

Fisheries Jurisdiction Case (Spain v Canada)

Julia Pfeil

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A. Factual Background

- 1 The judgment of the → *International Court of Justice (ICJ)* in the Fisheries Jurisdiction Case between Spain and Canada relates to a series of events which have become known as the 'Turbot War' in the media. In 1994, Canada and the → *European (Economic) Community ('EC')* could not agree on the total allowable catch for certain straddling stocks covered by the Northwest Atlantic Fisheries Organization's (NAFO) Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries (see also → *Straddling and Highly Migratory Fish Stocks*). Disagreement centred on fishing activities in the Grand Banks area off the Canadian coast at Newfoundland, which in part belongs to the → *high seas*.
- 2 On 12 May 1994, Canada amended its Coastal Fisheries Protection Act by extending its area of application to also cover parts of the high seas in the Grand Banks area. The amendment made it illegal for vessels flying the flag of certain States, all of them → *flags of convenience*, to fish in that particular area between 9 March and 31 December in any year, and accorded Canadian authorities respective enforcement powers. These powers included the right to board, inspect, and search vessels, and to use force to arrest the master of a vessel. In 1995, Spain and Portugal were added to the list of flag States concerned.
- 3 On 10 May 1994, Canada had deposited the Declaration by Canada Recognizing as Compulsory the Jurisdiction of the International Court of Justice, in Conformity with Art. 36, Para. 2, Statute of the International Court of Justice ('Canada's Declaration of Acceptance'), thereby revoking its prior declaration. The new declaration differed from the old one merely in that it contained one additional reservation which excluded jurisdiction for all: '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.'
- 4 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 the Grand Banks area by Canadian Government vessels. Several warning shots were fired. The vessel was seized and the master arrested on charges of violations of Canadian fisheries regulations. Part of the ship's catch was confiscated. The members of the crew were released immediately. The master was released following the payment of bail, and the vessel was released following the posting of a bond.
- 5 After vehement → *protest* from Spain and the EC, on 20 April 1995, the EC and Canada agreed on fisheries control and enforcement measures. Canada agreed to remove Spain and Portugal from the list of flag States covered by its amended fisheries legislation. Following the Agreed Minute on the Conservation and Management of Fish Stocks between Canada and the European Community, all proceedings against the *Estai* and its master were discontinued; subsequently, the confiscated portion of the catch was returned. A lawsuit brought by the owners of the *Estai* against Canada was, however, unsuccessful (*Pereira v the Attorney General of Canada*).

B. History of Proceedings

- 6 On 28 March 1995, Spain instituted proceedings against Canada. Both parties appointed ad hoc judges. Canada argued that the ICJ lacked jurisdiction (→ *International Courts and Tribunals, Jurisdiction and Admissibility of Inter-State Applications*). The Court thus decided to first address the question of jurisdiction.
- 7 Canada argued that the ICJ had no jurisdiction pursuant to the reservation contained in its declaration of acceptance. Spain argued that the Canadian reservation could not cover the subject matter of the dispute because of Canada's lack

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Jurisdiction of the International Court of Justice Hanqin Xue, 2017-07-03 The International Court of Justice principal judicial organ of the United Nations plays an important and unique role in the peaceful settlement of international disputes As a third party mechanism it is a highly technical and well structured institution Through its continuous and consistent jurisprudence it provides legal certainty stability and predictability to the interpretation and application of international law This special course intends to introduce some general concepts that underlie international adjudication and the basic rules and principles governing the competence and jurisdiction of the Court Notwithstanding its prominence the Court does not have a general and unconditional competence in dispute resolution Its jurisdiction is based on the consent of the States both in general terms as well as in each specific case which reflects the attributes of the State system Jurisdiction is a substantive matter The Court's decision on the question of jurisdiction is no less important than on the merits *The New Entrants*

Problem in International Fisheries Law Andrew Serdy, 2016-02-19 International agreements on allocation of fish stocks do not apply to other States can they be prevented from upsetting hard fought bargains **The Peaceful Settlement of**

