



INTERNATIONAL COURT OF JUSTICE

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Communiqué

unofficial
for immediate release

No. 95/9
29 March 1995

Spain brings a case against Canada

The following information is made available to the Press by the Registry of the International Court of Justice:

On 28 March 1995 the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the rules of application of that Act, as well as to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the Estai, sailing under the Spanish flag.

The Application indicates, inter alia, that by the amended Act "an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the NAFO Regulatory Area [NAFO - Northwest Atlantic Fisheries Organization], that is, on the high seas, outside Canada's exclusive economic zone"; that the Act "expressly permits (Article 8) the use of force against foreign fishing boats in the zones that Article 2.1 unambiguously terms the 'high seas'"; that the rules of application of 25 May 1994 provide, in particular, for "the use of force by fishery protection vessels against the foreign fishing boats covered by those rules ... which infringe their mandates in the zone of the high seas within the scope of those rules"; and that the rules of application of 3 March 1995 "expressly permit[...] such conduct as regards Spanish and Portuguese ships on the high seas".

The Application of Spain alleges the violation of various principles and norms of international law and states that there is a dispute between the Kingdom of Spain and Canada which, going beyond the framework of fishing, seriously affects the very principle of the freedom of the high seas and, moreover, implies a very serious infringement of the sovereign rights of Spain.

As a basis of the Court's jurisdiction, the Applicant refers to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court.

In that regard, the Application specifies that:

"The exclusion of the jurisdiction of the Court in relation to disputes which may arise from management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures (Declaration of Canada, para. 2 (d), introduced as recently as 10 May 1994 or two days prior to the amendment of the Coastal Fisheries Protection Act), does not even partially affect the present dispute. Indeed, the Application of the Kingdom of Spain does not refer exactly to the disputes concerning those measures, but rather to their origin, to the Canadian legislation which constitutes their frame of reference. The Application of Spain directly attacks the title invoked to justify the Canadian measures and their acts of enforcement, a piece of legislation which, going a great deal further than the mere management and conservation of fishery resources, is in itself an internationally wrongful act of Canada, as it is contrary to the fundamental principles and norms of international law; a piece of legislation which for that reason does not fall exclusively within the jurisdiction of Canada either, according to its own Declaration (paragraph 2 (c) thereof). Moreover, only as from 3 March 1995 has an attempt been made to extend that legislation, in a discriminatory manner, to ships flying the flags of Spain and Portugal, which has led to the serious breaches of international law set forth above."

While expressly reserving the right to modify and extend the terms of the Application, as well as the grounds invoked, and the right to request the appropriate provisional measures, the Kingdom of Spain requests:

"(A) that the Court find that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;

(B) that the Court adjudge and declare that Canada is bound to refrain from any repetition of the reported acts, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity of which the amount must cover all the damages and injuries occasioned; and

(C) that, consequently, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship *Estai* flying the flag of Spain, and the measures of coercion and the exercise of jurisdiction over that ship and over its captain, constitute a concrete violation of the aforementioned principles and norms of international law;"