9

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DES PÊCHERIES

(ROYAUME-UNI c. NORVÈGE)

VOLUME I

Requête. — Exposés écrits

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

FISHERIES CASE

(UNITED KINGDOM *v.* NORWAY)

VOLUME I

Application.—Written statements

Tous droits réservés par la
Cour internationale de Justice

All rights reserved by the
International Court of Justice

N° de vente :
Sales number 83

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DES PÊCHERIES

(ROYAUME-UNI c. NORVÈGE)

ARRÊT DU 18 DÉCEMBRE 1951

VOLUME I

Requête. — Exposés écrits

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

FISHERIES CASE

(UNITED KINGDOM *v.* NORWAY)

JUDGMENT OF DECEMBER 18th, 1951

VOLUME I

Application.—Written statements

SECTION B. — EXPOSÉS ÉCRITS
SECTION B.—WRITTEN STATEMENTS

1.—MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

CONTENTS

	Pages
PART I.—Introduction	17
PART II.—Contentions of the Government of the United Kingdom regarding the principles of international law to be applied in defining base-lines	55
PART III.—Arrests of British vessels since September 1948	97
PART IV.—List of annexes	102
PART V.—Annexes	103

PART I

Introduction

1. This Memorial is submitted to the Court in pursuance of an Order made by the Acting President of the Court dated 9th November, 1949, following upon the Application dated 24th September, 1949, addressed to the Registrar of the Court by the Agent of the Government of the United Kingdom. In this application the Court is asked :

(*a*) to declare the principles of international law to be applied in defining base-lines, by reference to which the Norwegian Government is entitled to delimit the fisheries zone, "extending to seaward *four sea* miles from those lines and exclusively reserved for its own nationals", and to define the said base-lines in so far as it appears necessary, in the light of the arguments of the Parties, in order to avoid further legal differences between them ;

(*b*) to award damages to the Government of the United Kingdom in respect of all interferences by the Norwegian authorities with British fishing vessels outside the zone which, in accordance with the Court's decision under (*a*), the Norwegian Government is entitled to reserve for its nationals.

2. With reference to point *(a)* in the preceding paragraph, the Government of the United Kingdom desire to make the following observations on the subject of the four sea miles therein mentioned. The United Kingdom, while not accepting as a general proposition that a State can have a belt of territorial waters wider than 3 miles, does not, for very exceptional reasons, put Norway's claim to a breadth of 4 miles [1] in issue in these proceedings, but invites the Court to decide the case on the assumption that the breadth of the Norwegian belt is 4 miles. The question at issue, therefore, is whether as a matter of international law the belt of territorial waters must be measured from base-lines, which in general follow the actual configuration of the coast of the mainland and of islands, as has hitherto always been held, or whether base-lines may be taken for the country as a whole which consist of notional straight lines of unlimited length, connecting extreme promontories situated either on the mainland or on adjacent islands or even on far-distant and isolated rocks, thus enclosing large areas which would otherwise be open sea.

3. This Memorial is divided into three parts. Part I, Introduction, contains an historical account of the background to the present dispute. Part II presents the contentions of the Government of the United Kingdom on point *(a)* of paragraph 1 of this Memorial, and the reasons in support of such contentions; whilst Part III deals with point *(b)* of paragraph 1 of this Memorial, namely, the arrests of British vessels which have occurred since 16th September, 1948, the date upon which the Norwegian Government declared its intention to enforce fully the provisions of the Norwegian Royal Decree of 12th July, 1935.

For the convenience of the Court, and in order to ensure uniformity of terminology, a glossary of technical terms involved in the case has been prepared by the hydrographer of the Royal Navy, and forms Annex 1 to this Memorial.

Annex 2 to this Memorial contains a series of charts of the relevant portion of the coast of Norway. These charts show, marked by a *blue* line, the base-lines prescribed by the Royal Decree of 1935 as slightly amended by the Decree of 1937 [2]. The pecked blue line is drawn four miles to seaward from and parallel to these base-lines. These charts also show by a *red* line the base-lines drawn by the Norwegian experts at the Oslo Conference of 1924. (See para. 14 below.) This is the red line referred to in paragraph 2 of the United Kingdom Application. The pecked red line is again drawn four miles to seaward from the red line and parallel to it. Chart No. 1

[1] *I.e.* the Scandinavian league; the Norwegian word is "mil" and not "milom" as stated in the United Kingdom Application. The distance is 4 sea miles or one-fifteenth of a degree of latitude (*vide* Annex 1 for the explanation of the technical terms).

[2] The text of the Norwegian Royal Decree of 1935 is annexed to the United Kingdom Application of 24th September, 1949.

is an index chart from which the relevant charts for a particular area can be ascertained. Charts Nos. 2 to 9 are medium scale charts. Chart No. 2 covers the area in which base-point No. 1 of the Royal decree will be found, and this chart, together with the remaining charts following consecutively show base-points Nos. 2 to 48 laid down in that decree. The numbering starts in the north-east and proceeds north and westwards. The charts have been prepared by the Hydrographic Department of the British Admiralty by overprinting on the standard Admiralty navigation charts. These standard British Admiralty navigation charts are themselves constructed on the basis of Norwegian charts. At a later stage of the case, the Government of the United Kingdom will produce a new set of charts on which there will be shown by green lines the baselines and limits which, in the contention of the United Kingdom, Norway is entitled to use for the purpose of defining her fishery zone.

Historical background up to end of the first World War

4. The area covered by the Norwegian Decree of 1935 and involved in the present dispute lies off that section of the Norwegian coast which is situated northward of 66° 28′ 48″ north latitude. It is the habitat of chiefly cod, haddock, coalfish and red fish, and the population in this part of the Norwegian coast are engaged largely in fishing. However, until recent times this area was not visited by foreign vessels to any considerable degree, and the question of its importance to foreign fishing did not arise until several years after the beginning of this century, by which time the radius of operation of steam trawlers had been greatly extended. This fact is well brought out by Captain Meyer in his work *The Extent of Jurisdiction in Coastal Waters* (being a translation into English of Storting Document No. 17/27 [1]), who writes (p. 122) as follows:

> "As the North Sea became, comparatively speaking, more and more exhausted, the vessels were compelled to go further afield in order to maintain the supply. British trawlers had in 1891 pushed as far as Iceland and shortly afterwards also to the Faroes. Later operations commenced in the Bay of Biscay and along the coasts of Spain and Portugal, more particularly after 1902; in the following year, the industry travelled southwards along the coast of Africa to Agadir and even to French West Africa. *In 1905, English trawlers began to fish in the waters along northern Norway and Russia.*"

To this it may be added that the trawling began in the extreme north-east in the waters contiguous to the Russian frontier and only moved westwards gradually. It was not, in fact, until shortly before the outbreak of the 1914-1918 war that Norway's claims over maritime waters came into conflict with the interests of countries, other

[1] For Storting Document No. 17/27, see paras. 21-24.

than the limitrophe States of Russia and Sweden. So far as Sweden was concerned, no question could, in any case, have arisen after 1814, and before 1905, between Norway and that country, *at least on the plane of international law*, although as a domestic matter there were some disputes, and arrangements were made distinguishing between Swedish and Norwegian fishing rights. This was because, for international purposes, the two countries were bound by a Union under which their foreign affairs were jointly conducted and they were under a common Crown. Shortly after the separation of Norway and Sweden, the Government of the United Kingdom approached the Norwegian Government with a view to inducing it to become a party to the North Sea Fisheries Convention, 1882, and in this connection requested copies of the various regulations on fishery limits in force in Norway with which it had hitherto little occasion to concern itself. The trawling by British vessels off the Norwegian coast, which had just recently begun, and the separate existence of Norway as an independent State, were the predominant factors in causing the Government of the United Kingdom to make such an approach. The Norwegian Government, however, confined itself to communicating, on 6th August, 1908, copies of Decrees of 19th September, 1889, and 17th December, 1896, and, as it showed no interest in the proposal made by the Government of the United Kingdom, the matter was dropped [1].

5. The Royal Decree of the King of Sweden-Norway of 9th September, 1889, just referred to, provided that a line drawn at a distance of one "mil" (Scandinavian league) to seaward from, and parallel with, a line drawn between certain specified points on the mainland, and on some islands and islets, was to be regarded as the border of the stretch of the ocean outside the coast of Romsdal County within which fishing was exclusively reserved for the country's own population. Romsdal County is situated between 62° and 63° north, and well south of the area now in dispute.

The Decree of 17th December, 1896 (re-enacting a previous decree of 5th January, 1881), prohibited whaling in the Varangerfjord, within a line drawn from the Russian frontier at Jakobselv to the headland of Kibergnes and, in addition, four miles from the coast at Kibergnes.

The Norwegian note of 6th August, 1908, transmitting the above decrees, stated that, although the law of 7th January, 1904 (prohibiting all whaling for ten years in Norwegian territorial waters off certain parts of the coast), does not mention the Decree of 1896, the latter decree was regarded as indicating the "true limits of territorial waters in the Varangerfjord" [2]. The note added that the

[1] There was, however, also a decree of 1869 relating to the coast off the County of Sundmöre which is about latitude 62° 30′ north, and south of the area now in dispute. It is to be remarked that no reference to this decree of 1869 was made in the Norwegian communication of 6th August, 1908.

[2] The text of the Norwegian note is in French.

exclusive right of fishing in the Vestfjord, consecrated by the usage of centuries, had not yet been the subject of any legislative disposition. Both the Varangerfjord and the Vestfjord lie within the area covered by the Decree of 1935, the subject of the dispute before the Court.

6. The Royal Decree of 1935, as stated in paragraph 3 of the United Kingdom Application, refers to a Royal Rescript of 1812 of the King of Denmark-Norway, which (as translated by the Registry of the Court) provides as follows:

> "It is our wish to lay down as a rule that whenever determining limits of our territorial sovereignty at sea, this sovereignty shall be recognized as extending for *one ordinary nautical mile* [1] measured from the island or islet farthest from the mainland and not covered by sea [2]."

The Government of the United Kingdom does not deny that it was within the competence of the Kingdom of Denmark-Norway to lay down in the Rescript of 1812 the points of land territory from which the "mil" or Scandinavian league therein specified should be calculated, nor, on the face of it, does the rescript purport to do more. In Part II of this Memorial, there will be set forth the contentions of the United Kingdom with regard to the general principles of international law governing the manner in which States are entitled to fix the marginal belt (whether three or four miles wide) off their coast. The Government of the United Kingdom maintains that these principles are binding on all States, and that only a title by long usage, which has been proved by the State asserting it, can entitle Norway (or any other State) to use a system of calculating its territorial waters which leads to larger encroachments on the open sea than these general principles allow. The United Kingdom will reserve for its Reply its answer to Norwegian claims based on historical grounds, whether such historical grounds are advanced to support methods of drawing base-lines for territorial waters or to support claims to fjords or bays as internal waters, though the United Kingdom recognizes that Norway may be entitled to claim certain fjords. For these reasons it will not, at this stage of the pleadings, discuss further the Royal Rescript of 1812. It also reserves for its Reply any further discussion of the Decrees of 1869 and 1889 (see para. 5 above), which are also mentioned in the Decree of 1935. The Decrees of 1869 and 1889 relate to parts of the coast of Norway which are not involved in the case before the Court. Indeed, the parts of the Norwegian coast covered by the Decrees of 1869 and 1889 have never at any time been of any great interest to British fishermen.

7. A few years after 1908, when British steam trawling off the Norwegian coast had developed on a considerable scale, an incident

[1] The reference is to the "Scandinavian league" (*vide* Annex 1).
[2] Mr. Nansen's translation will be found in Annex 9.

occurred, which for the first time produced an open controversy between Norway and the United Kingdom on the subject of territorial waters. On 11th March, 1911, a British steam trawler, the *Lord Roberts*, was arrested by the Norwegian authorities for fishing inside the Varangerfjord, within a line from Kibergnes to Jakobselv (a line laid down in the Whaling Decree of 1896 mentioned in paragraph 5 above). It was alleged that the vessel was within the broad waters of the Varangerfjord, off the coast between Skalnes and Langbunes, some distance inside a straight line between Kibergnes and Jakobselv, with the nearest point of land four and a half miles away. The conviction by the District Court was upheld by the Court of Appeal on the footing that this was the position of the vessel (though it would appear that the District Court had held her to be in a somewhat different position) and that Varangerfjord was Norwegian waters (i.e. in effect that the fjord constituted "internal waters"). Notice of appeal was lodged with the Supreme Court of Norway at Christiania, but, as diplomatic correspondence was still continuing between the two Governments, the appeal was not proceeded with immediately. The 1914 war then broke out and this appeal was, in the year 1916, ultimately withdrawn.

8. This incident served to impress upon both Governments the necessity of investigating the subject of Norwegian territorial waters, and, so far as the Government of the United Kingdom was concerned, of reaching an understanding with Norway in the matter.

9. Shortly after the arrest of the *Lord Roberts*, a commission was appointed by Norwegian Royal Decree of 29th June, 1911, consisting of an official of the Ministry of Foreign Affairs, a naval officer and an inspector of Fisheries. This Commission produced a report dated 29th February, 1912, entitled *Rapport de la Commission de la Frontière des Eaux Territoriales*. Part I of this report was published in Christiania in 1912 by Grøndahl and Søn. Part II was confidential and remains so to this day. Part I of this report is valuable as a careful account of Norwegian legislation and practice and contains a skilful presentation of the Norwegian case for the claims it was then making, or which it was thought it could make. Reference will be made to it hereafter, under the short title "Norwegian Report of 1912". On 22nd August, 1913, a *modus vivendi* [1] was submitted by the British Minister at Christiania in which

[1] This proposed *modus vivendi*, pending the next international "Peace Conference", would have reserved certain waters (in particular Varangerfjord, within the line Kibergnes-Jakobselv and Vestfjord) for the exclusive use of Norwegian ships for fishery purposes, each Government reserving its standpoint on questions of principle. The Norwegian Government, however, besides claiming to close all Norwegian fjords to British fishing vessels, were unwilling to modify even temporarily their domestic legislation as regards the 4-mile limit, and the negotiations broke down. The reference to a "Peace Conference" is to the conference of the type held at the beginning of the century at The Hague, such as the 1899-1900 Conferences.

proposals were made for the regulation of the question of territorial waters as between the two Governments. These proposals failed to secure the acceptance of the Norwegian Government, and with the outbreak of the first World War shortly afterwards, the matter was not pursued.

World War 1914-1918

10. The interests of the United Kingdom as regards Norwegian territorial waters during the 1914-1918 war were, of course, primarily connected with the exercise of belligerent rights, and this question assumed first-class importance whilst controversy regarding fisheries dropped into the background. Disputes between the two Governments mainly arose in connection with the question of the four-mile limit. The Norwegian Government contended that it must insist on the observance of this limit by the belligerents and in addition it claimed certain fjords as internal waters. In the year 1915, an incident occurred when H.M. trawler the *Robert Smith* was stopped in the Vestfjord, on the ground that it was indulging in war-like activities in Norwegian waters. The position of the vessel was outside the three-mile limit but within four miles of land. The British naval officer was informed that he was in Norwegian waters. There was considerable diplomatic correspondence, partly on the question of the four-mile limit and partly on the question whether, independently of the four-mile limit, the vessel was not in Norwegian internal waters (on the basis that Vestfjord was "historically" such). But eventually, such incidents were amicably settled, owing to the desire of each Government not to be involved in a bitter controversy at such a time with another Power, with whom it had long-established ties of friendship. On the general question of the four-mile limit, a "gentlemen's agreement" was reached whereby for its part the Government of the United Kingdom did not press as a matter of right for the recognition of the three-mile limit [1], and on the other hand, in practice, the Norwegian Government ceased to make any effective attempt to interfere with British warships operating between the three and the four-mile zone. In 1918, the British Minister was informed that there had been no official

[1] A British note to the Norwegian Government of the 28th October, 1916, referring to a case in the Prize Court of the United Kingdom in which the Crown was claiming a 3-mile limit, contains the following passage:

"At the same time, His Majesty's Government have no desire that the rights exercised by them in the fourth mile during the war should prejudice the Norwegian Government in the efforts which the latter may contemplate making in the future to secure recognition of their claims, in connection with fishery rights, by international agreement, and, in the event of the Prize Court holding that the only limit which Norway is entitled to claim for purposes connected with the rights of belligerency is the 3-mile limit, His Majesty's Government are prepared to undertake not to quote such a decision as invalidating any Norwegian claims in connection with fishery rights."

announcement by the Norwegian Government abandoning its claim to four miles, "but that the Norwegian Government had recognized the difficulty of upholding this claim in practice and had instructed their naval officers, in maintaining the neutrality of Norwegian territorial waters, to confine their efforts within the three-mile limit, and not to fire on belligerent ships operating within that limit".

Conditions after the first World War

11. Owing to the conditions which prevailed immediately after the first World War, fishing was not resumed on any considerable scale off the coast of Northern Norway until April 1922. Its resumption by British and German trawlers caused some excitement, and even ill-feeling, amongst the local population, and, no doubt partly owing to the pressure of public opinion, the Norwegian Government felt obliged to take steps to enforce its laws prohibiting foreign vessels from fishing in Norwegian waters. Towards the end of 1922, a British trawler, the *Celerina*, was arrested and fined, and several similar arrests ensued in the following year. Indeed, as the year 1923 wore on, arrests of British trawlers began to occur with increasing frequency (for example, the *Quercia*, the *Kanuck*, etc.). These arrests led to differences between the two Governments because of the divergence of views as to the limits of Norwegian waters. In the correspondence at the time, the divergence is referred to principally as one between a three-mile and four-mile belt of territorial waters, but it became increasingly apparent that there were also differences as to the waters in bays, fjords or inlets which could be regarded as Norwegian internal waters. Though at that time no Norwegian claims similar to those now made in the Decree of 1935 emerged, the principal issue (apart from the question of three or four miles, and the question which fjords could be claimed as Norwegian internal waters on historic or prescriptive grounds) seemed to be whether the ten-mile rule should be applied as a general rule to determine which inlets should be regarded as internal waters, or six miles as the United Kingdom then contended.

12. The situation was made all the more confusing because the owners and skippers of British vessels were embarrassed, when fishing off the Norwegian coast, by lack of information as to the actual extent of territorial or internal waters claimed by the Norwegian Government. They did not know the method adopted by Norway in tracing her waters, especially in waters east of North Cape. No decrees or charts had ever been issued by the Norwegian Government in which its claims were precisely defined, and later efforts to obtain such charts were to prove unsuccessful. In January 1924, there occurred another incident of a vessel being arrested by the

Norwegian authorities between the three and the four-mile limit, namely the *Lord Kitchener*. Other differences arose in connection with the arrests of vessels (such as the *James Long*), when the vessel was just outside the closing line (according to the Norwegian claim) of the fjord and, it would have been in territorial waters, if this line enclosing internal waters was accepted. But many of the Norwegian claims to inlets as national waters were disputed by the United Kingdom, who at that time had not finally accepted (as it does now) the ten-mile rule as a general rule for the defining of inlets which may be claimed as national waters. Thus, in connection with the arrest of the *Kanuck* (to which reference has been made above), there were discussions on 15th January, 1924, between Mr. Lindley, British Minister, with both the Norwegian Foreign Minister, Mr. Michelet, and the Secretary-General of the Ministry, Mr. Esmarch, and Mr. Lindley reported :

> "The difficulties which have arisen are due to the fact that this limit is measured from a line drawn between any headlands which are not more than ten miles apart, whereas His Majesty's Government consider that headlands must be not more than six miles apart if a line is to be drawn between them from which the limit is to be measured. I pointed this out to Mr. Esmarch, who at once admitted that the Norwegian claims had always been one of ten miles between headlands."

The 1924-1925 negotiations

13. In view of the uncertainty regarding the Norwegian limits of territorial waters, and the desirability of avoiding the recurrence of incidents which could only injure the relations between Norway and the United Kingdom, the Government of the latter, on 29th March, 1924, addressed a note to the Norwegian Government suggesting that the whole question of such limits should form the subject of discussion between experts nominated by both Governments. This invitation was acknowledged by the Norwegian Government on 15th April, 1924 (Annex 3). The Norwegian Government, after some delay (probably due to the absence on a scientific cruise of Dr. Hjort, a former Director of Norwegian Fisheries, whom it wished to employ as its chief expert), accepted the proposal for a conference and suggested the formation of small expert British and Norwegian committees to examine and discuss the proposals made by the United Kingdom. Mr. Lindley, reporting this suggestion made to him orally on 18th September by Dr. Hjort, stated :

> "I pointed out that there were several questions, apart from the four-mile limit, on which our two Governments did not see eye to eye. There was the definition of what constituted an island, and there was the length between headlands, which could properly be taken as the base for calculating the extent of territorial waters seaward of that line. *The Norwegian Government claimed that such a line might be ten miles long*. His Majesty's Government maintained,

on the other hand, that it could only be six miles. I then informed Dr. Hjort that I had made several attempts to obtain from the Norwegian Government—officially or unofficially—a definite statement of what they claimed as Norwegian territorial waters. We were aware, of course, of the general nature of their claims, but, in order to avoid unpleasant incidents, it was important for us to know the exact line laid down on a chart of such waters. As Dr. Hjort was probably aware, the British authorities had, in order to show their friendly disposition towards Norway, and in return for the considerate behaviour shown in the past by the Norwegian authorities, advised British trawlers not to fish within the Norwegian four-mile limit. This action of the British authorities in no way entailed any recognition of the Norwegian claims, but it had prevented many disputes during the trawling season. It would be very advantageous if, instead of giving this vague warning to our trawlers, the British authorities were in a position to show them on a chart exactly where the Norwegian line ran, and I had never been able to understand the reluctance of the Norwegian authorities to communicate to us this information. I asked Dr. Hjort whether he could obtain for me this chart, or at any rate one of the coast of Finnmarken, which seemed to be the only part of Norwegian territory visited by our trawlers. Dr. Hjort said that he entirely agreed with my views, and that he had for fifteen years been pressing various Norwegian governments to make known the exact extent of their claims to territorial waters. He had not succeeded in his object, but the present Prime Minister, who was also his brother-in-law, took a more sensible view of the matter than his predecessors, and he would ask him at once whether the chart I wished for could not be communicated to this Legation, on the understanding that such communication in no way prejudiced the claims of either country. Dr. Hjort telephoned to me this morning to say that the chart of Finnmarken, which is the only part of the coast of real interest to our trawlers, would be communicated to the Legation as soon as it has been prepared. I should mention, in this connection, that, during the discussion regarding the communication of this chart, Dr. Hjort said that his Government thought that, in return for it, we should undertake to observe it during the progress of negotiations, without prejudice to our claims. I replied that I could not recommend this course to His Majesty's Government, nor did I think that they would accept it if I did. The possession of the chart was merely a question of convenience and couldnot be considered as conferring any advantage on us, for which a concession such as he mentioned should be made in return. We already knew generally the Norwegian claims and we did not accept them ; the fact that the chart would show in a definite and convenient form the exact nature of these claims did not in any way alter the situation. The chart would simply be useful in enabling our trawlers to know precisely whether they were within those waters claimed by the Norwegian Government as territorial. After arguing the point for some time, Dr. Hjort said that he would recommend that the chart should be communicated to us without conditions, and this recommendation has been accepted by Mr. Mowinckel, as stated above."

On 19th September, 1924, Mr. Mowinckel wrote to Mr. Lindley:

[*Translation*]

"My dear Minister,

To revert to our conversation of the other day. I would confirm the readiness of the Norwegian Government to appoint a committee of two or three persons to discuss the question raised in your note of 29th March with a corresponding British committee.

Professor John Hjort has communicated to me the gist of the conversation he had with you on the 18th instant, and as agreed therein a chart will eventually be sent you of East Finnmark indicating the limits of Norwegian territorial waters according to Norwegian views.

In transmitting this chart, it is assumed that it will in no respect prejudice the point of view of either Norway or Great Britain regarding the extent of the territorial waters. The sole aim of this information is to contribute towards preventing British trawlers from trespassing upon Norwegian territorial waters owing to their ignorance of the limits and from being arrested by Norwegian guardships.

Before replying officially to your note of 29th March, I should be glad to hear from you whether your Government is prepared to approach the matter on the lines indicated above.

I remain, etc.

(Signed) J. MOWINCKEL."

Subsequently, the arrangements were made for the proposed conference. The British experts (Mr. H. G. Maurice of the Fisheries Department, Captain H. P. Douglas and Lt.-Commander R. T. Gould of the Admiralty) arrived in Oslo on 1st December, 1924, and remained until the 12th. Dr. Hjort was the chief expert on the Norwegian side. In Annex 4 will be found the report, dated 30th December, 1924, of Mr. Maurice and Captain Douglas, and the records (Protocols) of these discussions.

14. Special interest attaches to the charts produced at these meetings showing along the coast north of latitude 61° (i.e. including all the area subject to the 1935 Decree which extends as far south as latitude 66° 28′ 48″ north).

(1) The three-mile territorial limit according to the British thesis.
(2) The four-mile territorial limit according to the same thesis.
(3) The Norwegian territorial limits as defined by Norwegian Royal decrees where such are in force (see Protocol, 4th meeting) [1].

[1] The above is what the Protocols say, but it is hardly accurate. Lines were drawn under (3) for the whole area, but there were only Royal decrees covering the Varangerfjord (at the north-east end) and the extreme south-west. Elsewhere, the lines were drawn under (3) in accordance with what the Norwegian experts considered to be Norwegian claims.

In the Protocols they are described as charts "prepared by the British Committee", but the following further explanation is found in paragraphs 5 and 6 of the report of Mr. Maurice and Captain Douglas, showing that, of the three different sets of lines on these charts, while Nos. (1) and (2) (three-mile and four-mile limits according to the British thesis) were drawn by the British experts, No. (3), showing Norwegian views, was the work of Norwegian experts. These paragraphs read :

"5. One fact, knowledge of which was essential to an understanding of the point of view of the Norwegians, was, in our judgment, the method according to which it was their practice to draw the limits of the waters they claimed as Norwegian territorial waters. On the one chart (part of the coast of East Finnmark) which had been furnished by the Norwegian Government, the lines were drawn in a manner which indicated no settled principle. It was clear, for instance, that the lines did not follow the sinuosities of the coast, that neither ten-mile nor six-mile bay lines had been consistently taken as base-lines, nor had the rule enunciated in the report of the Norwegian Royal Commission of 1912, according to which base-lines should be drawn between the outermost points of the coast or adjacent islands and rocks, notwithstanding the length of such lines, been adopted. It may be remarked that the strict application of the last-mentioned rule to the west coast of Norway would lead to a manifest absurdity.

6. Our request for charts of the rest of the coast of Norway and adjacent waters correspondingly marked was received with evident embarrassment, and it became apparent that the Norwegian Committee could not undertake to draw the lines except at certain points of the coast where the limits had been defined by the Norwegian Orders in Council. Eventually, we suggested that we should ourselves draw the lines for the rest of the coast according to such principles as we could evolve from the report of the Norwegian Royal Commission on Territorial Waters of 1912, and, rather than accept that solution, the Norwegian Committee secured permission, from their Foreign Office for Fishery Inspector Captain Iversen, subsequently assisted by Commander Askim of the Norwegian Admiralty, to prepare charts to indicate the Norwegian claims, with the proviso that the lines they drew were not to be regarded as authoritative. The lines so drawn appear on the charts annexed to this report, on which are indicated also the three-mile line, drawn according to the British thesis, a four-mile line, drawn according to the same thesis, *mutatis mutandis*, and the limits of certain areas of concentrated seasonal fishing, within which, it has been suggested, that trawling might be prohibited by agreement during specified seasons."

The lines drawn by Captain Iversen and Commander Askim, in the conditions described in paragraph 6 of the Maurice/Douglas report, together with the line on the single chart of East Finnmark drawn up in advance of the meetings by the Norwegian Government, show the Norwegian claims. These lines were reproduced

as red lines on the "certified copies of all the said charts, containing the information transferred to them in the course of the different meetings", which the British Admiralty transmitted to the Norwegian Government in accordance with the Protocol of the 11th meeting (para. 3). The red line represented Norwegian claims as formulated in 1924 by the Norwegian fishery and naval expert with the proviso that "they were not to be regarded as authoritative".

15. The lines these Norwegian experts drew, when joined up, acquired special significance in later years when they came to be known as the "red line" which formed the basis first of a tacit *modus vivendi* (see para. 26) and later of the *modus vivendi* in 1933 (see para. 44 below). In this connection, a statement may be quoted by M. Koht, then Norwegian Minister for Foreign Affairs, in a speech in the Storting on 24th June, 1935. He said :

> "It would not be right to conceal the fact that the 'red lines' have called forth protests from the interested districts. They were drawn up (at the time of the discussions which took place in Oslo in 1924) in consequence of a British request, and constitute an attempt at showing the principle on which base-lines should be drawn according to the Norwegian point of view but without in any way binding the Norwegian authorities as regards the final fixing of the base-lines."

There was also indicated on the charts a three-mile limit drawn according to the British thesis, and a four-mile limit according to the same thesis. The former lines, when joined up, formed the "green line" also shown on the charts, whilst the latter is shown on some, though not all, the charts as a pecked red line. The original working charts on which the above lines were drawn are no longer available in the archives of the Government of the United Kingdom, although it is possible they may still be in possession of the Norwegian Government. However this may be, on their return to London the British delegation, as promised (see Protocol of the 11th meeting in Annex 4), caused clean copies of the original working charts to be drawn up with the lines plotted upon them. One set of these copies, certified by Captain Douglas, was, in January 1925, transmitted to the Norwegian Government, who acknowledged their receipt with thanks, and raised no question as to their authenticity. (See despatch of the British Minister at Oslo, 28th January, 1925, filed in Annex 5.) Another certified set was retained in the archives of the Foreign Office and is now filed with Annex 5.

16. The experts at the Oslo Conference in December, 1924, were appointed merely to explore the situation and report to their Governments. Their report suggested the possibility of an agreement being reached on the basis of certain proposals which they formulated. Mr. Lindley, on 1st April, 1925, addressed a note to the Norwegian Government, indicating that these particular

proposals were not approved by the Government of the United Kingdom, but suggesting another basis for an agreement, and suggesting that the conversations be resumed. This note and the diplomatic correspondence which ensued between 15th April and 17th June, 1925, forms Annex 6 to this Memorial. It was agreed to hold further discussions in London. The Norwegian delegates (Dr. Hjort and Commodore Gade with Commodore Askim as expert cartographer) arrived there in July, 1925. The chief British representatives were again Mr. Maurice and Captain Douglas. Protocols of the minutes of the meetings held by them were agreed upon and signed and are contained in Annex 7 hereto. As appears from the diplomatic notes of 10th and 17th June (Annex 6, items Nos. 5 and 6), the particular subjects of the discussions in London were to be the fjords and arrangements as regards fishing in the area north of latitude 61°, but the question of base-lines for drawing territorial waters was raised at once by the Norwegian delegates (see Annexes IV and VII to the minutes which are all contained in Annex 7 to this Memorial).

17. The question of fjords and inlets occupied much of the discussions. Some 32 fjords and inlets were discussed, which are conveniently shown on silhouettes traced from Admiralty charts and numbered consecutively from E-W-SW[1]. These silhouettes appear at the back of Annex 7. There were 15 fjords or inlets with openings more than six miles wide (the rule then being applied by the United Kingdom) which the United Kingdom experts were prepared to recommend should be accepted as Norwegian waters, and there were nine to which the Norwegian delegates were prepared to abandon their claim[2]. As regards the base-lines for the delimitation of territorial waters, the minutes of the 6th meeting and Annexes IX and X of these minutes are of particular interest. The principles then put forward by the British experts are in Annex X. As will appear hereafter, the United Kingdom now submits to the Court principles different and in some respects more favourable to the littoral State from those set out in this Annex X. This change results from the detailed investigation of the matter at the Hague Codification Conference, 1930, and the general acceptance of certain principles at that conference. The Norwegian views on these points are indicated in the minutes of the 2nd meeting (para. 4), the

[1] All 32 fjords are shown on the Admiralty silhouettes, and though the highest figure of these is 25, the difference is made up by the use of letters after numbers, viz.: 19, 19 A, 19 B, etc. (see Annex 7, p. 152). Different numbers had been used in the Oslo Conference Protocols, but in the London Conference the silhouette numbers are used in the minutes. Some fjords mentioned in the Oslo Conference Protocols (Annex 4, p. 106) are not referred to in the London Conference at all, but the London Conference only dealt with fjords whose opening was over 6 miles and which Norway claimed on historic grounds.

[2] The names and numbers of these 15 and 9 inlets respectively will be found in Annex 7 (pp. 152 and 153) under the headings "Annex (B) and (C)".

5th meeting (last para.), and Annex IX. The British opposition to the drawing of straight lines from headland to headland is indicated in Annex VII. The minutes of the 6th meeting refer to charts drawn with red and green lines, red lines according to Norwegian views and green lines according to British views; but it is not the red lines on these charts of the London meetings which are the relevant ones for the purpose of the red-line *modus vivendi*, but the red lines of the Oslo charts referred to in paragraph 15 above. Further, though these meetings indicated Norwegian tendencies to make claims based on straight lines drawn arbitrarily from headland to headland and to claim waters inside the outermost fringe of skerries as Norwegian waters simply because they were inside, these tendencies did not at that time indicate such wide claims based on these grounds as are now found in the 1935 Decree. Thus it is the case that, whereas the Government of the United Kingdom modified its views so as to bring them into accord with those generally held at the Hague Codification Conference, Norway, after that conference, began making wider claims which departed further from these views of the Hague Conference than did her claims prior to that conference.

18. At the eighth and last meeting of the 1925 Conference, the delegates drew up what they considered to be "the only possible basis of agreement" under heads which included a convention dealing with the question of territorial waters. It was suggested that under this convention Norway should accept the principle of the three-mile limit, as defined in Annex X, for her territorial waters. In return, the United Kingdom would agree to accept as territorial inlets (that is to say as Norwegian national waters) 15 fjords and inlets whose mouth was wider than six miles, and base-lines were indicated for each of these fjords. In respect of fishing in the area north of latitude 61°, a convention would be concluded on the lines of the Anglo-Danish Convention of 1901 regulating fisheries in the waters surrounding Iceland and the Faroes, amplified as suggested in Annex VI to the minutes, that is to say, Norway would have exclusive fishing rights in all Norwegian internal waters (i.e. 6-mile bays, harbours, and other inlets accepted as Norwegian waters on special (historic, etc.) grounds) and in territorial waters as defined in the Territorial Waters Convention, and also in any other bays or portions of bays which could be enclosed by a ten-mile line[1]. Norway would also accede to the North Sea Fisheries Convention of 1882, applying to the area south of latitude 61°.

18A. This proposed basis of agreement was referred to the two Governments, as the experts had no authority to do more. On

[1] The United Kingdom was at this time and in this connection keeping open the question whether the general 10-mile limit for bays operated for anything else except (on a conventional basis) for fishing.

19th August, 1925, the British experts informed Dr. Hjort that the Government of the United Kingdom was prepared to conclude conventions on the lines proposed at the London Conference, but the Foreign Affairs Committee of the Storting rejected the proposals (chiefly, it appears, because they involved the surrender by Norway of its claim to a four-mile limit), and on 11th November the Norwegian Prime Minister informed the British Minister that he could not recommend these points to the Storting and the negotiations thus proved abortive.

Question of the publication of the documents of the Oslo Conference (1924) and London Conference (1925)

19. It is convenient to interrupt the strictly chronological account of the history of the dispute to explain briefly the discussions between the two Governments with regard to the publication of the records and other documents produced at these two conferences or resulting directly from them.

On 18th August, 1925, Mr. Maurice and Captain Douglas wrote a joint letter to Professor Hjort of the Norwegian delegation at the London Conference, which reads as follows :

> "We have submitted to His Britannic Majesty's Government the summary of conclusions adopted at the eighth meeting of the Anglo-Norwegian Conference, and we are authorized to inform you and Kommandor Gade that His Britannic Majesty will be prepared to enter into conventions with His Majesty the King of Norway in accordance therewith.
>
> With reference to the questions addressed to us by the Norwegian delegation at our seventh meeting, we are authorized to state that, should agreement be reached on the points at issue between His Britannic Majesty's Government and the Norwegian Government, His Britannic Majesty's Government would be prepared, jointly with the Norwegian Government, to communicate the conventions when concluded to other governments interested, and to invite their accession thereto. His Britannic Majesty's Government would, moreover, be prepared to agree to the inclusion in the conventions of provisions reserving complete liberty to both parties to denounce the agreements and to resume their existing claims regarding territorial waters and rights of fishing, should the interested Powers refuse to recognize Norwegian territorial claims to the same extent as His Britannic Majesty, or to accede to the proposed convention about fisheries.
>
> The terms set forth in the drafts herewith represent the utmost limit of the concessions which His Britannic Majesty's Government are prepared to make.
>
> His Majesty's Government trust that the Norwegian Government will give instructions to the captains of its fishery-protection cruisers to act in accordance with the proposed Fisheries Convention without waiting for its formal ratification. His Britannic Majesty's Government will enjoin a corresponding line of conduct upon the masters

of all British fishing vessels fishing in waters adjacent to the coast of Norway."

The enclosures to that letter were:

(a) a draft Territorial Waters Convention,
(b) Heads of Agreement relating to Fisheries,

drawn up in accordance with the proposals of the last meeting of the conference. It was agreed between the British and Norwegian delegates that the above letter and its enclosures should not be published either in the United Kingdom or in Norway until there was a clear prospect that the negotiations were going to lead to a final settlement.

20. Early in November, 1925, as stated in paragraph 18 above, it became clear that there were no prospects of any such settlement and that the proposals agreed upon in London had no hope of receiving acceptance in the Storting. The Norwegian Minister for Foreign Affairs represented, however, to the British Minister in Oslo that it would be necessary for the Storting to receive a public report from the Norwegian Government on the subject of the negotiations. This would necessarily involve that some of the matters referred to in the draft agreements enclosed in the letter to Professor Hjort on the basis of the London discussions would be made public. The Government of the United Kingdom at first was opposed to any form of public statement in the Storting other than in the most general terms to the effect that it had not been possible for the Government of the United Kingdom and the Norwegian Government to come to an agreement. Later the Government of the United Kingdom decided to modify their attitude in the matter, and on 1st January, 1926, the British Minister in Oslo was instructed to inform the Norwegian Government that the Government of the United Kingdom would no longer oppose the publication of a full statement by the Norwegian Prime Minister together with the draft Convention on Territorial Waters and Heads of Agreement relating to Fisheries, but that the Government of the United Kingdom also proposed that the two latter documents should, simultaneously with such a statement in Norway, be laid before the Parliament of the United Kingdom. On the other hand, the United Kingdom maintained its objection to the publication of the letter of 18th August, 1925, because this would necessarily involve the publication of the Protocols of the Conference referred to in it. In the speech from the Throne in the Storting made on 11th January, 1926, the Norwegian Government confined itself to stating that it proposed to suspend negotiations and would make a detailed report later; consequently the question of publishing papers was for the time being dropped. In these circumstances the Government of the United Kingdom decided to abandon its proposal to lay papers before Parliament.

21. In the meantime, a committee of the Storting, working in two sections, had already begun work on a report. One section devoted itself to a thorough investigation of the whole subject of territorial waters, and to a lengthy exposition of the Norwegian case from the historical and legal point of view. Another section devoted itself chiefly to technical questions connected with fisheries and also to an account of the negotiations of 1924-1925 and the draft agreements then proposed. These Storting reports were at various times transmitted to the Government of the United Kingdom for their information, and, if they so desired, for their comment. The fruit of the labours of the first section of the committee mentioned above came to be known as Storting document No. 17/27, whilst the work of the second section was entitled document No. 17 B.

22. On 26th August, 1926, the Norwegian Minister in London addressed a note to the Secretary of State referring to Annex X of the Minutes of the London negotiations (the definition of the principles used by the United Kingdom in defining territorial waters which will be found in Annex 7 to this Memorial). The Norwegian Minister enquired whether "the British authorities concerned raise any objection to private Norwegian parties being made acquainted with the above-mentioned principles adopted by Great Britain for the purpose of fixing the three-mile limit". In reply to this note, the Government of the United Kingdom enquired, on 24th September, 1926, in a communication addressed to the Norwegian Minister, whether, in the event of such permission being given by the Government of the United Kingdom, the Norwegian Government would furnish it with a definite statement of the principles which it applied in drawing the limits of territorial waters claimed by the Norwegian Government, with "particular reference to the selection of the base-lines from which that limit is drawn in the case of inlets". Several months elapsed without any answer being vouchsafed by the Norwegian Government to this enquiry, and after repeated reminders they were further approached in a note dated 28th March, 1927, in which they were requested to be so good as to supply the Government of the United Kingdom with copies of the charts issued to Norwegian fishery protection vessels on which (it was supposed) the Norwegian territorial limits would be drawn. An answer was received to this note on 19th July, stating that the Norwegian Government was not in a position to reply to the enquiries of the Government of the United Kingdom in the above matters, "since the question of an exact marking of the limit of Norwegian territorial waters is now being considered by a special committee, and it is not until a report has been furnished by the latter that the State authorities will be able to take up its final attitude in the matter". This was but another indication that Norway had at the time no settled

practice with regard to the delimitation of Norwegian waters—still less any legislation fixing their limits generally.

23. The subject of publication was not again resumed until the summer of 1927, when the Norwegian Government drew attention to the Storting reports and stated that it desired to publish them. As regards document No. 17/27, which developed the Norwegian case regarding territorial waters on historical and legal grounds, and was later translated and published (see para. 24 below), the Government of the United Kingdom stated on 23rd July, 1927, that it had no objection to its publication "on the understanding that their assent is in no way to be understood as endorsing the various views expressed by Norwegian authorities therein". As regards document No. 17 B, which dealt with technical questions regarding fisheries and also gave an account of the 1924-1925 negotiations, the Government of the United Kingdom, although in 1926 (see para. 20) it had been prepared to waive its original objection to the publication of the draft agreements of 1925, now again objected to their publication and could not therefore give its unqualified assent to the publication of that document.

24. In the spring of 1928, M. Mowinckel returned to office as Prime Minister and informed the British Minister at Oslo that his Government did not feel it possible, in view of the fact that document No. 17/27 had already been published, to refrain from proceeding to publish document No. 17 B and asked that the Government of the United Kingdom should reconsider its decision as regards the latter. As by this time the contents of this document were known to the whole of the Norwegian Storting, the Government of the United Kingdom did not see that any purpose would be served by continuing to maintain its objection to its publication. Consequently, on 23rd May, 1928, the British Minister in Oslo was instructed to inform the Norwegian Government that the Government of the United Kingdom agreed to the publication of the draft Convention relating to Territorial Waters and the Heads of Agreement relating to Fisheries. His instructions continued as follows:

> "You should add that while His Majesty's Government in Great Britain have agreed to the publication of the Territorial Waters Convention and Fisheries Agreement, it was distinctly understood originally that nothing was to be published unless a definite agreement was arrived at and that it is due solely to the strong desire manifested in Norway in favour of publication that His Majesty's Government in Great Britain have agreed to this. As it will be necessary to lay the draft Convention and Heads of Agreement before Parliament, you should give him [the Secretary of State for Foreign Affairs] not less than a fortnight's notice of the date fixed by the Norwegian Government for publication."

In the result Storting documents Nos. 17/27 and 17 B were made public. The former was later translated into English by its

author, Captain Meyer, and published in 1937 at Leiden under his name under the title *The extent of Jurisdiction in Coastal Waters*. For its part the Government of the United Kingdom published (with a short explanatory statement) a Command Paper (3121) in 1928 containing the terms of the proposed draft Territorial Waters Convention and the Heads of Agreement relating to Fisheries. (Annex 7 A.)

History of the dispute between the end of the London Conference (1925) and the Hague Codification Conference (1930)

25. No further attempts were made to reach agreement with Norway over the limits of the latter's territorial waters till 1933. A new factor of importance at this time was the work of the League of Nations for the codification of international law, and the choice of territorial waters as one of the topics to be dealt with. At its first session in April 1925, the Committee of Experts for the Progressive Codification of International Law selected this topic as part of its work, and appointed a sub-committee to study it. Following its second session, it circulated to Governments on 30th January, 1926, a report by Dr. Schücking and also a *questionnaire* on specific points in the law of territorial waters. On receipt of the replies to this *questionnaire*, the Preparatory Committee of the Codification Conference submitted in February and May 1929 two reports to the Council of the League to which it annexed Bases of Discussion which it had drawn up. It recommended that the conference be held in the spring of 1930 and that the Bases of Discussion be circulated in advance to governments. On 13th March, 1930, the conference opened at The Hague. It was hoped by the Government of the United Kingdom that a solution of its dispute with Norway would be found as a result of this conference. The work of this conference is dealt with in paragraphs 35-37 below.

26. In the meantime, with the exception of a few minor incidents, the relations between British trawlers and the Norwegian fishery protection vessels became more satisfactory. This relatively satisfactory state of affairs was due to what may be described for convenience as "the tacit red line *modus vivendi*" to distinguish it from a later more explicit, but still informal, red line *modus vivendi* adopted in 1933, which will be referred to as "the 1933 red line *modus vivendi*". The tacit red line *modus vivendi* began in 1925 and operated fairly satisfactorily till 1931.

27. Although there was never any written understanding or formal agreement between the two Governments on the subject, in fact a situation was reached in which it was tacitly understood that the line to be observed by the British trawlers was the line which the Government of the United Kingdom, in its application, has described as the "red line", that is to say the red lines on the charts produced at the Oslo Conference of 1924 and referred

to in paragraph 14 above. (As stated in that paragraph, these lines were drawn by Norwegian experts, and represented without any official commitment their view of what waters Norway claimed.) This situation came about (at any rate in part) in consequence of what the British trawling industry understood to be the policy of the Government of the United Kingdom in the matter, namely, that British trawlers would not receive the diplomatic support of the Government of the United Kingdom as against the Norwegian Government to the extent of making protests to, and claims against, that Government in respect of any interferences which were inside the limits claimed by the Norwegian experts in 1924. The British trawlers were in fact supplied, through the Ministry of Agriculture and Fisheries, with charts upon which the "red line" was marked. These charts, although occasionally inaccurate because of mistakes in copying, nevertheless served as sufficient guidance to British trawlers to avoid many arrests. It is not within the knowledge of the Government of the United Kingdom whether any similar charts were issued to Norwegian fishery protection vessels, but those vessels must inevitably have been aware of the approximate position of the "red line", and it is to be supposed that the absence of many arrests during the years in question was due, on the one hand, to the fact of such knowledge, and, on the other, to the existence of British arrangements with the trawlers as described above. In this connection it may be pointed out that in the *Bergens Tidende* and the *Aften Posten*, both Norwegian newspapers, of 26th March, 1930, it was stated that the officer commanding the Norwegian fishery protection cruiser, Captain Gottwaldt, had said that foreign trawlers had shown themselves more respectful of territorial waters during the past season and that co-operation between British trawlers and Norwegian fishery protection vessels was more cordial. A telegram from the British Legation at Oslo of 24th November, 1933, describes the situation, as it had been while the "tacit red line *modus vivendi*" was in force, in the following words:

> "Your telegram No. 49 (of 24th November. Norwegian treatment of British trawlers and visit of Mr. Asserson).
>
> Tacit arrangement is merely practice that British trawlers do not have our support within limits claimed by Norwegians in 1925 if they are not molested outside those limits. Both sides observed this in practice until some 18 months ago when Norwegians began arresting or warning off trawlers even outside these limits, which are themselves very wide, and were not admitted by His Majesty's Government in 1925 negotiations or since."

"The Deutschland"

28. British trawlers were not alone in meeting with difficulties off the Norwegian coast. Several German vessels were arrested in the course of the years between 1926 and 1928, e.g., the *Deutschland*, the *Elsie Kunkel*, the *Fritz Busse*. These German vessels were

arrested for fishing and customs offences. Of these incidents, the most important was that of the *Deutschland*, which was arrested in 1926 for smuggling by the Norwegian authorities off the island of Halten about 64° 12′ N. and some 60 miles from the entrance to Trondhjem Fjord [1]. The absence of protests from the German Government in respect of arrests for smuggling is explained by the fact that Germany was, with Norway, a party to the Helsingfors Anti-smuggling Convention of 19th August, 1925, in which it was agreed that no objection should be taken to arrests for customs or fiscal protection grounds within a 12-mile limit. There is attached as Annex 8 a section of the chart which was before the Norwegian Supreme Court on which the places mentioned in the judgments are shown and the base and other lines put in issue marked. The *Deutschland* was not charged with breach of the fishery regulations but *(a)* the supercargo was charged with violating the Norwegian Customs Acts of 1845 and 1922 within the 10-mile limit for customs purposes laid down by the Act of 1922, and *(b)* the supercargo and seven members of the crew were charged with violating the Norwegian Act of 1924 relating to the importation of spirits, which was only applicable within the four-mile limit. By a judgment of the local court the accused were convicted. The International Court is not concerned in this case with the question whether or not it is legitimate for States to exercise, in a contiguous zone outside territorial waters, jurisdiction over foreign vessels for the purpose of the protection of its customs and fiscal interests. The *Deutschland* case is, however, relevant to the issues now before the Court, because it raised the question of the base-line from which either the Norwegian territorial water limit of four miles or the Norwegian customs limit of ten miles should be drawn, and because the two limits start from the same base-line. In any case, the issue which was most seriously contested by the accused and which occupies the greater part of the judgment is the second charge, to which the four-mile limits of territorial waters is applicable.

29. The decision in the *Deutschland* is published in *Retstidende* for 1927, page 513, and an English translation of the relevant portions of the judgment, prepared by Hoiesterettssadvokat Nansen, the Norwegian Counsel in this case of the Government of the United Kingdom, forms Annex 9. The explanatory comments in square brackets are those of Mr. Nansen. The principal issue in the case was the fact that the Norwegian prosecuting authorities considered that the four- (and ten-) mile limit was to be drawn parallel to, and on the seaward side of, a base-line, beyond the outer fringe of islands, of which Halten was one; whereas the captain of the vessel had been navigating on the assumption that by keeping outside a radius of four (ten) miles distance from the

[1] North of the area covered by the decree issued in 1889 by the King of Sweden-Norway relating to fishing limits off Romsdal county (see para. 5 above) and South of the area in dispute.

nearest land (i.e. main land) he would be keeping within the law. The case was taken to the Norwegian Supreme Court, who decided, on 30th June, 1927, by a majority of six judges to one, to quash the conviction of the defendants so far as the charge under the Spirits Act was concerned (i.e. where the four-mile limit was applicable), while maintaining the conviction of the supercargo under the Customs Act. As regards the conviction under the Customs Act, it is not necessary to say more than that the ten-mile limit was not discussed in the judgment of the Supreme Court, as the Supreme Court found this unnecessary; since it took the view that mere preparations for smuggling spirits into Norway constituted an offence under the Customs Act. It is only necessary, therefore, to consider the portions of the judgments which deal with the charge under the Spirits Act of 1924, and it is only these portions of the judgments of the Supreme Court which are reproduced in Annex 9 in an English translation.

30. The principal judgment of the majority, delivered by Judge Bonnevie, quotes, so far as it is necessary, the judgment of the Court below, and it will be seen that the Court below presumed that the limit of Norwegian territorial waters "must be drawn parallel with the chief direction of the coast outside the skerries". The Court below then went on to say that, while it could not exactly say where the border was to be drawn in the area where the alleged offence occurred, "it is safe to say that at any rate the base-line cannot be drawn closer in than from Grundskjær (the extreme rock in the Halten group) to Kya on Folla, so that the territorial border and the customs duty border cannot be closer in than four and ten miles respectively outside this line". And it was because the lower Court found that the accused had been for most of the time within ten miles of this line, and several times within four miles of this line, and twice even inside the base-line, that it convicted them.

31. The Supreme Court had before it a statement by Norwegian naval experts, together with an opinion by Dr. Ræstad, an eminent Norwegian jurist, who was later the chief Norwegian representative at the Hague Conference on territorial waters and also the writer of a legal treatise on this subject. Dr. Ræstad's opinion was quoted in the judgment of Judge Bonnevie (with whose judgment five other members of the Court, Judges Andersen, Broch, Bugge, Soldan and Nygaard, concurred). As Judge Bonnevie adopted and made his own the arguments of Dr. Ræstad, it may be convenient to indicate briefly what Dr. Ræstad said.

32. Dr. Ræstad distinguished clearly two different things, namely: (1) what areas Norway was entitled under international law to appropriate as Norwegian waters, and (2) what areas in fact Norway had appropriated as a matter of internal Norwegian law. Dr. Ræstad carefully avoids expressing any opinion on question (1), but on question (2) he expressed the opinion that there was no evidence, or insufficient evidence, that Norway had appropriated

the waters in question. Dr. Ræstad, while saying there was no doubt that the Scandinavian league (four sea miles) should be applied, indicated that doubt arose when it had to be decided from what base-line this league has to be drawn. The question which arose was whether it should be drawn from single islands, islets or rocks or, as the District Court had done, from imaginary base-lines drawn between two islands, and how, in practice, these base-lines were to be drawn. He therefore points out that it was important to know if the old Rescript of 1812, or any other supplementary common law rules, prescribe that territorial waters are to be based on such lines. He then points out that neither the Rescript of 1812 nor any other common law rules state how, in practice, and between which islands, islets or rocks, the base-lines are to be drawn. Then, having indicated that the laws of some countries other than Norway state that territorial waters are to be reckoned from the coast and its bays, and it is then possible to ascertain from historical evidence what is meant by a bay, he points out that the Rescript of 1812 does not say anything of this kind, and that it was very unlikely, for historical reasons, that it was meant to be understood in this way, as regards bays, because he says " the original starting point in Norway, as in several other countries, is that the extent of the sea territory corresponds with the range of view, but this is not the same as reckoning sea territory from an imaginary line". It was not reasonable to suppose that the Danish-Norwegian Government, by this decree, wanted to extend its protection over parts of the sea which could not be easily defined. He then refers to the old Norwegian view that the skerries are a unity, and that the skerries should provide the natural starting point for the reckoning of territorial waters, but (he says) it was not permissible for a court to select any particular line along part of the skerries as the base-line unless support for this conclusion could be found either in Norwegian legislation or on historical facts. There was no Norwegian legislation supporting such a view, and support for it could only be found, on the basis of historical facts, if the area in question lay in a fjord or arm of the sea which, through a long historical development, had received the character of Norwegian sea territory, but he said there was no evidence to this effect as regards the region of the sea now in question. Even if one assumed a rule that all parts of the sea which could be called a fjord or bay were included in Norwegian waters, there still remained the question whether this area was in a fjord or a bay, and where the limits of the fjord or bay should be drawn, and the arm of the sea in question here (Frohavet)[1] would clearly have to be limited by a line not further out than between the Halten group and Hosen island.

[1] This is No. 21 in the table given in Annex (D) to Annex V of the Minutes of the London Conference, 1925. See Annex 7 to this Memorial. It appears from Annex 7 (p. 141) that at a late stage of the London Conference the British experts were prepared to accept Frohavet as a Norwegian "historic" bay with a closing line from Flessa to Halten.

