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Case Comments

Decisions of International and Foreign Tribunals

International Court of Justice

PAKISTAN v. INDIA (Pakistani Prisoners of War)

It will be recalled that these proceedings, which relate to a dispute concerning charges of genocide against 195 Pakistanis held in India, were commenced by an Application filed in the Registry on May 11, 1973. A request for the indication of interim measures of protection was made by the Government of Pakistan on the same date, and this was the subject of three public hearings, held on June 4, 5 and 26, 1973, and of an Order made by the Court on July 13, 1973. The Government of India had not taken any steps in the proceedings, but made it known that in its view there was no legal basis whatever for the jurisdiction of the Court in the case. December 15, 1973 had been fixed, by an Order of September 29, 1973, as the time-limit for the filing by the Government of Pakistan of a Memorial on the jurisdiction of the Court.[1]

On December 15, 1973, the President of the Court ordered, pursuant to Article 74 of the Rules of Court, that the case be removed from the Court's list. The decision was based on a letter of December 14 from the Agent of Pakistan informing the Court of negotiations between the Government of India and the Government of Pakistan, and requesting it to record discontinuance of the proceedings.

UNITED KINGDOM v. ICELAND; FEDERAL REPUBLIC OF GERMANY v. ICELAND (Fisheries Jurisdiction)[2]

The two *Fisheries Jurisdiction* cases were instituted by Applications made to the Court on April 14, 1972 by the United Kingdom, and on June 5, 1972 by the Federal Republic of Germany. They originated in the proposed extension by the Government of Iceland of the limits of its exclusive fisheries jurisdiction from 12

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[1]See 7 INT'L LAW. 727 (July 1973) and 919 (Oct. 1973), 8 INT'L LAW. 192 (Jan. 1974).

[2]See 6 INT'L LAW. 665 (July 1972) and 889 (Oct. 1972); 7 INT'L LAW. 232 (Jan. 1973), 505 (April 1973) and 920 (Oct. 1973).

to 50 nautical miles from the baselines around its coasts, effective as of September 1, 1972.

In its Application, the United Kingdom contended that in international law: (i) the proposed extension was without foundation and invalid, and that Iceland was not entitled unilaterally to exclude the fishing vessels of other countries from the additional area; (ii) questions concerning the conservation of fish stocks in the waters around Iceland were not susceptible to regulation by the unilateral extension by Iceland of its exclusive fisheries jurisdiction but might be regulated, as between Iceland and the United Kingdom, by arrangements agreed upon between those two countries.

The Federal Republic of Germany, in its Application, contended that (i) the proposed unilateral extension of its exclusive fisheries jurisdiction had no basis in international law and could not be opposed to the Federal Republic and its fishing vessels, and (ii) if Iceland established a need for special fisheries conservation measures beyond the 12-mile limit around its coasts, such measures, to the extent that they would affect the Federal Republic, could not, in international law, be taken on the basis of a unilateral extension by Iceland of its exclusive fisheries jurisdiction, but could be taken only on the basis of an agreement between the two States.

In letters of May 29 and June 27, 1972, respectively, the Minister for Foreign Affairs of Iceland stated that there was no basis under the Statute for the Court to exercise jurisdiction in the case and that the Government of Iceland was not willing to confer jurisdiction on the Court and would not appoint an Agent.

By Orders made on August 17, 1972, the Court, following requests by the Governments of the United Kingdom and of the Federal Republic, indicated, *inter alia*, the following provisional measures, pending its final decision: the three Governments concerned should each ensure that no action of any kind was taken which might aggravate or extend the dispute; Iceland should refrain from taking any measures to enforce the 50-mile limit against vessels registered in the United Kingdom or the Federal Republic; and the United Kingdom and the Federal Republic should respectively ensure that the annual catch taken by such vessels from the Sea Area of Iceland did not exceed 170,000 metric tons in the one case, and 119,000 metric tons in the other. By Orders dated July 12, 1973, the Court confirmed that these measures should remain operative until the Court gave final judgment.

In Judgments given in the two cases on Feruary 2, 1973, the Court found that it had jurisdiction to entertain the Applications and to deal with the merits of the dispute.

