

**MEMORIAL ON JURISDICTION  
SUBMITTED BY THE GOVERNMENT OF  
THE UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND**

## PART A

## INTRODUCTION

1. This Memorial is submitted to the Court in pursuance of the Order made by the Court on 18 August 1972, which Order required the Government of the United Kingdom to submit before 13 October 1972 a Memorial "addressed to the question of the jurisdiction of the Court to entertain the dispute".

2. The Court, in making its Order of 18 August 1972, referred to "the letter dated 29 May 1972 from the Minister for Foreign Affairs of Iceland, received in the Registry on 31 May 1972; the telegram from the said Minister dated 28 July 1972, received in the Registry on 29 July 1972; the telegram from the said Minister dated 11 August 1972, received in the Registry the same day, and repeated and confirmed by letter from the said Minister of 11 August 1972, in each of which communications it was asserted that there was no basis under the Statute of the Court for exercising jurisdiction in the case". The Government of the United Kingdom therefore understand that in the present Memorial they are required to expand and develop their submissions relating to the jurisdiction of the Court, and to answer any doubts concerning the Court's jurisdiction raised by these various Icelandic letters and telegrams.

3. The principles which the Court applies in a case where it has to consider whether it has jurisdiction to entertain proceedings have been stated in the following terms:

"It has been argued repeatedly in the course of the present proceedings that in case of doubt the Court should decline jurisdiction. It is true that the Court's jurisdiction is always a limited one, existing only in so far as States have accepted it; consequently, the Court will, in the event of an objection—or when it has automatically to consider the question—only affirm its jurisdiction provided that the force of the arguments militating in favour of it is preponderant. The fact that weighty arguments can be advanced to support the contention that it has no jurisdiction cannot of itself create a doubt calculated to upset its jurisdiction. When considering whether it has jurisdiction or not, the Court's aim is always to ascertain whether an intention on the part of the Parties exists to confer jurisdiction upon it. The question as to the existence of a doubt nullifying its jurisdiction need not be considered when, as in the present case, this intention can be demonstrated in a manner convincing to the Court." (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, Series A, No. 9, p. 32.*)

4. As required by Article 32 of the Rules of Court, the Government of the United Kingdom specified in their Application instituting proceedings of 14 April 1972 the provision on which they founded the jurisdiction of the Court. This was Article 36 (1) of the Statute of the Court read in conjunction with the Exchange of Notes between the Government of the United Kingdom and the Government of Iceland of 11 March 1961 (Annex A to the Application). Article 36 (1) provides that "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force". The penultimate paragraph of the Exchange of Notes provides that "the Icelandic

Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months' notice of such extension and, in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice".

5. The Government of the United Kingdom accordingly must satisfy the Court on the following points:

- (i) that the Exchange of Notes of 1961 was a treaty or convention in force between the parties on 14 April 1972 conferring jurisdiction on the Court in a dispute relating to the extension of fisheries jurisdiction around Iceland;
- (ii) that on that date there was a dispute between the parties; and
- (iii) that the dispute related to the extension of fisheries jurisdiction around Iceland.

The Government of the United Kingdom submit, however, that, if the force of their arguments militating in favour of the Court's jurisdiction is "preponderant", the Court will affirm its jurisdiction; and that, for the Court to decline jurisdiction, it would be necessary for the Government of Iceland to show—or for the Court to ascertain *proprio motu*—not merely that weighty arguments can be advanced to support the contention that the Court has no jurisdiction but also that there was no intention on the part of the Government of Iceland and the Government of the United Kingdom to confer jurisdiction upon the Court.

6. The Government of the United Kingdom have carefully studied the various communications made by the Government of Iceland that are referred to in paragraph 2 above, and indeed all other relevant communications and statements that might throw light on the basis for the contention by the Government of Iceland that the Court has no jurisdiction to entertain these proceedings. It does not appear from these communications and statements that any of the objections to the Court's jurisdiction raised by the Government of Iceland are directed to the second and third of the three propositions (as set out in para. 5 above) which the Government of the United Kingdom must establish if they are to satisfy the Court that it has jurisdiction in the present case; i.e., that on 14 April 1972 there was a dispute between the Government of Iceland and the Government of the United Kingdom; and that this dispute related to the extension of fisheries jurisdiction around Iceland. Indeed, the Government of the United Kingdom submit that there can be no possible controversy about these questions. They simply remind the Court of the history of relations between the two Governments as described in the Application instituting proceedings and amplified in the opening part of the Attorney-General's speech before the Court on 1 August 1972. They submit that, as regards the second of those propositions, this history demonstrates beyond doubt that, by 14 April 1972, there was a dispute between the two Governments in the sense, as defined by the Court, of "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J. Series No. 2, p. 11*); and that, in so far as it might be argued that, for a dispute to exist, it must be shown that negotiations have failed, the negotiations between the two Governments concerning the threatened extension of Iceland's fisheries jurisdiction had, by 14 April 1972, in the words of the Court in the *Right of Passage* case (*I.C.J. Reports 1957, pp. 125, 149*), "reached a dead-

lock". As regards the third proposition, it does not seem to be denied, and it could, indeed, scarcely be denied, that the dispute related to the extension of fisheries jurisdiction around Iceland.

7. Consequently, it only remains to consider the objections raised by the Government of Iceland against the first of the three propositions which the Government of the United Kingdom must establish, i.e., that the Exchange of Notes of 1961 was a treaty or convention in force between the Government of the United Kingdom and the Government of Iceland on 14 April 1972, conferring jurisdiction on the Court in relation to such a dispute. Again it must be said that none of these objections appears to question that the provisions of the Exchange of Notes of 1961, if in force on 14 April 1972, did confer jurisdiction on the Court (and the later sections of this Memorial will seek to show that the conferment of such jurisdiction was at all times accepted by both parties as the object and purpose of the relevant provision). The objections appear rather to be directed to asserting that, for one reason or another, the Exchange of Notes of 1961 was in fact not in force at that date.

8. Accordingly, in Part B of this Memorial the Government of the United Kingdom will analyse the terms of the relevant provisions of the Exchange of Notes of 1961 in order to elicit what those provisions mean and were intended to mean, with particular reference to the duration of the agreement to submit disputes to the jurisdiction of the Court, and will then examine the origins of the Exchange of Notes of 1961 (that is to say, the history and background of its conclusion) in order to see what light these throw on questions of interpretation. In Part C of this Memorial the Government of the United Kingdom will examine in turn each of the various objections to the jurisdiction of the Court that are referred to in paragraph 7 above. Finally, Part D of this Memorial summarizes the contentions put forward in Parts B and C and sets out the formal submissions which the Government of the United Kingdom make to the Court on the question of the jurisdiction of the Court to entertain the dispute.

## PART B

## MEANING AND INTENTION OF THE EXCHANGE OF NOTES OF 1961

## 1. The Terms of the Exchange of Notes of 1961

9. The Exchange of Notes of 1961 (see Annex A to the Application instituting proceedings) contains, in the penultimate paragraph of the Note from the Foreign Minister of Iceland, a compromissory clause in the following terms:

“The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months’ notice of such extension and, in the case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice.”

The Althing Resolution of 5 May 1959 (see Annex IV to the letter from the Minister for Foreign Affairs of Iceland to the Registrar of the Court, dated 29 May 1972), contained the assertion:

“... *that* Iceland has an indisputable right to fishery limits of 12 miles, *that* recognition should be obtained of Iceland’s right to the entire continental shelf area in conformity with the policy adopted by the Law of 1948, concerning the Scientific Conservation of the Continental Shelf Fisheries and *that* fishery limits of less than 12 miles from baselines around the country are out of the question”.

In fact the Exchange of Notes of 1961 disposed of the first and third of these contentions, at least once the three-year transitional period which it provided for had ended. All that remained of the Althing Resolution was the statement of Iceland’s policy *to seek recognition of Iceland’s right to the entire continental shelf area, based upon a policy of conservation*. The Exchange of Notes of 1961 recorded that this was Iceland’s policy and, although it was not a policy which at that point of time was consistent with international law—the 1958 United Nations Conference on the Law of the Sea had rejected the argument that a coastal State’s rights to its continental shelf include the fishery resources of the high seas above the shelf—it remained possible that, in the future, such a policy might be consistent with a changed international law.

10. Thus, the parties to the Exchange of Notes of 1961 did envisage that, at some time in the future, that Exchange of Notes might be overtaken by events and terminated; and, certainly, the Government of the United Kingdom were put on notice that Iceland intended to work for a change in international law as it stood in 1961. However, from the terms of the Althing Resolution itself, it was evident that this would require “recognition” by the international community and, in addition, evidence of a need for “scientific conservation”.

11. The compromissory clause in the Exchange of Notes of 1961, having noted that this was Iceland’s policy, provided two clear and simple conditions precedent to the agreement embodied in the Exchange of Notes being terminated as a result of Iceland’s pursuit of this policy:

- (i) that six months' notice should be given to the United Kingdom of any extension of Iceland's fisheries jurisdiction; and
- (ii) that, if the United Kingdom should dispute the extension, and the right which was then vested in either party to refer the dispute to the International Court of Justice was exercised, the Court then upheld the legality of the extension.

The Government of the United Kingdom do not contest that the first condition has been met: the statement of intention contained in the policy statement issued by the Government of Iceland on 14 July 1971 (see para. 10 of the Application instituting proceedings), was repeated in the aide-mémoire of 31 August 1971 (see Annex C to the Application), and the firm intention to issue new regulations providing for fishery limits of 50 miles was notified in the aide-mémoire of 24 February 1972 (see Annex H to the Application), more than six months before the intended date of operation of the proposed new regulations on 1 September 1972. The second condition precedent to termination has not been met. That condition provided for reference to the Court in the event of a dispute regarding any extension of Iceland's fisheries jurisdiction and it is this condition which Iceland now claims is no longer operative.

12. The purpose of the condition is clear. The questions whether a coastal State's rights in international law to the high seas fisheries above its continental shelf had become "recognized" and whether a case for scientific conservation truly existed were regarded by both parties as questions which, in the absence of agreement, called for objective, judicial determination. The parties would not have been prepared to allow such questions to be unilaterally and subjectively determined, either by Iceland or the United Kingdom; and it was therefore agreed that, if they were in dispute, it would be for the International Court to decide these questions. Then, and only then, on the basis of a judgment by the Court upholding the legality of the Icelandic extension, would the 1961 agreement terminate and Iceland be able to implement the Althing Resolution by extending its fisheries jurisdiction.

13. This interpretation of the Exchange of Notes of 1961 is not only the one which emerges from the plain meaning of the words used by the parties but it is also the one which is consistent with the presumption of international law against any right of unilateral denunciation. In this respect Article 56 of the Vienna Convention on the Law of Treaties is purely declaratory of existing customary law in providing that:

- "1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
  - (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
  - (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

2. . . . ."

14. Nothing in the terms of the agreement embodied in the Exchange of Notes of 1961 or (as Section 2 of this Part of this Memorial will show) in the history of the negotiations between the parties leading to that agreement indicates (far less establishes) that the parties intended to admit the possibility of unilateral denunciation or withdrawal. Nor can a right of unilateral

denunciation or withdrawal be implied from the nature of the agreement. Such an implied unilateral right of denunciation or withdrawal would be plainly inconsistent with the fact that there is a procedure for termination of the agreement (on the initiative of Iceland, the party which alone would have an interest in terminating it) which was expressly provided for by the agreement, namely, the satisfying of the two conditions that are set out in the compromissory clause as described in paragraph 11 of this Memorial.

15. It will be apparent that the Government of the United Kingdom are not advancing any contention to the effect that fishery agreements in general should be construed as enduring in perpetuity or that this particular fishery agreement should be construed as enduring, or was intended to endure, in perpetuity. Nor are they advancing any contention about the duration or mode of termination of compromissory clauses in general. Their contention is the limited one that, as regards this particular Exchange of Notes, while the parties did not envisage that it would endure in perpetuity, they did envisage that it would endure either until terminated by mutual consent or until terminated in accordance with the procedure described in paragraph 11 of this Memorial. The Government of the United Kingdom submit that the terms in which the parties embodied their agreement can have no other construction put on them. The Government of the United Kingdom further submit that by thus providing (in and by means of the compromissory clause) an agreed mode of termination, the parties intended to exclude any implied right of unilateral denunciation or withdrawal from either the agreement as a whole or the compromissory clause in particular. The very clause which provided the agreed mode of termination cannot be regarded as itself subject to an implied right of denunciation.

16. This construction of the agreement between the parties, which the Government of the United Kingdom contend is the proper construction on a purely textual analysis, is also entirely in accord with the situation facing the parties in 1961. They were in a situation in which Iceland contemplated the possibility of a future extension of fishery limits but in which the parties accepted the need to test the question whether, at the point in time when Iceland gave notice of such proposed extension, the extension would be in conformity with international law. The whole purpose of the compromissory clause was to allow that question to be tested by the Court and therefore to make the agreement terminable only upon the two conditions specified above.

17. Thus the compromissory clause was fundamental to the whole agreement. As will be seen, it was in fact a *sine qua non* of the consent of the United Kingdom to the agreement. In these circumstances the Exchange of Notes cannot have been intended to be susceptible to unilateral denunciation, so as to render the compromissory clause ineffective, on the argument that, though the situation with which the compromissory clause was intended to deal had not previously arisen, the object and purpose of the agreement had been achieved. The object and purpose of the agreement embodied in the Exchange of Notes was not only to settle the dispute over the Icelandic claim to fisheries jurisdiction up to 12 miles but also, since by the terms of the Althing Resolution and its incorporation in the agreement Iceland gave notice of possible further claims in the future, to provide a means whereby the parties might resolve the question of the legality of such further claims. The object and purpose of the compromissory clause would take effect only at the time when Iceland sought a further extension of its fisheries jurisdiction, though Iceland now seeks to be entitled to regard it as terminated at the very point in time at which it was intended to take effect.

18. This construction of the Exchange of Notes derives not only from the plain meaning of the words used by the parties, reflecting what must have been their common intention if the agreement was to have any real efficacy as a settlement of the whole dispute, but also from the history of the negotiations leading up to the Exchange of Notes. It is therefore proposed, in the following section of this Part of this Memorial, to examine the origins of the Exchange of Notes and, in particular, the way in which the parties arrived at a consensus on the compromissory clause and its place in the agreement as a whole.

## 2. The Origins of the Exchange of Notes of 1961

19. The background to the dispute as a whole has already been summarized in the *Application Instituting Proceedings*. Concentrating on the immediate background to the Exchange of Notes of 1961, it may be recalled that, after the first United Nations Conference on the Law of the Sea in 1958 had failed to reach agreement on the question of fishing limits, the Government of Iceland on 30 June 1958 issued a decree (Decree No. 70) which came into effect on 1 September 1958, purporting to extend Iceland's fisheries limits from 4 miles to a distance of 12 miles from baselines specified in the decree. The validity of this action was disputed by the United Kingdom and British fishing vessels continued to fish up to the four-mile limit.

20. In the period from June 1958 to the convening of the second United Nations Conference on the Law of the Sea on 21 March 1960, a number of informal discussions were held between the parties. However, no direct negotiations were held and the proposal by the United Kingdom to refer the dispute to the International Court of Justice, made on 25 September 1958, in the General Assembly<sup>1</sup> and repeated in a memorandum submitted to the United Nations<sup>2</sup>, was rejected by the Government of Iceland. The reason for this rejection, as stated in a Note dated 18 December 1958 (the full text of which is set out in Annex C to this Memorial), was that the Government of Iceland did not consider it practicable or desirable to refer the matter to the Court at the same time as the second United Nations Conference on the Law of the Sea, which would be convened in the near future, was dealing with the disputed question of the extent of fishery limits as well as the breadth of the territorial sea.

21. The second Geneva Conference on the Law of the Sea ended on 28 April 1960 without reaching agreement on fishery limits. However, a substantial body of State opinion emerged during the Conference to the effect that a coastal State should be entitled to claim exclusive fisheries within a 12-mile limit, subject to the retention of certain fishing rights by other States which had acquired "historic rights" to fish in the "outer six" miles. Believing that this new evidence of a general consensus among States might form the basis for a settlement of the dispute with Iceland, the United Kingdom proposed new

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<sup>1</sup> See Annex A to this Memorial which sets out the text of the relevant passage of the speech made to the General Assembly of the United Nations on 25 September 1958 by Mr. Selwyn Lloyd, Secretary of State for Foreign Affairs of the Government of the United Kingdom. (*Official Records of the General Assembly*, Thirteenth Session, 758th Plenary Meeting, para. 85.)

<sup>2</sup> See Annex B to this Memorial. This sets out the text of the relevant paragraph of the Memorandum which was submitted to the General Assembly of the United Nations by the Government of the United Kingdom in November 1958. A copy of the complete Memorandum will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

negotiations with Iceland on several occasions during the months May to August 1960. Ultimately, on 10 August 1960, the Government of Iceland decided to enter into direct negotiations with the United Kingdom<sup>1</sup>.

22. The discussions began in Reykjavik on 1 October 1960. At the third meeting, on 5 October, it had become apparent that, in principle, the United Kingdom would accept Iceland's right to exclusive fisheries within 12 miles after the end of a transitional period (during which certain British fishing would continue within the 12-mile limit). The crucial question posed by Iceland was whether the United Kingdom would agree to Iceland imposing restrictions on fishing outside the 12-mile limit. The United Kingdom reply was that, whilst restrictions scientifically proven to be justifiable on conservation grounds or because of high density line fishing and static net fishing might need to be examined, the United Kingdom sought a guarantee that, after the transitional period, the Government of Iceland would not seek to exclude British vessels from any of the waters outside 12 miles unless there were to be some change in the general rule of international law agreed under United Nations auspices. So fundamental was this issue that Sir Patrick Reilly (Deputy Under-Secretary of State at the Foreign Office and leader of the United Kingdom delegation) made an express statement in the meeting which took place on 8 October 1960, to the effect that, should the Government of Iceland insist on restrictions outside 12 miles, there was no possibility of an agreement. In his words, "some assurance about further extensions beyond 12 miles was an essential point . . .".

23. Formal negotiations were discontinued until late in October. However, on 28 October 1960 a Memorandum by the Government of Iceland which included the following proposal was handed to Sir Patrick Reilly:

*"The Situation after the Termination of the Agreement"*

The Icelandic Government reserves its right to extend fisheries jurisdiction in Icelandic waters in conformity with international law. Such extension would, however, be based either on an agreement (bilateral or multilateral) or decisions of the Icelandic Government which would be subject to arbitration at the request of appropriate parties."

24. At a subsequent meeting, on 1 November, the United Kingdom, wishing to avoid unilateral action by Iceland in accordance with its own concept of international law, proposed the following draft to the Icelandic representatives:

"Except in accordance with the terms of any subsequent agreement between the United Kingdom and Iceland, or subsequent multilateral agreement which embodies a generally accepted rule of law in relation to fishing limits, the Icelandic Government will not take any action to exclude vessels registered in the territory of the United Kingdom from fishing in any area outside the 12-mile limit."

In commenting on that text at the same meeting, the Icelandic representative said that the draft should allow for the possibility of applying customary international law so that Iceland could take advantage of changing customary international law.

<sup>1</sup> A copy of the full set of contemporary records of the consequent discussions (which lasted, with intervals, from 1 October 1960 to 4 December 1960), prepared by the United Kingdom delegation, will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court. [See pp. 178-237, *infra*.]

25. At the next meeting, on 4 November 1960, the United Kingdom delegation suggested the following formula to meet the point that had been made by the Icelandic representative:

"The Icelandic Government will not take any action to exclude vessels registered in the United Kingdom from fishing in any area outside the 12-mile limit except in accordance with the terms of a subsequent international agreement embodying a generally-accepted rule of law in relation to fishing limits, or in conformity with a rule of international law, established by general consent and recognised as such by the International Court of Justice, which would permit such an extension of fishery jurisdiction."

In commenting on this text at the same meeting, the Icelandic representatives expressed a preference for arbitration and suggested deleting the words "and recognised as such by the International Court of Justice". The United Kingdom delegation then produced a second draft (also at the same meeting) which was identical with the earlier draft save that it read:

"... established by general consent, which would permit such an extension of fishery jurisdiction. Any dispute as to whether such a rule exists may be referred, at the request of either party, to the International Court of Justice."

The Icelandic representative stated (again at the same meeting) that this was acceptable, though he would still have preferred arbitration.

26. At this stage, therefore, the two sides had reached agreement that any action to exclude United Kingdom fishing vessels from any area outside the 12-mile limit would have to be justified on the basis of a subsequent international agreement embodying a generally accepted rule of law, or a rule of customary international law established by general consent. Moreover (and herein lay the essence of the guarantee against unilateral action which the United Kingdom had sought throughout the negotiations), the question whether such a rule existed, justifying the action, might be referred to the International Court of Justice by either party in the event of a dispute.

27. However, there were subsequent exchanges of view through the diplomatic channels in which the Government of Iceland indicated that they were not, after all, able to accept the draft agreed in London as set out in paragraph 25 of this Memorial. Another series of meetings then took place in Reykjavik between 2 and 4 December 1960. At the very first of these meetings, on 2 December 1960 Sir Patrick Reilly pointed out that the problem of the assurance about further extensions outside the 12-mile limit was a key point. He said that "Her Majesty's Government considered that such an assurance must cover three essential points, which were as follows:

- (1) The Icelandic Government will not claim an extension of fishery limits beyond 12 miles except in accordance with a *rule* of international law which has been clearly established (a) by embodiment in an international agreement, or (b) accepted by general consent as a rule of customary international law.
- (2) Any dispute about whether such a rule of international law has been established shall be submitted to the International Court of Justice: and pending the Court's decision, any measure taken to give effect to such a rule will not apply to British vessels.
- (3) The assurance on this point will form an essential part of the agreement.

If these three points could be met then Her Majesty's Government would do all they could to help the Icelandic Government on the form and presentation of the assurance. In particular, if a reference to the Althing's Resolution of May 5, 1959, was important, they would have no objection to including one". In reply the Foreign Minister of Iceland said that, while the text proposed in London was not acceptable to his Government, "there did not seem to be any real differences of opinion between the two sides. The Icelandic Government must state that their aim was the Continental Shelf. They were, however, ready to state their intention to base their action on rules of international law and also their willingness to submit any dispute to the International Court."