International Disputes Yoshifumi Tanaka, 2018-01-11 Addressing not only inter state dispute settlement but also the settlement of disputes involving non State actors The Peaceful Settlement of International Disputes offers a clear and systematic overview of the procedures for dispute settlement in international law In light of the diversification of dispute settlement procedures traditional means of international dispute settlement are discussed alongside newly developing fields such as the dispute settlement system under the United Nations Convention on the Law of the Sea the WTO dispute settlement systems the peaceful settlement of international environmental disputes intra state disputes mixed arbitration the United Nations Compensation Commission and the World Bank Inspection Panel Figures are used throughout the book to help the reader to better understand the procedures and institutions of international dispute settlement and suggestions for further reading support exploration of relevant issues Suitable for postgraduate law and international relations students studying dispute settlement in international law and conflict resolution this book helps students to easily grasp key concepts and issues **The World Court Reference Guide and Case-Law Digest** Bimal Patel, 2014-04-10 This single volume

comprehensive and systematic overview of procedural and organizational aspects of the jurisprudence of the World Court covers the period from 2001 to 2010 and includes case law digests from 1992 to 2010 it identifies analytical patterns on various procedural judicial and non judicial matters for the first time The volume offers Statements of initial claims as well as counter claims of the contentious cases Summarized details of all orders as well as the duration of the oral and written proceedings Summaries and headnotes texts of the operative and final paragraphs of all judicial decisions the composition of the Court and declarations and opinions of its Members Systematic reference on Sources of Law Coverage of the composition of the Litigation teams and much more This work will be an indispensable reference tool for international and national

judicial and quasi judicial bodies lawyers and law firms and academicians alike It will prove to be a very useful source for research on and analysis of the jurisprudence of the World Court Excerpt from the Foreword to this Volume by H E Judge Peter Tomka President ICJ Mr Bimal Patel has assembled an impressive compilation of both institutions respective case load spanning a period of 88 years namely from the inception of the PCIJ in 1922 to the ICJ s recent activities providing coverage up until 31 December 2010 Patel s work provides us with succinct but accurate freeze framed accounts of the contentious and advisory proceedings that made their way from the Court s docket into orders advisory opinions and judgments thereby presenting a completed puzzle of the Court s work

The Statute of the International Court of Justice Andreas Zimmermann,Christian J. Tams,Karin Oellers-Frahm,Christian Tomuschat,2019-03-21 This landmark publication in the field of international law delivers expert assessment of new developments in the important work of the International Court of Justice ICJ from a team of renowned editors and commentators The ICJ is the principal judicial organ of the United Nations and plays a central role in both the peaceful settlement of international disputes and the development of international law This comprehensive Commentary on the Statute of the International Court of Justice now in its third edition analyses in detail not only the Statute of the Court itself but also the related provisions of the United Nations Charter as well as the relevant provisions of the Court s Rules of Procedure Six years after the publication of the second edition the third edition of the Commentary embraces current events before the International Court of Justice as well as before other courts and tribunals relevant for the interpretation and application of its Statute The Commentary provides a comprehensive overview and analysis of all legal questions and issues the Court has had to address in the past and looks forward to those it will have to address in the future It illuminates the central issues of procedure and substance that the Court and counsel appearing before it face in their day to day work In addition to commentary covering all of the articles of the Statute of the ICJ plus the relevant articles of the Charter of the United Nations the book includes two scene setting chapters Historical Introduction and General Principles of Procedural Law as well as important and instructive chapters on Counter Claims Discontinuation and Withdrawal and Evidentiary Issues

Commentary on the Third Geneva Convention ,2021-09-09 The application and interpretation of the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 have developed significantly in the seventy years since the International Committee of the Red Cross ICRC first published its Commentaries on these important humanitarian treaties To promote a better understanding of and respect for this body of law the ICRC commissioned a comprehensive update of its original Commentaries of which this is the third volume The Third Convention relative to the treatment of prisoners of war and their protections takes into account developments in the law and practice in the past seven decades to provide up to date interpretations of the Convention The new Commentary has been reviewed by humanitarian law practitioners and academics from around the world This new Commentary will be an essential tool for anyone involved with international humanitarian law

