

1973

## Decisions of International and Foreign Tribunals

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## Case Comments

### Decisions of International Foreign Tribunals

#### International Court of Justice

##### FISHERIES JURISDICTION CASES

*(United Kingdom v. Iceland; Federal Republic of Germany v. Iceland)*

#### *United Kingdom v. Iceland*

At the public sitting held on January 5, 1973, the International Court of Justice heard Sir Peter Rawlinson, Attorney-General, counsel for the Government of the United Kingdom, on the subject of the Court's jurisdiction to deal with the case concerning *Fisheries Jurisdiction*.

On February 2, 1973, the Court delivered its judgment on the question of its jurisdiction in this case, finding by fourteen votes to one, that it had jurisdiction to entertain the application filed by the United Kingdom on April 14, 1972 and to deal with the merits of the dispute. The president of the Court appended a declaration to the judgment, Judge Sir Gerald Fitzmaurice appended a separate opinion, and Judge Padilla Nervo a dissenting opinion.

#### ANALYSIS OF THE JUDGMENT

##### RÉSUMÉ OF THE PROCEEDINGS (PARAS. 1-12 OF THE JUDGMENT)

After giving a résumé of earlier proceedings in the case,<sup>1</sup> the Court

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\*B.A. (1940) and LL.B. (1942), Tulane University; member, American, Inter-American, Louisiana State, New Orleans (member, Executive Committee) and Federal Bar Associations, American Judicature Society and Maritime Law Association; president (1972- ), New Orleans Chapter, Federal Bar Association; president (1957-1959), Phi Delta Phi International Legal Fraternity.

<sup>1</sup>See, e.g., 6 INT'L LAW. 665 (July, 1972) and 889-95 (Oct., 1972), and 7 INT'L LAW. 232 (Jan., 1973).

observed that the Government of Iceland had failed to appear to plead the objections to the Court's jurisdiction which it is understood to entertain, but that the Court, in accordance with its Statute and its settled jurisprudence, must examine the question on its own initiative, a duty reinforced by Article 53 of the Statute whereby, whenever one of the parties does not appear, the Court must satisfy itself that it has jurisdiction before finding on the merits. In so doing, it avoided not only all expressions of opinion on matters of substance, but also any pronouncement which might prejudice or appear to prejudice any eventual decision on the merits.

**COMPROMISSORY CLAUSE OF THE 1961 EXCHANGE OF NOTES  
(PARAS. 13-25 OF THE JUDGMENT)**

To found the Court's jurisdiction, the Government of the United Kingdom relied on an Exchange of Notes which took place between it and the Government of Iceland on March 11, 1961, following an earlier dispute over fisheries. By that Exchange of Notes, the United Kingdom undertook to recognize an exclusive Icelandic fishery zone up to a limit of twelve miles and to withdraw its fishing vessels from that zone over a period of three years. The Exchange of Notes featured a compromissory clause, as follows:

The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months' notice of such extension, and, 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.

The Court found that there is no doubt as to the fulfillment by the Government of the United Kingdom of its part of this agreement or as to the fact that the Government of Iceland, in 1971, gave the notice provided for in the event of a further extension of its fisheries jurisdiction. Nor is there any doubt that a dispute has arisen, that it has been submitted to the Court by the United Kingdom and that, on the face of it, the dispute thus falls exactly within the terms of the compromissory clause.

The Court concluded that it is thus apparent that the Court has jurisdiction.

**VALIDITY AND DURATION OF THE 1961 EXCHANGE OF NOTES  
(PARAS. 24-45 OF THE JUDGMENT)**

The Court next considered whether, as had been contended by Iceland, the agreement embodied in the 1961 Exchange of Notes either was initially void or has since ceased to be operative.

In a letter of May 29, 1972, the Minister for Foreign Affairs of Iceland

said that the 1961 Exchange of Notes had taken place at a time when the British Royal Navy had been using force to oppose the 12-mile fishery limit. The Court, however, noted that the agreement appears to have been freely negotiated on the basis of perfect equality and freedom of decision on both sides.

