



INTERNATIONAL COURT OF JUSTICE

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Case concerning Fisheries Jurisdiction (Spain v. Canada)

Hearings to be held from 9 to 17 June 1998 on the issue of the jurisdiction of the Court

THE HAGUE, 5 December 1997. Hearings in the case concerning Fisheries Jurisdiction between Spain and Canada will be held before the International Court of Justice (ICJ) from Tuesday 9 to Wednesday 17 June 1998 in the Great Hall of Justice of the Peace Palace in The Hague, seat of the Court.

The public sittings will be exclusively dedicated to the oral arguments of the Parties concerning Canada's contention that the Court lacks jurisdiction to deal with the case.

Taking into account an agreement concerning the procedure reached between the Parties on 27 April 1995, the then President of the Court, Judge Mohammed Bedjaoui (Algeria), decided, by an Order of 2 May 1995, that the written proceedings should first be addressed to the question of the jurisdiction of the Court.

History of the dispute

On 28 March 1995 Spain filed 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), to the implementing regulations of that Act and to certain measures taken on the basis of that legislation. The dispute deals in particular with the boarding on the high seas, on 9 March 1995, of a fishing boat, the Estai, flying the Spanish flag and with a Spanish crew, by a Canadian patrol boat, the Cape Roger.

Spain alleged that the boarding of the Estai by the Cape Roger occurred "after successive attempts at boarding by gunboats manned by individuals armed with automatic weapons". It added that "the boat and its crew were forcibly escorted away and held incommunicado in the Canadian port of St. John's, Newfoundland, where the captain of the boat was imprisoned and subjected to criminal proceedings for having fished on the high seas".

In its Application, Spain indicated that by this action Canada had violated the principles of general international law which proclaim freedom of navigation and freedom of fishing on the high seas, as well as the exclusive jurisdiction of the flag State over ships on the high seas.

Spain also contended that Canada had breached the norms of general international law which reject the right of hot pursuit on the high seas and prohibit imprisonment and corporal punishment as penalties in case of violations of fishing laws and regulations.

Spain maintained that by the Canadian Act "an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the NAFO [Northwest Atlantic Fisheries Organization] Regulatory Area, that is, on the high seas".

It therefore asked the Court to declare that the boarding on the high seas of the Estai constitutes a violation of the principles of international law, that Canada is bound to refrain from such acts and is due to pay reparation for the damages and injuries occasioned, and that the Canadian Act is not opposable to Spain.

As a basis of the Court's jurisdiction, Spain referred to the declarations of both States by which they accept that jurisdiction as compulsory (Article 36, paragraph 2, of the Statute of the Court).

On 21 April 1995, Canada informed the Court that it lacked jurisdiction to deal with the case because of a reservation made in its Declaration recognizing the compulsory jurisdiction of the Court of 10 May 1994. In this Declaration, Canada said the Court had a compulsory jurisdiction "over all disputes . . . other than . . . disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area . . . and the enforcement of such measures".

Website address of the Court: <http://www.icj-cij.org>

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