28. At a subsequent meeting on the same day, the Foreign Minister of Iceland acknowledged "that the most difficult feature of the problem of the assurance was how to deal with the point to which Her Majesty's Government evidently attached so much importance that, if there was a dispute, no measure to apply an extension of fishery limits would be taken pending reference to the International Court". The Minister for Justice of Iceland, Mr. Benedicksson, agreed with this comment and admitted "that Her Majesty's Government's attitude on this point was reasonable". He suggested that it should be possible to find some form of words which would imply an obligation not to apply the extension until the Court had decided. The "assurance formula" was then referred to a further meeting of the two delegations later the same day, meeting without the Ministers.

29. At this third meeting on 2 December 1960, the following formula was agreed between both sides for submission to the Icelandic Ministers:

"The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, but agrees that any extension of fishery jurisdiction around Iceland will be in accordance [with the terms of a subsequent bilateral agreement between the Government of the United Kingdom and the Government of Iceland] or with the terms of any international agreement embodying a generally accepted rule of law in relation to fishery limits, or in conformity with a rule of international law, established by general consent, which would permit such an extension of fishery jurisdiction. If the Icelandic Government intend to apply a measure adopted in pursuance of such a rule to vessels registered in the United Kingdom, any dispute between the Contracting Parties as to the existence or applicability of the rule shall be referred, at the request of other<sup>1</sup> Contracting Party, to the International Court of Justice."

30. This draft was rejected by the Icelandic Cabinet on 3 December 1960, and at a further meeting on that day the Icelandic delegation proposed the following alternative:

"The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland. Six months notice will be given of the application of any such extension and in case of dispute the measures will be referred to the International Court of Justice."

Sir Patrick Reilly pointed out that the formula did not ensure that any further extension of fisheries jurisdiction must be in accordance with international

<sup>1</sup> *Sic.* ? "either" intended.

law but he undertook that the United Kingdom delegation would consider it at once. Subsequently on this same day he put the following revised formula to the Icelandic delegation:

"The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland in conformity with international law. Six months' notice will be given of the application of any such extension, and any dispute as to whether the measures to be applied are in accordance with international law will be referred, at the request of either party, to the International Court of Justice."

The Icelandic delegation promised that this would be considered by Icelandic Ministers with a view to a further meeting between officials the following morning.

31. This meeting duly took place on 4 December 1960. The Icelandic representatives reported that their Ministers still objected to the words "in conformity with international law" because they carried the implication that Icelandic action hitherto had not been in conformity with international law. They regarded the words as unnecessary in view of the provision for reference to the International Court, since the Court would, of course, base its decision on international law. The United Kingdom delegation pointed out that the phrase had first been used by the Icelandic delegation themselves in the formula which they had put forward on 28 October (see para. 23 above). They said that they found it difficult to comprehend the objection to the phrase but, after a break for consultation and in an effort to assist in finding a suitable formula, they suggested three drafts, as follows:

"1. (a)

The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959. Six months notice will be given of the application of any such extension, and any dispute as to whether there is in existence a rule of international law which would permit such an extension of fishery jurisdiction will be referred, at the request of either party to the International Court of Justice.

1. (b)

The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland. Six months notice will be given of the application of any such extension and in case of dispute the measures in question will be referred to the International Court of Justice, at the request of either party, for decision as to whether there is in existence a rule of international law which would permit such an extension of fishery jurisdiction.

2.

The Icelandic Government will continue to work for the recognition under international law of an extension of the fisheries jurisdiction around Iceland in accordance with the terms of the Althing Resolution of May 5, 1959. Six months notice will be given of the application of any such extension, and any dispute in respect of such extension will be referred, at the request of either party, to the International Court of Justice."

The Icelandic delegation undertook to put these drafts to their Ministers.

32. At this same meeting there was also some discussion of the form of the

agreement. It was common ground that the "assurance" should be contained in an Exchange of Notes: the United Kingdom delegation pointed out that it was essential that this should state that it constituted an agreement between the two Governments. It was contemplated that there would in addition be a formal Fishery Agreement (dealing with fishery limits) together with a further separate Exchange of Notes about baselines.

33. At this stage the United Kingdom delegation returned to London to report on the negotiations to their Government. Subsequently, on 9 December, the *Government of the United Kingdom* submitted to the Government of Iceland, through their Ambassador in Reykjavik, a draft Exchange of Notes containing the proposed "assurance" and referring (as envisaged in the discussions on 4 December: see para. 32 above) to a Fishery Agreement to be signed on the same day. The relevant part of the draft (the full text of which is set out in Annex D to this Memorial) was in the following terms:

"... the Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland. I am, nevertheless, to propose:

- (i) that six months' notice shall be given by the Icelandic Government to the United Kingdom of any such extension; and
- (ii) that in case of a dispute between the Icelandic Government and the United Kingdom Government in relation to any such extension the matter shall be referred, at the request of either party, to the International Court of Justice."

34. The Government of Iceland were unable to agree to this draft and on 10 December 1960, proposed, through the British Ambassador in Reykjavik, an alternative text for an Exchange of Notes with the assurance cast in the following terms:

"Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding extension of fisheries jurisdiction around Iceland. Six months' notice will be given of application of any extension and in case of dispute the measures will, at the request of the several parties be referred to the International Court of Justice."

The full text of this proposed Exchange of Notes, which was apparently designed to cover all questions in dispute and therefore to replace, as well, the proposed Fishery Agreement and the proposed separate Exchange concerning baselines, is set out in Annex E to this Memorial.

35. In reply to this the Secretary of State for Foreign Affairs of the United Kingdom sent a personal message to the Foreign Minister of Iceland, through the British Ambassador in Reykjavik, on 14 December 1960. The full text is set out in Annex F to this Memorial. He expressed the disappointment of the Government of the United Kingdom at the attitude, and specifically at the latest proposals, of the Government of Iceland. He pointed out that the Icelandic draft Exchange of Notes would not constitute an agreement between the two Governments and he repeated the United Kingdom's basic requirements which, as regards the "assurance", he described as follows:

"... the assurance should be set out in an Exchange of Notes expressly stated to constitute an Agreement which would, in Her Majesty's Government's view, be the only way of binding both parties to accept the jurisdiction of the International Court of Justice in the event of any

dispute arising over extensions of fishery jurisdiction. We regard this as essential if we are going to achieve stability in our future fishery relations as we earnestly desire;”.

36. On 16 December 1960, the Government of the United Kingdom transmitted to the Government of Iceland, through the British Embassy in Reykjavik, a further draft Exchange of Notes. The full text of the draft is set out in Annex G to this Memorial. In relation to the controversial “assurance” the proposed text was as follows:

“The Icelandic Government, while continuing to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland, will give to the United Kingdom Government six months’ notice of any such extension, and in case of a dispute in relation to such extension the matter shall, at the request of either party, be referred to the International Court of Justice.”

37. It may be noted that the differences between the Icelandic proposal of 10 December 1960 (Annex E) and the United Kingdom proposal of 16 December 1960 (Annex G) were, first, that the United Kingdom draft made it clear that the dispute in contemplation was a dispute in relation to any extension of the Icelandic fisheries jurisdiction and, second, that it made it clear that reference to the Court could be by unilateral application.

38. Further discussions between the Foreign Secretary and the Foreign Minister of Iceland took place in Paris and London on 17, 18, 19 and 20 December 1960<sup>1</sup>. In the course of the discussions in Paris on 17 December 1960, the Foreign Minister of Iceland is recorded as saying that “. . . the Icelandic Government would be able to give a firm assurance that they would not attempt to extend beyond 12 miles calculated from present baselines otherwise than with the agreement of the International Court”. This statement was repeated at meetings on 18 December 1960, and 20 December 1960. As agreed at the last meeting on 20 December 1960, the Foreign Secretary wrote to the Foreign Minister of Iceland (through the British Embassy in Reykjavik) on 21 December 1960, transmitting the drafts of two Exchanges of Notes; the first of these dealt with the “assurance” in the followings terms:

“The Icelandic Government will continue to work for the implementation of the Althing Resolution of the 5th May, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months’ notice of any such extension, and in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice.”

It will be noted that, save for the eventual deletion of the word “any” before the words “such extension”, this was to be the text ultimately incorporated in the Exchange of Notes of 1961. The only remaining points of difference related to the form the settlement should take, that is to say, whether it should be called an “agreement”, whether it should be embodied in one or two Exchanges of Notes and whether it should be registered with the United Nations Secretariat. The insistence of the United Kingdom upon registration under Article 102 of the Charter was based upon the view that this was

<sup>1</sup> A copy of the full set of contemporary records of these discussions, prepared by the United Kingdom delegation, will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court. [See pp. 178-228, *infra*.]

essential to make the compromissory clause, the "assurance", effective since, without registration, the agreement could not be invoked before the International Court of Justice. That the compromissory clause was fundamental to the settlement was abundantly clear to both parties, as appears from the letter of 21 December 1960. The text of that letter and the drafts enclosed with it are set out in Annex H to this Memorial.

39. Owing to certain domestic problems, the Government of Iceland were unable to make an early response to the United Kingdom proposal, but on 13 February 1961 the Foreign Minister of Iceland communicated to the British Ambassador in Reykjavik his Government's agreement to the drafts submitted by the United Kingdom on 21 December 1960, subject to two "conditions" and certain "provisos". The "conditions" were, first, that the timing of the presentation of the Note to the Althing must be at the discretion of the Government of Iceland and, second, that meanwhile the terms of the agreement must be kept secret. The "provisos" were: first, that there might be subsequent discussions with a view to revising the Landings Agreement (a non-governmental agreement between the Icelandic and British fishing industries about the landing of fish in the United Kingdom from Icelandic vessels); second, that the two drafts should be combined into one Exchange of Notes; third, that British warships should not recommence patrolling within the Icelandic 12-mile limit (as they had not done for many months); and, last, that the United Kingdom should not seek to extend beyond the agreed three years the transitional arrangements allowing British vessels to fish in the outer six-mile zone. (At the same time, the Government of Iceland put forward a draft of the proposed single Exchange of Notes. For all material purposes this was identical with the Exchange as finally concluded and as set out in Annex A to the Application instituting proceedings.) It may be noted that nothing in these "conditions" or "provisos" affected the terms of the "assurance" or its status within the agreement. On 22 February 1961 the Government of the United Kingdom communicated their general concurrence with these "conditions" and "provisos", so far as concerned them, and their acceptance of the Icelandic draft.

40. On 28 February 1961 the Government of Iceland placed the terms of the proposed Exchange of Notes before the Althing. These were approved by the Althing on 9 March 1961<sup>1</sup> and the formal Exchange of Notes took place on 11 March 1961.

41. It is significant to note the written observations of the Government of Iceland in submitting the proposed agreement to the Althing. A translation of the full text of the memorandum submitted to the Althing is set out in Annex I to this Memorial. The passage relating specifically to the "assurance" reads as follows:

*"Further Extension of the Fisheries Jurisdiction*

At the end of the note there are two items of consequence. The Government declares that it will continue to work for the implementation of the Althing resolution of May 5, 1959, regarding the extensions of the fisheries jurisdiction around Iceland. Such an extension would, however, be notified to the British Government six months in advance, and if a dispute arises in connection with these measures, this shall be referred to the

<sup>1</sup> An Opposition amendment to delete the undertaking to refer any dispute about further extensions of the Icelandic fishery limits to the International Court of Justice and to replace it with a statement that such extensions would be made "in accordance with Icelandic and international law" was defeated.

International Court of Justice, should either one of the parties request it. These provisions are in harmony with the proposals and attitude of Iceland at both Geneva Conferences on the Law of the Sea. At both these conferences it was moved on Iceland's behalf that where a nation bases its existence on fisheries along the coast, special conditions shall prevail for the coastal country over and above the general fishery limitations, any dispute being referred to a court of arbitration. These motions were overruled.

At the former Geneva Conference there was agreement on a treaty for the protection of fishing banks on the high seas which Iceland signed<sup>1</sup>. There it is provided that under special circumstances and when negotiations with other States involved have not led to results, a coastal country can determine unilateral measures for protection. Such steps shall be based on scientific necessity and the same rules shall apply to foreign subjects as to citizens of the country itself. A court of arbitration decides the issue in case of dispute. At this Conference there was also passed a resolution<sup>2</sup> recommending that nations concerned should cooperate in ensuring the priority of a coastal State, when it was necessary to take measures against over-fishing and it was decided that a court of arbitration should settle disputes.

In the note which accompanies this Althing resolution there is no obligation implied to adhere to the material limits decided in Geneva. On the other hand, those means which were agreed upon in Geneva are, of course, still open.

Finally, it is provided in the note that it, together with the reply of the British Government, where the British Government confirms its contents, be registered with the Secretary-General of the United Nations. In Article 102 of the United Nations Charter it is stated that only agreements that are so registered can be handled by the International Court of Justice, should a dispute arise concerning their implementation. This provision is a direct consequence of what has been said about reference of the matter to the International Court of Justice."

42. These comments indicate beyond any doubt that the Government of Iceland knew that the effect of the agreement was to make any future extension of its fisheries jurisdiction referable to the International Court of Justice; that the Government of Iceland accepted that unilateral action extending its jurisdiction was incompatible with the principle of compulsory adjudication, be it by arbitration or judicial settlement<sup>3</sup>; and that the whole purpose of

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<sup>1</sup> The reference is presumably to the Convention on Fishing and Conservation of the Living Resources of the High Seas (A/CONF.13/L.54), adopted at the 18th Plenary Meeting of the Conference. The Convention was ratified by the United Kingdom on 14 March 1960. It entered into force on 20 March 1966. It has not been ratified by Iceland.

<sup>2</sup> The reference is presumably to the resolution on Special Situations relating to Coastal Fisheries, adopted at the 16th Plenary Meeting on the report of the Third Committee: see Annex E to the Application instituting proceedings.

<sup>3</sup> The reference to Icelandic policy during the Geneva Conferences on the Law of the Sea may be taken to refer to the Icelandic amendment, introduced in the Third Committee in 1958, A/CONF.13/C.3/L.79/Rev. 1, which, in relation to a coastal State's claims to preferential rights, permitted any interested State opposing such claims to submit the dispute to the arbitration commission envisaged in the draft of the International Law Commission. A similar amendment was introduced in the First Committee as A/CONF.13/C.1/L. 131. Neither amendment, in fact, survived in the plenary session.

registration under Article 102 was to ensure that the International Court would have effective jurisdiction<sup>1</sup>.

### 3. Submissions on the Meaning and Intention of the Exchange of Notes of 1961

43. It is the submission of the Government of the United Kingdom that the Exchange of Notes of 1961 was intended to have effect, and was so drafted that it did have effect, as an agreement which would remain valid until such time as either the United Kingdom consented to an extension of fisheries jurisdiction by Iceland beyond the limits fixed in the agreement or the International Court of Justice should decide that such an extension was consistent with international law. This is the clear meaning and intent of the agreement *which emerges not only from the words of the agreement but also from the history of the negotiations between the parties.*

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<sup>1</sup> Further evidence that this was the intention of both parties is provided by a statement made by Mr. Thoroddsen, the Finance Minister of Iceland, speaking in Copenhagen on 13 April 1961. Having referred to Iceland's ultimate intention to seek fishery limits co-extensive with its continental shelf, he concluded that "at the right time the matter will be placed before the International Court at The Hague". See Annex J to this Memorial which sets out the text of a Reuter report published in *The Times* newspaper on 13 April 1961, and a translation of a similar report published in the Danish newspaper *Morgunbladid* on 13 April 1961.

## PART C

THE ICELANDIC ASSERTIONS THAT THE EXCHANGE OF NOTES  
OF 1961 SHOULD BE CONSIDERED AS TERMINATED

## 1. Introductory

44. In the face of the clear meaning of the language used and in the face of the overwhelming evidence of the intention of the parties when they concluded the Exchange of Notes of 1961, the Government of Iceland have sought to argue that the agreement which it embodies is either void or has terminated by reference to grounds of invalidity or termination which derive not from its own terms or the original intention of the parties but from general international law. The Government of the United Kingdom must deal with these arguments, notwithstanding the fact that the Government of Iceland have failed to appear before the Court to substantiate their assertion that the Court does not have jurisdiction. The Government of the United Kingdom are, however, in some difficulty in attempting to deal with arguments which so far have not been put by the Government of Iceland in clear legal terms but which the Government of the United Kingdom are forced to deduce from the resolutions of the Icelandic legislature, statements by Icelandic Ministers and statements in Icelandic documents and communications to the Court, particularly those referred to in paragraph 2 of this Memorial.

45. Some of the various reasons that are apparently given by the Government of Iceland to justify the termination of the Exchange of Notes of 1961 are not reasons which can be reconciled with the grounds for the termination of agreements which international law recognizes as valid grounds. For example, in his statement introducing the resolution on fisheries jurisdiction before the Althing on 9 November 1971 the Prime Minister of Iceland spoke of the decision to terminate the agreements with the United Kingdom and the Federal Republic of Germany in these terms:

“That decision is based on the opinion that these Agreements have already attained their main objective as these nations have fully benefited by the period of adjustment which they were given by the Agreements. Secondly, it is our opinion that the provision in the Agreement concerning six months’ notice of an extension and that any dispute over such an extension be referred to the International Court of Justice in perpetuity, are unnatural restrictions which the Icelanders need to get rid of. In our opinion, disputes of this nature cannot properly be judged by the International Court of Justice<sup>1</sup>.”

In the submission of the Government of the United Kingdom, such arguments are not acceptable legal arguments. (They are also inconsistent with the facts. It is not true that “the main objective” of the agreement constituted by the Exchange of Notes of 1961 was to accord to the United Kingdom a “period of

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<sup>1</sup> See p. 8 of “Background Information No. 4. Iceland, i.e., Fisheries Jurisdiction”, published by the Secretary for Press and Information, Prime Minister’s Office, Reykjavik. A copy of the full text will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

adjustment". As will be seen from the history of the negotiations and as is evident from the very terms of the Exchange of Notes, the provision of a "period of adjustment" was the purpose of the three-year transitional period but not the purpose of the agreement as a whole.) In the submission of the Government of the United Kingdom, the proposition that a compromissory clause providing for reference to the *International Court of Justice* is an "unnatural restriction which the Icelanders need to get rid of" is not an admissible proposition to be placed before the Court. It strikes at the very heart of the system of jurisdiction based upon binding agreements which is embodied in Article 36 (1) of the Statute of the Court, and the Government of the United Kingdom submit that it is unrecognizable and unacceptable as a valid legal ground for the termination of an international agreement. For similar reasons the Government of the United Kingdom must emphatically oppose the suggestion that a dispute regarding the validity under international law of Iceland's extension of fisheries jurisdiction "cannot properly be judged by the International Court of Justice".

46. A further suggestion that has been made by the Government of Iceland, for example in the Althing Resolution of 15 February 1972<sup>1</sup>, is that the Exchange of Notes of 1961 is no longer applicable "because of the vital interests of the nation". This, too, is an argument which, in the submission of the Government of the United Kingdom, is unacceptable as a valid ground in law for terminating an international agreement; if it were ever accepted as such, the treaty as a form of binding obligation would cease to exist. This is not to deny that fisheries, for Iceland, represent a vital interest; and the terms of the Exchange of Notes of 1961 clearly reflect the view of the Government of Iceland that Iceland has such an interest. But that is a totally different matter from the suggestion that, where a State has entered into a binding agreement (and, in doing so, has doubtless taken into account its vital interests), it is free to terminate that agreement unilaterally merely by invoking its "vital interests".

47. There remain, however, certain arguments contained in or implied by the various documents and statements issued by the Government of Iceland which might be assimilated to grounds of termination recognizable in international law. In essence, these seem to be three in number. The first is that the agreement embodied in the Exchange of Notes of 1961 is void for duress; the second is that the agreement has lapsed owing to a fundamental change of circumstances; and the third is that the agreement has lapsed owing to the development of a new preemptory norm of international law permitting coastal States to assert exclusive fishing rights in the seas above their continental shelves (or, despite its terms and the intention of the parties, has been validly terminated in reliance on such a new norm). All three arguments are discernible in the Icelandic sources referred to, and the Government of the United Kingdom will deal with them in turn.

## 2. The Argument that the Exchange of Notes of 1961 is Void for Duress

48. The letter dated 29 May 1972 addressed by the Minister for Foreign Affairs of Iceland to the Registrar of the Court contains the statement: "The 1961 Exchange of Notes took place under extremely difficult circumstances, when the British Royal Navy had been using force to oppose the 12-mile fishery limit established by the Icelandic Government in 1958."

<sup>1</sup> Annex G to the Application instituting proceedings.

49. The Government of the United Kingdom wish to state the following facts. The Royal Navy at no time interfered with Icelandic fishing vessels. Protection was afforded by fishery protection vessels of the Royal Navy to British fishing vessels, which, from 1 September 1958, Iceland was seeking to exclude from the area within 12 miles of her shores.

50. The measures taken by the United Kingdom were solely such as were necessary to protect British vessels exercising the right of fishing from unlawful seizure and molestation on the high seas. The minimum of force was used in affording such protection. During the entire period from 1 September 1958 to the conclusion of the Exchange of Notes of 1961 not a single shot was fired from any British naval vessel other than one star shell for illumination purposes. This was in marked contrast with the occasions on which Icelandic vessels opened fire on British vessels. The mission of British naval units was to prevent unlawful arrest on the high seas. When the British naval vessels were not satisfied that a British fishing vessel was outside the Icelandic 4-mile limit, as in the case of the vessel *Valafell* on 1 February 1959, the vessel was instructed to proceed to an Icelandic port to face trial for illegal fishing.

51. The following chronology of events during the relevant period reveals the emptiness of any suggestion that the activities of British naval vessels amounted to duress upon the Government of Iceland in the negotiation and conclusion of the Exchange of Notes of 1961.

#### *2 June 1958*

The Government of Iceland announced that new regulations purporting to extend fishery limits from 4 to 12 miles from baselines would be issued on 30 June and come into effect on 1 September of that year.

#### *4 June 1958*

The Government of the United Kingdom announced that such regulations could not be accepted as having any effect in law and that it would be their duty to prevent unlawful attempts to interfere with British vessels on the high seas.