In the same letter, the Minister also expressed the view that "an undertaking for judicial settlement cannot be considered to be of a permanent nature," and the Government of Iceland had indeed, in an aide-mémoire of August 31, 1971, asserted that the object and purpose of the provision for recourse to judicial settlement had been fully achieved. The Court pointed out, however, that the compromissory clause contains no express provision regarding duration; and that, in fact, the right of the United Kingdom to challenge before the Court any claim by Iceland to extend its fisheries zone was subject to the assertion of such a claim and would last so long as Iceland might seek to implement the 1959 Althing Resolution.

In a statement to the Althing (the Parliament of Iceland) on November 9, 1971, the Prime Minister of Iceland alluded to changes regarding "legal opinion on fisheries jurisdiction." His argument appeared to be that as the compromissory clause was the price that Iceland had paid at the time for the recognition by the United Kingdom of the 12-mile limit, the present general recognition of such a limit constituted a change of legal circumstances that relieved Iceland of its commitment. The Court observed that, on the contrary, since Iceland has received benefits from those parts of the agreement already executed, it behoves it to comply with its side of the bargain.

The letter and statement just mentioned also drew attention to "the changed circumstances resulting from the ever-increasing exploitation of the fishery resources in the seas surrounding Iceland." It is, noted the Court, admitted in international law that if a fundamental change of the circumstances which induced parties to accept a treaty radically transforms the extent of the obligations undertaken, this may, under certain conditions, afford the party affected a ground for invoking the termination or suspension of the treaty. It would appear that in the present case, there is a serious difference of views between the parties as to whether developments in fishing techniques in the waters around Iceland have resulted in fundamental or vital changes for that country. It was the Court's opinion, however, that changes would be relevant only for any eventual decision on the merits, and that it cannot be said that the change of circumstances alleged by Iceland had modified the scope of the jurisdictional obligation agreed to in the 1961 Exchange of Notes. Moreover, any question as to the jurisdiction of the Court, deriving from an alleged lapse of the obligation

through changed circumstances, is for the Court to decide, by virtue of Article 36, paragraph 5, of its Statute.

*Federal Republic of Germany v. Iceland*

At the public sitting held on January 8, 1973, the International Court of Justice heard Professor Jaenicke, agent and counsel for the Government of the Federal Republic of Germany, on the subject of the Court's jurisdiction to deal with that case concerning *Fisheries Jurisdiction*.

On February 2, 1973, the date of its judgment in the *United Kingdom* case, the Court also delivered its judgment on the question of its jurisdiction in the captioned case, finding by fourteen votes to one, that it had jurisdiction to entertain the application filed by the Federal Republic on June 5, 1972 and to deal with the merits of the dispute. The president of the Court appended a declaration to the judgment, Judge Sir Gerald Fitzmaurice appended a separate opinion, and Judge Padilla Nervo a dissenting opinion.

ANALYSIS OF THE JUDGMENT RÉSUMÉ OF THE PROCEEDINGS  
(PARAS. 1-13 OF THE JUDGMENT)

After reviewing the earlier proceedings in the case,<sup>2</sup> the Court noted the proceedings instituted against Iceland by the United Kingdom on April 14, 1972 in the case concerning *Fisheries Jurisdiction (supra)*, and that the composition of the Court in the instant case included a judge of United Kingdom nationality, and therefore decided, by eight votes to five, that there was in the present phase concerning the jurisdiction of the Court, a common interest in the sense of Article 31, paragraph 5, of the Statute which justified the refusal of the request of the Federal Republic of Germany for the appointment of a judge ad hoc.

