

FISHERIES JURISDICTION CASE (UNITED KINGDOM v. ICELAND) (MERITS)

Judgment of 25 July 1974

In its Judgment on the merits in the case concerning Fisheries Jurisdiction (United Kingdom 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 United Kingdom;

(2) found that Iceland is not entitled unilaterally to exclude United Kingdom fishing vessels 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 United Kingdom 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 United Kingdom, interests of other States, conservation of fishery resources, joint examination of measures required).

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 Judge Nagendra Singh appended declarations; Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh (already mentioned) and Ruda appended a joint separate opinion, and Judges Dillard, 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.

Procedure—Failure of Party to Appear (paras. 1–18 of the Judgment)

In its Judgment, the Court recalls that proceedings were instituted by the United Kingdom against Iceland on 14 April 1972. At the request of the United Kingdom, the Court indicated interim measures of protection by an Order dated 17

August 1972 and confirmed them by a further Order dated 12 July 1972. By a Judgment of 2 February 1973 the Court found that it had jurisdiction to deal with the merits of the dispute.

In its final submissions, the United Kingdom asked the Court to adjudge and declare:

(a) that the claim by Iceland to be entitled to a zone of exclusive fisheries jurisdiction extending 50 nautical miles from the baselines is without foundation in international law and is invalid;

(b) that, as against the United Kingdom, Iceland is not entitled unilaterally to assert an exclusive fisheries jurisdiction beyond the limit of 12 miles agreed to in an Exchange of Notes in 1961;

(c) that Iceland is not entitled unilaterally to exclude British fishing vessels from the area of the high seas beyond the 12-mile limit or unilaterally to impose restrictions on their activities in that area;

(d) that Iceland and the United Kingdom are under a duty to examine together, either bilaterally or with other interested States, the need on conservation grounds for the introduction of restrictions on fishing activities in the said area of the high seas and to negotiate for the establishment of such a régime in that area as will *inter alia* ensure for Iceland a preferential position consistent with its position as a State specially dependent on its fisheries.

Iceland did not take part in any phase of the proceedings. By a letter of 29 May 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 United Kingdom.

The United Kingdom having referred to Article 53 of the Statute, the Court had to determine whether the claim was 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

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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. 19–48 of the Judgment)

The Court recalled that in 1948 the Althing (the Parliament of Iceland) had 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. Subsequently the 1901 Anglo-Danish Convention which had fixed a limit for Iceland's exclusive right of fishery round its coasts was denounced by Iceland as from 1951, new Icelandic Regulations of 1958 proclaimed a 12-mile limit and the Althing declared by a resolution in 1959 "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". Following a number of incidents and a series of negotiations, Iceland and the United Kingdom agreed on an Exchange of Notes which took place on 11 March 1961 and specified *inter alia* that the United Kingdom 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 United Kingdom six months' notice of such extension and that "in case of a dispute in relation to such 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 United Kingdom would be terminated and that the limit of exclusive Icelandic fisheries jurisdiction would be extended to 50 miles. In an aide-mémoire of 24 February 1972 the United Kingdom was formally notified of this intention. In reply the latter emphasized that the Exchange of Notes was not open to unilateral denunciation and that in its view the measure contemplated "would have no basis in international law". 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 a series of incidents and negotiations which resulted on 13 November 1973 in an exchange of Notes constituting an interim agreement between the United Kingdom and Iceland. This agreement, concluded for two years, provided for temporary arrangements "pending a settlement of the substantive dispute and without prejudice to the legal position or rights of either Government in relation thereto".

The Court considered that the existence of the interim agreement ought not to lead it to refrain from pronouncing judgment: it could not be said that the issues before the Court had become without object, since the dispute still continued; and, though it was beyond the powers of the Court to declare the law between the Parties as it might be at the date of expiration of the interim agreement, that could not relieve the Court from its obligation to render a judgment on the basis of the law as it now existed; furthermore, the Court ought not to discourage the making of interim arrangements in future disputes with the object of reducing friction.

Reverting to the 1961 Exchange of Notes, which in the Court's Judgment of 1973 was held to be a treaty in force, the Court emphasized that it would be too narrow an interpretation of the 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 the 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. 49–78 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 United Kingdom 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 British fishing vessels from all fishing beyond the limit of 12 miles agreed to in 1961.

The United Kingdom had pointed out that its vessels had been fishing in Icelandic waters for centuries, that they had done so in a manner comparable with their present activities for upwards of fifty years and that their exclusion would have very serious adverse consequences. There too the economic dependence and livelihood of whole communities were affected, and the United Kingdom 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 United Kingdom; 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 United Kingdom.

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 United Kingdom 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 United Kingdom fishing vessels from areas to 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 United Kingdom 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 Court could not accept the view that the common intention of the Parties was to be released from negotiating throughout the whole period covered by the 1973 interim agreement. The task before them 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.

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For those reasons, the Court gave (Judgment, para. 79) the decision indicated above.