#### *1 September 1958*

On the date on which the Government of Iceland purported to bring their regulations into force the Royal Navy commenced providing protection for British trawlers inside havens of about 30 miles in length between 4 and 12 miles from the baselines. The number of havens was either three or two according to the season of the year. The number of fishery protection frigates of the Royal Navy off Iceland at no time exceeded four. Usually there was only one frigate for each haven. A number of attempts were made by Icelandic gunboats to arrest British trawlers, but all were unsuccessful. Shotted rounds were fired by Icelandic gunboats on a number of occasions. On one occasion only did one of Her Majesty's ships fire and then only a star shell to illuminate a trawler threatened with arrest. Towards the latter half of 1959 the Icelandic gunboats made fewer serious attempts to arrest British trawlers and contented themselves with "buzzing", i.e., steaming close past the trawler and informing her that she was being reported for illegal fishing.

#### *22 February 1960*

British trawler owners announced that they would withdraw all their trawlers from the whole sea area around Iceland as a gesture of goodwill pending the second United Nations Law of the Sea Conference in Geneva.

*14 March 1960*

Royal Navy vessels were also withdrawn from the area around Iceland.

*17 March-25 April 1960*

The second United Nations Conference on the Law of the Sea narrowly failed to reach agreement on a proposal for a territorial sea of 6 miles with a further 6-mile exclusive fishery zone in which the vessels of countries which had habitually fished there would have the right to continue fishing for a period of 10 years.

*28 April 1960*

British trawler owners instructed their vessels to return to the sea area around Iceland but to remain outside the 12-mile zone. British naval vessels also returned to the waters off Iceland primarily to provide *normal technical and medical assistance to British fishing vessels*. They patrolled outside the 12-mile zone and were prepared to intervene if they saw any attempt by Icelandic gunboats forcibly to arrest British fishing vessels which were alleged to have been fishing within the 12-mile zone.

*29 April 1960*

The Government of Iceland announced an amnesty for all foreign fishing vessels which had fished within the 12-mile line in contravention of Icelandic law. British trawler owners then permitted their trawlers to go inside the 12-mile zone for shelter, repairs, etc., provided that their gear was stowed, so that it was clear that they were not fishing.

52. It will thus be seen that the Royal Navy established havens for British trawlers within the 12-mile zone from the period 1 September 1958 to 14 March 1960 only. For a period of approximately one year immediately preceding the Exchange of Notes of 1961 British trawler owners authorized their vessels to fish only outside the 12-mile zone. The activities of the Royal Navy were confined in the main to providing technical and medical support for British trawlers, warning them when they seemed in danger of transgressing their owners' instructions to keep clear of the 12-mile zone and reporting any such transgressions to the owners for disciplinary action against the skippers. They did, however, on occasion intervene to prevent the forcible arrest of British fishing vessels which were alleged to have been fishing between the 4-mile and 12-mile lines, since the Government of the United Kingdom had not accepted the extension to 12 miles and considered that any infringement of the British trawler owners' declaration that they would not allow their vessels to fish within 12 miles should be for the owners to deal with by disciplinary action against the skippers and not for the Icelandic courts. Severe disciplinary action was indeed taken when necessary by the owners and everything was done to reduce the risk of incidents to a minimum. The occasions on which a British naval vessel had to take action to prevent the forcible arrest of a trawler by Icelandic coastguard vessels became rare and there was no such occasion after July 1960.

53. The activities of British naval vessels were conducive to a negotiated settlement rather than the reverse. To the extent that they involved intervention in cases of threatened arrest they were purely defensive in character and the Government of the United Kingdom have at all times been prepared to justify them as being in accordance with international law. The Government of Iceland, however, at no time sought to put the matter to the test by raising

it before an appropriate international forum, and indeed declined the offer by the Government of the United Kingdom to refer the substantive dispute to the International Court of Justice. A very material point is that if it were true to say, as the Government of Iceland do, that the activities of British naval vessels created "extremely difficult circumstances", those circumstances would have ceased to exist more than a year before the conclusion of the Exchange of Notes of 1961, since in February 1960 the British trawler owners voluntarily withdrew their vessels entirely from the Icelandic area and subsequently authorized them to fish only outside the 12-mile line.

54. Moreover it can be seen from the history of the negotiations leading up to the Exchange of Notes of 1961 that at no time did the Government of Iceland conduct themselves as if they were a Government not fully free to consider where their own best interests lay. It has been seen from the analysis of the origins of the compromissory clause that the Government of Iceland resolutely opposed successive proposals by the Government of the United Kingdom. Exactly the same impression emerges from a study of the negotiations over the other controversial issues such as baselines, duration of the transitional period, and the definition of the areas within the outer 6 miles in which British fishing would be allowed to continue during the transitional period. That the negotiations were long and arduous is not to be denied. Such is frequently the case when both or all the Governments in negotiation have important interests to protect. The record is, however, quite inconsistent with any suggestion that the Exchange of Notes of 1961 did not reflect decisions freely taken by the Government of Iceland. There is, too, a clear inconsistency between the argument of duress and the action of the Prime Minister of Iceland in sending to the Prime Minister of the United Kingdom on 11 March 1961 a letter in which he said: "I should like to extend to you my sincere thanks for your most valuable personal contribution towards a fortunate solution of the matter, which I welcome wholeheartedly<sup>1</sup>". He would scarcely have written in these terms if he had thought that the agreement which Iceland had just concluded had been negotiated under duress.

### 3. The Argument that the Exchange of Notes of 1961 Has Lapsed Owing to a Fundamental Change of Circumstances

55. The resolution adopted by the Althing on 15 February 1972 contains the statement that "because of the vital interests of the nation and owing to changed circumstances the Notes concerning fishery limits exchanged in 1961 are no longer applicable . . .". The letter dated 29 May 1972 addressed to the Registrar of the Court by the Minister for Foreign Affairs of Iceland, contains a similar reference to "the changed circumstances resulting from the ever-increasing exploitation of the fishery resources in the seas surrounding Iceland".

56. The Government of the United Kingdom do not dispute the principle, commonly spoken of as the doctrine of *rebus sic stantibus*, that, under defined conditions, a treaty may be terminated because of a fundamental change of circumstances. This principle is recognized by almost all modern writers and is succinctly described by Rousseau as "une théorie d'après laquelle un changement essentiel dans les circonstances de fait en vue ou en considération desquelles un traité a été conclu peut entraîner la caducité de ce traité ou tout

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<sup>1</sup> For the text of this letter and Mr. Macmillan's reply see Annex K to this Memorial.

au moins affecter sa force obligatoire"<sup>1</sup>. The principle has been invoked by States before the Permanent Court of International Justice and although in the *Free Zones* case<sup>2</sup> the Court did not expressly recognize the principle, neither did it reject it. The same principle has been invoked in State practice and in decisions of municipal courts based upon the application of international law<sup>3</sup>. Thus, the Rapporteur of the International Law Commission felt confident in treating the principle as one of established customary law<sup>3</sup> and this view was accepted in the Vienna Conference which restated the principle in Article 62 of the Vienna Convention on the Law of Treaties of May 1969 in the following terms:

*"Fundamental change of circumstances*

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

- (a) if the treaty establishes a boundary; or
- (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty."

57. The conditions defined in paragraph 1 of Article 62 are essentially five-fold and may be summarized in the form used by the International Law Commission in its Commentary on the Draft Articles submitted to the Vienna Conference<sup>4</sup>.

*"(1) the change must be of circumstances existing at the time of the conclusion of the treaty."*

58. The circumstances to which the Government of Iceland refer are, essentially, the increased exploitation of the fishery resources in the seas

<sup>1</sup> Rousseau, *Droit international public* (1953), p. 60. See also Oppenheim, *International Law*, 8th ed., Vol. I, pp. 938-944; McNair, *Law of Treaties* (1961), pp. 681-691; Hill, *The Doctrine of Rebus Sic Stantibus in International Law* (1934); Sepulveda, *Derecho Internacional Publico* (1968), pp. 129-130; Harvard Law School, *Research in International Law III, Law of Treaties* (1935), pp. 1096-1126.

<sup>2</sup> *P.C.I.J., Series A/B, No. 46*, pp. 156-158.

<sup>3</sup> For a detailed summary of this practice and references to the relevant municipal decisions, see *Second Report on the Law of Treaties* (A/CN.4/156 and Add. 1-3) in 1963 *Yearbook of the International Law Commission*, Vol. II, pp. 80-85.

<sup>4</sup> United Nations Conference on the Law of Treaties. First and Second Session. Documents of the Conference, Draft Articles of the I.L.C., p. 79.

surrounding Iceland and the danger of still further exploitation because of an increase in the catching capacity of fishing fleets. The reference is made more explicit in the Icelandic Memorandum of February 1972 (enclosure 2 to Annex H to the Application instituting proceedings) which, at page 8, states:

“Fishing techniques and catch capacity are rapidly being developed and about half of the catch of demersal fish in the Icelandic area has been taken by foreign trawlers (Fig. 2). The danger of intensified foreign fishing in Icelandic waters is now imminent. The catch capacity of the distant water fleet of nations fishing in Icelandic waters has reached ominous proportions.”

In fact the graph given at Figure 2 of the Icelandic Memorandum shows the total demersal catch after 1960 as varying to no great extent from the 1960 level. The more specific figures given in the tables annexed to the United Kingdom's Request for the Indication of Interim Measures of Protection (dated 19 July 1972) show that in 1960 the total catch of demersal species in Icelandic waters by all States was 758.9 thousand metric tons. There was thereafter some variation year by year both upwards and downwards with a final total catch figure in 1971 estimated at 783 thousand metric tons, only 3.2 per cent. greater than in 1960. Of this total catch Iceland took 53.4 per cent. in 1960 and 52.4 per cent. in 1971, and the Icelandic share is consistently about half the total. Moreover, scientific reports (of the International Council for the Exploration of the Sea to the North East Atlantic Fishery Commission meeting in 1972<sup>1</sup> and the ICES/ICNAF Working Group on Cod Stocks in the North Atlantic reporting to the International Commission for the North West Fisheries in June 1972)<sup>1</sup> give no evidence that the stocks of demersal fish around Iceland are in an unsatisfactory condition, apart from the relatively small stock of haddock, which is fished primarily by Iceland. The report of the ICES/ICNAF Working Group referred to above does indeed give evidence (table 12, Estimates of Population Biomass) of a stable cod stock at Iceland in the decade 1960-1970 (cod forming 55 per cent. of the total catch of all demersal species at Iceland). As regards the capacity of fishing fleets, increases in the efficiency of individual trawlers have been counterbalanced by the reduction in total numbers of vessels in national fleets under modernization programmes. The capacity of the international fleet fishing for cod in the North Atlantic as a whole has changed very little in the decade 1960-1970 and the amount of cod fishing by foreign trawlers at Iceland alone has decreased. The long-term stability of demersal catches there reflects a fundamental soundness in the stocks. Increases in fishing capacity which are believed to have occurred in some fleets have been aimed at species other than cod and these do not occur in significant quantities close to Iceland.

59. It appears, therefore, that though there has been some change of the circumstances as they existed in 1960, the change has been of a very minor order.

(2) “that change must be a fundamental one”

60. This condition has clearly not been met. From the information given in paragraph 58 above it is clear that whatever change in the circum-

<sup>1</sup> A copy of this Report will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

stances has occurred, it falls very far short of what may be regarded as "fundamental".

61. The reluctance which at one time existed towards admitting the principle of *rebus sic stantibus* was based upon the risk that States would invoke it owing "not to essential changes of circumstances, but to a change in a State's policy or attitude towards the treaty"<sup>1</sup>. This is precisely what has happened in the present case in which the Government of Iceland seeks to conceal what is no more than a change of policy towards the Exchange of Notes of 1961 in the guise of the legal doctrine of *rebus sic stantibus*. Though he was there dealing with a somewhat different situation, the words of Judge de Castro in his separate opinion on the *Appeal Relating to the Jurisdiction of the ICAO Council*<sup>2</sup> are, *mutatis mutandis*, highly relevant: "The direct consequence of the doctrine which India advances before us is to confer on member States the possibility of freeing themselves at will from their obligations as members of the Organisation vis-à-vis another member State. It affords a convenient cover for a *non volumus*. It is enough to accuse the other party of breach of an obligation, and to treat the breach as an appropriate ground for putting an end to the treaty." See also paragraph 16 (b) of the Judgment of the Court in the same case<sup>3</sup> where the Court said: "If a mere allegation, yet unestablished, that a treaty was no longer operative could be used to defeat its jurisdictional clauses, all such clauses would become potentially a dead letter. . . . The result would be that means of defeating jurisdictional clauses would never be wanting."

62. The rigorous standards which tribunals have applied to the concept of "fundamental" change cannot be over-emphasized. Indeed, the history of international adjudication does not contain one example in which the plea of *rebus sic stantibus* has been successful. In the *Case of the Free Zones of Upper Savoy and Gex*<sup>4</sup> the Permanent Court of International Justice refused to accept that, on the facts, there had been such changes, since the original treaties of 1815 and 1816, as would merit being regarded as "fundamental" for this purpose. The Permanent Court accepted that some changes had occurred, for example in the food supply requirements of Geneva and in communications, but did not regard these changes as sufficiently fundamental<sup>5</sup> or as affecting what the Court described as "the whole body of circumstances"<sup>6</sup>. There is nothing to suggest that such changes as may have occurred in the demersal fisheries off Iceland's coasts are fundamental, and certainly they cannot be said to be changes in "the whole body of circumstances".

(3) "it must also be one not foreseen by the parties"

63. Nothing in the history of the negotiations leading up to the Exchange of Notes of 1961 suggests that the parties did not foresee any increase in fishing catch or any development in fishing techniques. On the contrary, both parties were of sufficient experience in fishing techniques to have known that further development of these techniques was inevitable.

<sup>1</sup> Second Report on the Law of Treaties, in 1963 *Yearbook of the I.L.C.*, Vol. II, para. 15.

<sup>2</sup> *I.C.J. Reports 1972*, p. 46 at p. 133.

<sup>3</sup> *Ibid.*, p. 54. See also para. 32 of the Judgment at pp. 64-65.

<sup>4</sup> *P.C.I.J., Series A/B, No. 46*, pp. 156-158.

<sup>5</sup> The same point is made in the decision of the Swiss Federal Court in *Thurgau v. St. Gallen*, Annual Digest of International Law Cases, 1927-1928, case No. 289.

<sup>6</sup> *Loc. cit.*, p. 158.

(4) "*the existence of those circumstances must have constituted an essential basis of the consent of the parties to be bound by the treaty*"

64. The strictness of this condition can again be illustrated by reference to the *Free Zones* case, for the Permanent Court of International Justice there refused to accept the French argument that the absence of any customs régime for Geneva in 1815 was the basis of the consent by the parties to the agreement of 1815<sup>1</sup>.

65. Nothing in the history of the negotiations leading up to the Exchange of Notes of 1961 suggests that it was negotiated on the basis that there would be no increase in the fishing catch or further development of fishing techniques.

(5) "*the effect of the change must be radically to transform the scope of obligations still to be performed under the treaty*"

66. In the submission of the Government of the United Kingdom, this condition is wholly unsatisfied in the present case. The change of circumstances which is alleged by the Government of Iceland not only cannot be said "radically to transform the scope of" the particular obligations which are imposed by the Exchange of Notes of 1961 and which they seek to escape by relying on it: it is not even relevant to those obligations. The Government of the United Kingdom respectfully remind the Court that what is in issue in the present case is not whether Iceland should, by virtue of the Exchange of Notes of 1961 and as against the United Kingdom, be restricted from extending its exclusive fisheries limits to the full extent permitted by current international law but whether current international law does indeed permit such an extension as Iceland now seeks to make (in which case the United Kingdom can make no objection to it) and, more immediately, whether Iceland is bound, by the Exchange of Notes of 1961 and as against the United Kingdom, to accept the Court's decision on that question. Whatever might be the relevance of "changed circumstances resulting from the ever-increasing exploitation of the fishery resources in the seas surrounding Iceland" to the continuing validity of an agreement holding Iceland to a particular, fixed fisheries limit, they can have no relevance to an agreement to abide within the limits of general international law and to submit any relevant dispute about that law to the International Court of Justice.

67. It is thus clear that none of the conditions essential to the proper application of the doctrine of *rebus sic stantibus* are fulfilled in the present case. There is, moreover, a final and fatal flaw in the Icelandic contention. That flaw is that the doctrine never operates so as to extinguish a treaty automatically or to allow an unchallengeable unilateral denunciation by one party; it operates only so as to confer a right to call for termination and, if that call is disputed, to place the dispute before some organ or body with power to determine whether the conditions for the operation of the doctrine are present. As the Rapporteur of the International Law Commission put it:

"... a State may only terminate or withdraw from a treaty on the basis of the *rebus sic stantibus* doctrine either by agreement or by following a

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<sup>1</sup> *Loc. cit.*, p. 158.

procedure which offered an objecting party the possibility of some form of independent determination of the claim to invoke the doctrine<sup>1</sup>.

68. This principle is of longstanding. In the *Free Zones* case France conceded that the doctrine did not allow unilateral denunciation but would cause a lapse of a treaty only "lorsque le changement des circonstances aura été reconnu par un acte faisant droit entre les deux Etats intéressés"; and it continued: "cet acte faisant droit entre les deux Etats intéressés peut être soit un accord, lequel accord sera une reconnaissance du changement des circonstances et de son effet sur le traité, soit une sentence du juge international compétent s'il y en a un<sup>2</sup>".

69. The same principle was stated by Belgium in the case concerning *The Denunciation of the Sino-Belgian Treaty of 1865*, in which the Belgian Government emphasized that "... il ne peut être question de dénoncer unilatéralement un traité pour cause de circonstances nouvelles, sans avoir tout au moins tenté d'obtenir la révision du traité par la voie indiquée à l'article 19 du Pacte. ... Si telle est la procédure ouverte à tous les Membres de la Société des Nations, c'est à la Cour permanente de Justice internationale que doit être soumise, en dernier ressort, une contestation qui surgirait relativement à l'application du principe *rebus sic stantibus* entre deux Etats signataires tous deux de la clause facultative de compétence<sup>3</sup>".

70. During the detailed discussion in the Committee of the Whole at Vienna, when it was considering the draft Article 59 on *rebus sic stantibus*, numerous delegations made it clear that they could support the adoption of the text only on condition that it provided a form of compulsory international adjudication of any claim to invoke the doctrine<sup>4</sup>. It is now provided in Articles 65 and 66 of the Vienna Convention on the Law of Treaties that, in relation to any invocation of *rebus sic stantibus*, where the parties to a Treaty have failed within 12 months to achieve a settlement of a dispute by the means indicated in Article 22 of the United Nations Charter (which means include reference to judicial settlement) any one of the parties may submit the dispute to the procedure for conciliation provided in the Annex to the Convention. Conceding that Iceland is not bound by this provision *per se*, it is nevertheless clear that the obligation upon a State invoking *rebus sic stantibus* to refer the matter, if disputed, to independent adjudication arises from general international law and is part and parcel of the principle of *rebus sic stantibus*.

<sup>1</sup> Second Report on the Law of Treaties, *loc. cit.*, para. 18; and see Rousseau, *op. cit.*, p. 60 who states "il est généralement reconnu en pratique que la clause *rebus sic stantibus* n'autorise pas une rupture unilatérale des traités, mais qu'elle requiert un accord des Parties contractantes pour constater le changement des circonstances ou — à défaut de cet accord — une décision, arbitrale ou judiciaire". To the same effect see Sibert, *Traité de droit international public* (1951), Vol. II, Section 1,000. And see also the Harvard Law School, *Research in International Law*, *loc. cit.*, p. 1096, which provided in Article 28 that "A treaty entered into with reference to the existence of a state of facts, the continued existence of which was envisaged by the parties as a determining factor moving them to undertake the obligations stipulated, may be declared by a competent international tribunal or authority to have ceased to be binding, in the sense of calling for further performance, when that state of facts has been essentially changed".

<sup>2</sup> *Loc. cit.*, Series C, No. 58, pp. 578-579, 109-132 and 405-415.

<sup>3</sup> *Ibid.*, Series C, No. 16; I, p. 22.

<sup>4</sup> For example, Switzerland (63rd Meeting, paras. 27-28); United Kingdom (63rd Meeting, para. 35); Australia (64th Meeting, para. 26); Turkey (64th Meeting, para. 73); France (64th Meeting, para. 92); Greece (65th Meeting, para. 3); Denmark (65th Meeting, para. 11); Italy (65th Meeting, para. 23).

Iceland cannot, therefore, rely on this principle unless it is willing to submit its claim to do so to adjudication by the appropriate means. In the present case, where the claim is advanced in answer to a *prima facie* valid invocation of a treaty before the International Court of Justice, the appropriate means is to submit it to that Court. Indeed, Iceland can scarcely be entitled to claim that the Court's jurisdiction, validly conferred by agreement in the first place, is now ousted on this ground in a case where it refuses to address argument to the Court on that very issue.

**4. The Argument that the Exchange of Notes of 1961 Has Lapsed or Been Validly Terminated by Reason of the Development of a New Rule Permitting Coastal States to Assert Exclusive Fishing Rights over the Waters Above their Continental Shelves**

71. Implicit in the claim of the Government of Iceland to be entitled to extend their exclusive fishery limits is the proposition that offshore fisheries are resources to which Iceland has a sovereign right by virtue of the concept of the continental shelf. Reference to this concept was made in the resolution adopted by the Althing on 15 February 1972<sup>1</sup>, in the Icelandic Memorandum on "Fisheries Jurisdiction in Iceland" of February 1972<sup>2</sup>, in the statement by the Minister for Foreign Affairs of Iceland during the debate in the General Assembly of the United Nations on 29 September 1971<sup>3</sup>, and in the statement of the Minister for Fisheries of Iceland at the Ministerial Meeting of the North East Atlantic Fisheries Commission in Moscow on 15 December 1971<sup>4</sup>.

72. It is evident that the Convention on the Continental Shelf, concluded at Geneva in 1958, does not support that proposition since, by the very terms of Article 2, the "natural resources" to which that Article refers do not extend to free-swimming fish. It may also be recalled that, as recently as 1969, in the *North Sea Continental Shelf* cases, the International Court of Justice accepted that this Article was regarded as "reflecting, or as crystallizing, received or at least emergent rules of customary international law . . ."<sup>5</sup>

73. This being so, the Icelandic claim is tenable only if the Government of Iceland can show that, contrary to the Convention and to the view expressed by the Court in 1969, a new rule of international law embodying the proposition referred to above has emerged before the inception of these proceedings and that, moreover, it is a rule of such a character as to entitle Iceland to regard the Exchange of Notes of 1961 as having lapsed or as being capable, despite its own terms, of being unilaterally terminated. The Minister for Foreign Affairs of Iceland in his statement on 29 September 1971, did indeed refer to a "new system [which] already has the support of the international community"<sup>6</sup>. It may also be recalled that in the dissenting opinion on the United Kingdom's Request for Interim Measures of Protection in this case the Icelandic claim was regarded as one based upon the continental shelf

<sup>1</sup> See Enclosure 2 to Annex H to the Application instituting proceedings, p. 39, *supra*.

