

Analysis of the Balancing Mechanism Between the Jurisdiction of the International Court of Justice and the Legal Effect of Sovereign States' Optional Clause Reservations: The 1995 Fisheries Jurisdiction (Spain v. Canada) Case

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abstract: Using the International Court of Justice's 1995 case Fisheries Jurisdiction (Spain v. Canada) as a practical vantage point, this paper focuses on the Court's central question of whether it possessed jurisdiction over the dispute. Integrating relevant theories of international law and the regime governing reservations (including reservations to treaties), it examines how the ICJ, in exercising its jurisdiction, seeks to reconcile state sovereignty with international judicial practice. The paper explores the balance between the International Court of Justice's jurisdiction and the legal effect of sovereign States' Optional Clause Reservations, and offers a preliminary inquiry into the ICJ's jurisdictional mechanism and into how future international law might better accommodate the relationship between respect for the principle of State consent and the compulsory and universal character of adjudicatory jurisdiction.

keywords: International Court of Justice; Jurisdiction; Sovereign States Optional; Clause Reservations

Introduction

As an international judicial organ, the International Court of Justice (ICJ) has played an increasingly pivotal role in settling international disputes and upholding the international rule of law. An ever-growing number of States, relying on the authority and compulsory character of the Court's jurisdiction, have chosen to make voluntary declarations accepting the ICJ's jurisdiction, including declarations under Article 36(2) of the Statute. From the Court's own practical perspective, however, the exercise of jurisdiction must both secure the implementation of international law and respect the autonomous will of sovereign States—that is, take into account the principle of reservations invoked by States when accepting treaty obligations. The quest to balance the compulsory reach of the ICJ's jurisdiction with the sovereign autonomy of States has thus become a central issue for effective international adjudication. The dispute between Canada and Spain concerning fisheries jurisdiction on the High Seas offers a paradigmatic case for examining this problem. A close analysis of this case helps illuminate how the ICJ calibrates the scope of its jurisdiction when confronted with States' voluntary reservations, as well as the extent to which the Court asserts the compulsory force of its jurisdiction when managing the relationship between State sovereignty and international judicial practice, thereby seeking to address the complex practical difficulties of implementing judgments.

1. Case Summary

1.1 Factual Background

On 9 March 1995, the Canadian Coast Guard intercepted and seized the Spanish fishing vessel *Estai* on the High Seas approximately 245 nautical miles from Canada's coast, in NAFO Division 3L within the NAFO Regulatory Area, alleging violations of Canadian law and overfishing of Greenland Halibut (Turbot). Canadian officers boarded the vessel, arrested the captain, confiscated the catch, and towed the vessel to a Newfoundland port. Spain lodged a strong protest, arguing that Canada's high-seas enforcement lacked any basis in international law and exceeded the scope of rights conferred on coastal States by the "United Nations Convention on the Law of the Sea" (UNCLOS).

1.2 Legal Issues

Relying on the "Optional Clause" of compulsory jurisdiction under Article 36(2) of the "Statute of the International Court of Justice", Spain instituted proceedings alleging that Canada had violated the principle of the freedom of the High Seas; breached UNCLOS provisions governing the management of fisheries resources beyond the Exclusive Economic Zone; and abused force and enforcement powers. Canada, in turn, invoked its Declaration of 10 May 1994, contending that the case fell within the exclusion created by its Reservation under paragraph 2(d)—namely, "disputes arising out of conservation and enforcement measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area"—and that the International Court of Justice therefore lacked jurisdiction.

1.3 Judgment

By twelve votes to five, the Court held that it had no jurisdiction. It reasoned that Canada's Reservation was clear and lawful; that Spain had not objected at the time of filing; and that, under the principle of reciprocity, the scope of Spain's acceptance of compulsory jurisdiction must be read subject to Canada's Reservation, thereby excluding the dispute from the Court's jurisdiction.

1.4 Types of ICJ Jurisdiction Addressed in This Case

The International Court of Justice exercises two principal forms of jurisdiction: contentious jurisdiction and advisory jurisdiction. Contentious jurisdiction concerns the Court's authority to adjudicate specific legal disputes between States and render binding judgments. Advisory jurisdiction, by contrast, is exercised pursuant to Article 96 of the "Charter of the United Nations", under which the General Assembly, the Security Council, and other organs and specialized agencies may request advisory opinions on legal questions arising within the scope of their activities. As the Canada–Spain dispute plainly did not involve the exercise of advisory jurisdiction, the analysis here focuses on the Court's contentious jurisdiction.