33. Judge Bonnevie, who quotes, and relies on, this opinion of Dr. Ræstad, stated that he found the question of the limits of Norwegian territorial waters in this area very doubtful. He considered it certain that, as regards special regions of the sea such as the Vestfjord and the Varangerfjord, Norway had maintained from olden times that these fjords were Norwegian in their entirety, and that straight lines must be drawn from the mouth of the fjords even though this meant including regions more than four miles from land as Norwegian waters. But, he said, for the greater part of Norway's extensive coast it was not proved that there existed any further rules.

34. It will thus be seen that, in the month of June 1927, all the members of the Norwegian Supreme Court except one held that there was no evidence up to that time that Norway had appropriated and brought under Norwegian sovereignty any waters which could not be said to lie within a fjord, or within four miles of the mouth of the fjord, except in two areas which had been the subject of special legislation, areas covered by the special Decrees of 1869 and 1899 off Sundmöre Romsdal respectively. In the absence of such legislation, it was not possible to deduce the appropriation by Norway of areas of sea enclosed on the inside by base-lines, drawn from point to point from the outermost rocks or skerries, or extending four miles seaward from the said base-lines. The Decree of 1812 was too indefinite for any such conclusions to be drawn. All this seems to follow from the judgment of the Norwegian Supreme Court. Judge Berg, who was in the minority, based his view on the report of 1912 of the Norwegian Commission, which has been referred to in paragraph 9 above, and on the Norwegian Government's answers to the *questionnaire* of the League of Nations' experts concerned with the preparations for the codification of international law in the matter of territorial waters which he quotes (Annex 9, p. 187).

The Hague Codification Conference (1930)

35. The Hague Codification Conference opened on 13th March, 1930, and finished on 12th April, 1930. Territorial waters was one of the subjects with which the conference was convoked to deal, and it was allocated to the Second Committee. As is well known, the Hague Conference failed in one of its principal objects of producing a convention, to be signed and ratified by the vast majority of States in the world, laying down with obligatory force all the necessary rules of international law with regard to territorial waters. It failed to do so principally because of failure to agree on the breadth of territorial waters. While in this respect it has been described by the eminent French author of *Le droit international public de la Mer*, Professor G. Gidel, as

"a great defeat for the three-mile limit", it is important to remember that even Gidel goes on (at page 180 of the *Recueil des Cours de l'Académie de Droit international* (1934), Vol. II) to say:

> "Pour le moment, on se trouve conduit à n'attribuer à la fixation faite par un État de ses eaux territoriales au delà de la limite de 3 milles universellement adoptée comme minimum, qu'une valeur essentiellement relative. La fixation par l'État riverain de l'étendue de sa mer territoriale ou de ses zones spéciales côtières a bien une valeur absolue en droit interne à l'égard des nationaux de l'État riverain. Elle n'a de valeur internationale que par l'assentiment individuel de chaque État et pour cet État seulement."

36. The subject of the breadth of territorial waters, together with the subject of the contiguous zone, was allocated to the first sub-committee of the Second Committee of the Conference. The Chairman of the first sub-committee was M. Barbosa de Magalhaes. A second sub-committee was presided over by Vice-Admiral Surie. The Rapporteur to the Second Committee, M. François, also acted as Rapporteur for the two sub-committees in order to ensure co-ordination. The second sub-committee was entrusted with two principal tasks, namely, *(a)* a consideration of the rights of States inside territorial waters, both those of the riparian State and those of other States, and *(b)* the drawing up of the principles by which territorial waters, whatever the breadth, should be drawn. This second task involved the ascertainment of principles dividing territorial waters on the one hand from internal waters on the other hand. The second sub-committee achieved considerable success in its work. On both the subjects entrusted to it, the sub-committee produced reports, in the form of more or less carefully drafted rules, which commanded, for the great part, the assent of the whole or a vast majority of the delegations represented at the conference, and a large portion of its work was approved in the full committee and adopted in a report. Now the greater part of the work of sub-committee No. 2 is rightly treated by Gidel and other writers as possessing the highest degree of international authority, as being in fact the most authoritative pronouncements on these matters that exist. It is the second part of the second sub-committee's work (namely, that relating to the manner in which territorial waters may be delimited) which is most relevant to the case now before the Court.

37. It will be seen that, in Part II of this Memorial, the Government of the United Kingdom, in support of its contentions with regard to the principles of international law applicable, relies *(inter alia)* on the work of this sub-committee. The Government of the United Kingdom has attributed so great an authority to

the work of the Hague Conference in regard to the delimitation of territorial waters that it has in several points modified its views in accordance with those generally held by the Hague Conference Second Committee, and accepts those views (which are more favourable to the littoral State) as representing the modern international law on the subject. Amongst other things, the Government of the United Kingdom now finally accepts as a general rule of international law the ten-mile rule for bays and other enclosed waters, whereas previously, in regard to Norway and other countries, it sometimes pressed for the more limited rule of double the width of territorial waters, i.e. six miles. The Norwegian attitude, after the Hague Conference, has been the opposite. Whereas its rather indefinite and vague claims before 1930 appeared to bear some resemblance to the principles the Hague Conference accepted, Norway has subsequently seen fit, particularly in the 1935 Decree, to make claims which go much further than anything Norway has ever claimed before, and to pay no regard either to the principles which commanded such great support at the Hague Conference, or, indeed, to any other principles for which there appear to be substantial international authority.

History of dispute (1930-1933)

38. Towards the end of 1930, incidents arising out of the arrests of British vessels by the Norwegian authorities began to occur again. The *Lord Mountbatten* was arrested in October 1930, and on 12th December, 1930, the British Minister addressed a protest against her arrest, on the ground that, according to the British method of calculating territorial waters, she was on the high seas at the time she was interfered with. In the following year, the British vessels *Howe* and *Lord Weir* were arrested and, by a note dated 27th March, 1931, the British Minister at Oslo, Sir Charles Wingfield, protested against these arrests (Annex 10). In the case of the *Howe*, the vessel was fined for fishing between three and four nautical miles from the shore at a position 70° 28'.8 north 31° 6'.9 east (near Persfjord) [1] on the night of 13th September, 1930; whilst in the case of the *Lord Weir* the fine was imposed on the ground that she had been fishing on or about the same date at a spot (70° 31' 8" north 30° 35' 5" east) 3·6 nautical miles outside the base-line Haabrandnesset-Klubbespiret, the base-line for Syltefjord [2] indicated by a pecked green

[1] Persfjord was not discussed at the London Conference. It is, however, No. 2 in the list in the records of the Oslo Conference (Annex 4, p. 106). As stated above, the London Conference was considering especially fjords whose entrance was more than 6 miles wide. Persfjord lies between Varangerfjord and Syltefjord.

[2] No. 2 Admiralty silhouette (Annex 7), a fjord in regard to which the British experts at the London Conference recommended acceptance of the Norwegian claim ; and there is, therefore, no difference between the points taken as the eastern end of the base-line in the red and pecked green lines respectively.

line on chart No. 325 of the 1924 series filed herewith as Annex 5. The base-line used by the Norwegian prosecuting authorities in the *Lord Weir* case was a line nearer to land than even the red line in this area. Haabrandnesset was the point adopted in the red line. The western end of the base-line (Klubbespiret) is, however, slightly further towards the fjord than Korsnesset (the red line base-point) [1]. The place names are not shown on the 1924 charts, but they are shown on chart No. 2 filed in Annex 2 of this Memorial, from which it will be seen that Haabrandnesset and Klubbespiret are landmarks at the mouth of Syltefjord. This vessel was in fact more than four nautical miles from the nearest land, but if the base-line in question was taken into account then it would be within the four-mile limit. The British protest, while stating that the Government of the United Kingdom did not recognize any right of arrest outside the three-mile limit, was based on the fact that no base-line had ever been laid down in the region of the Syltefjord by Royal decree or other order, and referred to the *Deutschland* judgment. The Norwegian Government were asked to state what was the precise base-line claimed by them in this part of the Norwegian coast, and under what ordinance the base-line was laid down. On 11th August, 1931, the Norwegian Government replied to this note saying that Norwegian territorial waters, on the basis of prescriptive right, extended to four nautical miles. As regards the base-lines from which the four-mile limit was to be calculated, the Norwegian Government stated it was not in a position to make a statement on the subject because the whole matter was under examination by the Storting (see Annex 10). ("The position is that the Storting have not yet taken up a standpoint with regard to final markings of these lines in all details.") In the year 1932, the two British trawlers *Deepdale Wyke* and the *St. Neots* were arrested for fishing off Brevikfjord and Kongsfjord respectively. However, the fines were accepted in these cases and no legal proceedings or protests ensued.

39. Later, in February 1933, the *Loch Torridon* and the *Crestflower* were also arrested. The skippers of the *Loch Torridon* and the *Crestflower* appealed to the Trondenes County Court from a decision of the Chief of Police at Senja, imposing fines upon them for fishing in Norwegian territorial waters. The Court found as a fact that both trawlers were within the territorial limits fixed by the Norwegian Admiralty, i.e. 4 miles from the base-line Tokkeboen-Torreskjæret (a dry skerry) N.N.E. of Glimmen (north of Andenes), about 69° 30′ N. latitude and 16° 40′ E. long. The position of the

[1] At the London Conference, the line recommended for the Syltefjord was Storksjaer-Klubbespiret. (See Annex 7, Minutes of eighth meeting.) Storksjaer is a rock adjacent to the coast about ½ mile west of Haabrandnesset and further up the fjord. The London Conference therefore recommended for the Syltefjord a base-line rather further up the fjord at *both* ends than the red line.

vessels was 3·2 miles off this base-line. This position is in the approaches to Andfjord. Tokkeboen is base-point 56 of the red line and 27 of the blue line. If chart No. 6 of the series filed in Annex 2 is consulted, however, it will be seen that the blue and red lines diverge in this area, for the red line curves inwards to base-point No. 57, whilst the blue line continues straight on to base-point No. 28 (58 of the red line). In the result the vessel was arrested at a point which could have been within the blue line (if it had at that time been promulgated) but was in fact about 2 miles outside the red line (which was drawn on a 4-mile limit and was the only line publicly known at that time as claimed by Norway) [1]. It was argued for the defence that the line in question :

(*a*) had not been fixed by Order in Council
(*b*) had not been recognized internationally
(*c*) had not been notified to foreign countries
(*d*) was more than 10 miles in length and not permissible under international law
(*e*) was drawn over rocks at times washed over by the sea.

40. The Court held that there was no rule of international law that a base-line across a fjord must not exceed 10 miles in length. As to fixing the line, no competent Norwegian authority had laid it down. In view, however, of disagreement between the various countries as to the correct principles to be followed on defining territorial waters, and also *in view of the fact that the Norwegian authorities had not notified the limits, or the principles on which such limits were laid down*, the Court held that the accused had made an error in good faith regarding the limits of Norwegian territorial waters and acquitted them. In May 1933, the *Loch Torridon* was again arrested on the same charge, at about the same place, and the case was brought before the same Court, but on this occasion (10th May, 1933) she was fined.

41. In view of the facts that the vessel was arrested *outside* the red line, and that Norway had never officially prescribed the lines in this area, the Government of the United Kingdom represented (see Annexes 11 and 14, No. 1, and para. 47 below) that the fine should be remitted, but for a long time the Norwegian Government resisted this request, and only finally acquiesced in April 1935 when, as an "act of grace", it remitted the fine.

[1] In the London Conference, Andfjord was inlet No. 16 (see Annex 7, p. 141). The Norwegians pressed for the red line (Maaneset to the Rock, North of Glimmen). This is 14.6 miles long. In fact, the base-line agreed at the London Conference was (Annex 7, Minutes of Conference, Annex VIII) the line Maaneset-northernmost point of Andoy, a line 15.8 miles long. The blue base-line runs from Tokkeboen to the Rock, north of Glimmen, a distance of 18 miles, Tokkeboen being much further north-east than either Maaneset or the northern tip of Andoy (see chart No. 6 filed in Annex 2).

42. The revival of incidents of the above character was disturbing to the Government of the United Kingdom. A memorandum was left with the Norwegian Prime Minister and Minister for Foreign Affairs on 27th July, 1933, in which His Majesty's Government expressed its concern at the situation which had arisen in consequence of this increasing interference with the British trawlers. In this memorandum (Annex 11), it was stated that one of the principal causes of complaint was that the Norwegian authorities not only claimed a four-mile limit for territorial waters, but "also make use of unjustifiable base-lines, thus extending their territorial waters even beyond the utmost limits claimed in 1924". In other words, His Majesty's Government were concerned at the fact that what had been understood to be a tacit arrangement that the "red line" should be observed was now falling through, and that it appeared to be the intention of the Norwegian Government to claim even wider limits for their territorial waters than they had claimed during the 1924-1925 negotiations. Indeed, the evidence suggests that Norway was already claiming the blue line in advance of its promulgation. Sir Charles Wingfield had already been instructed in the previous May to express the concern of the Government of the United Kingdom in the matter orally to the Norwegian Foreign Ministry.

43. From all these events, His Majesty's Government drew the inference that the Norwegian Government was embarking upon a policy of making more exaggerated claims in regard to territorial waters than those which it had maintained in previous years. Towards the end of 1933, therefore, informal discussions began, the object of which was to reach a *modus vivendi* with the Norwegian Government on the whole matter.

Red line modus vivendi *of 1933*

44. Following these discussions, Mr. Asserson, the Norwegian Director of Fisheries, visited London in November 1933 and saw Mr. Maurice, Fisheries Secretary of the Ministry of Agriculture and Fisheries. As a result of their conversations, an agreement was reached which was embodied in diplomatic form in a note, dated 30th November, 1933, addressed by the Norwegian Minister in London to Sir John Simon, then Secretary of State, recapitulating that on 22nd November a conference had been held at the Ministry of Fisheries and stating that "Desiring to avoid any friction, my Government have given instructions to the Norwegian patrol vessels enforcing the necessity of maintaining the practice which for years has been followed in this matter. This step has been taken pending the decision of the Storting in regard to a Bill establishing the base-lines of the Norwegian territorial waters." (See Annex 12.) This communication was interpreted by the Government of the United Kingdom as meaning that the red line, which formed the

basis of the practice referred to by M. Vogt, would in future be observed as the *modus vivendi* at least until the Storting had enacted legislation establishing the Norwegian base-lines definitively. The *modus vivendi* which had hitherto been tacit was now recorded in an official note. The Norwegian Foreign Minister, Dr. Koht (in the same speech in the Storting on 24th June, 1935, as that from which a quotation has already been made in paragraph 15 above), used the following words with regard to this matter : "The committee are further aware that the base-lines which they recommend (i.e. those in the 1935 Decree) are somewhat longer than the so-called 'red lines' indicated on some British charts. These latter lines have never been recognized by Norway and they have no authoritative title except inasmuch as the Norwegian Minister in London, in a note of 30th November, 1933, promised that the Norwegian fishery inspection vessels would abide by these lines—which were however not directly mentioned in the note—until further notice." The Storting report on the 1935 Decree also uses similar language with regard to this *modus vivendi*.

45. Unhappily this *modus vivendi* did not in fact put an end to incidents in which British trawlers were involved. Indeed, immediately after its conclusion, a case was reported, from which it appeared that one of the Norwegian patrol vessels was still enforcing territorial limits wider than those contained by the red line. The Norwegian Government explained the incident on the ground that the instructions given as a result of the 1933 (explicit) red line *modus vivendi* had not reached the patrol vessel. This incident was however of minor importance as compared with the case of the *St. Just*.

The *St. Just* was arrested and condemned by the District Court of Vardo on 16th November, 1933. The 1933 (explicit) red line *modus vivendi* was concluded on 30th November. The case was taken to the Court of Appeal and from the latter to the Supreme Court, and these appeals were heard after the conclusion of the *modus vivendi*, but no reference is made to it in the proceedings. The Norwegian report of the judgment is to be found in the *Retstidende* for 1934. M. Nansen's translation of this judgment is given in Annex 13 to this Memorial. The arrest was made outside the Syltefjord in East Finnmark and therefore in the region [1] covered by the chart supplied by the Norwegian Prime Minister to the British Authorities *before* the beginning of the 1924 Oslo Conference (see para. 13 above). This chart contained the red line marked by the Norwegian authorities showing their claims to territorial waters in that area. On this chart (and on chart No. 325 of the 1924 series filed with Annex 5), the Syltefjord was closed by a red line

[1] This was in the same region and of the same fjord as in the case of the *Lord Weir* (para. 38).

drawn across two headlands on the mainland (Herbakken [1] to Korsnesset). Only one (Herbakken) of these headlands was actually at the mouth of the Syltefjord, and the result was a line 11·4 miles long and, on this basis, Norwegian territorial waters extended four miles seaward from this line. (It is of some interest also to note that the Syltefjord was claimed with this red closing line at the London Conference by the Norwegian delegates, and the British delegates were prepared to recommend this line to their Government; see Annex V A and B of the records of the London Conference, in Annex 7 to this Memorial. The line ultimately recommended in the joint conclusions of the delegates was slightly further up the fjord than the red closing line (see footnote to para. 38 above).)

When the *St. Just* was prosecuted, however, the Norwegian prosecutor based his case on a different line, 25 miles long, drawn from Kaalnesset (on Ráenoya) to Korsnesset, which passed about 400 yards outside Herbakken. This line is in fact identical with the blue line of the 1935 Decree (see chart No. 2 of the series filed in Annex 2) and was not only longer than the red base-line but also quite different and much longer than the base-line upon which the Court gave its decision in the *Lord Weir* (para. 38). The conviction, pronounced on the footing that the *St. Just* had been within four miles of this longer line, was upheld by the Court of Appeal, and by a majority of five judges to two in the Supreme Court, although the *St. Just* carried, to guide her operations, the chart showing the red line as drawn by the Norwegian authorities in 1924, and no notification of any change from this line had been given at any time by the Norwegian Government, and the line on which the conviction was based had not been published, and the *St. Just* was unaware of it.

It was on this ground that Judges Boye and Bonnevie (who dissented in the Supreme Court) held that the conviction should be quashed. It must be held, they said, that for British fishermen at any rate Norway must be regarded as claiming the line her Government had communicated to the Government of the United Kingdom for the information of British fishermen, as the line closing the Syltefjord from which the four miles should be measured. The majority judgment (Judges Klaestad, Christiansen, Lie, Borch and Berg) was delivered by Judge Klaestad. It seems to depart from the precedent set by the Supreme Court in the *Deutschland* case (para. 28 above) in holding that the Court must decide the base-lines enclosing fjords if the Government had not done so by decree and that the Court must do so, even if the task was difficult, by interpreting the fundamental Rescript of 1812, and applying it to the area in question as best it can in the light of such other

[1] Herbakken is the name of the whole promontory in this area, and Haabrandnesset given in para. 38 as the eastern end of the base-line (red and pecked green) is the eastern tip of Herbakken. The same point is meant, whether the description is Herbakken or Haabrandnesset.

evidence of Norwegian practice as it can find. The evidence on which Judge Klaestad relied was the report of the Norwegian Commission of 1912, the Norwegian Government replies to the League of Nations (in connection with the preparatory work for the Codification Conference) in 1927 and 1928, and the base-lines which had been drawn in the Decrees of 1869 and 1889 for the regions of Sundmöre and Romsdalen. On these grounds, Judge Klaestad upheld the prosecution's base-line which passed outside one of the headlands of the Syltefjord.

46. Though in a note of 1st September, 1934, the Norwegian Foreign Minister urged that the line on which the conviction in the *St. Just* had been based "only in an insignificant degree differs from the line on the chart of East Finnmark, which I had transmitted to His Britannic Majesty's Chargé d'Affaires on 4th November, 1924", the Government of the United Kingdom not unnaturally protested strongly against the conviction, basing its contention that the conviction was unjust on the same grounds as those adopted by the two minority judges in the Supreme Court.

History of dispute (1933-1935)

47. The case of *St. Just* (described in para. 45 above) was not the only incident of the kind which occurred after the *modus vivendi* of 1933, though not all of the incidents raised any question of principle. Difficulties of this kind undoubtedly arose chiefly owing to the delay on the part of the Storting in reaching any decision on the question of territorial waters, whilst public opinion in both countries became increasingly strong on the whole question. A statement was issued to the press by the Norwegian Prime Minister on 12th July, 1934, saying that all the complaints of the British Government regarding the treatment of British trawlers by the Norwegian authorities were being carefully investigated.

In the first of three notes, all dated 24th May, 1934, the Government of the United Kingdom proposed to the Norwegian Government that the latter should remit fines imposed on British trawlers by the Norwegian authorities in respect of fishing carried on outside the red line of 1924, and mentioned the cases of the *Edgar Wallace* and the *Loch Torridon* (see para. 39) as examples of such cases. In the second note of the same date it also drew the attention of the Norwegian Government to particular cases of interference by Norwegian Government vessels with British vessels, namely, the *Balthasar*, the *Bernard Shaw* and the *Orsino*, in which, according to the information in the possession of the Government of the United Kingdom, the vessels in question were fishing outside Norwegian territorial waters. The interference arose out of alleged fouling of the fishing lines of Norwegian boats by the nets of the trawler. Having regard to the recurrence of such incidents, the

Government of the United Kingdom proposed by the third note of the same date that some machinery should be devised, at least for settling claims by Norwegian in-shore fishermen against British trawlers in respect of damage to fishing gear, and it was proposed that a formal convention be drawn up with this end in view. By a note of 31st May the Norwegian Government replied that they considered that the latter proposal should stand over until the Storting had come to a final decision on the subject of base-lines for Norwegian territorial waters. All these four notes are reproduced in Annex 14. However, after further correspondence, the two Governments reached an agreement signed on 5th November, 1934, which provided for a joint Anglo-Norwegian board of enquiry to investigate and settle claims by fishermen of the two countries, in respect of damage to their fishing gear caused by fishermen of the other country. As regards particular incidents the Norwegian Government undertook to investigate the complaints made.

48. The whole of these discussions, however, which dragged on for several months, proved abortive except for the Agreement of 1934 for settling claims between fishermen of British and Norwegian nationality, and eventually the whole situation was changed by the promulgation, on 12th July, 1935, of the Norwegian Royal decree defining, for fishery purposes, the territorial limits of the northern coasts from the Finnish frontier to Træna. This decree forms the subject matter of the proceedings now before the Court, instituted by the Government of the United Kingdom against the Norwegian Government.

49. The text of the Decree of 12th July, 1935, which is annexed to the application of the United Kingdom instituting these proceedings, was communicated by the Norwegian Government to the British Minister in Oslo on 19th August, 1935. It was issued with a report of the Committee of Foreign Affairs of the Storting and an explanatory statement issued by the Norwegian Government. This report and this statement are attached as Annex 15. The explanatory statement says that the Norwegian authorities "have made use of their sovereign rights on the sea off the shores in order to fix the maritime boundaries separately for various purposes". This passage follows a reference to the Norwegian law of 30th September, 1921, fixing a ten-mile limit for customs purposes. As stated above, this law of 1921 raises the question of a contiguous zone for customs protection outside territorial waters and the existence of an international right to establish such a contiguous zone is not an issue in these proceedings. On the other hand, as will be mentioned hereafter in Part II, the United Kingdom maintain that there is no international right by which a State can claim exclusive fishing rights outside territorial waters. It does not seem, taking the explanatory statement and the report of the Storting as a whole, that Norway was intending to claim exclusive fishery rights outside

territorial waters (i.e. waters under Norwegian sovereignty). The passage is perhaps rather to be explained as an intention to keep the way open for a possible decision by Norway, in case of a future war, to fix the waters which she might claim as Norwegian for neutrality purposes within narrower limits than those laid down in this decree (see in particular para. 19 of the Storting report [1]). The decree does not even lay down the outer limits for fishery purposes, nor does it specify the breadth of the belt formed by the waters contained in any such limits. All it attempts to do is to lay down base-lines from which the limits are to be calculated. Owing, however, to the fact that the decree refers in its preamble to the Royal Rescript of 1812, it is clear that, by implication, the belt is to be taken as four miles in breadth from the base-lines laid down by the decree.

50. When the decree was examined in London it was found that the base-lines laid down by it were further out than those indicated on the chart communicated by the Norwegian Prime Minister in November, 1924 (see para. 13 above), which related only to a section of the coast off East Finnmark. They were also considerably more extensive than those delimited by the red line for the coasts of Northern Norway as a whole at the Oslo Conference (see para. 15 above). At a rough estimate, 1,200 square miles of fishing were reserved outside the red line (the non-binding but most authoritative statement of Norwegian official views of her claims up to that date).

51. On 22nd August, the Norwegian Minister for Foreign Affairs, Mr. Koht, stated that the decree brought the 1933 red line *modus vivendi* to an end but that the possibility of continuing that *modus vivendi* to give time for discussion might be considered.

On 24th August, the British Minister at Oslo informed the Norwegian Government that the Government of the United Kingdom could not recognize the four-mile limit, or any other area or limit but the three-mile limit, for fisheries, any more than for territorial waters. In addition, the Minister was instructed to express to the Norwegian Government the fullest reservations with regard to the new base-lines. He also stated that the Government of the United Kingdom hoped that the new decree would not be enforced against British fishermen pending the discussion of proposals for a general settlement which they would shortly submit. Mr. Koht replied that no orders for enforcement had yet been issued and care would be taken on the Norwegian side to avoid incidents.

In accordance with instructions from the Government of the United Kingdom, Mr. Dormer, the British Minister at Oslo, had

[1] In Annex 16. The numbering of paragraphs has been inserted by the Government of the United Kingdom for convenience of reference.

discussions with the Norwegian Prime Minister on 25th September, and Foreign Minister on 1st October, 1935. Annex 16 gives these instructions, Mr. Dormer's report of the interview, and the texts of *aide-mémoires* exchanged. The two questions discussed were (1) proposals for an agreement ; (2) continuation of the *modus vivendi* while the proposals were under discussion. Mr. Koht gave no assurance as to the continuance of the *modus vivendi*. On 16th October, Mr. Koht was informed (as the owners of the British trawlers had been informed) that the Government of the United Kingdom would regard the *modus vivendi* as being still in force, and the responsibility for incidents resulting from interference with British vessels outside the red line would rest on Norway.

52. On 7th October, Mr. Koht told Mr. Dormer that the Norwegian Government could not withdraw its decree but repeated his assurance of 1st October (vide Annex 16, item No. 2) that the Norwegian authorities would act leniently. At the end of November, Mr. Koht informed the British Chargé d'Affaires that the "provisional arrangement could not be prolonged indefinitely". In addition to discussions on an agreement for the settlement of the dispute, there were also discussions at that time for reference of the dispute to arbitration or to the Permanent Court of International Justice. The Government of the United Kingdom expressed preference for the Permanent Court of International Justice.

53. According to information conveyed to the British Minister in Oslo by his German colleague in October 1935, the German Government also protested against the decree, stating that they could not recognize the base-lines therein laid down, and that they considered any line outside the three-mile limit, whether for territorial waters or for fishery purposes, as being contrary to the law of nations.

In the meantime, as already stated, British trawlers had been informed that the Government of the United Kingdom regarded the *modus vivendi* of 1933 as still being in force, and the Norwegian authorities were notified of this by the British Vice-Consul in Northern Norway.

54. It appears that, at this time, the British authorities were under the impression that the Norwegian assurances regarding "lenient" treatment (para. 52) were to be interpreted as meaning that, in general, and, as against British trawlers, the Norwegian authorities would confine themselves to enforcing the red line. A certain incident, however, which occurred a few months later proved that this impression was incorrect. The British trawlers *Esquimaux*, *Arkwright*, and *Bunsen* were interfered with whilst fishing outside the red line. When Mr. Eden, then Secretary of State for Foreign Affairs, was questioned regarding these incidents in the House of Commons, he observed that, if the red line was

not adhered to, "a new situation would arise rendering it difficult to continue the negotiations at present in progress for a general settlement of the whole controversy". The Norwegian Government thereupon issued a communiqué referring to this statement and said that it was their intention to warn trawlers off the decree limit but that they would refrain from arresting them if they obeyed the warning. From this statement it became apparent that, when the Norwegian Government spoke of "lenient" treatment, they did not mean that British trawlers would be allowed to fish up to the red line, but that, if they were discovered fishing within the decree limits (and presumably outside the red line, although this was not explicitly stated), the Norwegian authorities would confine themselves to warning them out of the area, and would not proceed to arrest them unless the warning was disregarded.

55. With some difficulty, however, the Norwegian Government were induced, at the end of February 1936, to give a confidential assurance that British trawlers would not be arrested outside the red line whilst negotiations for a permanent settlement were in progress. These negotiations continued throughout 1936, and, on 9th February, 1937, the Government of the United Kingdom submitted a draft Fishery Convention to the Norwegian Government. The convention was drawn up in multilateral form as it was hoped that, if agreement was reached, other countries, particularly France and Germany, would become signatories. On 28th April in the same year, the Norwegian Government communicated to the Government of the United Kingdom the text of their own draft convention, which had apparently been prepared without particular reference to the British proposals. On 21st July, 1937, an *aide-mémoire* was handed to the Norwegian Government containing a number of criticisms of the Norwegian draft. It was not until 8th December, 1937, that the Norwegian Government replied to these observations. On that date, they informed the Government of the United Kingdom that, although the British and Norwegian draft conventions were sufficiently similar to form a basis for discussion, they preferred their own draft, because it was more comprehensive. They added, in particular, that they could not accept a clause in the British draft which established the red line as the limit for trawling, but that, nevertheless, an effort should be made to reconcile the two existing draft conventions. As a result of notes exchanged in June and July 1938, the two Governments agreed to allow the question of a convention and its provisions to be discussed by experts appointed by the two Governments. A Conference was held in Oslo in October 1938 in which agreement was reached upon a draft convention based on the earlier British and Norwegian drafts. In addition, it was agreed that, as a first step, the draft convention should be submitted for the opinion of the fishing interests of the two countries.

The convention was still the subject of discussion between the interests concerned and their respective Governments when the second World War intervened.

56. For several years during the war the question of the limits of Norwegian territorial waters remained in abeyance, but in 1943 an International Fishery Conference was held in London at which a large number of countries were represented. This conference drew up a general fishery convention and a protocol, the provisions of which concerning exclusive fishery limits were not acceptable to Norway and certain other countries. To overcome their difficulties a specimen bilateral agreement was drawn up which, if signed, would have enabled the dissident countries to accept the convention and protocol. This convention and protocol was never ratified and consequently the proposals fell to the ground. From then onwards, no success was achieved in reaching any settlement between the two Governments.

57. On 16th September, 1948, it was decided by the Norwegian Government to enforce "fully" the Royal Decree of 1935. The Norwegian Government were informed that this action on their part could not fail to affect seriously the relations between the two countries, and that the Government of the United Kingdom were still prepared to try to reach an agreement regarding fishery limits. Alternatively the case could, in the view of the Government of the United Kingdom, be brought before the International Court of Justice, preferably by agreement, although as both countries were parties to Article 36 (2) of the Statute of the Court, either Government could bring the case before the Court unilaterally. From this time onwards, the strict enforcement by the Norwegian Government of the 1935 Decree produced a number of arrests of British vessels within the decree line, but outside the red line, and, in respect of all interferences with British vessels outside the limits which the Court holds that Norway is entitled to reserve, the Government of the United Kingdom now claims the award of damages. Further particulars of these arrests, and of the damages claimed by the Government of the United Kingdom, are contained in Part III of this Memorial.

58. During the winter of 1948-1949 discussions were held in London by representatives of the two Governments with the object of reaching a settlement of the dispute. The representatives of the two Governments succeeded in reaching agreement upon recommendations to their Governments, which included a fishing convention providing for a new compromise line as the limits of Norwegian exclusive fishery rights. The Government of the United Kingdom accepted these recommendations, but the Norwegian Government found itself unable to do so, and so informed the Government of the United Kingdom in July 1949.

59. The Government of the United Kingdom then reached the conclusion—with which it is confident that both its opponent the Norwegian Government and the Court will agree—that during the past quarter of a century every effort which two friendly Powers could make to settle the dispute by negotiation had been exhausted. In consequence, being devoted to the rule of law in international affairs and in conformity with the provision in the Charter that normally legal disputes should be decided by this Court, the Government of the United Kingdom instituted these proceedings by application on 24th September, 1949.

PART II

Contentions of the Government of the United Kingdom regarding the principles of international law to be applied in defining base-lines

60. The dispute between the Governments of the United Kingdom and Norway, as stated in paragraph 8 of the Application, concerns the lines prescribed by the Royal Decree of 1935 as the base-lines for the delimitation of the Norwegian fisheries zone. The Government of the United Kingdom, for the purpose of the present dispute, has agreed that the fisheries zone shall be delimited on the assumption that it extends to seaward four sea miles from such base-lines as, in the opinion of the Court, the Norwegian Government is entitled to lay down under the applicable principles of international law relating to base-lines for territorial waters. On the other hand, the Government of the United Kingdom, for the reasons set out in the following paragraphs, disputes that the base-lines laid down by the Royal Decree of 1935 have been drawn in accordance with the applicable principles of international law.

61. The Government of the United Kingdom advances four main contentions in regard to the legality of the base-lines contained in the Royal Decree of 1935 :

A.—International law does not give to each State the right arbitrarily to choose its own base-lines and a State, in prescribing base-lines for any particular area, can therefore do so only within the limits imposed by international law (paras. 62-67).

B.—The applicable rules of international law which restrict a State's determination of its base-lines are those set out in paragraphs 68-122, below.

C.—The base-lines prescribed in the Royal Decree of 1935 do not conform to the above-mentioned rules of international law and are therefore illegal and invalid under general international law (paras. 123-140).

D.—If the Norwegian Government, as appears to be the case, seeks to justify the base-lines of the Royal Decree of 1935 on special historic grounds, the onus lies upon it both to prove in fact and to establish in law its exceptional claim (paras. 141-145). The answer of the United Kingdom to this claim will therefore be reserved for its Reply to the Counter-Memorial.

The detailed arguments of the United Kingdom Government in support of each of these contentions wille now be developed in turn.

A.—A State is not free to fix its own base-lines except within the limits imposed by international law

62. The concept of the territorial sea, which is universally recognized in international law, is that of a continuous belt of sea, of even width, attached to the coasts of a maritime State. No State can claim exclusive fishery rights outside territorial waters. (See, *inter alia*, Gidel, *Le Droit international public de la Mer*, Vol. I, p. 489.) Norway appears herself to subscribe to this concept since she claims a continuous belt of four sea miles, and since, in her reply to point 1 of the *questionnaire* which was circulated to governments before the Hague Conference on the Codification of International Law held in 1930 (*Bases of Discussion*, League of Nations Document 74.M.39.1929.V, p. 172), she said :

> "The Norwegian Government agrees with the committee's proposal to take as a starting point the principle that a State has sovereignty over a *certain zone of sea washing its coasts.*"

The traditional concept of the territorial sea found expression in the report of the Second Committee of the Conference (*Plenary Meetings*, League of Nations Document C.351.M.145.1930. V, p. 126) in the following two provisions of the draft code attached to the report :

(a) *Article 1.*—"The territory of a State includes a *belt* of sea described in this convention as the territorial sea."

(b) *Paragraph 1 of the report of the Second Sub-Committee (*ibid., *p. 131).*—"*Subject to the provisions regarding bays and islands,* the breadth of the territorial sea is measured *from the line of low-water mark along the entire coast.*"

The concept is too well recognized and too well established in law to require further citation of authorities.

The point which it is here desired to emphasize is that the territorial sea, as it has been admitted into international law, is an appendage to the geographical coast line of a State. It follows that the base-line from which a maritime belt extends is essentially the line on the coast which marks the end of the land and the beginning of the sea. A State, in determining the base-line for its maritime belt, is, therefore, bound, in the first instance, to do so by reference to the physical line of its coast.

The fact that the broken character of a coast line may tend to enclose areas of sea within the land frontier of a State has led to the recognition in international law that, under certain defined conditions, the base-line may be amended so as to include those areas of sea within the national territory of the State concerned as internal waters. In that event, the base-line is drawn—but only at the places on the coast where such conditions exist—by geometrical construction from the configuration of the coast rather than by absolute reference to the physical line joining the land and the sea. Professor Gidel (*Le Droit international public de la Mer*, Vol. III, p. 517) well expresses this general principle :

> "La ligne de départ de la mer territoriale peut correspondre à des données physiques immédiates, ou résulter médiatement seulement des éléments naturels par l'intermédiaire d'une construction géométrique."

63. Although international law does not require the base-line in all circumstances to coincide with the line of division between land and sea, this does not mean that the definition of its base-line is left to the arbitrary choice of the coastal State. On the contrary, the cases in which a departure from the normal line of the coast is permitted are exceptions to the main rule, strictly limited by international law, and, when an exception is allowed, the base-line may be drawn only by geometrical construction from the physical facts which justify the exception.

Differences there have been concerning the precise limits set by the rules of international law to departures of the base-line from the line of the coast. But there can be no real doubt that the limits within which such departures will be permitted are established by international law. The preoccupations of jurists with such matters as the tide level, bays, estuaries, islands, rocks, etc., are themselves evidence that base-lines are within the regulation of international law. The draft conventions of such learned bodies as the Institute of International Law (Paris Conference, 1894, 13 *Annuaire*, p. 328 ; Stockholm Conference, 1928, *Annuaire*, p. 755), the American Institute (Rio Conference, 1927, 23 A.J.I.L., Special Supplement, p. 370), the International Law Association (Report of the 34th Conference, 1926, p. 101) and the Harvard Research (1929, 23 A.J.I.L., Special Supplement, p. 243) all assume that the question of the base-line is governed by international law, and lay down rules in regard to the tide level, bays, etc. The same assumption is made both in the preparatory work of the 1930 Conference held at The Hague (*Bases of Discussion*, pp. 35-64, and p. 193) and in the report of the Second Sub-Committee on Territorial Waters (*Plenary Meetings*, p. 131), which also formulated certain draft rules in regard to base-lines.

64. The above evidence, in the submission of the Government of the United Kingdom, establishes beyond question that a State,

in fixing its base-lines, is limited, first by geographical facts, and secondly by rules of international law which determine the legal consequences of those facts.

Moreover, the Government of the United Kingdom contends that the onus is upon a State, which fixes a base-line departing in any particular place from its geographical coasts, to justify that departure as one permitted by international law. All the draft conventions mentioned in paragraph 63 above state the rule that the maritime belt extends from the low-water mark on the coast as the primary rule. That this is the primary rule is made particularly clear in the formulation of the rules regarding the base-line in the report of Sub-Committee No. 2 of the Hague Conference of 1930 (*Plenary Meetings*, p. 131). The purport of this rule, the text of which is given in paragraph 62 above, is that, subject to the rules regarding bays and islands, the base-line is the line of low-water mark *along the entire coast*. It follows that any departure of the base-line from the line of low-water mark on the coast has to be specifically justified as within one of the exceptions permitted under the rules of international law regarding bays, islands, etc.

65. The above contention is reinforced by the consideration that the primary rule of maritime law is that the seas are free. It is not proposed to take up the time of the Court by examining here the emergence of the freedom of the seas as the basic principle of maritime law (see Gidel, *op. cit.*, Vol. I, pp. 143 *et seq.*). The attention of the Court is, however, drawn to the following observation of Professor Gidel made in connection with the base-line for islands (Gidel, *op. cit.*, Vol. III, p. 674):

> "L'idée qui domine le droit de mer est l'idée de la liberté de l'utilisation licite et normale des espaces maritimes ; toute restriction inutile à cette liberté doit être évitée."

66. It follows that there is a presumption of law that waters of the sea are free, and that any claim to sovereignty over a given area of sea has to be justified as an exception recognized by international law. One such recognized exception is the belt of the territorial sea. International law, as said in paragraph 62 above, also recognizes that areas of sea may in certain conditions be so far enclosed by land as to be part of the national territory and inland waters of the coastal State. In that event, the base-line departs from the line of the coast, and is drawn across the seaward entrance of the inland waters. The base-line is then both the outward limit of inland waters and the starting point for delimiting the territorial belt to seaward. The presumption in favour of the freedom of the seas is thus of particular importance in regard to the rules governing such amendments of the base-line. Any departure of the base-line from the coast involves an encroachment of *inland* waters upon the sea, which constitutes an even more serious derogation from the freedom of the seas than the extension

of territorial waters. For the customary right of innocent passage has no application to inland waters.

67. The Government of the United Kingdom, for all the above reasons, submits that :

(1) The Norwegian Government, in laying down base-lines for the Norwegian coasts north of 66° 28′ 48″ in the Royal Decree of 1935 was only entitled to do so within limits imposed by international law.

(2) Under general international law the base-line of a State's maritime belt and fisheries zone is primarily the line along its entire coast marking the division between land and sea.

(3) Under general international law, that is, apart from the question of historic usage which will be dealt with hereafter, departures of the base-lines of the 1935 Decree from the line of the Norwegian coast (and these departures are in fact almost continuous) can only be justified if they fall under exceptions to the primary rule in (2) which have been specifically sanctioned by international law.

B.—The applicable rules of law

68. (a) *The rule of the low-water mark along the entire coast.*

Reference has already been made to the rule that, in general, the base-line coincides with the line of the coast. Formerly, there were some writers who supported the high-water mark as the criterion of the coast line for the purpose of delimiting the territorial sea. Modern treaty and diplomatic practice is, however, overwhelmingly in favour of the low-water mark as the criterion. The low-water mark was adopted as the rule at the Hague Conference of 1930 both in Basis of Discussion No. 6 (*Bases of Discussion*, p. 39) and in the report of Sub-Committee No. II (*Plenary Meetings*, p. 131).

Differences were found at the conference to exist in the practice of States concerning the determination of the low-water mark. Some States used the mean of all tides, some the mean of spring tides, others the lowest tide, etc. Sub-Committee No. II in its report proposed the following two paragraphs to express the rule of the low-water mark :

> "Subject to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the line of low-water mark along the entire coast.
>
> For the purposes of this convention, the line of low-water mark is that indicated on the charts officially used by the coastal State, provided the latter line does not appreciably depart from the line of mean low-water spring tide."

The sub-committee explained in an observation that the line indicated on official charts was chosen as the most practical criterion, and that the requirement that the line should not appreciably

depart from the line of mean low-water spring tides was added as a safeguard against abuse.

69. The formula proposed by Sub-Committee II, which accords with international practice, has met with general acceptance, and is accepted by the Government of the United Kingdom. It is, however, again emphasized that the rule has to be read as a whole. A State is not entitled to maintain that the limits of its land territory are to be ascertained by reference to conditions at low water, and, at the same time, to reject the rule that the base-line follows the low-water mark along the entire coast except where a departure is specifically sanctioned by international law.

Bays

70. (b) *A State is only entitled—apart from historic usage—to trace the base-line across the waters of an indentation at the nearest point to the entrance at which the width does not exceed 10 miles and then only if an indentation qualifies in law as a bay.*

The fact that the same considerations do not apply to enclosed waters as to the open sea has always been recognized. The distinction is taken by Grotius (*De Jure Belli ac Pacis*, Lib. II, Cap. III, § 8) and by the classical writers of the eighteenth and nineteenth centuries. The classical writers did not, however, contemplate extensive appropriation of the sea under this principle. Grotius, for example, was careful to set limits, though not clearly defined limits, to such appropriations:

> "Ad hoc exemplum videtur et mare occupari potuisse ab eo, qui terras ad latus utrumque possideat, etiamsi aut supra potest ut sinus, aut supra et infra ut fretum, *dummodo non ita magna sit pars maris, ut non cum terris comparata portio earum videri possit.*"

Similarly in the eighteenth century Vattel (*Le Droit des Gens*, Liv. I, Chap. XXIII, § 291) wrote:

> "Tout ce que nous avons dit des parties de la mer voisines des côtes, se dit particulièrement et à plus forte raison des rades, des baies et des détroits, comme plus capables encore d'être occupés, et plus importants à la sûreté du pays. *Mais je parle des baies et des détroits de peu d'étendue, et non de ces grands espaces de mer auxquels on donne quelquefois ces noms*, tels que la baie d'Hudson, le détroit de Magellan, sur lesquels l'empire ne saurait s'étendre, et moins encore la propriété."

Afterwards, when the cannon-shot principle played an important part in the development of the concept of the territorial sea, it was natural that it should also influence the theories of some writers concerning the limits within which the appropriation of bays is permissible. Thus writers such as Ortolan (*Diplomatie de la Mer*, Tome I, p. 145), Calvo (*Le Droit international*, Tome I, Section 367) limited the appropriation of bays to those the mouths of which could be controlled by cannon placed on either shore. Writers such

as Wheaton, *Elements of International Law* (8th ed.), § 188, and Phillimore, *Commentaries* (3rd ed.), Book I, Chapter VIII, on the other hand, preferred simply the test of the ability to exercise physical control of the bay. Moreover, the increasing range of cannon during the nineteenth century more and more divorced the cannon-shot principle from the practice of States in regard to the territorial sea. Consequently, so far as concerns the opinion of jurists, the position at the end of the nineteenth century was that there was virtual unanimity that only bays of limited width can be included in the territory of a State but that there was no precise rule determining the maximum width, which had been unanimously and definitively accepted.

71. The position was much the same at the end of the nineteenth century in regard to the practice of States, except that, as will be seen, an important tendency had showed itself towards the definition of the maximum width of the bays which can legally be appropriated by a State without reliance upon an historic title. The extensive claims of some States to sovereignty over adjacent waters, including the claims of England to the Narrow Seas and of Denmark to Northern Waters, had either been abandoned or fallen into desuetude during the eighteenth century. Afterwards, in addition to the territorial belt, States asserted claims of a varying nature to the waters of bays or other inlets. The process of defining the limit of legitimate claims in regard to bays may be said to have begun in 1839 with the Anglo-French Fishery Convention, the object of which was to settle differences between the two countries concerning their respective rights to exclusive fisheries, especially the French right to exclusive oyster fisheries in the Bay of Cancale (Granville) (Hertslet, *Treaties and Conventions*, Vol. V, p. 89). Article IX of this treaty having provided for an exclusive right of fishery for each country within 3 miles off low-water mark along the whole extent of its coasts, continued as follows:

> "It is equally agreed, that the distance of 3 miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries, shall, with respect to bays, the mouths of which do not exceed 10 miles in width, be measured from a straight line drawn from headland to headland."

This clause, it will be seen, only reserved bays, the *entrances* of which between their headlands did not exceed 10 miles. The same clause was repeated in a further fishery convention between the two countries in 1867, which, however, was not ratified by France on other grounds. (Fulton, *Sovereignty of the Sea*, p. 619.)

72. In 1853, in the case of the *Washington* (Hudson, *Cases on International Law*, p. 445), Umpire Bates referred with approval to the limit of 10 miles imposed in the Anglo-French Convention:

"This doctrine of headlands is new, and has received a proper limit in the Convention between France and Great Britain of 2nd August, 1839."

Although Umpire Bates was scarcely correct in saying that the doctrine of headlands was new in 1853, his opinion that it should be limited by the 10-mile rule soon won numerous adherents. In 1868 the North German Government agreed with Great Britain that the 10-mile rule, in a form similar to that in the convention with France, should apply in regard to the exclusive fisheries off the north German coasts (British Board of Trade Notices to Fishermen, Hertslet, *Commercial Treaties*, Vol. XIV, pp. 1055 and 1057). In 1882 the 10-mile rule received further extension in Article 2 of the North Sea Fisheries Convention which adopted it in the following altered form :

"As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles."

This formula for bays was endorsed by Belgium, Denmark and the Netherlands in addition to Great Britain, France and Germany. Only Norway and Sweden decided not to subscribe to the convention ; a refusal which is believed to be due to the adoption in the convention of a three-mile limit and not to the fact that it adopted a 10-mile rule for bays. It will be observed that the 10-mile rule as applied in the 1882 Convention, does not reserve only those bays with entrances not exceeding 10 miles but reserves all bays within a 10-mile line across the bay.

73. Meanwhile, a long-standing dispute between Great Britain and the United States concerning the bays in which exclusive fisheries were reserved to Great Britain off the Atlantic coasts of Canada and Newfoundland by the Convention of 1818 had again come to a head in 1885, and the so-called Chamberlain-Bayard Treaty was signed in 1888 (*British and Foreign State Papers*, Vol. 79, p. 267). The convention, at the suggestion of the United States, and, indeed, with some reluctance on the part of Great Britain, provided that—apart from certain named bays—the 10-mile rule in the form found in the North Sea Convention should be applied to bays on the North Atlantic coasts of America. The convention proved abortive, since the United States Senate failed to ratify it, and, until the famous Arbitration of 1910 mentioned below, the even narrower rule of a six-mile limit was applied as a *modus vivendi* (Fulton, *op. cit.*, p. 628).

74. In addition, the 10-mile limit was adopted in Fishery Conventions between Spain and Portugal of 1885 and 1893 (*British and Foreign State Papers*, Vol. 77, p. 1182, and Vol. 85, p. 420), a fact which is the more significant because these two countries

claimed territorial belts the double of which exceeds 10 miles. Again, the Anglo-Danish Fishery Convention of 1901 applied the 10-mile limit to the Faroes and to Iceland. Admittedly, the 10-mile limit was applied in nineteenth-century State practice as a conventional rule, but the principle that, apart from historic titles, claims to bays *inter fauces terræ* must be restricted had received wide recognition. Thus, in 1894 the Institute of International Law (Paris, 13 *Annuaire*, p. 292), although it had differences of opinion as to the limit being 10 or 12 miles, was agreed in adopting one or other of these limits as the general rule for bays. In the result, the Institute, which was then advocating a 6-mile territorial sea, voted by a majority in favour of a 12-mile limit for bays. In 1895, however, the International Law Association unanimously preferred the 10-mile limit as having the sanction of practice. (Report of the 17th Conference, p. 109.)

75. Parallel with the tendency during the nineteenth century to narrow and define the bays which a State may ordinarily claim as part of its inland waters, it was recognized that a certain number of wider bays, such as the Chesapeake Bay in the United States, and the Bay of Conception in Newfoundland, belonged to the coastal States concerned, by reason of their long and continuous assertion of sovereignty over the bays. This distinction between historic and ordinary bays was endorsed both by the Institute of International Law in Article 3 of its draft of 1894 (13 *Annuaire*, p. 329) and by the International Law Association in Article 3 of its draft of 1895 (Report of 17th Conference, p. 109). Both these learned bodies, in laying down respectively a limit of 12 and 10 miles for ordinary bays, added the proviso :

> "Unless a continued usage of long standing has sanctioned a greater breadth."

The recognition at the close of the nineteenth century of a distinct class of "historic" bays only serves to emphasize that claims to ordinary bays were regarded as subject to the strict regulation of international law with respect to their width.

The onus of proof, in the case of a claim to an historic bay, is on the State claiming it, and, therefore, the Government of the United Kingdom will defer to its Reply its comments on Norway's claims to fjords and other inlets on historic grounds.

76. In 1910 occurred the North Atlantic Coast Fisheries Arbitration between Great Britain and the United States (hereafter called "the 1910 Arbitration"). The Chamberlain-Bayard Treaty not having come into force, disputes continued between the two countries concerning the proper interpretation of the 1818 Convention, and especially the clause which reserved "bays" for British fishermen. Broadly speaking, Great Britain argued that the word "bays" was used in the 1818 Convention in its geogra-

phical sense, and reserved for British fishermen all bays *inter fauces terræ*. The United States, on the other hand, argued that "bays" must be interpreted to mean only bays which, under international law, were within the territorial waters of Great Britain, and contended that this reserved only those bays whose entrances did not exceed 6 miles in width. Great Britain, in reply, contended that there was no rule regarding the width of bays in 1818 and, secondly, that in 1910 there was still no specific rule of international law imposing a definite limit on the width of bays, the 10-mile limit being said to be conventional.

77. The tribunal, in its award (Wilson, *Hague Arbitration Cases*, p. 182), rejected the United States' contention that the 3-mile limit must always be applied strictly even within bays, and refused to apply a six-mile limit to bays. It held (p. 186) that, as a matter of construction, the word "bays" in the 1818 Convention was used in its geographical sense, and was intended to reserve all bays within a line drawn at the place where the body of water ceased to have the configuration of a bay. The tribunal, by an express application of the intertemporal law, held itself unable to interpret the 1818 Treaty in the light of *subsequent* international acts favouring a specific limit of 10 or 12 miles (p. 182). Although the tribunal, for this reason, felt itself unable to apply the 10-mile limit it recommended to the parties the adoption of the 10-mile limit for all bays other than those for which specific limits were fixed by the award. Moreover, both States subsequently accepted this recommendation (105 *British and Foreign State Papers*, p. 287). Judge Drago, in his well-known dissenting judgment (p. 205), referred to the 10-mile limit as a principle supported "by the acquiescence and the practice of many nations". Moreover, despite the British arguments against there being a specific limit laid down by international law, he held the 10-mile limit to be the established usage of Great Britain.

78. The British attitude in regard to the 10-mile limit, it must be admitted, showed some inconsistency during the first quarter of the present century. The 10-mile limit was applied in the several fishery conventions mentioned above, but in 1907, after the Moray Firth disputes, Lord Fitzmaurice, Under-Secretary of State for Foreign Affairs, said in the House of Lords that, apart from special conventions, a six-mile limit applied to bays (169 *Hansard*, column 989). In 1908, however, he seemed to regard the question of bays as unsettled (196 *Hansard*, column 236). In the 1910 Arbitration, British Counsel denied that there was any settled rule, but Great Britain, despite the tribunal's award giving her all "bays" under the 1818 Conventions, accepted its recommendation that the 10-mile limit should be applied to all bays not specifically defined in the award. In 1927, in the case of *The*

Fagernes [1] (1927 P. 311), the Crown, while recognizing that there was no settled limit fixed by international law for the breadth of bays, disclaimed jurisdiction over a place in the Bristol Channel where the width is 20 miles. In a much earlier case (*R.* v. *Cunningham*, 1859, Bell's Crown Cases), the English Courts had held that there was jurisdiction much further inland where the Channel was *10* miles wide (para. 135 below), but the judgment had been expressed in terms which had been regarded by some as meaning all that part of the channel which lay between the Counties of Glamorgan and Somerset was within the jurisdiction.

79. These differences in the attitude of British authorities concerning the precise limit of bays that may be claimed as national territory are no indication that the question of bays is not regulated by international law. On the contrary, they only indicate that the precise limit was not yet finally settled, and, if there was a change in British policy during this period, it was in favour of narrowing the limit of territorial bays to 6 miles. In fact, as will be shown, there is the strongest evidence that international law recognizes that—apart from historic titles—bays can only be claimed as part of a State's territory within strict limits and that the limit is that of 10 miles.

