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THE FACTS

The applicant, a Falkland Islands registered company (25.1% owned by island residents and 74.9% owned by Spanish interests), was represented by Mr S.J. Swabey, a solicitor practising in London.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

South Georgia and the South Sandwich Islands ("SGSSI") were acquired by the Crown by settlement. There were no indigenous peoples. From 1908 until 1985 it was a British Dependent Territory and a Dependency of the Falkland Islands. After 18 April 1985, SGSSI ceased to be a dependency of the Falkland Islands and became a British Overseas Territory as defined in the British Overseas Territory Act 2002. The United Kingdom is responsible for its international relations. The government of the SGSSI comprises officials from the United Kingdom who are posted to and operate from the Falkland Islands. There is no democratic mechanism. No one lives on the SGSSI apart from a transient group of scientists working for the British Antarctic Survey.

The applicant owns a fishing vessel – *MV Jacqueline* – which operated under a Falkland Islands flag and was specially equipped with long lines to fish the Patagonian toothfish, found in the waters of the SGSSI. Fishing in SGSSI waters is regulated pursuant to the Convention on the Conservation of Antarctic Marine Living Resources ("CCAMLR") to which the United Kingdom is a party. Annual total allowable catches are set by the CCAMLR Commission to particular designated blocks of ocean. The coastal State countries enforce those limits. In the case of the SGSSI, the relevant coastal State is the United Kingdom. From 1997 it operated a licensing system which limited the amount of fish caught by each licensed vessel.

The *Jacqueline* was granted a licence for every year from 1997 until 2001. In that year the applicant sought a licence as usual but was refused by the SGSSI authorities. It was unaware of the reasons.

The applicant applied for judicial review of the refusal before the Supreme Court of the Falkland Islands. Evidence was submitted indicating that the Foreign and Commonwealth Office (FCO) had intervened in order to reduce the number of United Kingdom flagged vessels receiving licences in favour of vessels from other coastal States to avoid adverse diplomatic repercussions in a sensitive area and had indicated that licences should be

given to United Kingdom vessels with the best conservation-compliance record, which in their view excluded the applicant. But for this intervention, the SGSSI Director of Fisheries would have given a licence to the applicant. By an order of 1 June 2001, the Chief Justice declared that the SGSSI decision, taken on advice from the FCO and not pursuant to an instruction within the meaning of the SGSSI Order 1985 (SI 1985/449, which forms the constitution of the territory), was not properly based on relevant matters to be taken into account and accordingly was unlawful. He ordered that the application be remitted for fresh consideration.

On 7 June 2001 the Secretary of State for the Foreign and Commonwealth Office in London formally instructed the SGSSI Commissioner to instruct the SGSSI Director of Fisheries to allocate licences to any United Kingdom flagged vessel, other than to two vessels named in the instruction (which did not include the applicant's).

The applicant challenged the lawfulness of the instruction in the High Court in London.

On 5 December 2001 the High Court judge found, noting the flawed basis on which the FCO had taken the view that the applicant had not complied with conservation measures, that the criteria on which the licences were granted had not been made clear or transparent and there had been manifest unfairness in the way in which the FCO had issued its instructions to exclude the applicant. The instruction was accordingly unlawful and quashed.

On 30 October 2002 the Court of Appeal upheld the lower court's decision, making adverse comment on the way the authorities had acted. The applicant had sought damages for the losses from the 2001 season and this claim, stayed during the earlier proceedings, was revived, relying on Article 1 of Protocol No. 1.

On 22 July 2003 Mr Justice Collins struck out the claim for damages, accepting the argument of the Secretary of State that Protocol No. 1 had not been extended to the SGSSI.

On 29 April 2004 the Court of Appeal rejected the applicant's appeal finding that the applicant was unable to bring a claim for damages based on Article 1 of Protocol No. 1 because the latter provision had not been extended to the SGSSI by the United Kingdom. It held that the issue of control over territory – which had founded the extraterritorial reach of the European Convention of Human Rights in other circumstances – was not relevant to a case such as that before it, where a declaration had to be made for the provision in question to apply.

On 13 October 2005 the House of Lords dismissed the applicant's appeal, also finding that Article 1 of Protocol No. 1 did not apply to the SGSSI.

