INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

FISHERIES JURISDICTION CASE

(SPAIN *v.* CANADA)

JURISDICTION OF THE COURT

JUDGMENT OF 4 DECEMBER 1998

1998

COUR INTERNATIONALE DE JUSTICE

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(ESPAGNE c. CANADA)

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FISHERIES JURISDICTION CASE

(SPAIN *v.* CANADA)

JURISDICTION OF THE COURT

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"Automatic reservation" — Court not deprived of its competence to interpret Canada's reservation — Court's findings on its jurisdiction resulting from that interpretation alone.

Mootness — Determination not necessary in this case.

JUDGMENT

Present: *President* SCHWEBEL; *Vice-President* WEERAMANTRY; *Judges* ODA, BEDJAOUI, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK; *Judges* ad hoc LALONDE, TORRES BERNÁRDEZ; *Registrar* VALENCIA-OSPINA.

In the fisheries jurisdiction case,

between

the Kingdom of Spain,

represented by

Mr. José Antonio Pastor Ridruejo, Head of the International Legal Service of the Ministry of Foreign Affairs, Professor of International Law at the Complutense University of Madrid,

as Agent and Counsel (until 31 October 1998);

Mr. Aurelio Pérez Giralda, Director of the International Legal Service of the Ministry of Foreign Affairs,

as Agent (from 1 November 1998);

Mr. Pierre-Marie Dupuy, Professor of International Law at the University Panthéon-Assas (Paris II),
Mr. Keith Highet, Member of the Bars of the District of Columbia and New York,
Mr. Antonio Remiro Brotóns, Professor of International Law at the Autonomous University of Madrid,
Mr. Luis Ignacio Sánchez Rodríguez, Professor of International Law at the Complutense University of Madrid,

as Counsel and Advocates;

Mr. Félix Valdés Valentín-Gamazo, Minister-Counsellor, Embassy of Spain to the Netherlands,

as Co-Agent;

Mr. Carlos Domínguez Díaz, Embassy Secretary, Assistant Director-General for International Fisheries Management Organizations, Ministry of Agriculture and Fisheries,
Mr. Juan José Sanz Aparicio, Embassy Secretary, Department of International Legal Affairs, Ministry of Foreign Affairs,

as Advisers,

and

Canada,

represented by

His Excellency Mr. Philippe Kirsch, Q.C., Ambassador and Legal Adviser to the Department of Foreign Affairs and International Trade,

as Agent and Advocate;

Mr. Blair Hankey, Associate General Counsel, Department of Foreign Affairs and International Trade,

as Deputy Agent and Advocate;

Mr. L. Alan Willis, Q.C., Department of Justice,

as Senior Counsel and Advocate;

Mr. Prosper Weil, Professor Emeritus, University of Paris,

as Counsel and Advocate;

Ms Louise de La Fayette, University of Southampton,
Mr. Paul Fauteux, Department of Foreign Affairs and International Trade,

Mr. John F. G. Hannaford, Department of Foreign Affairs and International Trade,
Ms Ruth Ozols Barr, Department of Justice,
Ms Isabelle Poupart, Department of Foreign Affairs and International Trade,

Ms Laurie Wright, Department of Justice,

as Counsel;

Mr. Malcolm Rowe, Q.C., Government of Newfoundland and Labrador,
Mr. Earl Wiseman, Department of Fisheries and Oceans,
as Advisers;

Ms Manon Lamirande, Department of Justice,
Ms Marilyn Langstaff, Department of Foreign Affairs and International Trade,

Ms Annemarie Manuge, Department of Foreign Affairs and International Trade,
Mr. Robert McVicar, Department of Foreign Affairs and International Trade,

Ms Lynn Pettit, Department of Foreign Affairs and International Trade,
as Administrative Officers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 28 March 1995, the Kingdom of Spain (hereinafter called "Spain") filed in the Registry of the Court an Application instituting proceedings against Canada in respect of a dispute relating to the amendment, on 12 May 1994, of the Canadian Coastal Fisheries Protection Act, and the subsequent amendments to the regulations implementing that Act, as well as to specific actions taken on the basis of the amended Act and its regulations, including the pursuit, boarding and seizure on the high seas, on 9 March 1995, of a fishing vessel — the *Estai* — flying the Spanish flag. The Application invoked as the basis of the jurisdiction of the Court the declarations whereby both States have accepted its compulsory jurisdiction in accordance with Article 36, paragraph 2, of its Statute.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was forthwith communicated to the Canadian Government by the Registrar; and, pursuant to paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. By letter of 21 April 1995, the Ambassador of Canada to the Netherlands informed the Court that, in his Government's opinion, the Court

> "manifestly lacks jurisdiction to deal with the Application filed by Spain . . ., by reason of paragraph 2 *(d)* of the Declaration, dated 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court".

4. At a meeting between the President of the Court and the representatives of the Parties held on 27 April 1995, pursuant to Article 31 of the Rules of Court, the Agent of Canada confirmed his Government's position that the Court manifestly lacked jurisdiction in the case. At the close of the meeting it was agreed that the question of the jurisdiction of the Court should be separately determined before any proceedings on the merits; agreement was also reached on time-limits for the filing of written pleadings on that question.

By Order of 2 May 1995, the President, taking into account the agreement reached between the Parties, decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the

dispute and fixed 29 September 1995 and 29 February 1996, respectively, as the time-limits for the filing of a Memorial by Spain and a Counter-Memorial by Canada on that question.

The Memorial and the Counter-Memorial were duly filed within the time-limits so prescribed.

5. Since the Court included upon the Bench no judge of the nationality of the Parties, each of them availed itself of the right conferred by Article 31, paragraph 3, of the Statute to proceed to choose a judge *ad hoc* to sit in the case: Spain chose Mr. Santiago Torres Bernárdez, and Canada Mr. Marc Lalonde.

6. At a meeting held between the President of the Court and the Agents of the Parties on 17 April 1996, pursuant to Article 31 of the Rules of Court, the Agent of Spain expressed the wish of his Government to be authorized to submit a Reply and the Agent of Canada stated that his Government was opposed thereto. Each of the Parties subsequently confirmed its views on the matter in writing, Canada in letters from its Agent dated 22 April and 3 May 1996, and Spain in letters from its Agent dated 25 April and 7 May 1996.

By Order of 8 May 1996, the Court decided that it was sufficiently informed, at that stage, of the contentions of fact and law on which the Parties relied with respect to its jurisdiction in the case, and that the presentation, by them, of further written pleadings on that question therefore did not appear necessary. The case was consequently ready for hearing with regard to the question of the jurisdiction of the Court.

7. By letter of 8 June 1998, the Agent of Spain, referring to Article 56, paragraph 4, of the Rules of Court, submitted to the Court five official Canadian documents which had been published but not previously produced. A copy thereof was communicated to the Agent of Canada, who, by letter of 9 June 1998, stated that, in his Government's opinion, the provision referred to by Spain afforded the possibility of making reference in oral arguments to documents which were part of readily available publications, but did not contemplate their production, adding that despite the late date of submission of the documents in question Canada would not object to their production, in order to avoid delaying the work of the Court.

8. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed should be made accessible to the public on the opening of the oral proceedings.

9. Public sittings were held between 9 and 17 June 1998, during which pleadings and replies were heard from the following:

For Spain: Mr. José Antonio Pastor Ridruejo,
Mr. Luis Ignacio Sánchez Rodríguez,
Mr. Antonio Remiro Brotóns,
Mr. Keith Highet,
Mr. Pierre-Marie Dupuy.

For Canada: H.E. Mr. Philippe Kirsch,
Mr. Blair Hankey,
Mr. L. Alan Willis,
Mr. Prosper Weil.

*

10. In the Application, the following requests were made by Spain:

"As for the precise nature of the complaint, the Kingdom of Spain requests:

(A) that the Court declare 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 acts complained of, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which 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."

11. In the written pleadings, the following submissions were presented by the Parties:

On behalf of the Spanish Government,

in the Memorial:

"The Kingdom of Spain requests the Court to adjudge and declare that, regardless of any argument to the contrary, its Application is admissible and that the Court has, and must exercise, jurisdiction in this case."

On behalf of the Canadian Government,

in the Counter-Memorial:

"*May it please the Court* to adjudge and declare that the Court has no jurisdiction to adjudicate upon the Application filed by Spain on 28 March 1995."

12. In the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Spanish Government,

at the sitting of 15 June 1998:

"At the end of our oral arguments, we again note that Canada has abandoned its allegation that the dispute between itself and Spain has become moot. At least, it appears to have understood that it cannot be asserted that the Spanish Application, having no further purpose for the future, merely amounted to a request for a declaratory judgment. Nor does it say — a fact of which we take note — that the agreement between the European Union and Canada has extinguished the present dispute.