2. The International Court of Justice's Reasoning Balancing "Voluntary Acceptance" and "Compulsory Character"

2.1 The "Voluntary Acceptance" Reflected in Permitting Sovereign States to Enter Reservations

2.1.1 The meaning and function of permitting sovereign States to formulate "Reservations" under International Law

In the field of the Law of Treaties, a "Reservation" is precisely defined as a unilateral statement made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it seeks to exclude or modify the legal effect of certain provisions of the treaty in their application to that State.^[1] Whatever its wording or designation, any statement that pursues this purpose constitutes a Reservation. The purpose of a State in formulating a Reservation is to determine, with respect to the application of specific treaty provisions to itself, whether it consents to the jurisdiction of the International Court of Justice and, if so, the specific scope of that acceptance, thereby modifying or excluding, in part, the legal effect of the treaty vis-à-vis that State. This constitutes an important means by which a sovereign State exercises its sovereignty and gives effect to its national will.

2.1.2 The Theoretical Basis for the International Court of Justice's Adherence to the Principle of Respecting Sovereign States' "Voluntary Acceptance"

2.1.2.1 The Institutional Nature of International Organizations

From the perspective of the International Court of Justice's nature, as a typical International Organization, its legal personality is derivative and, relative to Sovereignty, limited. The ICJ's scope of activity, legal status, and dispute-settlement functions all depend on authorization by Sovereign States. Accordingly, the prerequisite for the ICJ to acquire jurisdiction over a dispute is the voluntary acceptance of the parties; only within the bounds of State consent can the ICJ establish and exercise Optional Jurisdiction. This reflects the necessity of the ICJ's respect for State Sovereignty.

2.1.2.2 Historical Experience in Achieving Effective

Compliance with Judgments Compliance with ICJ judgments is often affected by State interests, domestic policy, international relations, and, at times, the ambiguity or incompleteness of the judgment itself. Most States, in consideration of maintaining the dignity of International Law, facilitating future international relations and international cooperation, and preserving their international reputation, choose to take measures to fulfill the obligations determined by the judgment even in the absence of

^[1] [UK] J. G. Starke, *Introduction to International Law*, translated by Zhao Weitian; revised by Wen Guangjun, Beijing: Law Press (China), 1984, p. 368.

coercive enforcement comparable to that of domestic courts. In practice, instances in which parties to a dispute do not fully comply with ICJ judgments are not uncommon. For example, in *Nicaragua v. United States* (1986), the United States refused to comply with the judgment and, when votes were held in the United Nations Security Council and the United Nations General Assembly on resolutions calling for immediate payment of compensation to Nicaragua, it exercised its veto or voted against. This demonstrates that, to ensure the effectiveness of its judgments, the ICJ still relies on the autonomous cooperation of the Sovereign States concerned.

2.2 The Legal Basis for the “Compulsory” Character of the International Court of Justice’s Contentious Jurisdiction

From the perspective of the International Court of Justice, “Compulsory” denotes that the Court possesses binding authority to adjudicate certain legal disputes without, in every instance, relying on a special agreement between the parties.

The legal source of this “Compulsory” character is found in Article 36(2) of the Statute of the International Court of Justice: “The States Parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: (a) the interpretation of a treaty; (b) any question of International Law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation.”

Focusing on Article 36(2), a State may at any time declare that, with respect to matters such as the interpretation of treaties, any question of International Law, any fact constituting a breach of an international obligation, and the nature or extent of the reparation to be made, it recognizes the ICJ’s jurisdiction as compulsory in relation to any other State accepting the same obligation.^[2]

In the present case, Spain submitted its dispute with Canada to the International Court of Justice pursuant to that provision. In its Application, Spain contended that Canada’s conduct in the Estai incident not only violated the “Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries of 1978” but also constituted a serious and flagrant breach of a series of international principles and norms, falling within the category of “the existence of any fact which, if established, would constitute a breach of an international obligation”. It should be particularly noted that the Principle J invoked by Spain derives from Article 27 of the 1969 “Vienna Convention on the Law of Treaties”, which emphasizes that States may not invoke provisions of their domestic law as a justification for non-compliance with international norms in force that are binding upon them. In the context of this case, Spain contends that the domestic law advanced by Canada in fact refers to Canada’s reservation to the “Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries” and to subsequent domestic legislation concerning fisheries harvesting.

