



*American Model United Nations*

## **International Court of Justice**

IN THE INTERNATIONAL COURT OF JUSTICE

SPAIN,

APPLICANT

V.

CANADA,

RESPONDENT

MEMORIAL OF SPAIN

STATEMENT OF FACT

On March 9<sup>th</sup>, 1995, the Spanish fishing trawler the Estai was in international waters when it was seized by the Canadian coast guard for allegedly fishing over the NAFO quota. On May 12<sup>th</sup> 1994, Canada passed an amendment to the coastal fisheries act giving itself nearly limitless power to control the NAFO regulatory zone outside of the Canadian EEZ. Spain is the second largest consumer of fish in the world and strict enforcement of a somewhat arbitrary fishing quota would cripple the economy.

STATEMENT OF JURISDICTION

The International Court of Justice has jurisdiction over this case.

STATEMENT OF LAW

1. The Principle of general international law which proclaims the exclusive jurisdiction of

The flag state over ships on the high seas, a principle codified by the Geneva convention on the high seas 1958, article 6, paragraph 1 and by the United Nations Convention on the Law of the Seas 1982, Article 92 and other articles to the same effect

2. The principle of general international law which proclaims freedom of navigation on the high seas, a principle codified by the Geneva convention on the high seas 1958 article 2 and by the United Nations Convention on the Law of the Seas 1982, Articles 87,90 and other articles to the same effect

3. The principle of general international law which proclaims freedom of fishing on the high seas, codified by the Geneva conventions on the High Seas 1958, Article 2 and by the United Nations Convention on the Law of the Seas 1982, Article 87, 116 and other articles to the same effect

4. The principle of general international law according to which no state may subject any part of the high seas to its sovereignty, codified by the Geneva convention on the high seas 1958, Article 2 and by the United Nations Convention on the Law of the Seas 1982, Article 89

5. The norm of general international law which rejects the right of hot pursuit on the high seas, outside the EEZ, a norm stated by the United Nations Convention on the Law of the Seas 1982, Article 111

6. The norm of general international law which, except as otherwise agreed between the

states concerned, prohibits imprisonment and corporal punishment as penalties for violations of fishing laws and regulations

7. The principle of general international law which makes it an obligation to settle international disputes by peaceful means in such a manner that peace, security and justice are not endangered, codified by the United Nations Charter, Article 2, paragraph 3

8. The principle of general international law according to which states may not invoke the provisions of their internal law as justification for their failure to observe the international norms in the force which bind them, codified by Article 27 of the Vienna convention on the law of treaties 1969 in relation to treaty norms

## ARGUMENTS

1. Bill C-29 extending Canada's jurisdiction is unlawful in regards to the law of the sea and international traditions and does not apply to Spain.

The ICJ said in the Anglo- Norwegian fisheries case of 1951 that the "delineation of sea areas has always been an international aspect; it cannot be dependent merely upon the will of the coastal state as expressed in its municipal law." Bill C-29 is a municipal law giving Canadian authorities the power to do as they see fit with any foreign vessel that is in the waters outside of the Canadian EEZ. This includes permitting a peace officer to use lethal force against a person to be arrested.

Although the conservation of fish stocks is an admirable goal, and one that Spain takes very seriously, Canada's unilateral efforts infringe on the rights of Spain as a sovereign nation.

2. Canada's actions against Spain's fishing trawler the Estai are unacceptable acts of enmity.

The Estai was captured in international waters and towed to Canada where the captain and crew were charged with violations of Canadian law. Canadian law applies only to the nation of Canada and to their EEZ. The Estai was 45 nautical miles outside of Canada's EEZ. The boarding of the Estai on the *suspicion* of illegal activities is at best reprehensible and at worst organized piracy on the high seas. Furthermore the confiscation of the boat's catch and papers is simply theft. Canadian law C-29 states within itself that it applies in particular to ships without a flag or those flying flags of convenience. The Estai was a Spanish ship flying the Spanish flag.

## SUMMARY

We would like to remind the justices that Spain brings these charges against Canada in regards to the belligerent act against a vessel flying the Spanish flag and the attempt to substitute a domestic law for an international one. Fortuitously no life was lost as a consequence of the reckless behavior of Canada.