To support the jurisdiction of the Court, Germany relied (a) on an Exchange of Notes between the Government of the Federal Republic and the Government of Iceland dated July 19, 1961, and (b) on a declaration for the purpose of securing access to the Court, in accordance with a Security Council resolution of October 15, 1946, which it made on October 29, 1971 and deposited with the Registrar of the Court on November 22, 1971. On July 28, 1972 the Minister for Foreign Affairs of Iceland pointed out in a telegram that the Federal Republic had thus accepted the jurisdiction of the Court only "after it had been notified by the Government of Iceland, in its aide-mémoire of August 31, 1971, that the object and purpose of the provision for recourse to judicial settlement of certain matters had been fully achieved." The Court observed that the binding

<sup>2</sup>See, e.g., 6 INT'L LAW. 889-95 (Oct., 1972) and 7 INT'L LAW. 232 (Jan., 1973).

force of the 1961 Exchange of Notes bears no relation to the date of deposit of the declaration required by the Security Council resolution and that the Government of the Federal Republic had complied with the terms both of the resolution in question and of Article 36 of the Rules of Court.

As was true in the *United Kingdom* case, the Court also concluded that although the Government of Iceland had failed to appear to plead the objections to the Court's jurisdiction which it is understood to entertain, the Court must examine the question on its own initiative, but it avoided not only all expressions of opinion on matters of substance, but also any pronouncement which might prejudice or appear to prejudice any eventual decision on the merits.

#### COMPROMISSORY CLAUSE OF THE 1961 EXCHANGE OF NOTES (PARAS. 14-23 OF THE JUDGMENT)

By the 1961 Exchange of Notes, the Federal Republic of Germany undertook to recognize an exclusive Icelandic fishery zone up to a limit of twelve miles and to withdraw its fishing vessels from that zone over a period of less than three years. The Exchange of Notes features a compromissory clause substantially in the same terms as those of the Exchange of Notes in the prior case involving the *United Kingdom*.

On the basis of the same reasoning set forth in its decision in the *United Kingdom* case, the Court concluded that it is thus apparent that the Court has jurisdiction in this case.

#### VALIDITY AND DURATION OF THE 1961 EXCHANGE OF NOTES (PARAS. 24-25 OF THE JUDGMENT)

The Court next considered whether, as had been contended, the agreement embodied in the 1961 Exchange of Notes either was initially void or has since ceased to operate. Again, as was true in the prior case, the Court rejected all possible contentions of the Government of Iceland for the same reasons stated in the prior decision.

#### Composition of the Court

On February 8, 1973, the International Court of Justice elected Judge Manfred Lachs (Poland) to be its president, and re-elected Judge Fouad Ammoun (Lebanon) as vice-president. Their terms of office as president and vice-president will come to an end in 1976, when their membership on the Court is also due to expire.

On February 14, 1973, the Court held a public sitting in the Peace Palace, The Hague, at which the three new Judges who took office on February 6 made the solemn declaration provided for in Article 20 of the Statute of the Court.

The new Members of the Court are Sir Humphrey Waldock (United Kingdom), Nagendra Singh (India) and José-María Ruda (Argentina). They replace Sir Muhammad Zafrulla Khan (Pakistan), Sir Gerald Fitzmaurice (United Kingdom) and Luis Padilla Nervo (Mexico), whose membership on the Court expired on February 5.

Now that the three new Members have taken office, and the president and vice-president have been elected, the Court is composed, in order of precedence, as follows:

President	Manfred Lachs (Poland)
Vice-President	Fouad Ammoun (Lebanon)
Judges	Isaac Forster (Senegal)
	André Gros (France)
	Cesar Bengzon (Philippines)
	Sture Petré (Sweden)
	Charles D. Onyeama (Nigeria)
	Hardy C. Dillard (United States)
	Louis Ignacio-Pinto (Dahomey)
	Federico de Castro (Spain)
	Platon D. Morozov (USSR)
	Eduardo Jiménez de Aréchaga (Uruguay)
	Sir Humphrey Waldock (United Kingdom)
	Nagendra Singh (India)
	José-María Ruda (Argentina)