2.3 The International Court of Justice: Balancing Criteria and Approach Reflected in the Present Case

2.3.1 Special Rules of Interpretation

In its final Judgment, the International Court of Justice noted that “in such

^[2] Li, Lianglin. *Reservations to the Optional Clause and the International Court of Justice’s Compulsory Jurisdiction under the Optional Clause: An Analysis of the Fisheries Jurisdiction (Spain v. Canada) Case*. Wuhan University International Law Review, 2006, 5(02): 414–426.

circumstances, the Court has, in earlier cases, elaborated in detail the appropriate rules for the interpretation of declarations and reservations.” At the same time, the Court held that a State’s declaration accepting the Court’s compulsory jurisdiction is a unilateral act of a sovereign State, and that the rules governing its interpretation differ from those established by the “Vienna Convention on the Law of Treaties.”

2.3.1.1 The 1957 Certain Norwegian Loans case and the “Principle of Reciprocity in Interpretation”

Between 1885 and 1909, the Government of Norway and two Norwegian banks issued public loans on foreign markets stipulating that principal and interest would be payable in gold or in currency convertible into gold. In 1914 Norway ceased payment in gold, and in 1923 enacted legislation providing for repayment in Norwegian currency (kroner) on a conversion basis. The French Government, acting on behalf of French bondholders, brought a claim against Norway and sought to refer the dispute to the International Court of Justice, invoking Article 36, paragraph 2, of the “Statute of the International Court of Justice” and the respective declarations by Norway and France accepting the Court’s compulsory jurisdiction, and argued that the Court had jurisdiction. Norway, however, contended that the dispute fell within its exclusive domestic jurisdiction and did not fall within the types of disputes provided for in the Statute. Norway further pointed out that, although it had accepted the Court’s compulsory jurisdiction without reservation, France’s declaration contained a reservation excluding matters essentially within its domestic jurisdiction. The Court held that its jurisdiction depends upon the declarations made by the Parties on the basis of reciprocity. Norway’s declaration accepted the Court’s compulsory jurisdiction without reservation, whereas France’s declaration did so subject to reservations excluding, inter alia, matters essentially within its domestic jurisdiction. The scope of France’s acceptance of jurisdiction was therefore narrower than Norway’s. Under the principle of reciprocity, Norway was entitled to invoke the reservation contained in France’s declaration to exclude the relevant dispute from the Court’s jurisdiction.

This case demonstrates that, in determining jurisdiction, the International Court of Justice considers the mutual consistency and reciprocity of the Parties’ declarations accepting jurisdiction. Where one Party’s declaration contains a reservation, the other Party may invoke that reservation to preclude the Court’s jurisdiction. This reflects the Court’s respect for State sovereignty and its application of the reciprocity principle when exercising its compulsory jurisdiction.

2.3.1.2 The 1984 case “Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)” reflects rules that pursue the stability and fairness of the international legal order while accommodating flexibility

In “Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),” the International Court of Justice, when determining its jurisdiction, relied not only on the United States’ declaration accepting the Optional Clause under Article 36, paragraph 2, of the “Statute of the International Court of Justice,” but also took into account provisions in various bilateral and multilateral treaties concluded by the United States that contemplated referring disputes to the Court. For example, the 1956 “Treaty of Friendship, Commerce and Navigation” between the United States and Nicaragua. Although, at the merits stage, the Court primarily applied customary international law in light of the United States’ “Multilateral Treaty Reservation,” the existence of that Treaty and any

dispute-settlement clause it contained were considered as part of the broader treaty context at the jurisdictional phase, indicating that the United States had, in its bilateral relations with Nicaragua, previously envisaged and arranged for the judicial settlement of related disputes. Ultimately, the Court interpreted and assessed the relevant treaty instruments in their entirety and concluded that it had jurisdiction over the case.

The proper limits of the right to formulate reservations must be assessed in the light of State practice. In terms of its original rationale, the reservation mechanism was established to address the tension between the generally undifferentiated conferral of treaty benefits and the divergence of States' interests; to remedy and reconcile differences arising from unequal power, varying capacities for risk mitigation, and distinct interests and concerns; and thereby to better maintain the international order. The interpretive approach adopted by the International Court of Justice in this case aligns with that practical purpose. This holistic, multi-factor method enables the Court to determine its jurisdiction more comprehensively and accurately, and to safeguard the stability and fairness of the international legal order.