80. Thus, in addition to the practice in fishery conventions already mentioned, which continued unchanged, some States clearly showed that they treated the 10-mile limit as already a rule of general international law by applying it also in neutrality proclamations. Examples are France in a decree of 1912, and in Instructions to Naval Commanders (Crocker, *The Extent of the Marginal Sea*, p. 529) and the Netherlands and Uruguay in decrees of 1914 (Harvard Research Draft, p. 268; 23 A.J.I.L., Special

[1] This was a case decided by the English courts. It arose out of a collision between a British vessel, the *Cornish Coast*, and an Italian vessel, *The Fagernes*, which occurred in the Bristol Channel. The point where the collision took place was between 10½ and 12½ miles off the English coast, and 9½ or 7½ miles off the Welsh coast (i.e. where the Channel was 20 miles wide). The court of first instance (1926 Probate 185) held that the waters where the collision occurred were *inter fauces terræ*, and accordingly within the bodies of the Counties of Devon and Glamorgan and therefore within the jurisdiction of the High Court. When the case came before the Court of Appeal the Attorney-General informed the Court that he was instructed by the Secretary of State for Home Affairs that the point where the collision occurred was not within the limits to which the territorial sovereignty of His Majesty extended. Two members of the Court of Appeal considered that this statement was conclusively binding upon it, and accordingly reversed the judgment of the Court below. The third member, while concurring in the reversal of the decision, held that the statement was not necessarily binding on the Court, but that, having regard to the general trend of modern jurists, to limit the width of the *fauces terræ* within which there was territorial sovereignty, the Court should be guided by the information so given. Two members of the Court of Appeal also indicated that they were doubtful if they would have concurred in the conclusion reached in the Court below, even if the Attorney-General had not intervened and no such statement by the Home Secretary had been made.

Supplement). Moreover, the absence of such action by other States does not necessarily indicate that they did not regard the 10-mile limit for bays in this way. Again, all the draft conventions, produced by learned societies in anticipation of the Codification Conference of 1930, envisaged a general rule limiting the width of ordinary bays and distinguishing them from bays claimed by long usage. Article 7 of the draft convention of the International Law Association (Report of the 34th Conference, 1926, p. 101) went to the length of applying the territorial limit strictly in all ordinary bays. Article 6 of the draft convention of the American Institute on the National Domain (Rio Conference, 1927, 23 A.J.I.L., Special Supplement, p. 370) stated the rule for bays in a form similar to that of the North Sea Fisheries Convention, but left blank the actual number of miles to be specified as the limit. The 10-mile limit was adopted in all the other drafts, i.e. Article 4 of the draft of the League of Nations Committee of Experts in 1926 (23 A.J.I.L., Special Supplement, p. 366), Article 2 of the draft of the Japanese International Law Association (1926, *ibid.*, p. 376), Article 3 of the draft of the Institute of International Law (Stockholm Conference, 1928, *Annuaire*, p. 756), and Article 5 of the Harvard Research draft (23 A.J.I.L., Special Supplement, pp. 243 and 265).

81. The replies of governments to the *questionnaire* circulated before the Codification Conference of 1930 showed considerable divergencies in regard to the limit for bays varying from double the width of the territorial sea to 10, 12 or (Italy only) 20 miles or, in the cases of Norway and Sweden, no numerical restriction at all. (*Bases of Discussion*, pp. 39-45.) The greatest measure of support was, however, for the 10-mile limit, and it was adopted in Basis of Discussion No. 7. Discussion of bays in the main Committee on Territorial Waters centred upon historic bays, and the question of ordinary bays was examined in Sub-Committee No. II. The only limit for bays seriously entertained by the sub-committee was that of 10 miles, which was incorporated in the sub-committee's report as a draft rule in the following form (*Plenary Meetings*, p. 131) :

> "In the case of bays the coasts of which belong to a single State, the belt of territorial waters shall be measured from a straight line drawn across the opening of the bay. *If the opening of the bay is more than 10 miles wide, the line shall be drawn at the nearest point to the entrance at which the opening does not exceed 10 miles.*"

82. The report of Sub-Committee No. II was admittedly not discussed by the main Committee on Territorial Waters. The report, however, states in an observation on the above draft rule (*ibid.*) that :

"Most delegations agreed to a width of 10 miles provided a system were simultaneously adopted under which slight indentations would not be treated as bays."

It is evident from this observation that there was no disposition at the conference to enlarge the scope for claiming bays as inland waters beyond the 10-mile rule.

It is also to be remarked that the 10-mile limit was incorporated in the report of Sub-Committee No. II, in Basis of Discussion No. 7, and in the draft conventions of learned societies without express reference to the limit fixed for the territorial sea. Mr. J. B. Moore, afterwards judge of the Permanent Court, in a letter to Sir Thomas Barclay in 1894 (13 *Annuaire*, p. 146, note) explained the 10-mile rule for bays as having been arrived at by taking the 3 miles of territorial sea on either side of the bay and adding to these 6 miles a further 4 miles. He said:

"The transgression of an encroachment upon territorial waters by fishing vessels is generally a grave offence, involving in many instances the forfeiture of the offending vessel, and it is obvious that, the narrower the space in which it is permissible to fish, the more likely the offence is to be committed. In order, therefore, that fishing may be both practicable and safe and not constantly attended with the risk of violating territorial waters, it has been thought expedient not to allow it where the extent of free waters between the 3-mile line drawn on each side of the bay is less than 4 miles. This is the reason of the 10-mile line."

83. This explanation of the 10-mile rule has often been quoted, but it appears to be a rationalization of the rule rather than its basic principle. The statement is, in fact, a repetition of the argument used by the United States in the Chamberlain-Bayard Treaty negotiations to induce Great Britain to give up larger claims to bays in favour of the 10-mile rule of the 1887 North Sea Convention (North Atlantic Coast Fisheries Arbitration, Vol. 3, p. 948). At any rate, the 10-mile limit seems primarily to have been adopted by States to echo the words of Umpire Bates (see para. 72 above) in order that "a proper limit may be placed upon exclusive claims to bays". This was certainly the case in the North Sea Convention of 1882.

84. Moreover, both Sir Thomas Barclay in 1894 (13 *Annuaire*, p. 145) and in 1922 Sir Cecil Hurst, afterwards President of the Permanent Court (*British Year Book of International Law*, Vol. 3, pp. 42 *et seq.*), regarded the 10-mile limit as associated with the range of vision principle of earlier times. The English common law recognized a rule whereby "that arm or branch of the sea which lies within the *fauces terræ* where a man may reasonably discern between shore and shore is, or at least may be, within the body of a county" (Lord Hale, *De Jure Maris*, p. 1, c. 4). Sir Cecil Hurst regarded the 10-mile limit in English practice as the working

equivalent in modern times of the old range of vision rule (*op. cit.*, p. 54). Professor Gidel (*op. cit.*, Vol. III, p. 572) also refers to the connection of the rule with the visibility test :

> "L'élément visibilité doit recevoir dans toute cette matière une importance de premier ordre et c'est à ce titre aussi que la longueur de dix milles qui répond aux conditions normales de la visibilité sur les côtes de l'Europe occidentale mérite d'être retenue comme la distance-type."

85. Whatever may be its theoretical basis, the 10-mile rule has, as stated, been formulated in conventions, and applied in State practice as an unqualified limit of 10 miles for bays, and as an exception to the ordinary rule of the territorial sea. It is accordingly submitted that the report of Sub-Committee No. II in framing the 10-mile rule as a rule for bays independent of the limit of the territorial sea, is in accord with practice.

86. The Government of the United Kingdom, which, *de lege ferenda*, would have preferred the even stricter rule of a 6-mile limit, expressed its readiness in 1930 to accept the 10-mile rule formulated by Sub-Committee No. II as being the principle which both commands general support and has the sanction of international practice, including the United Kingdom's own practice.

87. The only alternative limit which has received any measurable support is the 12-mile limit. As already seen (paras. 74 and 80 above), the Institute of International Law proposed a 12-mile limit in 1894, but abandoned it in 1928 for the 10-mile limit. A 12-mile limit was supported in the replies of three States (Latvia, Finland and Poland) at the 1930 Codification Conference. It was also adopted by Bustamante (*La Mer territoriale*, p. 98) in his draft code prepared before the report of the Codification Conference of 1930 favouring the 10-mile limit was available. Moreover, Bustamante recorded his hesitation "between the line of 10 miles, *because of the international sanction that it has gained*, and the line of 12 miles". It is indeed the weakness of the argument for the 12-mile limit that it lacks the sanction of international practice—a deficiency which can scarcely be regarded as met by the recent unilateral proclamations of Yugoslavia and Saudi Arabia adopting a 12-mile limit for bays.

88. The 12-mile limit has a significance only as the largest limit that has ever been seriously suggested as the general limit for bays. This larger limit was, however, brought before the Codification Conference of 1930 and rejected in favour of the 10-mile rule found in international practice. Further, as indicated in paragraphs 12 and 13 above, the Norwegian Government were in 1924 contending that the 10-mile rule for bays was one which received its support.

Definition of a bay for the purpose of applying the 10-mile rule

89. The difficulty of defining curvatures of the coast which qualify as bays is well known and, as already emphasized, was the chief impediment to Sub-Committee No. II recording a final adoption of the 10-mile limit in its report. Unless slight curvatures are excluded, a State, by misuse of the 10-mile rule, could nullify the fundamental principle that the belt of territorial sea extends from low-water mark along the entire coast. The whole rationale of the special rule for bays is that the penetration of the waters into the land tends to enclose them, thus taking them out of normal use by international maritime traffic and bring them within the intimacy and use of the coastal State. Accordingly, it is clear, on principle, that a bay in international law is an indentation which makes an appreciable penetration into the land in proportion to the width of its mouth.

90. The difficulty is to find a formula to express the proportion between the width of the mouth and the penetration inland which is required by international law. The tribunal in the 1910 Arbitration drew attention to the difficulty without solving it (Wilson, *Hague Arbitration Cases*, p. 186) :

> "The geographical character of a bay contains conditions which concern the interests of the territorial sovereign to a more intimate and important extent than do those connected with the open coast. Thus conditions of national and territorial integrity, of defence, of commerce and of industry are all vitally concerned with the control of the bays penetrating the national coast line. This interest varies, speaking generally, in proportion to the penetration inland of the bay ; but, as no principle of international law recognizes and specified relation between the concavity of the bay and the requirements for control by the territorial sovereign, this tribunal, etc."

The above passage from the 1910 Award, although it does not lay down any specific test, emphasizes that the chief element in any test of a bay, is the penetration of the bay into the line of the coast.

91. It follows that the legal, like the geographical, definition of a bay, is essentially a matter of the geographical configuration of the coast; this is the reason why the meaning of "bay" in international law received comparatively little attention from jurists before the Codification Conference, 1930, and why no State, except Great Britain, thought it necessary in its reply to the *questionnaire* to formulate a definition of a bay. It is also the reason why at the conference the considerable discussion of the definition of a bay in Sub-Committee No. II was devoted almost entirely to geometrical formulæ for measuring the physical proportions of the bay.

92. Great Britain, in its reply to the *questionnaire* (*Bases of Discussion*, p. 41), proposed the following definition of bays for the purpose of the 10-mile rule:

> "A bay for this purpose is something more pronounced than a mere curvature of the coast. There must be a distinct and well defined inlet, moderate in size and long in proportion to its width."

Sub-Committee No. II recognized that the crucial question is the proportion between width of entrance and penetration inland, but considered the British definition to lack precision. British, German, United States, French and Latvian formulæ were examined for reducing the question of proportion to a geometrical test. (Gidel, *op. cit.*, Vol. III, pp. 584-592.) Another formula has since been suggested by Dr. Münch (*Die Technischen Fragen des Küstenmeers*, p. 97). One objection to all these formulæ is that they scarcely fulfil the fundamental need that the test should be one readily applicable by mariners. The United States and French proposals were, however, considered by Sub-Committee No. II to be sufficiently important to be incorporated in its report as appendices (*Plenary Meetings*, p. 132). Of these two proposals, it is that of the United States which has attracted the greater support (Gidel, *op. cit.*, Vol. III, p. 585; Münch, *op. cit.*, Section 22, Part IV).

93. Sub-Committee No. II did not record any opinion concerning the particular formulæ proposed and reserved the possibility of considering other formulæ or modifications of those proposed. On the other hand, the sub-committee did record the opposition of delegations to treating slight curvatures as bays in the following sentence, which has already been quoted in paragraph 82 above:

> "Most delegations agreed to a width of 10 miles, provided a system were simultaneously adopted under which slight indentations would not be treated as bays."

94. There can be no real doubt, it is contended, concerning the general sense in which the word "bay" is used in international law. It denotes a well-marked indentation whose penetration inland is in such proportion to the width of its mouth as to constitute the indentation more than a mere curvature of the coast. The concept of a bay is well-enough understood, and in most cases it will be enough to say that a bay is a well-marked indentation whose penetration inland is in reasonable proportion to the width of its mouth. In case of doubt concerning a somewhat shallow indentation on the coast of Norway, the Government of the United Kingdom would be content that the doubt should be resolved by applying the geometrical test proposed by the United States delegation at the Codification Conference of 1930 (*Plenary Meetings*, p. 132, Sub-Appendix A).

Summary of the submissions
of the Government of the United Kingdom in regard to bays

95. The submissions of the Government of the United Kingdom in regard to the bays which may be claimed as inland waters are, accordingly, as follows:

(a) There has evolved a clear rule of international law, evidenced by the opinions of jurists, the practice of States and the proceedings of the Codification Conference 1930, that the width of such bays is to be strictly limited except where an historic title can be made out.
(b) There is almost universal agreement that the maximum limit for the width of such bays is of the order of 10 or 12 miles.
(c) Of these two distances, 10 miles is the one which has received wide recognition in international practice and which was favoured in the report of the 1930 Conference. Indeed, the report emphasized the preference of delegations for the stricter limit by recording that they only accepted a 10-mile limit *subject to a restrictive definition of the word "bay"*.
(d) In these circumstances the 10-mile limit as formulated in the report of Sub-Committee No. II is the limit which ought to be applied in the present case as the general rule of international law governing bays.
(e) A bay for this purpose is any well-marked indentation of the coast whose penetration inland bears a reasonable proportion to the width of its mouth. (In case of dispute the geometrical test proposed by the United States at the 1930 Conference might be applied.)
(f) The onus of proof in the case of a claim to a bay wider than 10 miles, on historic grounds, is on the State making it. (See para. 141 below *et seq.*)

Effect on the base-line of islands, rocks or banks lying off the coast

96. Writers did not, until comparatively recently, give detailed consideration to the effect of islands upon the base-line of the territorial sea. It was assumed that isolated islands had their own territorial waters on the same principle as a continent and that otherwise the effect of islands was covered by the law relating to bays and straits. Numerous writers, e.g. Azuni (*Droit maritime de l'Europe*, p. 254), Ortolan (*Diplomatie de la Mer*, p. 156), Calvo (*Le Droit international*, Vol. I, Section 367), recognized that islands may play a part in enclosing the mouth of a bay but, where the island is merely placed off the open coast, they assumed that the law relating to straits applies.

97. These assumptions of writers were fully justified in principle because, as previously stated, the whole rationale of treating bays as inland waters is that the configuration of the coast under certain conditions encloses areas of the seas to such an extent as to take them out of normal use by international maritime traffic. If the special conditions do not exist, the waters remain part of the open seas and there is a right of innocent passage for international maritime traffic. In other words, the essential distinction is whether the waters between an island and a mainland constitute a channel leading to inland waters or whether they constitute a channel connecting two parts of the free sea. This distinction was thus expressed by Calvo *(op. cit.*, para. 368) :

> "On distingue deux sortes de détroits : ceux qui aboutissent à des mers fermées ou enclavées, c'est-à-dire dont la souveraineté absolue peut être revendiquée exclusivement par l'État dont elles baignent les côtes ; et ceux qui servent de communication entre des mers libres."

It is believed that, although it is necessary to give some greater precision to the rules concerning the effect of islands upon territorial waters, the leading writers on international law were entirely correct in treating the problem as basically a question of bays and straits.

98. In addition, many of the classical writers referred with approval to the decision in the British Prize Court of Lord Stowell in the case of *The Anna* (1805, 5 C. Robinson, p. 373), where he held the capture of a vessel within 3 miles of certain permanently visible mud islands at the mouth of the Mississippi, but 5 miles from the mainland, to have been made within the territorial waters of the United States. Lord Stowell considered it immaterial that the islands were "not of consistency enough to support the purposes of life, uninhabited, and resorted to only for shooting and taking birds' nests", since "the right of dominion does not depend on the texture of the soil". He laid down that the islands were the natural appendages of the coast and part of United States territory so that in considering the validity of the capture, the right of territory must be reckoned from the islands. Lord Stowell's decision was not concerned with the status of the waters lying between the islands and the mainland, but only with the question whether these uninhabited islands close to the coast could be reckoned as territory of the United States so as to possess territorial waters to be measured from them.

99. Some of the fishery conventions mentioned above in connection with bays also dealt with the question of "dependent islands and banks". Thus Article 2 of the North Sea Fisheries Convention of 1882 provided :

> "The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along

the whole extent of the coasts of their respective countries, *as well as of the dependent islands and banks.*"

Article 2 of the Anglo-Danish Convention of 1901 expanded this formula to include specifically small rocks, using the phrase "dependent islets, rocks and banks", although it did nothing to clarify the meaning of the word "dependent". These conventions, again, were not concerned with the status of the waters between the islands, rocks or banks and the mainland. They merely provided for the right of exclusive fishery to attach to the waters off dependent islands, rocks and banks up to the 3-mile limit.

100. The question of rocks and sandbanks was raised at the Conference of the Institute of International Law in 1894 (13 *Annuaire*, p. 293), but was excluded from consideration apparently because it was feared that to make allowance for rocks and banks would lead to undue extension of territorial waters. The Rapporteur, Sir Thomas Barclay, in a further report to the Institute in 1912, emphasized the need for more study of the question of islands and banks; but it was only in the years immediately before the Codification Conference of 1930 that detailed examination of this question was undertaken. In the course of this fresh examination of the question of islands a tendency developed to distinguish between individual islands and groups of islands. This distinction, in the opinion of the Government of the United Kingdom, is unsound in principle, and without any basis in law, but, in examining the rules concerning islands, it will be convenient first to consider individual islands, and then to examine the supposed differences in the case of groups of islands.

Individual islands, rocks and banks

101. *Distinction between islands and other elevations.*—Article 5 of the draft convention drawn up by M. Schücking, Rapporteur of the League of Nations Committee of Experts (*Bases of Discussion*, p. 193), dealt with individual islands as follows:

> "If there are natural islands, not continuously submerged, situated off a coast, the inner zone of the sea shall be measured from these islands, except in the event of their being so far distant from the mainland that they would not come within the zone of the territorial sea if such zone were measured from the mainland. In such case, the island shall have a special territorial sea for itself."

The effect of this article would be to allow the island (including an elevation of the sea bed covered at high tide only) to be taken into account in drawing the base-line of the mainland, provided that the island lies within the territorial belt measured from the mainland coast. On the other hand, if it lies altogether outside

the primary territorial belt of the mainland, the article would only allow it to have its own territorial waters. It is to be noted that under this draft the foregoing rules would equally apply if the elevation of the sea bed only showed at low tide.

102. On the other hand, Article 6 of the draft of the International Law Association (Report of the 34th Conference, 1926, p. 101), Article 7 of the draft of the American Institute (Rio de Janeiro Conference, 1927, 23 A.J.I.L., Special Supplement, p. 372), and Article 4 of the draft of the Institute of International Law (Stockholm Conference, 1928, *Annuaire*, p. 757) provided simply that islands, whether within or outside territorial waters, should have their own territorial waters. In none of these drafts was the word "island" defined so as to specify whether an island is to be determined by reference to conditions at low or high water.

103. The replies of governments to the *questionnaire* circulated before the Codification Conference of 1930 contained two opposing conceptions. (*Bases of Discussion*, pp. 52-54.) One group maintained that an elevation of the sea bed, to qualify as an island entitled to its own territorial waters, must be permanently above high-water mark and capable of occupation and use. The other group maintained that any elevation which shows above water at low tide is an "island" and entitled to its own territorial waters. *Basis of Discussion No. 14* (*ibid.*, p. 54), by way of compromise, gave partial effect to both conceptions in the following draft rules :

> "In order that an island may have its own territorial waters, it is necessary that it should be permanently above the level of high tide."
>
> "In order that an island lying within the territorial waters of another island or of the mainland may be taken into account in determining the belt of such territorial waters, it is sufficient for the island to be above water at low tide."

The question was discussed at the 1930 Conference in Sub-Committee No. II, which adopted the rules of *Basis No. 14* in its report, but gave them greater precision in the following two rules :

Base-line

> "Elevations of the sea bed situated within the territorial sea, though only above water at low tide, are taken into consideration for the determination of the base-line of the territorial sea."

Islands

> "Every island has its own territorial sea. An island is an area of land, surrounded by water, which is permanently above high-water mark."

Sub-Committee No. II, in an observation upon its formula for islands, stated expressly that an elevation which is only exposed at low tide is not to be regarded as an "island", and may only be taken into account if it was within the territorial belt of permanently dry land.

104. Consequently, under the rules drawn up by Sub-Committee No. II, only land permanently above water possesses territorial waters in its own right, and it possesses a belt of territorial waters whether it is within or outside the territorial belt of the mainland or other island as the case may be. A bank or rock exposed only at low tide (low-tide elevation) is significant in regard to territorial waters only if it lies within a belt of territorial sea measured from the low-water mark of land permanently exposed, and then its significance lies in the fact that it is taken into consideration as a piece of territory for the determination of the territorial sea [1].

105. These rules, so far from being arbitrary, are founded on the practical consideration that claims to territorial waters are only admissible in respect of land permanently visible to mariners. The objection to measuring the territorial sea from elevations that are not permanently visible applies also to some extent in regard to low-tide elevations lying within the territorial sea of land which is permanently exposed. It was for this reason that in 1930 the Government of the United Kingdom preferred that only land permanently exposed should be taken into account. But the practical objection is not so strong in the case of low-tide elevations close to permanently visible land because other land-marks will normally be available to mariners enabling them to fix their position. Sub-Committee No. II also justified the rule drawn up in regard to low-tide elevations by the analogy of the fishery conventions which measure the zone of exclusive fisheries not only from the low-water mark but also from "dependent islands, rocks and banks".

106. The Government of the United Kingdom, with some other States, took the view in 1930 that for an elevation to rank as an island and have its own territorial waters, it must be capable of occupation and use. This view, which is strongly supported by Professor Gidel (*op. cit.*, Vol. III, p. 675), was not adopted in the report of Sub-Committee No. II. The Government of the United Kingdom, however, understand the words in the rule

[1] It is not necessary here to examine the question what is the status of waters lying between a permanently exposed island or low-tide elevation on the one hand and the mainland on the other, i.e. whether these waters are territorial waters or inland waters, or whether, if territorial waters, they may have the character of straits in the event of their connecting two parts of the open sea, and being used by international navigation. For the purpose of fisheries there is no practical difference between territorial waters (whether or not forming part of a strait) and inland waters.

contained in the report "an *area* of land, surrounded by water, which is permanently above high-water mark", to mean an elevation exposing an appreciable surface of land above the sea so as to be permanently visible in normal weather conditions. This would accord with the principle upon which, as mentioned above, the sub-committee's rule was founded.

107. The Government of the United Kingdom also emphasizes that a low-tide elevation lying wholly outside the territorial sea as measured from the coast line or the mainland (or of an island) cannot be taken into account at all in determining the base-line of the mainland (or island). It makes no difference that the elevation, which lies beyond the distance of the territorial belt from the primary coast line, is within the width of the territorial belt when measured from another such elevation which is situated within the primary territorial sea and has therefore been taken into account in extending the base-line. Such progressive extensions of the base-line are inadmissible for the very reason that they thrust the outer margin of the territorial sea too far from the permanently visible land-marks. That this interpretation of the rule laid down by Sub-Committee No. II is correct has been expressly stated by Professor Gidel (*op. cit.*, p. 700 and p. 705, note 1) and by Dr. Ræstad (R.D.I., La Pradelle (1931), Vol. 7, p. 127), both of whom were members of the sub-committee, and by Münch (*op. cit.*, Section 20, Part III). In other words, the rule formulated by the sub-committee means precisely what it says and no more. A low-tide elevation can only be taken into account if it lies within the width of the territorial sea measured from the actual low-water mark of a mainland or island.

108. The above rules distinguishing between islands and low-tide elevations are considered to be a reasonable compromise between opposing views and to be founded on pertinent practical considerations. Moreover, they are broadly in line with the principles of the North Sea and other fishing conventions. They are commonly regarded as an acceptable solution of the difference in regard to this branch of customary law. Accordingly, it is submitted that the rules endorsed in the sub-committee of the Codification Conference in 1930 ought to guide the Court in determining the status and effect of particular islands, rocks and banks in the present case.

109. Special considerations apply to the case of islands lying in or off the mouths of bays. An island may lie either in or at the mouth of a bay or inlet in such a position that the channels for practical purposes give access only to inland waters. In this case, the rule for bays applies, and the island may be used as a base-point for carrying the base-line across the mouth of a bay otherwise too wide to qualify at that point as a closed bay under the 10-mile

rule. But, to have the effect of closing the bay, the intervals between island and mainland and, if more than one island is used as a base-point, the intervals between island and island, must not exceed 10 miles (Gidel, *op. cit.*, Vol. III, p. 706). The rationale of this rule is that the islands have the effect of closing an otherwise open bay. On the other hand, a low-tide elevation cannot be used for the purpose of measuring a 10-mile interval. There is no authority for it and to do so would violate at least one of the principles on which the 10-mile rule is said to rest, i.e. the principle of the range of vision (see para. 86 above). Consequently, where the islands lie not in but off the mouth of the bay, it is submitted that the question whether the law of bays or straits is to be applied depends on the facts of each case. If the islands, by reason of their position, push normal coastal navigation outside the line of the islands, and the intervals do not exceed 10 miles, the bay is closed. If, however, normal coastal navigation passes across the entrance of the bay inside the islands, the bay is not closed and the law of straits applies.

Straits

110. Except where an island has the effect of enclosing waters in a bay or inlet, the channel between the island and the mainland is a strait as was recognized by the Court recently in the *Corfu Channel* case. It is therefore necessary to examine the principles of international law governing straits. The replies of governments to the League of Nations *questionnaire* (*Bases of Discussion*, pp. 55-60) concerning the régime for straits, the shores of which belong to a single State, showed a large measure of agreement as to the general principles. These principles were translated by the Preparatory Committee into the following two rules of Bases Nos. 15 and 17 (*Bases of Discussion*, pp. 59-60) :

> "When the coasts of a strait belong to a single State and the entrances of the strait are not wider than twice the breadth of territorial waters, all the waters of the strait are territorial waters of the coastal State."
>
> "Where a strait is merely a channel of communication with an inland sea, the rules regarding bays apply to such strait and sea."

It is evident that these rules are founded upon the classical and logical distinction between open and closed waters. If the channel connects two parts of the open sea, the law of territorial waters above applies. If it leads from the open sea to inland waters, the law governing bays applies.

111. The report of Sub-Committee No. II maintained these principles with minor amendments. The rule for straits set out in the report is as follows :

> "In straits which form a passage between two parts of the high sea, the limits of the territorial sea shall be ascertained in the same

manner as on other parts of the coast, even if the same State is the coastal State of both shores.

When the width of the straits exceeds the breadth of the two belts of territorial sea, the waters between those two belts form part of the high sea. If the result of this delimitation is to leave an area of high sea not exceeding two miles in breadth surrounded by territorial sea, this area may be assimilated to territorial sea."

The report provided that the rule for bays should apply to straits giving access to inland waters, not in a separate article, but in the following observation upon the rule for straits :

"The application of the article is limited to straits which serve as a passage between two parts of the high sea. It does not touch the regulation of straits which give access to inland waters only. As regards such straits, the rules concerning bays, and where necessary islands, *will continue to be applicable*."

The sub-committee, *ex abundanti cautela*, also stated in its observation that the waters of a strait connecting two parts of the open sea may not be regarded as *inland* waters. In such straits, the waters have the status of the territorial sea, even although the shores of the strait are nowhere wider apart than twice the width of the territorial sea. A strait can only attract the status of inland waters when it gives access to inland waters and is assimilated to a bay.

112. The submissions of the Government of the United Kingdom in regard to the effect of islands, rocks and banks upon the base-lines are, therefore, as follows :

(1) An island, that is, an area of land surrounded by water, which is permanently above high-water mark, has its own territorial sea and its own base-line.

(2) An elevation of the sea bed, only above water at low tide, which is situated within the territorial belt of a mainland (or of a permanently dry island) counts as a piece of territory for the purpose of the delimitation of territorial waters. It is sufficient for the purpose of this rule that the elevation is only partially within the territorial belt, in which case the whole of the elevation is so taken into account.

(3) A low-tide elevation, situated wholly outside the territorial sea measured from the low-water mark of a mainland (or of an island as the case may be), cannot be taken into account at all in determining the base-line of the mainland (or island) even if it should lie within (in the present case) 4 miles of another such elevation which is within the territorial sea of the mainland (or island).

(4) If a strait or sound between a mainland and an island (or a low-tide elevation inside the territorial belt) or between two islands, connects two parts of the open sea, the law of straits applies and each piece of territory has its own territorial

waters and its own base-line. If, however, the strait or sound lies between an island and the mainland and if it connects one part of the open sea, not with another part, but with inland waters, the law for bays applies, and the base-lines may be joined at the nearest place to the seaward entrance where the interval does not exceed 10 miles in width. Low-tide elevations cannot, however, be used for measuring a 10-mile interval. In case of doubt as to the status of a particular channel, the test is whether the channel would reasonably be used for coastwise navigation by international maritime traffic.

(5) If permanently dry islands lie in or off the opening of a bay (including a sound classed as a bay under (4)) which is more than 10 miles wide, they may be used like stepping stones to carry the base-line across the opening if the intervals nowhere exceed 10 miles. This is subject to the islands in fact closing the bay by throwing coastwise navigation outside the island or line of islands, and not leaving a channel inside the islands, which would reasonably be used by international maritime traffic. In the latter event the rule as to straits applies.

Groups of islands

113. General international law, whether customary or conventional, has not recognized any special principle, either giving a peculiar status to the waters of an archipelago or in any way excepting them from the ordinary rules governing islands, bays and straits. The classical writers, although they recognized that islands in the mouth of a bay may enclose the bay under certain conditions (para. 96 above), were silent even as to the possibility that the waters of an archipelago might be subject to special rules. Indeed, it was not until after the 1914-1918 war, when the codification of the law of the territorial sea was being discussed that the possibility of a special rule for archipelagos was investigated.

114. The question of archipelagos was dealt with in Article 5 of the draft convention of the League of Nations Committee of Experts (*Bases of Discussion*, p. 193), Article 7 of the draft of the American Institute of International Law (23 A.J.I.L., Special Supplement, p. 370) and Article 5 of the draft of the Institute of International Law (1928 *Annuaire*, p. 756). Broadly speaking, these drafts accepted the view that the islands of a group should be treated as a unit and that the territorial sea should be measured from the outermost islands of the group. The drafts of the International Law Association (Report of 34th Conference, 1926, p. 101), of the Japanese International Law Association (23 A.J.I.L., Special Supplement, p. 376) and of the Harvard Research (*ibid.*, p. 243) did not, however, give any place to the concept of a legal régime for archipelagos.

115. The views of governments in their replies to the *questionnaire* (*Bases of Discussion*, pp. 50-51) were divided, some rejecting the concept altogether, others admitting it though in various forms. The Preparatory Committee framed a special rule for groups of islands as *Basis of Discussion No. 13* (*ibid.*, p. 51) in the following form :

> "In the case of a group of islands which belong to a single State and, at the circumference of the group, are not separated from one another by more than twice the breadth of territorial waters, the belt of territorial waters shall be measured from the outermost islands of the group. Waters included within the group shall also be territorial waters.
>
> The same rule shall apply as regards islands which lie at a distance from the mainland not greater than twice the breadth of territorial waters."

The rule in Basis No. 13 was fundamentally closer to the law governing straits than to the law governing closed bays. For the régime was to be that of territorial waters and the intervals between islands on the periphery were to be restricted to double the width of the territorial sea.

116. The Preparatory Committee in an observation explained the grounds of their recommendation as follows :

> "To treat a group of islands or an island and the mainland as a single whole possessing its own belt of territorial waters *raises a new question*. What is to be the status of the waters separating either the mainland from the islands or the islands from one another ? According to one opinion, such waters are inland waters and the ordinary belt of territorial waters surrounds the group at its circumference. Another opinion, which appears to be that of the majority of governments, considers all the waters in question to be territorial waters and to be subject accordingly to the rules governing territorial waters. The first opinion is based on the interests of the coastal State and the second is more favourable to freedom of navigation. In face of these divergencies of view an attempt has been made to discover a possible basis of discussion which would be a compromise : it consists in treating as a unit a group of islands which are sufficiently near to one another at the circumference of the group while giving to the waters included within the group the character of territorial waters."

In other words, the Preparatory Committee pointed out that the proposed introduction of a special rule for archipelagos involves an important issue of the freedom of the seas.

117. The question of groups of islands was discussed at the conference by Sub-Committee No. II, which was unable to formulate a definite rule owing to differences of opinion and to the technical difficulties inherent in the question. The sub-committee did, however, record in an observation incorporated in its report (*Plenary Meetings*, p. 133) that a majority favoured the adoption

of a special régime for archipelagos by some application of the 10-mile rule. The text of the observation is as follows:

"With regard to a group of islands (archipelago) and islands situated along the coast, the majority of the sub-committee was of opinion that a distance of 10 miles (i.e. between them) should be adopted as a basis for measuring the territorial sea outward in the direction of the high sea. Owing to the lack of technical details, however, the idea of drafting a definite text on the subject had to be abandoned. The sub-committee did not express any opinion with regard to the "nature of the waters included within the group."

It may be added that the proposal to apply the 10-mile rule by analogy from the law of bays was made *de lege ferenda* by Japan, and that the discussion was very indefinite and inconclusive. Thus, Dr. Münch (*op. cit.*, para. 24) says: "As in the case of bays and straits they tried to go as far as 10 sea miles. The reports of the Second Sub-Commission only mentions this very briefly; in fact, the conversations on this *reached a deadlock because of difficulties of views and of expression.*"

118. The mere definition of what may constitute a group of islands under the proposed rule presents technical problems of such great complexity as, in the views of the Government of the United Kingdom, to render the introduction of the new rule undesirable and, indeed, impracticable. Professor Gidel, who is not in principle averse to considering the introduction of a special rule for groups of islands, acknowledges the technical difficulties (*op. cit.*, Vol. III, p. 707):

"Tandis que la notion géographique d'archipel s'établit d'une façon assez aisée par rapport aux espaces maritimes au milieu desquels l'archipel se trouve ou aux surfaces terrestres au voisinage desqueles il est situé, la notion juridique d'archipel est, au contraire, *d'une construction extrêmement difficile et peut être même impossible* en ce qui concerne le droit public maritime."

The difficulty of definition is further illustrated by the extremely complex, if ingenious, proposals of Dr. Münch (*op. cit.*, Section 24). The United States geographer, S. W. Boggs (24 A.J.I.L., p. 548), seeks to avoid the problem of definition by a special rule for the elimination of small "pockets" of high sea.

119. It is also to be remarked that the proposal to apply the 10-mile rule to the intervals between islands of an archipelago by analogy from the law of bays is founded upon a false analogy, except where the channels lead to closed waters. A channel between islands of an archipelago which connects two areas of open sea lacks one essential condition upon which the principle of closed bays is founded, namely, that the waters by reason of the geographical configurations are removed from normal use by international maritime traffic. The importance attached to this condition is seen

in the contrasting rules laid down in the report for the two types of straits (see para. 111 above). Whereas the report applies the 10-mile rule, and the régime of *inland* waters, to straits leading to inland waters, it applies the double radius test and the régime of *territorial* waters to other straits, thus safeguarding the right of innocent passage for international maritime traffic in cases where the strait connects two parts of the high seas. The distinction drawn by the report between channels leading inland, and channels connecting the open sea, is no less important for the freedom of navigation in the case of groups of islands than in the case of individual islands off a mainland. Indeed, Professor Gidel (*op. cit.*, Vol. III, p. 724), who *de lege ferenda* favours the application of a 10-mile rule to archipelagos, insists that the waters should have the status of *territorial* not inland waters.

120. The creation of a special régime for achipelagos thus both presents serious technical difficulties and, if adopted, would constitute a derogation from the freedom of the seas in the areas affected. The proposal to allow such a special régime for archipelagos is, moreover, a proposal to formulate a new rule of international law. Although the proposal received the support of a majority of Sub-Committee No. II, no rule was formulated. On the contrary, the technical difficulties were left unsolved, and the major question of principle, the status of the waters, was left without even an expression of opinion by the sub-committee. In these circumstances, it is submitted that the Court is not entitled, under Article 36 of its Statute, to apply any special rule for archipelagos except with the agreement of both Parties to the case. The Government of the United Kingdom is unable to give its support to a rule which it regards as unnecessary, since the question is satisfactorily regulated by the existing rules of international law, and which militates against the freedom of the seas, for navigation and fishing. The question before the Court is what limitations on the right of fishing Norway is justified under international law in requiring the United Kingdom and other States to respect. While the status of the waters, territorial or internal, has no importance as regards fishing, the application of a 10-mile interval to groups of islands generally on the false analogy of bays would clearly have a considerable effect.

The Government of the United Kingdom accordingly maintains that the established rules relating to the tide level, bays, islands and straits govern the determination of the base-line on a coast where there are groups of islands no less than on a coast where there are individual islands. This view of the existing law is also that of Professor Gidel (*op. cit.*, Vol. III, p. 717), who writes:

> "*État actuel du droit.* — L'effort doctrinal important du Dr Münch permettra peut-être, si la question est reprise un jour ou l'autre dans une conférence internationale, d'établir des règles convention-

nelles sur la question des archipels. *Pour le moment et en l'absence de règles spéciales à cet égard admises par le droit international, la solution à laquelle il convient de se tenir est celle qui résulte du droit commun de la matière de la mer territoriale.*"

121. The Government of the United Kingdom, in consequence, submits that the rules governing individual islands, set out in paragraph 112 above, apply equally to the islands of an archipelago. The multiplication of the islands increases the importance and effect of the rules but that is all.

Finally, it is emphasized that, even if a special rule for archipelagos, in the form contemplated at the 1930 Conference, had been adopted, it still would not have authorized Norway to extend, as she has done, her base-lines along islands and rocks 15, 25 or even 44 miles apart. *The records of the conference provide no warrant whatever for such long base-lines under the normal rules relating to bays, islands, straits, etc.* Indeed, the longest possible base-line seriously contemplated by the conference—apart from inlets to which a claim can be based on historic usage—was restricted to 10 miles.

Submissions of the Government of the United Kingdom in regard to the principal rules of international law regulating the delimitation of base-lines [1]

122. Accordingly, the full submissions of the Government of the United Kingdom in regard to the applicable rules of international law which, apart from historic usage, regulate Norway's determination of her base-lines are as follows:

(1) Subject to the rules governing bays, islands, and other elevations of the sea bed, the base-line is to be the line of low-water mark along the entire coast. The line of low-water mark is that indicated on Norwegian official charts unless it departs appreciably from the line of mean low-water spring tides. (Paras. 68 to 69 above.)

(2) In the case of bays, the base-line is to be a straight line drawn across the opening at the nearest point to the entrance of which the opening does not exceed 10 miles in width. A bay for this purpose is a well-marked indentation of the coast whose penetration inland bears a reasonable proportion to the width of its mouth. In case of doubt the geometrical formula proposed by the United States at the Hague Codification Conference of 1930, which is set out in Sub-Appendix A to the report of Sub-Committee No. II (*Plenary*

[1] Detailed points, such as the effect of roadsteads, harbours and artificial structures, have not been discussed in the above examination of the rules of international law which regulate the delimitation of base-lines. They will be dealt with only if they become an issue in the present case.

Meetings, p. 132), should be used as an approximate test. (Paras. 70 to 95 above.)

(3) Any Norwegian island, that is, any area of land surrounded by water and permanently above high-water mark which is a Norwegian possession, has its own territorial sea and its own base-line except where the law of bays applies under rule 7 below. (Paras. 96 to 100 above.)

(4) Any elevation of the sea bed, although only above water at low-tide, which is situated within the territorial sea of the Norwegian mainland, or of a Norwegian island, counts as a piece of territory for the purpose of the delimitation of territorial waters. It is sufficient for the purpose of this rule that the elevation is only partially within the territorial sea. (Paras. 101 to 112.)

(5) Any elevation which is only above water at low tide situated wholly outside a 4-mile zone measured from the low-water mark of the Norwegian mainland, or of a Norwegian island as the case may be, cannot be taken into account at all in delimiting the territorial waters of the mainland or island. It makes no difference under this rule that the elevation lies within 4 miles of another elevation which is itself situated within the 4-mile zone of the mainland or island.

(6) *(a)* If a strait or sound, used by international navigation and lying between the Norwegian mainland and a Norwegian island (or a rock or bank within 4 miles of land submerged at high tide only) or between two Norwegian islands, connects two parts of the open sea, the law of straits applies and each piece of territory has its own base-line.

(b) If, however, the strait or sound is only used by international navigation for communication with inland waters, the law for bays applies, and, thus if the strait lies between *two portions of permanently dry land*, the base-lines of the two pieces of territory may be joined by drawing a line across the opening at the nearest point to the entrance at which the opening does not exceed 10 miles in width.

(7) If an island or islands lie in or off the opening of a bay (including a sound classed as a bay under rule 6 *(b)*) which is more than 10 miles wide, the base-line may be drawn across the opening by way of the islands provided that the intervals nowhere exceed 10 miles in length. This is subject to the islands in fact closing the bay by throwing coastwise navigation outside the island or line of islands and not leaving a seaward channel inside the islands which would reasonably be used by international maritime traffic. In the latter event, the rule for straits applies.

C.—Inconsistency of the lines prescribed by the Royal Decree of 1935 with the general rules of international law regarding base-lines

123. As explained in paragraph 3 of this Memorial, the charts prepared by the hydrographer of the Royal Navy, and attached at Annex 2, show:

(a) *By a blue line*, the base-lines in fact prescribed by the Royal Decree of 1935 (as amended in 1937).

(b) *By a red line*, the base-lines of the 1924 red line delimited by Norwegian experts at the Oslo Conference as their appreciation of the extent of Norwegian claims to territorial waters. In addition, Annex 17 contains a description of each individual base-point on the blue line adopted in the Decree of 1935 (as amended in 1937).

124. The blue lines on the charts reveal clearly that the base-lines of the Royal Decree of 1935 depart altogether from the general principles of international law governing base-lines. The Royal Decree in fact infringes these general principles in the following ways:

(i) The base-lines do not anywhere follow the line of the coast but are drawn across the open sea from point to point selected arbitrarily by the Norwegian Government.

(ii) The base-lines where a departure from the coast line would be permissible by reason of an indentation qualifying as a bay, take no account of the rule restricting the closure of bays by a limit of 10 miles. Examples are Varangerfjord (30 miles), several fjords between points 6 (Korsneset) and 11 (the outer point on Avloisa at Nordkyn) and several fjords between points 20 (Darupskjær) and 21 (Vesterfallet) and the Vestfjord (40 miles). To some of these fjords, Norway may establish a claim on historic usage. The onus of proof is on Norway and the Government of the United Kingdom will reserve its decision on these fjords until their Reply (see paras. 61, 75 and 95 above, and 143 below).

(iii) The base-lines, in some cases where there is a bay, take no account even of the headlands of the bay but pass to seaward of the entrance in breach of the rule of the low-water mark as well as of the rule for bays. Examples are the lines in between points 5 (Kaalneset on Reinoy) and 6 (Korsneset) off Persfjord and Syltefjord[1], between points 7 (Molvikskjær) and 8 (Kjolnes) off Baasfjord and Kongsfjord, between points 8 (Kjolnes) and 9 (the skjær with the perch east of the skjær on which Torrba beacon is situated) off Tanafjord and Koifjord and between points 11

[1] See para. 45 above (case of *St. Just*).

(the outer point on Avloisa at Nordkyn) and 12 (Knivskjærodden) where indeed a base-line of 39 miles passes far out to seawards of several fjords, also closing the strait of Mageroy Sound.

(iv) Base-point No. 21 of the Royal decree, Vesterfall in Gasan (70° 25′ 2″ N., 19° 54′ 9″ E.) is an elevation of the sea bed not qualifying as an island, which is situated not less than 8 miles from any island. It cannot therefore be properly used as a base-point for measuring the territorial sea of the nearest island, let alone of the mainland of Norway.

(v) The base-lines take no account of the distinction between bays and straits and of the rule forbidding the enclosure as inland waters of straits connecting two parts of the open sea. Examples of straits so enclosed are: Maasoyfjord in the north-western approach to Mageroy Sund; between the north-eastern end of Soroya and the south-western end of Rolvsoy leading to Rolvsoy Sund; Sørøy Sund; Kamoy Sund; the entrance to Kvænangenfjord and other coastal channels used by international maritime traffic as shown in Admiralty *Norway Pilot*, Part III, 1939. On page 25 of that publication it is stated: "The number of steam vessels running up and down the coast of Norway throughout the year is very considerable; nearly all these pass through Indreleia", i.e. some of the sounds mentioned above form part of Indreleia and others are approach channels to it.

(vi) The base-lines in many instances are drawn across intervals of sea greatly in excess of 10 miles for which there is no justification whatever in existing principles of general international law, nor even indeed in the rule for coastal archipelagos adumbrated at the Hague Codification Conference of 1930. These instances are:

	Miles
Points 1 to 2	30
Points 5 to 6	25
Points 7 to 8	19
Points 8 to 9	25
Points 11 to 12	39
Points 12 to 13	19
Points 13 to 14	12·8
Points 18 to 19	26·5
Points 19 to 20	19·6
Points 20 to 21	44
Points 21 to 22	18
Points 24 to 25	16·4
Points 25 to 26	19·5
Points 26 to 27	13
Points 27 to 28	18

	Miles
Points 30 to 31	16·5
Points 31 to 32	16·5
Points 32 to 33	11·7
Points 34 to 35	23
Points 35 to 36	14·5
Points 38 to 39	13·5
Points 39 to 40	15·2
Points 40 to 41	16·25
Points 45 to 46	40
Points 46 to 47	14·8

125. The Norwegian coast in the areas covered by the Royal Decree of 1935 is so heavily indented and is, on its west coast, so thickly studded with islands that departures of the base-lines from the low-water mark of the mainland coast will result, very frequently and indeed usually, from the application of the general rules of international law governing base-lines. This does not, however, mean that the particular configuration of the Norwegian coasts renders the general rules of international law inapplicable in determining their base-lines. On the contrary, it only serves to increase the importance and effect of the special rules regarding bays, islands and straits in their application to the Norwegian coasts.

126. The idea that the configuration of the Norwegian coast is so complex as to defy the application of ordinary rules receives the support of the United States geographer S. W. Boggs in the following passage in an article in the *American Journal of International Law* (Vol. 24, pp. 554-555):

"It may be noted, somewhat parenthetically, that regardless of what definition may be adopted for the term 'island' as applying to small rocks, shoals and shifting bars, some of which are awash only at low tide, and many of which constitute nothing but an obstacle to navigation, a large portion of the coast of Norway will present a unique problem. Much of the fjorded western coast of Norway is fringed with almost countless islands and rocks, and it is exceedingly difficult to indicate exactly which of these meet the requirements of any definition of the term 'island' for delimitation purposes and which rocks do not meet such requirements. Therefore a navigator could not swing his arc of 3 m. radius from the point on the chart indicating his position and readily ascertain whether or not he was in territorial waters or on the high sea. To describe the arcs of circles around all the technical 'islands' along the Northern Skjærgaard would result in a series of arcs of unusual complexity. For that exceptional coast it would appear that the Norwegian system of indicating arbitrarily straight lines as the boundary between the territorial sea and the high sea is not only justified, but practically inevitable, and the further fact that these are rather commonly accepted as 'historic waters' tends to eliminate

this coast from the operation of the system proposed in the American amendment for general application."

The views of this distinguished geographer merit careful consideration but the opinions expressed by him in the above passage, in the submission of the Government of the United Kingdom, are not only unsound in themselves but are inconsistent with the fundamental principles for the delimitation of base-lines which he advocates earlier in the same article.

127. First, the contention that the coast of Norway is for legal purposes unique cannot be accepted. Not only are there comparable coasts, elsewhere, for example, the west coasts of Scotland and Ireland, but, in any event, the differences are differences of degree, not of kind. The multiplication of bays and islands multiplies the exceptions from the rule of the low-water mark along the entire coast, but it does not alter the essential nature of the legal situations in regard to individual bays and islands.

128. Secondly, the statement that some of the rocks off the Norwegian coast may be of doubtful status loses its force if the rules regarding islands and low-tide elevations recognized by the Hague Conference of 1930 are conscientiously applied. It is essential that a navigator should be able to swing his 4-mile arc and disregard all elevations which neither are themselves visible islands nor are in the vicinity of visible islands. As Mr. Boggs pertinently observed earlier in his article (p. 543):

> "If the territorial sea is to be delimited in a manner to occasion the least possible interference with navigation, it will be necessary to assume the view-point of one who is on the sea and who wishes to know where territorial waters begin."

The fact is that the island and rock fringes off the Norwegian coast, so far from rendering the application of the general rules of international law inappropriate on the contrary demand their strict application.

129. Thirdly, it is a complete misconception that the drawing of arbitrary straight lines on a complex coast is a more practical solution than the application of the general principles of international law. The practical advantages of arbitrary straight lines are confined to the draughtsman in his city office who no doubt finds this method easier work, and to States which, like Norway, wish to increase the area of their inland waters which can only be achieved at the expense of the community of States. But no system of base-lines is so unpractical for the mariner as the drawing of long, arbitrary straight lines, which leave him over large areas with no landmark from which to fix his position and on which to swing his arc. It was this consideration, amongst others, which, in the general rule for bays, limited the permitted length of straight

lines drawn across bays to 10 miles[1]. Arbitrary base-lines 15, 25 and even 44 miles in length take no account of "the view-point of one who is on the sea and wishes to know where territorial waters begin". In this connection it is to be observed that the base-lines of the 1935 Decree are situated at many points a long distance from any land at all. The following examples may be noted where the distance from a position on the base-line to the nearest land may be up to $11\frac{1}{4}$ miles between points 11 (Avloisa) and 12 (Knivskjærodden), $15\frac{1}{2}$ miles between points 20 (Darupskjær) and 21 (Vesterfallet), $7\frac{1}{2}$ miles between points 27 (Tokkeboen) and 28 (rock north-north-east of Glimmen), and $7\frac{3}{4}$ miles between points 34 (Utflesskjær) and 35 (Kverna).

130. It is further to be observed that the Norwegian Government in the Royal Decree of 1935 has not limited its use of the system of arbitrary straight lines to the west coast of Finnmark where complex archipelagos are to be found, but has applied it equally to East Finnmark where there are bays and a few individual islands but no complex archipelagos.

The base-line described by the Royal Decree of 1935 may indeed be said to fall into two distinct sections east and west of the most northerly point, 12 at Nord Kap. Of the 11 base-points on the east coast, five are on the mainland and the remaining six are islands or elevations within 4 miles from the mainland shore. Of the 36 base-points on the west coast, none are on the mainland and many lie several miles from the mainland shore. Point 12 itself is the most northerly tip of the large island of Mageroy, which is separated from the mainland by a strait about three-quarters of a mile wide. But, despite the geographical differences and despite the fact that on the east coast the base-points are on or close to the mainland while on the west they are not, the system of base-lines—if system it can be called—is essentially the same on both coasts. In each case the most extreme landmark, mainland or island (and point 21 cannot even be regarded as a landmark) is taken and the points are joined together by straight lines of whatever length.

131. The result is that even on the east coast the system of straight lines is not a system of closing individual bays by drawing lines from headland to headland. It is not the headland system for bays as it was understood in the nineteenth century before it was cut down to the 10-mile rule. The lines, on the contrary, run from extreme point to extreme point disregarding individual bays, whether large or small.

Thus between points 5 (Kaalneset) and 6 (Korsneset) the line passes to seaward of three separate fjords (Persfjord, Syltefjord and Makur-Sandfjord), between points 7 (Molvikskjær) and 8 (Kjolnes) two fjords (Baasfjord and Kongsfjord), between points 8 (Kjolnes)

[1] It also excludes low-tide elevations in measuring the 10-mile elevation.

and 9 (skjær with perch east of the skjær on which is Torrba beacon) two fjords (the large Tanafjord and Koifjord) and between points 11 (Avloisa) and 12 (Knivskjærodden) six fjords, including the large Lakse and Porsanger fjords and a further bay made up of three small fjords. All these fjords are marked on Norwegian maps as separate fjords and, apart from the three small fjords mentioned above as forming a single bay, all were treated as separate bays at the Oslo-London Conferences of 1924-1925 [1].

132. In short, the system of the Royal Decree of 1935 is a system of joining one extreme land-mark to another extreme land-mark for which there is no authority whatever under the general principles of international law governing base-lines. The only affinities of this system are with the British King's Chamber Claims of the seventeenth century in matters of neutrality, not with any rule of modern international law. The British claim to King's Chambers, as Sir Maurice Gwyer said at the Hague Codification Conference of 1930 (*Plenary Meetings*, p. 111), "was abandoned many centuries ago". Owing to a dictum of Sir William Robson, Attorney-General, in the 1910 Arbitration (*Proceedings of the Tribunal*, Vol. XI, p. 4164), some misconception has however existed even among modern writers about the status of the British claim to-day. It is therefore desirable that the truth about this claim should be made plain once and for all. Sir William Robson in 1910 said that the British claim "still stands perfectly good" but, as will be shown, it is clear that he had in mind the common law doctrine of bays *inter fauces terræ* (headland to headland), not the old neutrality claim to chambers between extreme landmarks.

133. No misconception ought any longer to exist in regard to the claim to King's Chambers, as the claim has been authoritatively explained by Fulton (*Sovereignty of the Sea* (1911), p. 122 ; 548). The King's Chambers were proclaimed in 1604 by James I as a neutrality rule forbidding captures of prizes within the chambers. The chambers were formed by straight lines drawn by experts from Trinity House between one extreme land-mark and another round the coast and not necessarily between the headlands of individual bays. They were confined to England—as distinct from Great Britain—and even in England there is no evidence of the claim to King's Chambers having been enlarged into a general claim to inland or territorial waters. It remained a neutrality rule and, even as such, fell into desuetude in the eighteenth and nineteenth centuries.

[1] It is true that Persfjord, Makur-Sandfjord, Baasfjord, and Koifjord do not have separate numbers in the Admiralty silhouettes and are not mentioned in the minutes of the London Conference though they all appear separately in the minutes of the Oslo Conference: see Annex 4 (p. 127), but the London Conference was only concerned with fjords with entrances and more than 6 miles across which Norway claimed on historic grounds.