In *United Kingdom v. Iceland*, the Court, on March 25, 1974, held two public sittings at which argument on the merits was heard from Mr. Samuel Silkin, Attorney-General of England, and on March 29, 1974, held a public sitting at which Mr. G. Slynn, counsel for the United Kingdom, answered questions

which had been put by Judges Gros, Petrén, Dillard, Jiménez de Aréchaga and Sir Humphrey Waldock. The Government of Iceland was not represented.

In *Federal Republic of Germany v. Iceland*, the Court, on March 28, 1974, held two public sittings at which arguments on the merits were heard from Professor Dr. Günther Jaenicke, Agent of the Federal Republic, and Dr. Arno Meyer, counsel and expert for the Federal Republic.

On Tuesday, April 2, 1974, the Court held a further sitting in the same case, for the purpose of hearing the replies of the Agent of the Federal Republic to questions put to him on March 28 by Judges Gros, Jiménez de Aréchaga and Sir Humphrey Waldock. The Government of Iceland was not represented.

The Court has authorized that the written pleadings in the two cases be made accessible to the public. Sets of these documents have accordingly been made available at the following places: the Press Room in the Peace Palace, The Hague (Room 5); the Library of the Carnegie Foundation in the Peace Palace, The Hague; the Library of the International Press Centre "Nieuwspoort," Hofsingel 12, The Hague; the Dag Hammarskjöld Library, United Nations Headquarters, New York, U.S.A.; the United Nations Library, Palais des Nations, Geneva, Switzerland; United Nations Information Centre, 14-15 Stratford Place, London, England; and United Nations Information Centre, 37 H.C. Andersens Boulevard, Copenhagen, Denmark.

AUSTRALIA v. FRANCE (Nuclear Tests)[3]

On March 21, 1974, the International Court of Justice adopted the following resolution by a vote of 11 to 3:

1. In a Communiqué issued on August 8, 1973, the Court drew public attention to the fact that before the reading of its Orders indicating interim measures in the *Nuclear Tests* cases, statements had been published in the Press as to the probable decision of the Court. It referred in particular to a statement that the Court was expected to decide in favor of Australia by 8 votes to 6, which had in fact been made by the Prime Minister on the eve of the reading of those Orders.

2. Before the issue of that Communiqué, the Court, on June 22, 1973, requested the Agent of the Australian Government, through the Registrar, to report on the above statement predicting the decision and the vote of the Court. The explanation was then given to the Court, first orally by the Agent through the Registrar, and then in writing by the Co-Agent and the Prime Minister himself, that the statement in question had been purely speculative, was made in the course of an informal talk to lawyers and was not intended for publication; and regret was expressed by the Prime Minister at any embarrassment which might have been caused to the Court.

[3]See 7 INT'L LAW. 762 (July 1973) and 918 (Oct. 1973); 8 INT'L LAW. 191 (Jan 1974).

3. The Court also learned of certain other statements made or published in the Press in Australia, the Netherlands and elsewhere which predicted the probable decision of the Court and even the probable number of the judges voting with the majority and minority as well as of rumors of a similar character that had been current in The Hague and elsewhere. Accordingly, under the direction of the President, extensive inquiries were made in an attempt to discover whether any of the various statements, guesses and rumors might have their origin in any specific source. Furthermore, the Agent and Co-Agent of the Australian Government were again convoked by the President to obtain their assistance in this investigation and also concerning the source of certain statements in Australia, including press statements purporting to be based on governmental sources. The Agent affirmed that any governmental statements made in Australia were based on the assessment of legal advisers, that no source of concrete information was relied upon and that none existed.

4. In undertaking the several investigations mentioned in the preceding paragraphs, the Court has, above all, been mindful of the need to protect the integrity of the international judicial process as well as the dignity of the principal judicial organ of the United Nations. In the light of these investigations, the Court feels bound to conclude that they have not enabled it to identify any specific source of the information on which the statements made by government officials or those published in the Press or the various guesses and rumors were based. These investigations have, on the other hand, only confirmed the Court's concern as to the character of the forecasts made in some of the statements, guesses and rumors circulating as to the course of the Court's deliberations prior to the reading of its Orders in the *Nuclear Tests* cases.

5. The Court accordingly expresses its strong disapproval of the making, circulation or publication of all statements anticipating or purporting to anticipate or forecast the manner in which judges of the Court will cast their votes in a pending case; and reiterates its view that any making, circulation or publication of such statements is incompatible with the fundamental principles governing the good administration of justice.