2.3.2 The International Court of Justice's inclination to respect the voluntary character of sovereign States' undertakings

Revisiting the "Fisheries Jurisdiction (Spain v. Canada)" dispute, the International Court of Justice held that a State's declaration accepting the Court's compulsory jurisdiction is a unilateral act of a sovereign State, and that the rules governing its interpretation differ from the general treaty-interpretation rules established by the "Vienna Convention on the Law of Treaties." The Court tends to interpret declarations accepting its compulsory jurisdiction, and any accompanying reservations, by starting from the accepting State's contemporaneous intention and adopting a natural and reasonable reading.^[3]

In the present case, the International Court of Justice, having comprehensively examined materials such as Canada's ministerial statements, parliamentary debates, legislative intent, and official gazettes, declined to adopt the interpretative methods proposed by Spain, such as the principle of *contra proferentem* and the principle of effectiveness. Upon review, the dispute submitted by Spain was determined to be one arising from and concerning the conservation and management measures taken by Canada against vessels fishing in the Regulatory Area of the Northwest Atlantic Fisheries Organization as established by the 1978 "Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries," as well as the enforcement of such measures, thereby falling within the scope of the fourth reservation listed in Canada's declaration of May 1994. Consequently, the International Court of Justice determined that it had no jurisdiction over the dispute.

^[3] Zhang, Fayang. *A Study on the Issue of Reservations to the Optional Jurisdiction of the International Court of Justice*. Master's thesis, Guangdong University of Foreign Studies, 2021. DOI: 10.27032/d.cnki.ggdwu.2021.000143.

3. The Theoretical Significance of the Balance between the Jurisdiction of the International Court of Justice and the Validity of Voluntary Reservations by Sovereign States

From the perspective of the International Court of Justice (ICJ), according to Article 36, paragraph 2 of the “Statute of the International Court of Justice,” although the Court possesses compulsory jurisdiction over certain legal disputes and does not need to rely on a special agreement between the parties for every adjudication, the exercise of such compulsory jurisdiction has specific prerequisites. It is not entirely free from the constraints of state will but is based on declarations made in advance by the parties concerned.

The textbook “International Public Law” (Marxist Theory Research and Construction Project) also points out that state consent remains the foundation of the source of the ICJ's jurisdiction. States decide autonomously whether and to what extent to accept the compulsory jurisdiction of the Court. The exercise of this jurisdiction is limited by the scope of the voluntary declarations of acceptance made by states, often referred to as “reservations.” This reflects the fundamental principle of respect for state sovereignty in international law, namely, the right of states to autonomous decision-making in international affairs. On the one hand, the stability and fairness of the international legal order require the ICJ to actively exercise jurisdiction to resolve disputes and uphold the authority of international law; on the other hand, the maintenance of state sovereignty requires the Court to carefully consider the reservations and will of states when exercising jurisdiction. This contradiction necessitates that the Court carefully weigh these factors in every case to find an appropriate balance.

This balance not only helps maintain the authority and legitimacy of the International Court of Justice but also facilitates the development and implementation of international law. By respecting state sovereignty, the Court can obtain the cooperation and support of states, thereby resolving international disputes more effectively. At the same time, the Court's jurisdiction can also prompt states to comply with their international law obligations and safeguard the common interests of the international community.

4. Conclusion

Through an in-depth analysis of the dispute between Canada and Spain, it is clearly evident that the International Court of Justice upholds the principled stance of respecting sovereign states when facing disputes regarding reservations and the interpretation of the origins of optional compulsory jurisdiction. The Court prioritized interpreting the reservation based on the declarant's original intent and the context of the reservation clause, confirming the validity of the reservation and thus choosing not to exercise jurisdiction. Overall, this helps safeguard the stability and uniformity of the international order.

However, this process also highlights the complex challenges the ICJ faces in practice: namely, how to seek a delicate balance between respecting state sovereignty, maintaining the international legal order, and ensuring international judicial fairness and effectiveness. Although whether a state accepts the jurisdiction of the Court

belongs to its autonomous prerogative, states must nevertheless bear corresponding responsibility for acts infringing upon the rights and interests of other states in international interactions. All disputes should be resolved by peaceful means. As to whether disputes are resolved according to the methods prescribed in Article 33 of the “Charter of the United Nations,” this is to be determined through consultation by the parties concerned. This case provides a valuable practical example for the field of international law, helping to deepen the understanding and recognition of issues such as the jurisdictional mechanism of the ICJ and the relationship between state sovereignty and international justice. It offers useful reference for the resolution of similar international disputes in the future, promoting the continuous improvement and progress of international law amidst the evolving international situation.

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