134. It is true that the United States writer, Kent (*Commentaries on International Law*, Vol. I, pp. 29-30), in 1826, adumbrated the possibility of very large "chambers" for the American continent but his suggestion was not followed up by the United States Government. It is also true that writers such as Wheaton (*International Law* (1836), Section 179) and Phillimore (*Commentaries upon International Law* (3rd edition), 1879, Vol. I., p. 285) mentioned the British claim to King's Chambers without disapproval but they regarded the claim as an exceptional and historic title. In fact, as already stated, the claim had been abandoned and seems to have been confused with the common law doctrine of jurisdiction over bays *inter fauces terræ*. The importance of this doctrine was that it marked the division between jurisdictions of the courts of common law and of the court of the Admiral, the principle being that the common law jurisdiction extended not only to harbours, estuaries and havens but also to bays and other arms of the sea *inter fauces terræ*. The range of vision principle mentioned by Lord Hale (see para. 84 above) set a limit to this doctrine, which now translated into the 10-mile rule, applies in all cases other than "historic bays".

135. During the nineteenth century there was some uncertainty as to the precise limits of the doctrine of jurisdiction *inter fauces terræ*. But it is significant that, in the first Bristol Channel case (*Reg.* v. *Cunningham* (1859), Bell's Crown Cases, p. 72), the Court directed all its attention to the doctrine "*inter fauces terræ*", not to the King's Chambers. If the claim to King's Chambers had still stood "perfectly good", there would have been no case to argue in *Reg.* v. *Cunningham* [1]. Similarly, in the famous case of the collision of the German ship *Franconia* [2] (*Reg.* v. *Keyn* (1876), 2 Ex. D. 63),

[1] In this case, the prisoners were charged with assault on board a foreign vessel at anchor in the Bristol Channel at a point where it is 10 miles across (wide enough to enable a man reasonably to see from shore to shore). The form of the indictment alleged that an offence had been committed in the County of Glamorgan (i.e. in *internal* as opposed to territorial waters). It was held that the waters of the Channel at this point were within the bodies of the Counties of Somerset and Glamorgan, but the Court said: "the whole of the inland sea between the Counties of Somerset and Glamorgan is to be considered as within the counties of which its several parts are respectively bounded". This phrase was taken by some, including the judge in the *Fagernes* case (see para. 78 above), to cover all waters inside a line between Port Eynon Head and Bull Point (just over 20 miles). This view of *Cunningham*'s case was, however, held by two of the three members of the Court of Appeal in the *Fagernes* case to be wrong.

[2] The facts here were as follows: Keyn, the accused, was the master of the German ship *Franconia* which within 2 miles from Dover Pier negligently ran into and sank the British steamer *Strathclyde*, thereby killing X, a British subject on board the latter vessel. The circumstances in which X was killed amounted to manslaughter in English law, but the point at issue was whether the English courts had jurisdiction over criminal offences committed in territorial waters, or whether such jurisdiction stopped at low-water mark, or at the outer limit of a bay which had been appropriated as internal waters. No doubt was raised that the point at which the offence was committed was in territorial and not internal waters. The Court held

no one raised the question whether the collision had occurred in the Dungeness-South Foreland "Chamber" of James I, although, if the claim had stood "perfectly good", the question would have been extremely relevant. Nor is the case of *Mortensen* v. *Peters* [1] (1906) (14 Sc. L.T. 227) in the Scottish Court of Justiciary any authority for a modern British claim to King's Chambers which indeed were never applied to Scotland. The case concerned the application of a British statute to foreign fishing vessels outside the territorial limit and turned on a question of the construction of the legislative provisions applicable. On the vessels being convicted, the British Government remitted the sentences, thereby indicating that it did not consider that the jurisdiction which the Court had exercised under these domestic legislative provisions was compatible with international law. Finally, in the second Bristol Channel case (*The Fagernes* [1927], Probate 311), the argument of the Attorney-General and the decision of the English Court of Appeal are wholly inconsistent with the maintenance of a modern claim to the Chamber of King James's neutrality proclamation [2].

136. Sir William Robson's dictum was made as an interjection during the argument of Senator Root in the 1910 Arbitration and, if taken literally, is without any foundation whatever. If, however, he was referring to British claims to individual bays *inter fauces terræ*—and much of the arbitration concerned this very point—then the dictum could be justified since the definition of the law governing claims in regard to individual bays was not yet complete, and the award of the arbitrators as previously explained (see para. 77 above) did much to accelerate the acceptance of the 10-mile limit and to crystallize the distinction between ordinary bays and "historic bays".

137. It is repeated that the British claim to King's Chambers was never more than a neutrality rule and was abandoned long ago. King James's proclamation cannot therefore provide any

that there was no criminal jurisdiction in territorial waters at common law. (The legal effect of this decision was reversed by the Territorial Waters Jurisdiction Act, 1878, under which such jurisdiction now exists.)

[1] In this case, Mortensen, the captain of a Norwegian fishing vessel, but a Danish subject, was prosecuted for trawling within limits laid down by Section 6 of the Herring Fishery (Scotland) Act, 1889. Under this section, trawling was prohibited in the Moray Firth within a line drawn from Duncansby Head in Caithness to Rattray Point in Aberdeenshire. The accused admitted the fact of trawling at the point alleged but maintained that the point in question was outside the 3-mile limit. The Scottish courts held that this was no defence as the Act of Parliament clearly prohibited trawling at the point in question, and the Court must apply the Act even if it was contrary to international law. The Parliament of the United Kingdom subsequently altered the law by providing (Trawling in Prohibited Areas Prevention Act, 1909) that no prosecution could take place for the exercise of prohibited fishing methods beyond 3 miles from the coast, but the fish so caught could not be landed or sold in the United Kingdom.

[2] See para. 78 above.

kind of justification for the land-mark to land-mark system adopted in the Royal Decree of 1935.

It is also repeated that Norway's land-mark system of base-lines is entirely different from, and much more arbitrary than, headland to headland *(inter fauces terræ)* claims in regard to individual bays round the coast. The headlands of bays system, to quote Umpire Bates again, received its proper limit in the 10-mile rule but to the Norwegian system there is almost no limit. Applied either in Norway or elsewhere the land-mark system may result in the enclosure as *inland* waters of extravagantly large areas of high sea.

138. Norway, during the Hague Codification Conference of 1930, appears herself to have recognized that the land-mark system of base-lines is both without any warrant in the accepted principles of general international law governing base-lines and involves the risk of arbitrary encroachments on the high seas. For, jointly with Sweden, she proposed that Bases of Discussion Nos. 6, 7 and 8 containing the existing concepts of international law in regard to base-lines should be entirely swept away and replaced by the following rule:

> "The breadth of territorial waters shall be measured from straight lines drawn along the coast from one land-mark to another. Any part of the territory may be used as a land-mark, including islands, islets and rocks left exposed at the ordinary level of the lowest tides. As regards bays and coastal archipelagos in particular, these straight lines shall be drawn across the opening either of bays or of intervals of sea from the outward side of the archipelago. Each State shall fix the said base-lines for its coast. *It may not, however, make these base-lines longer than is justified by the rules generally admitted either as being an international usage in a given region or as principles consecrated by the practice of the State concerned and corresponding to the needs of that State or the interested population and to the special configuration of the coasts or the bed of the sea covered by the coastal waters.*"

Plainly, the object of the above proposal was to legalize by a *new* rule of general international law the base-lines which Norway wished to draw, and in 1935 did in fact draw, to enlarge her zones of exclusive fishery. On the other hand, the last sentence of the proposal equally acknowledges that base-lines of unlimited length would be quite out of the question even under a land-mark system of base-lines.

139. The restrictions on the land-marks contained in the Norwegian-Swedish proposal are entirely illusory. Even the phrase "international usage in a given region is quite indefinite", for it leaves unsettled what should constitute a "region" for the purpose of the restriction. In any event, as Professor Gidel pointed out (*op. cit.*, Vol. III, p. 640), the restrictions are stated in the alternative and the second alternative "the practice of the State concerned" is no

limitation at all. Professor Gidel summed up the objections to the proposal as follows *(ibid.)* :

> "S'il n'était contenu par la loyauté et la modération des États appelés à l'appliquer, un tel texte en effet serait la négation de tout état de droit. Car il pose en principe que chaque État riverain fixe pour ses côtes les lignes de base ainsi qu'il veut. Sans doute il paraît édicter des restrictions à la libre appréciation de l'État riverain."

It is sufficient to add that the proposal received no support at the Hague Conference of 1930 except that of Spain (*Minutes of the Second Committee*, p. 194, Amendment to Bases Nos. 3, 4, 6, 7 and 8).

140. The Government of the United Kingdom accordingly submits that the base-lines of the Royal Decree of 1935 are wholly inconsistent with the recognized rules of general international law governing base-lines as they have been clarified and defined in the proceedings of the Hague Codification Conference of 1930. Further, it will be seen that, as compared even with the red line, the base-lines of the 1935 Decree enclose an area which is larger by 1,200 square miles of water.

D.—The burden lies upon Norway to establish any extraordinary prescriptive or historical title to the base-lines of the Royal Decree of 1935

141. The Government of the United Kingdom therefore contends that if—which is denied—any justification exists in law for the wholly exceptional base-lines of the Royal Decree of 1935, it can only be found in some extraordinary, historical ground of title. The Government of the United Kingdom, at the same time, notes that the Royal Decree of 1935 does, in fact, purport to be based on "ancient well-established national titles of right" and to have been drawn "in accordance with the Royal Rescript of 22nd February, 1812, and the Decrees of 16th October, 1869, 5th January, 1881, and 9th September, 1889". Moreover, the Norwegian Government, in its reply to the League of Nations *questonnaire* (*Bases of Discussion*, p. 174), claimed that "from *time immemorial*, all waters on the landward side of the furthest rocks have been regarded as Norwegian inland waters and the "skjærgaard" itself as a "coast".

142. It is admitted that in regard to bays and inlets international law recognizes that claims can be established on historic grounds, but does international law recognize that claims such as Norway is now making to areas which are not bays or inlets or enclosed by land at all can be established by usage ? If so, some very definite generally accepted usage must be shown. The Government of the United Kingdom, as stated in paragraphs 61, 75 and 95 above,

maintains that the burden lies upon Norway to prove in fact and establish in law any such extraordinary title to inland waters by long usage as she appears to claim. That the onus of proof lies upon a State which claims an exceptional title in conflict with the applicable rules of general international law is really a self-evident proposition. There is also ample evidence that in the particular case of historic claims to inland waters the onus does lie upon the claimant State. Thus, in the case of bays, the various draft articles of the Institute of International Law, the International Law Association and the American Institute all treat claims by long usage to bays wider than 10 (or 12) miles as exceptions to be specially established. Typical is the draft Article 3 of the Institute of International Law (Stockholm, 1928, *Annuaire*, p. 756), where the phrase is :

> "A moins qu'un usage international n'ait consacré une largeur plus grande."

Similarly, in the draft Article 4 of the League of Nations Committee of Experts (23 A.J.I.L., Special Supplement, p. 366) the phrase is :

> "Unless a greater distance has been established by continuous and immortal usage."

Finally *Basis of Discussion No. 8* (*Bases of Discussion*, p. 45) was quite explicit. After referring to special claims by usage the Basis said, "the onus of proving such usage is upon the coastal State". Although *Basis of Discussion No. 8* underwent some criticism in the Second Committee (*Minutes*, pp. 103-114), it was not seriously questioned that it is for the coastal State to establish a special claim.

143. Moreover, as has been emphasized previously (para. 65 above), the primary rule of maritime law is that the seas are free. In consequence, a presumption of law arises that any given area of sea which is not within the inland or territorial waters of a State under the general rules of international law, forms part of the high seas. A claim to encroach on the high seas at the expense of the community of States, has thus inevitably to be specially and weightily proved, both in fact and in law. Professor Gidel endorses this principle strongly in the following passage (*op. cit.*, Vol. III, p. 632) :

> "En ce qui concerne le fardeau de la preuve, il pèse sur l'État qui prétend attribuer à des espaces maritimes proches de ces côtes le caractère, qu'ils n'auraient pas normalement, d'eaux intérieures. C'est l'État riverain qui est le demandeur dans cette sorte de procès. Ses prétentions tendent à empiétement sur la haute mer ; le principe de la liberté de la haute mer, qui demeure la base essentielle de tout le droit international public maritime, ne permet pas de faire peser le fardeau de la preuve sur les États au détriment desquels la haute mer sera réduite par l'attribution de certaines eaux en propre à l'État qui les réclame comme telles."

The onus of justifying the exceptional base-lines of the Royal Decree of 1935, which greatly exceed the normal base-lines permitted by the applicable rules of international law, rests, therefore, upon the Norwegian Government.

144. Since it is for Norway to prove in fact and establish in law any special historic claim that she makes, the Government of the United Kingdom is not called on to deal with Norway's claim to "historic waters" by anticipation in this Memorial. Nor would it be appropriate to do so until that claim has been fully formulated, defined and documented by the Norwegian Government in the present proceedings. Accordingly, the Government of the United Kingdom has not, in this Memorial, attempted to examine the possible basis of any supposed Norwegian claim to historic waters. It will not comment here on the Decrees of 1869, 1881 and 1889. If such a claim is put forward in the Counter-Memorial, it will be examined in the United Kingdom's Reply.

145. At this stage, the Government of the United Kingdom contents itself with making one observation in regard to claims to historic waters. In order to establish such a claim, it cannot be *enough* for the Norwegian Government simply to adduce evidence of Norway's own constitutional practice. By a well-settled rule of international law, a State cannot excuse its breaches of applicable rules of international law by merely invoking the provisions of its own municipal law, binding although the latter may be in its municipal courts. Before an international tribunal, and, in particular, before the International Court of Justice, the municipal law of a State is no bar to an international claim by another State. Thus, in the case of the Free Zones of Upper Savoy (judgment No. 46), the Permanent Court of International Justice said :

> "It is certain that France cannot rely on her legislation to limit the scope of her international obligations" (p. 167).

And, with special reference to constitutional law, the Permanent Court, in the case of the Treatment of Polish Nationals in Danzig (Series A/B 44), said :

> "A State cannot adduce as against another State its own constitution with a view to evading obligations incumbent upon it under international law or treaties in force" (p. 24).

Similarly, a State cannot unilaterally by its own legislation increase its own rights and diminish those of other States under international law whether in regard to the high seas or in regard to any other matter.

Under the above principle and under the above and other decisions of the Permanent Court of International Justice, it is therefore international law and international usage, not Norwegian law and Norwegian usage, by which any exceptional Norwegian

claim to historic waters will have ultimately to be tested. Recognition and acceptance by other States, or at least long-continued successful enforcement against foreign States, must be shown.

PART III

Arrests of British vessels since September 1948

146. Since 16th September, 1948, when the Norwegian Government decided to enforce strictly the Royal Decree of 12th July, 1935, the Norwegian Government have caused to be arrested the following British trawlers or ships on the ground that these ships were fishing within Norwegian territorial waters as defined by the 1935 Decree [1]. None of these ships were, according to the information of the Government of the United Kingdom, fishing within the red line:

Date of arrest	*Name of ship*
23rd November, 1948	*Cape Argona.*
5th January, 1949	*Arctic Ranger.*
5th January, 1949	*Kingston Peridot.*
17th January, 1949.	*Lord Plender.*
19th January, 1949.	*Equerry.*
5th May, 1949	*Lord Nuffield.*
7th November, 1949	*Welbeck.*
15th November, 1949. . . .	*Cape Palliser.*
7th December, 1949	*Nelis.*
9th December, 1949	*Etruria.*

Cape Argona

147. This ship was arrested 3½ miles N.E. of Sletnes (in East Finnmark) on 23rd November, 1948, by the Norwegian gunboat *King Haakon VII* at a position, as computed by the gunboat, 71° 7′ 27″ N., 28° 23′ E. This position is one mile inside the Decree line (between base-points 8 and 9; the interval between these points is 25 miles) and ¾ mile inside the red line. According to the evidence of the skipper, however, his ship was fishing to seaward of a dan buoy placed by the ship in position 71° 4′ 45″ N., 28° 36′ 30″ E., which was ¾ mile outside the red line, but admittedly within the Decree line. The ship was brought to Tromsø and was prosecuted for illegal fishing before the Arbeiderforeningen in Tromsø on 25th November, 1948. A copy of the judgment of the Court dated 27th November, 1948, is attached (Annex 18). From this it appears that the skipper was convicted and was fined 10,000 kroner with the alternative of 45 days' imprisonment, and

[1] All the positions of the vessels in question can be found on charts Nos. 2 and 3, filed in Annex 2. Nordkyn, which is frequently mentioned, is a large peninsula shown on chart No. 3.

that, in addition, he was charged 10,000 kroner as the value, to be confiscated, of his catch and gear. He was also ordered to pay 50 kroner costs. The judgment was based exclusively upon a finding that fishing had taken place inside the Decree line.

The Government of the United Kingdom on 10th January, 1949, protested against the arrest of the *Cape Argona* and against the judgment given against her and reserved its full rights to claim compensation. A copy of the protest is attached (Annex 19).

The skipper of the *Cape Argona* has appealed against the judgment of 27th November, 1948, to the Supreme Court on the grounds of an incorrect application of the law. This ship was detained from 13·30 hours, 23rd November, 1948, to midnight, 25th November, 1948.

Arctic Ranger and *Kingston Peridot*

148. These ships were arrested $5\frac{1}{4}$ miles N.E. of the entrance to Kongsfjord (in East Finnmark) on 5th January, 1949, by the Norwegian gunboat *Andenes* in positions, agreed by the Norwegian authorities, 70° 49′ 30″ N., 29° 45′ 40″ E., and 70° 49′ 5″ N., 29° 49′ 0″ E., respectively. These positions are within the Decree line (between base-points 7 and 8; the interval between these points is 19 miles) but outside the red line.

These ships were taken by the Norwegian authorities to Tromsø and claims were made against each of them for 15,000 kroner for illegal fishing and 10,000 kroner confiscation value for catch and gear. They were ultimately released on a guarantee being lodged for 50,000 kroner.

The Government of the United Kingdom on 10th January, 1949, protested against the arrest and detention of these vessels and reserved its full rights to claim compensation. A copy of the protest is attached (Annex 20). These ships were both detained from 02·00 hours, 5th January, 1949, to 19·00 hours, 6th January, 1949.

Lord Plender

149. This ship was arrested 7 miles W. of Nordkyn (in East Finnmark in the general locality of North Cape) on 17th January, 1949, by the Norwegian gunboat *Andenes* in a position, agreed by the Norwegian authorities, 71° 8′ 30″ N., 27° 18′ 30″ E. This position is within the Decree line (between base-points 11 and 12; the interval between these points is 39 miles) but at least $\frac{1}{2}$ mile outside the red line. The ship was taken to Tromsø and a claim was made against it for 15,000 kroner for illegal fishing and 10,000 kroner confiscation value for catch, gear and part value of the ship. The ship was ultimately released on a guarantee being placed for 25,000 kroner.

The Government of the United Kingdom on 25th January, 1949, protested against the arrest and detention of this vessel and reserved

its full rights to claim compensation. A copy of the protest is attached (Annex 21, item No. 1). This ship was detained from 22·20 hours, 17th January, 1949, to 19·30 hours, 19th January.

Equerry

150. This ship was arrested 6¾ miles N.W. of Nordkyn (in East Finnmark) on 19th January, 1949, by the Norwegian corvette *Sørøy* in a position agreed with the Norwegian authorities 71° 10′ 30″ N., 27° 21′ E. This position is within the Decree line (between base-points 11 and 12 ; the interval between these points is 39 miles) but one mile and a half outside the red line. In the course of the arrest the following incident took place. The Norwegian corvette *Sørøy* first signalled to the trawler to stop from a distance of one hundred yards, not by hailing or by signal or by any internationally recognized method, but merely by two blasts of its whistle. A few minutes later, although the *Equerry* was not increasing speed or trying to escape, *Sørøy* opened fire with live tracer shells from an Oerlikon gun. The ship was taken to Tromsø and a claim was made against it for 15,000 kroner for illegal fishing and 15,000 kroner confiscation value of fishing gear, catch and part value of ship. The ship was ultimately released on a guarantee being given for 30,000 kroner.

The Government of the United Kingdom on 25th January, 1949, protested against the arrest and detention of this vessel and reserved its full rights to claim compensation (Annex 21, item No. 1), and further on 3rd February, 1949, protested against the action of the Norwegian corvette in firing on the *Equerry*. A copy of this protest is filed in Annex 21, item No. 2. This ship was detained from 11·20 hours, 19th January, 1949, to 08·00 hours, 21st January, 1949.

Lord Nuffield

151. This ship was arrested 8¼ miles W. of Nordkyn (in East Finnmark) on 4th May, 1949, by the Norwegian corvette *Sørøy* in a position agreed by the Norwegian authorities as 71° 8·7′ N., 27° 13′ E. This position is within the Decree line (between base-points 11 and 12 ; the interval between these points is 39 miles) but is one-third mile outside the red line. It was alleged by the Norwegian authorities that this vessel had been fishing prior to arrest within the red line but this is denied by His Majesty's Government.

The arrest was accompanied by certain passive obstruction on the part of the *Lord Nuffield* resulting in the placing of a prize crew on board. This obstruction was, however, discontinued on instructions from the British Fishery Protection Vessel H.M.S. *Wave* which at the time was lying at Kirkness and no further incident took place.

The Government of the United Kingdom on 19th May, 1949, protested against the arrest and detention of this vessel and reserved its full rights to claim compensation, and on 13th July, 1949, replied further to the Norwegian Government's assertion, which it made in a note of 8th June, 1949, that the vessel had been fishing within the red line. Copies of these communications are contained in Annex 22.

The ship was brought to Vardo and was prosecuted for illegal fishing, 15th December, 1949. The skipper was convicted and was fined 10,000 kroner for illegal fishing and a further 10,000 kroner confiscation value of catch and gear and 500 kroner for costs. An appeal has been lodged against this conviction to the Supreme Court. This ship was detained from 00·15 hours, 5th May, 1949, to 20·00 hours, 5th May, 1949.

Welbeck

152. This ship was arrested 5 miles N.N.W. of Tarhalsen light (in West Finnmark) on 7th November, 1949, by the Norwegian gunboat *Nordkyn* in a position agreed by the Norwegian authorities to be 70° 56′ 42″ N., 23° 12′ 42″ E. This position is within the Decree line (between base-points 18 and 19; the interval between these points is 26½ miles) but ½ mile outside the red line. The ship was taken to Hammerfest and was prosecuted for illegal fishing on 6th December, 1949. The skipper was convicted and was fined 15,000 kroner for illegal fishing and in addition the owners were charged 15,000 kroner confiscation value of catch and gear.

This ship was detained from 21.45 hours, 7th November, 1949, to 19·00 hours, 9th November, 1949.

An appeal to the Supreme Court has been lodged against the conviction in this case.

Cape Palliser

153. This ship was arrested 8¼ miles E. of Sletnes (in East Finnmark) by the Norwegian gunboat *Nordkyn* on 15th November, 1949, in a position fixed by the Norwegian authorities as 71° 4′ 36″ N., 28° 34′ 13″ E. This position is within the Decree line (between base-points 8 and 9; the interval between these points is 25 miles) but on the red line. The ship was taken to Hammerfest where the skipper was fined 15,000 kroner for illegal fishing and his owners a further 15,000 kroner confiscation value of catch and gear.

This ship was detained from 23·14 hours, 14th November, 1949, to 04·00 hours, 16th November, 1949.

Nelis

154. This ship was arrested 7¼ miles N.W. of Nordkyn (in East Finnmark) on 7th December, 1949, in a position agreed by the

Norwegian authorities 71° 9′ 30″ N., 27° 17′ 12″ E. This position is within the Decree line (between base-points 11 and 12; the interval between these points is 39 miles) but 1½ miles outside the red line. The ship was taken to Hammerfest where the skipper was fined 15,000 kroner for illegal fishing and a further 15,000 kroner confiscation value of catch and gear. An appeal to the Supreme Court has been lodged against this conviction. The ship was detained from 09·25 hours, 7th December, 1949, to 21·45 hours, 8th December, 1949.

Etruria

155. This ship was arrested 6¼ miles N.W. of Nordkyn (in East Finnmark) on 9th December, 1949, in a position agreed by the Norwegian authorities, 71° 10′ 30″ N., 27° 23′ E. This position is within the Decree line (between base-points 11 and 12; see para. 154) but 1¾ miles outside the red line. The ship was taken to Hammerfest where the skipper was fined 20,000 kroner for illegal fishing and a further 20,000 kroner confiscation value of catch and gear. An appeal to the Supreme Court has been lodged against this conviction. This ship was detained from 22·30 hours, 9th December, 1949, to 23·00 hours, 11th December, 1949.

156. In respect of all the arrests mentioned above, and also in respect of such other arrests as may be made before the judgment of the International Court in this case, of vessels fishing outside the limit which the Court may hold to be justified according to international law, the United Kingdom Government claims the fullest compensation. Such compensation extends not only to the fines levied by the Norwegian Government courts and costs but to all losses including loss of fishing time sustained by the ships, their owners and skippers in respect of their arrest and detention in Norwegian waters and Norwegian ports and their expenses in connection with the prosecutions and subsequent appeals.

Particulars of the sums claimed under these heads will be submitted subsequently by the Government of the United Kingdom at such time as the Court shall indicate to be appropriate.

(*Signed*) W. E. BECKETT,
Agent for the Government of
the United Kingdom.

27th January, 1950.

PART IV

List of annexes

Annex		Pages
1.	Glossary of measurements	103
2.	Charts submitted by Government of United Kingdom showing red and blue lines	104
3.	Diplomatic correspondence leading up to 1924 negotiations	104
4.	Maurice-Douglas Report and Protocols of Oslo Conference, 1924	106
5.	Despatch of 28th January, 1925, from Oslo acknowledging, on behalf of Norwegian Government, receipt of charts copies of which are filed herewith (being a certified set of charts showing the red line and transmitted by Government of the United Kingdom to Norwegian Government in January 1925)	136
6.	Diplomatic correspondence, April-June 1925	136
7.	Protocols of London Conference, 1925	141
7 A.	Cmd. 3121 of 1928	162
8.	Photostat reproduction of section of chart used in *Deutschland* case	162
9.	*Deutschland* judgment with Mr. Nansen's comments	162
10.	Diplomatic correspondence in cases of *Lord Weir* and *Howe*	170
11.	Memorandum of 27th July, 1933, to Norwegian Government	171
12.	Norwegian note of 30th November, 1933, establishing *modus vivendi* regarding red line	173
13.	*St. Just* judgment with Mr. Nansen's comment	173
14.	Diplomatic correspondence, May 1934	181
15.	Report of Committee on Foreign Affairs of Storting (together with explanatory statement issued with Royal Decree of 12th July, 1935)	187
16.	Diplomatic correspondence, September-October 1935	193
17.	Base-points in blue line of Norwegian Royal Decree of 12th July, 1935	199
18.	Judgment of Tromsø Court dated 27th November, 1948, in case of *Cape Argona*	205
19.	United Kingdom note of 10th January, 1949, protesting against arrest and judgment in case of *Cape Argona*	209
20.	United Kingdom note of 10th January, 1949, protesting against arrest of *Arctic Ranger* and *Kingston Peridot*	210
21.	United Kingdom note of 25th January, 1949, protesting against arrest of *Lord Plender* and *Equerry*	211
22.	Diplomatic correspondence concerning arrest of *Lord Nuffield*	212

PART V

Annexes

Annex 1

GLOSSARY OF MEASUREMENTS

British

Sea mile :

The sea mile is the length of one minute of arc measured along the meridian in the latitude of the place (or vessel) and will vary both with the latitude and the dimensions adopted for the circumference of the earth. The variation due to the shape of the earth in one length of one sea mile between latitudes 60° and 70° is a matter only of 8 feet. *The sea mile is the general unit of measurement used by British seamen and is the measurement most easily taken from any chart.* When references are made to 3 or 4, or any other number of, miles as the breadth of territorial waters, the reference is to sea miles.

The length of a sea mile in latitude 60° is approximately 2,030.8 yards and in latitude 70° 2,033·6 yards.

Nautical mile :

A term which in the past has been often incorrectly used and confused with a sea mile. It is, in fact, a measured distance for calculating speeds, etc., and varies in different countries. The British nautical mile is 6,080 feet (1,853·18 metres). A rough approximation often used for the nautical mile is 2,000 yards.

Cable :

One-tenth part of a sea mile. In practice it is also accepted as 1/10 of a nautical mile. A rough approximation is 200 yards.

Statute or land mile :

1,760 yards ; 5,280 feet ; 1,609·3 metres.

Geographical mile :

This is *not* used for Admiralty purposes. This is usually regarded as the length of one minute of arc measured along the Equator.

Norwegian

Sea mile :
Geographical mile :
"Mil" (in connection with the sea but not otherwise) :
Geografisk mil :
Scandinavian league [1] *:*

[1] In the 1912 "Rapport", which is in French, the above terms are translated by the words "lieue" or "lieue géographique".

One-fifteenth of a degree of latitude or four minutes of latitude at the Equator or 7,420 metres (8,114 yards).

"*Mil*" (when used in connection with land measurements):
10,000 metres.

Nautical mile:
Quarter mile:

One minute (i.e. 1/60 of a degree) of latitude at the latitude of the distance to be measured.

Notes for use of British Admiralty charts

(1) Care must be taken when measuring distances on a chart that the latitude graduations on the *sides* of the chart are used. (The top and bottom graduations are longitude units and do *not* represent any kind of linear distance.)

(2) It is essential when measuring on a chart that the latitude graduations in the borders of the chart are used *in the same latitude* as the distance to be measured. Admiralty charts used in this case are on the Mercator's projection. On this projection the scale of latitude and distance increases with the latitude until at the poles it is infinite. Hence it must be remembered that this projection does not show the correct relation between distances measured in different parts of the chart unless they are in the same latitude: it is, therefore, not possible to take off distances from the margins at random.

(3) It should be noted that the charts in a set are not drawn on the same natural scale as each other; each varies with the latitude. This in effect means that they should not be joined to make one composite chart, nor should distances taken from one be measured on another.

Annex 2

CHARTS SUBMITTED BY GOVERNMENT OF UNITED KINGDOM SHOWING RED AND BLUE LINES

[*In separate cover.*]

Annex 3

DIPLOMATIC CORRESPONDENCE LEADING UP TO 1924 NEGOTIATIONS

No. 1

MR. LINDLEY TO MR. MICHELET

Christiania, 29th March, 1924.

Monsieur le Ministre,

I have the honour to inform Your Excellency that His Majesty's Government have been considering for some time the conflicting claims

respecting the proper extent of territorial waters which exist at present between that Government and the Royal Norwegian Government.

2. In view of the understanding reached between His Majesty's Government and the Soviet Government in the course of the correspondence exchanged between them in the early summer of last year, it will presumably be neither possible nor desirable indefinitely to postpone the convening of an international conference with regard to the whole question of territorial waters. In any such conference the views of the British and Norwegian Governments will, as regards Russia in particular, be identical in so far as both Governments combat the Russian claim to a 12-mile limit. His Majesty's Government have, as Your Excellency is probably aware, established a *modus vivendi* with the Soviet Government whereby British vessels fish unmolested up to the 3-mile limit, but a final settlement of this difficult question is postponed for decision by the international conference.

3. It is understood that the Norwegians, who have not established such a *modus vivendi*, are even more interested in a satisfactory settlement of this question than His Majesty's Government. It has therefore occurred to His Majesty's Government that, apart from the advantages which would necessarily accrue from an early settlement of the question at issue between the Norwegian and British Governments, it would be desirable that both Governments should, if possible, come to an understanding in advance of the international conference, so as to ensure that their views and objects shall be entirely identical.

4. With this object in view His Majesty's Government propose that a mutual understanding should be arrived at on the basis that the Norwegian Government will not claim a wider belt than 3 miles for its territorial waters and that certain large inlets, notably the Vestfjord and Varangerfjord, should be recognized as part of Norway. In that event no attempt would henceforward be made, for example, to interfere with fishing vessels outside a 3-mile limit, and foreign vessels would not be allowed to fish within the two fjords mentioned.

5. The Norwegian Government are no doubt aware that His Majesty's Government have found it necessary to close certain areas round the Scottish coast to trawlers flying the British flag. His Majesty's Government trust that, in view of the very large concession made to the Norwegian Government by the suggestion contained in paragraph 4 above, the Norwegian Government will also be willing to enter into a special agreement with His Majesty's Government subjecting trawlers flying the Norwegian flag to the same restrictions in the area referred to as those imposed on British trawlers.

6. I have the honour to add that it is not the intention of His Majesty's Government to suggest any formal convention, but rather an informal arrangement based on the above proposals, which I am authorized to discuss with Your Excellency, should the Norwegian Government be inclined to enter into such a discussion.

I avail, etc.

(Signed) F. O. LINDLEY.

No. 2

NOTE FROM Mr. MICHELET TO Mr. LINDLEY, DATED 15th APRIL, 1924
[*Translation*]

Monsieur le Ministre,

I have the honour to acknowledge the receipt of your note of 29th March last, in which you propose, on behalf of your Government, that, pending the convening of an international conference with regard to the whole question of territorial waters, negotiations should be entered into between the Norwegian and British Governments with a view to arriving at an informal arrangement on the extent of territorial waters on the basis that the Norwegian Government should confine itself to claiming a territorial limit of 3 nautical miles, and that in return certain large fjords, such as the Vestfjord and the Varangerfjord, are to be recognized as Norwegian territorial waters.

At the same time the British Government wishes to enter into a similar agreement by which Norwegian trawlers would be subjected to the same restrictions in certain areas around the Scottish coast as are now imposed upon British trawlers, which are forbidden to fish in those areas.

I have the honour to inform you that the Norwegian Government have already taken steps to have the question investigated, in view of the proposal put forward by the British Government. I shall address a further communication to you on the subject as soon as the investigations have been concluded.

(Signed) C. F. MICHELET.

Annex 4

MAURICE-DOUGLAS REPORT AND PROTOCOLS OF OSLO CONFERENCE, 1924

MR. H. G. MAURICE AND CAPTAIN H. P. DOUGLAS TO MR. AUSTEN CHAMBERLAIN

(Received 31st December, 1924)

(Very confidential)

Whitehall, 30th December, 1924.

Sir,

We have the honour to submit the following report of our conversations with the committee appointed by the Norwegian Government to discuss with us questions arising out of the divergent views of Great Britain and Norway on the subject of the limit of territorial waters in the sea.

2. The course and outcome of our discussions is, we think, sufficiently indicated by the documents annexed to this report, namely :

(1) Minutes of meetings of the committees, with annexes.

(2) Memorandum on "The principal facts concerning Norwegian territorial waters" (a document prepared by the Norwegian Committee), which is to be regarded as an annex to the minutes of the first meeting.

(3) Charts of the coast of Norway, with indications referred to in paragraph 3 of the résumé appearing in the minutes of the twelfth meeting.

We wish to direct attention particularly to the prepared charts, to the résumé included in the minutes of the twelfth and last meeting of the committees, to the annex to the minutes of the ninth meeting and to paragraph 4 of the minutes of the tenth meeting.

3. These passages in the documents indicate the point to which our conversations led us; but it should be added that there was, further, something in the nature of an understanding that, if any agreement were reached, it would include the adhesion of Norway to the North Sea Convention in the area to which the convention applies, and the application to the fisheries off the coast of Norway, north of that area, by agreement [*scil.* between] Great Britain and Norway (with the inclusion at once or subsequently of Germany) of regulations analogous to those of the North Sea Convention.

4. It will be observed that: (1) we declined absolutely to enter into any arguments of a legal character; (2) we have pressed for and, to the best of our ability, elicited the facts from which the necessities of the Norwegian fisheries could be judged; (3) we have entered into no sort of undertaking or understanding with regard to any measures proposed for the protection of the Norwegian fisheries, except that we would submit them to His Majesty's Government for consideration; and (4) it has throughout been recognized that no statement or admission or provisional acceptance of a hypothesis on either side could be taken to commit either Government.

With reference to point (3) in this paragraph, we wish to add that we took it upon ourselves to rule out certain proposals as being such that Great Britain could not possibly entertain them, but we did not feel justified in declining to submit any proposal unless we were quite satisfied that it could not afford a basis for further negotiation.

Uncertainty as to the limits of the waters claimed by Norway as territorial

5. One fact, knowledge of which was essential to an understanding of the point of view of the Norwegians, was, in our judgment, the method according to which it was their practice to draw the limits of the waters they claimed as Norwegian territorial waters. On the one chart (part of the coast of East Finnmark) which had been furnished by the Norwegian Government, the lines were drawn in a manner which indicated no settled principle. It was clear, for instance, that the lines did not follow the sinuosities of the coast, that neither 10-mile nor 6-mile bay lines had been consistently taken as base-lines, nor had the rule enunciated in the report of the Norwegian Royal Commission of 1912, according to which base-lines should be drawn between the outermost points of the coast or adjacent islands and rocks, notwithstanding the length of such lines, been adopted. It may be remarked that the strict application of the last-mentioned rule to the west coast of Norway would lead to a manifest absurdity.

6. Our request for charts of the rest of the coast of Norway and adjacent waters correspondingly marked was received with evident embarrassment, and it became apparent that the Norwegian Committee could not undertake to draw the lines except at certain points of the coast where the limits had been defined by Norwegian Orders in Council. Eventually, we suggested that we should ourselves draw the lines for the rest of the coast according to such principles as we could evolve from the report of the Norwegian Royal Commission on Territorial Waters of 1912, and, rather than accept that solution, the Norwegian Committee secured permission from their Foreign Office for Fishery Inspector Captain Ivesen, subsequently assisted by Commander Askim, of the Norwegian Admiralty, to prepare charts to indicate the Norwegian claims, with the proviso that the lines they drew were not to be regarded as authoritative. The lines so drawn appear on the charts annexed in this report, on which are indicated also the 3-mile line, drawn according to the British thesis, a 4-mile line, drawn according to the same thesis, *mutatis mutandis*, and the limits of certain areas of concentrated seasonal fishing, within which, it has been suggested, that trawling might be prohibited by agreement during specified seasons.

7. It is of interest to remark that in the course of conversation, during the voyage home, with the captain of the steamship *Blenheim* and a certain Commander Smith of the Norwegian Navy, both of whom served in Norwegian naval ships during the war, we learned incidentally that during the war the 4-mile limit which Norway sought to enforce for neutrality purposes was drawn according to the same method as is employed by Great Britain in drawing the 3-mile line. It would appear, therefore, that different methods are employed by the Norwegian Admiralty and the Norwegian fishery authorities. This may in part account for the fact that the Norwegian Admiralty was not represented on the Norwegian Committee.

8. Since it was not possible intelligently to consider the questions at issue in the absence of information which would enable us to compare the areas claimed by Norway as territorial with those admitted by Great Britain to be territorial and the chief fishing areas with both, the delay in the preparation of charts dissipated our hopes of concluding our conversations within a week, and, it may be added here, that it was only by working at very high pressure that we were able to bring them to an end at the close of the second week.

Special circumstances affecting Norwegian fisheries

9. In order properly to appreciate the circumstances of the Norwegian fishermen, by which, naturally, the attitude of Great Britain to the questions at issue will be influenced, it is necessary to take under review the conditions of the fisheries both in general and in detail. A great part of our time was, therefore, devoted to cross-examination of the Norwegian Committee on matters of fact which we could not ascertain without their assistance. We have in our possession detailed notes of the answers we received, but we do not think it necessary for the purpose of this report to do more than present a brief review of the more salient facts, relying, as we think we safely may, upon the substantial accuracy of the information given to us.

10. Norway is a barren mountainous country with a total area of 120,000 square miles and a coast line of some 1,500 miles, not counting

its innumerable indentations. It has a total population of some 2,700,000 souls, and of these at least 100,000 are fishermen. The two most important fisheries are for herring and cod. No special protection is apparently desired for the herring fisheries, which take place for the most part south of latitude 61° north. Our discussions were for the most part confined to the great cod fisheries north of this latitude. Some of the fishermen on the west coast are of the crofter type, fishing actively and continuously during the spring concentrations of spawning cod, but devoting the greater part of the rest of the year to cultivating their small farms. Even in their case, however, it appears that fishing is their chief means of livelihood. It may, therefore, be said that one-twenty-seventh part of the total population consists of professional fishermen, and, if one allows an average of three dependants per male fisherman, that approximately one-seventh of the total population is directly dependent upon fishing for its means of livelihood. This calculation takes no account of that other large proportion of the population whose employment is derived from the handling, transport, curing and canning of fish, and the provision of the accessories of the industry, particularly boats and gear. Outside of its fishing and shipping industries, and forestry, the country has few resources, and it can truly be said of the population of the north coast that they must either fish or starve.

11. The population is widely scattered (the average population per square mile is twenty-one, and approximately one-tenth of it is concentrated in Christiania), the means of transport are limited, and the fishing population has, therefore, neither the markets for fresh fish nor the means of reaching them which are open to our own trawling industry. It is not, therefore, from mere conservatism that they continue to pursue their old methods of fishing and to salt or dry the product of their chief fisheries for export to foreign markets which they have exploited for centuries. Any attempt on the part of Norway, situated as she is, to develop a trawling industry would, in our view, be doomed to failure even if she had the coal resources which are essential to successful steam trawling.

12. Moreover, Norway regards it as vital to her national interests to maintain a fishing population throughout the length of her coasts. The sea is her chief natural resource, and she seeks to secure for her coastal population an even distribution of opportunity for its exploitation. With this view she has, at certain points of closely concentrated fishing, made regulations enabling committees of the fishermen to control the movements of fishing vessels, to partition the fishing grounds between different methods of fishing, to fix the times at which gear may be shot and hauled, and actually the times at which the boats may visit the grounds and must leave them, and, as we understood, the number and length of lines, nets, etc., that may be laid. This system is in vogue particularly at Lofoten, and we were shown charts upon which were indicated the areas appointed for different methods of fishing.

Methods of fishing employed in Norway

13. The methods of fishing employed are long lines, hand lines and gill nets. The larger craft carry on board four to eight "dories", a type of flat-bottom boat, which is put overboard, when the fishing ground is reached, for the purpose of laying the long lines. Each "dory" will put

out lines carrying from 2,000 to 4,000 hooks, and as there is from a half to three-quarters of a fathom between the hooks, it will be seen that each "dory" may lay from 1,000 to 2,000 or more fathoms of line. Even the small-decked craft and open boats will put out 1,000 to 2,500 fathoms of line at a time. The nets used vary in length and depth, the larger ones are 30 fathoms long and 5 to 6 deep, smaller ones are 20 fathoms long and about 3 fathoms deep. One of the larger craft will shoot from sixty to eighty large nets, giving an aggregate length of 1,800 to 2,400 fathoms. In view of the enormous number of lines and nets being laid in a limited area, regulations are laid down by the committees referred to above as to the direction in which they shall be laid and as to the steps to be taken if and when they become foul of one another.

14. Both nets and long lines are attached to anchored buoys, which at night are left unlighted. When we suggested that lights should be attached to the buoys so that trawlers might have notice of their whereabouts, we were assured that this was impossible, on the north coast at any rate, because the current was so strong that the buoys were frequently pulled under the water. Both day and night fishing is practised, and we were informed that, in the areas of concentration on the west coast, it was a strict rule, when night fishing was practised, that all vessels should be off the grounds by a fixed hour, in order that there might be no thefts of gear or similar interference. Night lines and nets are hauled, at times fixed by regulation, in the morning.

Hand-lining is, of course, carried out from the boats and presumably by day.

15. The whole of the west coast fishing for cod depends upon a seasonal concentration of spawning cod. The chief fishing on the north (Finnmark) coast, on the contrary, depends upon a concentration, broadly speaking, in the months of March to June inclusive, resulting from the movement towards the coast of large shoals of spawning caplin on which the cod feed. There is said to be also a certain concentration, the cause of which was not specified, in the months of September, October and November on certain parts of this north coast. At no time, however, are the concentrations so local here as on the west coast. In other words, the fishing in a good season is fairly evenly distributed right along the coast of Finnmark.

The 4-mile claim largely sentimental and political

16. We formed the opinion early in the course of our discussions, and with increasing conviction as they proceeded, that the demand for the maintenance of the 4-mile limit was founded largely on political and national sentiment or prejudice. We believe that the demand is by no means universal in Norway, and is confined mainly to fishermen and ardent prohibitionists, but, as fishing is the chief productive industry of the country and there is still a political majority, as we understand, in favour of prohibition, the supporters of the demand are obviously a force to be reckoned with. It is worthy of remark that no evidence was produced to us, though we repeatedly pressed for it, of actual damage to fishery interests by the operations of trawlers, and we were assured, as regards the most important fishing grounds of the west coast, that trawling did not take place, and, as a rule, was impossible in them. Moreover, the examination of the prepared charts showed that the areas of concentrated fishing—and even the areas within which regula-

tions of fishing were prescribed and enforced by Norway—in most instances extended beyond the limit of waters claimed by Norway as within her territorial jurisdiction.

17. Even in the case of the Finnmark coast, off which British trawlers fish in considerable numbers, no evidence of damage to gear or of claims for compensation for damage to gear was produced. Nor did the committee seriously allege that there was any falling off of the catch which could be attributed to depletion of the stock through trawling. It is true that Dr. Hjort urged that the investigations in which he has played a prominent part tended to show that the cod fished at different times on different parts of the coast belonged to one and the same stock, and argued, from the analogy of certain conclusions of the International Council for the Exploration of the Sea regarding the effect of the operations of trawlers in the North Sea, that there was occasion to apprehend such depletion; but on being reminded that the conclusions of the International Council referred to the plaice, a much less mobile fish than the cod, and of the great difference between the open coast of Norway and the comparatively confined and intensely exploited area of the North Sea, he did not attempt seriously to press the point. In the end, the committee's case was reduced practically to one of reasonable apprehension coupled with the statement, often repeated, that because of the operations of trawlers the fishermen were afraid to lay night lines, and could only fish by day, or, if at night, then close to the shore.

Suggested lines of agreement

18. It will be seen from the minutes and annexes that the lines of agreement tentatively suggested are that, on the one hand, Norway should accept the principle of the 3-mile limit of territorial waters and become a party to the North Sea Convention, while, on the other hand, Great Britain should recognize all the Norwegian fjords and certain other enclosed inlets as part of the territorial waters of Norway, and should enter into a convention or agreement with Norway whereby

(a) regulations analogous to those of the North Sea Convention would be applied to all fishing operations off the coast of Norway north of latitude 61° north;

(b) in certain specified areas on the west and north-west coast of Norway outside territorial waters, trawling would be prohibited in certain months of the year; and

(c) trawling would be prohibited either along the whole coast of East and West Finnmark up to the 100-fathom line during the months of March to June inclusive, or along the whole coast of East Finnmark, up to a distance of 1 mile beyond the 3-mile line as defined by Great Britain, throughout the year.

West coast fisheries

19. The areas within which it is proposed to prohibit trawling for certain months of the year (January to April inclusive) on the west and north-west coast, are those within which there is the greatest concentration of fishing operations connected with the migrations of spawning cod. As at present informed, we are disposed to think that agreement to these proposals would not involve any serious loss of fishing to British trawlers. In a great part of the aggregate area composed of these separate areas we believe that the nature of the bottom is such that trawling

would be, for the most part, impossible. The Norwegian Committee were emphatic upon this point, but when we suggested that, if that were so, protection by regulation was not necessary, they argued that it was desirable because it would reassure their fishermen, who were nervous about the possible incursion of trawlers during their period of concentrated fishing, and also about the effect of possible future developments of trawling.

Finnmark coast fisheries.

20. When we come to the coast of Finnmark we reach the centre of acute conflict of interests. It is off this coast that British trawlers are most active. A considerable number of them visit these waters every year to fish, chiefly for haddock and plaice, while an even more considerable number, which proceed annually to fish off the Murmansk coast, regard the waters off Finnmark as a profitable area in which, on the way home, to supplement their catches. At the same time, Norway attaches even more importance to her fisheries in the north than she does to those of More and Lofoten, because of the peculiar conditions which govern the life of the coastal population of Finnmark. Along the coast of Finnmark 86·5 per cent of the total male population above the age of 15 are engaged in fishing, and this population, existing on a bare rocky soil incapable of cultivation, has absolutely no means of subsistence except the sea. We were led, moreover, to understand that Norway regards this population as something in the nature of an outpost or garrison against her north-eastern neighbours, fearing especially, it would appear, at the present moment, political invasion.

21. At the outset, the Norwegian Committee pressed strongly for protection against trawling up to a 4-mile limit throughout the length of the coast of Finnmark and throughout the year. This proposal we declined to consider. They then suggested prohibition of trawling up to the 100-fathom line—that is, to a distance considerably beyond the territorial limit—during the four months of the spring fishery, and they intimated that they would need similar protection, though not perhaps on so extensive a scale, in certain months of the autumn. While this proposal was under discussion, they suggested a modification of their first demand involving the prohibition of trawling up to the 4-mile limit along the whole of the coast of East Finnmark for the whole of the year. We told them that, while we regarded the acceptance of this suggestion as very doubtful, we would be prepared to submit it for consideration, on the understanding that if it were accepted they would be prepared to waive all suggestions of prohibition of trawling, at any time, off the coast of West Finnmark, outside territorial waters as defined by Great Britain, and that they would be prepared to accept as the area of prohibition of trawling for East Finnmark the waters between the coast and a line drawn 1 mile outside the 3-mile line, as defined by Great Britain, thus getting rid of their arbitrary line which, in some parts, extended much further out to sea. These conditions, subject of course to the understanding as to the provisional and non-committal character of all suggestions put forward, they indicated their readiness to accept.

Are regulations against trawling justifiable?

22. We had hoped to discover possible lines of agreement, both here and elsewhere, on the basis of regulations governing the movements of

vessels using different kinds of gear in the presence of one another, without having recourse to any such drastic method as the prohibition of any particular method of fishing. But the Norwegian Committee insisted that nothing short of the prohibition of trawling would meet their case, because their primary object was to protect the gear of their fishermen, and trawlers could not fish among their buoyed lines and nets without carrying them away, and could not avoid them at night. It is obvious that, in the areas of great concentration on the west coast, trawlers could not possibly work without causing great damage. A rule prohibiting trawling at times and in the places of concentration may, therefore, be regarded as a reasonable form of regulation. It must be remembered, however, that the most important Finnmark fishery takes place in the months March to June, and is at its height in the last three months of this period. During these months daylight is actually or practically continuous, so that there is no apparent reason why the boats should not lie by their lines. If they did so, trawlers would be able to avoid them, and, as there is not the same concentration of fishing as occurs on the west coast, the case might be met by a less drastic form of regulation. During the dark months the case is different, if it is really impossible to light the buoys; but on this subject we have doubts.

23. In any case, the proposed permanent prohibition of trawling up to the 4-mile line off the coast of East Finnmark, equally with the regulations proposed for the west and north-west coasts, will need to be further examined in its bearing on the operations of British trawlers. The extra-territorial area off the Finnmark coast in which it is suggested that trawling should be permanently prohibited amounts in all to little more than 120 square miles; and, as we have said, we are disposed to think that the areas in which it is proposed that a similar prohibition should apply seasonally are of little value to trawlers. *Prima facie*, therefore, an agreement on these lines, coupled with reasonable regulations governing fishing operations in extra-territorial waters off the coast of Norway as a whole and with the recognition of the territorial character of the Norwegian fjords and analogous inlets, might be regarded as a comparatively light price to pay for the adhesion of Norway to the principle of the 3-mile limit, which is important to Great Britain from other points of view than that of free fishing.

24. In all the circumstances, and subject to the considerations referred to in paragraphs 26, 27 and 31 below, the possibility of agreement turns, so far as Great Britain is concerned, upon whether she could consent to the prohibition of trawling throughout the year within the 4-mile belt off the coast of East Finnmark, or can find a satisfactory alternative to this proposal. It is only within this area that any serious conflict arises between British trawlers and the Norwegian fishermen, and we think it is only in respect of this proposal that serious opposition on the part of the British fishing industry need be anticipated. If, however, such an agreement as is proposed is made with Norway, the British fishing industry is likely to argue—and with some justice—that Norway gets everything while Great Britain gets nothing. Although exclusion from an area of approximately 120 square miles may, at first sight, seem a small matter, the British fishing industry is not likely so to regard it, considering the fact that it is part of the one area (of no great extent as a whole) to which they attach importance in this neighbourhood, and in which the incidents of recent years have occurred.

25. It is true that, by drawing the 4-mile line 1 mile outside the 3-mile line recognized by Great Britain, the agreement would reduce the sphere of Norwegian interference; but the skippers of trawlers have hitherto, in spite of such interference, exercised the right to trawl up to the 3-mile limit, and we are not in a position to weigh with confidence the economic value of the area of which they would be deprived. We understand that, at certain seasons, at any rate, the fish of most importance to them—which we understand to be, not cod, but haddock and plaice—are chiefly concentrated near to the coast, and it may well be that fishing outside 4 miles from land is, at these seasons, of little value to them.

The risks of one-sided agreements

[Paragraphs 26 and 27 omitted as not material.]

Territorial inlets

28. In the matter of territorial inlets it will be seen that we have provisionally drawn base-lines—from which the territorial limit would be drawn—across the actual mouths of all fjords and across the entries of certain other inlets practically enclosed by skerries, which, in our judgment, might reasonably be treated as territorial inlets. It appears to us that, if it is agreed that Varangerfjord and Vestfjord should be accepted as territorial inlets, it follows logically that the other less extensive fjords may properly be so recognized. The precise points between which the base-lines should, in this case, be drawn would no doubt have to be further considered. Having regard to the difficulties we feel about the regulations of the fisheries which have been proposed, we think that, if our suggestions regarding the fjords are acceptable to His Majesty's Government, the most should be made, in any further discussions or negotiations, of the extremely generous view which it is proposed to take of Norway's claims in respect of territorial inlets. So much importance do we believe Norway to attach to this recognition that we consider it to be within the bounds of probability that she might, in return for it, be prepared to accept a great deal less than she is at present asking for (through her committee) in the way of protection for her fisheries.

29. We have not here referred specifically to Christiania Fjord, the approaches to which the Norwegians seemed most anxious to control, for reasons not connected with fishing, e.g. defence. This question appears to be one for the British Admiralty to consider.

Policing

30. On the subject of the arrangements to be made for the enforcement of any regulations which may be agreed upon, we need not, at this stage, enter into details. We will only say here that we think it will be generally agreed in Great Britain that it would be intolerable that British fishing vessels should be subject to arrest by Norwegian ships for trial in a Norwegian court except for offences against Norwegian laws committed in Norwegian territorial waters. It would, no doubt, be necessary to confer upon Norway the right of visit and search such as is conferred upon the cruisers of the various parties to the North Sea Convention, but it would be necessary to secure for British fishermen the right to be tried for any alleged infraction of the convention in a British court, and it appears to follow that any power of arrest conferred upon Norway

would be limited to arrest for the purpose of immediate conduct to the nearest British port. In these circumstances, any power of arrest that might be so conferred would probably be nugatory.