Spain's final submissions are therefore as follows:

We noted at the outset that the subject-matter of the dispute is Canada's lack of title to act on the high seas against vessels flying the Spanish flag, the fact that Canadian fisheries legislation cannot be invoked against Spain, and reparation for the wrongful acts perpetrated against Spanish

vessels. These matters are not included in Canada's reservation to the jurisdiction of the Court.

We also noted that Canada cannot claim to subordinate the Application of its reservation to the sole criterion of its national legislation and its own appraisal without disregarding your competence, under Article 36, paragraph 6, of the Statute, to determine your own jurisdiction.

Lastly, we noted that the use of force in arresting the *Estai* and in harassing other Spanish vessels on the high seas, as well as the use of force contemplated in Canadian Bills C-29 and C-8, can also not be included in the Canadian reservation, because it contravenes the provisions of the Charter.

For all the above reasons, we ask the Court to adjudge and declare that it has jurisdiction in this case."

On behalf of the Canadian Government,

at the sitting of 17 June 1998:

"*May it please the Court* to adjudge and declare that the Court has no jurisdiction to adjudicate upon the Application filed by Spain on 28 March 1995."

* * *

13. The Court will begin with an account of the background to the case.

14. On 10 May 1994 Canada deposited with the Secretary-General of the United Nations a declaration of acceptance of the compulsory jurisdiction of the Court which was worded as follows:

"On behalf of the Government of Canada,

(1) I give notice that I hereby terminate the acceptance by Canada of the compulsory jurisdiction of the International Court of Justice hitherto effective by virtue of the declaration made on 10 September 1985 in conformity with paragraph 2 of Article 36 of the Statute of the Court.

(2) I declare that the Government of Canada accepts as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after the present declaration with regard to situations or facts subsequent to this declaration, other than:

(a) disputes in regard to which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement;

(b) disputes with the Government of any other country which is a member of the Commonwealth, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;

(c) disputes with regard to questions which by international law fall exclusively within the jurisdiction of Canada; and

(d) disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures.

(3) The Government of Canada also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.

It is requested that this notification be communicated to the Governments of all the States that have accepted the Optional Clause and to the Registrar of the International Court of Justice."

The three reservations set forth in subparagraphs *(a)*, *(b)* and *(c)* of paragraph 2 of the above-mentioned declaration had already been included in Canada's prior declaration of 10 September 1985. Subparagraph *(d)* of the 1994 declaration, however, set out a new, fourth reservation, further excluding from the jurisdiction of the Court:

"*(d)* disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures."

15. On the same day that the Canadian Government deposited its new declaration, it submitted to Parliament Bill C-29 amending the Coastal Fisheries Protection Act by extending its area of application to include the Regulatory Area of the Northwest Atlantic Fisheries Organization (NAFO). Bill C-29 was adopted by Parliament, and received the Royal Assent on 12 May 1994.

Section 2 of the Coastal Fisheries Protection Act as amended defined the "NAFO Regulatory Area" as "that part of the Convention Area of the Northwest Atlantic Fisheries Organization that is on the high seas . . .".

The new Section 5.1 of the Act contained the following declaration:

"5.1. Parliament, recognizing

(a) that straddling stocks on the Grand Banks of Newfoundland are a major renewable world food source having provided a livelihood for centuries to fishers,

(b) that those stocks are threatened with extinction,

(c) that there is an urgent need for all fishing vessels to comply in both Canadian fisheries waters and the NAFO Regulatory Area with sound conservation and management measures for those stocks, notably those measures that are taken under the *Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries,* done at Ottawa on October 24, 1978, Canada Treaty Series 1979 No. 11, and

(d) that some foreign fishing vessels continue to fish for those stocks in the NAFO Regulatory Area in a manner that undermines the effectiveness of sound conservation and management measures,

declares that the purpose of section 5.2. is to enable Canada to take urgent action necessary to prevent further destruction of those stocks and to permit their rebuilding, while continuing to seek effective international solutions to the situation referred to in paragraph *(d).*"

The new Section 5.2 read as follows:

"5.2. No person, being aboard a foreign fishing vessel of a prescribed class, shall, in the NAFO Regulatory Area, fish or prepare to fish for a straddling stock in contravention of any of the prescribed conservation and management measures."

Sections 7 ("Boarding by protection officer"), 7.1 ("Search") and 8.1 ("Use of force") of the Act as amended dealt with the activities of Canadian fisheries protection officers within the NAFO Regulatory Area. These sections read as follows:

"7. A protection officer may

(a) for the purpose of ensuring compliance with this Act and the regulations, board and inspect any fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area; and

(b) with a warrant issued under section 7.1, search any fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area and its cargo."

"7.1. (1) A justice of the peace who on *ex parte* application is satisfied by information on oath that there are reasonable grounds to believe that there is in any place, including any premises, vessel or

vehicle, any fish or other thing that was obtained by or used in, or that will afford evidence in respect of, a contravention of this Act or the regulations, may issue a warrant authorizing the protection officer named in the warrant to enter and search the place for the fish or other thing subject to any conditions that may be specified in the warrant.

(2) A protection officer may exercise the powers referred to in paragraph 7 *(b)* without a warrant if the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be practical to obtain a warrant."

"8.1. A protection officer may, in the manner and to the extent prescribed by the regulations, use force that is intended or is likely to disable a foreign fishing vessel, if the protection officer

(a) is proceeding lawfully to arrest the master or other person in command of the vessel; and
(b) believes on reasonable grounds that the force is necessary for the purpose of arresting that master or other person."

Finally, the new Section 18.1, which was concerned with the application of criminal law, stated:

"An act or omission that would be an offence under an Act of Parliament if it occurred in Canada is deemed to have been committed in Canada if it occurs, in the course of enforcing this Act,

(a) in the NAFO Regulatory Area on board or by means of a foreign fishing vessel on board or by means of which a contravention of section 5.2 has been committed; or
(b) in the course of continuing pursuit that commenced while a foreign fishing vessel was in Canadian fisheries waters or the NAFO Regulatory Area."

16. On 12 May 1994, following the adoption of Bill C-8, Canada also amended Section 25 of its Criminal Code relating to the use of force by police officers and other peace officers enforcing the law. This Section applied as well to fisheries protection officers, since their duties incidentally included those of peace officers.

17. On 25 May 1994 the Coastal Fisheries Protection Regulations were also amended.

The new Sections 19.3 to 19.5 regulated "the use of force" by Canadian fisheries protection officers pursuant to Section 8.1 of the amended Act.

The new subsection 2 of Section 21 of the Regulations provided as follows:

"(2) For the purposes of section 5.2 of the Act,

(a) straddling stocks are,

(i) in Division 3L, Division 3N and Division 3O, the stocks of fish set out in Table I to this section, and

(ii) in Division 3M, the stocks of fish set out in Table II to this section;

(b) vessels without nationality and foreign fishing vessels that fly the flag of any state set out in Table III to this section are prescribed classes of vessels; and

(c) a prohibition against fishing for straddling stocks, preparing to fish for straddling stocks or catching and retaining straddling stocks is a prescribed conservation and management measure."

The "straddling stocks" referred to in "Table I" included the "Greenland halibut" (also called in French "flétan noir"). This was the only stock mentioned in "Table II". "Table III" specified Belize, the Cayman Islands, Honduras, Panama, Saint Vincent and the Grenadines and Sierra Leone.

18. These Regulations were further amended on 3 March 1995. In their amended version, paragraphs *(b)* to *(d)* of Section 21 (2) read as follows:

"*(b)* the following classes of foreign fishing vessels are prescribed classes namely

(i) foreign fishing vessels without nationality,

(ii) foreign fishing vessels that fly the flag of any state set out in Table III to this section, and

(iii) foreign fishing vessels that fly the flag of any state set out in Table IV to this section;

(c) in respect of a foreign fishing vessel of a class prescribed by subparagraph *(b)* (i) or (ii), prohibitions against fishing for the straddling stocks set out in Table I or II to this section, preparing to fish for those straddling stocks and catching and retaining those straddling stocks are prescribed conservation and management measures; and

(d) in respect of a foreign fishing vessel of a class prescribed by subparagraph *(b)* (iii), the measures set out in Table V to this section are prescribed conservation and management measures".

"Table IV" referred to Spain and Portugal. "Table V", which was headed "Prescribed Conservation and Management Measures", began by laying down the following prohibitions:

"1. Prohibitions against fishing for, or catching and retaining, Greenland halibut in Division 3L, Division 3M, Division 3N or

Division 3O during the period commencing on March 3 and terminating on December 31 in any year."

19. On 9 March 1995, the *Estai*, a fishing vessel flying the Spanish flag and manned by a Spanish crew, was intercepted and boarded some 245 miles from the Canadian coast, in Division 3L of the NAFO Regulatory Area (Grand Banks area), by Canadian Government vessels. The vessel was seized and its master arrested on charges of violations of the Coastal Fisheries Protection Act and its implementing regulations. They were brought to the Canadian port of St. John's, Newfoundland, where they were charged with offences under the above legislation, and in particular illegal fishing for Greenland halibut; part of the ship's catch was confiscated. The members of the crew were released immediately. The master was released on 12 March 1995, following the payment of bail, and the vessel on 15 March 1995, following the posting of a bond.