<sup>2</sup> *Ibid.*, p. 27, *supra*.

<sup>3</sup> *Ibid.*, p. 52, *supra*.

<sup>4</sup> *Ibid.*, p. 55, *supra*.

<sup>5</sup> *I.C.J. Reports 1969*, p. 39.

<sup>6</sup> *Loc. cit.*

concept and there was a reference to the "progressive development of international law" and the "recognition of the concept of the patrimonial sea"<sup>1</sup>.

74. Such a claim by Iceland presupposes, first, that a new general rule of international law has emerged since 1961 by virtue of which a coastal State may claim exclusive fishing rights in the seas superjacent to its continental shelf; and, second, that the rule is part of the *jus cogens* and constitutes a peremptory norm by virtue of which the Exchange of Notes of 1961 becomes void and is terminated (or may be unilaterally terminated despite its own terms). The first part of this proposition is disputed by the Government of the United Kingdom. However, this is a matter which pertains more to merits than to jurisdiction and, since the Court has required this Memorial to be confined to "the question of jurisdiction", it is sufficient for the Government of the United Kingdom to meet the whole of the Icelandic argument on this point by contesting the second part of the proposition. For, whatever be the contemporary rule of international law on exclusive fisheries jurisdiction, it is clear that this rule does not have the character of *jus cogens* so as to terminate, or override the provisions of, a valid treaty. Accordingly, it is submitted that, as a ground for contesting the Court's jurisdiction based upon the Exchange of Notes of 1961, this Icelandic argument is untenable. It may be noted that it has not been repeated in the Icelandic communications to the Court.

75. The concept of termination of existing treaties by reference to an emerging peremptory norm of international law has always been treated with great caution and, although finally embodied in Article 64 of the Vienna Convention on the Law of Treaties, it was intended to be confined to a very limited category of rules having the character of *jus cogens*. As is evident from the *travaux préparatoires*, the International Law Commission had in mind only "certain rules from which States are not competent to derogate at all by a treaty arrangement"<sup>2</sup>. It is not possible that a rule on exclusive fisheries can fall into this category. Exclusive fishery limits have always been conceived as limits within which the coastal State *may*, not *must*, prohibit fishing by foreign vessels. There never has been a rule preventing a coastal State from permitting, by custom or treaty arrangement, foreign vessels to fish within its territorial sea or other exclusive fishery limits. Rules on exclusive fisheries therefore lack the peremptory character required for the operation of this principle. They also lack the generality of application required by the concept of *jus cogens*. Indeed, even those who support the concept of a "patrimonial sea" do not envisage it as necessarily a rule of general application and Iceland itself has stated quite explicitly that "The Government of Iceland does not maintain that the same rule should necessarily apply in all countries"<sup>3</sup>. There can, therefore, be no possibility of the *jus cogens* doctrine applying to rules of this kind. It must also be said that, as with the doctrine *rebus sic stantibus*,

<sup>1</sup> Order of 17 August 1972, pp. 6, 11.

<sup>2</sup> Commentary to the Draft Articles, etc., *loc. cit.*, p. 67. Indeed, at an earlier stage, the Rapporteur had envisaged such peremptory norms as covering only three categories: (i) rules prohibiting the threat or use of force contrary to the United Nations Charter; (ii) rules constituting international crimes and (iii) rules requiring States to punish or suppress acts of omissions. See *Second Report on the Law of Treaties*, A/CN.4/156 and Add. 1-3, 1963, *Yearbook of the I.L.C.*, Vol. II, p. 52.

<sup>3</sup> Statement by Ambassador Andersen on 16 March 1971 before the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the limits of National Jurisdiction, reproduced in the Application instituting proceedings, Enclosure 2 to Annex H, Appendix VI.

so too the doctrine of *jus cogens* demands reference to impartial international adjudication<sup>1</sup> and does not permit unilateral denunciation of valid treaties.

76. But, just as in the case of an objection to the Court's jurisdiction based on *rebus sic stantibus* (see para. 66 above), an even more fundamental flaw in an objection based on *jus cogens* is that such an objection can have no relevance to the particular obligations which are imposed by the Exchange of Notes of 1961. Even if there could be a new peremptory rule of international law authorizing coastal States to extend their exclusive fisheries jurisdiction to the edge of the continental shelf adjacent to them, there could be no conflict between such a rule and a treaty obligation by which a particular coastal State has agreed, first, not to extend its exclusive fisheries limits at any given time beyond what is permitted by international law in force at that time and, secondly (and this is what is in issue at the present stage of these proceedings), that a dispute concerning the legality of any particular extension should be referred to and determined by the International Court of Justice. The same would be true if the alleged new peremptory rule were to the effect that coastal States may extend their exclusive fishery limits to whatever reasonable distance they themselves consider expedient (though the Government of Iceland do not themselves appear to have put their case in these terms); there could be no conflict between that rule and the particular obligations which are imposed by the Exchange of Notes of 1961. (The Government of the United Kingdom do not, of course, concede that such a new peremptory rule has emerged, in either of these forms.)

77. The position is basically that the Government of Iceland, which have put forward the topic of exclusive fishery zones as one of the subjects and issues that should be considered at the forthcoming Law of the Sea Conference<sup>2</sup>, not only seek to anticipate, by unilateral action, the result which they would wish to see emerge from that Conference; they also seek to avoid independent adjudication on the question whether that action is lawful. Whatever might be thought of the validity of such a course in the absence of any relevant treaty provision, its invalidity is patent when it takes place in violation of quite specific bilateral treaties such as the Exchange of Notes of 1961. The attempted resort to the *jus cogens* doctrine fails to satisfy any of the conditions required by that doctrine and is in any event entirely irrelevant to the issues before the Court in this case not only (as the Government of the United Kingdom will in due course be prepared to submit to the Court) on the merits but also, and more immediately, on the question of the Court's jurisdiction. Accordingly it cannot be accepted as a ground for invalidating or overriding the provisions of the Exchange of Notes of 1961 that confer that jurisdiction.

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<sup>1</sup> Vienna Convention on the Law of Treaties, Articles 64 and 66.

<sup>2</sup> A/AC.138/51, 13 August 1971. The topic is headed "Zones of special jurisdiction: fisheries and other marine resources; exclusive limits and preferential rights, conservation and management of resources".

## PART D

## FINAL SUBMISSIONS OF THE GOVERNMENT OF THE UNITED KINGDOM

## 1. Summary of Contentions Put Forward in this Memorial

78. The Government of the United Kingdom contend that the considerations of fact and law set out in the foregoing paragraphs of this Memorial establish the following:

- (a) that the Exchange of Notes of 11 March, 1961, always has been and remains now a valid agreement;
- (b) that, for the purposes of Article 36 (1) of the Statute of the Court, the Exchange of Notes of 11 March, 1961, constitutes a treaty or convention in force and a submission by both parties to the jurisdiction of the Court in case of a dispute in relation to a claim by Iceland to extend its fisheries jurisdiction beyond the limits agreed in that Exchange of Notes;
- (c) that, given the refusal by the United Kingdom to accept the validity of unilateral action by Iceland purporting to extend its fisheries limits (as manifested in the Aide-Mémoires of the Government of Iceland of 31 August, 1971, and 24 February, 1972, the Resolution of the Althing of 15 February, 1972, and the Regulations of 14 July, 1972, issued pursuant to that Resolution), a dispute exists between Iceland and the United Kingdom which constitutes a dispute within the terms of the compromissory clause of the Exchange of Notes of 11 March, 1961; and
- (d) that the purported termination by Iceland of the Exchange of Notes of 11 March, 1961, so as to oust the jurisdiction of the Court is without legal effect.

## 2. Submissions of the Government of the United Kingdom

79. Accordingly, the Government of the United Kingdom submit to the Court that they are entitled to a declaration and judgment that the Court has full jurisdiction to proceed to entertain the Application by the United Kingdom on the merits of the dispute.

(Signed) H. STEEL,

Agent for the Government of the  
United Kingdom.

13 October 1972.

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## ANNEXES TO THE MEMORIAL ON JURISDICTION

## Annex A

EXTRACT FROM SPEECH MADE BY MR. SELWYN LLOYD, SECRETARY OF STATE FOR FOREIGN AFFAIRS, TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 25 SEPTEMBER 1958

"85. The topic of territorial waters and fishing rights will be raised in the Sixth Committee during the session. This is an even more striking example of a subject where the principle of interdependence should be recognized. Our attitude is that this is a matter which must be settled by international agreement, that unilateral seizure of areas of the high seas under the pretext of some unilateral national decision is quite out of tune with the spirit of the day. We regret very much our present dispute with Iceland. We have a long history of most cordial relations which we wish to restore as quickly as possible. Our difference is essentially a difference of opinion as to what Iceland is legally entitled to do. The United Kingdom, with other countries, believes that Iceland is acting illegally. Iceland maintains that it is acting legally. So I have this proposition to make. If the Icelandic Government is prepared to agree, let us submit the issue to the International Court of Justice. If the law is on Iceland's side, then it has nothing to fear from such a course."

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**Annex B**

EXTRACT FROM MEMORANDUM SUBMITTED TO THE GENERAL ASSEMBLY OF THE  
UNITED NATIONS BY THE GOVERNMENT OF THE UNITED KINGDOM IN  
NOVEMBER 1958

**“THE INTERNATIONAL COURT OF JUSTICE**

In view of the unwillingness of the Government of Iceland to adopt the economic approach and make a fishery agreement, the Government of the United Kingdom has suggested that if the Government of Iceland wishes to base its case upon its rights under international law the two parties should agree together to seek a decision from the International Court of Justice. It is open to the Government of Iceland, which has not accepted the compulsory jurisdiction of the International Court, to indicate at any time that it is prepared to accept the jurisdiction of the Court in this case.”

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## Annex C

NOTE BY THE GOVERNMENT OF ICELAND DATED 18 DECEMBER 1958

"No. 32

The Ministry for Foreign Affairs presents its compliments to the British Embassy and has the honour to refer to the Embassy's Note Verbale of November 10, 1958 protesting against actions of Icelandic Coast Guard vessels.

As regards the incidents on September 29 and October 6, dealt with in the Embassy's Note Verbale, attention is called to the following:

- (a) The Coast Guard vessel *Aegir* observed on September 29 the British trawler *Afridi* off Grimsey 5.7 nautical miles within the Icelandic fishery limits. The trawler was suspected of having previously violated Icelandic laws and regulations. For two hours the trawler ignored all stop signals from the *Aegir* including three blank shots, two of which were fired within the 12 miles fishery limit. It might be mentioned in this connection that during this pursuit the Commanding Officer of the British warship *Decoy* was overheard to send a message to the *Afridi* with 'all his encouragements'.
- (b) On October 6 the Coast Guard vessel *Maria Julia* approached the British trawler *Kingston Emerald* engaged in illegal fishing off Glettinganes 1.5 nautical miles within the fishery limits. The trawler ignored all stop signals from the patrol boat including five blank shots. The skipper of the trawler replied to the signals from the *Maria Julia* with rude language and even attempted to ram the patrol boat. The trawler's crew was armed with long knives.

The Icelandic Government rejects the assertions in the Embassy's Note Verbale of unwarranted actions on behalf of the Icelandic Coast Guard patrol against the above British trawlers sailing or fishing outside the 12-mile fishery limit.

With regard to the observations in the Note Verbale concerning the attempts of Icelandic authorities to arrest violators of the Icelandic fishery legislation, the following should be noted:

As repeatedly pointed out, it is the view of the Icelandic Government that the Regulations issued on June 30, 1958, extending the Icelandic fishery limits to 12 nautical miles, are in conformity with international law and were essential to safeguard vital Icelandic interests.

The Government of Iceland considers that the Icelandic authorities are legally entitled to take steps to arrest vessels violating Icelandic laws and regulations. It depends on the circumstances whether the arrest is effected within the prescribed limits, whether it has to be made outside the limits in conformity with the principles of *droit de chasse*, or whether legal proceedings in connection with such violations have to be instituted later in cases where Icelandic authorities have been prevented by foreign military force from arresting the violators.

As regards the *droit de chasse* the Icelandic Government considers that it is sufficient that the required steps be taken before the vessel in question leaves

the 12-mile limit. The Geneva Convention on the High Seas has not been ratified by the Icelandic Government. In any case that Convention does not contain any provision concerning the breadth of the territorial sea or the extent of fishery limits. It is generally agreed, as shown by the recent debate in the Sixth Committee of the General Assembly of the United Nations, that since these questions were left unsettled as far as the Geneva Conventions were concerned the cornerstone of the edifice constructed at Geneva is lacking. This fact must be kept in mind when the application of the Geneva Conventions is being considered.

The Icelandic Government wishes to use this occasion to reiterate once more its protests against British warships interfering with lawful enforcement actions by Icelandic authorities in Icelandic waters, and reserves all its rights in this connection. At the same time the earnest hope is expressed that the warships be withdrawn without further delay.

The Icelandic Government takes note of the statement made in the Embassy's Note Verbale regarding the readiness of the British Government to negotiate a reasonable interim agreement or *modus vivendi* pending the outcome of the next United Nations Conference on the Law of the Sea, although the activities of British warships in Icelandic waters certainly complicate the whole matter.

As the second United Nations Conference on the Law of the Sea will be convened in the near future for the specific purpose of dealing with the disputed question of the extent of fishery limits as well as the breadth of the territorial sea, the Icelandic Government does not consider it practical or desirable to refer the matter at the same time to the International Court of Justice.

The Ministry avails itself of this opportunity to renew to the Embassy the assurance of its highest consideration.

Ministry for Foreign Affairs,  
Reykjavik, December 18, 1958."

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**Annex D****DRAFT EXCHANGE OF NOTES PUT FORWARD BY THE GOVERNMENT OF THE UNITED KINGDOM ON 9 DECEMBER 1960***No. 1*

Your Excellency,

I have the honour to refer to the Fishery Agreement between Iceland and the United Kingdom signed today. I am to state that the Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland. I am, nevertheless, to propose:

- (i) that six months notice shall be given by the Icelandic Government to the United Kingdom Government of any such extension; and
- (ii) that in case of a dispute between the Icelandic Government and the United Kingdom Government in relation to any such extension the matter shall be referred, at the request of either party, to the International Court of Justice.

2. I have the honour to suggest that this Note and Your Excellency's reply thereto confirming that the proposals set out in sub-paragraphs (i) and (ii) of the first paragraph of this Note are acceptable to the United Kingdom Government shall be regarded as constituting an Agreement between our two Governments in regard to these proposals.

*No. 2*

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date reading as follows:

[As in No. 1]

2. I have the honour to state that whilst the United Kingdom Government affirms that it cannot recognize any extension of fisheries jurisdiction which is not in accordance with international law, the proposals set out in sub-paragraphs (i) and (ii) of the first paragraph of Your Note are acceptable to the United Kingdom Government, and to confirm that Your Excellency's Note and my present reply thereto will be regarded as constituting an Agreement between our two Governments in regard to these proposals.

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## Annex E

DRAFT EXCHANGE OF NOTES PUT FORWARD BY THE GOVERNMENT OF ICELAND  
ON 10 DECEMBER 1960

## I

Your Excellency,

The discussions which have taken place between representatives of our respective Governments concerning the fisheries dispute have now been concluded. It is the understanding of my Government that this dispute can be settled on the following basis:

1. United Kingdom Government no longer oppose the 12-mile fisheries limit around Iceland.

2. Following base lines enter into force immediately:

- 1-5
- 12-16
- 51-42
- 35-39

3 (a). For a period of three years British trawlers may engage in trawling within the zone from 6 to 12 miles as follows:

- (1) Horn-Langanes (with the exception of area between Sormsey and the mainland, delimited by the lines drawn from the southernmost tip of the mainland to the base points of 6 and 8).  
June-September.
- (2) Langanes-Glettinganes.  
May-December.
- (3) Glettinganes-Setusker (20).  
January-April and July-August.
- (4) Setusker-Myrnatbhui (30).  
March-July.
- (5) Myrnatbhui-20° W. longitude.  
April-August.
- (6) 20° W. longitude-Geirfugladrangur (51).  
March-May.
- (7) Geirfugladrangur-Bjargtangar (43).  
March-May.
- (8) Bjargtangar-Straumnes (46).  
June-October.
- (9) Straumnes-Horn.  
March-June.

3 (b). *Protected areas between 6 and 12 miles.*

*In following areas, however, there will be no British trawling:*

- (1) Between 63° 37' N. latitude and 64° 13' N. latitude (south Faxaflói).
- (2) Between 64° 40' N. latitude and 64° 52' N. latitude (at Snaefellsnes).
- (3) Between 65° N. latitude and 65° 43' N. latitude (Mafdafjorddur).

- (4) Between 14° 15' W. longitude and 15° 32' W. longitude (Myrabugt).
- (5) Between 16° 12' W. longitude and 16° 46' W. longitude (Ingolfshofdi).

4. *Protected areas outside the 12-mile limit.*

There will be no British trawling during the next three years inside the following areas between 12 and 18 miles:

- (1) Bjargtangar-Bardi (45).  
January-April.
- (2) Bardi-Horn.  
November-February.

Icelandic Government will continue to work for implementation of the Althing resolution of May 5, 1959, regarding extension of fisheries jurisdiction around Iceland. Six months' notice will be given of application of any such extension and in case of dispute the measures will at the request of the several parties, be referred to the International Court of Justice.

I would propose that in your reply to this Note you will confirm the above understanding.

II

Your Excellency,

I have the honour to acknowledge the receipt of the draft Note of today as follows:

[Assuming No. 1]

On behalf of the United Kingdom Government I wish to confirm the understanding contained in your Note.

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**Annex F****TEXT OF MESSAGE BY SECRETARY OF STATE FOR FOREIGN AFFAIRS, DELIVERED  
14 DECEMBER 1960**

Her Majesty's Ambassador has reported to me the Icelandic Government's latest proposals for a settlement of the fishery dispute, as set out in the draft Exchange of Notes which you handed to him on December 10. I am afraid I must tell you that these proposals have come to my Government as a severe shock and disappointment. I need hardly say that we wish for nothing more than to strengthen relations between our two countries as traditional friends and as fellow-members of NATO. To that end we have striven hard to reach a settlement of the dispute. You have told us that your Government also sincerely desire a settlement. This had encouraged us to hope that despite the difficulties on both sides it would be possible to find a compromise between our respective positions. It was in the spirit of compromise and in an earnest attempt to reach an agreement that we put forward the proposals which the Ambassador conveyed to you on 9 December.

2. These went a very long way to meet you in recognition of Iceland's special situation in regard to fisheries. Not only were we willing to accept a transitional period much shorter than that envisaged in the United States/Canadian proposal, but in recognition of your Government's internal difficulties we were ready to go much further. We were willing to agree to a severe curtailment of our industry's freedom to fish within the 6-12 mile zone, to accept the immediate introduction of four new baselines for the purpose of delimiting that zone, and even to consider the exclusion of our vessels from an area outside 12 miles during a reasonable transitional period. The cumulative effect of these further concessions by us would have been to deprive our industry of most of the benefit which transitional arrangements were intended to provide. Finally, we were prepared to accept a less satisfactory form of assurance in regard to future action by the Icelandic Government than that which we considered desirable.

3. Your Government's present position appears, if I may say so, to take little account of our proposals, and your draft Exchange of Notes does not, as we would wish, constitute an Agreement between the two Governments. Nor do the Icelandic proposals meet our three basic requirements for the terms of an Agreement which were made clear in the Ambassador's communication of December 9. These are:

- (i) the assurance should be set out in an Exchange of Notes expressly stated to constitute an Agreement which would, in Her Majesty's Government's view, be the only way of binding both parties to accept the jurisdiction of the International Court of Justice in the event of any dispute arising over extensions of fishery jurisdiction. We regard this as essential if we are going to achieve stability in our future fishery relations as we earnestly desire;
- (ii) the transitional period should be five years, although in order to meet you we have offered to consider a shorter period if you are ready to eliminate the outside area in return for additional restrictions on our vessels in the 6 to 12-mile zone off the north-west coast;

- (iii) it should be expressly stated as part of the Agreement that the proposed baseline changes, to be introduced on the entry into force of the Agreement, are solely for the purpose of the delimitation of the fishery zone around Iceland.

In addition the proposals envisaged for restrictions on our vessels in the 6 to 12-mile zone go beyond what we had been led to believe in London would be acceptable to you.

4. I was glad to hear that you had informed Mr. Stewart that your Government might be prepared to meet us to some extent over the formula on baselines as set out in paragraph 3 (iii) above. I much regret, however, that even if this point were satisfactorily settled your Government's proposals in their present form would be wholly unacceptable to us.

5. I am sure you realize as well as I do the serious consequences which would result if we failed to reach agreement and, in particular, the harm which would be caused to Anglo-Icelandic relations. I sincerely trust, therefore, that your Government will be prepared to reconsider their position.

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## Annex G

DRAFT EXCHANGE OF NOTES PUT FORWARD BY THE GOVERNMENT OF THE  
UNITED KINGDOM ON 16 DECEMBER 1960

(No. 1)

Your Excellency,

I have the honour to refer to the discussions which have taken place in Reykjavik and London this autumn between representatives of our respective Governments concerning the fisheries dispute between our two countries. I now have the honour to make the following proposals for the settlement of the dispute:

- (1) The United Kingdom Government will no longer object to a 12 mile fishery zone around Iceland measured from the baselines specified in paragraph 2 below which relate solely to the delimitation of that zone.
- (2) The baselines which will be used for the purpose referred to in paragraph 1 above will be those set out in the Icelandic Regulation No. 70 of July 1, 1958, as modified by the use of baselines drawn between the following points:
  - A. Point 1 (Horn) to Point 5 (Asbutharif)
  - B. Point 12 (Langanes) to Point 16 (Glettinganes)
  - C. Point 51 (Geirfugladrangur) to Point 42 (Skalasnagi)
  - D. Point 36 (Einidrangar) to Point 51 (Geirfugladrangur)

These modifications will enter into force immediately.

