

THE FISHERIES JURISDICTION CASE BEFORE THE ICJ

On March 3, 1995, Canada added Spain and Portugal to list of flag states whose vessels could be arrested in the NAFO Regulatory Area pursuant to the Coastal Fisheries Protection Act and Regulations. The basis for this action was the imminent prospect of Spanish and Portuguese vessels irreparably depleting the Greenland halibut stock. Canada accompanied these amendments with a call to the EU for a 60 day moratorium on Greenland halibut catches in the interests of conservation. On March 6, 1995, the European Council of Ministers formally rejected the proposed moratorium.

On March 9, 1995, pursuant to the Coastal Fisheries Protection Act and Regulations, Canadian officials boarded and arrested the Spanish fishing vessel *Estai* in the NAFO Regulatory Area for fishing contrary to Canadian law. The *Estai* and its crew were taken to St. John's, Newfoundland, where formal charges were laid against the ship and its master. The master was promptly released on bail and the vessel was later released on bond.

Soon after the arrest of the *Estai*, talks commenced between high level Canadian and EU officials. These talks resulted in the signing of an Agreed Minute on April 20, 1995, aimed at strengthening enforcement of international conservation measures in the NAFO Regulatory Area and modifying the Canadian and EU quotas of Greenland halibut for 1995. The Agreed Minute provided that Canada and the EU would submit joint proposals to that end to NAFO. These proposals were adopted by NAFO on September 15, 1995.

While negotiations between Canada and the EU were proceeding, on March 28, 1995, Spain filed an application with the International Court of Justice alleging that Canadian actions were contrary to international law. Both Spain and Canada had made declarations pursuant to Article 36(2) of the Statute of the Court accepting its compulsory jurisdiction. However, the Canadian declaration contains a reservation that is pertinent to the present dispute, in that it excludes from the Court's jurisdiction:

"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."

Spain has asked that the Court declare (i) that the