20. The same day that the *Estai* was boarded, the Spanish Embassy in Canada sent two Notes Verbales to the Canadian Department of Foreign Affairs and International Trade. The second of these stated *inter alia* that: "the Spanish Government categorically condemn[ed] the pursuit and harassment of a Spanish vessel by vessels of the Canadian navy, in flagrant violation of the international law in force, since these acts [took] place outside the 200-mile zone". On 10 March 1995, the Spanish Ministry of Foreign Affairs sent a Note Verbale to the Canadian Embassy in Spain which contained the following passage:

> "In carrying out the said boarding operation, the Canadian authorities breached the universally accepted norm of customary international law codified in Article 92 and articles to the same effect of the 1982 Convention on the Law of the Sea, according to which ships on the high seas shall be subject to the exclusive jurisdiction of the flag State . . .
>
> . . . . . .
>
> The Spanish Government considers that the wrongful act committed by ships of the Canadian navy can in no way be justified by presumed concern to conserve fisheries in the area, since it violates the established provisions of the NAFO Convention to which Canada is a party."

In its turn, on 10 March 1995 the Canadian Department of Foreign Affairs and International Trade sent a Note Verbale to the Spanish Embassy in Canada, in which it was stated that "[t]he *Estai* resisted the efforts to board her made by Canadian inspectors in accordance with international practice" and that "the arrest of the *Estai* was necessary in order to put a stop to the overfishing of Greenland halibut by Spanish fishermen".

Also on 10 March 1995, the European Community and its member States sent a Note Verbale to the Canadian Department of Foreign Affairs and International Trade which included the following:

> "The arrest of a vessel in international waters by a State other than the State of which the vessel is flying the flag and under whose jurisdiction it falls, is an illegal act under both the NAFO Convention and customary international law, and cannot be justified by any means. With this action Canada is not only flagrantly violating international law, but is failing to observe normal behaviour of responsible States.
>
> This act is particularly unacceptable since it undermines all the efforts of the international community, notably in the framework of the FAO and the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, to achieve effective conservation through enhanced cooperation in the management of fisheries resources.
>
> This serious breach of international law goes far beyond the question of fisheries conservation. The arrest is a lawless act against the sovereignty of a Member State of the European Community. Furthermore, the behaviour of the Canadian vessels has clearly endangered the lives of the crew and the safety of the Spanish vessel concerned.
>
> The European Community and its Member States demand that Canada immediately release the vessel, repair any damages caused, cease and desist from its harassment of vessels flying the flag of Community Member States and immediately repeal the legislation under which it claims to take such unilateral action."

21. On 16 April 1995, an "Agreement constituted in the form of an Agreed Minute, an Exchange of Letters, an Exchange of Notes and the Annexes thereto between the European Community and Canada on fisheries in the context of the NAFO Convention" was initialled; this Agreement was signed in Brussels on 20 April 1995.

In Part A ("Control and Enforcement") of the Agreed Minute, the Community and Canada agreed on proposals which would "constitute the basis for a submission to be jointly prepared and made to the NAFO Fisheries Commission, for its consideration and approval, to establish a Protocol to strengthen the NAFO Conservation and Enforcement Measures"; at the same time the parties decided to implement immediately, on a provisional basis, certain control and enforcement measures. In Part B ("Total Allowable Catch and Catch Limits"), they agreed on the total allowable catch for 1995 for Greenland halibut within the area concerned, and to certain management arrangements for stocks of this fish. In Part C ("Other Related Issues") Canada undertook to

> "repeal the provisions of the Regulation of 3 March 1995 pursuant to the Coastal Fisheries Protection Act which subjected vessels from Spain and Portugal to certain provisions of the Act and prohibited these vessels from fishing for Greenland halibut in the NAFO Regulatory Area";

it was further stated that, for the European Community, "any re-insertion by Canada of vessels from any European Community member State into legislation which subjects vessels on the high seas to Canadian jurisdiction" would be considered as a breach of the Agreed Minute. It was likewise stated in that Part that Canada would regard as a breach of the Agreed Minute

> "any systematic and sustained failure of the European Community to control its fishing vessels in the NAFO Regulatory Area which clearly has resulted in violations of a serious nature of NAFO conservation and enforcement measures".

Point 1 of Part D ("General Provisions") of the Agreed Minutes provided as follows:

> "The European Community and Canada maintain their respective positions on the conformity of the amendment of 25 May 1994 to Canada's Coastal Fisheries Protection Act, and subsequent regulations, with customary international law and the NAFO Convention. Nothing in this Agreed Minute shall prejudice any multilateral convention to which the European Community and Canada, or any Member State of the European Community and Canada, are parties, or their ability to preserve and defend their rights in conformity with international law, and the views of either Party with respect to any question relating to the Law of the Sea."

Finally, Part E ("Implementation") stated that the "Agreed Minute [would] cease to apply on 31 December 1995 or when the measures described in this Agreed Minute [were] adopted by NAFO, if this [should be] earlier".

The Exchange of Letters noted the agreement of the parties on two points. It was agreed, on the one hand, that the posting of a bond for the release of the vessel *Estai* and the payment of bail for the release of its master

> "[could] not be interpreted as meaning that the European Community or its Member States recognize[d] the legality of the arrest or the jurisdiction of Canada beyond the Canadian 200-mile zone against fishing vessels flying the flag of another State"

and, on the other hand, that

> "the Attorney-General of Canada [would] consider the public inter-

> est in his decision on staying the prosecution against the vessel *Estai* and its master; in such case, the bond, bail and catch or its proceeds [would] be returned to the master".

The European Community emphasized that the stay of prosecution was essential for the application of the Agreed Minute.

22. On 18 April 1995 the proceedings against the *Estai* and its master were discontinued by order of the Attorney-General of Canada; on 19 April 1995 the bond was discharged and the bail was repaid with interest; and subsequently the confiscated portion of the catch was returned. On 1 May 1995 the Coastal Fisheries Protection Regulations were amended so as to remove Spain and Portugal from Table IV to Section 21. Finally, the Proposal for Improving Fisheries Control and Enforcement, contained in the Agreement of 20 April 1995, was adopted by NAFO at its annual meeting held in September 1995 and became measures binding on all contracting parties with effect from 29 November 1995.

* * *

23. Neither of the Parties denies that there exists a dispute between them. Each Party, however, characterizes the dispute differently. Spain has characterized the dispute as one relating to Canada's lack of entitlement to exercise jurisdiction on the high seas, and the non-opposability of its amended Coastal Fisheries Protection legislation and regulations to third States, including Spain. Spain further maintains that Canada, by its conduct, has violated Spain's rights under international law and that such violation entitles it to reparation. Canada states that the dispute concerns the adoption of measures for the conservation and management of fisheries stocks with respect to vessels fishing in the NAFO Regulatory Area and their enforcement.

24. Spain contends that the purpose of its Application is not to seise the Court of a dispute concerning fishing on the high seas or the management and conservation of biological resources in the NAFO Regulatory Area. Claiming that its exclusive jurisdiction over ships flying its flag on the high seas has been disregarded and swept aside, it argues that

> "the object of the Spanish Application relates essentially to Canada's entitlement in general, and in particular in relation to Spain, to exercise its jurisdiction on the high seas against ships flying the Spanish flag and their crews, and to enforce that right by a resort to armed force".

25. Spain maintains that the Agreement of 20 April 1995 between the European Community and Canada on fisheries in the context of the NAFO Convention (see paragraph 21 above) settled as between Canada

and the Community certain aspects of a dispute provoked by the unilateral actions of Canada within the area of the high seas subject to regulation by NAFO (an organization of which both the Community and Canada are members). Spain also stresses that it co-operated in the conclusion of this Agreement as a member State of the Community, to which, it states, competence in respect of fisheries conservation and management has been transferred. However, according to Spain, its Application is based on a right exclusive to itself and concerns a dispute whose subject-matter differs from that covered by the Agreement; this dispute, therefore, is not merely a matter of fisheries conservation and management.

26. For its part, Canada is of the view that:

> "this case arose out of and concerns conservation and management measures taken by Canada with respect to Spanish vessels fishing in the NAFO Regulatory Area and the enforcement of such measures".

Canada contended at the hearing that Spain's Application constitutes

> "a claim in State responsibility on account of Canada's alleged violation of the international obligations incumbent upon it under the rules and principles of general international law",

and maintained that a dispute consists of an indivisible whole comprising facts and rules of law. In its view the Court cannot have jurisdiction with regard to one of these elements and not have jurisdiction with regard to the other.