The adhesion of other Powers to any agreement that may be reached

31. We understand that Norway would not be wholly content with a simple agreement with Great Britain, but would wish to secure the concurrence in it of Germany, and perhaps of other Powers. This would, from the point of view of the British fisheries, be advantageous, inasmuch as it is undesirable that British trawlers should be excluded from fishing areas to which the trawlers of other nations have access. The question arises, therefore, at what stage the concurrence of other Powers should be sought. There would be certain advantages in concluding once for all a convention which would include all probable parties. On the other hand, we feel that there is no inconsiderable risk that the endeavour to bring other parties in before an agreement with Norway has been definitely concluded may involve demands on the part of those parties which would embarrass Great Britain and might lead to a long postponement of any settlement. It would, from this point of view, be preferable, on the whole, to come to an agreement with Norway alone and then join her in inviting other Powers to become parties to it *ex post facto ;* but it would be most unfortunate if an agreement were made with Norway which excluded British trawlers if, in the end, the trawlers of other countries were left in a position of superior advantage. The difficulty might perhaps be met by making any agreement with Norway contigent upon her securing the subsequent concurrence in it of Germany, if not of other Powers.

The effect of any agreement on Norway's historical claim

32. Whether, on further examination, the Norwegian Government would see its way to enter into any bargain is, of course, open to doubt. We are rather disposed to believe that, as a whole, Norway earnestly desires a settlement, and is ready, or nearly ready, for acceptance of the 3-mile principle, and even, as we have said, that it is probable that she might be ready to accept something less than what is above suggested by way of return.

33. On the other hand, there are certain considerations present to the minds of the Norwegian Committee, and, no doubt, of others in Norway, referred to particularly in the minutes of the tenth and eleventh meetings, which may cause her to hesitate to enter into any agreement. Of these, we think that the most serious from the Norwegian point of view is that referred to in the concluding two paragraphs of the minutes of the eleventh meeting. It was inevitable that this question should arise. When we were asked what would be the effect of an agreement such as was under discussion upon the relations of Norway with other Powers, we replied that, in our view, the essential basis of any agreement would be the recognition by Norway of the principle of the 3-mile limit of territorial waters as a rule of general application. From this there naturally followed the question, what would be the position of Norway in respect of her historical claim to the 4-mile limit in the event of her entering into an agreement with Great Britain, which was, at a later date, denounced by either party, or perhaps by a third party. To this we replied, in effect, that, while recognizing the importance of the ques-

tion, we thought that the necessity for discussing it did not arise until our respective Governments entered into negotiations for a formal agreement. Nevertheless, we feel that this question is likely to prove one of the most serious obstacles to a settlement. We understand that His Majesty's Government wish Norway not merely to enter into an agreement with them whereby the exclusive fishery jurisdiction of Norway is limited to the 3-mile line, as between British and Norwegian subjects, but to accept and support, at any international conference on territorial waters that may be convened, the principle of the 3-mile limit as a rule of international law. The mere signature of a convention of the character suggested, especially if it were coupled with the adhesion of Norway to the North Sea Convention, would, in our opinion, weaken Norway's historical claim, her support of the 3-mile principle in an international conference would destroy it. It may be argued against this that Great Britain, at any rate, has not recognized her claim, but the mere fact that Great Britain is ready to enter into a bargain with Norway to induce her to abandon it, implies a certain recognition of the force, if not of the actual validity, of the historical argument to which Norway attaches so much importance. It would seem necessary, therefore, either to persuade Norway—who is perhaps half ready to be persuaded—that the adoption of the 3-mile principle is to her advantage, apart from any privileges she may acquire by convention for her fishermen, or, by some other means, to convince her that, in entering into such an agreement as is contemplated, she will not be sacrificing an enduring in exchange for an ephemeral advantage.

Summary of conclusions and submissions

34.—(1) As a result of our discussions we are now for the first time informed as to the method by which Norway is in the habit of defining her claim to territorial waters. The method is obviously haphazard, and there is reason to think that different methods are employed by the fisheries authorities and naval authorities, the last named having during the war defined their 4-mile limit on the same principles, generally speaking, as the method observed by Great Britain in defining the 3-mile limit.

(2) The position of the fishing industry in Norway and the conditions under which their fishermen work constitute a strong argument for special consideration of their interests and for protection, if and where such protection is necessary.

(3) The methods of fishing employed are generally adapted to the geographical and other conditions under which fishing is carried on.

(4) The fishing on the west coast depends upon the arrival of large numbers of spawning cod, which occurs in the first four months of the year. The fish, and consequently the fishing, are closely concentrated in fairly well-defined areas.

(5) The fishing on the Finnmark coast takes place in the months of March to June inclusive. It is determined by the arrival of shoals of spawning caplin, on which cod feed. The fishing appears to be fairly venly distributed along the coast. There is said to be also a seasonal fishing of some importance in the months of September to November, and there is continuous, though less intensive, fishing throughout the year.

(6) No evidence was produced to us of actual damage to the Norwegian fisheries by the operations of trawlers, nor was it seriously contended that the available stock of fish had been reduced as a result of trawling operations. The demand for the maintenance of the 4-mile limit appears to arise out of political and sentimental rather than practical considerations.

(7) We are disposed to think that the regulations proposed for the west coast would not in themselves involve any serious loss to Britain or to British trawlers.

(8) The point of acute conflict of interests between Great Britain and Norway is the coast of Finnmark. On the one hand, this is the area to which British trawlers attach most importance; on the other, practically the whole of the population of the coast of Finnmark depends absolutely for its livelihood on fishing, and Norway attaches very great importance to the maintenance of its coastal population.

(9) We refused to consider a proposal to prohibit trawling permanently up to a 4-mile limit off the coast of Finnmark throughout its length. We submit with great hesitation an alternative proposal involving a corresponding prohibition off the whole of the coast of East Finnmark. We are disposed to think that it should be possible adequately to protect the Finnmark fishermen by less drastic regulations.

(10) All the proposed regulations both for the west coast and for the north coast must be carefully scrutinized with reference to their bearing on the operations and interests of British trawlers.

(11) In our view, any agreement imposing regulations for the protection of the fishing interests of the nationals of one party only to the agreement involves the risk of creating a precedent which may cause serious embarrassment by stimulating other countries to demand corresponding treatment. It is, therefore, essential that before entering into any such agreement Great Britain should be absolutely satisfied that the special circumstances of the case are such that the agreement does not, in fact, create a precedent, which would hold good against her elsewhere.

(12) Assuming that any agreement with Norway results in the recognition as territorial inlets of the Vestfjord and Varangerfjord, we are of opinion that the recognition as such of her lesser fjords and certain inlets enclosed by skerries logically follows, and we have proceeded on this assumption in our discussions and in the provisional marking of territorial inlets on the charts. The case of Christiania Fjord is a special one, which we think should be determined by the Admiralty.

(13) If any agreement involving the regulation of fisheries is reached, the arrangements for its enforcement must be such as to secure that no British vessel shall be arrested and taken to a Norwegian port, and tried before a Norwegian court.

(14) It is desirable that Germany at least, and possibly other Powers, should become parties to any agreement regarding fisheries between Great Britain and Norway. The question of the stage at which other countries should be approached will require careful consideration.

(15) Norway is likely to feel considerable hesitation about entering into any agreement on the lines suggested, owing to the fact that if she once openly surrenders her claim to territorial jurisdiction up to the 4-mile limit she can never again assert it with the same force as hitherto.

(16) We submit:

(a) That the discussions commenced at Christiania should, unless Norway desires to break them off, be continued as soon as may be, preferably in London;

(b) that before the discussions are renewed this report should be submitted to the Departments concerned, and particularly to Ministry of Agriculture and Fisheries and the Admiralty;

(c) that the Ministry of Agriculture and Fisheries should be authorized to discuss the suggested regulations, if they think fit, confidentially with representatives of the trawling industry with a view to the closer examination of the effect which the regulations may be expected to have on British fishing interests, and to the consideration of practical alternative measures, if any; and

(d) that the most serious consideration should be given to the risk to the widespread trawling interests of Great Britain involved by according special privileges to the nationals of a single country, unless the circumstances of that country are of so special a character that they can be said to have no parallel elsewhere.

Assistance received

35. We cannot conclude our report without recording our grateful appreciation of the sympathy and help we have throughout received from His Majesty's Representative in Norway—the Hon. F. O. Lindley, C.B., etc. We desire also to express our appreciation of and thanks for the services of Mr. E. M. B. Ingram, First Secretary of the Legation at Christiania, who, by the courtesy of Mr. Lindley, was permitted to act as secretary to our committee and carried out the duties of that post with an industry, good temper and unfailing tact which we cannot too highly praise.

We also are deeply indebted to Lieutenant-Commander R. T. Gould for his excellent work in the preparation of charts and for many other services.

(*Signed*) HENRY G. MAURICE.
,, H. P. DOUGLAS.

PROTOCOLS OF THE OSLO CONFERENCE, 1924

First meeting held on 2nd December, 1924, at 5 p.m., in the Storting

Present:

On the British side:

H. G. MAURICE,
Captain H. P. DOUGLAS,
Lieut.-Commander A. T. GOULD,
E. M. B. INGRAM, *Secretary*.

On the Norwegian side:

Dr. HJORT (Johan),
Dr. KLAESTAD (Helge),
BYRACHEF WALNUM (Ragnv),
INGV. SMITH-KIELLAND, *Secretary*.

Dr. HJORT opened the proceedings by addressing a few words of welcome to the British Committee on behalf of the Norwegian Government, to which suitable replies were made by Mr. Maurice on behalf of the Ministry of Agriculture and Fisheries and by Captain Douglas on behalf of the Admiralty.

The committees then went on to the election of a chairman, and on the proposal of Mr. Maurice it was unanimously decided that Dr. Hjort should preside at the meetings.

It was decided that no shorthand reports should be made and that the two secretaries after each meeting should prepare a protocol recording the subjects discussed and any formulæ or points of agreement arrived at. It was further agreed that no information should be given to the press, except in the form of a communiqué to be agreed on beforehand by the committees.

At Dr. Hjort's suggestion it was agreed that Fiskerikonsulent Thor Iversen, formerly captain of the *Mikael Sars*, should be admitted to the meetings whenever his presence was desired by the Norwegian Committee, except when questions of policy were under discussion.

A time-table for future sessions was also agreed to.

Mr. Maurice enquired whether the Norwegian Committee could furnish charts showing Norwegian claims to territorial waters along the whole Norwegian coast. It was agreed that Dr. Hjort should consult with his colleagues before giving a definite answer.

(Signed) HENRY G. MAURICE.
,, E. M. B. INGRAM } Secretaries.
,, INGV. SMITH-KIELLAND }

(Signed) JOHAN HJORT, Chairman.

Christiania, 2nd December, 1924.

Second meeting held on 3rd December, 1924, at 11 a.m., in the Storting

Present :

The same as at the first meeting.

A memorandum entitled "The principal facts concerning Norwegian territorial waters" was circulated to the members of the committees and a lecture illustrating the main features of the memorandum was delivered by the chairman. This memorandum is annexed to the protocol of this meeting [1].

The minutes of the first meeting were passed and the committees adjourned till 10 a.m. on 4th December, in order that the British Committee might have an opportunity of studying the memorandum in detail.

(Signed) HENRY G. MAURICE.
(Signed) E. M. B. INGRAM } Secretaries.
,, INGV. SMITH-KIELLAND }

(Signed) JOHAN HJORT, Chairman.

Christiania, 3rd December, 1924.

---

[1] The Government of the United Kingdom possess only a small number of copies of this document (printed at Christiania in 1924 by Det Mallingske Bogtrykkeri) which they obtained through the courtesy of the Norwegian Government. They presume that the Norwegian Government would be prepared to supply a number of copies for the use of the Court.

Third meeting held on 4th December, 1924, at 10 a.m., in the Storting

Present:

The same as before.

The committees first passed the minutes of the second meeting.
At Dr. Hjort's suggestion the following resolution was adopted:

"The two Governments represented are not in any way bound by what the committees or their members might put forward or agree to during the discussions. Neither shall these discussions, nor even the fact that they take place, prejudice in any respect whatsoever the present Norwegian point of view as to the extent of the territorial waters of Norway or with regard to other questions in connection with territoriality. This, of course, holds good as regards the British point of view."

Dr. Hjort referred to the Norwegian memorandum of 3rd December and to the two documents, which had already been sent to the British Committee in London (Part II of the report of the Commission on the Limits of Norwegian Territorial Waters, 1912, and Dr. Boye's paper on the same subject read at Stockholm in September 1924), and enquired the views of the British Committee regarding the Norwegian standpoint as set forth in these documents.

Mr. Maurice, in reply, expressed the gratitude of the British Committee for the lucid presentation in these documents of the facts of the Norwegian case, but pointed out that no charts showing the limits claimed by Norway on all parts of the Norwegian coast had been supplied. He then requested that the legal aspect of the case might be excluded from the committees' discussions, in view of the fact that the British Committee contained no legal experts. In suggesting this procedure, Mr. Maurice made it clear that the British Committee and the British Government were quite familiar with the legal arguments put forward by the Norwegian Committee, and were aware that counter-arguments could be advanced to meet them, but he and his colleagues were neither qualified nor authorized to do so. He did not, however, dispute the fact that Norway had over a long period claimed, and to the best of her ability maintained, a 4-mile territorial limit.

Continuing, Mr. Maurice asked that the British Committee should be allowed to state their point of view. On being invited to do so, Mr. Maurice and Captain Douglas made brief statements, summaries of which will be found in the annex to the protocol of this meeting.

The two committees, having thus explained their respective points of view, proceeded to a general discussion of the question. As a result of this discussion, it became evident that the British point of view could be summarized as follows:

(1) Great Britain could not accept as a basis of negotiation a recognition of a general 4-mile limit for Norway.
(2) Great Britain could not accept a solution involving the recognition of a 4-mile territorial limit for fisheries along the whole Norwegian coast, and a 3-mile territorial limit for all other purposes.
(3) Great Britain could not accept a solution involving the application of the 3-mile territorial limit for Norway, supplemented by a

separate convention, whereby exclusive fishing rights were reserved to Norway up to a limit of 4 miles from the coast.

(4) Great Britain would have no objection in principle to a solution involving the application of a 3-mile territorial limit for Norway, supplemented by a separate convention embodying special fishing regulations applicable to Norway and Great Britain between that limit and the 4-mile limit along the whole Norwegian coast.

(5) Before Great Britain could enter into an arrangement whereby exclusive fishing rights outside the 3-mile limit, which she recognizes, were reserved to Norway off any parts of the coast, she would require to be satisfied that the facts of the situation were so exceptional that the arrangement could not be invoked by other countries as a precedent applicable to them. The facts to be examined could include historical and sociological as well as geographical and industrial considerations.

(Signed) HENRY G. MAURICE. *(Signed)* JOHAN HJORT, Chairman.

(Signed) E. M. B. INGRAM
" INGV. SMITH-KIELLAND } Secretaries.

Christiania, 4th December, 1924.

ANNEX TO THE PROTOCOL OF THE THIRD MEETING

In stating the British Committee's standpoint, Mr. Maurice proposed that he should himself speak on the fishery, and to some extent the general maritime aspect of the matter, while Captain Douglas would state the views of the British Admiralty.

Mr. Maurice stated as his first point, that if the present discussions were to be fruitful it was necessary to examine facts, not legal theories; the relevant facts being those which affected the vital necessities of the Norwegian and British fishermen respectively. He was disinclined to believe that the operations of British trawlers had, up to the present, prejudiced the interests of Norwegian fishermen. If, as the memorandum and Dr. Hjort's letter appeared at certain points to suggest, it was contended that trawling operations had, in fact, seriously depleted the stock of fish, or that there was serious reason to believe that they would do so, that was a fact affecting the interests not only of the Norwegian fishermen but also of the British fishermen who trawled off the coast of Norway. The most satisfactory way of dealing with a fact of this kind would be, after full investigation, to arrange by convention for measures of protection which should be binding, not merely upon Norway and Great Britain, but upon every other country whose fishermen frequented, or were likely to frequent, those waters.

It would be impossible for Great Britain to enter into an arrangement involving exceptional treatment for Norwegian fishermen, except on the basis of facts of so exceptional a character that the arrangement could not be quoted as a precedent adverse to the wider interests which Great Britain sought to maintain. Owing to the widespread operations of British trawlers, it was inevitable that Great Britain should, from time to time, find herself involved in argument with other countries regarding rights of fishing off the coasts of those countries. At the

present time, Great Britain had to meet a claim on the part of the government at present in power in Russia to exclusive rights of fishing up to a distance of 12 miles from the coast, and proposals from the Danish Government for the extension of the limits of exclusive fishery jurisdiction round Iceland and the Faroe Islands. Norway had important interests to maintain in the Murmansk area; she was also interested in the Icelandic fisheries; and, if she was not at the moment concerned with the fishing about the Faroe Islands, it was easily conceivable that she might be so in the future. If Great Britain entered into an arrangement with Norway involving the recognition of Norway's exclusive right of fishing outside the ordinary territorial limits accepted by all the principal maritime nations of the world, with the one exception of Norway, it would be most difficult for Great Britain to resist claims of a similar character from other countries, including those just referred to; and if Great Britain gave way as regards those countries it would be difficult for Norway not to accept the situation as applicable to herself. There was no distinction in principle between the Norwegian claim to 4 miles and the Russian claim to 12, or any other claim there might be advanced in excess of the rule ordinarily accepted. It would surely be better that two fishing nations like Great Britain and Norway should agree to maintain the policy which in the long run was best calculated to promote the interests of both of them.

The British Committee believed that in pressing for the general recognition of the 3-mile limit and in contesting every extension of exclusive jurisdiction for any purpose, they were working for the interests not merely of Great Britain and the British Empire, but of Norway and other countries similarly situated. That was the general British view, and the Fisheries Department, which was in his charge, in considering fishery questions, always kept before it the principle that the maintenance of the greatest possible freedom in the deep seas was of paramount importance.

Captain Douglas then spoke from the British Admiralty and Imperial point of view. At the outset he pointed out how Norway, during the Great War, had shown in which quarter her sympathies lay.

He maintained that Great Britain's one aim was to secure the freedom of the seas for all seafarers. He showed how Great Britain, with her dominions, and the greatest maritime Powers had accepted the principle of the 3-mile limit, although Great Britain, in common with Norway, had in the past laid claims to far greater jurisdiction of the sea.

He pointed out that the Admiralty were primarily concerned with the question of the limit of territorial waters as it affected sea-power, and that this side of the question was the most important of all, because the safeguarding of all maritime interests, of any nation, must stand or fall on the question whether it could or could not exert adequate sea-power in their defence, or else obtain the support of an ally who could.

He desired to emphasize the point that Great Britain did not wish for the 3-mile limit so that she could encroach on other countries' waters—there was no such selfish motive—it was an absolute essential of her very existence.

He continued that the British Empire was world-wide, and probably embraced more peculiarities of coast line and configuration, more diverse commercial interests, and more varieties of fisheries than the territory of any other nation on the face of the globe; and yet it had been

found possible for all the constituent countries of the Empire to arrive at a common policy regarding territorial waters throughout the Empire. He gave a brief outline of this policy and concluded by pointing out that the foundation of this common policy of Great Britain, her colonies and the Dominions was the wish to secure the fullest possible measure of sea-power so as to use it as effectively as possible both in their own defence and for the assistance and protection of the smaller nations.

(Signed) HENRY G. MAURICE. *(Signed)* JOHAN HJORT.

(Signed) E. M. B. INGRAM } Secretaries.
,, INGV. SMITH-KIELLAND }

Fourth meeting held on 5th December, 1924, at 10 a.m., in the Storting

Present :

The same as before, with the addition of Fiskerikonsulent Thor Iversen.

The minutes of the third meeting were passed. Dr. Hjort began by enquiring whether he was right in assuming that the discussion of the question whether Great Britain would accept a solution involving a 4-mile limit, had now been carried as far as it profitably could for the present. The British Committee confirmed this assumption. Dr. Hjort then proposed that the extent to which Norwegian fishing interests could be safeguarded on the basis of such arrangements as are indicated in points 4 and 5 at the end of the protocol of the third meeting should be examined. Before proceeding to do so, however, he stated that, according to the views of himself and of his colleagues, there was a third alternative which might equally form the subject of discussion. This alternative, which might be considered as based upon the desire of both committees to arrive at a *modus vivendi*, was that neither Great Britain nor Norway should abandon their present contentions regarding the limit of Norwegian territorial waters, but that an endeavour might be made to reach an understanding, applicable to those parts of the coast where there had been a conflict of fishing interests, while reserving the questions of principle involved.

The British Committee took note of this statement. Dr. Hjort went on to say that, though the Norwegian Committee were of opinion that such a solution of the problem was possible, they were prepared for the moment to continue the discussions on the basis of the two propositions already referred to, while reserving this third alternative for subsequent consideration.

Dr. Hjort then proceeded to explain the special peculiarities of the Norwegian fishing industry off the coast of Möre, as affording a typical example of the combination of special conditions which characterized this industry off the west coast in general, up to the Lofoten Islands.

After an examination of the charts concerned and a discussion of the details involved, it was agreed that the meeting should be adjourned in order that the British Committee might prepare charts of this area, demonstrating :

(1) The 3-mile territorial limit according to the British thesis.
(2) The 4-mile territorial limit according to the same thesis.
(3) The Norwegian territorial limits as defined by Norwegian Orders in Council where such are in force.
(4) So far as possible, with Captain Iversen's help, the facts as to the nature and extent of the fishing operations at different seasons of the year.

The object of the British Committee in preparing these charts was in no wise to bind the Norwegian Government, but to facilitate the subsequent discussion of the possibility of any mutual or international arrangements by the graphical presentation of all the material facts and circumstances involved.

After a short interval the discussion of these charts was resumed in the afternoon.

(Signed) HENRY G. MAURICE. *(Signed)* JOHAN HJORT, Chairman.

(Signed) E. M. B. INGRAM
,, INGV. SMITH-KIELLAND } Secretaries.

Christiania, 5th December, 1924.

Fifth meeting held on 6th December, 1924, at 10.30 a.m., in the Storting

Present :

The same as at the fourth meeting.

The minutes of the fourth meeting were passed.

The examination of the charts of the Möre coast prepared by the British Committee was continued, with special reference to the possibility of an eventual arrangement being reached either there or, by analogy, elsewhere, whereby trawlers might be excluded from special areas off this coast during certain months of the year.

(Signed) HENRY G. MAURICE. *(Signed)* JOHAN HJORT, Chairman.

(Signed) E. M. B. INGRAM
,, INGV. SMITH-KIELLAND } Secretaries.

Christiania, 6th December, 1924.

Sixth meeting held on 6th December, 1924, at 5 p.m., in the Storting

Present:

The same as at the fifth meeting.

The minutes of the fifth meeting were read and passed.

The committees continued to discuss the charts prepared by the British Committee.

(*Signed*) HENRY G. MAURICE. (*Signed*) JOHAN HJORT,
Chairman.

(*Signed*) E. M. B. INGRAM } Secretaries.
" INGV. SMITH-KIELLAND }

Christiania, 6th December, 1924.

Seventh meeting held on 8th December, 1924, at 11 a.m., in the Storting

Present:

The same as at the sixth meeting.

The minutes of the sixth meeting were read and passed.

The charts of the Norwegian coast north of Möre, which had been prepared by the British Committee with Captain Iversen's help, were examined in detail by the committees.

After a short interval in the afternoon the committees resumed their study of the same charts.

(*Signed*) HENRY G. MAURICE. (*Signed*) JOHAN HJORT,
Chairman.

(*Signed*) E. M. B. INGRAM } Secretaries.
" INGV. SMITH-KIELLAND }

Christiania, 8th December, 1924.

Eighth meeting held on 9th December, 1924, at 10.30 a.m., in the Storting

Present:

The same as at the seventh meeting, with the exception of Mr. Walnum.

The minutes of the seventh meeting were passed.

The committees proceeded with the study of the charts referred to in the protocols of the last two meetings.

These charts were re-examined *seriatim* with a view to arrive at proposals to be submitted by the two committees for the consideration of their respective Governments, both committees emphasizing the fact that it must not be assumed that they would recommend to their Governments any proposals which they undertook to submit to them.

Each chart was examined first with a view to the provisional definition by the British Committee of Norwegian territorial waters, including territorial inlets on the basis of the acceptance by Norway of the 3-mile limit as defined by Great Britain; and, secondly, with a view to the provisional delimitation of areas of the sea outside the limit above referred to, within which during agreed periods arrangements for the protection of the interests of Norwegian fishermen might be applied by agreement between Norway and Great Britain.

The last-named areas thus provisionally selected for consideration as protected fishing areas were marked on the charts in accordance with suggestions put forward by the Norwegian Committee.

(Signed) HENRY G. MAURICE. *(Signed)* JOHAN HJORT, Chairman.

(Signed) E. M. B. INGRAM
,, INGV. SMITH-KIELLAND } Secretaries.

Christiania, 9th December, 1924.

Ninth meeting held on 10th December, 1924, at 10.15 a.m., in the Storting

Present:

The same as at the seventh meeting.

The minutes of the eighth meeting were discussed and reserved.

Both committees continued and completed the re-examination of the charts of the Norwegian coast on the lines described in the protocol of the eighth meeting.

The details regarding the provisional definitions and delimitations considered in the course of the discussions at this and at the eighth meeting are embodied in the annex to this protocol.

(Signed) HENRY G. MAURICE. *(Signed)* JOHAN HJORT, Chairman.

(Signed) E. M. B. INGRAM
,, INGV. SMITH-KIELLAND } Secretaries.

Christiania, 10th December, 1924.

ANNEX TO THE PROTOCOL OF THE NINTH MEETING

The provisional definitions and delimitations considered in the course of the discussions at the eighth and ninth meetings are tabulated as under.

In column "A" is shown the provisional definition by the British Committee of the limits of the Norwegian fjords and other waters, the recognition of which as territorial inlets the British Committee was prepared in the circumstances outlined in the protocol of the eighth meeting to submit for their Government's consideration. The lines joining the serially numbered points 1 .... 1, 2 .... 2, etc., on the different charts indicate the base-lines 3 miles from which the limit of Norwegian territorial waters would be drawn, if the British thesis

regarding the 3-mile limit of territorial waters were accepted by Norway.

In column "B" is shown the provisional delimitation of the areas within which during agreed periods the British Committee were prepared, in the circumstances outlined in the protocol of the eighth meeting and unless otherwise specified, to submit for their Government's consideration that regulations for the protection of the interests of Norwegian fishermen might be applied by agreement between the two countries, if the British thesis regarding the 3-mile limit of territorial waters were accepted by Norway.

In a further discussion of the charts of the Finnmark coast, an alternative proposal to that recorded in the following tables was suggested by the Norwegian Committee for the consideration of the British Committee. This proposal, which was based upon the very great importance attached by the Norwegian Committee to the fourth mile for the protection of the coastal fishermen of East Finnmark, was to the effect that, if the British Committee could agree to submit for consideration regulations excluding British trawlers throughout the whole year from the coast of East Finnmark up to a line drawn 1 mile outside the 3-mile territorial limit as defined by Great Britain, the Norwegian Committee would be prepared to withdraw their desiderata for special regulations over the rest of the coast of Finnmark and Tromsö down to the area specified in the table for chart 321.

The area covered in the following tables is that of the whole Norwegian coast from the Norwegian-Finnish frontier down to latitude 61° N.:

Chart 325

A	B
1 ...... 1 Varangerfjord (Grense Jakobselv to Kibergnes). 2 ...... 2 Persfjord. 3 ...... 3 Syltefjord. 4 ...... 4 Sandfjord. 5 ...... 5 Baasfjord. 6 ...... 6 Kongsfjord.	The Norwegian Committee pressed for regulations (1) excluding British trawlers throughout the year from entering the area between the coast and a line drawn 1 mile outside the 3-mile territorial limits as defined by Great Britain, and (2) excluding British trawlers during the months of March, April, May and June from the area between the coast and the 100-fathom line as marked on the chart. The British Committee at this stage were only prepared to submit for their Government's consideration the possibility of regulations excluding British trawlers during the months of March, April, May and June from the area specified in (1) above.

Chart 324

A	B
7 ...... 7 Tanafjord. 8 ...... 8 Koifjord. 9 ...... 9 Sandfjord. 10 ...... 10 Kamöyfjord. 11 ...... 11 Makeilfjord. 12 ...... 12 Sandfjord. 13 ...... 13 Oksefjord. 14 ...... 14 Kjöllefjord.	For the East Finnmark area, as defined in the note at the bottom of column "A", the Norwegian Committee pressed for regulations similar to those demanded for the area covered by chart 325. The British Committee reiterated the standpoint adopted by them when considering chart 325.

15 . . . . . . 15 Laksefjord.
16 . . . . . . 16 Porsangerfjord.
17 . . . . . . 17 Kamöyfjord.
18 . . . . . . 18 Kaldfjord, Risfjord and Vestfjord.

Note.—The administrative boundary between East and West Finnmark roughly follows a line drawn northwards from Sverholtklubben.

For the West Finnmark area as defined in the note at the bottom of column "A", the Norwegian Committee pressed for regulations excluding British trawlers during the months of March, April, May and June from the area between the coast and the 100-fathom line as marked on the chart.

Chart 323

A

19 . . . . . . 19 Knivs Kjærvik.
20 . . . . . . 20 Sandbukt.
21 . . . . . . 21 Tufjord.
22 . . . . . . 22* Store Stappen to Hjelmsöy.
23 . . . . . . 23* Hjelmsöy to Ingöy.
24 . . . . . . 24* Ingöy to Tarhalsen (on Sørøy).
25 . . . . . . 25 Donnæsfjord.

*Assuming that the waters thus enclosed are accepted as a territorial inlet.

B

The Norwegian Committee pressed for regulations excluding British trawlers during the months of March, April, May and June from the area between the coast and the 100-fathom line as marked on the chart.

Chart 322

A

26 . . . . . . 26 Bölefjord.
27 . . . . . . 27 Aafjord.
28 . . . . . . 28 Sandfjord.
29 . . . . . . 29 North-west point of Sørøy to Loppen*.
30 . . . . . . 30 Loppen to Arnöy, enclosing Kvænangenfjord.
31 . . . . . . 31 Arnöy to Fuglökalven *.
32 . . . . . . 32 Fuglökalven to Vandöy, enclosing Fuglöfjord.

* Assuming that the waters thus enclosed are accepted as a territorial inlet.

Note.—The administrative bounddary between West Finnmark and Tromsö follows a line drawn seawards up the centre of the Kvænangenfjörd.

B

For the area on this chart coming within the boundaries of West Finnmark as defined in the note at the bottom of column "A", the Norwegian Committee pressed for regulations excluding British trawlers during the months of March, April, May and June from the area between the coast and the 100-fathom line as marked on the chart.

Chart 321

A

33 . . . . . . 33 Vandöy to Kvalöy, enclosing Raasafjord.
34 . . . . . . 34 North-west point of Kvalöy to north-west point of Grötöy *.
35 . . . . . . 35 Mefjord.
36 . . . . . . 36 Ersfjord and Stensfjord.
37 . . . . . . 37 Bergsfjord.
38 . . . . . . 38 Andfjord.

* Assuming that the waters thus enclosed are accepted as a territorial inlet.

B

The Norwegian Committee pressed for regulations excluding British trawlers during the months of January, February, March and April from the area provisionally defined as inshore of a line joining the following positions:
From a position:
69° 24½′ N., 16° 35′ E., to 69° 35′ N., 16° 34′ E., to 69° 44′ N., 17° 38½′ E., to 69° 54½′ N., 17° 20′ E., to 70° 08′ N., 18° 20′ E.

Chart 311

A

39 . . . . . . 39 Gavlfjord.
40 . . . . . . 40 Sörbraksjær (off the Litlöy lighthouse) to Kvalnes *.
41 . . . . . . 41 Elsneset (on Værröy) to north-west point of Röstöy †.
42 . . . . . . 42 Skomvær lighthouse to Kalsholmen lighthouse †.

* Assuming that the waters thus enclosed are accepted as a territorial inlet.

† The waters thus enclosed (viz., the Vestfjord) being accepted as a territorial inlet.

B

The Norwegian Committee pressed for regulations (1) excluding British trawlers during the months of January, February, March and April from the area on the Vesteraalsbank, provisionally defined as inshore of a line joining the following positions:
From a position:
68° 47½′ N., 14° 18′ E., to 68° 55′ N., 13° 55½′ E., to 69° 16½′ N., 15° 09′ E., to 69° 09′ N., 15° 30′ E., and (2) excluding British trawlers during the months of January, February, March and April from an area within a radius of 10 miles from the Skomvær lighthouse.

The British Committee were prepared to submit for their Government's consideration the possibility of regulations excluding British trawlers from the area specified in (2) above for the period desired, but expressed the opinion that regulations for the months of March and April only would suffice.

Chart 310

A

The British Committee maintained that the pocket north-east of Floholmen did not admit of alteration for purposes of defining territorial waters, but stated that for purposes of a fishery convention it could be taken into account.

B

The Norwegian Committee pressed for regulations excluding British trawlers during the months of January, Februay, March and April (1) from the area enclosed within a radius of 10 miles from the southern-most lighthouse on Træna and (2) from the area enclosed within a radius of 9 miles from the Sklinna lighthouse.

Chart 309

A	B
43 . . . . . . 43 Nordöerne lighthouse to Ellingraasa lighthouse, enclosing Follafjord. 44 . . . . . . 44 Flessa to Halten, enclosing Frohavet *. 45 . . . . . . 45 Fröyfjord. 46 . . . . . . 46 Ramsöyfjord. * It being accepted that the waters enclosed by the line joining these points give access to the fortified port of Trondhjem.	The Norwegian Committee pressed for regulations excluding British trawlers during the months of January, February, March and April (1) from the area enclosed within a radius of 10 miles from the Nordöerne lighthouse and (2) between latitudes 64° 15′ N. and 63° 14′ N.* from an area 2 miles outside the 3-mile limit as defined by Great Britain. * The area here defined overlaps on to chart 218.

Charts 218, 216 and 214

A	B
Nil.	The Norwegian Committee pressed for regulations excluding British trawlers during the months of January, February, March and April from the Möre fishing grounds inside an area provisionally defined as inshore of a line joining the following positions : 63° 14′ N., 7° 19′ E., to 63° 12′ N., 6° 30′ E., to 63° 05½′ N., 6° 11½′ E., to 62° 55½′ N., 6° 26′ E., to 62° 54½′ N., 6° 03½′ E., to 62° 36′ N., 5° 04′ E., to 62° 18½′ N., 5° 04′ E., to 62° 12½′ N., 4° 58′ E.

Chart 212

A	B
Nil.	The Norwegian Committee pressed for regulations excluding British trawlers during the months of January, February, March and April from the Kalvåg area, provisionally defined as inshore of a line joining the following positions : 61° 51¾′ N., 4° 43′ E., to 61° 45′ N., 4° 32′ E., to 61° 42′ N., 4° 33½′ E.

Chart 210

A	B
Nil.	Nil.

(*Signed*) HENRY G. MAURICE. (*Signed*) JOHAN HJORT.

(*Signed*) E. M. B. INGRAM } Secretaries.
,, INGV. SMITH-KIELLAND }

Tenth meeting held on 10th December, 1924, at 5 p.m., in the Storting

Present:

The same as at the ninth meeting.

When asked to define the views of the British Committee as to the possibility of Great Britain's agreeing to the retention by Norway of exclusive fishing rights in certain areas off the Norwegian coast, Mr. Maurice stated that, though the British Committee would prefer not to discuss the question, they could not entirely rule it out of discussion. He and his colleagues had always admitted their preference for a solution involving seasonal regulation. If, however, Norway pressed for exclusive fishing rights in any area, Mr. Maurice reminded the Norwegian Committee that, as stated in the protocol of the third meeting, Great Britain would first require to be satisfied absolutely that the facts and circumstances in those areas were so peculiar that such an agreement could not be invoked by other countries as a precedent for general application; and secondly, he warned them that if they pressed this demand it would reduce proportionately the likelihood of Great Britain's acquiescing in Norway's requirements elsewhere along the coast.

Dr. Hjort reverted to the British Committee's statement in the protocol of the third meeting that Great Britain would have no objection in principle to a solution involving the application of a 3-mile territorial limit for Norway, supplemented by a separate convention embodying special fishing regulations applicable to Norway and Great Britain between that limit and the 4-mile limit along the whole Norwegian coast. He enquired whether, now that the facts regarding the Norwegian fishing industry along the whole coast had been reviewed in detail, a solution on these lines would be possible. Mr. Maurice stated that, while in principle there was no objection to such a solution by convention, its possibility would depend on the existence of conditions all along the coast which would justify it. The review of the facts above referred to had, however, demonstrated that such a similarity of conditions did not obtain along the whole coast, but that only in certain areas did the circumstances warrant special regulations.

Dr. Hjort then referred to the third alternative put forward by the Norwegian Committee in the protocol of the fourth meeting, viz., that neither Great Britain nor Norway should abandon their present contentions regarding the limit of Norwegian territorial waters, but that an endeavour might be made to reach an understanding applicable to those parts of the coast where there had been a conflict of fishing interests, while reserving the question of principle involved. Mr. Maurice, on behalf of the British Committee, made it clear from the outset that they could not possibly accept such a solution. He pointed out that the sole purpose of the committee's presence in Christiania was that every avenue might be explored whereby the acceptance by Norway of the application of the 3-mile limit for all purposes, as defined by Great Britain, might be reconciled with the protection of the interests of Norwegian fishermen, with whom and for whom Great Britain entertained the warmest sympathy and admiration. The principle of the 3-mile limit of territorial jurisdiction was vital to Great Britain and no solution would be possible which was not based upon it. The British Committee was, moreover, firmly convinced that this principle was the one which

accorded most closely with the interests of Norway as a great maritime nation.

Dr. Hjort next enquired the final attitude of the British Committee towards the Norwegian Committee's requirements in Finnmark. Mr. Maurice stated in reply that the British Committee preferred the method of seasonal regulation during the months of special fishing concentration (viz., in the case of East Finnmark from March to June inclusive, as stated on the table for charts 325 and 324, in the annex to the protocol of the ninth meeting). Nevertheless, they would not dismiss as impracticable the suggestion put forward by the Norwegian Committee in the fourth paragraph of the annex to the same protocol.

They were therefore prepared to submit for the consideration of the British Government that an arrangement might be concluded between Great Britain and Norway whereby British trawlers might throughout the whole year be excluded from an area along the whole coast of East Finnmark 1 mile outside the 3-mile territorial limit as defined by Great Britain. Mr. Maurice added that the British Committee would, moreover, be prepared to suggest the conclusion of a convention between Norway and Great Britain whereby regulations similar to those in force under the North Sea Convention might be applied to the whole Norwegian coast north of latitude 61°.

Dr. Hjort next enquired whether it was the view of the British Committee that, if an arrangement were concluded with Great Britain involving the acceptance by Norway for all purposes of the 3-mile territorial limit as defined by Great Britain, it would be to Great Britain's interest that a similar arrangement should be accepted by other nations as regards Norway. Mr. Maurice replied that it would obviously be to Great Britain's advantage that the same conditions should be enforced on the fishermen of other nations as on British fishermen off the Norwegian coast. At the same time he reminded the Norwegian Committee that, in consenting to consider such arrangements for the benefit of Norway, Great Britain incurred the risk that, unless the existence of such absolutely exceptional circumstances as are indicated in point 5 of paragraph 6 of the protocol of the third meeting could be advanced in their support, these arrangements might be cited by other nations as a precedent for demanding similar concessions regarding their coasts.

The Norwegian Committee asked whether an eventual agreement with Great Britain would alter in any respect the relations between Norway and other countries as regards the question of the extent of Norwegian territorial waters; in other words, whether it would be in conformity with the said agreement that Norway could maintain as against other countries the *status quo* existing before the conclusion of such an agreement. In reply to this question, the British Committee stated that, in their opinion, the essential basis of the present discussions was the acceptance by Norway of the principle of the 3-mile limit of territorial jurisdiction as one of general application.

The question was next raised whether the conclusion of special arrangements between Norway and Great Britain on the matters under discussion would affect the position of Norway as regards the enforcement of her customs laws outside the 3-mile limit of territorial waters as defined by Great Britain. The British Committee replied that, in their opinion, the question was not relevant to the present discussions, and that in any case it was a question of law and not of fact.

Finally, allusion was made to the problems connected with the enforcement of any regulations which might be agreed upon as applicable in certain areas of the coast of Norway outside the 3-mile limit of territorial waters as defined by Great Britain. The British Committee regarded these problems as more suitable for discussion after an agreement had been reached as to the nature of the arrangements to be made.

(Signed) HENRY G. MAURICE. *(Signed)* JOHAN HJORT, Chairman.

(Signed) E. M. B. INGRAM
" INGV. SMITH-KIELLAND } Secretaries.

Christiania, 10th December, 1924.

Eleventh meeting held on 11th December, 1924, at 4.30 p.m., in the Storting

Present:

The same as at the tenth meeting.

The minutes of the eighth and ninth meetings were read and passed, as was the annex to the protocol of the ninth meeting.

Dr. Hjort proceeded to express the gratitude of the Norwegian Committee for the courtesy of Captain Douglas and Lieutenant-Commander Gould in explaining the British methods of defining the 3-mile limit for territorial waters, and in preparing the various charts utilized in the course of the discussions.

Dr. Hjort further recorded the gratitude of the Norwegian Committee for Captain Douglas's kind offer to forward to the Norwegian Committee certified copies of all the said charts, containing the information transferred to them in the course of the different meetings.

The Norwegian charts illustrating the coast of Norway south of latitude 61° north up to the line from Lindesnes to Hanstholm (viz. within the limits embraced by the North Sea Convention) were examined. In reply to a question put by the Norwegian Committee, Captain Douglas stated that on these charts there appeared no fjords the entrance of which was more than 10 miles across. As regards the Christiania Fjord and its approaches, as shown on chart 317, the Norwegian Committee considered that the waters exhibited thereon should be reserved for further consideration in any subsequent negotiations between Norway and Great Britain on the subject of territorial waters.

Finally, the Norwegian Committee drew attention to the situation which might subsequently arise in the event of a terminable convention being concluded between the two countries involving the acceptance by Norway of the 3-mile limit for territorial waters as defined by Great Britain, together with certain fishery regulations. They emphasized the anomalous position of Norway in the event of such a convention expiring. Mr. Maurice stated that the British Committee fully realized the difficulties inherent in such an eventuality, but was of opinion that the

question could only be considered by the Governments concerned, and would only arise if and when such a convention came to be drafted.

(*Signed*) HENRY G. MAURICE. (*Signed*) JOHAN HJORT,
Chairman.

(*Signed*) E. M. B. INGRAM
,, INGV. SMITH-KIELLAND } Secretaries.

Christiania, 11th December, 1924.

Twelfth meeting held on 12th December, 1924, at 1 p.m., in the Storting

Present:

The same as at the eleventh meeting.

The minutes of the tenth and eleventh meetings were read and passed.

The following text of a communiqué was next decided upon for distribution to the press:

"1. The British and Norwegian Committees, assembled at Christiania from 2nd-12th December to discuss the question of territorial waters, with special reference to coastal fisheries and trawling, have held twelve meetings.

2. It was recognized from the outset that neither committee had authority to bind its Government, and that the utmost they could do was to submit for the consideration of their respective Governments, proposals advanced on the one side and on the other for the reconciliation of their conflicting views and interests.

3. It was equally clearly understood that neither country had, by the fact of entering into these discussions or by anything which was said during them, abandoning its point of view regarding the limits of territorial jurisdiction on the sea.

4. The two committees will now submit a report to their respective Governments, with whom will rest the decision as to whether the report in question can form the basis of further negotiations."

The committees finally agreed upon the following résumé of the principal points covered by their discussions:

1. As a preliminary, the possibility of an agreement which left undisturbed the Norwegian point of view regarding the extent of territorial waters was examined, but it became evident that there was no possibility of an agreement upon this basis.
2. The committees then proceeded to examine possible lines of an agreement on the basis of the acceptance by Norway of the 3-mile limit of territorial waters as defined by Great Britain, coupled with the recognition by Great Britain of the Norwegian fjords and certain other enclosed waters as within the territorial jurisdiction of Norway, and the delimitation of special areas within which protection should be afforded by agreement between the two countries to Norwegian fishing interests with regard especially to the operations of trawlers.

3. For this purpose, the committees proceeded to a detailed examination of the facts affecting the Norwegian fisheries on all parts of the coast of Norway, and of charts specially prepared to indicate :

(*a*) The seaward limit of territorial waters as defined by Great Britain.
(*b*) The base-lines of fjords and other enclosed waters provisionally accepted as within the territorial jurisdiction of Norway.
(*c*) Norwegian territorial limits, as defined by Norwegian Orders in Council, where such are in force, and elsewhere as approximately defined on the basis of those orders.
(*d*) The areas of the principal concentrations of fishing for cod.

The results of these investigations are set out in detail in the annex to the protocol of the ninth meeting, in connection with which paragraph 4 of the protocol of the tenth meeting should be read.

4. The question was next raised whether a *modus vivendi* might not be established, whereby, without prejudice to the standpoint of either country regarding the limit of territorial waters, protection might, by mutual agreement, be afforded to Norwegian fisheries on the lines above suggested. It became apparent that there was no possibility of agreement on this basis.

5. On the assumption that the only method by which there was any possibility of reaching an agreement was that outlined in paragraph 2 above, the committees took note of the fact that it would be necessary to consider the effect which any agreement on this basis might be expected to have upon the relations of Norway with other Powers ; but, while fully recognizing the importance of the point, they agreed that such questions should be deferred for consideration by the Governments when the occasion arose.

6. The committees accordingly agreed to submit the protocols of their meetings to their respective Governments, with special reference to the annex to the protocol of the ninth meeting and paragraph 4 of the protocol of the tenth meeting, as indicating the lines along which it was desirable that the possibility of an agreement should be further explored.

(*Signed*) HENRY G. MAURICE.
,, H. P. DOUGLAS.

(*Signed*) JOHAN HJORT,
Chairman.

(*Signed*) HELGE KLAESTAD.
,, RAGNV. WALNUM.

(*Signed*) E. M. B. INGRAM
,, INGV. SMITH-KIELLAND } Secretaries.

Christiania, 12th December, 1924.

Annex 5

NORWEGIAN ACKNOWLEDGMENT OF CHARTS SHOWING RED LINE

MR. LINDLEY TO MR. CHAMBERLAIN

Sir, Oslo, 28th January, 1925.

I have the honour to state that the seventeen charts enclosed in your despatch of 15th instant were duly forwarded to the Norwegian Minister for Foreign Affairs for transmission to the Norwegian Territorial Waters Committee.

In acknowledging the same, the Norwegian Minister for Foreign Affairs states that the charts have been handed to the chairman of the Norwegian Committee, Dr. Hjort, who requests that his best thanks may be conveyed to Captain Douglas for having carried out this task.

I have, etc.

(Signed) F. O. LINDLEY.

NOTE.—There is filed as part of this annex the certified set of these charts[1] which was retained at the time in the archives of the Foreign Office (see para. 15 of the Memorial).

Annex 6

DIPLOMATIC CORRESPONDENCE, APRIL-JUNE 1925

No. 1

MR. LINDLEY TO MR. MOWINCKEL

Monsieur le Ministre, Oslo, 1st April, 1925.

I have received instructions from His Majesty's Principal Secretary of State for Foreign Affairs to inform your Excellency that His Britannic Majesty's Government, having given the most careful consideration to the report drawn up by the experts at the recent Anglo-Norwegian Conference regarding territorial waters, regret that they are not prepared to continue the discussion on the lines described in that report. His Majesty's Government would, however, be glad to conclude an agreement with the Norwegian Government, whereby Norway would accede to the North Sea Fisheries Convention of 6th May, 1882. Your Excellency is no doubt aware that in that convention the principle of the 3-mile limit is embodied, and that, as regards bays, this limit is measured from a straight line drawn across the bay in question at the point nearest the opening of the bay where its width does not exceed 10 miles.

As regards waters north of latitude 61°, which is the northern limit of the area covered by the North Sea Convention, His Britannic Majesty's Government would be prepared to conclude with the Norwegian Government a special convention on the lines of the 1882 Convention, but

[1] In separate cover.

amplified and modified to meet the special local conditions obtaining in those regions. His Majesty's Government would also be agreeable to include in such a convention a clause recognizing the Vestfjord and the Varangerfjord as fishing areas exclusively reserved to Norwegian subjects, on the condition that the accession of the German Government could be obtained.

I avail, etc.

(Signed) F. O. LINDLEY.

No. 2

MR. MOWINCKEL TO MR. LINDLEY

[*Translation*]

Mr. Minister, Oslo, 15th April, 1925.

I have the honour to acknowledge the receipt of your note of the 1st instant, in which you inform me that the British Government regrets to be unable to continue negotiations regarding the question of territorial waters on the basis of the report of the British and Norwegian Committee. At the same time you put forward on behalf of your Government a proposal that Norway should adhere to the North Sea Fishery Convention of 6th May, 1882, and that she should, as regards the waters north of latitude 61°, conclude with Great Britain a special agreement founded on the same principles as those in the Convention of 1882, but modified and amplified in order to meet the particular local needs of those regions. In such an agreement the British Government would be willing to include a clause recognizing the Vestfjord and the Varangerfjord as fishing areas exclusively reserved for Norwegian subjects, on condition that the accession of the German Government could be obtained.

The Norwegian Government—which regrets the points of view taken by the British Government regarding the December negotiations—has not yet had an opportunity of considering the new proposal now put forward by the British Government. Before this can be done I feel it first to be necessary to ask supplementary information in explanation of the following:

> In your note of the 1st instant you state that the British Government would eventually be ready to recognize the Vestfjord and Varangerfjord "as fishing areas exclusively reserved to Norwegian subjects". In the note of 29th March, 1924, you state "that certain inlets, notably the Vestfjord and the Varangerfjord, should be recognized as part of Norway". I should be grateful to hear from you what importance should be given to the difference in expression which is to be found in the two notes.

In order that I may be able to deal with the matter further, I should be glad to hear from you when I can expect a reply regarding the above-mentioned point.

I have, etc.

(Signed) JOH. LUDW. MOWINCKEL.

No. 3

MR. LINDLEY TO MR. MOWINCKEL

Monsieur le Ministre, Oslo, 30th April, 1925.

I did not fail to refer to my Government Your Excellency's note of 15th instant, in which you enquire as to the signification to be attached to the fact that, in my note of 29th March, 1924, addressed to your predecessor, I stated that in certain circumstances His Britannic Majesty's Government were prepared to "recognize as part of Norway certain large inlets, notably the Vestfjord and the Varangerfjord", whereas in my note of the 1st instant I stated that His Britannic Majesty's Government were ready, on certain conditions, to recognize these two fjords "as fishing areas exclusively reserved for Norwegian subjects".

I have now received from His Majesty's Principal Secretary of State for Foreign Affairs a telegram instructing me to inform Your Excellency that, provided an agreement is reached with the Royal Norwegian Government on the precise lines laid down in my note of the 1st instant, and on the understanding that, by such an agreement, the Norwegian Government accept the 3-mile limit of Norwegian territorial waters for all purposes, His Britannic Majesty's Government will be prepared to support the claim of the Norwegian Government to the Varangerfjord and the Vestfjord as Norwegian national waters at a future international conference. As regards Germany, it would be understood that German trawlers would not receive more favourable treatment in Norwegian waters than British trawlers.

I avail, etc.

(Signed) F. O. LINDLEY.

No. 4

NOTE FROM THE NORWEGIAN MINISTER FOR FOREIGN AFFAIRS TO MR. LINDLEY, 12th MAY, 1925

[*Translation*]

Monsieur le Ministre,

I have the honour to acknowledge the receipt of your note of 30th April, 1925, in which you were good enough to acquaint me with further explanations regarding a particular point which I ventured to raise in my note of 15th April, 1925.

In this latter note I directed your attention to a discrepancy in the statements of the British Government concerning the Vestfjord and the Varangerfjord in your note of 1st April of this year as compared with that in your note of 29th March, 1924.

I now learn from your note of 30th April that your Government, in conjunction with its readiness to recognize the Vestfjord and Varangerfjord as fishing areas exclusively reserved for Norwegian subjects, "will", also in certain circumstances, "be prepared to support the claim of the Norwegian Government to the Varangerfjord and Vestfjord as Norwegian national waters at future international conferences".

While welcoming this declaration of the British Government, I cannot refrain from drawing attention to the fact that there is still a discrepancy between this promise and the statement in the note of 29th March, 1924, in which the British Government stated that in certain circumstances it was prepared *"to recognize as part of Norway certain large inlets, notably the Vestfjord and the Varangerfjord"*.

The attitude of the British Government towards the above fjords is not clear from either of the notes of 1st or 30th April, 1925, in that the notes only name specifically the Vestfjord and Varangerfjord, and furthermore refer to the provisions of the North Sea Convention of 1882, in which the 3-mile limit in regard to fjords (bays) "is measured from a straight line drawn across the bay in question at the point nearest the opening of the bay where its width does not exceed 10 miles". As far as the waters are concerned north of 61° latitude, which is the limit of the North Sea Convention, the British Government declares its readiness to conclude "a special convention on the lines of the 1882 Convention but amplified and modified to meet the special local conditions obtaining in those regions".

Before the Norwegian Government can undertake a closer investigation of the proposals which appear in the two notes of the British Government, it will be necessary to obtain further light on the British Government's attitude, not only regarding the Varangerfjord and Vestfjord, but also regarding the other Norwegian fjords.

It would also be of interest to receive further details regarding the convention which the British Government, in its note of 1st April, declares itself prepared eventually to conclude with the Norwegian Government as regards waters north of 61° latitude, and of which it is said that it [*sic*] can be "amplified and modified to meet the special local conditions obtaining in those regions", especially in regard to the substance and scope of these amplifications and modifications which are to meet the local conditions.

In your note of 1st April, 1925, it is stated that the recognition on the part of Great Britain of the Vestfjord and Varangerfjord "as fishing areas" must be conditional upon the accession of the German Government. And in your note of 30th April, 1925, you say that so far as Germany is concerned, it must be understood that German trawlers would not receive more favourable treatment in "Norwegian waters" than British trawlers.

Both these notes give me the impression that the British Government is of opinion that there will eventually be a question of a regulation of territorial waters of international application.

This coincides with the opinion of the Norwegian Government that any eventual agreement regarding the question of territorial waters will be conditional upon the accession not only of Germany, but of all the countries which are concerned, either upon the grounds of their interest in the question or as the result of their attitude towards it generally. Without such an international regulation an agreement such as is here contemplated will lack the general application which, from its very nature, is essential to it.

I avail, etc.

(Signed) J. L. MOWINCKEL.

No. 5

MR. LINDLEY TO MR. MOWINCKEL

Oslo, 10th June, 1925.