3. For a period of three years from the acceptance of these proposals, the Icelandic Government will not object to vessels registered in the United Kingdom fishing within the outer 6 miles of the fishery zone referred to in paragraph 1 above within the following areas during the periods specified:

- (i) Horn (Point 48)-Langanes (Point 12) (June to September)
- (ii) Langanes (Point 12)-Glettinganes (Point 16) (May to December)
- (iii) Glettinganes (Point 16)-Setusker (Point 20) (January to April and July to August)
- (iv) Setusker (Point 20)-(Point 30) (March to July)
- (v) Point 30-20° West longitude (April to August)
- (vi) 20° West longitude-Geirfugladrangur (Point 51) (March to May)
- (vii) Geirfugladrangur (Point 51)-Bjartangar (Point 43) (March to May).

4. There will, however, be no fishing by vessels registered in the United Kingdom in the outer 6 miles of the fishery zone referred to in paragraph 1 during aforesaid period of three years in the following areas:

- (i) Between 63° 50' north latitude and 64° 13' north latitude south of Faxaflói
- (ii) Between 64° 40' north latitude and 64° 52' north latitude (Snaefellanes)
- (iii) Between 65° north latitude and 65° 20' north latitude
- (iv) Between Bjartangar (Point 43) and Horn (Point 48)
- (v) Off the mainland between 18° 30' east longitude and Point 8 (the precise area to be determined)

- (vi) Between 14° 58' west longitude and 15° 32' west longitude (Myrabugt)
- (vii) Between 16° 12' west longitude and 16° 46' west longitude (Ingolfshofdi).

5. The Icelandic Government while continuing to work for the implementation of the Althing Resolution of 5 May, 1959, regarding the extension of fisheries jurisdiction around Iceland, will give to the United Kingdom Government six months' notice of any such extension, and in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice.

I have the honour to suggest that this Note and your Excellency's reply thereto confirming that the proposals set out in this Note are acceptable to the United Kingdom Government shall be regarded as constituting an agreement between our two Governments on this matter which shall enter into force immediately.

(No. 2)

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date reading as follows:

[As in No. 1]

I have the honour to state that in view of the exceptional dependence of the Icelandic nation upon coastal fisheries for their livelihood and economic development, and without prejudice to the rights of the United Kingdom under international law, the proposals set out in Your Note are acceptable to the United Kingdom Government, and I confirm that Your Note and my present reply thereto shall be regarded as constituting an Agreement between our two Governments on these matters which shall enter into force immediately.

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## Annex H

LETTER FROM SECRETARY OF STATE FOR FOREIGN AFFAIRS TO FOREIGN  
MINISTER OF ICELAND, DATED 21 DECEMBER 1960, AND  
ENCLOSING TWO DRAFT EXCHANGES OF NOTES

(a)

## TEXT OF LETTER

December 21, 1960.

As I told you yesterday, Her Majesty's Government in the United Kingdom would be prepared to accept a settlement of the Fisheries dispute on the terms which are, as explained below, embodied in the two draft Exchanges of Notes which I am sending you herewith. It is my understanding that the substance of these terms, at which we have arrived after such lengthy discussions, is also acceptable to your Government and that the only point of difference remaining between us is the form which the settlement should take.

You explained to me that the Icelandic Government see difficulty in calling the settlement an agreement and in accepting the registration with the Secretariat of the United Nations of a document which embodies the proposed arrangements for continued fishing inside 12 miles during the transitional period. I explained to you that Her Majesty's Government consider it essential that the terms of the Assurance that any dispute on future extensions of fishery jurisdiction beyond 12 miles would be referred to the International Court of Justice, should be embodied in a form which is an Agreement registered with the Secretariat of the United Nations in accordance with the provisions of the Charter. Article 102 of the Charter specifically provides that unless so registered the Agreement cannot be invoked before any organ of the United Nations.

In order to assist the Icelandic Government in overcoming the difficulty to which you referred, Her Majesty's Government would be prepared to accept an arrangement divided into two halves, namely:

- (i) an agreement in the terms of the draft Exchanges of Notes Nos. 1 and 2 attached dealing with the jurisdiction of the International Court of Justice in any future dispute, which would be registered with the Secretariat of the United Nations under Article 102 of the Charter, and
- (ii) an Exchange of Notes as set out in the draft notes Nos. 3 and 4 attached which would not be registered with the Secretariat of the United Nations but which would state the terms on which the fisheries dispute had been settled.

I am making this suggestion in the earnest hope that it will enable us to reach a settlement of a dispute whose continuance might have such dangerous consequences for all of us. I greatly hope that it will be acceptable to your Government.

(b)

TEXT OF DRAFT EXCHANGES OF NOTES

A. First Exchange

No. 1

*Draft Note from the Foreign Minister of Iceland*

Your Excellency,

I have the honour to refer to the discussions which have taken place in Reykjavik and London this autumn between representatives of our respective Governments concerning the fisheries dispute between our two countries, and to the settlement of that dispute the terms of which are set out in Notes exchanged this day between us on behalf of our respective Governments.

I further have the honour to make the following proposals:

The Icelandic Government will continue to work for the implementation of the Althing Resolution of 5th May, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months' notice of any such extension, and in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice.

I have the honour to suggest that this Note and Your Excellency's reply thereto accepting the above proposal shall constitute an agreement on this matter between our two Governments which shall have effect from today's date.

I have the honour to be, etc.

No. 2

*Draft United Kingdom Reply to No. 1*

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date reading as follows:

[As in No. 1]

I have the honour to confirm that the proposals made in Your Excellency's Note is acceptable to the Government of the United Kingdom and that that Note, together with this reply, shall constitute an agreement on this matter between our two Governments which shall have effect from today's date.

I have the honour, etc.

## B. Second Exchange

## No. 3

*Draft Note from the Foreign Minister of Iceland*

Your Excellency,

I have the honour to refer to the discussions which have taken place in Reykjavik and London this autumn between representatives of our respective Governments concerning the fisheries dispute between our two countries. In view of these discussions, my Government is willing to settle the dispute on the following terms:

1. The United Kingdom Government will no longer object to a 12-mile fishery zone around Iceland measured from the baselines specified in paragraph 2 below which relate solely to the delimitation of that zone.

2. The baselines which will be used for the purpose referred to in paragraph 1 above will be those set out in the Icelandic Regulation No. 70 of 1st July 1958, as modified by the use of baselines drawn between the following points:

- A. Point 1 (Horn) to Point 5 (Asbutharif).
- B. Point 12 (Langanes) to Point 16 (Glettinganes).
- C. Point 51 (Geirfugladrangur) to Point 32 (Skalasnagi).
- D. Point 35 (Geirfugladrangur) to Point 39 (Eldeydrangur).

These modifications will enter into force immediately.

3. For a period of three years from the date of Your Excellency's reply to this Note, the Icelandic Government will not object to vessels registered in the United Kingdom fishing within the outer 6 miles of the fishery zone referred to in paragraph 1 above within the following areas during the periods specified:

- (i) Horn (Point 48)-Langanes (Point 12) (June-September).
- (ii) Langanes (Point 12)-Glettinganes (Point 16) (May-December).
- (iii) Glettinganes (Point 16)-Setusker (Point 20) (January-April and July-August).
- (iv) Setusker (Point 20)-(Point 30) (March-July).
- (v) Point 30-20° W. longitude (April-August).
- (vi) 20° W. longitude-Geirfugladrangur (Point 51) (March-May).
- (vii) Geirfugladrangur (Point 51)-Bjartangar (Point 43) (March-May).

4. There will, however, be no fishing by vessels registered in the United Kingdom in the outer 6 miles of the fishery zone referred to in paragraph 1 during the aforesaid period of three years in the following areas:

- (i) Between 63° 37' N. latitude and 64° 13' N. latitude south of Faxaflói.
- (ii) Between 64° 40' N. latitude and 64° 13' N. Latitude (Snaefellanes).
- (iii) Between 65° N. latitude and 65° 20' N. latitude.
- (iv) Between Bjartangar (Point 43) and Horn (Point 48).
- (v) Off the mainland between 18° 30' W. longitude and Point 8 (the precise area to be determined).
- (vi) Between 14° 58' W. longitude and 15° 32' W. longitude (Myrabugt).
- (vii) Between 16° 12' W. longitude and 16° 46' W. longitude (Ingolfshofdi).

I have the honour to suggest that this Note and Your Excellency's reply thereto will confirm that its contents are acceptable to the United Kingdom

Government, and that the settlement of the dispute has been accomplished on the terms stated therein. The settlement will become effective forthwith.

No. 4

*Draft United Kingdom Reply to No. 3*

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date reading as follows:

[As in No. 3.]

I have the honour to confirm that in view of the exceptional dependence of the Icelandic nation upon coastal fisheries for their livelihood and economic development, and without prejudice to the rights of the United Kingdom under international law, the contents of Your Excellency's Note are acceptable to the United Kingdom, and the settlement of the dispute has been accomplished on the terms stated therein. I also confirm that the United Kingdom Government agrees that the settlement will become effective forthwith.

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## Annex I

TRANSLATION OF MEMORANDUM SUBMITTED TO ALTHING ON 28 FEBRUARY 1961  
TOGETHER WITH DRAFT EXCHANGE OF NOTESBill on Parliamentary Resolution for the Settlement of the  
Fishery Dispute with Britain.*(Introduced in the Althing at Its 81st Legislative Convention, 1961)*

The Althing resolves to permit the Government to settle the fishery dispute with Britain in harmony with the Note which is printed with this Resolution. [There follows the text of the draft Note from the Foreign Minister of Iceland, in English and Icelandic.]

*Comments on this Resolution*

The parliamentary resolution which is under debate permits the Government, if it is passed, to settle the fishery dispute with Britain in harmony with the Note which is printed with the resolution, it being considered certain that the British Government will agree to this solution.

This solution implies four main points:

- (1) Britain recognizes immediately the 12-mile fishery zone of Iceland.
- (2) Britain recognizes important changes in the baselines in four places around the country, which extends the fishery zone by 5,065 square kilometres.
- (3) British ships will be permitted to fish within specified areas between the 6 and 12-mile limits for a limited period each year during the next three years.
- (4) The Government of Iceland declares that it will continue to work for the implementation of the parliamentary resolution of 5 May, 1959, regarding the extension of the fisheries jurisdiction around Iceland and that any dispute on actions that may be taken, will be referred to the International Court of Justice.

Before these four points are explained further, it is necessary to retrace briefly Iceland's actions in the fishing limits question.

*Iceland's Action in the Fishing Limits Question*

Needless to say, it has for a long time given rise to dispute among States, how territorial rights should be determined.

When Iceland's position is considered, where there are rich fishing banks all around the country and the nation bases its survival in large measure on the utilization of the fish stock in these banks, it is obvious what importance must be attached to further developments in this field.

The treaty which Denmark made with Britain in 1901, providing for a 3-mile territorial limit around Iceland, had a fateful effect on the preservation of fish stocks around this country by reducing immensely the protection which they

enjoyed as long as the fishing by foreigners was not allowed within 4 miles, counting from straight baselines.

Long before the last war, it had become clear that the existing territorial limits did not give the fish stock sufficient protection and that the Icelandic fisheries were in danger owing to over-fishing. After the war, steps were taken to prepare measures to protect the fish stocks off Iceland. In the year 1948, a law was passed on the Scientific Protection of Fishing Banks on the Continental Shelf, where the Minister of Fisheries was permitted to make rules on fishing within the limits of the Continental Shelf.

In the year 1950, the first regulation was issued on the basis of the law on the Continental Shelf, but it affected only the North of Iceland. The treaty with Britain from 1901 was then still in force. With this regulation was initiated the policy which has subsequently been followed as far as baselines are concerned. Straight baselines were then determined in that area and at the same time fishery limits were set at 4 nautical miles from baselines.

The treaty with Britain could be terminated by 2 years' notice and such notice had been served in October 1949, so that the treaty expired in October 1951. About that time the case between Britain and Norway on baselines off Norway had been taken for judgment before the International Court of Justice in The Hague and judgment was passed in December 1951. The Norwegians won the case in all its main features and thereby obtained recognition of the straight baselines, from which they had measured their territorial waters. This judgment of the International Court of Justice was of great general importance in determining baselines and formulating rules on this matter.

On 19 March 1952, the Government of Iceland issued a regulation effective for the whole country, where straight baselines were drawn and fishery limits determined 4 nautical miles from these lines.

The British Government and the Governments of three other countries protested against these actions of Iceland but did not take further steps. On the other hand, the Federation of British Trawler Owners imposed a landing ban on Icelandic iced fish at British ports.

Negotiations were conducted between the Icelandic and British authorities, where both parties expressed their views concerning the extension of the fishery jurisdiction and the landing ban. In the first half of 1953, for instance, the possibility of referring the dispute on the regulation of 19 March 1952 to the International Court of Justice was discussed, and on 24 April 1953 the Minister of Iceland in London informed the British Foreign Office that the Icelandic Government was prepared to refer this dispute to the International Court of Justice and that it was ready to discuss with the British Government, in what manner this should be done, on the condition that the landing ban would be immediately lifted, as soon as agreement had been reached on the way of dealing with the case.

This did not materialize, as the British Government did not consider itself in a position to ensure that the condition of the Icelandic Government of lifting the landing ban before the case was referred to the Court would be fulfilled.

The landing ban was not lifted until November 1956, after agreement had been reached, through the intervention of the OEEC, between Icelandic and British trawler owners, where rules were set out for the landing of Icelandic fish on ice at British ports, and this agreement is still in force.

The next action of the Icelanders in the fishery limits matter was regulation No. 70 of 30 June 1958, where the fishing limits were extended to 12 miles. It was, however, not considered possible to change the baselines.

*Agreement Proffered in 1958 Through the Intervention of NATO*

Before the regulation of 1958 took effect, Iceland's position was made known to those nations which had most interests to safeguard and an attempt was made to obtain their recognition of the proposed Icelandic measures.

In the discussions which took place under the auspices of NATO, its member States were offered by Iceland that they would be permitted to let their ships fish for three years in the 6 to 12-mile zone all around the country, against their immediate recognition of the 12-mile fisheries jurisdiction and certain changes in the baselines. Those baseline changes were, however, much smaller than those which Britain is now prepared to agree to for the solution of the fishery dispute. There was then no provision for changes in baselines either at the Faxaflói or the Selvogsbanki. This offer of the Icelandic Government was declined.

Those Governments which protested against the new rules let the protests suffice, except the British Government which decided to give British fishing vessels warship protection within the 12-mile limits.

This created a dangerous situation on the Icelandic fishing banks, where the Icelandic coast guard ships waged an uneven battle with the supremacy of the British fleet, and the behaviour of British trawlers and warships repeatedly led to dangerous incidents, so that lives were imperilled.

The Althing resolution of 5 May 1959 interpreted the views of the whole nation on the behaviour of the British around this country and at the same time reaffirmed the policy which had already been set out with the law on the Continental Shelf from 1948. The resolution was as follows:

"The Althing resolves to protest energetically against the violations of Icelandic fishery legislation which the British authorities have brought on with the constant use of force by British warships inside the Icelandic fishery limits, now recently time and again even inside the 4-mile territorial limits from 1952. As such actions are obviously intended to force the Icelanders to retreat, the Althing declares that it considers that Iceland has an indisputable right to a 12-mile fishery limit, that a recognition of its rights to the whole Continental Shelf should be sought, as provided in the law on scientific protection of the fish banks of the Continental Shelf from 1948, and that a smaller fishing limit than 12 miles from baselines around the country was out of the question."

Repeated protests by the Icelandic Government against Britain's actions were not heeded. It was not until in the beginning of the Geneva Conference in the middle of March 1960 that Britain decided to stop these actions, and then only for the duration of the conference.

There was no agreement at this conference, so that at its close there was complete uncertainty as to what would follow next. The Icelandic Government then decided to pardon all those British trawler skippers who had become guilty of violation of the regulation on the 12-mile fishery limit. British trawler owners then announced that they would not allow their ships to fish inside the fishery limits during the next three months, as from 12 May. Later this decision was extended for two months, and again for an uncertain time, after the talks with the British began.

Last summer it became apparent, however, that the dangerous situation had not been done away with, and there were serious clashes between Icelandic coast guards and fishing boats on the one side and British trawlers and warships on the other.

About that time, the British Government asked the Icelandic Government for talks regarding the solution of the fishery dispute. The Government acceded to this request, according to the following Press report from the Foreign Ministry on 10 August 1960:

"The British Government has requested the Government of Iceland that talks be taken up between them on the present dispute regarding the position of British fishing vessels on Icelandic fish banks. As the Icelandic Government considers it a matter of course to investigate thoroughly all expedients which might prevent further clashes on the Icelandic fishing grounds, besides the necessity for promoting the implementation of the Althing Resolution of May 5th, 1959, it has declared itself prepared to start such talks, at the same time as it has again emphasised to the British Government that it considers that Iceland has an indisputable right according to international law to the fisheries jurisdiction which has already been decided."

The talks with the British began in Reykjavik on 1 October 1960. Now that they are finished, the Government considers that it is possible to solve the fishery dispute on the basis of the Note which accompanies this draft resolution. The matter is thus introduced in the Althing for making a decision on it, the Prime Minister having declared when the Althing convened that Althing would be consulted before a final decision was made.

It will now be explained closer, what is involved in the solution of the dispute in detail:

#### *Britain Recognizes 12 Miles and New Baselines*

According to item 1 in the Note, it is provided that the British Government will no longer object to a 12-mile fisheries jurisdiction round Iceland and this jurisdiction is reckoned from new baselines, as will be mentioned later.

With this agreement, Iceland obtains Britain's recognition of the 12-mile limit and it is obvious, of how great an importance this is, not least with regard to the fact that up to now Britain has neither recognized formally the 4-mile fisheries jurisdiction from 1952 nor the 12-mile jurisdiction from 1958.

In item 2 of the Note there is provision for the drawing of new baselines, more favourable to us than those which have applied hitherto. The changes which there will be at four important places around the country will now be explained.

The first change is on the Hunafloi. Its effect is to decrease the number of baseline points. The line will be drawn straight across the bay, between the outermost points, Horn and Asbudarrif. By this change, the area inside the 12-mile limit is extended by 972 square kilometres. This area is not only of importance to those who fish there, but also to fishing east and west of this area, owing to the fish-runs in these parts and besides it gives added protection to small fish which live there.

The second change is south of Langanés and this also eliminates three baseline points. The baseline will be drawn straight across the mouths of three bays, Bakkaflói, Vopnafjörður and Heradsflói, besides Borgarfjörður, from Langanés to Glettinganes. The increase in the area inside the 12-mile limit here amounts to 1033 square kilometres. This area holds important breeding places for young fish which will now have added protection against trawling. This protection, therefore, is of far-reaching importance, the area being frequented by fishing boats from many parts of the East Coast Firths.

The third baseline change is in the Faxaflói and leads to an elimination of two basepoints, but in addition Geirfugladrangur is now absorbed in the baseline system around the country and the southern end of the Faxaflói line leads to this point. Geirfugladrangur was formerly an independent baseline place. The northern end of the baseline leads to Skalasnagi at Snaefellsnes which has been the northernmost of three baseline points on the peninsula. This change in the baseline brings an increase of 860 square kilometres in the area within the 12-mile limit. The importance of this increase is obvious.

Finally there is the fourth baseline change and the greatest one, i.e., on Selvogsbanki. Three baseline points are eliminated there and the line will be drawn from Geirfuglasker, south of Vestmannaeyjar, to Eldeyjardrangur west of Reykjanes. Thereby the fishery jurisdiction increases by 2,200 square kilometres. Here are the most important spawning-grounds of white-fish off Iceland. More ships fish in this area than elsewhere around Iceland. It is difficult to evaluate the great importance of this change of baseline for all fishing off Iceland in the future.

The four baseline changes which are planned will altogether lead to an increase in the fisheries jurisdiction by 5,065 square kilometres.

These changes in baselines take effect as soon as the dispute is settled and will not be repealed.

#### *Limited Fishing Permission for Britain for Three Years*

In Articles 3 and 4 of the Note are provisions for British ships being permitted to fish between 6 and 12 miles in areas and at times of the year more closely defined, and this shall apply for the next three years. At the same time it is provided that there will be specially defined areas between the 6 and 12 miles which will be completely closed to fishing by British trawlers.

When the provision for the permission for the British to fish between 6 and 12 miles is studied, regard must be taken to three items which are of the utmost importance. In the first place, the baseline changes which have been mentioned, and in the second place the areas which are entirely exempted where British ships may never fish and in the third place, the limited length of time each year when the fishing is permitted.

In the area from Horn to Langanes there has been made an important change in the baseline off Hunaflói. Furthermore the area between Grimsey and land is entirely closed. The same applies to the area around Kolbeinsey, where there is often much small fry. For a period of three years, British ships will, however, be allowed to fish in other places in this area between the 6 and 12 miles, but only 4 months a year in the period June-September, so that *their total fishing time within the 12-mile limit will be one year.*

In the fishing area of the East Coast boats, from Langanes to Myrnatangi, the baseline change south of Langanes is of much importance. Off the East Coast and the South East Coast, fishing by British ships is permitted for varying lengths of time each year. To the north, where a baseline change is made, the fishing time is the longest, 8 months, in the period from May-December. Altogether this time will be two years, and owing to the change of the baseline, a considerable portion of the area will be outside the present 12-mile limit.

In the central area, between Glettinganes and Setusker off Reydarfjordur, fishing by British ships between 6 and 12 miles is permitted for 6 months each year, during the months January/April and July and August. Altogether the fishing time here in the three-year period will be one year and a half.

In the southernmost area, which extends from Setusker to Myrnatangi in the Medalland Bay, British ships are permitted to fish between 6 and 12 miles for five months, March-July. The important exception is made, however, that there are two places off Hornafjordur and Ingolfshofdi, where this fishing is prohibited, these areas having been lately of much importance to cod fishing by motor boats. When these areas are excepted, British ships are allowed to fish for 15 months altogether during the three-year period.

From Myrnatangi to 20° W. longitude which is somewhat east of Vestmannaeyjar, British are allowed to fish between the 6 and 12 miles for 5 months, April-August. Their total time for fishing in the three-year period will also here be 15 months.