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Diane A. Desierto,2012-01-05 Unveiling the complex dynamic between State sovereignty and necessity doctrine as historically practiced in international political relations this book proposes analytical criteria to assess the lawfulness and legitimacy of interpretations of necessity and national emergency clauses in specialized treaty regimes Reciprocity in Public International Law

Arianna Whelan,2023-03-02 There is a common perception of reciprocity as a concept that is opposed to the communitarian interests that characterise contemporary international law or merely a way of denoting reactions to unfriendly or wrongful conduct This book disputes this approach and highlights how reciprocity is instead linked to the structural characteristic of sovereign equality of States in international law This book carries out an in depth analysis of the concept of reciprocity and the elements that characterise it before examining the various roles and articulations of reciprocity in a number of fields of public international law the law of treaties the treatment of individuals the execution of international law and the jurisdiction of international courts and tribunals In all these areas it analyses both more traditional and more contemporary examples to demonstrate how reciprocity is closely linked to the very structure of public international law

Negotiations in the Case Law of the International Court of Justice Karel Wellens,2016-04-22 This book examines the multifunctional role negotiations play in the jurisprudence of the International Court of Justice Prior negotiations may be necessary to bring to the surface and clarify the legal aspects of a dispute before its submission to the ICJ Negotiations may play a potential and parallel role during the course of the proceedings results of negotiations may find their way into the judicial reasoning and may even form part of the basis of the judicial settlement The Court s judgment may require further negotiations for its implementation A failure of this process may bring the parties back before the Court This volume presents a detailed and critical examination of the case law of the ICJ through the prism of the functional interaction between negotiation and judicial settlement of disputes In cases where legal interests of third States are involved this functional interaction becomes even more complex The focus is not on the merits of each individual case but on the Court s contribution and clarification of this functional interplay The systematic analysis of the Court s jurisprudence makes this book essential reading for those involved with and studying international law and justice **International Investment Law and Water Resources Management**

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water and the need for regulatory flexibility may increasingly compel governments to adopt measures with significant economic impact on foreign investment In International Investment Law and Water Resources Management Daza Clark offers an appraisal of indirect expropriation revisiting the well known doctrine of the police power Through the lens of international investment law the author explores a framework that assesses the legitimate exercise of police power with particular attention to the special nature of water resources **The International Court of Justice** Serena

Forlati,2014-06-23 The International Court of Justice is the principal judicial organ of the United Nations and epitomizes the very notion of international judicial institution Yet it decides inter State disputes only with the parties consent This makes it more similar to international arbitral tribunals than other international courts However the permanent nature of the Court the predetermination of procedural rules by the Statute and the Rules of Court the public character of proceedings the opportunity for third States to intervene in a case under Articles 62 and 63 of the Statute and the Court s role as the principal judicial organ of the United Nations mark a structural difference between the ICJ and non institutionalized international arbitral tribunals This book analyses if and to what extent these features have influenced the approach of the ICJ and of the PCIJ before it to its own judicial function and have led it to depart from the principles established in international arbitration State Territory and International Law Josephat Ezenwajiaku,2020-05-31 This book proposes a re