COMPLAINTS

The applicant complained under Article 1 of Protocol No. 1 that there was an interference with its possessions, namely its entitlement to a licence for the 2001 fishing season, which it would have received but for the intervention by the Secretary of State. This interference was unlawful and in breach of this provision. It argued that Article 1 of Protocol No. 1 did apply to the SGSSI as the officials in the territory were either directly controlled or could be overruled by the Contracting State, and persons within a territory could rely on the full range of Convention rights if a Contracting State exercised effective overall control over that territory. Alternatively, even without this control, the issue of extensions reflected a position which no longer existed with the demise of colonial government or could be distinguished from the present case which concerned a territory to which all Convention rights had been extended save those under Protocol No. 1. The United Kingdom had put forward no objective justification for failing to extend the other rights, and the Convention should be interpreted to prevent Contracting States avoiding legal responsibility for their unlawful acts and to avoid lacunae.

THE LAW

The applicant company complained of an unlawful interference with its possessions, namely, its entitlement to a licence for fishing, relying on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Court notes at the outset that in light of the findings of the various domestic courts as to the unlawful nature of the Secretary of State's intervention in the allocation of fishing licences for the SGSSI in 2001, the principal issue in this case is whether Protocol No. 1 applies to the case. The courts in the United Kingdom were unanimous in finding that it did not, and although varying somewhat in their reasoning, they all found that the SGSSI was a territory for which the United Kingdom was responsible within the meaning of Article 56 of the Convention and no declaration extending Protocol No. 1 to that territory had been lodged by the United Kingdom.

The applicant sought to argue that the absence of such a declaration is, however, not fatal to their claim before this Court

Firstly, it relied on the Court's case-law which indicates that in certain circumstances the responsibility of a Contracting State was capable of being engaged outside its national territory where it exercised effective control (see *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, § 70, ECHR 2001-XII). This "effective control" principle, recently identified, does not, however, replace the system of declarations which the Contracting States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. This can be seen from a careful reading of the above case and those cited therein. *Banković and Others*, a decision of the Grand Chamber, emphasises the regional basis of the Convention and the exceptional nature of extensions beyond that legal space (§ 80). The situations which it covers are clearly separate and distinct from circumstances where a Contracting State has not, through a declaration under Article 56 (former Article 63), extended the Convention or any of its Protocols to an overseas territory for whose international relations it is responsible (see *Gillow v. the United Kingdom*, 24 November 1986, § 62, Series A no. 109; *Bui Van Thanh and Others v. the United Kingdom*, no. 16137/90, Commission decision of 12 March 1990, Decisions and Reports 65, p. 330; and *Yonghong v. Portugal* (dec.), no. 50887/99, ECHR 1999-IX).

Secondly, the applicants contend that the declarations system set out in Article 56 is outdated, geared to the colonial systems in the aftermath of the Second World War, and the Convention should not be interpreted so as to allow the United Kingdom to escape responsibility for its unlawful actions where there is no objective justification for failing to extend the Convention and its Protocols fully. The Court can only agree that the situation has changed considerably since the time that the Contracting Parties drafted the Convention, including former Article 63. Interpretation, albeit a necessary tool to render the protection of Convention rights practical and effective, can only go so far. It cannot unwrite provisions contained in the Convention. If the Contracting States wish to bring the declarations system to an end, this can only be possible through an amendment to the Convention to which those States agree and give evidence of their agreement through signature and ratification. Since there is no dispute as to the status of the SGSSI as a territory for whose international relations the United Kingdom is responsible within the meaning of Article 56, the Court finds that the Convention and its Protocols cannot apply unless expressly extended by declaration. The fact that the United Kingdom has extended the Convention itself to the territory gives no ground for finding that Protocol No. 1 must also apply or for the Court to require the United Kingdom somehow to justify its failure to extend that Protocol. There is no obligation under the Convention for any Contracting State to ratify any particular Protocol or to give reasons for their decisions in that regard concerning their national jurisdictions. Still less can there be any such obligation as regards the territories falling under the scope of Article 56 of the Convention.

In these circumstances, the Court concludes that Article 1 of Protocol No. 1 is not applicable in the present case and that it has no jurisdiction to

entertain the complaints under this provision. The application is rejected as incompatible with the provisions of the Convention and as such inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.