Then we have arrived at the area from 20° W. longitude to Geirfugladrangur, i.e., the fishing grounds around Vestmannaeyjar and on the Selvogsbanki. The great change in baselines on Selvogsbanki will of course be effective here. A very large area which is now outside the 12-mile limit will through this change come within the 12-mile limit and the main part of that area where British ships will be allowed to fish in the months March-May each year for three years will be outside the present 12-mile limit.

From Geirfugladrangur to Bjargtangar, off Faxaflói and Breidafjordur, the baseline changes will be of great importance to Faxaflói. Here are also three areas which will be entirely closed, for the protection of cod net-fishing. Outside these closed areas British ships will be allowed to fish between the 6 and 12-mile lines for three years in the months March-May, or for a total of nine months.

Finally there is the area off the Vestfirðir, from Bjargtangar to Horn. It is not provided that British ships will be permitted any fishing inside the 12-mile limit there.

*Permanent Increase in the Fisheries Jurisdiction by  
5,065 Square Kilometres*

On considering these items as a whole and viewing those areas and the periods during which British ships will be permitted to fish between 6 and 12 miles, the following is clear:

Icelandic ships fish, to be sure, most of the time in all these areas. The fish catches are, however, very fluctuating in quantity and are dependent on the fish-run from year to year. In determining fishing permits for the British, the experience of past years has been taken into account, aiming to cause the least possible damage to the fishery of the Icelanders themselves.

In this connection it is interesting to note the quantity of fish brought on shore in the different parts of the country. The following summary shows the quantity of the catch of the fishing boats which was landed in the year 1959, being the last year for which final information is available. It is also shown, what percentage each area produces of the total catch of the boat fleet. This summary is compiled from the reports of the Icelandic Fishery Society:

	<i>tons</i>	<i>%</i>
Vestfirðir (North-West area) . . . . .	27,271	12.0
North Coast, West (Djupavík-Grenivík) . . . . .	19,955	8.9
North Coast, East (Grimsey-Thorshöfn) . . . . .	5,540	2.5
East Coast (Bakkafjordur-Hornafjordur) . . . . .	13,722	6.1
South-West Coast (Vestmannaeyjar- Stykkishölmur) . . . . .	157,111	70.3

As a whole, the area between 6 and 12 miles where it is provided that the British will be permitted to fish is 14,487 square kilometres. Here it must, however, be considered that the fishing is only to be permitted for three years and secondly the length of time each year is limited to three to eight months. When this is taken into consideration, the areas mentioned would equal to a permission for the British to fish on 5,500 square kilometres for three years. This is about 435 square kilometres more than the total area of 5,065 square kilometres which the increase within the 12-mile limit amounts to owing to changes in baselines. But the difference is that the area which is acquired owing to the change in baselines leads to an irrevocable increase in the fisheries jurisdiction.

The following summary shows the area of the Icelandic fisheries jurisdiction from the time steps were first taken to increase it up to the changes in baselines which are provided for in the Note:

	<i>sq. km.</i>
3 mile fishery limit . . . . .	24,530
4 mile (1952) . . . . .	42,905
12 mile (1958) . . . . .	69,809
12 mile (changed baselines 1961) . . . . .	74,874

#### *Further Extension of the Fisheries Jurisdiction*

At the end of the Note there are two items of consequence. The Government declares that it will continue to work for the implementation of the Althing resolution of 5 May 1959 regarding the extensions of the fisheries jurisdiction around Iceland. Such an extension would, however, be notified to the British Government six months in advance, and if a dispute arises in connection with these measures, this shall be referred to the International Court of Justice, should either one of the parties request it. These provisions are in harmony with the proposals and attitude of Iceland at both Geneva Conferences on the Law of the Sea. At both these conferences it was moved on Iceland's behalf that where a nation bases its existence on fisheries along the coast, special conditions shall prevail for the coastal country over and above the general fishery limitations, any dispute being referred to a court of arbitration. These motions were overruled.

At the former Geneva Conference there was agreement on a treaty for the protection of fishing banks on the high seas which Iceland signed. There it is provided that under special circumstances and when negotiations with other States involved have not led to results, a coastal country can determine unilateral measures for protection. Such steps shall be based on scientific necessity and the same rules shall apply to foreign subjects as to citizens of the country itself. A court of arbitration decides the issue in case of dispute. At this Conference there was also passed a resolution recommending that nations concerned should co-operate in ensuring the priority of a coastal State, when it was necessary to take measures against over-fishing and it was decided that a court of arbitration should settle disputes.

In the Note which accompanies this Althing resolution there is no obligation implied to adhere to the material limits decided in Geneva. On the other hand, those means which were agreed upon in Geneva are of course still open.

Finally it is provided in the Note that it, together with the reply of the British Government, where the British Government confirms its contents, be registered with the Secretary-General of the United Nations. In Article 102

of the United Nations Charter it is stated that only agreements that are so registered can be handled by the International Court of Justice, should a dispute arise concerning their implementation. This provision is a direct consequence of what has been said about reference of the matter to the International Court of Justice.

#### *A Favourable Solution*

Attempts at establishing general rules for the extent of fisheries jurisdiction have failed.

The Icelanders have already won a great deal, but the fisheries dispute with Britain still prevails and it is certain that it will flame up again, if nothing is done about it.

Iceland is not the only State which has come into conflict with others over the extent of its fisheries jurisdiction. Different kinds of disputes over these matters have been settled with agreements between States. Examples close at hand are the Russian, Danish and Norwegian agreements with Britain. In 1956 Britain made an agreement with the Soviet Union on the rights of British fishing vessels to fish within the 12-mile limits off the North Coast of the Soviet Union. According to this agreement, British ships are permitted to fish up to a three-mile limit in specified areas. The agreement was made for five years and will be automatically renewed, if not terminated by one year's notice by either party. The agreement was not terminated and therefore remains in force for the next five years.

In 1955 Britain made an agreement with Denmark on fishery limits off the Faroe Islands. It was a question of some changes in baselines but the fishing limits were after as before determined at 3 miles. This agreement was made for 10 years. In 1959 a new agreement was made between the same parties on the territorial waters at the Faroe Islands. According to this agreement, Britain recognised a 6-mile fisheries jurisdiction around the isles, which should be measured from the low-water line. Between 6 and 12 miles there were also specified three comparatively small areas where only line and hand-line fishing is permitted at specified times, and this is valid only for British ships. The agreement is in force for three years, but can be terminated after that with one year's notice. From the time this agreement was made, other nations have been excluded from fishing between the 6 and 12-mile limits around the Faroe Islands on the grounds that they had not formerly been fishing regularly in that area.

Last Autumn Britain made an agreement with Norway. According to it, Britain recognizes a 12-mile fishing limit off Norway, which shall however not come into force until after 10 years. During this period, British ships are permitted to fish in the outer 6-mile zone, with the exception of four specified areas which are entirely closed to trawl-fishing, and this applies also to Norwegian ships.

From these examples it is clear that other nations have been willing to make considerable concessions to be able to extend their fisheries jurisdiction without coming into conflict with others. No nation is more dependent on fishing than Icelanders, nor more in need to keep the peace on the fishing banks around their country. We now have two choices, to continue the dispute, or to settle it by an agreement which is in the long run more favourable than those fishing limits which were set by the regulation of 1958.

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## Annex J

TEXTS OF REPORTS PUBLISHED IN "THE TIMES" AND IN "MORGUNBLADID"  
ON 13 APRIL 1961

## 1. "The Times", 13 April 1961

## ICELAND TO DEMAND WIDER FISHERY LIMITS

Copenhagen, April 12—Professor Gunnar Thoroddsen, the Icelandic Finance Minister, said here today Iceland would not be permanently satisfied with its new 12-mile fishing limit.

Iceland aims at having the limit extended to cover the adjacent continental shelf, he said. This would give fishery limits of between 20 and 25 nautical miles.

"We will demand the whole shelf area down to 400 metres (about 1,312 feet) declared free. We consider the shelf belongs to the country", he said. "At the right time the matter will be placed before the International Court at The Hague."—*Reuter*.

## 2. "Morgunbladid", 13 April 1961

## WE ARE WORKING TO GET THE WHOLE CONTINENTAL SHELF

Copenhagen, 12 April.

The Icelandic Finance Minister, Gunnar Thoroddsen said in an interview with reporters on his arrival at Copenhagen today that the Icelanders would work to get the whole of the continental shelf off Iceland recognized as being within Icelandic fishing limits—that is to say that the fishing limits should reach up to 20-25 miles from the coast.

He said that the Icelanders would never be satisfied with a 12-mile limit as had been agreed with the British. The Icelanders were pleased with the agreement but a 12-mile limit would not suffice for long. The aim is that the continental shelf should be recognized as the limit. A claim will be put before the International Court at The Hague to that effect at the appropriate time.

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## Annex K

TEXT OF EXCHANGE OF LETTERS BETWEEN THE PRIME MINISTERS OF ICELAND  
AND THE UNITED KINGDOM, 11 MARCH 1961 AND 23 MARCH 1961

(No. 1)

*Reykjavik,  
11 March, 1961.*

My dear Prime Minister,

As the Icelandic Althing has now approved the resolution submitted by the Icelandic Government for settlement in the fisheries dispute between Great Britain and Iceland, I should like to extend to you my sincere thanks for your most valuable personal contribution towards a fortunate solution of the matter, which I welcome wholeheartedly.

I trust that the traditional friendship between our two nations, which has now been restored, may be maintained and developed forever.

Yours sincerely,  
(Signed) Olafur THORS.

(No. 2)

*23 March, 1961.*

My dear Prime Minister,

Thank you for your letter of 11 March, which I received through your Ambassador on 20 March. I much appreciate your kind words, and I send you my thanks for all that you did personally to bring about a settlement of the fisheries dispute.

I need hardly say how happy I am that this obstacle to better relations between our two countries has been removed. I share most sincerely your hope that the old association between Iceland and the United Kingdom will be maintained and developed, and I assure you that my Government will do all they can to strengthen the ties which bind our two countries, together as friends and allies.

Yours sincerely,  
(Signed) Harold MACMILLAN.

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**RECORDS OF ANGLO-ICELANDIC DISCUSSIONS,  
1 OCTOBER 1960 TO 4 DECEMBER 1960**

*Item (i)*

*(a) First Series, First Meeting, 1 October 1960: (b) Opening Remarks by  
Sir Patrick Reilly*

*(a)*

**ANGLO-ICELANDIC DISCUSSIONS**

The first meeting in Reykjavik began at 11.15 a.m. on Saturday,  
1 October 1960

Present:

Mr. Hans Andersen	Sir Patrick Reilly
Mr. Henrik Bjornsson	Mr. Charles Stewart
Mr. David Olafsson	Mr. Basil Engholm
Mr. Jon Jonsson	Miss Joyce Gutteridge
Mr. Gunnlaugur Briem	Mr. R. H. Mason
Mr. Tomas Tomasson	Mr. T. F. S. Hetherington
	Mr. A. Savage
	Mr. R. Beverton

The Head of the Icelandic Delegation opened the meeting by raising some procedural points. It was agreed between the two Delegations:

- (a)* that while we could not, at this point, say how long the discussions should last, we should probably need a week at least;
- (b)* we should not make an agreed record of the discussions, but each Delegation should prepare their own record;
- (c)* Sir Patrick Reilly suggested that Mr. Hans Andersen should be the Chairman throughout the discussions;
- (d)* no statement should be made to the Press until some agreement had been reached;
- (e)* Working Groups should be formed as necessary.

*The Icelandic Case*

2. Mr. Andersen then stated the views of the Icelandic Government. He said that these were well known and had been stated before at the United Nations and at both Geneva Conferences on the Law of the Sea. The following were the principal points he made:

- (a)* Iceland is in a unique position in that its people are dependent entirely upon the coastal fisheries: this is universally recognized;
- (b)* it is therefore essential for the Icelandic Government to safeguard its coastal fishery resources: conservation measures applicable to all alike were not sufficient for this. It is therefore the policy of the

Icelandic Government to secure exclusive fishery jurisdiction "in accordance with international law". The International Law Commission of the United Nations had, in 1956, drawn attention to countries which found themselves in this special position;

- (c) for this reason the Icelandic Government had adopted a 12-mile fishery limit on 1 September 1958. This limit was respected by all Iceland's friends with one exception;
- (d) a 6 + 6 solution, with an adjustment period of 10 years had nearly been reached at second Geneva Conference. Nevertheless two proposals tabled by the Icelandic Delegation had received considerable support:
  - (i) that countries in special situations should receive preferential treatment even beyond 12 miles;
  - (ii) that a transitional period should not apply to special situation countries.

3. Mr. Andersen emphasized that although these latter proposals had not been adopted by the Conference at Plenary Sessions, they had nevertheless received widespread support. It was true that no universally agreed rule of law had been adopted at Geneva but, he said, a majority of those participating thought that agreements in regard to special situation countries should be concluded bilaterally.

4. He reiterated the view of the Icelandic Government that a 12-mile fishery limit is not contrary to international law and recalled that historically, Iceland had enjoyed much wider limits. He added that under Article 4 of the Convention on the Territorial Sea, concluded at the first Geneva Conference, Iceland would be justified in reconsidering and extending some of her present baselines.

5. Mr. Andersen said that the Althing was unanimous that Iceland's 12-mile fishery jurisdiction should not be reduced. However, the Althing recognized the danger of incidents and were prepared to explore with us means of avoiding them. Our task, he concluded, was to find a way out of the present dilemma.

#### *The British Case*

6. Sir Patrick Reilly thanked Mr. Andersen for the clear statement that he had made and then spoke in accordance with the attached prepared statement.

#### *Discussion*

7. Mr. Andersen said that the talks had begun in a congenial atmosphere. He wished to ask one or two questions:

- (a) How many years did the British Delegation have in mind for the transitional period? Sir Patrick Reilly replied that, as Lord Home had suggested in his personal message to Mr. Gudmundsson on 5 August, we thought that five years would be fair to both sides.
- (b) Did Sir Patrick Reilly's statement contain the whole of the British proposal? Did we have in mind co-operation in other fields of a nature which would make it easier for the Icelandic Government to accept the British proposals? Sir Patrick Reilly replied that we would consider any suggestion that the Icelandic Government might put forward and, in reply to a further question, that we had nothing more concrete to suggest.

8. Mr. Andersen said that we should perhaps start by considering the areas between 6 and 12 miles in which, as Sir Patrick Reilly had suggested in his statement, we might be prepared to consider excluding British trawlers in favour of Icelandic inshore fisheries. We should perhaps consider first such areas inside 12 and then those outside 12 miles. He said that the Icelandic Delegation would like to know to which areas we attached primary importance and during which periods of the year. This, he said, was necessary to clarify the British proposal.

9. Sir Patrick Reilly replied that we should of course like access to the whole area and went on to suggest that we should approach this matter from the other direction: we should like to hear the Icelandic case for withholding permission to fish in certain areas within 12 miles. To this Mr. Andersen replied that it would be necessary to go thoroughly into every angle and then put forward concrete proposals. There might, he said, be alternative sets of proposals. Again it might prove possible, on examination, to reconcile conflicting interests: for example there might be times of the year in which the Icelanders wish to fish and the British did not and *vice versa*.

10. Mr. Engholm then said that the whole area round the Icelandic coast was of course of fundamental importance to our fishermen. We had some idea of the areas which were important from the point of view of the Icelandic inshore fishermen but, since we were considering a five-year transition period, it would help us to know which are the difficult areas, for example, on which parts of the coast there are major concentrations of line fishermen and what areas Iceland regards as particularly important from the conservation point of view.

11. Mr. Andersen thought this was reasonable and suggested that we should explore the position together. He remarked that it was not the intention of the Icelandic Delegation to listen to our proposals one after the other and say "No" to each. He proposed that a Working Group should be established to consider this matter and gave an assurance that the Icelandic side undertook to co-operate fully.

12. Sir Patrick Reilly said that the sooner we could get down to practical problems the better and added that the examination suggested by Mr. Andersen should be conducted on the basis that as far as the British side were concerned, we had in mind a five-year transition period.

13. It was agreed that the Working Group should begin on the afternoon of 1 October and that we should aim to have another full meeting of the Delegations on Monday, 3 October, at 10 a.m. if possible.

(b)

## FISHERY TALKS WITH ICELAND

### *Opening Remarks*<sup>1</sup>

I should like to say first of all how very glad I am to be in Reykjavik, a capital of which I have heard a great deal but have never before visited.

2. Her Majesty's Government were very glad that the Icelandic Government were able to announce on 10 August their agreement to enter into talks

<sup>1</sup> By Sir Patrick Reilly.

about the dispute between us over the extent of fishery limits off the Icelandic coast. My Government and the whole British people have deeply regretted this dispute between our two countries and they most earnestly desire a settlement which will enable us to return to the friendly and happy relations which we feel, and, we hope, you do too, is the natural and proper state of things between our two peoples who have so much in common and who are bound in the defensive alliance of NATO on the unity of which so much depends for the peace of the world. They greatly hope that it will now be possible for our differences to be brought to a settlement satisfactory to both sides as soon as possible. For this reason Mr. Macmillan was most grateful to Mr. Olafur Thors for his suggestion that he should stop at Keflavik on his way to New York and to have the opportunity of an exchange of ideas on this question. I know that he very much valued this talk with your Prime Minister. I am sure that both sides are equally anxious to see an end of this dispute and given the will I am sure that we shall be able to find a way.

3. Of course the most satisfactory solution to the question of fishery limits, as I am sure you will agree, is that there should be a universally agreed rule of law and that is what we had hoped would emerge from the second Geneva Conference on the Law of the Sea. It proved impossible, by the narrowest possible margin, to reach a solution accepted by the necessary majority and my Government, although disappointed, are very conscious of the need to make some arrangements if we are to avoid chaos in our fishery relations. The compromise proposal put forward at Geneva by the United States and Canadian Governments envisaged that after a transitional period of 10 years the countries which had made a practice of fishing within 12 miles of the coast of the countries concerned would thereafter be excluded.

4. As you are aware the Norwegian Government, shortly after the conclusion of the Geneva Conference, announced their intention of extending their fishery limits to 12 miles. In making this announcement Mr. Halvard Lange observed that this would cause some difficulty for countries who are now fishing up to the present limits. The Norwegian Government agreed to enter into bilateral talks with Her Majesty's Government: these talks have now concluded and the Norwegians have agreed on a 10-year transitional period after which we have agreed to raise no objection to the exclusion of vessels from the 12-mile area. I mention this to bring to your attention that my Government are not taking their stand on a rigid interpretation of international law as it stands at present, but, on the contrary, are prepared to make important concessions in order to achieve a satisfactory regulation of our fishery relations with our friends and neighbours.

5. My Government also recognize Iceland's special situation as a country whose economy depends mainly upon its fisheries and it was in recognition of this fact that the Foreign Secretary, Lord Home, in his message to the Icelandic Foreign Secretary, of 5 August, expressed the view that a transitional period of five years in Icelandic waters would be fair to both sides.

6. Lord Home said in the same communication to Mr. Gudmundsson that Her Majesty's Government were under heavy pressure from the British fishing industry. That remains so and I feel that I should ask you to remember in this connection that the voluntary ban on fishing within 12 miles, which our industry have imposed upon themselves, expires on the 12th of this month.

7. We understand, of course, that just as my Government is under pressure from the British fishing industry, so your Government is also under pressure on this issue. In these talks I very much hope that, as Mr. Macmillan said to

your Prime Minister, we shall be able to find a way of helping each other. My Government have already conveyed to your Government an idea of what we should regard as an equitable and satisfactory basis for a settlement.

8. Our starting point, as it was in the recent Anglo/Norwegian discussions, is the United States/Canadian formula to which I have already referred. This seems to us a reasonable compromise between the differing points of view of the coastal States on the one hand and the distant-water fishing States on the other. The 10-year transitional period is, as we said at Geneva, all too short a period to enable the distant-water fishing industries to make the very *considerable* adjustments which will be required to enable them to exist under the new conditions. But nevertheless we were prepared to accept this period in order to try and get a solution. Moreover, as I have said earlier, we recognize that Iceland is a "special situation" country and that the United States/Canadian formula would, for this reason, need to be modified in Iceland's favour to take account of this factor. This modification would presumably *apply primarily to the length of the transitional period* and, as you know, we have suggested that a reasonable period for the transition would be five years, which would give Iceland treatment twice as good as that under the United States/Canadian formula.

9. It may perhaps be helpful if, at this stage, I were to state in broad terms the principles which we think should provide the framework within which a *settlement acceptable to both our countries* could be reached. These principles are:

- (i) We are prepared to accept immediately that our vessels should be excluded from fishing within 6 miles from the baselines from which the territorial waters are measured. This in itself is a major step forward and would *immediately provide to your inshore fishermen a substantial additional area of sea for their fishing activities.*
- (ii) We are also prepared to accept that after a reasonable transitional period our vessels should be excluded from fishing within 12 miles. This means that after that period, which, after all, is a very short one in the lifetime of a nation, or even in the lifetime of the fishing industry, your fishermen would have the whole area within 12 miles to themselves.
- (iii) We also recognize that within the 6-12-mile field there might well be areas of particular importance to your inshore net and line fishermen, and we would be perfectly prepared to consider with you whether there are special areas which could be reserved for net and line fishing only, perhaps at special times of the year, in order to avoid collisions between the fishing vessels of our two countries.
- (iv) In addition we recognize that it is very desirable to try and make sure that where our fishing vessels are fishing side by side, the danger of damage to gear should be avoided as far as possible and relations between fishing vessels should be regulated. We are therefore quite ready to agree with your rules of conduct which would govern the relations between our fishing vessels both in the 6-12-mile zone *during the transitional period* and outside 12 miles indefinitely. This, I am sure, would be a very considerable help in avoiding possible friction.
- (v) Finally, we are prepared to recognize that there may be areas both inside the 6-12-mile zone, and indeed outside, which on the scientific principles of conservation should be reserved from trawling and seining. Here again we would be perfectly prepared to sit down and consider with you whether there are such areas and where they are located.

10. The proposal which Lord Home put forward on 5 August of a transitional period of five years during which our vessels should be able to continue to fish within the 6-12-mile zone is within the framework of these principles, and we would be prepared to look at this to see whether it requires any modification on practical grounds in the light of the points I have just made. I would suggest to you that it is essentially a very moderate proposal and it involves very substantial concessions from the traditionally and strongly held views of my Government on this whole subject. You will forgive me if I remind you that the livelihood of many thousands of ordinary British people is also involved in this issue.