27. Canada, referring to the notes of protest addressed to it by the European Community and by Spain (see paragraph 20 above), points out that they contain no trace of any distinction between a dispute with the European Community and a dispute with Spain, and that both the protests of the Community and those by the Spanish authorities "are founded on the dual, inextricably linked grounds of the fisheries protection legislation and general principles of international law". Canada argues that this conclusion is confirmed by the Agreement of 20 April 1995 between the European Community and Canada, inasmuch as "here, too, those questions relating to fisheries and those relating to State jurisdiction, legal entitlement and respect for the rights of the flag State are closely interlinked".

28. Spain insists that it is free, as the Applicant in this case, to characterize the dispute that it wishes the Court to resolve.

*

29. There is no doubt that it is for the Applicant, in its Application, to present to the Court the dispute with which it wishes to seise the Court and to set out the claims which it is submitting to it.

Paragraph 1 of Article 40 of the Statute of the Court requires moreover that the "subject of the dispute" be indicated in the Application; and, for its part, paragraph 2 of Article 38 of the Rules of Court requires "the precise nature of the claim" to be specified in the Application. In a number of instances in the past the Court has had occasion to refer to these provisions. It has characterized them as "essential from the point of view of legal security and the good administration of justice" and, on this basis, has held inadmissible new claims, formulated during the course of proceedings, which, if they had been entertained, would have transformed the subject of the dispute originally brought before it under the terms of the Application (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992,* pp. 266-267; see also *Prince von Pless Administration, Order of 4 February 1933, P.C.I.J., Series A/B, No. 52*, p. 14, and *Société Commerciale de Belgique, Judgment, 1939, P.C.I.J., Series A/B, No. 78*, p. 173).

In order to identify its task in any proceedings instituted by one State against another, the Court must begin by examining the Application (see *Interhandel, Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 21; *Right of Passage over Indian Territory, Merits, Judgment, I.C.J. Reports 1960*, p. 27; *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 260, para. 24). However, it may happen that uncertainties or disagreements arise with regard to the real subject of the dispute with which the Court has been seised, or to the exact nature of the claims submitted to it. In such cases the Court cannot be restricted to a consideration of the terms of the Application alone nor, more generally, can it regard itself as bound by the claims of the Applicant.

Even in proceedings instituted by Special Agreement, the Court has determined for itself, having examined all of the relevant instruments, what was the subject of the dispute brought before it, in circumstances where the parties could not agree on how it should be characterized (see *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, pp. 14-15, para. 19, and p. 28, para. 57).

30. It is for the Court itself, while giving particular attention to the formulation of the dispute chosen by the Applicant, to determine on an objective basis the dispute dividing the parties, by examining the position of both parties:

> "[I]t is the Court's duty to isolate the real issue in the case and to identify the object of the claim. It has never been contested that the Court is entitled to interpret the submissions of the parties, and in fact is bound to do so; this is one of the attributes of its judicial functions." *(Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 466, para. 30; see also *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France*) Case, Order of 22 September 1995, I.C.J. Reports 1995*, p. 304, para. 55.)

The Court's jurisprudence shows that the Court will not confine itself to the formulation by the Applicant when determining the subject of the dispute. Thus, in the case concerning the *Right of Passage over Indian Territory*, the Court, in order to form a view as to its jurisdiction, defined the subject of the dispute in the following terms:

> "A passage in the Application headed 'Subject of the Dispute' indicates that subject as being the conflict of views which arose between the two States when, in 1954, India opposed the exercise of Portugal's right of passage. If this were the subject of the dispute referred to the Court, the challenge to the jurisdiction could not be sustained. But it appeared from the Application itself and it was fully confirmed by the subsequent proceedings, the Submissions of the Parties and statements made in the course of the hearings, that the dispute submitted to the Court has a threefold subject:
>
> (1) The disputed existence of a right of passage in favour of Portugal;
> (2) The alleged failure of India in July 1954 to comply with its obligations concerning that right of passage;
> (3) The redress of the illegal situation flowing from that failure." (*Right of Passage over Indian Territory, Merits, Judgment, I.C.J. Reports 1960*, pp. 33-34.)

31. The Court will itself determine the real dispute that has been submitted to it (see *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, pp. 24-25). It will base itself not only on the Application and final submissions, but on diplomatic exchanges, public statements and other pertinent evidence (see *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, pp. 262-263).

32. In so doing, the Court will distinguish between the dispute itself and arguments used by the parties to sustain their respective submissions on the dispute:

> "The Court has . . . repeatedly exercised the power to exclude, when necessary, certain contentions or arguments which were advanced by a party as part of the submissions, but which were regarded by the Court, not as indications of what the party was asking the Court to decide, but as reasons advanced why the Court should decide in the sense contended for by that party." (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 262, para. 29; see also cases concerning *Fisheries, Judgment, I.C.J. Reports 1951*, p. 126; *Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953*, p. 52; *Nottebohm, Second Phase, Judgment, I.C.J. Reports 1955*, p. 16.)

33. In order to decide on the preliminary issue of jurisdiction which arises in the present case, the Court will ascertain the dispute between Spain and Canada, taking account of Spain's Application, as well as

the various written and oral pleadings placed before the Court by the Parties.

34. The filing of the Application was occasioned by specific acts of Canada which Spain contends violated its rights under international law. These acts were carried out on the basis of certain enactments and regulations adopted by Canada, which Spain regards as contrary to international law and not opposable to it. It is in that context that the legislative enactments and regulations of Canada should be considered.

35. The specific acts (see paragraph 34 above) which gave rise to the present dispute are the Canadian activities on the high seas in relation to the pursuit of the *Estai*, the means used to accomplish its arrest and the fact of its arrest, and the detention of the vessel and arrest of its master, arising from Canada's amended Coastal Fisheries Protection Act and implementing regulations. The essence of the dispute between the Parties is whether these acts violated Spain's rights under international law and require reparation. The Court must now decide whether the Parties have conferred upon it jurisdiction in respect of that dispute.

* *

36. As Spain sees it, Canada has in principle accepted the jurisdiction of the Court through its declaration under Article 36, paragraph 2, of the Statute, and it is for Canada to show that the reservation contained in paragraph 2 *(d)* thereto does exempt the dispute between the Parties from this jurisdiction. Canada, for its part, asserts that Spain must bear the burden of showing why the clear words of paragraph 2 *(d)* do not withhold this matter from the jurisdiction of the Court.

37. The Court points out that the establishment or otherwise of jurisdiction is not a matter for the parties but for the Court itself. Although a party seeking to assert a fact must bear the burden of proving it (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 437, para. 101), this has no relevance for the establishment of the Court's jurisdiction, which is a "question of law to be resolved in the light of the relevant facts" (*Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 76, para. 16).

38. That being so, there is no burden of proof to be discharged in the matter of jurisdiction. Rather, it is for the Court to determine from all the facts and taking into account all the arguments advanced by the Parties, "whether the force of the arguments militating in favour of jurisdiction is preponderant, and to 'ascertain whether an intention on the

part of the Parties exists to confer jurisdiction upon it'" *(Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988,* p. 76, para. 16; see also *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J. Series A, No. 9,* p. 32).

* *

39. As the basis of jurisdiction, Spain founded its claim solely on the declarations made by the Parties pursuant to Article 36, paragraph 2, of the Statute. On 21 April 1995 Canada informed the Court, by letter, that in its view the Court lacked jurisdiction to entertain the Application because the dispute was within the plain terms of the reservation in paragraph 2 *(d)* of the Canadian declaration of 10 May 1994. This position was elaborated in its Counter-Memorial of February 1996, and confirmed at the hearings.

40. Spain appears at times to contend that Canada's reservation is invalid or inoperative by reason of incompatibility with the Court's Statute, the Charter of the United Nations and with international law. However, Spain's position mainly appears to be that these claimed incompatibilities require an interpretation to be given to paragraph 2 *(d)* of the declaration different from that advanced by Canada. In its Memorial at paragraph 39 Spain thus stated:

> "Although the Court has hitherto avoided making a concrete determination on the compatibility or incompatibility, with the Statute, of the literal content of certain reservations, and on which certain judges have commented, initiating a major doctrinal debate, the reservation in paragraph 2 *(d)* of the Canadian declaration does not raise any problems of this kind.
>
> There may be reservations which, owing to their wording, are incompatible with the Statute, but the Canadian declaration is not one of them. On the other hand, what may be incompatible with the Statute is a certain interpretation of that reservation which Canada now appears to claim to present as the sole authentic interpretation of its reservation with a view to evading the jurisdiction of the Court.
>
> There are — or there may be — not just *anti-statutory* reservations; there are also *anti-statutory interpretations* of certain reservations."

While in the oral argument reference was made by Spain to "invalidity" and "nullity", and to the reservation being without effect and applying to "nothing", here again the emphasis was on the need for an interpretation of the reservation that would be compatible with international law.