Monsieur le Ministre,

I have the honour to state that His Britannic Majesty's Government have given careful consideration to Your Excellency's note of 12th May on the subject of Norwegian territorial waters, and are prepared to make substantial concessions in regard to the recognition of Norwegian jurisdiction over the fjords.

2. As regards the proposed extension of the North Sea Convention to the area north of latitude 61°, His Majesty's Government have reason to believe that the arrangements which they have in view will be satisfactory to both parties.

3. By direction, therefore, of His Britannic Majesty's Principal Secretary of State for Foreign Affairs, I am to urge Your Excellency to send Norwegian delegates over to London as soon as possible for the purpose of discussing in detail the question of these fjords and the arrangements to be made north of latitude 61°.

I avail, etc.

(Signed) F. O. LINDLEY.

No. 6

NOTE FROM NORWEGIAN MINISTER FOR FOREIGN AFFAIRS TO MR. LINDLEY, 17th JUNE, 1925

[*Translation*]

Monsieur le Ministre,

With reference to your note of the 10th instant regarding territorial waters, I have the honour to state that Professor Dr. Johan Hjort and Commodore (Kommandör) G. C. C. R. Gade, Chief of the Admiralty Staff, will be nominated at the next Council of Ministers as delegates of the Norwegian Government and will leave on Saturday, the 20th instant, for London.

They will be accompanied by Commander (Marinekaptein) Petter Askim as expert cartographer, and by Ingvar Smith-Kielland, secretary in the Ministry for Foreign Affairs, as secretary. In addition, the Commercial Counsellor at the Norwegian Legation in London, Mr. Christopher Fürst Smith, will assist them.

I avail, etc.

(Signed) J. L. MOWINCKEL.

Annex 7

PROTOCOLS OF THE LONDON CONFERENCE, 1925

First meeting

The first meeting was held at the Ministry of Agriculture and Fisheries on 23rd June, at 11 a.m. There were present:

On the Norwegian side:

Professor Johan Hjort,
Kommandör Gade,
Mr. Ingvald Smith-Kielland,
Kaptein Per Askim.

On the British side:

Mr. H. G. Maurice, C.B.,
Captain H. P. Douglas, C.M.G., R.N.,
Mr. E. M. B. Ingram, O.B.E.,
Commander B. C. Watson, D.S.O., R.N.,
Mr. H. S. Moss-Blundell, C.B.E.

Mr. Maurice opened the proceedings with a few words of welcome to the Norwegian delegates, on whose behalf Professor Hjort made a suitable reply. On the latter's proposal, it was agreed that Mr. Maurice should preside at the meetings of the conference.

Mr. MAURICE suggested that the best method of procedure would be to discuss first the Norwegian claims regarding the fjords.

Professor HJORT concurred on behalf of his colleagues, stating that the Norwegian Government, on receipt of Mr. Lindley's note of 10th June, 1925 (Annex I) [1], had decided that it would be advantageous to ascertain in detail both the concessions which Great Britain was prepared to make in this connection and the arrangements which might be made for the extension of the North Sea Convention to the areas north of latitude 61°. The Norwegian Government had consequently nominated the present Norwegian delegation to proceed to London with this object in view, and had furnished them with instructions on the subject, a copy of which will be found in Annex II.

Captain DOUGLAS then read a statement (Annex III) explaining the British attitude to the Norwegian claim that all Norway's so-called fjords should be regarded as coming within her territorial jurisdiction, and illustrated his statement by indicating on the tracings from admiralty silhouettes [2] the fjords which Great Britain is prepared to recognize as Norwegian territorial waters (viz., Nos. 1, 2, 4, 5, 6 (with a modified line), 11 (with a modified line), 19 and 25) [3].

[1] *I.e.* to those minutes (also in Annex 6, No. 5, to this Memorial). Annexes numbered with Roman figures refer to annexes to these minutes. Those numbered with Arabic figures are references to annexes to this Memorial.

[2] See p. 161.

[3] The names of the fjords designated by these numbers are: (1) Varangerfjord, (2) Syltefjord, (4) Tanafjord, (5) Laksefjord, (6) Porsangerfjord, (11) Kvænangerfjord, (19) Vestfjord, (25) Oslofjord.

The NORWEGIAN DELEGATES took note of this statement, and the proceedings were adjourned till 11 a.m. on 24th June to enable them to prepare a reply to Captain Douglas's statement.

Second meeting

The second meeting was held at the Ministry of Agriculture and Fisheries on 24th June, at 11 a.m. There were present the same as at the first meeting. The minutes of the first meeting were duly passed.

2. The Norwegian delegates presented the reply (Annex IV) which they had prepared to the statement made by Captain Douglas at the first meeting. The British delegates took note of this reply and a general discussion ensued regarding the two points in the second paragraph of the Norwegian memorandum, upon which the Norwegian delegates based their attitude towards the whole question. The British delegates emphasized the two facts that the more water Norway claimed as territorial, the greater would be her commitments and responsibilities in the event of a war; while from the point of view of a belligerent the lesser the extent of territorial waters, the greater the facilities for pursuing enemy shipping.

3. Allusion was made by the Norwegian delegates to the fact that other countries did not accept the British principle of the 3-mile limit. The British delegates made it clear that whatever other countries might assert and maintain in this respect, Great Britain did not accept their contentions and notified them of the fact whenever such pretensions were made. Great Britain contested any principles other than the 3-mile principle when claimed as a right for purposes of international law, but were prepared to make exceptions by convention for special purposes and if warranted by special circumstances. They made it clear moreover that the configuration of the Norwegian coast was not peculiar to Norway but was similar in many respects to that of Chile and Patagonia, while the entrances to the Straits of Magellan offered a parallel to many of the sounds and channels which gave access to several Norwegian fjords. The general configuration of the coast of Norway did not, therefore, in itself offer an exceptional circumstance warranting Great Britain in departing from her principle.

4. It became clear in the course of discussion that the Norwegian delegates held great store by retaining a "lead" behind the skerries along the whole Norwegian coast, through which Norwegian ships and coastal traffic could pass without emerging from Norwegian territorial waters. Next to the retention of this "lead" came the approaches to it from the high seas, and in this connection they put forward the suggestion that without infringing the principles upon which Great Britain drew her 3-mile limit for territorial waters, some formula might be evolved which would enable base-lines to be drawn in certain specified areas from island to island, where such islands give access to territorial inlets. The British delegates agreed to consider such a suggestion, provided the Norwegian delegation could put forward in each individual case sufficiently exceptional circumstances to support their claim.

The appropriate charts were then examined with a view to ascertain the degree to which the British principle upon which the 3-mile limit

is drawn would affect the maintenance intact by Norway of some such "lead", as is outlined above.

Third meeting

The third meeting was held at the Ministry of Agriculture and Fisheries on 24th June, at 3 pm. There were present the same as at the second meeting.

The examination of the charts mentioned at the end of the minutes of the last meeting was continued. Both parties having arrived at a mutual understanding of the main factors and principles underlying their respective standpoints, it was decided that two sub-committees should be formed : a naval one and a fishery one.

The former, which was to include Kommandör Gade and Kaptein Askim on the Norwegian side, and Captain Douglas, Commander Watson and Mr. Ingram on the British side, would go through the charts of the Norwegian coast and endeavour to reduce to a minimum the points of difference between the divergent views.

The latter sub-committee, which was to comprise Professor Hjort and M. Smith-Kielland on the Norwegian side, and Mr. Maurice and Mr. Blundell on the British side, would begin to discuss the details of an eventual arrangement regarding the protection of Norwegian fishing interests on the supposition that agreement is reached on the subject of the fjords.

Fourth meeting

The fourth meeting was held at the Ministry of Agriculture and Fisheries on 26th June, at 4 p.m. There were present the same as at the third meeting. The minutes of the second and third meetings were duly passed.

The Naval and Fishery Sub-Committees presented the reports of their respective proceedings, and the conference adjourned to enable both sides to consider these reports. The reports of these two sub-committees are attached as Annexes V and VI to the minutes of this meeting.

Fifth meeting

The fifth meeting was held at the Ministry of Agriculture and Fisheries on 29th June at 3.15 p.m. There were present the same as at the fourth meeting. The minutes of the fourth meeting were duly passed.

Mr. MAURICE proceeded to read out a statement prepared by the Admiralty in reply to the memorandum submitted by the Norwegian delegation which forms Annex IV to the minutes of the second meeting of the conference. This statement forms Annex VII to the minutes of this meeting.

The BRITISH DELEGATION then notified the Norwegian delegation of the result of the examination by His Majesty's Government of the arguments put forward by the Norwegian delegation in support of their claims to the seventeen inlets remaining to be discussed—see Annex (D) to the second meeting of the Naval Sub-Committee (Annex V to the minutes of the fourth meeting of the conference). The British delegates stated that they were prepared to meet the Norwegian claims regarding the inlets numbered as follows according to the Admiralty silhouettes in the above-mentioned annex: 3, 7, 11, 16, 18 A, 21, 24 and 25[1]. The reasons in each individual case are set forth in Part I of Annex VIII to the minutes of this meeting. They were, however, unable to meet the Norwegian views regarding the following inlets, numbered in Annex (D) as follows: 8, 10, 13, 18, 19 A, 19 B, 20, 22 A, and 24 A[2]. The reasons in each individual case are set forth in Part II of Annex VIII to the minutes of this meeting.

The NORWEGIAN DELEGATION took note of these statements.

Kommandör GADE raised the question of defining the rocks and islands which could be used as the points of departure from which territorial limits could be drawn. In this connection the Norwegian delegation submitted a memorandum (Annex IX to the minutes of this meeting) setting forth the definitions laid down by the Norwegian Government on this subject and the interpretation placed upon them by a Norwegian expert committee on territorial waters.

Sixth meeting

The sixth meeting was held at the Ministry of Agriculture and Fisheries on 30th June, at 3.30 p.m. There were present the same as at the fifth meeting. The minutes of the fifth meeting were duly passed.

The Norwegian delegates, having considered the statement by the British Committee (Annex VIII to the minutes of the fifth meeting) on the claims advanced by the Norwegian Naval Sub-Committee, emphasized their regret that the British Committee had not seen their way to accede to the Norwegian claims in respect of the inlets numbered 10 and 20 on the Admiralty silhouettes, and briefly recapitulated the arguments already put forward in support of their claims thereto.

Discussion was then opened on the British methods of drawing the 3-mile limit, with special reference to the rocks which might be used as points of departure for drawing the "envelope". The British delegates promised to provide the Norwegian delegates with a statement to be annexed to the protocol defining these methods. A few large-scale charts were examined on which the British method was drawn in green and the Norwegian method [3] in red.

[1] The inlets designated by these numbers are the following: (3) Kongsfjord, (7) Storestapper-Hjelmsöy, (11) Kvænangerfjord, (16) Andfjord, (18 A) Elsneset-Röstöy, (21) Frohavet, (24) Langesundfjord, (25) Oslofjord.

[2] (8) Hjelmsöy-Ingöy, (10) Sørøysund, (13) Fuglöyfjord, (18) Vesteraalsfjord, (19 A) Trænfjord, (19 B) Steinan-Högbraken-Sklinna, (20) Follafjord, (22 A) Skudesnesfjord, (24 A) Svenoer-Faerder.

[3] The Norwegian method is based on the principles defined in Annex IX to the minutes of the fifth meeting.

Dr. Hjort finally suggested that the Fishery Sub-Committee should continue its labours by an examination of the Anglo-Danish Convention for Iceland and the Faroe Islands of 1901. It was agreed that the object of this examination should be to sift in this convention the points of substance and principle from those of purely administrative machinery, with the object of endeavouring to arrive at formulæ which could be mutually applied as between Great Britain and Norway.

Seventh meeting

The seventh meeting was held at the Ministry of Agriculture and Fisheries on 3rd July, at 11 a.m. There were present the same as at the sixth meeting, with the exception of Kommandör Gade and Captain Douglas. The minutes of the sixth meeting were duly passed.

The British delegation furnished the Norwegian delegation with a statement defining the principles employed by Great Britain in determining the 3-mile limit of territorial waters. This statement forms Annex X to the minutes of this meeting.

The British delegation explained that the phrase "capable of use" in this statement meant capable, without artificial addition, of being used throughout all seasons for some definite commercial or defence purpose.

The Norwegian delegation handed the British delegation a questionnaire regarding the international aspect of any formal agreements which might be concluded between Great Britain and Norway regarding the fishery and territorial waters questions discussed at this conference. This questionnaire forms Annex XI to the minutes of this meeting.

Dr. Hjort explained that what he and his colleagues apprehended was that the fact of an agreement with Great Britain, even of a provisional character, by which Norway was committed to the principle of the 3-mile limit, might be construed by other Powers as a departure by Norway from the principles she maintains, with the result that she would be embarrassed in opposing a claim on the part of such Powers to freedom of access up to the 3-mile limit and within the fjords without any compensatory advantage in the form of protection for her fishery interests.

The British delegates undertook to bring this questionnaire and Dr. Hjort's statement to the notice of the British Secretary of State for Foreign Affairs, and made it clear that these question could only be dealt with through the normal diplomatic channels.

Eighth meeting

The eighth meeting was held at the Ministry of Agriculture and Fisheries on 6th July, at 11 a.m. There were present the same as at the sixth meeting. The minutes of the seventh meeting were duly passed.

The two delegations finally agreed upon the following résumé of the principal points covered by their discussions :

Early in the course of the discussions recorded in the preceding minutes it was patent that there were considerable difficulties in the way of reaching a satisfactory solution of the questions at issue.

While the Norwegian delegation could only regard, as satisfying Norway's interests and the Norwegian point of view, provisions similar to those of the protocol signed at Oslo in December 1924, the British delegates were unable to reconcile them with the maintenance of the 3-mile principle for territorial waters to which so much importance was attached by the British Government.

As, however, both delegations were convinced of the desirability and importance of agreement being reached between their respective countries on the fishery and territorial waters question, an attempt was made, despite the existing difficulties and differences of view, to investigate the grounds upon which conventions might be drawn up on these questions.

As a result of these investigations, which are summarized in the minutes of the conference, it became evident that the only possible basis of agreement was as follows:

(A) That a convention should be concluded dealing with the question of territorial waters;

That by it Norway would agree to accept the principle of the 3-mile limit for her territorial waters, as defined in Annex X to the minutes of the seventh meeting of the conference; while Great Britain would in return agree to accept as territorial inlets the so-called fjords and inlets specified in Annex (B) to the minutes of the first meeting of the Naval Sub-Committee (see Annex V to the minutes of the fourth meeting of the Conference), and in Part I of Annex VIII to the minutes of the fifth meeting of the conference;

That at the entrance to the following inlets the seaward limit of the 3-mile belt of territorial waters should be the lines indicated hereunder in the case of each inlet at each end of the line where it approaches within 3 miles of the coast, and where, in consequence, the limits of territorial waters are determined by reference to the coast:

Varangerfjord from Kibergnes to Grense Jakobselv.
Andfjord from Maaneset to North Point of Andöy.
Vestfjord from Skomvær light to Kalsholmen light.
Frohavet from Halten light to Hosenöene light.

And that with regard to the following inlets the limit of territorial waters should be 3 miles to seaward of the lines by which the inlets are defined as hereunder:

Syltefjord, from Storskjær to Klubbespiret.

Kongsfjord, from Vesterneset to Naalneset.

Tanafjord, from Tanahorn to north-east point of Omgangs-Klubben.

Laksefjord, from Store Finnkjerka to east point of Svaerholt-Klubben.

Porsangerfjord, from north point of Svaerholt-Klubben to Helnesodden.

Hjelmsöy-Mageröy, from Sortvignaering to Gjaesvaernaering.
Arnöy-Loppen, from Brynnilen to north point of Arnöy.
Rösthavet, from Elsneset to Röstöy.
Langesundfjord, from Straaholmen to Tveseten.
Oslofjord, from Faerder to Torbjörnskjær.

(B) That another convention should be concluded dealing with the question of fisheries north of latitude 61° N. on the lines of the Anglo-Danish Convention of 1901, regulating fisheries outside territorial waters in the ocean surrounding Iceland and the Faröes, as amplified and modified by the resolutions of the Fishery Sub-Committee (see Annex VI to the minutes of the fourth meeting of the conference).

(C) That Norway should accede to the North Sea Fisheries Convention of 1882.

It was further agreed that the eventual form of the above conventions, if accepted by the Governments concerned, could only be determined by them through the normal diplomatic channels. The conclusions of the two delegations were therefore confined to the points of substance and substance and questions of principle involved.

Both delegations are, however, agreed that the conclusion of such conventions would be greatly facilitated if a satisfactory answer to the questionnaire on their international aspect (see Annex VI to the minutes of the seventh meeting of the conference) could be furnished by the British Government.

(*Signed*) HENRY G. MAURICE. (*Signed*) JOHAN HJORT.
,, H. P. DOUGLAS. ,, GADE.
,, E. M. B. INGRAM, ,, INGV. SMITH-KIELLAND,
Secretary. Secretary.

London, 6th July, 1925.

ANNEXES
TO MINUTES OF MEETINGS OF THE ANGLO-NORWEGIAN LONDON CONFERENCE, 1925

Annex I

Note from His Majesty's Minister to the Norwegian Minister for Foreign Affairs, 10th June, 1925

Monsieur le Ministre,

1. I have the honour to state that His Britannic Majesty's Government have given careful consideration to your Excellency's note of 12th May on the subject of Norwegian territorial waters, and are prepared to make substantial concessions in regard to the recognition of Norwegian jurisdiction over the fjords.

2. As regards the proposed extension of the North Sea Convention to the area north of latitude 61°, His Majesty's Government have reason to believe that the arrangements which they have in view will be satisfactory to both parties.

3. By direction, therefore, of His Britannic Majesty's Principal Secretary of State for Foreign Affairs, I am to urge your Excellency to send Norwegian delegates over to London as soon as possible for the purpose of discussing in detail the question of these fjords and the arrangements to be made north of latitude 61°.

I avail, etc.

(Signed) F. O. LINDLEY.

Annex II

(Strictly confidential)

Instructions for the delegates of the Norwegian Government in negotiating with the British delegates in London relative to the territorial waters

The Norwegian delegates are charged with the task of endeavouring to obtain as exhaustive information as possible regarding the merits and extent of the assurances given in the British Minister's note dated 10th June, 1925, viz. :

1. What are the substantial concessions which the British intend to make in regard to the recognition of Norwegian jurisdiction over the fjords ?
2. How the arrangements as regards the proposed extension of the North Sea Convention to the areas north of latitude 61° are intended to be effected so that the same will be satisfactory to Norway.

It shall further be the duty of the Norwegian delegates to endeavour to ascertain what *base-lines* the British are willing to establish in regard to a possible 3-mile limit, also what procedure is intended to be adopted for the purpose of arriving at an arrangement, internationally recognized, relative to the territorial waters.

The delegates should make it clear to the British delegates that the said enquiries do not in any respect prejudice the view maintained by Norway in regard to her territorial waters.

It is a matter of course that the Government will not be bound by the negotiations which are to take place.

Annex III

Admiralty memorandum No. 1

If the question of Norwegian fjords could be isolated we should probably be prepared to concede nearly all Norway's claims in return for her adherence to the 3-mile limit, but we have to consider the effect on the demands made by other countries.

A large number of the claims made by Norway are to waters which, *prima facie,* we should not regard as closed waters at all, but as forming part of the high seas. Recognition of them by us will lead to similar demands by other countries, which in some places may greatly restrict the operations of our war vessels in war time and serioulsy prejudice the defence of the Empire and its communications.

We consider that for an inlet to be regarded as territorial it should be to a very considerable degree enclosed by the mainland. Other factors, such as national defence, maintenance of neutrality, economic, historical, remoteness from general sea traffic, come into consideration, but they are secondary to that of configuration.

In view of the peculiar character of the Norwegian coast, however, we are prepared to concede that it is not reasonable to insist that all inlets to be regarded as territorial must be enclosed by the mainland, but we find it impossible to discover any principle on which waters that are only enclosed by islands with navigable channels between them can be regarded as territorial, especially where these channels are of considerable width.

In some cases the area of water gained by Norway (that is, outside that covered by the 3-mile limit as drawn by us), if the whole of the so-called fjord is conceded, appears unimportant, and it is scarcely reasonable to expect this country to concede them and so give away an important principle which may lead to great difficulties with other countries.

Annex IV

Memorandum by the Norwegian delegation in reply to Annex III to the minutes of the first meeting

Introduction

Referring to the memorandum from the British delegation of 23rd June, we beg to submit for consideration the following remarks :

Apart from fishery points of view to be discussed at a later occasion, we consider the following principles decisive for the Norwegian standpoint as regards the extent of the territorial waters :

1. Belligerent countries in time of war should not be permitted to make use of Norwegian fjords and waters between the islands forming the belt outside the mainland, nor should their warships be allowed to operate or take up positions in these waters.
2. From the point of view of navigation, the communications by sea along the coast should be maintained during any war in which Norway is not a belligerent.

These two points may be better understood by the following explanation.

It will certainly be admitted from all sides that a country like Norway, whose policy of war will have a defensive character or the object of defending its neutrality, will desire to keep all warlike operations away from these coastal areas.

It is further evident that the navigation along the coast needs a neutral belt of sufficient extent and with limits of a nature which can be determined without great difficulty.

The British rules for determining the territorial limit will lead to very irregular lines when applied to the peculiar configuration of the coast and the complicated formation of islands, skerries and rocks off Norway. These are so irregular in reality that doubt will arise in many cases whether the position of a ship is within or outside the limit. We wish

to draw attention to the vital importance for Norway of being able to maintain during a time of war reliable communications along the coast. The existing system of communications (railways, roads, etc.) only permits the importation of goods to a very limited number of ports, and great parts of the country will hardly be able to exist if the distribution of goods from these ports along the coast should be paralyzed.

The Norwegian delegation understands the standpoint of the British delegation

However, we want to put forward as our opinion that, without prejudicing the British view as a universal principle, it might be possible in certain given cases to modify it.

On the part of Norway, the basis for such a modification might be built on the fact that the nation from olden times has looked upon as national waters the fjords, the bays and the inlets which have land on both sides which is Norwegian territory and which belong to the belt of skerries or geographically form part of the country.

The *reason* for an eventual recognition by Great Britain of these waters might be sought in the consideration that the said waters, unlike the Channel and the Danish Belts, cannot be characterized as part of any highways of the sea.

We want to draw attention to the fact that all the complexes of isles, rocks and skerries which, in connection with the mainland, form those fjords and inlets claimed by Norway are directly, geographically and naturally combined with the mainland as a whole.

Conclusion

In case the British delegation appreciate and make allowance for the views pointed out in the introduction, it seems to the Norwegian delegation that the discussion on fjords might be continued with advantage, on the basis that the British principles, as far as Norway is concerned, are modified in accordance with what might be expressed as our right claims, and in such a way an eventual agreement will not prejudice the position of Great Britain towards other countries, and will not compromise British interests. We venture to suggest that the delegates discuss the codification of a principle which gives special rules for :

> "Countries which are broken up in islands, constituting a lead, following the contour of the mainland ; such lead giving direct communication through it between the different parts of the country, but not affording the only passage to other seas, and therefore not essential for the communications or supplies of other countries."

If an agreement is reached on this principle, we would suggest its application to Norway.

This principle should not conflict with the general method for the determination of the British territorial waters as defined by the delegates of Great Britain at the meeting in Oslo in December 1924.

June 24, 1925

Annex V

First meeting of the Naval Sub-Committee

In accordance with the decision taken at the third meeting of the conference, the Naval Sub-Committee held its first meeting at the Admiralty on 25th June, at 11 a.m.

It was established at the outset that there was a total of thirty-one so-called fjords or inlets round the Norwegian coast, which should form the subject of discussion. These fjords are tabulated in the Annex (A) to the minutes of this meeting.

The British delegates reaffirmed their willingness to accept the Norwegian claims in respect of seven of the above, see Annex (B) to the minutes of this meeting. The Norwegian delegates, however, advanced subsequently a further claim regarding the limits of the Oslofjord.

The Norwegian delegates expressed a similar readiness to abandon eight of their former claims, as set forth in the protocol drawn up at the Oslo Conference in December 1924, see Annex (C) to the minutes of this meeting. One of these eight is the Listerfjord, which was not discussed at Oslo.

Before proceeding to discuss in detail the remaining seventeen fjords [1], Kommandör Gade explained that the protocol drawn up at Oslo gave expression in general to the Norwegian views and sentiments regarding Norway's geographical unity.

The British delegates made it clear that in applying the British principles to these fjords they were not rejecting the Norwegian claim to the interior waters of the fjords, but merely insisting on a method of drawing the territorial limits, which in the great majority of cases only involved the abandonment by Norway of a small area of waters at the entrances to these inlets.

The delegates next proceeded to discuss in detail and tabulate their respective views regarding the above seventeen fjords.

Annex (A)

TABLE showing the thirty-two so-called fjords or inlets round the Norwegian coast forming the subject of discussion

Norwegian chart No.	Oslo Protocol No.	Nos. on Admiralty silhouettes	Definition of inlet or base-line
325	1-1	1	Varangerfjord.
	3-3	2	Syltefjord.
	6-6	3	Kongsfjord.
324	7-7	4	Tanafjord.
	15-15	5	Laksefjord.
	16-16	6	Porsangerfjord.
323	22-22	7	Storestappen-Hjelmsöy.
	23-23	8	Hjelmsöy-Ingöy.
	24-24	9	Ingöy-Tarhalsen.
322	29-29	10	Sørøysund.
	30-30	11	Loppen-Arnöy, enclosing the Kvænangenfjord.
	31-31	12	Arnöy-Fuglöykalv.
	32-32	13	Fuglöykalv-Vannöy, enclosing the Fuglöyfjord.

[1] Viz., sixteen *plus* the reopened question of the Oslofjord.

Norwegian chart No.	Oslo Protocol No.	Nos. on Admiralty silhouettes	Definition of inlet or base-line
321	33-33	14	Vannöy-Kvalöy.
	34-34	15	Kvalöy-Gröttöy.
	37-37	(15 A)	Bergsfjord.
	38-38	16	Andfjord.
311	39-39	17	Gavlfjord.
	40-40	18	Sörbrakskjær-Kvalnaes, enclosing the Vesteraalsfjord.
	41-41	(18 A)	Elsneset-Röstöy.
	42-42	19	Vestfjord.
310	Not mentioned	(19 A)	Sörholm-Lovund, enclosing the Trænfjord.
	,,	(19 B)	Steinan-Högbraken-Sklinna.
309	43-43	20	Follafjord.
	44-44	21	Frohavet.
	45-45	22	Fröyfjord.
	46-46		Ramsöyfjord.
306	Not mentioned	(22 A)	Utsire-Karmöy-Hvidingsöy, enclosing the Skudesnesfjord.
	,,	23	Listerfjord.
305	,,	24	Tvesten-Straaholmsten, enclosing the Langesundsfjord.
317	,,	(24 A)	Svenoer-Faerder.
	,,	25	Faerder-Torbjörnskjær, enclosing the Oslofjord.

Annex (B)

The British delegates are prepared to accept the Norwegian claims to the following seven so-called fjords and inlets, the base-lines enclosing them being, with the exception of the Varangerfjord and the Oslofjord, those marked on the maps prepared at Oslo in December 1924 as representing the Norwegian claims:

Number according to Oslo Protocol	Number according to Admiralty silhouettes	Name
1-1	1	Varangerfjord.
3-3	2	Syltefjord.
7-7	4	Tanafjord.
15-15	5	Laksefjord.
16-16	6	Porsangerfjord.
42-42	19	Vestfjord.
Not numbered	25	Oslofjord.

As regards the Varangerfjord, it was agreed that at its entrance the seaward limit of the 3-mile belt of territorial waters should be the line from Kibergnes to Jakobselv, except at each end of the line where it approaches within 3 miles of the coast and where in consequence the limits of territorial waters are determined by reference to the coast.

As regards the Oslofjord, while the British delegates were prepared to concede the line as drawn in the charts prepared at Oslo, the Norwegian delegates pressed for an alteration of it, which is described in Annex (D) to the minutes of the second meeting of this sub-committee.

Annex (C)

The Norwegian delegates are prepared to abandon their claim to the following so-called fjords and inlets, the base-lines enclosing them being

those marked on the maps prepared at Oslo in December 1924 as representing the Norwegian claims:

Number according to Oslo Protocol	Number according to Admiralty silhouettes	Name
24-24	9	Ingöy-Tarhalsen.
31-31	12	Arnöy-Fuglöykalv.
33-33	14	Vannöy-Kvalöy.
34-34	15	Kvalöy-Gröttöy.
37-37	15 A	Bergsfjord.
39-39	17	Gavlfjord.
45-45 46-46	22	Fröyfjord. Ramsöyfjord.
Not mentioned	23	Listerfjord.

Second meeting of the Naval Sub-Committee.

The Naval Sub-Committee held its second meeting at the Admiralty on 25th June, at 3 p.m.

The discussion of the fjords mentioned in the last paragraph of the minutes of the first meeting was continued, and the results were tabulated as shown in Annex (D) to the minutes of this meeting.

Annex (D)

The following table analyzes the seventeen fjords which remained to be discussed between the delegations as stated in the final paragraph of the minutes of the first meeting of the Naval Sub-Committee, and specifies the exceptional circumstances which the Norwegian delegation put forward in support of their claims: —

No. according to Oslo Protocol	No. according to Admiralty silhouette	Name	Statement of Norwegian claims
6-6	3	Kongsfjord	The existing system of communication and supplies, lighthouses and beacons, and considerations necessary for safe navigation along the coast cause the Norwegian delegates to insist upon the base-line drawn in the Oslo Protocol.
22-22	7	Storestappen-Hjelmsöy	The Norwegian delegates did not set great store from the naval point of view by the base-line of the Oslo Protocol. They were prepared to consider a base-line drawn from Sortvignaering to Gjaesvaernaering. The above remarks were subject to any fishery requirements which the sub-committee was not competent to discuss.
23-23	8	Hjelmsöy-Ingöy	Reasons of navigation, coastal communication and supplies made it essential for the Norwegians to retain the base-line of the Oslo Protocol.

No. according to Oslo Protocol	No. according to Admiralty silhouette	Name	Statement of Norwegian claims
29-29	10	Sørøysund	The Norwegian delegates suggested that, as the Breivikfjord is 6 miles across the entrance, it might be treated as a 6-mile bay, and that the base-line across the Sound might be drawn from Haanebba to the northernmost point of Loppen in order that the direct line of Norwegian communications from the south to Hammerfest might pass entirely within Norwegian territorial waters. The above suggestions were subject to any fishery requirements which the sub-committee was not competent to discuss.
30-30	11	Loppen-Arnöy, enclosing the Kvænangenfjord	The Norwegian delegates would prefer the protocol line, but were prepared to consider a line from Brynnilen to the northernmost point of Arnöy, as the former place is the accepted point dividing the counties of Finnmarken and Tromsö. This latter line was necessary for them in order that their communications might not pass outside Norwegian territorial waters.
32-32	13	Fuglöykalv-Vannöy, enclosing the Fuglöyfjord	The Norwegian delegates understood that there were fishing considerations which would compel them to press for the line drawn in the Oslo Protocol.
38-38	16	Andfjord	The Norwegian delegates were most anxious to retain the line of the Oslo Protocol in order that intercommunications between the islands in the fjord might not have to pass outside Norwegian territorial waters. There were also naval considerations to be taken into account.
40-40	18	Sörbrakskjær-Kvalnaes, enclosing Vesteraalsfjord	The Norwegian delegates understood that there were fishing considerations which would compel them to press for the line drawn in the Oslo Protocol.
41-41	18 A	Elsneset-Röstöy	The Norwegian delegates claimed this as being one of the natural outlets of the Vestfjord.

No. according to Oslo Protocol	No. according to Admiralty silhouette	Name	Statement of Norwegian claims
Not mentioned	19 A	Sörholm-Lovund, enclosing the Trænfjord	The Norwegian delegates were anxious that the base-line for the limits of Norwegian territorial waters should be drawn through the points mentioned on the grounds of the general principles already enunciated.
Not mentioned	19 B	Steinan-Högbraken-Sklinna	These two cases afforded an illustration of the principles, the formulation of which they had advocated in the same annex, of drawing base-lines from island to island.
43-43	20	Follafjord	The Norwegian delegates desired to press for the lines of the Oslo Protocol in order that their direct route of communication might remain within Norwegian territorial waters. If the British thesis was maintained, the difficulties of navigation would be greatly increased.
44-44	21	Frohavet	The Norwegian delegates desired the line of the Oslo Protocol on the grounds of the general principles which were enunciated in Annex IV to the minutes of the second meeting of the conference.
Not mentioned	22 A	Utsire-Karmöy Hvidingsöy, enclosing the Skudesnesfjord	The Norwegian delegates were anxious that this fjord should be included on the grounds of the general principles already enunciated, but agreed that the territorial limits as drawn by Great Britain did not unduly conflict with their interests.
Not mentioned	24	Tvesten-Straaholmsten, enclosing the Langesundsfjord	The Norwegian delegates pressed for this base-line in order to protect the main route of navigation to and from the Oslofjord.
Not mentioned	24 A	Svenoer-Faerder	The Norwegian delegates pressed for this base-line in order to protect the main route of navigation to and from the Oslofjord.
Not mentioned	25	Faerder-Torbjörnskjær, enclosing the Oslofjord	The Norwegian delegates explained that this line was laid down by Royal decree as the southernmost limit of the defences of Oslo and the Oslofjord, and for this reason pressed for its acceptance as the base-line for Norwegian territorial waters in this area.

Annex VI

Meeting of the Sub-Committee for Fishery Questions

In accordance with the decision taken at the third meeting of the conference, the Fishery Sub-Committee held its first meeting at the Ministry of Agriculture and Fisheries on 25th June, at 11 a.m.

The question of safeguarding the Norwegian fishery interests north of latitude 61° north was considered with a view to deciding upon the necessary amplifications and modifications of the existing International Fishery Conventions, viz. that for the North Sea of 1882 and that made between Great Britain and Denmark for Iceland and the Faroe Islands in 1901.

It was agreed that the convention should follow the general lines of that of 1901, subject to special provision being made for :

(a) The exclusive fishery limits to be granted to Norway.
(b) The measures to be adopted for the protection of Norwegian fishery interests outside the agreed fishery limits.

With regard to *(a)*, it was agreed that the exclusive fishery limits of Norway should comprise :

(i) Such waters as shall be agreed to be Norwegian territorial waters.
(ii) Such other waters as are included in Article 2 of the Anglo-Danish Convention :

and that for the purposes of Article 2 neither of the expressions "islets, rocks and banks" covers any islet, rock or bank which is permanently submerged or which is neither exposed nor awash at high water.

With a view to carrying out this agreement the following article was drafted in substitution for Article 2 of the Convention of 1901 :

The subjects of His Majesty the King of Norway shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of Norway as well as of the dependent islets, rocks and banks, and within such waters as are specifically acknowledged by His Britannic Majesty's Government to be within the territorial limits of Norway.

As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay in the part nearest the entrance at the first point where the width does not exceed 10 miles.

The present article shall not prejudice the freedom of navigation or anchoring in territorial waters accorded to fishing boats provided they conform to Norwegian laws and regulations whilst within territorial waters.

The following article was also drafted to take the place of Article 4 :

The geographical limits for the application of the present convention shall be fixed as follows :

On the south by a line along the parallel of 61° of north latitude from the coast of Norway to a point where that parallel meets the 2nd meridian of east longitude.

On the west by a line from the last-mentioned point along the 2nd meridian of east longitude to a point where that meridian meets the 65th

parallel of north latitude, and thence to a point where the 16th meridian of east longitude meets the 72nd parallel of north latitude.

On the north by a line drawn from the last-mentioned point along the 72nd parallel of north latitude to a point where that parallel intersects the meridian of 31° 50′ east longitude.

On the east by a line drawn from the last-mentioned point along the meridian of 31° 50′ east longitude until it intersects the limit of the territorial waters of Finland.

With regard to *(b)*, the following articles were drafted :

In substitution for Article 15

(a) Subject to paragraph *(b)* and Article [1] ...., boats arriving on the fishing grounds shall not either place themselves or shoot their nets or other gear in such a way as to injure each other or to interfere with fishermen who have already commenced their operations.

(b) Fishermen operating in the vicinity of other fishermen shall conform to any local customs or arrangements which are observed in the vicinity, so long as such customs and arrangements are consistent with good seamanship in the circumstances.

(c) The Norwegian Government will keep His Britannic Majesty's Government informed of any such customs and arrangements as are referred to in the preceding paragraph, and His Britannic Majesty's Government will communicate such information to the British fishermen concerned.

In substitution for Article 19

(a) Trawl fishermen shall take all necessary steps in order to avoid doing injury to the nets or gear of net or long-line fishermen. They shall not come within 1 mile of any vessel engaged in fishing of these kinds or lying to nets or long lines, and shall not enter within any area which has been notified in accordance with paragraph *(c)*.

(b) Where damage is caused to nets or long lines, the responsibility shall be on the trawlers unless they can prove that they were under stress of compulsory circumstances or that they have complied with the terms of this article, and that the losses sustained did not result from their fault.

(c) The Norwegian Government shall from time to time notify to His Britannic Majesty's Government the areas within which it is anticipated that concentrations of nets and lines will take place. Such notification shall reach His Britannic Majesty's Government in time to enable them to inform fishermen of the areas therein contained, and His Britannic Majesty's Government will communicate the contents of each such notification to fishermen forthwith.

(d) For the purposes of paragraph *(c)*, a concentration shall be deemed to be a large number of vessels fishing in close proximity to one another and all employing the same method of net fishing or line fishing.

It was also agreed that it should be open to either party to suggest modifications of detail or wording in the remaining articles of the convention.

---

[1] *(a)*, *(b)*, *(c)* and *(d)* of those proposed in the next paragraph in substitution for Article 19.

Annex VII

Admiralty memorandum No. 2

Whilst we are prepared to make substantial concessions as regards Norwegian claims to fjords or inlets wherever these waters can in any way be regarded as enclosed, we cannot agree to recognize jurisdiction over waters that are really quite outside such enclosed inlets and can only be regarded as encroachments on the high seas. We have gone a long way to meet the Norwegian point of view by accepting that such enclosed inlets may in certain cases be formed by islands or may have navigable straits (in general use for sea traffic) leading out of them, two factors which are generally regarded as *prima facie* evidence that the inlets in question are not territorial.

We must, however, oppose claims which are mainly based on a theory of general enclosing lines (drawn from headland to headland) round the coast. This has no justification in international law, and the recognition of any such claims would lead to extraordinary difficulties with other countries.

Whilst sympathizing with the Norwegian desire to keep their coastal communications within territorial waters, though from the naval point of view there would appear to be no real advantage, we think that the ordinary 3-mile belt, together with such recognition of inlets as we are prepared to agree to, provides reasonable facilities for this.

Doubt as to whether a ship is within or outside the territorial limit is inevitable in many cases off all coasts, and it is impossible to avoid this. Where the coast line is irregular, we consider that it must be accepted that the limit of territorial waters must constitute an irregular line. Deep pockets will be almost entirely avoided by the substantial concessions that we are prepared to make, but the results of the peculiar configuration of the Norwegian coast cannot be entirely avoided on any recognized modern conception of territorial waters.

We must emphasize the substantial concessions that we have already agreed to make, particularly in respect of the Vestfjord, where we are accepting a line considerably farther out than would ordinarily be regarded as the closing line of the inlet.

29th June, 1925.

Annex VIII

Statement by the British Committee on the claims advanced by the Norwegian Naval Sub-Committee, as set out in Annex (D) attached to the minutes of the second meeting of the Naval Sub-Committees (see Annex V to the minutes of the fourth meeting of the conference)

Part I

We propose to deal first with the cases in which we think that we can meet the views of the Norwegian Committee, using the silhouette charts, and referring to the waters discussed by the numbers employed thereon, as set forth in Annex (D) :

3. The inlet is insignificant and we can agree to recognition, although there is some conflict with the principle we uphold.

7. We can agree to recognition of this fjord with the modified line suggested in Annex (D), on the ground that the various channels enclosed within this line can be regarded as mere divisions of the general entrance to the fjord.

11. This can be agreed to, subject to the drawing of the line from Brynnilen to the northernmost point of Arnöy. This line may be regarded as marking the entrance to a well-defined and narrow fjord.

16. In this case we have been impressed by the important naval considerations advanced, and in view of these considerations we can accept the Norwegian line, viz., from Maaneset to the northernmost point of Andöy.

18 A. We can agree to No. 18 A, the recognition of which appears to follow from the recognition of Vestfjord as defined by the Norwegian line.

21. We agree to the recognition of Frohavet for the reasons set out in the Oslo Protocol, i.e. that it gives access to the fortified port of Trondhjem.

24. Having regard to the great importance which the Norwegian Committee attaches to this area, owing to its proximtiy to Oslofjord, we can in this case regard the clusters of islands as, in effect, an extension of the coast enclosing the fjord.

25. We can accept the Norwegian Committee's correction of the line drawn at meeting at Oslo in December 1924. We understand that the revised line marks the outer defences of the port.

PART II

In the following cases we are unable to fall in with the views of the Norwegian Committee :

8. We can find no grounds for regarding these waters as a territorial inlet.

10. The same objection applies as in the case of No. 8. The entrance is wide, and there is no bay or fjord involved. Breivikfjord is a 6-mile bay.

13. We can find no grounds of necessity or principle which would justify the recognition of this area as a territorial inlet.

18. The same remarks apply as to No. 13.

19 A and 19 B. We are unable to recognize these areas, which are neither fjords nor bays.

20. The same remarks apply as to Nos. 13 and 18.

22 A. The same remarks apply as to 19 A and 19 B.

24 A. The same remarks apply as to 19 A and 19 B.

29th June, 1925.

Annex IX

Memorandum submitted by the Norwegian delegation explaining the points of departure from which Norwegian territorial waters are reckoned by Norwegian Royal decrees, etc.

1. In a letter from the Norwegian Ministry for Foreign Affairs to the Norwegian Ministries of Defence and Justice, dated 24th March, 1908, the following definition is given for purposes of fishing regulations:

"from the outermost coast line at low tide or from the outermost island or rock which is not permanently submerged".

2. By a Royal Decree of 18th December, 1912 (see *Norsk Lovtidende* of 1912, p. 591), the following definition is given for purposes of neutrality:

"islands, rocks or skerries which are not permanently submerged".

3. Subsequently the Norwegian Government set up a committee to report on the question of territorial waters. This committee defined in a report, which has never been made public but which was completed in 1913, the above terms as follows:

"islands, skerries and rocks which are always above water at ordinary low tide".

4. There is, moreover, a declaration between Norway, Denmark and Sweden concerning rules of neutrality which was issued on 21st December, 1912 (see *Norsk Lovtidende* of 1912, p. 596), and which arose out of the Royal decree mentioned in (2) above. It runs as follows:

"Les Gouvernements de Norvège, de Danemark et de Suède :

ayant, en vue de fixer des règles similaires de neutralité s'accordant avec les dispositions conventionnelles signées à La Haye, entamé des négociations qui ont abouti à un accord sur tous les points de principe comme le prouvent les textes ci-joints des règles adoptées séparément par les trois gouvernements respectifs ;

et appréciant à sa juste valeur l'importance qu'il y aurait à ce que l'accord si heureusement existant soit maintenu également à l'avenir:

sont convenus qu'aucun des trois gouvernements n'apportera des changements aux règles approuvées par lui sans avoir préalablement averti les deux autres assez tôt pour permettre un échange de vues dans la matière.

En foi de quoi les soussignés, dûment autorisés à cet effet par leurs gouvernements, ont signé la présente déclaration et y ont apposé leurs cachets.

Fait en trois exemplaires à Stockholm, le 21 décembre 1912."

Annex X

Principles employed by Great Britain in determining the 3-mile limit of territorial waters

The 3-mile limit of territorial waters is the envelope of all circles, 3 nautical miles in radius, whose centres are situated on the low-water mark. The coast line from the low-water mark of which this limit should be measured is that of the mainland and also that of all islands. The word "island" comprises all portions of territory capable of use and permanently above water in normal circumstances.

The limit of territorial waters in the case of bays whose width at the entrance does not exceed 6 miles, is 3 miles to seaward of a straight line drawn across the entrance.

Territorial rights may in addition be admitted in respect of a certain number of larger bays or inlets, to be known as territorial inlets, which must be specifically enumerated and geographically defined.

(N.B.—The word "envelope" is a mathematical term, and denotes a curve forming a common tangent to a number of other curves arranged according to some fixed principle. In the special case of the 3-mile limit, the envelope of the 3-mile circles, so long as the low-water mark is a smooth line, is a smoothed curve ; if the low-water mark is of indented character, the envelope becomes a succession of short arcs having a radius of 3 miles.)

Annex XI

Questions addressed by the Norwegian delegation to the British delegation, on 3rd July, 1925, regarding the international aspect of the negotiations

1. Should formal agreement concerning the question of territorial waters be subject to the condition that an eventual agreement does not enter into force until the adherence of other specified Powers has been secured ? If so, what countries should be specified ?

2. Should a similar condition be attached to a convention for fishery purposes ?

3. Would Great Britain approach the specified countries to obtain their adherence in either or both cases ?

4. Would Great Britain leave it to the Norwegian Government to decide whether there should be an understanding regarding fisheries during the time necessary for negotiations with other Powers ?

5. Should such an understanding be confined to regulations whereby Norway would permit British trawlers to fish up to the limits proposed under (2), and Great Britain would warn British fishermen not to enter these waters ?

Admiralty silhouettes A-G

[*Not reproduced.*]

Annex 7 A

PROPOSALS FOR AGREEMENTS

BETWEEN HIS MAJESTY'S GOVERNMENT IN GREAT BRITAIN AND THE NORWEGIAN GOVERNMENT

REGARDING TERRITORIAL WATERS AND FISHERIES OFF THE NORWEGIAN COAST[1]

[*Not reproduced.*]

Annex 8

PHOTOSTAT REPRODUCTION OF SECTION OF CHART USED IN "DEUTSCHLAND" CASE

[*Not reproduced.*]

Annex 9

THE "DEUTSCHLAND" JUDGMENT

(WITH MR. NANSEN'S COMMENTS)

Retstidende for 1927, page 513

Mr. Nansen's comments

[There were in this case eight accused, the supercargo on board the *Deutschland*, Webster, the master of the vessel, Gaetje, and six members of the crew. Webster was charged with infringement of the Acts concerning customs-duty dated 20th September, 1845, § 133, and 14th July, 1922, No. 8, §§ 1 and 2, both repealed by the present Act dated 22nd June, 1928, and the Act concerning importation of spirits, wine, etc., dated 1st August, 1924, No. 4, §§ 1, 33 and 35, now repealed by the Act dated 5th January, 1927. The master was charged with infringement of §§ 1, 33, 35 and 36 in the Act of 1st August, 1924, and the members of the crew with infringement of §§ 1 and 35 of the same Act.

According to § 1 in the Act of 14th July, 1922, the customs-duty limit is 10 nautical miles outside the extreme islands and islets which are not permanently run over by the sea (are not permanently under water). This 10-mile border is not discussed in the judgment as the Court found it unnecessary, the mere preparation for smuggling spirits into another State's territory being held to be a criminal offence. The law of 1st August, 1924, popularly called "the Spirits Act", bases its penal clauses, however, on the "usual territorial border", and it will be seen that it is only the limit of 4 sea miles, which the Supreme Court has discussed. The part of the judgment which only deals with the Act concerning customs-duty, part A of the charge, will therefore not be translated.

[1] Printed and published by His Majesty's Stationery Office, London, Cmd. 3121, 1928.

In the following translation reference is several times made to the Royal Rescript of the King of Denmark-Norway of 1812, referred to below as a "decree". Strictly speaking, the rescript itself is dated 22nd February, and the Memorial, representing the publication of it, appeared on 25th February. The comments in brackets are Mr. Nansen's.]

Translation of the judgment

Judge BONNEVIE: [The order of voting is decided by lot. The judge quotes from the judgment of the District Court.] "The accused (Webster) has admitted, that *Deutschland* loaded ca. 59,000 kilog. and 95 cases of spirits in Danzig. He has furthermore stated that it was originally the intention to go to Iceland, but as they encountered heavy weather in the North Sea, he decided to go to the Norwegian coast between Halten and Kya in order to dispose of the cargo outside the Norwegian border, the 10-mile border, which he was acquainted with. The accused has denied that he has passed the border mentioned. It is established, and has also been admitted by the accused, that the vessel remained between Kya and Halten during the period of 6th-17th March this year [1926], when she was seized and brought to Trondhjem.

To decide whether, and if so to what extent, Norwegian law has been infringed during *Deutschland's* stay on the coast, the Court finds it necessary to form an opinion on how the customs-duty border and the territorial border is to be drawn in this area. Starting with the Decree of 22nd February, 1812, and the later Royal Decrees of 16th October, 1869, concerning the sea-border outside Sundmöre, and of 9th September, 1889, concerning the sea-border outside Romsdalen, and the two Royal Decrees of 5th January, 1881, and 17th December, 1896, concerning the Varangerfjord, the Court presumes that the border must be drawn parallel with the chief direction of the coast outside the skerries. Without it being possible for the Court to decide exactly where the border is to be drawn here [between Kya and Halten], the Court considers that it is safe to say that here at any rate the base-line cannot be drawn closer in than from Utgrundskjær [the extreme rock in the Halten group] to Kya on Folla, so that the territorial border and the customs-duty border cannot be closer in than 4 and 10 miles respectively outside this line.

The Court finds it fully proved that between 6th-17th March the *Deutschland* has for most of the time been inside the Norwegian customs-duty border, several times has been inside the Norwegian territorial border and has twice even been inside the base-line. The accused has maintained that it is enough to keep 10 and 4 nautical miles respectively from the extreme rocks. In this connection, the Court will observe that even if, as the accused maintains, the border must be drawn in circles round the extreme rocks, the *Deutschland* has passed the Norwegian customs-duty border, as the following points lie at a distance of less than 10 miles from the nearest rocks, which are not permanently run over by the sea, Nos. 2, 6, 7, 10, 20 and 23 B. Point No. 5 lies at a distance of 10 nautical miles from Vestbrekka (see chart No. 309 [1]). According to the ship's log the vessel has, however, not been inside the 4-mile border.

The accused has maintained that the sale of the spirits took place outside the 10-mile border. The Court finds it established, however, that

[1] The chart giving these points is reproduced in Annex 8 [under separate cover].

the sale took place on 15th March and inside the 4-mile border, based on a line drawn between Utgrundsskjær-Kya." [Here ends the quotation from the judgment by the District Court.]

It will, in my view, be necessary for the Supreme Court to express an opinion on the District Court's construction in law regarding the extent of the sea-territory in the district in question. I have found the question, where the border of the sea-territory in this place must be presumed to go, extremely doubtful. Several statements by experts have been laid before the Supreme Court, including statements by Captain Meyer and Captain Klingenberg, together with an opinion by *dr. juris* Arnold Ræstad dated 2nd December, 1926. Among printed sources especially referred to is the report of the Sea-Border Commission of 1911 consisting of Mr. Wollebæk, Commander Dahl and M. Fleischer. We have also seen a letter from the Foreign Department to the Secretary-General of the League of Nations' Expert Committee for the continued codification of international law dated 3rd March, 1927, in which the Department's view on the question of the extent of sea-territory in general is stated.

As mentioned in the judgment of the District Court, regulations regarding the extent of the sea-territory are first found in the Memorial of 25th February, 1812, where it is stated that on the 22nd of that month the King resolved : "We wish to establish the rule that in all instances, where there is a question of the determination of the border of our territorial-supremacy in the sea, this is to be calculated up to the usual sea-mile's [4 sea miles] distance from the extreme island or islet from the shore, which is not run over by the sea [1]."

I see that it is clear that the Norwegian public authorities have construed this regulation as providing a definition of the limits of the sea-territory, which is indisputable Norwegian, within which limits therefore all points are Norwegian. It is at the same time quite certain that, as regards certain special regions of the sea, for instance the Vestfjord and the Varangerfjord, the public authorities have maintained from olden times that these fjords are Norwegian territory in their entirety, and that the territorial border must be drawn in straight lines at the mouth of the fjords, regardless of the fact that great regions which lie outside the 4-mile border are thereby included in Norwegian territory. But for the greater part of the country's extensive coast it is not proved that there exists any further rules. The coast outside Sundmöre and Romsdalen is an exception to this, *vide* the above-mentioned Royal Decrees of 1869 and 1889.

I think it relevant to quote some of the sections in the above-mentioned opinion by Dr. Ræstad :

"The Decree of 1812 and, if such exist, supplementary common law rules must be construed independently of the importance one will attach to the Act of 1922, § 1. Conversely, however, it might be said that the Act of 1922, § 1, should be construed in the light of the older rules of law. The decree and, if such exist, supplementary common law rules must also be construed independently of the fact that under the international convention regarding the control of smuggling of alcoholic goods dated 19th August, 1925, Art. 9, Norway and some other States 'bind

[1] This translation by Mr. Nansen may be compared with that of the Registry of the Court (see para. 6 of the Memorial).

themselves not to object if any of them enforces its laws on vessels proved to be smuggling within a distance of 12 nautical miles from the coast or the extreme skerries line'.

"It must furthermore be maintained that we are here concerned with the construction as to how customary rules are to be applied for the purpose of the supplementing penal clauses. It is not absolutely necessary to take it for granted that a customary rule—especially one that in itself is very summary and which therefore must to a special degree be supplemented by construction—shall be construed in the same way, when it is to be applied in the province of the legislation of penal law as when it is applied in other relations. . . .

"According to the decree there is no doubt as to the normal extent of the sea-territory measured from land to sea. It is a geographical mile or the equivalent of 7,420 metres[1]. Doubts can, however, arise when it is to be decided from what base the geographical mile is to be drawn. And it is the answer to this question which will determine whether the District Court has been right in finding the accused guilty of infringing the legislation regarding spirits.".... "The question arises, however, if in the present case one shall determine the extent of the sea-territory from the single islands, islets and rocks or—as the District Court has done—from imaginary base-lines drawn between two islands, islets or rocks and how in practice these base lines are to be drawn. It is here necessary to make a distinction. It is one thing if, according to international law, a State is entitled to determine [establish] that for particular or general purposes certain parts of the adjoining sea are under its supremacy. It is another thing if, according to international law or according to its own laws, a State can look upon its legislation in a special relation as extended to the same parts of the adjoining sea when it has not yet determined that its supremacy extends so far. A State can have a right without having made use of it.

"The present question is therefore not answered by stating that the Norwegian State has a right to draw the border of its sea-territory in criminal cases one geographical mile from imaginary base-line drawn between two of the extreme isands, islets or rocks. It is important to know if the Decree of 1812 and, if such exist, supplementary common law rules prescribed that the border of the sea-territory is to be based on such lines.