11. I believe that if we can look at this problem in a realistic and practical way, there is no reason why we should not be able to adjust our differences, as I am glad to say we have already done with Norway. We are anxious to be reasonable, and we are anxious to help you, but I am sure you, for your part, will recognize our problems and difficulties and be ready to discuss this problem with us in the spirit which I have suggested.

*Item (ii)*

*First Series, Second Meeting, 3 October 1960*

ANGLO-ICELANDIC DISCUSSIONS

The second meeting began at 3 p.m. on Monday, 3 October

Present:

Mr. Hans Andersen  
Mr. Henrik Bjornsson  
Mr. David Olafsson  
Mr. Jon Jonsson  
Mr. Gunnlaugur Briem  
Mr. Tomas Tomasson

Sir Patrick Reilly  
Mr. Charles Stewart  
Mr. Basil Engholm  
Miss Joyce Gutteridge  
Mr. R. H. Mason  
Mr. T. F. S. Hetherington  
Mr. A. Savage  
Mr. R. Beverton

The Chairman, Mr. Hans Andersen, invited the British Delegation to report on the meeting of experts which had taken place on Sunday, 2 October.

2. Mr. Basil Engholm said that there had been an exchange of information as to where the major interests of both sides lay and which were the periods of the most intense activity for each side. Each side recognized that the other was interested in fishing, not only during peak periods, but at other times as well. Having exchanged this information, the experts endeavoured to piece it together in order to determine where, and at what periods of the year, there were major conflicts of interest. The resulting information was set out on a chart of the Icelandic coast.

3. This information showed that for most of the areas around the coast, there would not necessarily be any major conflict of interest, but that in certain areas in the west and south-west there were periods when the peak activities coincided.

4. Mr. Engholm went on to say that it was extremely difficult, both from the political point of view, and from that of our industry, to accept the proposals put forward on 2 October by the Icelandic side that our fishermen should not fish within substantial areas of sea outside 12 miles during the

period of Icelandic peak fishing activity and he had hoped that the proposals put forward by us for solving the problem by agreed rules of conduct, both inside and outside 12 miles, with joint Anglo-Icelandic policing, on the lines of the arrangements that we had been able to reach with the Norwegians, would be satisfactory. He believed that such an arrangement would minimize the risk of incidents and the risk of damage to fishing gear.

5. Mr. David Olafsson agreed that Mr. Engholm had given an accurate and impartial account of the discussion of 2 October. He said that the crux of the problem was that in certain areas we both wanted the same fish at the same time and in the same place. He confirmed that the Icelandic view, with which the British Delegation did not agree, was that it was essential to solve this problem by reserving certain areas outside 12 miles as well as inside.

6. Mr. Hans Andersen said that the purpose of the meeting of the technical experts was to clarify the British proposal. It was clear that the British wanted rights for their trawlers which the Icelanders did not give to their own trawlers. If the Icelandic Government were to present this to their Parliament, they would need to be able to put forward a countervailing advantage which the British side had been able to give. The position, as he now understood it, was that the British proposal for rules of conduct was intended to provide this balancing element. Many Icelanders would say that the rules of conduct proposed by us were nothing more than a restatement of customary rules which would be followed in any case. He believed that the crucial element, from their point of view, was to ensure that in areas where there is line and net fishing, there should be no trawling at the same time. He suggested that this should be explored further by the Working Group in order to determine which were the areas for fixed line and net fishing.

7. Mr. Engholm agreed that there was no set of rules to which we both subscribe but that many rules are observed in practice. Nevertheless there would be many advantages in a set of agreed rules, for example those governing trawling in line fishing areas; rules for proving allegations of damage, etc. These would, he felt, give confidence to both sides, particularly if joint policing to enforce them were introduced.

8. Mr. Andersen then referred to Article 9 of the Rules of Conduct which had been discussed and agreed with the Norwegians and a copy of which had been handed to the Icelandic Delegation on 1 October. Article 9, he thought should be spelled out in more detail. He referred to the discussion which had taken place in 1958 under the auspices of NATO, at which a draft providing for the prohibition of trawling in a wide area—up to the 200-metre line both in the north-west and south-west—had been discussed. This, he thought, was a reasonable approach and should be kept in mind.

9. Mr. Engholm replied that the purpose of Article 9 in the draft Convention of 1943 had been to give long-term advance notice to other fishing interests as to where they could expect major concentrations of nets and lines. It was intended as a long-term method of giving warning as to the presence of concentrations of nets and lines and for this reason it provided that such notice was to be given through the diplomatic channel. It was not intended to deal with day-to-day warning. This point had been covered in Article 15. Mr. Engholm added that these rules have worked in a manner satisfactory to all the six signatories of the Convention. A similar problem had arisen with the Norwegians, who had agreed that such rules, properly policed, would be of great use in regulating fishery relations and would make a valuable contribution to minimizing the risk of conflict between different types of fishery operations in the same areas.

10. Referring to the 1958 discussions under NATO auspices, Mr. Engholm recalled that two limited areas outside 12 miles had been suggested for reservation for Icelandic net and line fishing, one off the north-west, the other off the south-west. But the circumstances had then been very different since we should have been free in other areas to fish up to 4 miles.

11. Mr. Hans Andersen thought that all possibilities should be explored, but that any proposals which seemed to go back on the principle of the 12-mile limit, would be extremely difficult for the Icelandic Government to justify to their public opinion. He thought there would be advantage in defining the areas once and for all rather than to accept a procedure under which they would have to be redefined periodically.

12. Mr. Andersen then said that there were other factors to be taken into account and he listed them as follows:

- (a) *Progressive Phasing-out.* Under this arrangement our vessels would be excluded first from the area between 6 and 8 miles, then from 8-10 and then from 10-12;
- (b) *Limitation on the size of trawlers fishing inside 12 miles;*
- (c) *The Landings Agreement.* This could perhaps be revised in favour of Iceland;
- (d) *EFTA.* The implications for Iceland of becoming a member;
- (e) *Joint Projects.* Some reference had been made to co-operation in joint industrial projects. The Icelandic side would like to know more about this;
- (f) *Baselines.* Revision of baselines in Iceland's favour after the transitional period would help the Icelandic Government to present an agreement to their Parliament and public opinion.

13. Mr. Andersen observed that the main thing was to consider whether we could make any progress with the "zig-zag" idea: this was of primary importance and the other points he had outlined were ancillary to it.

14. Sir Patrick Reilly replied, after the British Delegation had considered the points made by Mr. Andersen, that he agreed that the Working Party should consider the areas outside 12 miles in an attempt to determine which were the areas either inside or outside 12 miles where really dense concentrations of line and net fishing would make trawling impossible at the same time. He pointed out that in 1958 the discussion of this subject had taken place in different circumstances from those prevailing now: for example, we had then been able to look forward to a relatively short period before the beginning of the second Geneva Conference. He emphasized the difficulty for the British side in accepting any restrictions outside 12 miles and hoped that we could find other ways of helping the Icelandic Government, possibly within the framework of the six points which Mr. Andersen had outlined and which Sir Patrick Reilly then proceeded to comment upon in detail as follows:

- (a) *Progressive Phase-out.* This might be discussed by the Working Party. He thought that restrictions of this sort should be in place of and not supplementary to the restrictions suggested by the Icelanders in connection with the British proposals for a straight phase-out. Furthermore we would expect, under a progressive phase-out that there would be no restrictions in any area around the Icelandic coast, either in place or in time, within the remaining area. Since we should be giving up a "block" of sea sooner than we would under a straight phase-out, we should want a longer transitional period than five years.

- (b) *Size Limit on Trawlers.* Sir Patrick Reilly did not think that this would help. Mr. Engholm elaborated on this by saying that the problem of adjustment applied to the whole of our distant water fleet and not just to smaller or older trawlers.
- (c) *Baselines* (see para. 12 (f)). The British Delegation would be willing to exchange views on this, but the validity of revised baselines will depend upon whether modifications to the existing ones were in line with the general principles of international law, and in particular, whether they were in line with Article 4 of the 1958 Convention on the Territorial Sea.
- (d) *Landings Agreement.* The British Delegation could not commit the British fishing industry, who were solely responsible for the agreement on landings of Icelandic-caught fish reached in 1958 under the auspices of OEEC. However, we would be glad to know what the Icelandic Delegation had in mind. Our industry would be able to consider any such concessions only in the light of the arrangements likely to emerge on the question of fishery limits as a whole.
- (e) *EFTA.* Sir Patrick Reilly asked what exactly Mr. Andersen had in mind when speaking of Iceland's membership of EFTA. If he meant the application to Iceland of the tariff arrangements which formed part of the EFTA Agreement concerning the imports of frozen fish fillets into the United Kingdom, we should be glad to have more details.
- (f) *Joint Projects.* Sir Patrick Reilly said that he would be glad if Mr. Andersen could clarify this suggestion.

15. Sir Patrick Reilly then said that the British Delegation now needed further expert advice. This would be given in a personal capacity and we had it in mind to ask Mr. Cobby to come to Reykjavik. Mr. Andersen later acquiesced in this proposal.

16. Mr. Hans Andersen said that further study of the areas outside 12 miles was a basic factor and he welcomed the suggestion that the Working Group should consider this question further. It was agreed that they should meet at 10 a.m. on 4 October.

17. Commenting on the other points made by Sir Patrick Reilly, Mr. Andersen said:

- (a) *Progressive Phase-out.* The Icelandic Delegation had not made any suggestions in this regard. He said that if we were considering an equivalent to a five-year straight phase-out, which they for their side were not necessarily doing, then it would be reasonable to expect a longer transitional period than five years.
- (b) *Size of Trawlers.* Mr. Andersen did not fully understand our objections, but thought the point could be discussed later.
- (c) *Baselines.* It was agreed that Miss Gutteridge and he should discuss this question at 10 a.m. on 4 October.
- (d) *Landings Agreement.* Mr. Andersen said that the 1958 Agreement in Paris had provided for a limitation of the total of fish to be landed during each quarter, for a limitation on the different types of fish to be landed in each quarterly period, and for an overall limit on the total of fish which could be landed each year. The Icelandic Government would like to see these limitations removed, or at any rate amended in Iceland's favour.
- (e) *EFTA.* The Icelandic Government had been considering whether they should seek to join the Six or the Seven. They would like to know what

Iceland's position would be if she joined EFTA. The Icelandic experts had suggested that this point be raised: they were away at present but were expected back within a day or two.

(f) *Joint Projects.* Mr. Andersen thought that the British Delegation might have some proposals to make in this regard. He admitted that he did not have anything concrete in mind himself, but had heard vaguely that we were thinking along the lines of financial assistance for some industrial enterprise.

18. Sir Patrick Reilly said that it was still not clear to us what the Icelandic Delegation had in mind, but that we should be glad to have more details of this.

5 October 1960.

*Item (iii)*

(a) *First Series, Third Meeting, 5 October 1960: (b) Statement by Sir Patrick Reilly*

(a)

ANGLO-ICELANDIC DISCUSSIONS

The third meeting began at 4.00 p.m. on Wednesday, 5 October

Present:

Mr. Hans Andersen	Sir Patrick Reilly
Mr. Henrik Bjornsson	Mr. Charles Stewart
Mr. David Olafsson	Mr. Basil Engholm
Mr. Jon Jonsson	Miss Joyce Gutteridge
Mr. Gunnlaugur Briem	Mr. R. H. Mason
Mr. Tomas Tomasson	Mr. T. F. S. Hetherington
	Mr. A. Savage
	Mr. R. Beverton

The Chairman, Mr. Hans Andersen, said that our experts had determined the factual situation. The Icelandic Delegation felt that the time had come for them to consult their Government and he thought that it would be valuable, before doing so, to have the views of the British Delegation as to the stage which our discussions had now reached.

2. Sir Patrick Reilly agreed that now was a good moment for the two Delegations to take stock: the British Delegation would also wish to inform their Government. Sir Patrick Reilly then spoke from the attached statement which had been prepared in advance.

3. Mr. Hans Andersen thanked Sir Patrick Reilly for his statement and said that it would be useful to the Icelandic Delegation when meeting their Cabinet. While reserving comment on the points raised by Sir Patrick Reilly he noted with pleasure that the British Delegation thought that it would be possible to reach an agreement on restrictions within 12 miles, and he expressed his gratitude for the information about possible forms of economic

aid, and added that the latter would require further study. There were, however, one or two points on which he would be glad of clarification.

4. *Restrictions outside 12 miles.* This was of crucial importance for Iceland and it was therefore essential to ensure that he had correctly understood the British point of view. Did we see any possibility of any reserved areas outside 12 miles or did we envisage agreed Rules of Conduct as the only means of reconciling the Icelandic line and static net fishermen to our trawlers being permitted to fish between 12 and 6 miles during the transitional period. If we saw no possibility of restrictions outside 12, then his Government would be as diffident about the prospects of reaching agreement as the British Delegation appeared to be.

5. *Sir Patrick Reilly replied that he did not altogether exclude the possibility that our trawlers might be excluded from some areas outside 12 miles on conservation grounds and because of high density of line and static net fishing; this would need to be examined.*

6. *Sir Patrick Reilly then asked what would be the position outside 12 miles after the transitional period. Would the Icelandic Government be able to give an assurance that they would not seek to retain for their exclusive use the areas outside 12 from which our trawlers had been excluded during the transitional period. Mr. Andersen made no reply to this question.*

7. *Mr. Hans Andersen noted that the British Delegation had referred throughout to a transitional period of five years and said that the Icelandic Delegation had not accepted five years since the length of the transitional period would depend upon the agreement as a whole. Sir Patrick Reilly said that he recognized that the Icelandic Delegation had not committed themselves to five years, but said that it was most important from our point of view and expressed the hope that the Icelandic side would be able to confirm their agreement to five years.*

8. *Mr. Hans Andersen said that he would like to know what the reactions of the British Delegation were to the Icelandic suggestions about straightening out baselines. Sir Patrick Reilly replied that this was very difficult from our point of view: their effect would be to extend Icelandic fishery limits and therefore to increase our difficulties. Nevertheless, we should not wish to exclude further discussion. When would the Icelanders plan to introduce the modifications they had in mind? Mr. Andersen replied that this might be after the transitional period.*

9. *It was then agreed that both Delegations should meet again at 11.30 a.m. on 6 October<sup>1</sup>.*

(b)

## LINE FOR THIRD PLENARY MEETING<sup>2</sup>

We have covered a lot of ground and have clarified the issues, so that we now have a picture of the kind of basis on which it might be possible to reach an agreement satisfactory to both sides. It is time to take stock.

<sup>1</sup> This meeting did not take place but there was an unrecorded conversation between Mr. Andersen and Sir Patrick Reilly at the British Embassy on 6 October 1960 after the Icelandic delegation had consulted their Ministers. (See para. 6 of item (iv).)

<sup>2</sup> Prepared statement by Sir Patrick Reilly.

2. The kind of agreement of which a picture has emerged is one which would fall into two main parts:

- (a) arrangements dealing directly with fishery problems;
- (b) other arrangements, mainly of an economic character, not directly concerned with fishery problems, but nevertheless possibly of considerable benefit to Icelandic fishing interests.

3. The ideas which we have been discussing under (a) seem to fall under main headings:

- (i) First all our discussions have proceeded on the assumption that there will be a transitional or "phase-out" period during which British trawlers will continue to fish inside 12 miles, but outside 6.
- (ii) Secondly we have discussed the idea that it may be possible to agree on restrictions, mainly seasonal, on fishing by British trawlers within the 12-mile limit, in the interest of Icelandic line and net fishermen.
- (iii) Then we have discussed the idea of Rules of Conduct, applying both inside and outside the 12-mile limit and both during and after the transitional period.
- (iv) We on our side have also mentioned the possibility of devising some means of ensuring quick compensation in cases of damage, etc.
- (v) There has been much discussion of the possibility of certain restrictions outside the 12-mile limit.
- (vi) You have indicated that you are interested in substantial modifications of your baselines.
- (vii) We have looked at the possibility of a progressive phase-out but, as Mr. Engholm has explained, this does not seem to be a likely basis for a solution.
- (viii) We have considered the possibility of limiting the size of British trawlers within the 12-mile limit; but as I told you, this would not really help our Industry's problem.

4. Under (b) we have said that we would be glad to consider any suggestions which you may like to make and you have indicated interest in:

- (i) a revision of the "Landings Agreement" between our two fishing industries;
- (ii) the possibility of assistance to Iceland in the field of EFTA;
- (iii) the possibility of assistance in the form of co-operation in projects in Iceland, possibly of a financial nature.

5. Now I am sure that if we can reach a satisfactory agreement on the purely fishery points, my Government would want to help you, as far as it can, on matters of the kind to which I have just referred. But of course these are points which require consultation with various interests and therefore a little time; and in considering them my Government is bound to want to know what are likely to be the purely fishing terms of any agreement. They and others concerned, especially our Industry, can hardly consider such issues in isolation from the fishery issues.

6. It seems to me, therefore, that it is not too soon, and indeed that it is now desirable, for us to tell our Government where we have got to, and what is the basis of any arrangements on the purely fishery points which your Government is contemplating.

7. To take first, the first of the elements which I listed under the heading "Fishery Arrangements". It is clear that the length of the transitional period

is a cardinal point in the whole matter. Everything that we on our side have said from the first has been on the basis that we are discussing a suggested transitional period of five years. I would like to be able to tell my Government that this is also the period of which you are thinking. It would be very helpful, therefore, if you could confirm that this is so.

8. I should, if I may, now like to try and analyse the situation that we seem to have reached on the other main headings on fishery limits. From the discussions that have been taking place in the Working Party, it seems to me that both sides are agreed that in the 6-12 mile belt around the island it ought, with good will and a certain amount of give and take on both sides, to be possible to find a practical accommodation of our differing interests. Round most of the coast from the north-west, round the north coast, down the east coast, and along the south coast to the Westmann Islands, it so happens that our peak periods of fishing do not coincide with your peak periods of fishing, although there are some overlaps in various places. As regards the south and south-west coasts, the problem is somewhat different. There unfortunately our respective peak periods of fishing directly coincide and it would not, for that reason seem possible for us to reach a compromise between our differing interests on a seasonal basis. Nevertheless I should have thought that here again, with good will on both sides, it should have been possible for us to find a way of reconciling our different interests, perhaps by some demarcation of areas or possibly by some limitation on the numbers of vessels which would be able to fish in the 6-12 mile belt off these parts of the coast. I do not believe—and I think that your side would agree with this view—that difficult as they may be, the practical problems of reconciling our different interests in the 6-12 mile belt cannot be overcome. It will clearly mean sacrifice for our industry, since they would inevitably lose quite a large proportion of fish. Nevertheless we would be prepared to ask our industry to accept this sacrifice as evidence of our genuine desire to find a way through our mutual problems.

9. Unfortunately, this practical method of resolving our differences does not appear to be enough from your point of view. You have, I understand, suggested that if British vessels are to be permitted to fish in the 6-12 mile belt at restricted times of the year or in restricted areas during the five-year transitional period, you must ask for areas outside 12 miles to be entirely reserved for Icelandic fishing at other times of the year. I would remind you that in my opening remarks I said that we would be prepared to consider the possibility of some reservation of areas from trawling outside 12 miles if these could be shown to be necessary on scientific grounds of conservation. I understand that in the Working Party discussions there is a general agreement that the main area where small fish are most abundant is off the north-east coast, and even here, a reserved area on conservation grounds is, according to the scientists, a doubtful starter on present evidence.

10. The other practical argument which was advanced from your side for the reservation of areas outside 12 miles was that it was difficult for your line and net fishermen to operate in the same waters where trawling by our vessels was taking place. You said that your fishermen were frightened of their gear being damaged, and you also argued that the density of fishing, at any rate in some areas, might make it very difficult for the two industries to fish peaceably side by side. Our view has been that Rules of Conduct, backed up by joint policing by both our countries and perhaps assisted by some arrangement under which compensation would be readily and speedily available to fishermen whose gear was unfortunately damaged, would adequately safeguard the interests of both our fishing industries and enable them to live in

the same waters harmoniously side by side. I would remind you that this is something that they will have to do in any event after the transitional period, and in many waters during the transitional period. You for your part said that although you thought that the Rules of Conduct would be useful, you felt that in some areas the density of your vessels was such that Rules of Conduct alone would not, at any rate at the start, give the necessary confidence to your fishermen. We agreed therefore that the Working Party should examine the areas outside 12 to see whether there were any areas which, on density grounds, could be justified for reservation during the transitional period for line and net fishing. This examination has taken place and you have been good enough to supply us with the numbers of your vessels operating in different waters round your coasts, together with the figures of catch at different times of the year. From this analysis I am bound to say that we cannot see how it would be possible, except perhaps in one or two very limited areas, to justify the reservation of grounds outside 12 miles, because of the *density of the fishing*. And I think that, looking at this from a practical point of view, your side would not really dispute this.

11. Nevertheless you have suggested that in compensation for our being able to fish in the 6-12 mile belt during the transitional period, it would be essential for you to have reserved outside 12 miles a more or less continuous belt of water round the Icelandic coast, and I believe that you have even suggested that this might amount to a further belt of 12 miles and that British liners as well as trawlers should be excluded. As I have said, this could not conceivably be justified either on grounds of conservation or on practical grounds of the density of fishing, and as I understand it, your argument in favour of reservation of such an area is frankly based on political considerations.

12. The fact that this is so is perhaps reinforced by the point that even if British vessels were to be excluded from such waters outside 12 miles, this would not exclude trawlers from other countries, and the practical problem of trawling and net and line fishing going on side by side would therefore still exist. It seems to me therefore that even if it were justifiable to think in terms of such a reserved area, it would have no practical effect unless it were to be considered on a multilateral basis, and this would be bound to give rise to grave international complications.

13. Moreover, what would be the position at the end of the transitional period? At that stage, as I understand it, you would contemplate that not only would our fishing inside 12 miles cease, but the reserved areas for your fishermen outside 12 miles would also cease. Surely this would face you with grave political problems also. Moreover, we should need to have some guarantee in any agreement that after the transitional period the Icelandic Government would not seek to exclude our vessels from any of the waters outside 12 miles, unless of course there were to be some change in the general rule of international law agreed under United Nations auspices. Would your Government be prepared to give us such a guarantee in any agreement?