41. Accordingly, the Court concludes that Spain contends that the interpretation of paragraph 2 *(d)* of its declaration sought for by Canada

would not only be an anti-statutory interpretation, but also an anti-Charter interpretation and an anti-general international law interpretation, and thus should not be accepted. The issue for the Court is consequently to determine whether the meaning to be accorded to the Canadian reservation allows the Court to declare that it has jurisdiction to adjudicate upon the dispute brought before it by Spain's Application.

* *

42. Spain and Canada have both recognized that States enjoy a wide liberty in formulating, limiting, modifying and terminating their declarations of acceptance of the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute. They equally both agree that a reservation is an integral part of a declaration accepting jurisdiction.

43. However, different views were proffered as to the rules of international law applicable to the interpretation of reservations to optional declarations made under Article 36, paragraph 2, of the Statute. In Spain's view, such reservations were not to be interpreted so as to allow reserving States to undermine the system of compulsory jurisdiction. Moreover, the principle of effectiveness meant that a reservation must be interpreted by reference to the object and purpose of the declaration, which was the acceptance of the compulsory jurisdiction of the Court. Spain did not accept that it was making the argument that reservations to the compulsory jurisdiction of the Court should be interpreted restrictively; it explained its position in this respect in the following terms:

> "It is said that Spain argues for the *most restrictive scope permitted* of reservations, namely a restrictive interpretation of them . . . This is not true. Spain supports the most limited scope permitted in the context of observing of the general rule of interpretation laid down in Article 31 of the Vienna Convention on the Law of Treaties."

Spain further contended that the *contra proferentem* rule, under which, when a text is ambiguous, it must be construed against the party who drafted it, applied in particular to unilateral instruments such as declarations of acceptance of the compulsory jurisdiction of the Court and the reservations which they contained. Finally, Spain emphasized that a reservation to the acceptance of the Court's jurisdiction must be interpreted so as to be in conformity with, rather than contrary to, the Statute of the Court, the Charter of the United Nations and general international law.

For its part, Canada emphasized the unilateral nature of such declarations and reservations and contended that the latter were to be interpreted in a natural way, in context and with particular regard for the intention of the reserving State.

44. The Court recalls that the interpretation of declarations made

under Article 36, paragraph 2, of the Statute, and of any reservations they contain, is directed to establishing whether mutual consent has been given to the jurisdiction of the Court.

It is for each State, in formulating its declaration, to decide upon the limits it places upon its acceptance of the jurisdiction of the Court: "This jurisdiction only exists within the limits within which it has been accepted" (*Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 23). Conditions or reservations thus do not by their terms derogate from a wider acceptance already given. Rather, they operate to define the parameters of the State's acceptance of the compulsory jurisdiction of the Court. There is thus no reason to interpret them restrictively. All elements in a declaration under Article 36, paragraph 2, of the Statute which, read together, comprise the acceptance by the declarant State of the Court's jurisdiction, are to be interpreted as a unity, applying the same legal principles of interpretation throughout.

45. This is true even when, as in the present case, the relevant expression of a State's consent to the Court's jurisdiction, and the limits to that consent, represent a modification of an earlier expression of consent, given within wider limits. An additional reservation contained in a new declaration of acceptance of the Court's jurisdiction, replacing an earlier declaration, is not to be interpreted as a derogation from a more comprehensive acceptance given in that earlier declaration; thus, there is no reason to interpret such a reservation restrictively. Accordingly, it is the declaration in existence that alone constitutes the unity to be interpreted, with the same rules of interpretation applicable to all its provisions, including those containing reservations.

46. A declaration of acceptance of the compulsory jurisdiction of the Court, whether there are specified limits set to that acceptance or not, is a unilateral act of State sovereignty. At the same time, it establishes a consensual bond and the potential for a jurisdictional link with the other States which have made declarations pursuant to Article 36, paragraph 2, of the Statute, and "makes a standing offer to the other States party to the Statute which have not yet deposited a declaration of acceptance" (*Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, I.C.J. Reports 1998*, p. 291, para. 25). The régime relating to the interpretation of declarations made under Article 36 of the Statute is not identical with that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties (*ibid.*, p. 293, para. 30). Spain has suggested in its pleadings that "[t]his does not mean that the legal rules and the art of interpreting declarations (and reservations) do not coincide with those governing the interpretation of treaties". The Court observes that the provisions of that Convention may only apply analogously to the extent compatible with the *sui generis* character of the unilateral acceptance of the Court's jurisdiction.

47. In the event, the Court has in earlier cases elaborated the appropriate rules for the interpretation of declarations and reservations. Every declaration "must be interpreted as it stands, having regard to the words actually used" (*Anglo-Iranian Oil Co., Preliminary Objection, Judgment, I.C.J. Reports 1952*, p. 105). Every reservation must be given effect "as it stands" (*Certain Norwegian Loans, Judgment, I.C.J. Reports 1957*, p. 27). Therefore, declarations and reservations are to be read as a whole. Moreover, "the Court cannot base itself on a purely grammatical interpretation of the text. It must seek the interpretation which is in harmony with a natural and reasonable way of reading the text." (*Anglo-Iranian Oil Co., Preliminary Objection, Judgment, I.C.J. Reports 1952*, p. 104.)

48. At the same time, since a declaration under Article 36, paragraph 2, of the Statute, is a unilaterally drafted instrument, the Court has not hesitated to place a certain emphasis on the intention of the depositing State. Indeed, in the case concerning *Anglo-Iranian Oil Co.*, the Court found that the limiting words chosen in Iran's declaration were "a decisive confirmation of the intention of the Government of Iran at the time when it accepted the compulsory jurisdiction of the Court" (*ibid.*, p. 107).

49. The Court will thus interpret the relevant words of a declaration including a reservation contained therein in a natural and reasonable way, having due regard to the intention of the State concerned at the time when it accepted the compulsory jurisdiction of the Court. The intention of a reserving State may be deduced not only from the text of the relevant clause, but also from the context in which the clause is to be read, and an examination of evidence regarding the circumstances of its preparation and the purposes intended to be served. In the *Aegean Sea Continental Shelf* case, the Court affirmed that it followed clearly from its jurisprudence that in interpreting the contested reservation

> "regard must be paid to the intention of the Greek Government at the time when it deposited its instrument of accession to the General Act; and it was with that jurisprudence in mind that the Court asked the Greek Government to furnish it with any available evidence of explanations of the instrument of accession given at that time" (*Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 29, para. 69).

In the present case the Court has such explanations in the form of Canadian ministerial statements, parliamentary debates, legislative proposals and press communiqués.

50. Where, moreover, an existing declaration has been replaced by a new declaration which contains a reservation, as in this case, the intentions of the Government may also be ascertained by comparing the terms of the two instruments.

51. The *contra proferentem* rule may have a role to play in the interpretation of contractual provisions. However, it follows from the fore-

going analysis that the rule has no role to play in this case in interpreting the reservation contained in the unilateral declaration made by Canada under Article 36, paragraph 2, of the Statute.

52. The Court was addressed by both Parties on the principle of effectiveness. Certainly, this principle has an important role in the law of treaties and in the jurisprudence of this Court; however, what is required in the first place for a reservation to a declaration made under Article 36, paragraph 2, of the Statute, is that it should be interpreted in a manner compatible with the effect sought by the reserving State.

53. Spain has contended that, in case of doubt, reservations contained in declarations are to be interpreted consistently with legality and that any interpretation which is inconsistent with the Statute of the Court, the Charter of the United Nations or with general international law is inadmissible. Spain draws attention to the following finding of the Court in the *Right of Passage over Indian Territory* case, where the Court had to rule on the compatibility of a reservation with the Statute:

> "It is a rule of interpretation that a text emanating from a Government must, in principle, be interpreted as producing and as intended to produce effects in accordance with existing law and not in violation of it." (*Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 142.)

Spain argues that, to comply with these precepts, it is necessary to interpret the phrase "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" to refer only to measures which, since they relate to areas of the high seas, must come within the framework of an existing international agreement or be directed at stateless vessels. It further argues that an enforcement of such measures which involves a recourse to force on the high seas against vessels flying flags of other States could not be consistent with international law and that this factor too requires an interpretation of the reservation different from that given to it by Canada.

54. Spain's position is not in conformity with the principle of interpretation whereby a reservation to a declaration of acceptance of the compulsory jurisdiction of the Court is to be interpreted in a natural and reasonable way, with appropriate regard for the intentions of the reserving State and the purpose of the reservation. In point of fact, reservations from the Court's jurisdiction may be made by States for a variety of reasons; sometimes precisely because they feel vulnerable about the legality of their position or policy. Nowhere in the Court's case-law has it been suggested that interpretation in accordance with the legality under international law of the matters exempted from the jurisdiction of the Court is a rule that governs the interpretation of such reservations:

> "Declarations of acceptance of the compulsory jurisdiction of the Court are facultative, unilateral engagements, that States are absolutely free to make or not to make. In making the declaration a State is equally free either to do so unconditionally and without limit of time for its duration, or to qualify it with conditions or reservations." (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 418, para. 59.)

