

Gerald Fitzmaurice in *I.C.J. Reports 1963*, pages 102-103, as follows:

“... the real distinction and test would seem to be whether or not the objection is based on, or arises from, the jurisdictional clause or clauses under which the jurisdiction of the tribunal is said to exist. If so, the objection is basically one of jurisdiction.”

Article 17 of the General Act provides that the disputes therein referred to shall include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice. Among the classes of legal disputes there enumerated is that concerning “the existence of any fact which, *if established*, would constitute a breach of an international obligation” (emphasis added). At the preliminary stage it would seem therefore sufficient to determine whether the parties are in conflict as to their respective rights. It would not appear necessary to enter at that stage into questions which really pertain to the merits and constitute the heart of the eventual substantive decision such as for instance the establishment of the rights of the parties or the extent of the damage resulting from radio-active fall-out.

Judge Sir Humphrey WALDOCK makes the following declaration:

I concur in the Order. I wish only to add that, in my view, the principles set out in Article 67, paragraph 7, of the Rules of Court should guide the Court in giving its decision on the next phase of the proceedings which is provided for by the present Order.

Judge NAGENDRA SINGH makes the following declaration:

While fully supporting the reasoning leading to the verdict of the Court, and therefore voting with the majority for the grant of interim measures of protection in this case, I wish to lend emphasis, by this declaration, to the requirement that the Court must be satisfied of its own competence, even though *prima facie*, before taking action under Article 41 of the Statute and Rule 61 (New Rule 66) of the Rules of Court.

It is true that neither of the aforesaid provisions spell out the test of competence of the Court or of the admissibility of the Application and the request, which nevertheless have to be gone into by each Member of the Court in order to see that a *possible* valid base for the Court's competence exists and that the Application is, *prima facie*, entertainable. I am, therefore, in entire agreement with the Court in laying down a positive test regarding its own competence, *prima facie* established, which was enunciated in the *Fisheries Jurisdiction*<sup>1</sup> case and having been reiterated in this

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<sup>1</sup> *Fisheries Jurisdiction (United Kingdom v. Iceland)*, *I.C.J. Reports 1972*, Order of 17 August 1972, paras. 15 to 17, pp. 15 to 16.