bernárdez have appended dissenting opinions.

A summary of the Judgment is given in Press Communiqué No. 98/41bis, to which a brief summary of the opinions is annexed. The full text of the Judgment, the opinions and the Press Communiqués are available on the Court's website (<http://www.icj-cij.org>).

The printed text of the Judgment and of the opinions will become available in due course (information requests and orders should be addressed to the publications sections of the United Nations in New York or Geneva).

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