The holding of the Court relied on by Spain in the *Right of Passage over Indian Territory* case, which was concerned with a possible retroactive effect of a reservation, does not detract from this principle. The fact that a State may lack confidence as to the compatibility of certain of its actions with international law does not operate as an exception to the principle of consent to the jurisdiction of the Court and the freedom to enter reservations.

55. There is a fundamental distinction between the acceptance by a State of the Court's jurisdiction and the compatibility of particular acts with international law. The former requires consent. The latter question can only be reached when the Court deals with the merits, after having established its jurisdiction and having heard full legal argument by both parties.

56. Whether or not States accept the jurisdiction of the Court, they remain in all cases responsible for acts attributable to them that violate the rights of other States. Any resultant disputes are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties.

* * *

57. In order to determine whether the Parties have accorded to the Court jurisdiction over the dispute brought before it, the Court must now interpret subparagraph *(d)* of paragraph 2 of Canada's declaration, having regard to the rules of interpretation which it has just set out.

* *

58. However, before commencing its examination of the text of the reservation itself, the Court feels bound to make two observations which it considers essential in order to ascertain the intention which underlay the adoption of that text. The first of these concerns the importance attaching to the reservation in the light of the acceptance by Canada of the Court's jurisdiction; the second concerns the relationship between that reservation and the Canadian coastal fisheries protection legislation.

59. The Court has already pointed out (see paragraph 14 above) that the current Canadian declaration replaced a previous one, dated 10 September 1985. The new declaration differs from its predecessor in one respect only: the addition, to paragraph 2, of a subparagraph *(d)* con-

taining the reservation in question. It follows that this reservation is not only an integral part of the current declaration but also an essential component of it, and hence of the acceptance by Canada of the Court's compulsory jurisdiction.

60. As regards the objectives which the reservation was intended to achieve, the Court is bound to note, in view of the facts as summarized above (paragraphs 14 *et seq.*), the close links between Canada's new declaration and its new coastal fisheries protection legislation. The new declaration was deposited with the Secretary-General on 10 May 1994, that is to say the very same day that Bill C-29 was submitted to the Canadian Parliament; moreover, the terms in which Canada accepted the compulsory jurisdiction of the Court on that day echo those of the Bill then under discussion. Furthermore, it is evident from the parliamentary debates and the various statements of the Canadian authorities that the purpose of the new declaration was to prevent the Court from exercising its jurisdiction over matters which might arise with regard to the international legality of the amended legislation and its implementation. Thus on 10 May 1994 Canada issued a News Release on "Foreign Overfishing", explaining its policy in this field and adding that:

> "Canada has today amended its acceptance of the compulsory jurisdiction of the International Court of Justice in the Hague to preclude any challenge which might undermine Canada's ability to protect the stocks. This is a temporary step in response to an emergency situation."

Further, on 12 May 1994, the Canadian Minister for Foreign Affairs made the following statement in the Senate:

> "As you know, to protect the integrity of this legislation, we registered a reservation to the International Court of Justice, explaining that this reservation would of course be temporary . . ."

* *

61. The Court recalls that subparagraph 2 *(d)* of the Canadian declaration excludes the Court's jurisdiction in the following terms:

> "disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures" (see paragraph 14 above).

Canada contends that the dispute submitted to the Court is precisely of the kind envisaged by the cited text; it falls entirely within the terms of the subparagraph and the Court accordingly has no jurisdiction to entertain it.

For Spain, on the other hand, whatever Canada's intentions, they were not achieved by the words of the reservation, which does not cover the dispute; thus the Court has jurisdiction. In support of this view Spain relies on four main arguments: first, the dispute which it has brought before the Court falls outside the terms of the Canadian reservation by reason of its subject-matter; secondly, the amended Coastal Fisheries Protection Act and its implementing regulations cannot, in international law, constitute "conservation and management measures"; thirdly, the reservation covers only "vessels" which are stateless or flying a flag of convenience; and fourthly, the pursuit, boarding and seizure of the *Estai* cannot be regarded in international law as "the enforcement of . . ." conservation and management "measures". The Court will examine each of these arguments in turn.

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62. The Court will begin by pointing out that, in excluding from its jurisdiction *"disputes arising out of or concerning"* the conservation and management measures in question and their enforcement, the reservation does not reduce the criterion for exclusion to the "subject-matter" of the dispute. The language used in the English version — *"disputes arising out of or concerning"* — brings out more clearly the broad and comprehensive character of the formula employed. The words of the reservation exclude not only disputes whose immediate "subject-matter" is the measures in question and their enforcement, but also those *"concerning"* such measures and, more generally, those having their "origin" in those measures *("arising out of")* — that is to say, those disputes which, in the absence of such measures, would not have come into being. Thus the scope of the Canadian reservation appears even broader than that of the reservation which Greece attached to its accession to the General Act of 1928 ("disputes relating to the territorial status of Greece"), which the Court was called upon to interpret in the case concerning the *Aegean Sea Continental Shelf* (*I.C.J. Reports 1978,* p. 34, para. 81, and p. 36, para. 86).

63. The Court has already found, in the present case, that a dispute does exist between the Parties, and it has identified that dispute (see paragraph 35 above). It must now determine whether that dispute has as its subject-matter the measures mentioned in the reservation or their enforcement, or both, or concerns those measures, or arises out of them. In order to do this, the fundamental question which the Court must now decide is the meaning to be given to the expression *"conservation and management measures . . ."* and *"enforcement of such measures"* in the context of the reservation.

*

64. Spain recognizes that the term *"measure"* is "an abstract word signifying an act or provision, a démarche or the course of an action, con-

ceived with a precise aim in view" and that in consequence, in its most general sense, the expression *"conservation and management measure"* must be understood as referring to an act, step or proceeding designed for the purpose of the "conservation and management of fish".

However, in Spain's view this expression, in the particular context of the Canadian reservation, must be interpreted more restrictively.

Initially, Spain contended that the reservation did not apply to the Canadian legislation, which merely represented "the legal title which [was] the origin and basis of the prohibition of fishing on the high seas", or "frame of reference". The reservation covered only "the consequences of that Act for the conservation and management of resources", that is to say "the actual procedures for enforcement or implementation of the Act". However, in oral argument, it no longer pursued this point.

Spain's main argument, on which it relied throughout the proceedings, is that the term "conservation and management measures" must be interpreted here in accordance with international law and that in consequence it must, in particular, exclude any unilateral "measure" by a State which adversely affected the rights of other States outside that State's own area of jurisdiction. Hence, in international law only two types of measures taken by a coastal State could, in practice, be regarded as "conservation and management measures": those relating to the State's exclusive economic zone; and those relating to areas outside that zone, in so far as these came within the framework of an international agreement or were directed at stateless vessels. Measures not satisfying these conditions were not conservation and management measures but unlawful acts pure and simple. In the course of this argument, Spain referred to Article 1 (1) *(b)* of the "Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks" (hereinafter referred to as the "United Nations Agreement on Straddling Stocks of 1995"), which reads as follows

> "1. For the purposes of this Agreement:
>
> . . . . . .
>
> *(b)* 'Conservation and management measures' means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement."

65. Canada, by contrast, stresses the very wide meaning of the word "measure". It takes the view that this is a "generic term", which is used in international conventions to encompass statutes, regulations and administrative action.

Canada further argues that the expression "conservation and management measures" is "descriptive" and not "normative"; it covers "the whole range of measures taken by States with respect to the living resources of the sea". Canada further states that "a generic category is never limited to the known examples it contains". Finally, Canada contends that the United Nations Agreement on Straddling Stocks of 1995 is not relevant for the purpose of determining the general meaning of the expression in question and its possible scope in other legal instruments.

66. The Court need not linger over the question whether a "measure" may be of a "legislative" nature. As the Parties have themselves agreed, in its ordinary sense the word is wide enough to cover any act, step or proceeding, and imposes no particular limit on their material content or on the aim pursued thereby. Numerous international conventions include "laws" among the "measures" to which they refer (see for example, as regards "conservation and management measures", Articles 61 and 62 of the 1982 United Nations Convention on the Law of the Sea). There is no reason to suppose that any different treatment should be applied to the Canadian reservation, the text of which itself refers not to measures adopted by the executive but simply to "Canada", that is to say the State as a whole, of which the legislature is one constituent part. Moreover, as the Court has already pointed out (see paragraph 60), the purpose of the reservation was specifically to protect "the integrity" of the Canadian coastal fisheries protection legislation. Thus to take the contrary view would be to disregard the evident intention of the declarant and to deprive the reservation of its effectiveness.

67. The Court would further point out that, in the Canadian legislative system as in that of many other countries, a statute and its implementing regulations cannot be dissociated. The statute establishes the general legal framework and the regulations permit the application of the statute to meet the variable and changing circumstances through a period of time. The regulations implementing the statute can have no legal existence independently of that statute, while conversely the statute may require implementing regulations to give it effect.