"Here arises a difficulty which is serious, especially when the decree and, if such exist, supplementary common law rules are to be applied in criminal cases. Neither the decree nor such common law rules state how in practice—between which islands, islets or rocks—the base-lines are to be drawn. Even if it is assumed that the existing rules of law, provided as a general rule, that the sea-territory is to be reckoned from base-lines, it must therefore be admitted that they do not give any positive guidance as to how the sea-territory is to be reckoned in the special instance. Some foreign regulations state that the sea-territory is to be reckoned from 'the coast and its bays' or something similar. It will then be possible to establish from historical evidence what is to be understood by 'bays' or the other expression which may have been used. The decree does not contain anything similar. Furthermore, it is

[1] Generally referred to (for convenience) in the Memorial as a "Scandinavian league".

very unlikely for historical reasons that the decree was meant to be understood in this way. The original starting point in Norway as in several other countries is that the extent of the sea-territory corresponds to the range of view, but this is not the same as reckoning the sea-territory from an imaginary line. The decree was issued with the question of capture especially in mind. It is not reasonable to suppose that the Danish-Norwegian Government wanted to extend its protection of trading vessels to include parts of the sea, which could not easily be defined. If a construction such as that mentioned is to be applied to the decree, it must be because another solution would be unpractical, but the practical advantages—the greater public security—fall away, unless it can at the same time be stated how the base-lines are to be drawn. A rule in law, which states that the sea-territory is to be reckoned from base-lines, but not how the base-lines are to be drawn, can also not come into existence through common law, common law must concern itself with something practically stated.

"Undoubtedly the Norwegians have for many years looked upon the skerries as a unity, especially over questions of fishing and on these questions in particular they have felt it just that the skerries should provide the natural starting point for the reckoning of the sea-territory. In my view, however, one cannot select any particular line along a part of the skerries as a basis for defining the sea-territory unless one can find support in the positive regulations or unless in considering the region in question one can justify oneself on historical facts, i.e. common law. The necessary historical facts will usually apply only in connection with an exclusive use, for instance, for the purpose of fishing, of the part of sea in question : they do not usually apply in cases such as the present one of criminal jurisdiction, and they are certainly not present in this case. The two Royal Decrees of 18th October, 1869, and 9th September, 1889, do not disprove the contention that in criminal cases the sea-territory can only be reckoned from base-lines drawn between two islands, islets and rocks, *when a special provision has been issued to this effect* [underlined by Mr. Nansen], the base-line which has been drawn by the Royal Decree of 9th September, 1889, runs at any rate in one place, if not in several places, inside rocks, which are dry low water.

"Having taken this standpoint it is not necessary for me to decide the question whether the Norwegian authorities can [have the right to] determine, that the Norwegian sea-territory shall be reckoned from a base-line Utgrundsskjær-Kya. It is decisive for me that such a provision has not been issued, and that it also cannot be proved that such a determination of the sea-territory is based on historical facts both as regards the application and as regards the region in question."....

"There are fjords or arms of the sea on the Norwegian coast, which through a long historical development have received the character of Norwegian sea-territory, at any rate in some or most applications, but there is no evidence to the effect that the region of the sea in question or part of it has received such a character. Even if one takes it for granted that all parts of the sea which can be called fjord or bay are parts of Norwegian sea-territory—in other words that such a rule in law had been formed through common law—still in this case, where the 'run' of the border has not been more clearly decided upon, one

would still have to define the words 'fjord' and 'bay' in the most favourable way for the condemned, and limit 'the fjord' and 'the bay' in the way most favourable for the condemned. 'The fjord' or 'the bay' in question (Frohavet) would then clearly have to be limited outwards by a line not further out than between the Halten group and the Hosen Island.

"The foregoing does not mean that Norwegian public authorities could not issue provisions as to the extent of the sea-territory or could not by international agreement establish minimum claims, representing an advance of the sea-territory far outside those borders, which must at present be drawn under the present spatial jurisdiction of the penal codes." [Here ends the quotation from Dr. Ræstad's opinion.]

As can be derived from the above, it is Dr. Ræstad's opinion that the "base-line" drawn by the District Court cannot be maintained in connection with penal legislation. After considerable doubt I have in the end accepted Dr. Ræstad's standpoint.

As to the concrete question regarding the base-line Utgrundsskjær-Kya, decided upon by the District Court, I agree with Dr. Ræstad that the District Court had been too bold, and that other base-lines, which in practice would reduce the Norwegian territory, could quite well come under consideration. In this connection I express no view on whether the State authorities may have the right by Royal decree to decide upon a line Utgrundsskjær-Kya-Nordøen (Ertenbraken (Freflesa)) or perhaps direct Utgrundsskjær-Nordøen. Still less do I express a view on how the question would have been solved, if the State authorities had made such a decision prior to the action of the accused. I have not said positively whether some part of the region, which becomes Norwegian territory according to the line given by the District Court, cannot in reality be looked upon as such. In view of the evidence before me I regard myself as both entitled and bound to leave unsolved the question, how the territorial border should be correctly drawn. In a criminal case such as this it would not be reasonable for the Court to come to a positive decision as to the exact extent of the sea-territory in a region where the Norwegian State authorities themselves have omitted exactly to intimate their claim or their will with regard to the extent of the sea-territory. The District Court has also not exactly defined the border or the base-line here, but only said that it is presumed that one is "on the safe side" by taking such a line for granted. I am, however, of the opinion that one is not even entitled to establish so much. I am, indeed, of the opinion, that there are very good reasons for such a line and that there can even be a question of one still further out, if here, as is the case regarding the coast of Sundmöre and Romsdalen, the border of the sea-territory is to be decided by a Royal decree. But for the present, and according to the material disclosed in the present case, I am of the opinion that one must limit oneself to the view that the District Court has not been entitled, when judging the conduct of the accused, to build upon a base-line Utgrundsskjær-Kya as the correct one. The result hereof must be that the judgment given by the District Court is annulled, as the description of *Deutschland's* position given by the Court only refers to the line Utgrundsskjær-Kya, and does not contain any finding that in accordance with a correct construction of the extent of the sea-territory the *Deutschland* has been in a place which can with full certainty be said to be within Norwegian territory.

What now has been said concerns to the same extent all the accused. But regarding the accused No. 2, the Master of the ship, *Gaetje*, who also is accused of and condemned for infringement of § 36 of the "Spirits Act" by having been on Norwegian territory with more spirits than reasonable for use on board, it is, if anything, even clearer than it is necessary to decide the question whether the vessel has been inside the 4-mile border.

[Judge Bonnevie thereafter comes to the conclusion that the supercargo must be sentenced for his intention of smuggling, but that he and the other accused are acquitted for infringement of the "Spirits Act".]

Judge ANDERSEN : I have come to the same result as Mr. Bonnevie and agree with his conclusion. When I vote in favour of quashing the judgment as to part B of the charge, I do this chiefly in adherence with the views put forward in Dr. Ræstad's opinion. I am accordingly of the opinion that, in the absence of authority contained in a special provision, it cannot be established under the existing Norwegian law, for the application of the penal codes which the charge relates to, that the base-line for the territorial border can be drawn so far out, and in such a way, as the District Court has drawn it, in founding its judgment on a base-line, Utgrundsskjær in the Halten group to Kya on Folla. That the decision hereof is a question of law is not doubtful to me.

Judge BORCH : As Mr. Andersen.

Judge BUGGE : Likewise.

Judge SOLDAN : Likewise.

Judge NYGAARD : Likewise.

Judge BERG : [Forming the minority.] I have come to the conclusion that the appeal must be dismissed entirely.

I find that the construction of law as to where the border must be drawn, on which the District Court's view is based, is in conformity with what Norwegian authorities have always maintained when the question of the extent of the sea-territory has been raised in connection with other parts of the coast.

Because of the result of the voting, I will not enlarge in detail upon my view regarding this question. I will refer only to the following passage on page 11 in the report from the Sea-Territory Commission of 1911 : "Generally one will in special instances be most certain that one is coming to a decision in accordance with the old Norwegian construction of law if one deems the base-line to go between the most extreme of the points, between which the choice stands, without any regard to the length of the line."

I would also refer to the same report, page 29 : "When it is ascertained, which rocks along the coast must be looked upon as the 'extreme', it will be most in accordance with the terms of the Decree of 1812—which lets the border go outside the extreme islands and islets, and which does not even mention the coast line of the mainland—to look upon all continuous waters inside as Norwegian and furthermore to reckon the sea-territory itself as extending one [4 sea miles] mile outside imaginary straight lines drawn between the rocks. If the provision gives any guidance at all, it seems especially to look upon the islands and islets as so many points in such base-lines. This is in contradiction

to the idea that the border should partly be drawn in curves outside the rocks or in half circles round these with a one geographical mile radius or partly drawn in a whole circle round the individual rock thus giving a sea-territory in this place which is detached from the rest of the territory."

I also refer to the letter from the Foreign Department mentioned by Judge Bonnevie, which states, *inter alia* [the translation at this point has been intentionally made a literal—word for word—one] : "Regarding the drawing up of the border, it must be noted that for Norway the (to a special degree) characteristic system of fjords and skerries, distinguished by the numerous fjords which everywhere cut deep into the country and by the numerous big and small islands, islets and rocks, which stretch themselves in a broad continuous belt so to speak along the whole coast, has led, as a natural and necessary consequence, to the fact that one in Norway has not been able to let the border of the territorial waters follow all the numerous curves of the system of fjords and skerries, but has drawn the border 1 geographical mile from the extreme coast line at low water or from straight lines between extreme islands, islets or rocks, which are not permanently run over by the sea and outside bays and fjords—which from olden times in the history of the country have been looked upon and maintained to be as a whole inner Norwegian waters—from the line between the extreme land—mainland, island or islet—on both sides."

And further : "As intimated in the foregoing remarks to article 2, the Norwegian bays and fjords have, as a necessary consequence of historical facts, of the local conditions along Norway's peculiarly irregular coast and of the decisive importance, which a rational use of the fjord and skerries territories have for the living conditions of the population on the coast and the economy of the country, always been looked upon as and maintained to be a part of the Kingdom's territory. As fjords are reckoned not only the regions of sea, which on both sides are limited by the coast line of the mainland, but also such which are limited by a continuous row of islands or by the skerries. According to ancient Norwegian law, bays and fjords are as a whole Norwegian water, irrespective of the fact that their width at the mouth may exceed the varying, more or less arbitrary maxima, which some countries—with a less differentiated coast configuration—have lately established for special purposes dictated by their needs and have justified by various argumentation."

Now as to the region of sea in question, the expert Captain Meyer has stated that it must be looked upon as a basin limited against the ocean by the base-line Utgrundsskjar-Freflesa, which goes in the direction north 40 degrees east. He points out that both at Utgrundsskjær and Freflesa the skerries curve south-east about squarely on this line. The basin between these two cross-lines, formed by the skerries at the two points, extends south-westerly inside the Halten Islands. There is a continuous basin in the main direction of the coast from Hitra and Frøya to the Vikna group, covered against north-west in the southern half, uncovered in the northern. In this basin, according to the information given by him [Captain Meyer], there lies a very much used fishing ground Sveskallen north of Kya and outside the 4-mile circle round Kya.

I am of the opinion that it would be in accordance with old Norwegian construction of law, that a basin like this must be looked upon as part of the inner Norwegian seawater. According to Captain Meyer's statement it lies as a whole inside the water which serves the free navigation of foreigners along the Norwegian coast. In every circumstance, however, I am of the opinion that the District Court has been on the safe side, when it has presumed that the base-line for our sea-territory can be drawn between Utgrundsskjær and Kya.

Annex 10

DIPLOMATIC CORRESPONDENCE IN CASES OF "LORD WEIR" AND "HOWE"

No. 1

SIR C. WINGFIELD TO MR. MOWINCKEL

Oslo, 27th March, 1931.

Monsieur le Ministre d'État,

I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to draw Your Excellency's attention to the cases of two British trawlers, the *Howe* of Grimsby, and the *Lord Weir* of Hull, which were arrested by the Norwegian authorities in September last on charges of having fished in Norwegian territorial waters. In the first of these cases a fine of Kr. 2,000 was imposed, as it was held that the *Howe* was fishing between 3 and 4 nautical miles from the shore on the night of 13th September, whilst in the case of the *Lord Weir* a fine of Kr. 4,000 was imposed, besides the collection of Kr. 1,000 from the value of the catch and a payment of Kr. 100 to the Customs Watch, on the ground that on the night of 15th September she had fished at a spot 3.6 nautical miles outside the line Haabrandnesset-Klubbespiret, i.e. more than 4 nautical miles from the nearest land.

2. As Your Excellency is already aware, His Majesty's Government are unable to recognize any such right of arrest on the part of a foreign government outside the 3-mile limit; and, in the circumstances, I am instructed to protest against both of these arrests.

3. I am also to point out, in connection with the case of the *Lord Weir*, that, so far as His Majesty's Government are aware, no base-line has ever been laid down in the region of the Syltefjord by Royal decree or other order. You will remember the decision of the Norwegian Supreme Court in the case of the *Deutschland* in 1927, in the course of which it was stated that "it would not be fair if the courts of justice in a penal case like the present one should form a positive decision as to the exact extent of territorial waters for an area concerning which the Norwegian State authorities have themselves omitted to signify their claim or their will with regard to the extent of territorial waters".

4. In view of this decision I am to enquire what is the precise base-line claimed by the Norwegian Government on this part of the coast of Norway, and under what ordinance this base-line was prescribed: and in this connection I would venture to remind you that a similar question

was addressed to Your Excellency by Sir Francis Lindley in his note of 28th March, 1927, enquiring what were the principles upon which the Norwegian Government fixed the limit of their national or territorial waters in the case of inlets, the reply to which, dated 19th July, 1927, stated that the Norwegian Government were not at that time in a position to give the information desired, since the question of an exact marking of the limit of Norwegian territorial waters was being considered by a special committee.

I avail, etc.

(Signed) CHARLES WINGFIELD.

No. 2

THE MINISTER FOR FOREIGN AFFAIRS TO SIR C. WINGFIELD

Monsieur le Ministre, Oslo, 11th August, 1931.

With reference to your note to the former Prime Minister, Mr. Mowinckel, of 27th March last, and to Mr. Carnegie's letter to me of 18th ultimo, regarding the arrest of two British trawlers *Howe* and *Lord Weir*, I have the honour to convey the following information:

As is known, Norwegian territorial waters, in accordance with the prescription of centuries, have a breadth of 4 nautical miles. As regards the base-lines from which the 4-mile limit is to be calculated, the position is that the Storting have not yet taken up a standpoint with regard to the final marking of these lines in all details. It is assumed that this will take place in the course of the coming session of the Storting, and as soon as such a decision has been made it will be a pleasure for me to see that you receive all necessary information in that respect.

I must not omit to add that, in accordance with reports received from the competent authorities, the position is that whatever base-line, of those that Norway can consider, may be taken as the one from which territorial waters are to be calculated, the arrest of the two trawlers will be found to have taken place within the 4-mile limit.

I avail, etc.

(For the Minister for Foreign Affairs)
(Signed) AUG. ESMARCH.

Annex 11

MEMORANDUM TO NORWEGIAN GOVERNMENT

His Majesty's Government are very seriously perturbed over the situation that has arisen with regard to the treatment of British trawlers coming into the neighbourhood of the coast of Norway, for the reports received from our fishermen give the impression that a definite campaign against them has been initiated. It was proposed to instruct His Majesty's Minister to make very strong official representations on this subject ; but he has obtained permission to endeavour to arrive at some informal settlement first. The two chief causes of complaint are :

(*a*) That the Norwegian authorities not only claim all waters within a 4-mile limit, but also make use of unjustifiable base-lines, thus extending their territorial waters even beyond the utmost limits claimed in 1924 ; and

(*b*) That when fishing on banks at distances of 20 or 30 miles from the land, British trawlers are harried and hindered by Norwegian motor boats, who intentionally lay their lines so close to the trawlers that the latter can hardly continue their operations without cutting through them, with the result that they are arrested by the Norwegian authorities when next they enter Norwegian territorial waters for shelter or for any other cause.

With regard to (*a*), it should be noted that on 24th September, 1926, after the failure of the negotiations respecting territorial waters of 1924, His Majesty's Government asked the Norwegian Minister in London to furnish them with a definite statement of the principles applied by them in fixing the limits of territorial waters with particular reference to the base-lines from which these limits were drawn in the case of inlets. The Norwegian Government have repeatedly been asked since that date for this information, notably on 28th March, 1927, when Sir Francis Lindley also asked for copies of the charts actually showing these limits which had been circulated to Norwegian fishery protection vessels. On 19th July, 1927, the Norwegian Minister for Foreign Affairs stated that a special committee were considering this question, and that the Norwegian Government must await their report ; but arrests of British trawlers have continued in waters outside even the 4-mile zone round the Norwegian coasts, although no competent Norwegian authority has apparently ever decreed that these more extensive limits are claimed by Norway. This was brought out in the case of the arrest of the British trawlers *Loch Torridon* and *Crest Flower* off the Senja Bank in February last, for the judge at Trondenes found that the Norwegian authorities had not taken the proper steps to make known the full extent of their claims to territorial waters either in the neighbourhood under discussion or in principle. His Majesty's Legation understand that the special committee set up have reported on this question and that this report was sent to the Storting in 1930 or 1931 but His Majesty's Government are still waiting for an authoritative statement as to Norwegian claims, and they feel that it is most unjust for British trawlers to be arrested for fishing in waters to which Norway has put forward no official claim.

With regard to (*b*), it is suggested that the two Governments should enter into an agreement on the lines of that embodied in article 15 of the convention signed at The Hague on 6th May, 1882, for regulating the police of the North Sea Fisheries, which reads as follows :

> "15. Il est défendu aux bateaux arrivant sur les lieux de pêche de se placer ou de jeter filets de manière à se nuire réciproquement ou à gêner les pêcheurs qui ont déjà commencé leurs opérations."

His Majesty's Minister is most anxious to obtain at a very early date an answer that will satisfy His Majesty's Government and which will consequently make it unnecessary for them to send him official instructions on this subject.

27th July, 1933.

Annex 12

NORWEGIAN NOTE ESTABLISHING "MODUS VIVENDI" REGARDING RED LINE

MR. VOGT TO SIR JOHN SIMON

London, 30th November, 1933.

Sir,

On 22nd November last a conference was held at the Ministry of Fisheries in order to discuss the fishing situation outside Norwegian waters.

During this conference the British delegates made some complaints in regard to the seizure of British trawlers off the Norwegian coast, stating that the situation during the last eighteen months was different from what it used to be during previous years.

On this occasion I have the honour, by order of my Government, to inform you that the attitude of the Norwegian Government in regard to the treatment of British trawlers had not been subject to any alteration during the last eighteen months. In order to affirm this and desiring to avoid any friction, my Government have given instructions to the Norwegian control vessels enforcing the necessity of maintaining the practice which for years has been followed in this matter. This step has been taken pending the decision of the Storting in regard to a Bill establishing the base-lines of the Norwegian territorial waters.

I have, etc.

(Signed) B. VOGT.

Annex 13

THE "ST. JUST" JUDGMENT

(WITH MR. NANSEN'S COMMENTS)

Retstidende for 1934, page 731

Mr. Nansen's comments

[The Master of *St. Just* of Hull was sentenced by the District Court of Vardø for infringement of the Act concerning foreigners fishing in Norwegian sea-territory dated 2nd June, 1906, No. 3, §§ 1 and 4, and the Act concerning trawl-fishing dated 22nd May, 1925, No. 3, §§ 1 and 4.

The case was thereafter brought before the Court of Appeal ("Lagmannsretten"), the chairman of which is called "Lagmann", which upheld the judgment given by the District Court. The Supreme Court, with two dissenting votes, came to the same conclusion as the Court of Appeal.]

Translation of the judgment given by the Supreme Court

(Square brackets indicate explanatory comment by Mr. Nansen.)

Judge KLAESTAD: The accused has appealed against the judgment given by the Court of Appeal on the following grounds: "I look upon

the 'lagmann's' summing up regarding the border of the Norwegian sea-territory as incorrect. Referring to the judgment given by the Supreme Court 30th June, 1927, *Retstidende*, page 513 [the *Deutschland* case], I maintain that it is not the standpoint of Norwegian law, that the border of the sea-territory off the Norwegian coast must be drawn 4 nautical miles off land from base-lines following the main direction of the coast. In my view, the Norwegian State may have a right to determine such a territorial border as it considers necessary, in this case a territorial border from the base-line Kaalnes on Renøya-Korsnes (Makaur). The Norwegian State has, however, *only* in a few *other* instances i.e. not in this one), made use of its right to establish certain borders, going beyond the border mentioned in the Memorial of 25th February, 1812, viz., one (Norwegian) sea mile from the extreme island or islets which is not run over by the sea. I also base my view on the judgment given by the District Court of Trondenes 2nd March, 1933, in the criminal case against Frank Northon and Leonard Jolly. There is absolutely no evidence to show that in this instance any competent authority has made any provision regarding the above-mentioned base-line."

As regards the "lagmann's" summing up, the correctness of which is thus in dispute, the following has been entered in the minutes of the Court of Appeal: "At the request of the counsel for the defence, the 'lagmann' inserted a passage to the effect that in summing up he had stated that as a general rule the border for Norwegian sea-territory goes 4 nautical miles from land, *vide* the extreme rocks which are dry at low waters. The border does not, however, follow all the curves of the coast, but must be drawn according to a base-line which in this instance is presumed to be the line Kaalnesset on Reinøya-Korsnes (Makaur) since in the 'lagmann's' view the base-line must, according to Norwegian law, be drawn to follow the main direction of the coast."

In considering the construction of law expressed in this summing up, I will make the following observation: The Royal Decree of 22nd February, 1812, which is referred to in the Memorial of the 25th of the same month, does not contain any special provision as to how the sea-border shall be drawn in detail along the coast. The decree states in this connection that the border must be reckoned up to the usual sea-mile [Norwegian] distance from the extreme island or islet off the land, which is not run over by the sea. This provision is usually understood to mean that the sea-border must be drawn 4 nautical miles from straight lines between the extreme islands, islets or rocks, which are not regularly run over by the sea. It can probably be said that practical requirements have necessitated such a drawing up of straight base-lines for the reckoning of the sea-territory. In any case, the above-mentioned provision has not been understood to mean, nor has it been so applied, that the border follows the curves of the coast or is drawn up by the aid of circles around the extreme points of the skerries or the mainland—a procedure which, because of the coast's special configuration, could scarcely be carried through or maintained in practice.

In this connection I refer as an example to the report given in 1893 by the Finnmark Fishery Commission of 1891, which states on page 20 in connection with the above-mentioned Memorial of 1812: "For the

fjords of Finnmark, the border of the sea-territory can be drawn parallel with a straight line between both the extreme capes at the mouth of the fjord ; in the same way one must be able to jump from one island to the other."

In the same way the Sea-Border Commission of 1911 states in its report, Part I, page 11 : "Generally one will in special instances be most certain that one is coming to a decision in accordance with old Norwegian construction of law if one deems the base-line to go between the most extreme of the points, between which the choice stands, without any regard to the length of the line." The commission states further on page 29 : "When it is ascertained, which rocks along the coast must be looked upon as the 'extreme', it will be most in accordance with the terms of the Decree of 1812—which lets the border go outside the extreme islands and islets, and which does not even mention the coast line of the mainland—to look upon all continuous waters inside as Norwegian and furthermore to reckon the sea-territory itself as extending one [4 sea miles] mile outside imaginary straight lines drawn between the rocks. If the provision gives any guidance at all it seems especially to look upon the islands and islets as so many points in such base-lines. This is in contradiction to the idea that the border should partly be drawn in curves outside the rocks or in half circles round these with a one geographical mile radius or partly drawn in a whole circle round the individual rock thus giving a sea-territory in this place which is detached from the rest of the territory."

In a letter of 3rd March, 1927, from the Foreign Office to the Secretary-General of the League of Nations, it is furthermore *inter alia* stated : "Regarding the drawing-up of the border it must be noted that the for Norway to a special degree characteristic system of fjords and skerries, distinguished by the numerous fjords which everywhere cut deep into the country and by the numerous big and small islands, islets and rocks, which stretch themselves in a broad continuous belt so to speak along the whole coast, has led, as a natural and necessary consequence, to the fact that one in Norway has not been able to let the border of the territorial waters follow all the numerous curves of the system of fjords and skerries, but has drawn the border 1 geographical mile from the extreme coast line at low water or from straight lines between extreme islands, islets or rocks, which are not permanently run over by the sea and outside bays and fjords—which from olden times in the history of the country have been looked upon and maintained to be as a whole inner Norwegian waters—from the line between the extreme land—mainland, island or islet—on both sides."

Regarding the Decree of 1812 the Norwegian Government stated *inter alia* in a memorandum of 1928 to the Secretary-General of the League of Nations : "In accordance with the traditional construction of the constitutional status of the waters around the skerries, the general indication of this decree must be understood in such a way that a line, which combines the extreme rocks along the skerries, and, when such do not exist, the extreme points, forms the starting point for the reckoning of the sea-territory.... Norway has no rule for the maximum distance between the starting points for the base-lines from which the sea-territory is reckoned."

A similar construction is also maintained in our constitutional theory.

In my opinion, however, what is of the greatest and most decisive importance in determining how the above-mentioned provision in the Decree of 1812 is to be understood is that on several later occasions there have been issued Royal decrees stating how the base-line is to be drawn for special parts of the coast. These decrees, which partly concern regions outside the skerries and partly the water at the mouth of a fjord, must be looked upon as authentic indications as to how the rule is to be understood and put into practice and are therefore of great importance in interpreting how the rule is to be applied to other parts of the coast. It is laid down by the Royal Decree of 16th October, 1869[1], that a straight line drawn at a distance of one (Norwegian) geographical mile from, and parallel with, a straight line between Storholmen and Svinøy, shall be looked upon as the border for the stretch of water of the coast of Sundmöre, where the fishing is reserved for the country's own population. This line is 25.9 nautical miles long and cuts over Breisundet, Storholmen, lies about 9.5 nautical miles from the mainland with several big islands between. By the Royal Decree of 9th September, 1889[1], straight base-lines were drawn outside the coast of Romsdalen from Storholmen over Skraapen—outside Harøy-Gravskjær—outside Ona—and Kalven—the most extreme of the Orkrocks—to the most extreme of the Jevle islets outside Grip. The length of the base-line Storholmen-Skraapen is 14.7 nautical miles, of Skraapen-Gravskjær 7 nautical miles, of Gravskjær-Kalven 23.6 nautical miles and Kalven—the most extreme of the Jevle islets—11.6 nautical miles. The last-mentioned 4 islets lie about 12, 10½, 7 and 14 nautical miles respectively from the nearest mainland with many larger and minor islands, islets and rocks between. This information is derived from the above-mentioned report from the Sea-Border Commission of 1911, page 15, note 1, and page 17, note 1. It was finally decided by the Decrees of 5th January, 1881, and 17th December, 1896, concerning the preservation of whale, that the preservation border in the Varangerfjord goes parallel to a straight line drawn straight over the mouth (of the fjord) from Kibergnes to Grense-Jakobselv.

In considering the summing up by the "lagmann" in the light of the general rules laid down in the Decree of 1812, and the way in which these rules have been understood and put into practice, it appears to me that the principal observation of the "lagmann" regarding the sea-border is correct. I thus agree with him that, for the purpose in question, namely fishing, the sea-border "as a general rule goes 4 nautical miles from land *vide* the extreme rocks which are dry at low water", and that the sea-border does not follow all the curves of the coast but must "be drawn according to a base-line". In view of the different statements to which I have referred and especially in view of the base-lines, which were established by the Decrees of 1869 and 1889, I also consider that, under the existing law it is correct to lay down the general rule that the base-line "must be drawn according to the main direction of the coast", even if, because of its vagueness, such a rule is not of great use in giving satisfactory guidance in connection with concrete decisions.

Concerning the special base-line, in favour of which the "lagmann" has expressed himself, namely the line from Kaalnesset on Reinøy to Kors-

[1] See paras. 4-6 of the Memorial with regard to these decrees.

nesset on the Makaur land, it has been contended by the counsel for the prosecution, that the decision of the question, where the concrete border must be drawn, is not of a purely legal, but of a mixed *de facto* and legal nature and that it therefore should not have been referred to in the summing up of the "lagmann", and cannot be decided upon by the Supreme Court. I do not agree with this. In a judgment of the Supreme Court, *Retstidende* for 1927, page 513 [the *Deutschland* judgment], it was presumed that the decision hereof is a question of law—a view with which I concur. The Supreme Court must therefore also express an opinion on this part of the summing up, namely on the statement that the base-line "in this instance is presumed to be the line Kaalnesset on Reinøya-Korsnes (Makaur)". The prosecution maintains that according to the existing law this line is the correct base-line for the reckoning of the sea-territory. It is seen to be about 25 nautical miles long. It can be mentioned in comparison that the base-line which was established by the Decree of 1869 is 25.9 nautical miles, and that the longest base-line between two islets or rocks established in 1889 is 23.6 nautical miles, whilst the total base-line from Storholmen to Jevleholmen over three other islets or rocks is 56.9 nautical miles. The line over the mouth of the Varangerfjord from Kibergnes to Grense-Jakobslev is 30.5 nautical miles. In view of this and of the general rules already mentioned for the drawing up of the lines, I cannot find that the "lagmann's" statement on this point can be said to be contrary to the existing Norwegian law and thus based on an incorrect construction of law.

It is, however, contended in the appeal that no competent authority has made a provision for such a base-line and the Counsel for the Defence has, referring to the judgment by the Supreme Court in *Retstidende* for 1927, page 513 [the *Deutschland* case], given a detailed statement of this contention. As far as I understand it, the drift of this is mainly that in criminal cases at any rate the State lacks the authority to enforce the law on the sea-territory up to a border-line drawn in accordance with the above-mentioned general rules—in this instance up to 4 nautical miles reckoned from the line Kaalnesset to Korsnesset—unless such a border-line has been expressly established by an act of the State; as has been done for the waters outside Romsdalen and Sundmöre and for the Varangerfjord. For other parts of the coast it is contended that the State's right of punishment is limited to the sea-territory given by circles with a radius of 4 nautical miles drawn from the extreme head-lines or islets. The latter contention is probably connected with a similar contention that such a drawing of circles is a result of the Decree of 1812.

In my view these contentions are not sound. As a drawing up of the sea-border in circles is not, as mentioned, supported by Norwegian law, the contention which has been put forward, by the counsel for the defence, would in reality mean that Norway would have no definite and determinable sea-territory as regards the enforcement of the criminal legislation, except as regards the Sundmöre and Romsdalen coast and the Varangerfjord. This drawing up in circles would *inter alia* mean that the criminal courts would be barred from deciding cases on the basis that all fjords and bays are in their entirety inner Norwegian territorial water, although this is an established rule in our existing law. It is, however, not true, as [the defence] maintains it to be, that for waters other than Sundmöre, Romsdalen and the Varangerfjord, Norway lacks an "Act of State" governing the drawing up of the border.

The Decree of 1812 gives the rules for this, valid for the whole coast, and even if the application of these rules in some instances can give room for doubts and difficulties, both because of the general and somewhat incomplete contents of the rules and because of the special configuration of the coast, this does of course not give the courts a right to ignore the question.

If the question of punishment depends on where the border goes, the border must be ascertained without any regard as to the difficulties which are connected herewith and without any regard as to the opinion one otherwise may have regarding the possible error or good faith of the accused, which is a question of quite another nature. In this, as in all other instances, when it is a matter of applying a general rule of law on a concrete question of law, the courts must by construction decide how the general rule is to be understood and applied, and, with regard to the rule of law in question, the courts have at their disposal as already mentioned a number of means of interpretation, some of which are authentic. In this respect, however, the Norwegian courts do not stand in any exceptional position. As far as I know, no State has as yet fixed its sea-border in detail for all stretches of the coast and for all purposes. Also other States have, apart from certain special provisions for some waters or for special purposes, contented themselves with giving general and partly incomplete rules for the drawing up of the sea-border and have in the last resort left it to the courts to ascertain in a particular instance of law where the border is to be drawn in that instance in accordance with these general rules.

It has been contended by the counsel for the defence, that the view in which I have concurred regarding the last-mentioned objection is contrary to the judgment given by the Supreme Court, *Retstidende* for 1927, page 593 [the *Deutschland* case]. It is certainly true that the voting in that case does not seem to make it quite clear on what opinion of law the majority has based its decision. Judge Andersen, whose grounds were agreed with by the majority, stated, after having in the main agreed with an opinion laid before the court : "in the absence of authority contained in a special provision it cannot be established, under the existing Norwegian law for the application of the penal codes which the charge relates to, that the base-line for the territorial border can be drawn so far out, and in such a way, as the District Court has drawn it, in founding its judgment on a base-line, Utgrundsskjær in the Halten group to Kya on Folla". The statement that the base-line cannot "be drawn so far out and in such a way as the District Court has drawn it", goes to show that it is special *de facto* conditions on the spot, which have been decisive for the opinion of the majority. I find under these circumstances at any rate that I cannot take it for granted that this judgment has established a *res judicata*, which must be decisive for the question of law in the present case.

[Judge Klaestad thereafter comes to the conclusion that the appeal must be dismissed.]

Judge Boye : I agree in substance with Judge Klaestad's general comments on the extent of the sea-territory according to Norwegian law. I have, however, come to a conclusion different from Judge Klaestad's because it is stated in the "lagmann's" summing up that in the present instance the border must be drawn after a base-line which is

taken to be the line Kaalnes on Renøya-Korsnes (Makaur), whilst according to my opinion the accused cannot be sentenced unless he has fished inside a line which is drawn 4 nautical miles outside and parallel with a base-line between the utmost capes in the mouth of the Syltefjord, namely Harbakken and Korsnes.

As mentioned by Judge Klaestad, the sea-border is reckoned 4 nautical miles from straight base-lines which are drawn between the extreme islands, islets or rocks. Where such do not exist, which is the case for great parts of the coast of Finnmark, the base-lines are drawn between the extreme points on the mainland over the mouth of fjords or indentations in the coast. Our fjords have, notwithstanding their width, been looked upon from ancient times as inner Norwegian water, and the sea-border outside these is drawn in the way mentioned in the report from the Finnmark Fishery Commission of 1891, quoted by Judge Klaestad: "for the fjords of Finnmarken the border of the sea-territory can be drawn parallel with a straight line between both of the extreme capes at the opening of the fjord". Opinions can, however, be divided over which capes shall be looked upon as extreme. As mentioned in the judgment given by the Court of Appeal, the prosecution had charged the accused with fishing on Norwegian sea-territory outside Syltefjord. However, new evidence has been laid before the Supreme Court regarding the way in which the Norwegian sea-border in this part of the coast must be drawn so far as British fishermen are concerned, and importance must be attached to this evidence in deciding the present case.

The counsel for the defence has informed the Supreme Court that in 1924 the British Legation in Oslo requested that the Norwegian view of the limit of the Norwegian sea-territority in this area should be indicated on a map of East Finnmark. This was so that British trawlers might be informed of the limits of the Norwegian territory and so prevented from entering it through ignorance and consequently being seized by Norwegian protection vessels. Accordingly the Foreign Office forwarded to the British Chargé d'Affaires a map of East Finnmark together with an accompanying letter dated 4th November, 1924, signed by the Secretary for Foreign Affairs, which has been laid before the Supreme Court. This letter states: "In accordance with your letter of the 24th October this year, I have the honour to enclose two copies of a map of East Finnmark, on which is delineated the border of the Norwegian sea-territory such as this must be drawn according to Norwegian opinion. The transmission of this map does not in any way prejudice either Norway's or Great Britain's standpoint regarding the extent of the sea-territory". It appears from this map, which has been laid before the Supreme Court, that the base-line has not been drawn as stated in the summing up by the "lagmann", but that the sea-border outside Syltefjord has been drawn 4 nautical miles outside a base-line between Harbakken and Korsnes.

There is no suggestion that the above-mentioned intimation to the British Legation regarding the sea-border on this part of the coast, indicates a final decision regarding the drawing-up of the border for Norwegian sea-territory, but I must presume as long as the border in this area has not been accurately established by the State authorities, that the border-line indicated on the above-mentioned map is the one which, according to Norwegian opinion, is looked upon as applying, at any rate for the time being, to foreign fishermen, and that, as long as

they keep outside this border, they can reckon on being on the safe side. The purpose in forwarding this map was of course to help to prevent the invasion of Norwegian territory by British trawlers ignorant of the limits.

It makes certainly a relatively small difference whether the base-line is drawn between the extreme points of Syltefjorden, Harbakken and Korsnes, as in the mentioned map, or whether it is drawn from Kaalnesset on Renøy, as in the summing up of the "lagmann". The latter line will, as far as I can see from the map, go about 300 metres outside Harbakken. As far as I have understood there does not exist any customary law or traditon in this district regarding the exact borders for the sea-territory. It is not necessary for me to express myself more definitely regarding the drawing-up of the base-line for the sea-border outside this part of the coast. It is sufficient for the position which I have reached, that the base-line mentioned in the summing up of "lagmann" between Kaalnesset on Renøya and Korsnes—which, according to the information given by Judge Klaestad, is about 25 nautical miles long— is drawn somewhat further out than the above-mentioned base-line between Harbakken and Korsnes, which according to the map is about 11.4 nautical miles long. By the judgment given by the Court of Appeal it is decided that the accused has fished inside the sea-border reckoned according to the base-line mentioned by the "lagmann", but it is impossible to know what the result of the judgement would have been if in his summing up the "lagmann" had accepted as the line outside Syltefjorden the one indicated on the map, which the Foreign Department forwarded to the British Legation in 1924. As I have already said I am of the opinion that decisive importance must be attached to the borderline on this map, and its accompanying letter, which were not laid before the Court of Appeal.

I am accordingly of the opinion that the judgment given by the Court of Appeal must be annulled.

Judge CHRISTIANSEN : Both in substance and conclusion I agree with Judge Klaestad.

As regards the letter referred to by Judge Boye, that is the letter from the Norwegian Foreign Department to the British Chargé d'Affaires dated 4th November, 1929, with a map of the part of the coast in question, I will observe that the letter can only be looked upon as an offer of negotiation, which so far as I can see has not been accepted. Therefore, in my view, no importance can be attached to this letter, so much the less as it is expressly stated in the letter that it shall not prejudice anything.

Judge LIE : As Judge Christiansen.

Judge BORCH : Likewise.

Judge BONNEVIE : I agree with Judge Boye that the judgment given by the Court of Appeal must be annulled because of an error in the summing up.

When, in referring to the base-line, to which he refers the Court as a basis for its decision, the "lagmann" uses a vague expression as that the base-line "must be presumed to be 'the line Kaalnesset-Korsnesset' ", then by virtue of this one cannot in my view understand the "lagmann" to have meant to put the Court at liberty regarding this question of the

base-line .... I think that there is no doubt from the summing up that the "lagmann" has bound the Court to base its decision on the border of the sea-territory going according to the line stated by him, namely, 4 nautical miles outside the straight line Kaalnesset-Korsnes, and not elsewhere. I am, however, of the opinion that on this point the "lagmann" is in error. In my view he ought to have made no attempt to determine the border in this place, but should have left the question open and confined himself to stating as binding for the Court, that they would be indisputably safe only in laying down the condition that the accused should be condemned if he had come inside a distance of 4 nautical miles from the line Harbakken-Korsnesset, regarding which I refer to Judge Boye's observations, and which according to my opinion represents the innermost [outermost ?] base-line which here can come into consideration. I do not indeed disagree with Judge Klaestad when he states that it cannot be said that the "lagmann", by his determination of the base-line Kaalnesset-Korsnes, has acted against the existing rules of law inasmuch that I agree that such a base-line, if it had been established by Royal decree, as has been done by the Decrees of 1869 and 1889 for the coast ouside Sundmöre and Romsdalen, would have been quite in accordance with Norwegian construction of law. As, however, no such earlier decision has been made by a Norwegian authority for this part of the coast, I am of the opinion that it is wrong to do what the "lagmann" has done, viz., to establish just this base-line, when there also exist other alternatives, for which there are just as good or at any rate very good reasons. And I attach much importance to the fact, that as far as I can see, the only indication which has previously—viz., before the prosecution in this case—been given by the Norwegian authorities, as to what should be the correct base-line on this part of the coast, is the letter of 1924 [to the British Chargé d'Affaires] to which Judge Boye has referred, which emphasizes the line Harbakken-Korsnesset as an indication of the Norwegian view.

Judge Berg [the chairman of the Court]: I agree with Judge Klaestad and endorse Judge Christiansen's statement regarding the letter which was forwarded to the British Chargé d'Affaires.

Annex 14

DIPLOMATIC CORRESPONDENCE, MAY 1934

No. 1

SIR C. WINGFIELD TO Mr. MOWINCKEL

Your Excellency, Oslo, 24th May, 1934.

I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to refer to the proposal made at the meeting in London on 22nd November last between representatives of His Majesty's Government in the United Kingdom and of the Norwegian Government, that the latter should remit fines imposed on British trawlers by the Norwegian authorities in respect of fishing carried on outside the so-called "red line" of 1925.

It has been the practice during recent years for British trawlers to avoid fishing within the limits claimed by Norway during the negotiations in 1924-1925 ; and the Norwegian Government on their part have refrained from interfering with them so long as they remained outside these limits. The Norwegian Government have recently assured His Majesty's Government that their attitude in this respect has undergone no alteration ; His Majesty's Government consequently feel justified in urging them, in virtue of the above-mentioned proposal, to remit the fines imposed on British trawlers in two cases in which convictions were obtained on charges of fishing outside the 1925 line.

These two cases are :

(1) That of the *Edgar Wallace*, fined 5,000 kroner and 1,450 kroner, with 100 kroner costs, in all 6,550 kroner, for an alleged offence in the neighbourhood of Omgang on 6th June, 1932 [1].

(2) That of the *Loch Torridon*, fined 5,000 kroner, with 300 kroner costs, together with confiscation of fishing gear to an estimated value of 1,700 kroner, in all 7,000 kroner, for an alleged offence in the vicinity of Senja on 6th April, 1933 [2].

His Majesty's Government wish me to make it clear that they request the remission of the fines imposed on these trawlers on the ground that, notwithstanding the practice referred to above, they were convicted of fishing in waters byond the limits claimed in 1925, and to add that this request is made without prejudice to their contention, in the case of the *Loch Torridon*, that there was no sufficient justification for the denial by the competent judicial committee of the right to appeal to the Supreme Court on the question of law involved. The attitude of His Majesty's Government on this question was set forth in my note of 21st October last, in which it was pointed out that such a judgment exposed British trawlers to the consequences *ad hoc* and uncertain decisions on the extent of Norwegian territorial waters.

From Your Excellency's note of 18th December last it is understood that the Norwegian Government support the Judicial Committee in their refusal of appeal to the Supreme Court in this case, on the ground that the skipper of the *Loch Torridon* already knew from statements in the earlier trial the extent of the Norwegian claims to territorial waters in the region in which he was accused of fishing, and could not, therefore, and in fact did not, plead ignorance of them in the present case.

His Majesty's Government are unable to accept this argument as justifying the decision of the Judicial Committee. Although it is admitted that the skipper of the *Loch Torridon* knew the limits which the *local court* claimed as Norwegian territorial waters in the part of the coast concerned, and in fact during the course of the second trial maintained that he did not wittingly transgress them, His Majesty's Government are not aware that these limits have ever been officially claimed by the Norwegian Government. The decision of the Judicial Committee in this case suggests therefore that the local courts in Norway have power to declare as being within Norwegian jurisdiction waters over which the

[1] The *Edgar Wallace* was in the general neighbourhood of Nordkyn in East Finnmark.

[2] As stated above (para. 39 of the Memorial), this ship was in the neighbourhood of Andfjord.

Norwegian Government themselves have never definitely stated their claims; and such a principle clearly cannot be accepted by His Majesty's Government. Where no official claims in this respect exist, it is clear that there can be no valid legal basis for a decision, unless it be the accepted principles of international law; and it is equally clear that justice requires that it should be possible to appeal to the highest competent tribunal on any matter involving the application of international law. His Majesty's Government must accordingly urge the Norwegian Government to admit the right of British subjects to appeal to the Supreme Court in all cases which involve claims to territorial waters not officially defined by the Norwegian Government.

The above view is naturally put forward without prejudice to the question of how far His Majesty's Government would be able to accept as valid any given limits, even if officially claimed by the Norwegian Government. Nor do His Majesty's Government intend to imply that they would necessarily be able to accept as correct even the jugdment of the Supreme Court in regard to points of international law.

I avail, etc.

(Signed) CHARLES WINGFIELD.

No. 2

SIR C. WINGFIELD TO Mr. MOWINCKEL

Your Excellency, Oslo, 24th May, 1934.

Your Excellency will remember that in a note dated 30th November, 1933, the Norwegian Minister in London was good enough to inform His Majesty's Government that, in confirmation of the fact that there had been during the previous eighteen months no change in the attitude of the Norwegian Government towards British trawlers, and in order to avoid friction, the Norwegian Government had instructed their fishery control vessels to continue the practice of years past pending the decision of the Storting in regard to the extent of Norwegian territorial waters; and you are aware that this practice was founded on an arrangement come to in 1925, under which a red line marked on certain charts was to be observed provisionally as indicating the limit outside which British trawlers could count on freedom from interference.

I have received instructions from His Majesty's Principal Secretary of State for Foreign Affairs to bring to Your Excellency's notice the following cases in which British trawlers have been interfered with or hampered in their operations or subjected to penalties, even though they have scrupulously observed the limits of territorial waters described above:

(a) On Saturday, 21st April last, at about noon a number of British trawlers were fishing off the Tanafjord in fine and clear weather well outside Norwegian territorial waters. A motor-boat approached the steam trawler *Balthasar* and a man on board the motor-boat accused the trawler's skipper of having towed down his lines. The skipper replied that he had seen no sign of lines and was not aware of having towed any down. When the *Balthasar* hauled her

gear, about half an hour later one of the many motor-boats fishing near, whether the same as before or not the skipper does not know, came close and watched the process. A length of line with hooks was found in the trawl and was cut clear, and the motor-boat went away. But on Sunday, 22nd April, the Norwegian gunboat *Trek* visited the *Balthasar* and her captain insisted that the skipper must pay 400 kroner for the damage of these lines, although he protested that there were no marks to show where these lines had been set. On passing at Honningsvaag the skipper had to tell his agent to pay this compensation in order to prevent the detention of the trawler.

(*b*) On 22nd April, when several British trawlers were fishing outside the Tanafjord and outside the limits agreed upon last November, a Norwegian gunboat cruised amongst them at night without lights, seriously hampering their fishing operations, and an officer from this vessel compulsorily visited two of them, namely, the *Balthasar*, as described above, and the *Bernard Shaw*. In the case of the latter trawler the officer appears to have inspected her without giving any reason for this action.

(*c*) At 4 p.m. on 28th April the steam trawler *Orsino* placed her fishing buoy 4½ miles to seaward of the Norwegian base-line off Berlevaag and proceeded to fish with all her lights burning, keeping always outside her buoy. A motor vessel flying the Norwegian naval flag approached and proceeded to accompany all the movements of the trawler; and, when the latter hauled her trawl, a small boat with an officer in uniform in it was sent to the *Orsino*, the officer and one man coming on board her and, without even speaking to the skipper who was on his bridge, stationed themselves at the fore and aft "doors" respectively and examined the gear as it came on board. The officer subsequently came on the bridge and explained that there had been a complaint of British trawlers fouling the lines of Norwegian fishing vessels. The skipper denied having fouled any fishing lines and asked whether there was any complaint as to the state of his gear. To this the officer replied that he had no complaint to make and that the buoy was outside the 4-mile limit claimed by Norway. The *Orsino* then resumed fishing operations without further interference.

Your Excellency is aware of the strong feeling caused in the United Kingdom by these and other cases, in which it is felt that British trawlers have met with treatment which is unjustified; and in regard to such cases you will also have observed reports both of the question asked in the House of Commons on the 14th instant, and of Sir John Simon's reply. Far from diminishing in numbers, cases of the arrest of, or interference with, British trawlers seem to have been particularly numerous of late; and some of them, at all events, go to show that the Norwegian authorities in northern Norway are not permitting British trawlers to carry on their vocation undisturbed in waters outside the 1925 limit.

I have consequently received instructions to protest against the action of the Norwegian gunboat, as described above, in interfering with British vessels on the high seas, on the ground that such action is contrary to international law as well as an obvious breach of the understanding of November last; and also against the action of the Norwegian police in

taking proceedings against a British vessel for an offence alleged to have been committed on the high seas and therefore outside the jurisdiction of the Norwegian courts. I am likewise directed to ask for the refund of the 400 kroner, which the skipper of the *Balthasar* was thus compelled to pay, for an apology for the illegal levy of this penalty, and for an undertaking that there shall be no further interference of any kind with British vessels working outside the agreed limit.

I venture to express the earnest hope that the Norwegian Government will find it possible to meet these requests of His Majesty's Government, and thus to reassure those persons connected with our fishing industry who have been seriously perturbed by the recent course of events, for I am bound to point out to your Excellency that His Majesty's Government may otherwise find themselves compelled reluctantly to take such measures as may be open to them to protect British vessels from further interference on the high seas.

I avail, etc.

(Signed) CHARLES WINGFIELD.

No. 3

SIR C. WINGFIELD TO Mr. MOWINCKEL

Oslo, 24th May, 1934.

Your Excellency,

It has occurred to His Majesty's Government that a good many of the cases, which are so frequently arising in connection with the activities of British trawlers off the coast of Norway, might be obviated if some machinery could be devised for settling claims made by Norwegian inshore fishermen against British trawlers in respect of damage to fishing gear, since it seems possible that fishermen in certain cases have alleged that the loss of gear they have sustained took place in territorial waters, so as to induce the police to start criminal proceedings for illegal fishing and so to assist them in recovering the damages they claimed.

His Majesty's Government have in mind some procedure for the investigation of claims on the spot by responsible officials, as is done under the Anglo-Belgian Convention of 1891, which makes provision for claims by fishermen of both countries. In the present case, however, complaints by British fishermen against Norwegians are not likely to be numerous and, as they would in the circumstances contemplated relate to incidents in Norwegian waters, it would be found more convenient to investigate them in Norway than in the United Kingdom.

The most suitable arrangement would therefore appear to be one, whereby any claim put forward by the fishermen of either country against the fishermen of the other in respect of an incident occurring in waters adjacent to the coasts of Norway, should be investigated by a board consisting of a British consular officer and a person appointed by the Norwegian Government, and that the board's report should be forwarded to the Governments of both countries for consideration, with a view to their taking legal proceedings or any other action which might be required.

I am therefore instructed to submit the foregoing proposals to the Norwegian Government and to urge the importance of the conclusion of

an agreed scheme on these lines at an early date, whilst leaving for future consideration the question as to the desirability of embodying the arrangements in question in a formal convention.

I avail, etc.

(*Signed*) CHARLES WINGFIELD.

No. 4

THE MINISTER FOR FOREIGN AFFAIRS TO SIR C. WINGFIELD

[*Translation*]

Monsieur le Ministre, Oslo, 31st May, 1934.

I have the honour to acknowledge the receipt of your note of the 24th instant, containing a proposal to the effect that an endeavour shall be made to come to an agreement between the Norwegian and the British Governments regarding the establishment of a commission consisting of a British consular representative and a person appointed by the Norwegian Government for the investigation of claims by Norwegian fishermen against British trawlers in respect of damage done to fishing gear outside territorial waters.

In this connection I have to inform you that the Norwegian Government considers the proposal put forward of great interest, but they are of the opinion that the question should stand over and be taken up eventually if negotiations should take place with the British Government in continuation of the preliminary negotiations which were held in London in November 1933, when the Storting has come to a decision on the question of the settlement of base-lines for Norwegian territorial waters.

I have, etc.

(For the Minister for Foreign Affairs)
(*Signed*) AUG. ESMARCH.

No. 5

[*Translation*]

Monsieur le Ministre, Oslo, 31st May, 1934.

In acknowledging the receipt of your note of the 24th instant, in which you draw attention to various cases in which the Norwegian fishery patrol is said to have inspected British trawlers while fishing on the high seas, I have the honour to inform you that I have requested the competent Ministry to obtain explanations from the officers in command of the fishery protection vessels in question regarding the cases complained of. As soon as these explanations are forthcoming I shall have the honour to revert to the matter.

At the same time I desire to add that, should it be proved that the Norwegian fishery patrol has interfered unwarrantably with British trawlers, the Norwegian Government is fully prepared to make good the wrong done.

As regards the statement in your note concerning an arrangement of 1925, I do not fail to draw attention to the fact—of which, moreover,

the British Government is also well aware—that the negotiations of 1925 did not lead to any arrangement.

I avail, etc.

(Signed) JOH. LUDW. MOWINCKEL.

Annex 15

No. 1

REPORT OF COMMITTEE ON FOREIGN AFFAIRS OF STORTING

[*Translation*]

1. After consultation with the Minister for Foreign Affairs, the committee hereby beg leave to submit their report as to the laying down of base-lines on that part of the coast where, according to experience hitherto acquired, it is most urgent to establish the necessary protection against destruction by foreign trawlers of the stock of fish at the bottom of the sea, i.e. off the coast of Northern Norway.

2. It is on this part of our coast that all the seizures of trawlers have taken place during later years; it is in respect of this part of the coast that over and over again disputes have arisen with the masters of foreign trawlers as to where the Norwegian fisheries limit goes; and in particular the British Government have repeatedly requested that the exact limit of this part of the coast should be fixed so that it might be communicated to the trawler organizations.

3. The fact that it has taken such a long time to have this question settled in a satisfactory way is due to special historical and geographical reasons which are very much alive in the minds of the people.

4. Since time immemorial the Northern Sea, from the southern boundary of Hålogaland, has been claimed as a Norwegian sea, the exploration of which was reserved for Norwegian subjects, and when the neutrality limit, i.e. the limit within which the King undertook to protect foreign vessels, was fixed, during the great European wars in the eighteenth century, to be one German mile, equal to 4 nautical miles [1], it was not the intention, and it did not follow from the wording of the ordinance, that it should in any way restrict the exclusive fishing rights of the inhabitants. It was the high sea fisheries which had made it possible to settle on the coast of Northern Norway; without these fisheries the country would neither have been inhabited nor cultivated. So old are these facts that even the ancient sagas mention rules and regulations as to the high sea fisheries—just as they mention rules for the right of property on shore.

5. The only foreigners who, until the invention of the trawl, in a modest measure fished off a part of the coast of Northern Norway—with the King's permission—were the Russians, and they obtained this privilege through treaties and had to pay dues for fishing outside a limit of 1 Finnmark mile (6 nautical miles) from shore. Other Powers were fully aware of this limit.

---

[1] Actually sea miles.

6. The first time when a foreign (French) fishing vessel showed itself in Lofoten was in 1868; it was caused to stop fishing by an inspection vessel, and in the exchange of notes which ensued from this incident France recognized the special geographical, historical and economic reasons which made it a condition of life for the inhabitants of Northern Norway to have an exclusive fishing right within the 4-mile limit which the Norwegian Government claimed [1].

