

CASE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY IN THE GULF OF MAINE AREA (CONSTITUTION OF CHAMBER)

Order of 20 January 1982

The Court, by an Order, constituted a Chamber to which Canada and the United States submitted a longstanding dispute over the boundary separating the fishery zones and continental shelf areas of the two countries off the Atlantic coast in the Gulf of Maine.

This was the first time in the history of the Court that the parties to a dispute made use of the possibilities, embodied in the Statute and Rules of the Court, of sending their case to a chamber instead of the full Court.

Details of the process by which the chamber was created are given below.

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On 25 November 1981 the Government of Canada and the Government of the United States had notified to the Registry a Special Agreement, concluded by them on 29 March 1979, and having entered into force on 20 November 1981, by which they submitted to a chamber of the Court a question as to the course of the maritime boundary dividing the continental shelf and fisheries zones of the two Parties in the Gulf of Maine area.

The Special Agreement provided for the submission of the dispute to a five-member chamber to be constituted after consultation with the Parties, pursuant to Article 26, paragraph 2, and Article 31 of the Statute of the Court. These are respectively the Articles providing for the establishment of a chamber to deal with a particular case and the right of a Party, when there is no judge of its nationality upon the bench, to choose a judge *ad hoc* to sit in the case.

The Parties were duly consulted, and the Court had already been notified in a letter from the Parties accompanying the submission of the case that, since the Court did not include upon the bench a judge of Canadian nationality, the Government of Canada intended to choose a judge *ad hoc*.

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Following a decision in principle to accede to the Parties' request to form the special chamber, and an election held on 15 January 1982, the Court

—composed as follows: *Acting President* Elias; *Judges* Forster, Gros, Lachs, Morozov, Nagendra Singh,

Ruda, Mosler, Oda, Ago, Sette-Camara, El-Khani and Schwebel—

adopted, on 20 January 1982, by 11 votes to 2, an Order whereby it duly constituted a special chamber to deal with the delimitation of the maritime boundary between Canada and the United States in the Gulf of Maine area, with the composition having resulted from the above-mentioned election: Judges Gros, Ruda, Mosler, Ago and Schwebel. The Order notes that, in application of Article 31, paragraph 4, of the Statute of the Court, the Acting President had requested Judge Ruda to give place in due course to the judge *ad hoc* to be chosen by Canada, and that Judge Ruda had indicated his readiness to do so.

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Judge Oda appended a declaration to the Order of 20 January 1982.

Judges Morozov and El-Khani voted against the Order as a whole and appended dissenting opinions giving their reasons.

SUMMARY OF THE DECLARATION APPENDED TO THE ORDER

Judge Oda indicated that, while he voted in favour of the Order, it should have been made known that the Court, for reasons best known to itself, had approved the composition of the Chamber entirely in accordance with the latest wishes of the Parties.

SUMMARY OF DISSENTING OPINIONS APPENDED TO THE ORDER

In his dissenting opinion, *Judge Morozov* stressed that in substance the Special Agreement between the United States of America and Canada clearly took as point of departure the erroneous presumption that, contrary to Article 26, paragraph 2, of the Statute, the Parties who presented a request to create a Chamber for consideration of a particular case might not merely choose what should be the number of the members of the Chamber, but also formally decide and propose the names of judges who should be selected by secret ballot, and even present those proposals to the Court in the form of some kind of "ultimatum".

In that situation, the sovereign right of the Court to carry out the election independently of the wishes of the Parties, by

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secret ballot in accordance with the provisions of the Statute and Rules of Court, became in substance meaningless.

From his point of view, the matter could have been successfully settled by the Court in February 1982 in its new composition.

Judge El-Khani voted against the Order and stated in his dissenting opinion that in his opinion the imposition of an unduly close time-limit for the Chamber's formation and of a particular composition rendered the Court no longer master of its own acts, deprived it of its freedom of choice and was

an obstacle to the proper administration of justice. Furthermore it diminished the prestige of the Court and was harmful to its dignity as the principal judicial organ of the United Nations. It resulted in its regionalization, by depriving it of its basic and essential characteristic of universality, and produced the indirect result of two judges of the same nationality acting in the name of the Court, one in the Chamber and the other in the Court, which did not correspond to the Statute. On those grounds he found that it ought not to constitute a precedent, as it would be a dangerous course to follow in the future.