68. The Court shares with Spain the view that an international instrument must be interpreted by reference to international law. However, in arguing that the expression "conservation and management measures" as used in the Canadian reservation can apply only to measures "in conformity with international law", Spain would appear to mix two issues. It is one thing to seek to determine whether a concept is known to a system of law, in this case international law, whether it falls within the categories proper to that system and whether, within that system, a particular meaning attaches to it: the question of the existence and content of the concept within the system is a matter of definition. It is quite another matter to seek to determine whether a specific act falling within the scope of a concept known to a system of law violates the normative rules of that system: the question of the conformity of the act with the system is a question of legality.

69. At this stage of the proceedings, the task of the Court is simply to determine whether it has jurisdiction to entertain the dispute. To this end it must interpret the terms of the Canadian reservation, and in particular the meaning attaching in the light of international law to the expression "conservation and management measures" as used in that reservation.

70. According to international law, in order for a measure to be characterized as a "conservation and management measure", it is sufficient that its purpose is to conserve and manage living resources and that, to this end, it satisfies various technical requirements.

It is in this sense that the terms "conservation and management measures" have long been understood by States in the treaties which they conclude. Notably, this is the sense in which "conservation and management measures" is used in paragraph 4 of Article 62 of the 1982 United Nations Convention on the Law of the Sea (see also 1923 Convention between the United States of America and Canada for the Preservation of the Halibut Fisheries of the Northern Pacific Ocean, especially Articles 1 and 2; 1930 Convention between the United States of America and Canada for the Preservation of the Halibut Fisheries of the Northern Pacific Ocean and Bering Sea, Arts. 1, 2 and 3; 1949 International Convention for the Northwest Atlantic Fisheries, Art. IV (2) and especially Art. VIII; 1959 North-East Atlantic Fisheries Convention, Art. 7; 1973 Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts, Art. I and especially Art. X. Cf. 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, Art. 2). The same usage is to be found in the practice of States. Typically, in their enactments and administrative acts, States describe such measures by reference to such criteria as: the limitation of catches through quotas; the regulation of catches by prescribing periods and zones in which fishing is permitted; and the setting of limits on the size of fish which may be caught or the types of fishing gear which may be used (see, among very many examples, Algerian Legislative Decree No. 94-13 of 28 May 1994, establishing the general rules relating to fisheries; Argentine Law No. 24922 of 6 January 1998, establishing the Federal Fishing Régime; Malagasy Ordinance No. 93-022 of 1993 regulating fishing and aquaculture; New Zealand Fisheries Act 1996; as well as, for the European Union, the basic texts formed by Regulation (EEC) No. 3760/92 of 20 December 1992, establishing a Community system for fisheries and aquaculture, and Regulation (EC) No. 894/97 of 29 April 1997, laying down certain technical measures for the conservation of fisheries resources. For NAFO practice, see its document entitled Conservation and Enforcement Measures (NAFO/FC/Doc. 96/1)). International law thus characterizes "conservation and management measures" by reference to factual and scientific criteria.

In certain international agreements (for example the United Nations

Agreement on Straddling Stocks of 1995 and the "Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas" (FAO, 1993), neither of which has entered into force) the parties have expressly stipulated, "for purposes of th[e] Agreement", that what is generally understood by "conservation and management measures" must comply with the obligations of international law that they have undertaken pursuant to these agreements, such as, compatibility with maximum sustainable yield, concern for the needs of developing States, the duty to exchange scientific data, effective flag State control of its vessels, and the maintenance of detailed records of fishing vessels.

The question of who may take conservation and management measures, and the areas to which they may relate, is neither in international law generally nor in these agreements treated as an element of the definition of conservation and management measures. The authority from which such measures derive, the area affected by them, and the way in which they are to be enforced do not belong to the essential attributes intrinsic to the very concept of conservation and management measures; they are, in contrast, elements to be taken into consideration for the purpose of determining the legality of such measures under international law.

71. Reading the words of the reservation in a "natural and reasonable" manner, there is nothing which permits the Court to conclude that Canada intended to use the expression "conservation and management measures" in a sense different from that generally accepted in international law and practice. Moreover, any other interpretation of that expression would deprive the reservation of its intended effect.

72. The Court has already given a brief description of the amendments made by Canada on 12 May 1994 to the Coastal Fisheries Protection Act and on 25 May 1994 and 3 March 1995 to the Coastal Fisheries Protection Regulations (see paragraphs 15, 17 and 18).

It is clear on reading Section 5.2 of the amended Act that its sole purpose is to prohibit certain sorts of fishing, while Sections 7, 7.1 and 8.1 prescribe the means for giving effect to that prohibition. The same applies to the corresponding provisions of the amended Regulations. In its version of 25 May 1994, subsection 2 of Section 21 of the Regulations, which implements Section 5.2 of the Act, defines the protected straddling stocks and "the prescribed classes" of vessels, and states that for such vessels "a prohibition against fishing for straddling stocks, preparing to fish for straddling stocks or catching and retaining straddling stocks is a prescribed conservation and management measure". Table V to Section 21 of the Regulations as amended on 3 March 1995 lists seven types of "conservation and management measures" applicable to ships flying the Spanish or Portuguese flag; the first two of these specify the species of fish in respect of which fishing is prohibited in certain areas and during

certain periods; the next two specify the types of fishing gear which are prohibited; the fifth lays down size limits; while the last two lay down certain rules with which ships must comply in connection with inspection by protection officers.

73. The Court concludes from the foregoing that the "measures" taken by Canada in amending its coastal fisheries protection legislation and regulations constitute "conservation and management measures" in the sense in which that expression is commonly understood in international law and practice and has been used in the Canadian reservation.

*

74. The conservation and management measures to which this reservation refers are measures *"taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978"*.

Article I, paragraph 2, of that Convention defines the NAFO "Regulatory Area" as "that part of the Convention Area which lies beyond the areas in which coastal States exercise fisheries jurisdiction"; paragraph 1 of this same Article states that the "Convention Area" is "the area to which this Convention applies" and defines that area by reference to geographical co-ordinates.

The NAFO "Regulatory Area" is therefore indisputably part of the high seas. The Court need not return to the doubts which this part of the reservation may have raised on the Spanish side, in view of the construction placed by the latter on the expression "conservation and management measures". For its part the Court has determined that this expression must be construed in a general and customary sense, without any special connotations with regard to place.

75. Thus the only remaining issue posed by this part of the reservation is the meaning to be attributed to the word "vessels". Spain argues that it is clear from the parliamentary debates which preceded the adoption of Bill C-29 that the latter was intended to apply only to stateless vessels or to vessels flying a flag of convenience. It followed, according to Spain — in view of the close links between the Act and the reservation — that the latter also covered only measures taken against such vessels.

Canada accepts that, when Bill C-29 was being debated, there were a number of references to stateless vessels and to vessels flying flags of convenience, for at the time such vessels posed the most immediate threat to the conservation of the stocks that it sought to protect. However, Canada denies that its intention was to restrict the scope of the Act and the reservation to these categories of vessels.

76. The Court will begin by once again pointing out that declarations

of acceptance of its jurisdiction must be interpreted in a manner which is in harmony with the "natural and reasonable" way of reading the text, having due regard to the intention of the declarant. The Canadian reservation refers to "vessels fishing . . .", that is to say all vessels fishing in the area in question, without exception. It would clearly have been simple enough for Canada, if this had been its real intention, to qualify the word "vessels" so as to restrict its meaning in the context of the reservation. In the opinion of the Court the interpretation proposed by Spain cannot be accepted, for it runs contrary to a clear text, which, moreover, appears to express the intention of its author.

77. Furthermore, the Court cannot share the conclusions drawn by Spain from the parliamentary debates cited by it. It is, indeed, evident from the replies given by the Canadian Ministers of Fisheries and Oceans and for Foreign Affairs to the questions put to them in the House of Commons and in the Senate that at that time the principal target of the Bill was stateless vessels and those flying flags of convenience; however, these were not the only vessels covered. Thus the Minister of Fisheries and Oceans expressed himself as follows before the House of Commons:

> "as to what is meant by 'vessels of a prescribed class', it is simply a reference that allows the government to prescribe or designate a class, a type or kind of vessel we have determined is fishing in a manner inconsistent with conservation rules and therefore against which conservation measures could be taken.
>
> *For example*, we could prescribe stateless vessels. Another example is that we could prescribe flags of convenience. That is all that is meant." (Emphasis added.)

Similarly, the Minister for Foreign Affairs stated in the Senate:

> "We have said from the outset, and Canada's representatives abroad in our various embassies have explained to our European partners and other parties, that this measure is directed *first of all* toward vessels that are unflagged or that operate under so-called flags of convenience." (Emphasis added.)

