

FISHERIES CASE

Judgment of 18 December 1951

The Fisheries Case was brought before the Court by the United Kingdom of Great Britain and Northern Ireland against Norway.

By a Decree of July 12th, 1935, the Norwegian Government had, in the northern part of the country (north of the Arctic Circle) delimited the zone in which the fisheries were reserved to its own nationals. The United Kingdom asked the Court to state whether this delimitation was or was not contrary to international law. In its Judgment the Court found that neither the method employed for the delimitation by the Decree, nor the lines themselves fixed by the said Decree, are contrary to international law; the first finding is adopted by ten votes to two, and the second by eight votes to four.

Three Judges—MM. Alvarez, Hackworth and Hsu Mo—appended to the Judgment a declaration or an individual opinion stating the particular reasons for which they reached

their conclusions; two other Judges—Sir Arnold McNair and Mr. J. E. Read—appended to the Judgment statements of their dissenting Opinions.

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The situation which gave rise to the dispute and the facts which preceded the filing of the British Application are recalled in the Judgment.

The coastal zone concerned in the dispute is of a distinctive configuration. Its length as the crow flies exceeds 1,500 kilometres. Mountainous along its whole length, very broken by fjords and bays, dotted with countless islands, islets and reefs (certain of which form a continuous archipelago

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known as the *skjaergaard*, "rock rampart"), the coast does not constitute, as it does in practically all other countries in the world a clear dividing line between land and sea. The land configuration stretches out into the sea and what really constitutes the Norwegian coastline is the outer line of the land formations viewed as a whole. Along the coastal zone are situated shallow banks which are very rich in fish. These have been exploited from time immemorial by the inhabitants of the mainland and of the islands: they derive their livelihood essentially from such fishing.

In past centuries British fisherman had made incursions in the waters near the Norwegian coast. As a result of complaints from the King of Norway, they abstained from doing so at the beginning of the 17th century and for 300 years. But in 1906 British vessels appeared again. These were trawlers equipped with improved and powerful gear. The local population became perturbed, and measures were taken by Norway with a view to specifying the limits within which fishing was prohibited to foreigners. Incidents occurred, became more and more frequent, and on July 12th, 1935 the Norwegian Government delimited the Norwegian fisheries zone by Decree. Negotiations had been entered into by the two Governments; they were pursued after the Decree was enacted, but without success. A considerable number of British trawlers were arrested and condemned in 1948 and 1949. It was then that the United Kingdom Government instituted proceedings before the Court.

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The Judgment first specifies the subject of the dispute. The breadth of the belt of Norwegian territorial sea is not an issue: the four-mile limit claimed by Norway has been acknowledged by the United Kingdom. But the question is whether the lines laid down by the 1935 Decree for the purpose of delimiting the Norwegian fisheries zone have or have not been drawn in accordance with international law. (These lines, called "base-lines", are those from which the belt of the territorial sea is reckoned). The United Kingdom denies that they have been drawn in accordance with international law, and it relies on principles which it regards as applicable to the present case. For its part, Norway, whilst not denying that rules do exist, contends that those put forward by the United Kingdom are not applicable; and it further relies on its own system of delimitation which it asserts to be in every respect in conformity with international law. The Judgment first examines the applicability of the principles put forward by the United Kingdom, then the Norwegian system, and finally the conformity of that system with international law.

The first principle put forward by the United Kingdom is that the base-line must be low-water mark. This indeed is the criterion generally adopted in the practice of States. The parties agree as to this criterion, but they differ as to its application. The geographic realities described above, which inevitably lead to the conclusion that the relevant line is not that of the mainland, but rather that of the "*skjaergaard*", also lead to the rejection of the requirement that the base-line should always follow low-water mark. Drawn between appropriate points on this low-water mark, departing from the physical coastline to a reasonable extent, the base-line can only be determined by means of a geometric construction. Straight lines will be drawn across well-defined bays, minor curvatures of the coastline, and sea areas separating islands, islets and reefs, thus giving a simpler form to the belt of territorial

waters. The drawing of such lines does not constitute an exception to a rule: it is this rugged coast, viewed as a whole, that calls for the method of straight base-lines.

Must there be a maximum length for straight lines, as contended by the United Kingdom, except in the case of the closing line of internal waters to which the United Kingdom concedes that Norway has a historic title? Although certain States have adopted the ten-mile rule for the closing lines of bays, others have adopted a different length: consequently the ten-mile rule has not acquired the authority of a general rule of international law, neither in respect of bays nor the waters separating the islands of an archipelago. Furthermore, the ten-mile rule is inapplicable as against Norway inasmuch as she has always opposed its application to the Norwegian coast.

Thus the Court, confining itself to the Conclusions of the United Kingdom, finds that the 1935 delimitation does not violate international law. But the delimitation of sea areas has always an international aspect since it interests States other than the coastal State; consequently, it cannot be dependent merely upon the will of the latter. In this connection certain basic considerations inherent in the nature of the territorial sea bring to light the following criteria which can provide guidance to Courts: since the territorial sea is closely dependent upon the land domain, the base-line must not depart to any appreciable extent from the general direction of the coast; certain waters are particularly closely linked to the land formations which divide or surround them (an idea which should be liberally applied in the present case, in view of the configuration of the coast); it may be necessary to have regard to certain economic interests peculiar to a region when their reality and importance are clearly evidenced by a long usage.

Norway puts forward the 1935 Decree as the application of a traditional system of delimitation in accordance with international law. In its view, international law takes into account the diversity of facts and concedes that the delimitation must be adapted to the special conditions obtaining in different regions. The Judgment notes that a Norwegian Decree of 1812, as well as a number of subsequent texts (Decrees, Reports, diplomatic correspondence) show that the method of straight lines, imposed by geography, has been established in the Norwegian system and consolidated by a constant and sufficiently long practice. The application of this system encountered no opposition from other States. Even the United Kingdom did not contest it for many years: it was only in 1933 that the United Kingdom made a formal and definite protest. And yet, traditionally concerned with maritime questions, it could not have been ignorant of the reiterated manifestations of Norwegian practice, which was so well-known. The general toleration of the international community therefore shows that the Norwegian system was not regarded as contrary to international law.

But, although the 1935 Decree did indeed conform to this method (one of the findings of the Court), the United Kingdom contends that certain of the base-lines adopted by the Decree are without justification from the point of view of the criteria stated above: it is contended that they do not respect the general direction of the coast and have not been drawn in a reasonable manner.

Having examined the sectors thus criticised, the Judgment concludes that the lines drawn are justified. In one case—that of Svaerholthavet—what is involved is indeed a basin having the character of a bay although it is divided into two large fjords. In another case—that of LoppHAVET—the divergence between the base-line and the land formations is not such that

it is a distortion of the general direction of the Norwegian coast; furthermore, the Norwegian Government has relied upon an historic title clearly referable to the waters of Lophavet: the exclusive privilege to fish and hunt whales granted in the 17th century to a Norwegian subject, from which it follows that these waters were regarded as falling exclusively within Norwegian sovereignty. In a third case—

that of the Vestfjord—the difference is negligible: the settlement of such questions, which are local in character and of secondary importance, should be left to the coastal State.

For these reasons, the Judgment concludes that the method employed by the Decree of 1935 is not contrary to international law; and that the base-lines fixed by the Decree are not contrary to international law either.