interpretation of Article 2 4 of the Charter of the United Nations to read or at least include respect for the inviolability of State territory While States purport to obey the prohibition of the Use of Force they frequently engage in activities that could undermine international peace and security In this book the author argues that State practice opinio juris as well as contentious and advisory opinions of the International Court of Justice have promoted the first limb of Article 2 4 Although wars between States have decreased the maintenance of international peace and security remains a mirage as shown by the increase in intra and inter State conflicts across the world The author seeks to initiate a rethinking of the provision of Article 2 4 which the International Court of Justice has described as the cornerstone of the United Nations The author argues that the time is ripe for States to embrace an evolutive interpretation of Article 2 4 to mean respect as opposed to the traditional view of the threat or the use of force He also evaluates the discourse regarding territorial jurisdiction in cyberspace and argues that the efforts made by the international community to apply Article 2 4 to cyberspace suggest that the article is a flexible and live instrument that should be adjusted to address the circumstances that endanger international peace and security This book will engineer a serious debate regarding the scope of Article 2 4 which before now has always been limited to the threat or use of force As a result it will be of interest to academics and students of public international law as well as diplomats and policymakers *Strengthening the Validity of International Criminal Tribunals* Joanna

Nicholson,2018-04-17 International criminal law is experiencing a time of uncertainty and flux There is increasing doubt surrounding where the international criminal justice project is heading The contributions in this multi disciplinary volume

take stock of the situation and explore ways in which the validity of international criminal tribunals can be strengthened as the field of international criminal justice moves into a more uncertain future Areas considered include shaping the aims and aspirations of international criminal tribunals increasing the effectiveness and legality of substantive international criminal law improving certain processes and procedures of international criminal tribunals improving relationships between international criminal tribunals and other organisations and building trust between international criminal tribunals and African states World Court Digest ,2002-08-05 The World Court Digest continues the Fontes Iuris Gentium a series that presents the decisions of the Permanent Court of International Justice up to 1990 The new volume covers the period from 1996 to 2000 All important pronouncements of the Court in its judgments and advisory opinions are systematically arranged under specific topics taken from substantive and procedural international law The World Court Digest provides reliable access to the decisions of the most significant international judicial organ on questions as important as the aerial incident at Lockerbie the crimes of genocide in Bosnia and Herzegovina as well as the use of nuclear weapons and the use of force in the Yugoslavian context The Space Treaties at Crossroads George D. Kyriakopoulos,Maria Manoli,2019-02-18 This contributed volume addresses the future development of space law in light of our ever growing space activities the multiplicity of new space actors and the challenges posed by novel space technologies Unlike existing space law literature it sets its sights on the future envisaging how space law could and should evolve in coming decades Written by experienced professors academics and practitioners in the field this edited volume constitutes a valuable tool for understanding the current state of space law the challenges it is called upon to address and the new phase it is about to enter In addition this book initiates a discussion de lege ferenda addressing the letter and spirit of space law in the world of modern and future space activities These papers were presented at The Space Treaties at Crossroads Considerations de lege ferenda held on August 28 to 29 2015 in Athens Greece The conference was jointly organized by the National and Kapodistrian University of Athens and the Institute of Air and Space Law of McGill University **Enhancing the Rule of Law through the International Court of Justice** Giorgio Gaja,Jenny Grote Stoutenburg,2014-07-10 What is the current role of the International Court of Justice in contributing to the rule of law in the international community and which future developments might enable it to have an even greater impact These questions are explored in Enhancing the Rule of Law through the International Court of Justice edited by Judge Giorgio Gaja and Jenny Grote Stoutenburg Associate Legal Officer at the Court Resulting from a conference celebrating the centenary of the Peace Palace in The Hague the volume brings together contributions from Judges of the Court eminent scholars and new voices With contributions by Ronny Abraham Mohamed Bennouna Antonio A Canado Trindade Giorgio Gaja Christopher Greenwood Mariko Kawano Marcelo Kohen Chehrzad Krari Lahya Rosa M Hrluin Hugh Thirlway and Andreas Zimmermann **International Legal Materials** ,2005 The International Tribunal for the Law of the Sea P. Chandrasekhara Rao,Philippe Gautier,2018-02-23 This book provides

a first hand insight into the constitution jurisdiction procedure and judicial practice of the International Tribunal for the Law of the Sea It provides a valuable guide to the jurisprudence of the Tribunal over the past 20 years and serves as a reference point for practical information on how cases are received and handled by the Tribunal

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