



American Model United Nations

International Court of Justice

IN THE INTERNATIONAL COURT OF JUSTICE

SPAIN,

APPLICANT

V.

CANADA,

RESPONDENT

MEMORIAL OF THE CANADIAN GOVERNMENT

COMES NOW the Government of Canada and for their Memorial to the Court states the following:

STATEMENT OF FACT

In many of Canada's Northeastern Provinces the economy has been, and is overwhelmingly, dependent on the fishing industry. During much of the 1970's and 1980's the normally plentiful amount of turbot became perilously close to an irreversible depletion. Consequently, Canada has worked to protect this fishing industry through international cooperation and national legislation. With Canada's involvement in the North Atlantic Fisheries Organizations (NAFO), to which Spain is party; a quota on turbot was set in January 1995. Contesting the setting of the quota, the European Union began trying to implement a unilateral quota which allowed for a country to fish 18,630

tons of turbot, which is over 69% of the original NAFO quota. In response to the discontinued cooperation the Canadian government amended the Coastal Fisheries Protection Act (CFPA) to prohibit Spain and Portugal from fishing, retaining, and catching turbot from March 3rd to December 31st of any year. Canada also continued with its resolve to protect the fishing grounds by placing a moratorium on fishing the turbot. The legislation reflected a growing concern by members of the Canadian and International community over the dwindling population of turbot.

After establishing the Moratorium on fishing of turbot, some foreign vessels remained, notably the Spanish fishing trawler the *Estai*. During the afternoon of March 9th the Canadian Department of Fisheries and Oceans (DFO) vessel, the Cape Roger, found the *Estai* to be illegally trawling for turbot. The Cape Roger then proceeded to board the *Estai* unsuccessfully. The *Estai* cut its nets and fled. After several attempts the *Estai* was boarded by DFO officials and Royal Canadian Mounted Police. The commander of the vessel was arrested and the trawler was then towed back to St. Johns port in Canada. The crew was charged with fishing turbot illegally and violating provisions of the CFPA.

STATEMENT OF JURISDICTION

The Court has jurisdiction over this case. Canada as a member of the U.N recognizes a spirit of resolution through an international body.

STATEMENT OF LAW

1. International law recognizes the agreement between states involved in NAFO as an international convention, or treaty.
2. International Custom, as evidence of a general practice is accepted as law
3. General Principles of Law recognized by civilized States are recognized as law.
4. International law recognizes UNCLOS III signed by U.N. member states in 1982.
5. The Canadian government recognizes Parliament bill C-29. This law was created on May 12, 1994. The law describes fishing standards and procedures in northeast Canadian waters. The law prescribed the lawful methods for the Canadian law enforcement officers to enforce bill C-29.
6. The CFPA states it is illegal for NAFO states to fish stocks of fish straddling the NAFO Regulatory Area.

ARGUMENTS

1. Spain refused to negotiate to resolve many disputes that arose before and after the Canadian action against the unlawful *Estai*

On March 3, 1995 the government appealed to the EU to call for a multilateral 60-day moratorium on the fishing so that both Canada and Spain could peacefully negotiate to resolve the issue. Spain refused this negotiating opportunity and continued to fish unethically. On the week of March 22, negotiations at the G-7 commenced to attempt and resolve the *Estai* incident peacefully. However, the negotiations again broke down as Spain refused to participate legitimately. When Canada and the EU states finally established an agreement on acceptable fishing practices, Spain still refused to accept the multilateral agreement. Consequently, the EU had to force Spain to participate, and on April 15, Spain finally accepted the agreement.

2. Spain violated the terms agreed to in the NAFO

Countries involved in the European Union, including Spain, set new rules for conduct which changed the written and spirit of the rules outlined the NAFO agreement. The intent of this organization, which both Spain and Canada agreed upon, was to conserve the vital, yet diminishing, population of fish in the northeast quadrant of Canadian waters. The EU declined numerous times to abide by the terms of the multilateral

agreement in favor of establishing new unilateral quotas for fish withdrawal. Unlike Spain, it is important to note Canada has never used the objection principle on any multilateral NAFO agreements. The quotas were significantly higher than the previous contractual terms. Furthermore, the *Estai* was utilizing an illegal net which was designed to catch all fish regardless of size. The net not only had undersized mesh originally, but the net contained an even smaller-mesh lining to trap even smaller fish. The type of net is illegal, because it catches younger, smaller fish which destroys the fish population. Therefore, Spain completely defaulted from their previous agreement with Canada and the other countries involved in the fish conservation contract

3. Canada actions were a last resort to save the endangered wildlife population.

In an attempt to uphold the general principles of the law recognized by the states that participated in the multilateral NAFO agreement Canada acted with peaceful force. If Canada had not acted in the immediate manner it did, there may be no fish left in the NAFO regulated waters. Canada could not wait for the UN to deliberate, especially when Spain presented no evidence of cooperation in the past. Canada acted to preserve the UN UNCLOS III international law which calls for an, “equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection of the marine environment...for the seas and oceans.”

4. Spain knowingly violated Canadian law working to conserve the fish wildlife.

Besides Spain’s previous violation they knowingly violated law a second time when they fished vastly over their law assigned quota. The Canadian government acted, under full authority of the law, in consistency with the procedures laid out in C-29. These procedures were:

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 of the NAFO Regulatory Area;
- b) With a warrant issued under section 7.1, search and fishing vessel found within Canadian fisheries waters of the NAFO Regulatory Area and its cargo.

Coastal Fisheries Protection Act, amended May 1994.

Spain is now suing the Canadian government for acting in procedural uniformity with Canada law.

5. Spain was fishing a straddling stock of fish in the NAFO Regulatory Area.

The location where the *Estai* was initially spotted by Canadian government authorities was, if not in Canadian waters, in close enough proximity to be fishing a straddling stock. The type of net the *Estai* was using to catch the fish was not only illegal, but was compared to the size of a football field by investigators. Furthermore, the *Estai*'s net was so full with Canadian fish it cut its nets to attempt to get away from authorities, because the nets were too weighted with fish for the *Estai* to get away. The fish the *Estai* was fishing so carelessly for were, if not in Canadian waters, a straddling stock.

SUMMARY AND PRAYER FOR RELIEF

Canada honors the multilateral agreement created by NAFO. It wishes that all countries participate in the agreement. However, Canada will not tolerate abuse of the agreement by any state or private fishing vessel. The purpose of the agreement is to conserve the fish population fairly and orderly. Deliberate defections away from the document are not only illegal, but threaten the livelihood of, not only the fish species, but also the livelihoods of many families who depend on the presence of fish. Canada demands all parties honor their international commitments and only fish in the manner prescribed in the agreement.