Furthermore, the following statement by the Minister of Fisheries and Oceans to the Speaker of the House of Commons leaves no doubt as to the scope of the proposed Act:

> "The legislation gives Parliament of Canada the authority to designate any class of vessel for enforcement of conservation measures. The legislation does not categorize whom we would enforce against. The legislation makes clear that any vessel fishing in a manner inconsistent with good, widely acknowledged conservation rules could be subject to action by Canada. We cite as an example the

> NAFO conservation rules. Any vessel from any nation fishing at variance with good conservation rules could under the authority granted in the legislation be subject to action by Canada. There are no exceptions."

This is confirmed by the inclusion in the "prescribed classes of foreign fishing vessels", as a result of the amendment of 3 March 1995, of vessels flying the Spanish and Portuguese flags (see paragraph 18 above). Indeed, it should not be forgotten that, through the enactment of the legislation by means of regulations as well as statute, from the outset the potential was deliberately left open to add prescribed classes of vessels, the term "class" referring not only to types of vessels but also to the flags the vessels were flying.

*

78. The Court must now examine the phrase *"and the enforcement of such measures"*, on the meaning and scope of which the Parties disagree. Spain contends that an exercise of jurisdiction by Canada over a Spanish vessel on the high seas entailing the use of force falls outside of Canada's reservation to the Court's jurisdiction. Spain advances several related arguments in support of this thesis. First, Spain says that the use of force by one State against a fishing vessel of another State on the high seas is necessarily contrary to international law; and as Canada's reservation must be interpreted consistently with legality, it may not be interpreted to subsume such use of force within the phrase "the enforcement of such measures". Spain further asserts that the particular use of force directed against the *Estai* was in any event unlawful and amounted to a violation of Article 2, paragraph 4, of the Charter, giving rise to a separate cause of action not caught by the reservation.

79. The Court has already indicated that there is no rule of interpretation which requires that reservations be interpreted so as to cover only acts compatible with international law. As explained above, this is to confuse the legality of the acts with consent to jurisdiction (see paragraphs 55 and 56 above). Thus the Court has no need to consider further these aspects of Spain's argument.

80. By Section 18.1 of the 1994 Act, the enforcement of its provisions in the NAFO Regulatory Area was made subject to the application of criminal law. In turn, Section 25 of the Criminal Code was amended following the adoption of Bill C-8 (see paragraph 16 above). Spain contends in this context that Canada has thus provided for penal measures related to the criminal law and not enforcement of conservation and management measures. Spain also contends that the expression "enforcement of such measures" in paragraph 2 *(d)* of Canada's declaration contained no mention of the use of force and that the expression should not be interpreted to include it — not least because the relevant provisions of the

1982 United Nations Law of the Sea Convention relating to enforcement measures also make no mention of the use of force.

81. The Court notes that, following the adoption of Bill C-29, the Coastal Fisheries Protection Act authorized protection officers to board and inspect any fishing vessel in the NAFO Regulatory Area and "in the manner and to the extent prescribed by the regulations, use force that is intended or is likely to disable a foreign fishing vessel", if the officer "believes on reasonable grounds that the force is necessary for the purpose of arresting" the master or crew (Section 8.1). Such provisions are of a character and type to be found in legislation of various nations dealing with fisheries conservation and management, as well as in Article 22 (1) *(f)* of the United Nations Agreement on Straddling Stocks of 1995.

82. The Coastal Fisheries Protection Regulations Amendment of May 1994 specifies in further detail that force may be used by a protection officer under Section 8.1 of the Act only when he is satisfied that boarding cannot be achieved by "less violent means reasonable in the circumstances" and if one or more warning shots have been fired at a safe distance (Sections 19.4 and 19.5). These limitations also bring the authorized use of force within the category familiar in connection with enforcement of conservation measures.

83. As to Spain's contention that Section 18.1 of the 1994 Act and the amendment of Section 25 of the Criminal Code constitute measures of penal law other than enforcement of fisheries conservation measures, and thus fall outside of the reservation, the Court notes that the purpose of these enactments appears to have been to control and limit any authorized use of force, thus bringing it within the general category of measures in enforcement of fisheries conservation.

84. For all of these reasons the Court finds that the use of force authorized by the Canadian legislation and regulations falls within the ambit of what is commonly understood as enforcement of conservation and management measures and thus falls under the provisions of paragraph 2 *(d)* of Canada's declaration. This is so notwithstanding that the reservation does not in terms mention the use of force. Boarding, inspection, arrest and minimum use of force for those purposes are all contained within the concept of enforcement of conservation and management measures according to a "natural and reasonable" interpretation of this concept.

* *

85. In this Judgment, the Court has had to interpret the words of the Canadian reservation in order to determine whether or not the acts of Canada, of which Spain complains, fall within the terms of that reservation, and hence whether or not it has jurisdiction. For this purpose the Court has not had to scrutinize or prejudge the legality of the acts referred to in paragraph 2 *(d)* of Canada's declaration.

Because the lawfulness of the acts which the reservation to the Canadian declaration seeks to exclude from the jurisdiction of the Court has no relevance for the interpretation of the terms of that reservation, the Court has no reason to apply Article 79, paragraph 7, of its Rules in order to declare that Canada's objection to the jurisdiction of the Court does not possess, in the circumstances of the case, an exclusively preliminary character.

* *

86. In the course of the proceedings Spain argued that the reservation contained in paragraph 2 *(d)* of Canada's declaration might be thought to have the characteristics of an "automatic reservation" and thus be in breach of Article 36, paragraph 6, of the Statute. It is clear from the Court's interpretation of the reservation as set out above that it cannot be regarded as having been drafted in terms such that its application would depend upon the will of its author. The Court has had full freedom to interpret the text of the reservation, and its reply to the question whether or not it has jurisdiction to entertain the dispute submitted to it depends solely on that interpretation.

* * *

87. In the Court's view, the dispute between the Parties, as it has been identified in paragraph 35 of this Judgment, had its origin in the amendments made by Canada to its coastal fisheries protection legislation and regulations and in the pursuit, boarding and seizure of the *Estai* which resulted therefrom. Equally, the Court has no doubt that the said dispute is very largely concerned with these facts. Having regard to the legal characterization placed by the Court upon those facts, it concludes that the dispute submitted to it by Spain constitutes a dispute "arising out of" and "concerning" "conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area" and "the enforcement of such measures". It follows that this dispute comes within the terms of the reservation contained in paragraph 2 *(d)* of the Canadian declaration of 10 May 1994. The Court consequently has no jurisdiction to adjudicate upon the present dispute.

* * *

88. Finally, the Court notes that, in its Counter-Memorial of February 1996, Canada maintained that any dispute with Spain had been settled,

since the filing of the Application, by the agreement concluded on 20 April 1995 between the European Community and Canada, and that the Spanish submissions were now without object. However, at the beginning of Canada's oral argument, its Agent informed the Court that his Government intended to challenge the Court's jurisdiction solely on the basis of its reservation: "It is on this problem, and no other, that the Court is called upon to rule." This position was confirmed at the end of the oral proceedings. Spain nonetheless draws attention to the "Court's statutory duty to verify the existence of a dispute between States in order to exercise its function".

It is true that it is for the Court to satisfy itself, whether at the instance of a party or *proprio motu*, that a dispute has not become devoid of purpose since the filing of the Application and that there remains reason to adjudicate that dispute (see *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 38; *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974,* p. 271, para. 58). The Court has, however, reached the conclusion in the present case that it has no jurisdiction to adjudicate the dispute submitted to it by Spain (see paragraph 87 above). That being so, in the view of the Court it is not required to determine *proprio motu* whether or not that dispute is distinct from the dispute which was the subject of the Agreement of 20 April 1995 between the European Community and Canada, and whether or not the Court would have to find it moot.

* * *

89. For these reasons,

THE COURT,

By twelve votes to five,

Finds that it has no jurisdiction to adjudicate upon the dispute brought before it by the Application filed by the Kingdom of Spain on 28 March 1995.

IN FAVOUR: *President* Schwebel; *Judges* Oda, Guillaume, Herczegh, Shi, Fleischhauer, Koroma, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Lalonde;

AGAINST: *Vice-President* Weeramantry; *Judges* Bedjaoui, Ranjeva, Vereshchetin; *Judge* ad hoc Torres Bernárdez.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fourth day of December, one thousand nine hundred and ninety-eight, in three copies, one of which will be

placed in the archives of the Court and the others transmitted to the Government of the Kingdom of Spain and the Government of Canada respectively.

(Signed) Stephen M. SCHWEBEL,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

President SCHWEBEL and Judges ODA, KOROMA and KOOIJMANS append separate opinions to the Judgment of the Court.

Vice-President WEERAMANTRY, Judges BEDJAOUI, RANJEVA and VERESHCHETIN, and Judge *ad hoc* TORRES BERNÁRDEZ append dissenting opinions to the Judgment of the Court.

(Initialled) S.M.S.
(Initialled) E.V.O.