7. Owing to the development of trawl fishing, the Norwegian long-line and net fishing was threatened—in the same way as, for instance, the Scottish inshore fishing—and by a law of 1908 all trawl fishing in Norwegian territorial waters was prohibited.

8. The special social forms of the fishing industry which have developed in Norway, the co-operation and the collective economic interests, which in a special degree have given our fisheries a character of economic democracy on a broad basis, could not be consistent with steam trawl fishing, which necessarily would require always bigger ships and more capital. For the fishermen of Northern Norway, who are the poorest of the Norwegian people, fishing by cheap means is a necessity, a form of fishing which gives every man the feeling of a free and independent existence and which gives everyone his chance and the greatest possible latitude for personal daring and able seamanship.

9. In the nothernmost part of our country some 90 per cent. of the people are economically dependent upon the fisheries. The industrializing of the fishing and, as a consequence, its monopolizing by strong capitalist societies would be a social catastrophe. Furthermore, trawling in Norwegian territorial waters would mean the destruction of the home fisheries.

10. At an early date the Norwegians were aware of the fact that the use and the development of trawling would mean the destruction of the stock fish on the old fishing grounds unless effective protective measures were internationally adopted. Not only does the trawl kill the young fish and destroy all possibility of a rational renewal of the stock, bu tit breaks up the bottom of the sea, changes the nature of the banks and destroys the spawning places, and may thus essentially alter the rules for the migration of the fish. As a consequence of these circumstances, the old North Sea fisheries are a thing of the past. The fisheries off the coast of Scotland are ruined; the trawlers go farther and farther, and whilst only twenty-five years ago it was still an exception to see a foreign trawler off the coast of Northern Norway, there are now every year hundreds of English, German and French trawlers, and sometimes also of other nationalities, especially in the counties of Troms and Finnmark.

11. They fish on banks which lie outside, partly far outside, the 4-mile belt, which in the sixties of last century was adopted as constituting the limit in relation also to fisheries; but nevertheless in waters which have from time immemorial and by right of discovery and exploitation been considered as being exclusively Norwegian waters and reserved for the inhabitants, who are inseparably tied to, and who derive their only livelihood from, the fishing industry off the coast.

12. The people of Northern Norway, therefore, have not felt in any way satisfied with the 4-mile fisheries zone, however the base-lines

[1] It would probably be more correct to say that France accepted the Vestfjord as territorial waters.

might be drawn. It is true that this latter question is of the utmost importance, and it is growing in magnitude every year. As a consequence of the improvement of the trawling and the development of the tonnage and the engine power of the trawlers, it is now possible to trawl in waters where only a few years ago it was considered impossible owing to the depth and the conditions of the bottom of the sea, and the demands for an effective inspection are therefore always growing. But, at the same time, it is clearly recognized that the 4-mile limit *alone* does not in the long run secure the existence of the inhabitants. Numerous and strong demands have therefore been raised in the fishing districts for a far more extensive protection. Thus the committee, the Storting and the Government have received most urgent demands from local authorities and from mass meetings of fishermen to the effect that a 10-mile fisheries zone be established, or a 12-mile limit, as claimed by Russia—or even a 40-mile belt, so that the coastal banks might be wholly protected. And in times when tens of thousands of fishermen are without any means of subsistence because it has been ascertained that the stock of fish is continually diminishing, and in times when the Storting is voting millions of kroner every year in aid of destitute fishermen in the most exposed districts in order to keep them from starving—in such times these demands cannot be disregarded by the responsible authorities, but must be seriously examined; it is necessary to discuss ways and means of regulating the high sea fisheries in such a manner as to secure not only the livelihood of the inhabitants, but also to protect the stock of fish and thus avoid a breakdown of the trawling industry itself.

13. In order to show the feeling of the fishing population on the whole on this point, a few lines may be quoted from one of the numerous letters received by the committee:

> "There are thousands of people who are connected with the fishing industry and who, confiding in the continuance of this industry, have for generations built their homes on the coast and very often, so to speak, on bare stones in mountainous districts, where there is no other livelihood than fishing. The Government have helped building harbours and have given loans towards the building of fishing craft, and also of dwelling-houses, in places where it has been possible for the fishermen to cultivate a stretch of soil so as to keep a cow or two. All this has been done confiding in the fishing as the principal means of subsistence. To-day great masses of youths stand ready to take up the hard struggle of their fathers, and they hope that the sea will give them enough to pay off the debts on their small, but beloved, homes.
>
> I have often thought of this when sailing along the outer side of Senja, and also when passing the small islets and sounds outside Tromsö.
>
> I find that England ought to show her goodwill and take up negotiations with a view to securing the conditions of life for the thousands of families who cannot otherwise make their livelihood on the long coast from Vesterålen to the Finnish border."

14. Certain discussions have taken place in the International Council for the Exploration of the Sea; and there have also been discussions between Norwegian and British delegates. As link in the work for the protection of the fishermen, and in order to avoid friction, a Norwegian-

British agreement was concluded in 1934 providing for the settlement of claims in respect of damages to fishing gear by trawlers, whether caused in territorial waters or not. However, it has been urged, especially by England, that in order to arrive at establishing international protective regulations, it is necessary to know exactly where Norway draws the limit between national and international fisheries waters.

15. This committee have thoroughly discussed the question of extending the width of the fisheries zone which has been maintained by Norway since 1869, but they have come to the conclusion that they cannot recommend a considerable extension of the fisheries limit outside Norway by a unilateral Norwegian proclamation, however justified such measure would seem to be in view of the vital necessities of the inhabitants of Northern Norway. Norway has fishing interests on foreign coasts, too, and any arbitrary extension of the exclusive rights of the coastal State may create international friction.

16. The committee, therefore, do not venture to recommend to the Government, in spite of the most insistent demands from the inhabitants of the districts concerned, to proclaim certain banks outside the 4-mile limit—especially Malangsgrunnen and Svendsgrunnen—as Norwegian territory. They will confine themselves to recommending that the question as to the appropriate means for the protection of the fisheries on these and other banks be discussed with the interested Powers.

17. With a feeling of resignation, due to the development which has taken place in the last seventy years and to the fact that Norway has no longer been able to uphold the privileges on the seas which correspond to the old rights and the vital interests of the inhabitants, the committee confine themselves to recommending to the Government that a limit in respect of fisheries be fixed in conformity with that preconized by the Governor of Finnmark in 1908 and by the Commission on Territorial Waters of 1911 in their report, specifying by Royal decree, in the same way as in 1869 from which points on the coast the 4-mile limit is to be reckoned.

18. This fisheries limit shall be drawn 4 miles outside, and parallel to, straight lines drawn between the following points:

. . . .

[See schedule annexed to the Royal Decree of the 12th July, 1935 [1].]

19. The fact that the committee have used the term fisheries limit is due to practical reasons. One of the principal aims of fixing the limit is to avoid friction with foreign trawlers. To this end it will suffice to fix the limit in relation to fisheries. The width of the customs boundary of Norway is 10 miles. The two States the inhabitants of which in particular go in for trawling, viz. Great Britain and Germany, both claim a 3-mile neutrality limit. And they have both, especially Great Britain, intimated that they consider this to be of vital interest. It seems, therefore, that the simplest and most practical way of arriving at a *modus vivendi* as regards the trawling question would be to consider these two questions independently of one another. The easiest form for an understanding—explicit or implicit—as to the fisheries question between Norway and the interested States is that each State should

[1] Annexed to the Application of the Government of the United Kingdom. See pp. 12-16.

reserve its principal point of view as regards the neutrality limit, so that nothing in that respect should be forfeited and nothing prejudiced. In this connection it is of some interest to quote the note from the British Government to the Norwegian Government of the 28th October, 1916, in which a 3-mile limit was claimed in a prize court case :

> "At the same time His Majesty's Government have no desire that the rights exercised by them in the fourth mile during the war should prejudice the Norwegian Government in the efforts which the latter may contemplate making in the future to secure recognition of their claims, in connection with fishery rights, by international agreement, and in the event of the prize court holding that the only limit which Norway is entitled to claim for purposes connected with the rights of belligerency is the 3-mile limit, His Majesty's Government are prepared to undertake not to quote such a decision as invalidating any Norwegian claims in connection with fishery rights."

20. The committee are aware that the base-lines which they draw in conformity with former proposals do not on every point coincide with the lines indicated on the chart of Eastern Finnmark which, in November 1924, at the request of the British Legation in Oslo, was sent to the British Chargé d'Affaires by the Ministry for Foreign Affairs. But a reservation was made beforehand to the effect that such a chart, if handed over, should not later on be invoked as in any way prejudicing the point of view of either country, a reservation which was reiterated when the chart was sent. The difference is insignificant as regards the sea space, but experience has proved that the base-lines should be fixed as proposed in 1908 and 1911. The committee have made the necessary rectifications in conformity with the later corrected charts.

21. The committee are further aware that the base-lines which they recommend on certain points are somewhat longer than the so-called "red lines" indicated on some British charts. These latter lines have never been recognized by Norway, and they have no authoritative title except inasmuch as the Norwegian Minister in London, in a note of the 30th November, 1933, promised that the Norwegian fishery inspection vessels would abide by these lines—which, however, were not directly mentioned in the note—until further notice : "This step has been taken pending the decision of the Storting in regard to a Bill establishing the base-lines of the Norwegian territorial waters."

22. It is this decision which the Storting is now being invited to take. And it would not be right to conceal the fact that these "red lines" have called forth protests from the interested districts. They were drawn up (at the time of the discussions which took place in Oslo in 1924) in consequence of a British request, and constituted an attempt at showing the principle on which base-lines should be drawn according to the Norwegian point of view, but without in any way binding the Norwegian authorities as regards the final fixing of the base-lines.

23. This clearly results from the explicit understanding on which the discussions in 1924-1925 took place from both sides, viz. :

> "The two Governments represented are not in any way bound by what the committees or their members might put forward or agree to during the discussion. Neither shall these discussions, nor

even the fact that they take place, in any respect whatsoever prejudice the present Norwegian point of view as to the extent of the territorial waters of Norway or with regard to other questions in connection with territoriality. This, of course, holds good as regards the British point of view."

24. In conformity herewith and with reference to the Government's proposition, the committee invite the Storting to adopt the following resolution :

"The Storting gives its consent to the Government soliciting a Royal decree establishing base-line points for the fixing of the fishery limit of Norway from Grense-Jacobselv as far as Træna in conformity with those indicated in the present report."

No. 2

Explanatory statement issued with the Royal Decree of July 12, 1935

[*Translation*]

The question of the Norwegian maritime boundaries has for a long time been the object of discussion between the authorities of the country. A special Royal commission was appointed in 1911 to make enquiries as to the sea boundaries in Finnmark, in 1912 as regards the counties of Troms and Nordland, in 1913 as regards Nord-Tröndelag and Sör-Tröndelag and part of Möre. A new commission was appointed in 1926 to submit proposals as to the maritime boundaries of the whole of Norway.

Certain principles as to how the sea boundaries should be reckoned and drawn have been maintained unaltered by the Norwegian authorities as far back as the seventeenth century, and more especially since 1745 it has been an accepted rule that the King was master of the sea as far as 1 geographical mile from outlying banks and rocks along the coast. This rule was laid down in a more precise form by a Royal decree of the 22nd February, 1812, by which it was resolved that the boundaries of the Norwegian maritime belt should extend as far as 1 ordinary geographical mile from the outermost isles or rocks which are not submerged by the sea.

But definite boundary lines have been laid down only as regards the sea off Sundmöre, by a Royal decree of the 16th October, 1869 ; outside Romsdal and Nordmöre by a Royal decree of the 9th September, 1889, and for Varangerfjorden by a Royal ordinance of the 5th January, 1881. The boundaries off the county of Möre and Romsdal were proclaimed as limits of the Norwegian fisheries zone, and the boundaries outside Varangerfjorden as limits for whaling. Whenever a limit outside the base-lines was mentioned it was fixed at 1 geographical mile.

By a law of the 30th September, 1921, it was enacted that the limits for the Norwegian customs inspection should be 10 nautical miles reckoned from the outermost isles and rocks.

In view of all these special resolutions and regulations, it is evident that the Norwegian authorities—in full conformity with international law—have made use of their sovereign rights on the sea off the shores in order to fix the maritime boundaries separately for various purposes.

The question of the limits of the Norwegian fisheries zone became acute in the beginning of the twentieth century, when British, German and other vessels started fishing with trawls off the shores of Northern Norway. By a law of the 2nd June, 1906, fishing by foreigners was prohibited in Norwegian territorial waters, and by a law of the 13th May, 1908, all trawling was forbidden in the same waters. But the enforcing of these laws has met with many difficulties because the exact limits of the Norwegian maritime belt were not laid down, and many negotiations have, in particular, taken place with the British Government.

On the 17th June, 1935, the Committee on Foreign Affairs of the Storting presented a report to the effect that the Government should take steps to fix by a Royal decree the various points of the base-lines from which the limits of the Norwegian fisheries zone shall be reckoned as regards the coast from Varangerfjorden to Træna in the county of Nordland. This report was based on proposals submitted by the Government in 1931 and 1934, and it was after consultations with the Foreign Minister now in office that the report confined itself to the said part of the coast and only dealt with the delimination of the fisheries zone. The committee thus did not touch upon the question of the neutrality limit in times of war ; it was understood that in case of war the King would make special regulations as regards this limit.

In its report the committee—also after consultation with the Foreign Minister in office—had specified the points of the base-lines to be fixed by the Royal decree.

The report was unanimously adopted by the Storting on the 24th June, 1935, and in the same sitting the Foreign Minister announced that the Government accepted it.

Annex 16

DIPLOMATIC CORRESPONDENCE, SEPTEMBER-OCTOBER 1935

No. 1

SIR S. HOARE TO MR. DORMER (OSLO)

Sir, Foreign Office, 19th September, 1935.

With reference to your despatch No. 361 of 2nd September, I am now in a position to give you the considered views of His Majesty's Government on the recent Norwegian decree defining fishery limits and the policy to be adopted with regard to it.

2. His Majesty's Government and the trawling industry in this country were very unfavourably surprised at the manner in which these Norwegian claims were announced and at the exaggerated area claimed by Norway, which appears to be far in excess of anything claimed hitherto and of what might impartially be considered to be reasonable. As you will see from the enclosed record [1] of a discussion with the British fishing interests concerned, those interests are, in fact, so incensed at

[1] Not filed.

the Norwegian action that they refuse to consider proposals such as it had been intended to submit to the Norwegian Government for the general regulation of fishing off the Norwegian coast, as stated in my telegram No. 15 of 23rd August last. It is possible, however, that the feelings of the British fishermen may be mollified after further reflection, provided that, in the meantime, they are not in a worse position for conducting their fishing operations than they were before; and it is hoped that, in those circumstances, they would be prepared to discuss the details of proposals to be made to the Norwegian Government. You will realize that it would be almost impossible to work out proposals in detail without the collaboration of the trawler interests.

3. You should put the above considerations to the Norwegian Government and urge them as strongly as possible to continue to refrain from enforcing the new decree for as long as possible, and certainly for not less than a month from 1st October next. You should, at the same time, enquire whether they would agree, in principle, to consider proposals on the lines mentioned in my telegram No. 15, which would incorporate four main points: first, the settlement would take the form of a convention on the lines of the North Sea Fisheries Convention and would make adequate provision for the marking and lighting of fishing gear; secondly, lines would be drawn dividing areas reserved to trawl and line fishermen respectively and not to fishermen of different nationalities; thirdly, these lines would enclose in some cases banks many miles outside any possible territorial limit; and, fourthly, in other places the lines would trend towards the coast, leaving trawling areas relatively close to it.

4. In reinforcing your representations you may, if you think it advisable, tell the Norwegian Government that His Majesty's Government are being strongly pressed by their fishing industry to afford protection to British trawlers up to a 3-mile limit and to take measures to prevent or impede the import of fish into this country from Norway, and that they will find it very difficult to resist this pressure and to persevere in their proposals for a permanent settlement which they feel would be to the ultimate benefit of both countries, unless the Norwegian Government show a reasonable frame of mind by continuing for the present to respect the "red line" understanding and by accepting the principle of an arrangement by convention which would have regard to British as well as Norwegian fishing interests.

I am, etc.

(Signed) SAMUEL HOARE.

No. 2

MR. DORMER (OSLO) TO FOREIGN OFFICE, 1st OCTOBER, 1935

I had an hour's conversation with Minister for Foreign Affairs to-day and spoke generally in the sense of your despatch No. 258 [1]. He defended Norwegian Government's action in defining their fishing limits and said he was surprised that we had not expected it. He spoke with apparent sincerity but we did not pursue discussion on this point because

[1] No. 1 above.

it has no immediate interest. He said Norwegian Government would gladly consider any proposals for a comprehensive settlement, but owing to point four mentioned in your despatch he would have to wait and see what was actually proposed. His attitude in this matter was not unsatisfactory, and I will report further by despatch.

As regards question of postponing enforcement of decree he said he could again give assurance that authorities would act leniently and that he expected an equally conciliatory attitude on our part. I pointed out that unless this meant that they would permit trawlers to continue fishing temporarily up to red line, assurance would be of no practical help. He said that what I was asking represented no compromise, but I maintained that it did because if red line agreement was to be immediately cancelled we should be obliged to defend the right of trawlers to fish up to the 3-mile line, and if Norwegian patrol vessels warned them, however leniently, off the line laid down by the decree incidents were inevitable. I pointed out how satisfactorily on the whole provisional agreement had worked during the last season, and how sincerely desirous His Majesty's Government were of arriving at a friendly and mutually beneficial settlement. I said that we recognized Norwegian Government's difficulties, but he must also recognize ours and not make things more difficult than they already were. He finally stated that, in view of what I had said, he would consult his Government and give me an answer as soon as possible.

Conversation was entirely friendly and his Excellency showed conciliatory disposition. He is dining with me quietly on 3rd October to meet, as I hope, Mr. Maurice.

No. 3

MR. DORMER TO SIR SAMUEL HOARE (RECEIVED 8th OCTOBER)

Sir, Oslo, 2nd October, 1935.

In my telegram No. 52 of yesterday's date I had the honour to report my conversation with the Minister for Foreign Affairs on the subject of the new Norwegian decree respecting fishery limits, and I will now add some further details.

2. After I had spoken in the sense of your despatch No. 258 of 19th September, Mr. Koht said that he was surprised at our being surprised at the manner in which Norway had announced her claims. He said that His Majesty's Government had on more than one occasion asked to be informed of the exact extent of the Norwegian claims, and by carefully avoiding any mention of territorial limits he had thought that we would not raise objections to Norway stating her case. I thought his defence singularly lame, but, as he continued that this point was now of no immediate interest, I thought it better to defer arguing until we came to the question which most mattered.

3. As regards the proposals set forth in paragraph 3 of your despatch, I had, when I saw Mr. Nygaardsvold, put them down in writing in a memorandum, a copy of which I enclose. Mr. Koht stated that the Norwegian Government would gladly discuss with His Majesty's Government the question of trawling and line fishing in waters "outside

Norwegian fishing territory", both as regards dividing the banks and marking buoys and adhering to the North Sea Convention. He said the Norwegian Government would be glad to listen to any proposals coming from the British side, but that he could not tie himself in advance to agree to any particular principle until he knew more as to what was proposed. At the end of our conversation and just as I was leaving he handed me the enclosed *aide-mémoire*, which although it was worded in "landsmal", I noticed contained the same words : "outside Norwegian fishing territory". I said to him that I foresaw difficulty over that expression, as it looked as if the Norwegian Government were only prepared to discuss fishing in waters outside the decree limits. His Excellency replied that he had worded his *aide-mémoire* with great care. Both sides would recognize some Norwegian fishery territory, however close to the shore it might lie, and the words which he had used were therefore merely intended to apply to waters which lay outside that limit wherever it might be drawn. He seemed to me not quite to understand what was meant by agreeing "in principle", but from his general attitude I felt satisfied that to all intents and purposes he would not object to the discussion being carried on on the basis set forth in your despatch.

4. Our conversation then turned to what was to happen in the meantime. I do not think that I need add to what I reported in my telegram in this respect. We must have discussed the matter about continuing the "red line" agreement for the best part of half an hour. He was conciliatory throughout, and I think that he will do what he can to meet your wishes. I thought it advisable, on the whole, to mention the pressure which the fishing industry in the United Kingdom was bringing on His Majesty's Government, but I did not, except by implication, allude to the possibility of our sending out a fishery protection vessel ; and as regards the question of preventing or impeding the import of fish into the United Kingdom, I put it that the fishing people at our ports might easily make difficulties about handling fish from Norway and that in these democratic days, and as we were not under a dictatorship, it might well prove difficult to make them do so. Mr. Koht did not see anything in the nature of a threat in what I said, but I think my words had an effect. He said that he would speak to the Prime Minister, Mr. Nygaardsvold, at once, and let me have a reply as soon as possible.

5. I am also hoping that during Mr. Maurice's visit this week there will be a good opportunity for enlightening Mr. Koht still further as to the necessity for the Norwegian Government to show a reasonable frame of mind.

I have, etc.

(Signed) CECIL DORMER.

Enclosure 1

Copy of aide-mémoire *left by His Majesty's Minister with Norwegian Prime Minister on 25th September, 1935*

With a view to reaching a settlement of the fisheries question off the Norwegian coast, His Majesty's Government would be glad to learn

whether the Royal Norwegian Government would agree, in principle, to consider proposals which would incorporate four main points : first, the settlement would take the form of a convention on the lines of the North Sea Fisheries Convention and would make adequate provision for the marking and lighting of fishing gear ; secondly, lines would be drawn dividing areas reserved to trawl and line fishermen respectively and not to fishermen of different nationalities ; thirdly, these lines would enclose, in some cases, banks many miles outside any possible territorial limit ; and, fourthly, in other places the lines would trend towards the coast, leaving trawling areas relatively close to it.

Enclosure 2

Translation of aide-mémoire *handed by the Norwegian Minister for Foreign Affairs to His Majesty's Minister on 1st October, 1935*

The Norwegian Government will gladly discuss with the British Government questions regarding trawl fishing and line fishing in waters outside Norwegian fishery territory, both as regards dividing up the fishing banks and marking, etc., in accordance with the provisions of the North Sea Convention.

The Norwegian Government will gladly listen to all considerations which in the discussions may come from the British side, but it cannot in advance bind itself to particular hypotheses in respect of the agreement which, it is hoped, can be reached.

No. 4

MR. DORMER (OSLO) TO FOREIGN OFFICE, 7th OCTOBER, 1935

My telegram No. 52.

1. Owing to meetings which occupied morning and evening of 5th October and again yesterday between Foreign Affairs Committee and Government when trawler question as well as question before League of Nations was discussed, it was only to-day at 1.30 that Minister for Foreign Affairs could give me his answer. This was that Norwegian Government could not withdraw their decree, but that he was authorized to repeat his assurances that their authorities would act leniently pending negotiations of a comprehensive settlement. To this I replied that, as he already knew, His Majesty's Government were unable to accept decree limits and that unless assurance meant that trawlers would not be arrested up to "red line", they would have to take their stand on 3-mile line and, if necessary, give protection up to that line. He said "but if they are not arrested ?" to which I replied that if they were allowed to fish up to "red line" all would be well and I informed him of instructions sent to vice-consul. He did not demur. He then asked about our detailed proposals for a settlement. Would we put them forward as soon as possible or did we intend to wait and see if an incident occurred ? I said if we

could feel assurance that there would be no incident we should communicate them as soon as we could have co-operation of trawler interests. He asked whether we could not go ahead at once without, of course, committing ourselves, as a great deal depended on question whether our proposals would be found acceptable. The 1925 proposals which Mr. Maurice mentioned to him as being most practicable did not, he thought, cover all banks and he thought and hoped it was our intention to have a comprehensive settlement.

2. I said I would at once inform you of our conversation.

3. Short of actually saying so, Minister for Foreign Affairs could hardly have implied more clearly that there would be no serious interference with trawlers up to "red line".

4. He asked about advisability of issuing some announcement to the press, as fishermen were bound to protest when they saw our trawlers inside decree limits and an assurance that we were putting forward comprehensive proposals would have a calming effect. I said that if anything was published it would have to mention that meanwhile "red line" agreement was being prolonged. He said that in that case it would be better not to publish anything here.

5. He leaves for Geneva to-night.

Annex 17

BASE-POINTS IN BLUE LINE OF NORWEGIAN ROYAL DECREE OF 12th JULY, 1935

The following is a brief description of the base-points of the Norwegian Royal Decree of the 12th July, 1935.

The lengths of the lines between consecutive base-points are shown against the middle of brackets joining them in the first column.

	No. of base-point	*Name*	*Position*	*Description*	*General locality*
	1	Boundary between Norway and Finland (now U.S.S.R.)			EAST FINNMARK
30 miles (across Varangerfjord)					
	2	Eastern outer point of Kibergnes	70° 17·3′ N. 31° 04·3′ E.	A headland on the mainland	
6¼ miles					
	3	The outer point on the east side of Hornoy	70° 23·3′ N. 31° 10·5′ E.	The outer point of the small island of Hornoy lying within 3 miles of the mainland	
3 cables					
	4	Staurnes on Hornoy	70° 23·4′ N. 31° 10·2′ E.	A point on the island of Hornoy, see (3) above	
½ mile					
	5	Kalnes on Reinoy	70° 23·9′ N. 31° 09·3′ E.	A point on the island of Reinoy lying within 3 miles of the mainland	
25 miles					
	6	Korsnes	70° 40·5′ N. 30° 13·4′ E.	A headland on the mainland	
3 miles					
	7	Molvikskjær	70° 42·3′ N. 30° 06·3′ E.	An above-water rock about 1½ cables off-shore	
19 miles					
	8	Kjolnes	70° 51·2′ N. 29° 14·8′ E.	A cape on the mainland	
25 miles					
	9	The skjær with perch east of the skjær on which Torrba beacon is situated	71° 06′ N. 28° 12·3′ E.	A drying rock within 3 cables of the mainland	
4 cables					
	10	The skjær outside the skjær on which Torrba beacon is situated	71° 06·1′ N. 28° 11′ E.	A drying rock within 4 cables of the mainland	
10·2 miles					
	11	The outer point of Avloysa at Nordkyn	71° 08′ N. 27° 39·9′ E.	A cape on the mainland	
39 miles (across Svæsholthavet)					

WEST FINNMARK

Distance	No. of base-point	Name	Position	Description	General Locality
39 miles (across Svæsholthavet)	12	Knivskjærodde	71° 11·1′ N. 25° 40·9′ E.	A long low projecting point at the northern end of Mageroy, a *large* island separated from the mainland by a channel about ¾ mile wide	WEST FINNMARK
19 miles	13	Avloysinga at the northwest point of Hjelmsoy	71° 06·9′ N. 24° 43·7′ E.	A point on the island of Hjelmsoy, which island is separated from the mainland by less than 2 miles	
2 · 8 miles	14	Stabben, the skjær with perch north of Ingoy	71° 06·1′ N. 24° 04·1′ E.	An above-water rock about 8 cables northward of the island of Ingoy, one of the outer larger islands	
1 · 7 miles	15	The northern skagholm	71° 05·8′ N. 23° 59′ E.	An above-water rock about 1 cable off Fruholmen, an islet ¾ mile north-west of Ingoy	
1 cable	16	The dry skjær	71° 05·8′ N. 28° 58·8′ E.	An above-water rock about 1 cable north-west of Fruholmen, an islet ¾ mile north-west of Ingoy	
1½ cables	17	The dry skjær	71° 05·7′ N. 23° 58·6′ E.	An above-water rock about 1½ cables west-north-west of Fruholmen, an islet ¾ mile north-west of Ingoy	
½ cable	18	The western skagholm	71° 05·7′ N. 23° 58·4′ E.	An above-water rock about 1¾ cables west-north-west of Fruholmen an islet ¾ mile north-west of Ingoy	
26½ miles	19	Rundskjær (Bondoyskjær)	70° 51·5′ N. 22° 48·7′ E.	An above-water rock about 1½ miles south-west of Bondoy, an islet about 4½ miles north-west of the large island of Sørøy	
19 · 6 miles	20	Darupskjær at the north-west point of Sørøy (Fuglen)	70° 40·5′ N. 21° 59·1′ E.	An above-water rock about 2¼ cables off the northern point of the western extremity of Sørøy	
44 miles					

	No. of base-point	*Name*	*Position*	*Description*	*General locality*
44 miles					
	21	Vesterfall in Gasan	70° 25·2′ N. 19° 54·9′ E.	A rock awash outside territorial waters, about 9¾ miles north-eastward of northern point of island of Vanoy and 8½ miles north-west of island of Fugloy. (About 8 miles from nearest islet.)	TRØMS
18 miles					
	22	Sannifall	70° 18·3′ N. 19° 05·3′ E.	A drying rock about 3½ miles north-west of northern end of island of Kvaloy and within 2 miles of the nearest islet off that point	TRØMS
10 miles					
	23	Oter Fiskebae (position as amended by Decree of 10th December, 1937)	70° 13·5′ N. 18° 39· E.	A drying rock about 4½ miles westward of Grotoy and about 1¼ miles northward of Kitvoer an above-water rock	TRØMS
9 miles					
	24	Jubae	70° 06·2′ N. 18° 23·6′ E.	A drying rock about 2 miles westward of Sor Fugloy and about ¾ mile westward of L. Alkeskjær a small above-water rock	TRØMS
16 · 4 miles					
	25	Saltbae	69° 52·8′ N. 17° 56·4′ E.	A rock awash about 1½ miles westward of a group of rocks above water named Auvaer which are about 8¾ miles north-westward of Kvaloy with islets and rocks in between	TRØMS
19½ miles					
	26	North-west point of Kjolva	69° 36′ N. 17° 29·4′ E.	A cape at the northern end of the large island of Senja	TRØMS
13 miles					
	27	Tokkeboen	69° 29·5′ N. 16° 57·3′ E.	A rock awash about 4 miles north-west of islet of Ertnoy in entrance to Bergsfjord. Nearest above-water rock is Trollskjær about 2½ miles south-eastward of Tokkeboen	TRØMS
18 miles					

Distance	No. of base-point	Name	Position	Description	General locality
18 miles					
	28	Dry skjær north-north-east of Glimmen	69° 21·4′ N. 16° 11·4′ E.	Shown on Norwegian charts 81 and 82 as a rock awash, about 2½ miles off Andenes. Nearest above-water rock is Flesan about 1 mile southward, but it is not known if Glimmen about 1 cable from the skjær is an above-water or drying rock	NORDLAND
3¼ miles					
	29	The northern Svebae	69° 20·3′ N. 16° 02·8′ E.	A drying reef with a perch, about 1·8 miles off Andenes and ½ mile off Baran, an above-water rock	
7¼ miles					
	30	The western of Skreingan	69° 15·6′ N. 15° 48′ E.	An above-water rock about 1¼ miles off-shore	
16½ miles					
	31	The northern of Flesan north of Langenes	69° 06·1′ N. 15° 10·1′ E.	A small above-water rock about 2 miles north of Anda, an islet, and about 4¾ miles north of the northern point of Langoy	
16½ miles					
	32	North point of Flesa in Floholm outside Skogsoy	68° 53·4′ N. 14° 41·1′ E.	An above-water rock or islet, the western of a small group lying about 3½ miles west of Skogsoy	
11 . 7 miles					
	33	North point of the northern Floholm outside Aasanfjord	68° 44·7′ N. 14° 19·5′ E.	An above-water rock in a small group lying about 2¾ miles off coast of Langoy	
5¾ miles					
	34	Utflesskjær	68° 39·4′ N. 14° 13·3′ E.	A small above-water rock about 4 miles off southern end of the large island of Langoy with other rocks and islets in between	
23 miles					
	35	Kverna	68° 19·5′ N. 13° 41′ E.	Small rock, probably above water, surmounted by a beacon tower, about 9 cables off the north-western point of the large island of Vest Vaagoy, with a small islet in between	
14½ miles					

Distance	No. of base-point	Name	Position	Description	General locality
14½ miles					
	36	The northern dry skjær at Skarvholm	68° 11′ N. 13° 09·9′ E.	A small above-water rock on a bank about 3¾ miles west of large island of Flakstado and about 4 miles northward of Moskenesoy	NORDLAND
3 cables					
	37	The west point of the western Skarvholm	68° 10·8′ N. 13° 09·3′ E.	An above-water rock about 4 miles north of Moskenesoy and about 4 miles west of Flakstado	NORDLAND
2¾ miles					
	38	West point of Strandflesa	68° 08·7′ N. 13° 04·2′ E.	An above-water islet or rock about 2 miles off the north-western point of Moskenesoy	NORDLAND
13½ miles					
	39	Nordboe	67° 56·5′ N. 12° 47·4′ E.	A rock awash nearly 2½ miles off the western coast of Moskenesoy	NORDLAND
15·2 miles					
	40	Flesa, north-west of Vaeroy	67° 42·2′ N. 12° 35·4′ E.	An above-water rock nearly 2 miles north-west of Vaeroy	NORDLAND
16¼ miles					
	41	Homboe, north of Skarvholm at Rost	67° 32·3′ N. 12° 01·5′ E.	A drying rock about a mile north-west of Rostoy and about 3 cables from the nearest islet of Skarvholman	NORDLAND
1½ miles					
	42	Dryboe	67° 31·5′ N. 11° 59·1′ E.	A small drying rock about 2¼ miles west of Rostoy with rocks and islets between, the nearest being Svarvoy about ½ mile distant	NORDLAND
3½ miles					
	43	North Skjortbaken	67° 29·1′ N. 11° 52·2′ E.	A small ? above-water or drying rock south-westward of Rostoy and about 2 miles west-north-westward of the island of Storfjell with numerous islets and rocks between, the nearest being Bremholm about 6 cables distant	NORDLAND
3¼ miles					
	44	Havboe	67° 25·9′ N. 11° 49·8′ E.	A small drying rock about 1¼ miles westward of Hernyken, an islet ¾ mile north of Skomvaer. Nearest above-water rock or islet is ¾ mile distant	NORDLAND
1¾ miles					

	No. of base-point	*Name*	*Position*	*Description*	*General locality*
40 miles (across entrance to Vestfjord)	45	Flesjan	67° 24·1′ N. 11° 51·1′ E.	A small above-water rock about ¾ mile south-westward of the islet of Skomvaer, the southernmost of the Lofoten Islands	NORDLAND
14·8 miles	46	West point of the western Bremholm at Mykjen	66° 46·3′ N. 12° 26·8′ E.	The western point of an islet in the group named Myken off the coast on the southern side of Vestfjord	
7 miles	47	West point of the western Froholm	66° 35·5′ N. 12° 02·3′ E.	The western above-water rock or small islet in the Trænen group	
	48	West side of Bovarden	66° 28·8′ N. 11° 56·6′ E.	An islet near the south-western end of the Trænen group	

Annex 18

JUDGMENT OF TROMSØ COURT IN CASE OF "CAPE ARGONA"

[*Translation*]

(received from the British Embassy, Oslo)	Year 1948, the 25th November court was held in the chambers in the Arbeiderforeningen in Tromsø.
Administrating judge:	Byfogd Kristian Fauchald.
Lay judges:	Engineer Erling Rotvold. Harbourmaster O. B. Norvik. Drawn from the maritime board and both previously sworn in.
Recording clerk:	Asbjørg Pedersen.
Case No.	57/1948 by.
charged with	The Public Prosecution versus William Woodall, infringement of Law No. 2 of 17th March, 1939, paragraph 12, ref. paragraph 1, and Law No. 3 of 2nd June, 1906, paragraph 4, ref. paragraph 1.
Present:	The Public Prosecutor; Chief of Police Hans Clouman; for the Defence: the Barrister of the Superior Court Sig. Falck, privately engaged by the defendant. With the defendant appeared Commander Cumming. For S.K.N. appeared Lieut.-Commander Ellefsen.

Following a previous deliberation and casting of votes in closed session 27th November, 1948, the Court passed such

JUDGMENT

The Chief of Police in Tromsø has 25th November, 1948, issued "forelegg" to the master of the British Trawler *Cape Argona*—No. 143 H *William Woodall* for infringement of:

"1. Law No. 2 of 17th March, 1939, paragraph 12, ref. paragraph 1, for having fished with trawl in Norwegian territorial waters.

"2. Law No. 3 of 2nd June, 1906, paragraph 4, ref. paragraph 1, for, not being a Norwegian citizen or inhabitant of the Realm, having fished in Norwegian territorial waters, ref. Criminal Code, paragraph 63.

"That he, not being a Norwegian citizen or subject, on 23rd November, 1948, approximately 1320 hours, as master of the trawler *Cape Argona* H. 143 of Hull, did fish with trawl in Norwegian territorial waters off Slettnes lighthouse in Gamvik County district."

The fine levied—10,000 kroner, or 45 days' imprisonment, and in conformity with Law No. 2 of 17th March, 1939, paragraph 12, section 2, sub-section 2, demanded confiscation of value of catch and gear, the amount 10,000 kroner—was not accepted, wherefore the case was, 25th November, 1948, passed by the Chief of Police to the court with request for conviction in conformity with Law of Criminal Procedure, paragraph 277, section 4.

Both the Prosecution and the Defence have requested the case to be arraigned before the Tromsø Town Court in conformity with the Law of Criminal Procedure, paragraph 136, final section. Both parties have requested the case arraigned as soon as possible, and the defendant has waived notice in conformity with Law of Criminal Procedure, paragraph 252, section 3. The defendant was present in court during the trial and made his statement, 6 witnesses were examined, charts and written evidence were produced.

The defendant was born 8th August, 1913, British citizen, domicile: Enderby Common, Hull, master of the British trawler *Cape Argona* of Hull, married dependants: wife and 2 children, no property, income in 1947: approximately £ 2,000. Claims no previous charges or convictions.

The prosecution has demanded the defendant convicted according to the "forelegg" and charged with the costs. The defendant demanded acquittal, principally because he is of the opinion that the trawling took place outside Norwegian territorial waters, and that he, in any case, was not aware of any trespassing of the territorial limit. He further states that he is neither conversant with the laws claimed in the "forelegg" nor the whereabouts of the territorial limit line claimed by Norway for the coast from Slettnes lighthouse and eastwards. He therefore makes subsidiary claim of acquittal in conformity with Criminal Code, paragraphs 42 and 57.

The Court announces:

From the Royal Resolution of 12th July, 1935, it will appear that the Norwegian 4-mile line in the area of the Finnmark coast in question goes in a straight line from a point 4 nautical miles off point 8, the position of which is 70° 51′ 2″ N. longitude, 29° 14′ 8″ E. latitude, to 4 nautical miles off point 9, the position of which is 71° 6′ N. longitude, 28° 12′ 3″ E. latitude. And from there in a straight line to a point 4 nautical miles off point 10, the position of which is 71° 6′ 1″ N. longitude 28° 11′ E. latitude. This line shown on a chart No. 324 laid before the Court during the trial differs from the line shown on the corresponding British chart which the defendant had been given by his owners. The line shown on the last-mentioned chart, and which is claimed to be in accordance with British Admiralty's interpretation of the Norwegian 4-mile limit line, separates off Slettnes lighthouse from the Norwegian line and goes considerably nearer to the coast. From the mentioned point off Slettnes lighthouse the British line goes in a straight line to a point 4 nautical miles off Omgang light making it at this point approximately 2 nautical miles near the coast.

Inside the area limited by Norwegian and the British line is situated an important fishing ground.

The Court finds evidence for the fact, that the defendant before the trawling on this coast started the night before 23rd November, 1948, according to the usual procedure, put out a dan-buoy equipped with light. The trawler used this buoy as a starting point, and the defendant claims that he fished from this buoy in a nortwesterly direction as parallel as possible to the line claimed by the British. The dan-buoy was not found after the trawler was stopped by the Norwegian fishery protection vessel *King Haakon VII*, but according to the evidence which has been shown as to its position it must be considered proven

that it in any case was inside the Norwegian territorial limit line as stated in the Royal Resolution of 12th July, 1935. At least a considerable part of the trawling during the night before 23rd November and the following day has taken place in Norwegian territory.

The Court further finds evidence for the fact that the trawler *Cape Argona*, 23rd November approximately 1320 hours, was intercepted by the fishery protection vessel and, that it at that time was considerably inside Norwegian territorial waters, and that it then was trawling. The defendant has admitted and it is supported by the other evidence shown during the case that the fishing took place after his orders.

The Norwegian territorial waters have since the middle of the eighteenth century been fixed to be 1 "sea mile" (4 nautical miles) from land, and had, at least as far as concerns fishing, been claimed without curtailment since that time. The defendant has, according to his own statement, been trawler skipper for several years before the war and during the years after. The limit-line in question in this case from Slettnes lighthouse and eastwards has been claimed for a long time by Norway and cannot have been unknown to the defendant. It can thus not be taken into consideration that he possibly does not know the wording of the Royal Resolution of 12th July, 1935. In this connection the Court finds reasons to remark that, when the defendant takes upon himself responsibility as master of a trawler intending to trawl on a foreign coast, and then especially on the Finnmark coast with its great fjords, he should have made it a point to learn the regulations governing this coast. The defendant has, however, not done this, but has adjusted his trawling activity according to the British line.

Considering the facts of this case it cannot, as far as the Norwegian regulations governing fishing are concerned, serve as an excuse for the defendant that this line is in agreement with the line claimed by the British Admiralty, and that he has been informed of this line by the trawlers owners.

As responsible for the manœuvring of the trawler it is his duty to decide for himself where fishing may take place according to Norwegian law. In this connection the Court finds reason also to point to that, although the weather was stormy and with snow-showers, it must be considered proven that it was not so bad that reliable fixing of position now and again could not be taken, and which also was taken by the fishery protection vessel *King Haakon VII*.

As the defence has claimed that the defendant must be acquitted on the grounds of his lack of knowledge of the Norwegian criminal laws governing illegal fishing in Norwegian territorial waters, the Court will, in addition to what previously has been stated, state that similar criminal regulations are in effect for illegal fishing in all northern waters, thus for instance inside British and Icelandic territorial waters. The defendant cannot be considered ignorant of the illegality in breaking the law, governments, according to the Hague Convention, having the right, through their own laws, to reserve the economic use of their territorial waters for their citizens or inhabitants.

As the defendant is a British citizen and not a Norwegian subject, he must thus be found guilty of the infringement of the laws mentioned in the "forelegg".

In respect to the awarding of punishment it is observed that neither special aggravating nor extenuating circumstances are present, with the

exception of the fact that the defendant previously has not been punished. The fact that the vessel, when intercepted by the Norwegian fishery protection vessel, showed no sailing lights is found under the circumstances to be of no importance. It is clear that the trawler was fully illuminated by the working-lights on deck.

The punishment is fixed to a fine to the Treasury of an amount of 10,000 kroner in conformity with the "forelegg". In this award the Court has taken into consideration the very weighty general preventative measures which are present in cases of this kind. It is known that trawling has taken place in an area rich in fish, which there is reason to fear will suffer considerable exploitation if stringent measures are not taken.

It is further noted that the defendant himself has given yearly income at approximately £2,000—about 40,000 kroner, ref. Criminal Code, paragraph 27. In awarding the fine, paragraph 63 of the Criminal Code is further taken into consideration. The alternative imprisonment is found to be suitably fixed at 45 days in prison.

The prosecution has demanded confiscation in conformity with the "forelegg", where, as far as this point is concerned, is stated : In conformity with paragraph 12, section 2, sub-section 2 in Law of 17th March, 1939, he is forced to submit to confiscation of catch and gear worth 10,000 kroner—ten thousand kroner.

The paragraph 12, section 2, sub-section 2, quoted, states : "The value of the catch may also be confiscated, but only from the guilty party." There is thus a disconformity between the reference to the statutory provision and the claim as sub-section 2 does not mention the value of the gear. The wording of the claim is, however, found to be allowed. It is further noted that Superior Court in an ajudgment of 24th August, 1934 (R.T. 1934 e, 727 flg.), in a corresponding case concerning illegal fishing has decided that the value of the catch, gear and vessel may be confiscated from the guilty party, regardless of whether the property belongs to somebody else or not, and even though no part of the value of the catch has enriched the guilty party. This decision referred to the, at that time valid Law of 22nd May, 1925, concerning the prohibiting of fishing with trawl, paragraph 4, but has continued its importance as the mentioned paragraph 4 has to a considerable degree the same content as paragraph 12 in Law of 17th March, 1939. Reference is also made to decision by Superior Court in R.T. 1934, s. 731 flg., and attention is drawn to the fact that in both these decisions it was decided that the confiscation of the value is not determined by the owner of the property being summoned.

With reference to the above the Court finds that the amount to be confiscated should be appointed to 10,000 kroner as claimed in the "forelegg". One is aware of the fact that the value of the gear and catch of the *Cape Argona* by far exceeds this amount.

The defendant is found to be forced to submit to pay costs of an amount of 50 kroner.

The decision was unanimous.

SENTENCE

1. William Woodall is sentenced for infringement of Law No. 2 of 17th March, 1939, paragraph 12, reference paragraph 1, and Law No. 3

of 2nd June, 1906, paragraph 4, reference 1, addition to paragraph 63 of the Criminal Law to pay a fine to the Treasury of 10,000 kroner—ten thousand kroner or, if the fine is not paid, to a punishment of 45 (forty-five) days' imprisonment.

2. In conformity with Law No. 2 of 17th March, 1938, paragraph 12, William Woodall is sentenced to submit to confiscation of the value of catch and gear on board S/T *Cape Argona* of Hull to the amount of 10,000 kroner— ten thousand kroner.

3. William Woodall is sentenced to pay costs of procedure to Treasury of the amount of 50 kroner—fifty kroner.

The sentence was read in open court. The defendant was not present.

(Court adjourned.)

(Signed) KRISTIAN FAUCHALD.

(Signed) O. B. NORVIK. *(Signed)* ERLING ROTVOLD.

Certified copy.

[Signature.]

Annex 19

UNITED KINGDOM PROTEST AGAINST ARREST AND JUDGMENT IN CASE OF "CAPE ARGONA"

SIR L. COLLIER TO Mr. LANGE

Your Excellency, Oslo, 10th January, 1949.

I have the honour to inform Your Excellency that my Government, having considered the judgment of the court at Tromsø in the case of the British trawler *Cape Argona*, have instructed me to point out to the Norwegian Government that, as is clear from the judgment, action was taken against this vessel on the sole ground that she was fishing in waters purported to be reserved for the exclusive use of Norwegian nationals by the Royal Decree of 1935, and that, as the Norwegian Government are aware, they have never recognized the legality of that decree, which sought to extend Norwegian jurisdiction over substantial areas which they regard as the high seas open to fishing by vessels of all nations. They accordingly feel bound to protest against this unilateral enforcement of Norwegian claims, as well as against the illegal interception of the *Cape Argona* in waters beyond the limits within which, in their view, Norwegian jurisdiction can legitimately be exercised, and her subsequent detention, and must reserve their full rights in regard to the issues raised by this incident, including the right to claim financial compensation for losses suffered by the vessel's owners.

2. His Majesty's Government cannot refrain from expressing at the same time their surprise and disappointment that Norwegian authorities should have seen fit to take this provocative action at a time when discussions are actually in progress between them and the Norwegian Government for the purpose of arriving at an amicable settlement of the whole

dispute either by direct agreement or by its submission to the International Court of Justice [1]. They have made repeated appeals to the Norwegian Government to maintain, until a settlement can be reached, the provisional arrangement in force for the last fifteen years, whereby the so-called "red line" has been observed as the limit up to which fishing can take place in practice by United Kingdom vessels, being concerned to avoid incidents such as that now in question, which must tend to give rise to unnecessary friction and which they had understood the Norwegian Government to be equally anxious to avoid. Such incidents can only make it more difficult to reach a final settlement ; and they would therefore urge the Norwegian Government once more to agree, without prejudice to the legal rights by either party, to continue the "red line" arrangements on a purely provisional basis until a settlement has been achieved.

I avail, etc.

(Signed) L. COLLIER.

Annex 20

UNITED KINGDOM PROTEST AGAINST ARREST OF "ARCTIC RANGER" AND "KINGSTON PERIDOT"

SIR L. COLLIER TO MR. LANGE

Your Excellency, Oslo, 10th January, 1949.

I have the honour to inform Your Excellency that my Government have now learned that, since the arrest of the British trawler *Cape Argona*, against which they have instructed me to protest, as stated my note of to-day's date, two further trawlers, the *Arctic Ranger* and *Kingston Peridot*, have been arrested for fishing in positions given by the Norwegian authorities as 70° 49′ 30″ north latitude, 29° 45′ 40″ east longitude, and 70° 49′ 5″ north latitude, 29° 49′ 0″ east longitude respectively, while attempts were also made to arrest three other trawlers fishing beside them.

2. These positions are in waters which my Government consider to be outside Norwegian jurisdiction ; and they have consequently instructed me to lodge a formal protest against the arrest of the vessels in question and their subsequent detention by the Norwegian authorities, and to add that they reserve their full rights in this case, including the right to claim financial compensation for losses caused to the owners of the trawlers as well as the return of the monies which they have been obliged to deposit pending legal proceedings.

I avail, etc.

(Signed) LAURENCE COLLIER.

---

[1] For the discussions, see para. 52 of the Memorial.

Annex 21

UNITED KINGDOM PROTEST AGAINST ARREST OF "LORD PLENDER" AND "EQUERRY"

No. 1

SIR L. COLLIER TO Mr. LANGE

Your Excellency, Oslo, 25th January, 1949.

With reference to my note of 10th January, I have the honour to inform you that my Government have now learned that since the arrest of the British trawlers *Cape Argona*, *Arctic Ranger* and *Kingston Peridot*, two further trawlers, the *Lord Plender* and the *Equerry*, have been arrested for fishing in positions given by the Norwegian authorities as 71° 9′ north latitude, 27° 21′ east longitude and 71° 10′ north latitude, 27° 20′ east longitude respectively.

2. These positions are in waters which my Government consider to be outside Norwegian jurisdiction; and they have consequently instructed me to lodge a formal protest against the arrest of the vessels in question and their subsequent detention by the Norwegian authorities and to add that they reserve their full rights in this case, including the right to claim financial compensation for losses caused to the owners of the trawlers as well as the return of the monies which they have been obliged to deposit pending legal proceedings.

I avail, etc.

(Signed) LAURENCE COLLIER.

No. 2

SIR L. COLLIER TO Mr. LANGE

British Embassy, Oslo,

Your Excellency, 3rd February, 1949.

I have the honour to inform Your Excellency on instructions from my Government, that they desire to draw the urgent attention of the Norwegian Government to the circumstances in which the British trawler *Equerry* was arrested on 19th January last by the Norwegian gunboat *Sørøy* for fishing in a position between the so-called "red-line" and the fishery limit claimed by the Norwegian Government.

2. The trawler, whose maximum speed when towing is three knots, was some hundred yards away from the gunboat when the latter warned her to stop, not by hailing or by any form of signal, but merely by two blasts of her whistle, and a few minutes later, though she was not increasing speed or in any way attempting to escape, opened fire upon her with live tracer from an Oerlikon gun, the shells, about a dozen in number, passing across the deck between the fore whaleback and the bridge. My Government must protest strongly against this procedure, repetition of which might well create such hostility among British fishermen as to jeopardize the success of any permanent settlement of

the present dispute over fishery limits which they may ultimately reach with the Norwegian Government.

3. The subsequent proceedings in this case were also objectionable, and my Government reserve the right to challenge them when they have examined the evidence. Meanwhile, however, they have instructed me to make this present protest against the action of the gunboat and to draw attention to the urgent need for preventing any repetition of such incidents.

I avail, etc.

(*Signed*) LAURENCE COLLIER.

Annex 22

DIPLOMATIC CORRESPONDENCE CONCERNING ARREST OF "LORD NUFFIELD"

No. 1

SIR L. COLLIER TO MR. LANGE

Your Excellency, Oslo, 19th May, 1949.

With reference to my note of 25th January last and to previous correspondence regarding the arrest of British trawlers off the coast of Norway I have the honour to inform Your Excellency that my Government have now learned of the arrest of the trawler *Lord Nuffield* on 4th May in a position given as 71° 8′ 7″ north. 27° 13′ east.

2. This position is in waters which my Government consider to be outside Norwegian jurisdiction; and they have consequently instructed me to lodge a formal protest against the arrest of the vessel in question and her subsequent detention by the Norwegian authorities, and to add that they reserve their full rights in this case, including the right to claim financial compensation for losses caused to her owners as well as the return of the monies which the owners have been obliged to deposit pending legal proceedings.

I avail, etc.

(*Signed*) LAURENCE COLLIER.

No. 2

MR. LANGE TO SIR L. COLLIER

[*Translation*]

Your Excellency, Oslo, 8th June, 1949.

In reply to Your Excellency's note of 19th May, 1949, regarding the arrest of the British trawler *Lord Nuffield*, I have the honour to make the following communication:

According to reports from the naval authorities, the trawler was sighted at 0030 hours on 5th May, 1949, by the fishery protection vessel *Sørøy*. The trawler then had its trawl out and was sailing a course

north-east from the land outwards towards the so-called "red line", and continued on this course for a quarter of an hour after which it hove to and hauled up its trawling gear. The fishery protection vessel gives the trawler's position at the time when it hove to as 71°7′6″ north and 27° 16′ 5″ east. This position is on the so-called "red line" and the trawler had therefore been fishing inside that line, at any rate from the time when it was sighted until the time when it hove to.

After having taken in its gear, the trawler continued its voyage until 0057 hours when it was arrested by the fishery protection vessel. The trawler's position was then 71° 8′ 7″ north.

Accept, etc.

(Signed) HALVARD M. LANGE.

No. 3

SIR L. COLLIER TO MR. GERHARDSEN

Your Excellency, Oslo, 13th July, 1949.

I have the honour to inform Your Excellency that my Government have given consideration to Mr. Lange's note of 8th June last, regarding the arrest of the British trawler *Lord Nuffield* and would draw attention to the following considerations, in view of which they are unable to accept the contention that this vessel, when arrested, had been fishing within the so-called "red line".

2. The position of the trawler when she hove to on being hailed by the Norwegian fishery protection vessel *Sørøy* was, according to the *Sørøy's* own report, as given in your note, 71° 7′ 6″ north and 27° 16′ 5′ east, which lies, not on the "red line", but one-third of a mile outside it. Her course, moreover, as given by the *Sørøy*, was not north-east from the land outwards towards the "red line", but roughly parallel to it, since she was observed at 0030 on a course of 45° which she held until 0045, while the "red line" in this locality runs 50°, from 4′off Kjelsnaeringen to the tangential curve 4′ off Nordkyn. Thus, allowing her to have towed a maximum of one mile in these fifteen minutes, she was outside the "red line" at 0030 ; and thereafter, until she was boarded and the buoy dropped, her course was 315°, taking her still further away from it.

3. In these circumstances my Government must maintain the view of the case expressed in my note of 19th May last, that it is one in which a British trawler has been arrested for fishing between the "red" and the "decree" lines.

I avail, etc.

(Signed) LAURENCE COLLIER.