14. You will see from this analysis that your ideas about restrictions outside the 12-mile limit involve for us very great difficulties indeed. My Government could never sell them to our Industry or to Parliament or the public. With great regret, I must in honesty say that I see no basis for an agreement in these ideas as they now stand: and I would only be wasting your time if I offered to submit them to my Government for consideration.

15. We have been thinking very carefully over the position now reached. As we have said from the first, we recognize your political problem. We

believe that the practical problems can be fairly early (*sic*) met by the sort of means we have been discussing—Rules of Conduct, etc. The political problem remains. We have been thinking whether as an alternative to meeting it by restrictions outside 12 miles which cause us grave practical and political problems and which we really cannot contemplate, we could help you with some form of economic arrangements, especially such as might be of special value to your line and net fishermen.

16. It seems to us that the most helpful thing for you in this respect would be something which would help you to increase your sales of frozen fillets in the United Kingdom.

17. In this connection we were naturally much interested in your reference to EFTA. I feel sure my Government will have been much interested to know that you are considering this whole question of the Six and the Seven. But I am not sure quite how the question of Iceland's membership of EFTA, which is obviously a matter for multilateral discussion and would take some time, fits into the context of the sort of bilateral arrangements which we are now discussing. I think, therefore, that for our immediate problem it would be more helpful if we considered some bilateral arrangements of the kind which might be made if Iceland entered EFTA. What I have in mind is a reduction of the 10 per cent. tariff on imports into the United Kingdom of frozen fish fillets, along the lines of the arrangement we have made under the EFTA Agreement and subject to the same conditions. This would be of direct substantial and permanent benefit to your in-shore fishermen who are those mainly concerned with frozen fillets markets.

18. This is a tentative suggestion: and you will understand that before my Government could make yours any definite offer of this kind, they would have to consult their EFTA partners, especially Norway.

19. In addition, provided always that the "fishery" arrangements in a possible agreement were satisfactory, I think that my Government would be prepared to discuss with the Industry a possible revision of the Landings Agreement and I would not be without hope that the Industry might be ready to co-operate.

20. Finally, you have mentioned co-operation, financial or other, in projects in Iceland. I cannot really say anything useful about this without a clearer idea of what projects or what assistance you might be interested in. But we here will certainly consider sympathetically anything you care to suggest to us

21. To sum up, I believe we can reach agreement on a basis of:

- (i) five-year transitional period;
- (ii) restrictions inside 12 miles on a seasonal basis and in some places perhaps on an area basis;
- (iii) "Rules of Conduct" and Joint Policing;
- (iv) some other assistance to help with your political difficulties.

22. If, however, your Government insists on restrictions outside 12 miles such as you have suggested, that is restrictions which go far beyond anything that could be justified on the grounds of conservation or density, then, to my great regret, I do not see any basis of agreement.

23. I believe that we could give you very effective help to meet your political problem in the ways I have indicated: that is instead of restrictions outside 12 miles, economic measures of special interest to your line and net fishermen.

24. I do most earnestly hope that you will now consider a solution on those lines. I know that all of us here, and our two Governments, sincerely desire an agreement. I know that all of us have in our minds the gravity of the situation which would at once arise if we can reach no agreement. We are met here to prevent that happening. With all my heart I hope we can succeed.

*Item (iv)*

*First Series, Fourth (Informal) Meeting, 8 October 1960*

ANGLO-ICELANDIC FISHERY TALKS

Informal Meeting at 2.30 p.m. on 8 October

Present:

Mr. Hans Andersen	Sir Patrick Reilly
Mr. Henrik Bjornsson	Her Majesty's Ambassador
Mr. David Olafsson	Mr. Basil Engholm
	Mr. R. H. Mason

Sir Patrick Reilly began by saying that he was greatly disappointed that no agreement had been reached in spite of the hard work that had been put in by the experts on both sides, and in spite of the real possibilities, as they had appeared to us, of reaching an agreement. Her Majesty's Government had been very much alive to the difficulties of the Icelandic Government and had therefore instructed the delegation to make a determined effort to meet them. We of course also had our difficulties and had been hoping to find a similar attitude on the part of the Icelandic Delegation. We had formed the impression, however, that the Icelandic Government had not recognized British difficulties and Sir Patrick Reilly regretted that he would not be able to report to Her Majesty's Government that our efforts had met with an equivalent response.

2. Sir Patrick Reilly reviewed the various propositions which the Icelandic Government had asked us to accept:

- (i) The immediate exclusion of our vessels from within 6 miles;
- (ii) restrictions within the 6-12 mile area for a period the length of which was still quite uncertain since the Icelandic Government had not yet accepted our proposal for a 5-year transitional period;
- (iii) changes in the baselines;
- (iv) restrictions outside 12 miles corresponding with these areas which would be open inside 12 miles, and which could not be justified on grounds of conservation or of density of static net and line fishing;
- (v) no guarantee that after the transitional period had ended the Icelandic Government would not seek to maintain the areas outside 12 for their exclusive fishing.

3. We had hoped that our offers of economic assistance would help the Icelandic Government with their political difficulties, but these seemed to have been of no interest whatever to the Icelandic Government. Sir Patrick Reilly

could hardly bring himself to believe that an increase of their market for fish *in the United Kingdom* would be of no interest to Iceland. He asked whether there was anything further that the Icelandic Delegation could say to help us.

4. Mr. Hans Andersen replied that the Icelandic Delegation were equally disappointed. However, his Government looked at the various elements which compose this problem in a different light. The Icelandic Cabinet would have great difficulty with their Parliament and public opinion if they gave way on 12 miles: they firmly believed that a 12-mile fishery jurisdiction was now a generally accepted principle throughout the world, and that the concept of a transitional period should not apply to countries like Iceland, which are in a special situation. The 12-mile limit was not, in their view, illegal, and this view had been reinforced by the fact that all countries except Great Britain had observed it for the last two years. The Icelandic Government could not make special arrangements with any country which had opposed this view, especially with a country which had opposed it with military might. The only possible approach, therefore, was to present an agreement in such a way that the Icelandic Government could not be accused of backing down. It was for this reason that they had suggested examining the fishing areas to see where interests could be reconciled.

5. In view of the Icelandic people's firm conviction that the 12-mile limit was just, it would serve no purpose for his Government to make concessions inside 12 miles simply in return for economic concessions. It was a question of balance: concessions inside 12 should be balanced partly by restricted areas outside (not necessarily exactly equivalent) and partly by economic assistance.

6. Mr. Andersen thought that their suggestion about modifying the base-lines would be helpful to us in presenting the agreement to our own public opinion. Sir Patrick Reilly said that as things stood at present, it could only make them worse. He then recalled his conversation with Mr. Andersen at the British Embassy on 6 October after the Icelandic Delegation had consulted their Government. As he understood it, the Icelandic Government's position then was that for each area inside 12 miles, there must be an area outside of corresponding fishing value and broadly in the same parts of the island. This of itself would, however, not be sufficient to balance the scales, and we should have to put in our economic concessions as well. Did Mr. Andersen now mean that the economic concessions would enable the Icelandic Government to reduce the number of areas outside 12 miles from which our trawlers would be excluded during the transitional period? Mr. Andersen replied that this indeed was what he meant and that he thought he had made it clear on 5 October. Sir Patrick Reilly said that he had certainly not understood, either after that discussion or after the one with the Foreign Minister on 6 October.

7. Mr. Andersen said that he did not think it was fair to say that the Icelandic Government had shown no interest in the economic offers made by the British Delegation. They were in fact very interested.

8. Sir Patrick Reilly asked whether we could say that the Icelandic Government would accept a substantial reduction of areas outside 12 in return for economic concessions. Mr. Andersen replied that this would be pushing it too far and asked what we meant by substantial reductions. Sir Patrick Reilly replied that he meant areas which we could justify to our fishing industry as being excluded on grounds of conservation or on density of static net and line fishing. Sir Patrick Reilly added that some assurance about further extensions beyond 12 miles was an essential point for us: our fishermen were worried about a possible extension to the Continental Shelf and we could

not face the prospect of the same dreary story at the end of the five-year transitional period. This was a point upon which we must have satisfaction.

9. Mr. Henrik Björnsson said that the Minister of Foreign Affairs had said he would be very glad to look into this, but no conclusions had yet been reached.

10. Sir Patrick Reilly then referred to the extension of baselines: restrictions within 12 miles, plus modifications of baselines in favour of the Icelanders would be very difficult for our industry to accept, but if restrictions outside 12 were added to extended baselines, that would make agreement quite impossible. Mr. Engholm said that it had been clear from the discussions within the Working Group that there were only one or two areas outside 12 miles which could be justified on practical grounds, and the justification put forward by the Icelanders for the greater part of the proposed restricted area were put forward frankly for political reasons.

11. Sir Patrick Reilly then said that we should like to consider the idea that the extension of baselines, together with our economic offers, might make it possible for the Icelandic Government to reduce the restricted areas outside 12 miles, and the British Delegation then withdrew.

12. On reassembly Sir Patrick Reilly said that he thought he saw a glimmer of hope of continuing the discussions on the following assumption. The British Delegation would offer:

- (i) revised baselines consistent with Article 4 of the Convention on the Territorial Sea;
- (ii) the economic points, of which the Icelandic Delegation were aware, subject of course to the agreement of the British industry in regard to the Landings Agreement, and to the agreement of our EFTA partners in regard to the tariff reduction on frozen fish fillets; in return for
- (iii) agreed open areas at agreed seasons between 12 and 6 during the transitional period; for
- (iv) an assurance about no further extensions; and for
- (v) *no* restrictions outside 12 miles.

There was a possibility that we could get acceptance for such an agreement, whereas there was no such possibility if an agreement included substantial restrictions outside 12 miles.

13. Mr. Andersen asked whether we could consider any restricted areas outside 12 miles: perhaps somewhere there were dense concentrations of static net fishing. Mr. Engholm replied that that would be difficult, but there might be one or two very limited areas of this sort with which we could agree.

14. In reply to a question about the extent of the baselines, Sir Patrick Reilly said that we should have to discuss this with Miss Gutteridge, but he added, and this was a crucial point, that any agreement based on extending baselines would have also to exclude restrictions outside 12. Sir Patrick Reilly added that we should of course also require a transitional period of five years and an assurance that there would be no further extensions towards the Continental Shelf. He asked if the Icelandic Delegation could put this to the Prime Minister or the Minister of Foreign Affairs. If either of the latter would say that they would seriously consider such a proposal in the Icelandic Cabinet, Sir Patrick Reilly would remain in Reykjavik instead of going to London tomorrow as he had planned. Mr. Engholm would probably go to London but he could come back for a further discussion if there was any point in pursuing the discussions.

15. Mr. Andersen said that he would do what he could at once to consult Ministers and let us know the same evening. He thought that it would be a great pity to break off the discussions and that it would be well worthwhile to continue to thrash the question out over the next three or four days.

16. It was agreed that if the whole delegation now returned, we should not say to the Press that there had been a break, but our line should be that after a thorough review, the British Delegation had returned to London to report.

*Item (v)*

*Second Series, Icelandic Memorandum of 28 October 1960*

ICELANDIC MEMORANDUM HANDED BY Mr. HANS ANDERSEN  
TO SIR PATRICK REILLY ON 28 OCTOBER 1960

During the discussions which took place between representatives of Iceland and the United Kingdom early in October, both parties explained their views and interests and explored possibilities for solving the present dispute. Since then the problems have been further studied by the Iceland Government and the Government is prepared to recommend the following points to its supporters as a reasonable settlement:

- I. The 12-mile limit is no longer opposed.
- II. *Baselines.*

The present Icelandic baselines were drawn up in 1952. The Hague judgment of 1951 in the *Anglo-Norwegian Fisheries* case was then, of course, carefully studied and the Icelandic Government considered that the baselines could have been drawn more liberally in conformity with the principles of that judgment. In addition, further developments have taken place in this field, notably through the conclusion of the Geneva Conference on the Territorial Sea where a solid basis is found for the drawing of direct baselines. Consequently, it has for some time been the policy of the Icelandic Government to revise the present baselines so that direct baselines would be drawn between the following basepoints:

- Between 1 and 5
- Between 12 and 16
- Between 25 and 28
- Between 28 and 30
- Between 35 and 51
- Between 51 and 42

Also the elimination of pockets created by the present baselines around Grimsey and Hvalsbakur is considered appropriate.

III. *Areas within the 6-12 mile zone to be available for British trawlers for the next three years.*

1. *Area A* (Westmann Islands-Basepoint 51) March-May.
2. *Area B* (Basepoint 51-Basepoint 1 Horn)

In the area between basepoints 51 and 43 March-May.

In the area between basepoints 43 and 46 July-October.  
 In the area between basepoints 46 and 1 March-June.

3. *Area C* (Horn-Langanes) June-September.
4. *Area D* (Langanes-Basepoint 30).

In the area between basepoints 12 and 16 June-December.  
 In the area between basepoints 16 and 10 January-March, and July-August.  
 In the area between basepoints 20 and 30 March-July.

#### IV. *Protected Small Boat Areas within the 6-12 mile zone.*

##### (i) *Area B*

Between latitudes 63° 37' N. and 64° 13' N.  
 Between latitudes 64° 40' N. and 64° 52' N.  
 Between latitudes 65° 00' N. and 65° 20' N.

##### (ii) *Area D*

Between longitudes 14° 38' W. and 15° 32' W.  
 Between longitudes 16° 12' W. and 16° 46' W.

#### V. *Protected Small Boat Areas outside the 12-mile limit*

##### (i) *Area B*

In the area between basepoints 43 and 45 January-April.  
 In the area between basepoints 45 and 1 November-February.

##### (ii) *Area C*

In the area between basepoints 5 and 10 15 September-December.

##### (iii) *Area D*

In the area between basepoints 16 and 20 September-December.  
 In the area between basepoints 20 and 25 September-February.  
 In the area between basepoints 25 and 30 January-February.

#### VI. *"Rules of Conduct"*

The draft rules for the regulation of fisheries which were submitted by the British representatives would form a useful part of the agreement.

#### VII. *Economic Co-operation*

1. The landings agreement now in force should be revised to the effect that the quota would be increased and limitations as to species and carry-overs between periods would be abolished.
2. *Economic co-operation in other fields* would include tariff reductions on imported fish and fish products.

#### VIII. *The Situation after the Termination of the Agreement*

The Icelandic Government reserves its right to extend fisheries jurisdiction in Icelandic waters in conformity with international law. Such extension would, however, be based either on an agreement (bilateral or multilateral) or decisions of the Icelandic Government which would be subject to arbitration at the request of appropriate parties.

*Item (vi)**Second Series, First Meeting, 10.30 a.m., 28 October 1960*

## ANGLO-ICELANDIC FISHERY TALKS

*Record of First Meeting held at No. 12 Carlton House Terrace at 10.30 a.m.  
on 28 October 1960*

Present:

*United Kingdom*

Sir Patrick Reilly  
 Mr. C. B. Engholm, MAFF  
 Mr. I. F. Scott-Hetherington, Scottish  
 Office  
 Miss J. A. Gutteridge, Foreign Office  
 Mr. R. D. C. McAlpine, Foreign Office  
 Mr. A. Savage, MAFF  
 Commander R. H. Kennedy, Admiralty  
 Mr. M. S. Berthoud, Foreign Office

*Iceland*

Mr. Hans Andersen  
 Mr. David Olafsson

Sir Patrick Reilly opened by saying that it had been our hope that the next stage should be a further formal round of talks in Reykjavik. Nevertheless he was glad to welcome Messrs. Andersen and Olafsson to this country, and if their visit proved to be a useful further stage in our discussions with the Icelandic Government, we should be very pleased.

Mr. Andersen said that his Government had had full consultations with their parliamentary supporters and had arrived at a sincere view on the possible terms of an agreement which might be acceptable to Iceland. His Government, however, did not think it desirable to resume formal talks without first reaching a basic understanding; this was why they had sent him and Mr. Olafsson to London for preliminary discussions. Mr. Andersen then read out the attached Memorandum<sup>1</sup>, which he later handed to Sir Patrick Reilly, containing the Icelandic Government's proposals.

In answer to questions, Mr. Andersen elaborated the proposals as follows:

(i) *Landings Agreement*

The Icelandic fishing industry would like the present annual ceiling to be doubled, i.e., increased up to £3,600,000; they would also like the limitations on species and quarter carry-over to be abolished. He explained that the present ceiling in practice amounted to only £900,000 because the quotas for the six summer months were of no value.

(ii) *Tariff Commission*

The Icelanders would like to see tariffs reduced or eliminated on *all* fish imported to this country from Iceland.

(iii) *Proposed Icelandic undertaking on extensions of fishery jurisdiction beyond 12 miles*

In view of public opinion it was crucial for the Icelandic Government that their hands should not be tied for the future. The last phrase in the

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<sup>1</sup> See item (v).

Icelandic draft was intended to enable Iceland to extend her fishery limits unilaterally, but it would be open to the United Kingdom to request arbitration.

Mr. Engholm said that at first glance it appeared that the proposals for restricted areas and baselines would exclude our fishermen all the year round from the area off the "Hoof"; in some places the combined effect of the proposed baseline changes and outside areas would be virtually to exclude us from the continental shelf.

Mr. Olafsson said there were two very important areas where there was a clash of interests between Icelandic and British fishermen, namely the "Hoof" and the area off the Westmann Islands.

Sir Patrick Reilly asked why, in spite of the considerable benefits within 12 miles and of the economic concessions which we were offering it was still necessary for Iceland to demand areas outside 12 miles. If such claims could be justified on conservation or other grounds, they might be easier for us to consider. But if the claims were merely being made for political reasons they would be very difficult for us to look at favourably.

Mr. Olafsson said that his Government were under very heavy pressure from their fishing industry to introduce restricted areas outside 12 miles in order to compensate them for the areas within 12 miles where British trawlers would be allowed to fish during the transitional period. The areas outside 12 miles had been reduced from those which were discussed in Reykjavik.

Sir Patrick Reilly emphasized that the whole principle of areas outside 12 miles was basically unacceptable to us; he did not wish to waste the time of the meeting by going into detail.

Mr. Engholm said that as he understood it there were to be restricted areas outside 12 miles all round the coast with one or two exceptions where there would be baseline changes instead. Looking at the outside areas and the baselines, it could not be said that the new Icelandic proposals represented much of a change.

Mr. Olafsson said that the change was more in respect of the duration of the periods of restriction; these had been reduced to take into account the importance of peak periods to the British industry. He went over the areas showing how the periods of restriction had been reduced in each case, except for the East coast where no reduction was possible.

Sir Patrick Reilly said that this was a complicated picture which needed to be examined by experts. It seemed unlikely, however, that this examination would make the proposals seem acceptable.

Mr. Engholm emphasized that the only grounds on which we could entertain restricted areas outside 12 miles were those of conservation. This condition did not seem to be satisfied in any of the areas mentioned by the Icelanders, and he could not, therefore, see how the Icelandic proposals regarding these areas could be acceptable in spite of the reduction in the periods of the restrictions.

Mr. Andersen recalled that in the talks at Reykjavik the United Kingdom delegation had said that they might consider some areas outside 12 miles.

Sir Patrick Reilly quoted from the record of the relevant meeting to show that he had then said on a personal basis that we might possibly consider one or two such areas if satisfactory agreement could be reached on other points. The meeting was then adjourned for half an hour for detailed examination of the Icelandic proposals.

On resumption, Mr. Engholm said that on a broad calculation, taking into

account the additional restrictions now proposed both inside and outside the 6-12 mile area, and also the proposed adjustment to baselines, the loss in terms of fish involved in acceptance of the present Icelandic proposals would, if anything, be slightly more than if we accepted a straight 12-mile fishery limit off Iceland. Moreover, a settlement on the proposed basis, would, as a result of the adjustments of the baselines, result in the permanent loss of substantial areas.

Sir Patrick Reilly said that the Icelandic proposals had come as a shock to us. He asked Mr. Andersen to look at the problem from our industry's point of view. The basic positions of the two sides were that Iceland claimed that a 12-mile fishery limit was justified in international law while the United Kingdom recognized only a 3-mile limit for territorial waters and fishery limits, though in practice our industry had respected the Icelandic 4-mile limit, claimed unilaterally in 1952. It was for both sides to try to find a middle path. We had offered a solution which seemed to us to be reasonable, and would involve *de facto* acceptance on our part of a 12-mile limit after five years—a painfully short period for readjustment. The Icelandic Government had told us in Reykjavik that they were in principle prepared to accept a transitional period. We had said we could accept restrictions between 6 and 12 miles. This seemed to us to be a fair compromise. The present proposals, however, went much further. The proposed changes in baselines went far beyond anything we thought could be justified by the 1958 Convention; and the areas outside 12 miles had always been a point of extreme difficulty for us. The effect of these proposals was to cancel out any advantage our industry would obtain from fishing between 6 and 12 miles. He failed to see that there was anything in the Icelandic proposals which we could present to our industry as being of advantage to them.

In addition, Iceland was asking for economic concessions involving provision for a massive increase of Icelandic landings in this country which would have a serious effect on the market for our own fish sales. Moreover, as he understood it, Iceland was also asking for a comprehensive reduction in our tariffs on fish; this went far beyond even what we had given our EFTA partners.

The wording of the proposed Icelandic assurance on extensions beyond 12 miles needed careful examination by our legal experts. *Prima facie*, however, the form of words now proposed did not give much grounds for confidence in the future, nor would it enable us to give the industry the security it required. This added up to a gloomy and a disappointing picture. It was distressing that, in spite of the Icelandic Government's careful consideration, they should have gone so far beyond what we had indicated in Reykjavik we would be prepared to accept. Even the proposals we tabled on a personal basis there were far from acceptable to our industry. It would have been very difficult to have got them to agree to any revision of the landings agreement; under the new proposals this would be quite impossible. He thought that we were agreed to try to achieve a reasonable compromise with give and take on both sides. This would have given our industry a reasonable transitional period for re-equipment—and the Icelanders would have retained their market in the United Kingdom with the possibility of improvement for the future. If agreement could not now be reached the Icelandic market in the United Kingdom would not only be impaired but could also be endangered. Our industry would take matters into their own hands. He was reluctant to believe that this was the Icelandic Government's last word. The way things now stood there was no basis for negotiation.

Mr. Andersen said it was not a matter of what the Icelanders could reasonably expect us to accept, but rather what his Government could get through the Althing. They had consulted their Althing supporters and this was the result. Their purpose was not to say "take it or leave it" but to explore the possibility of agreement and to see how far the United Kingdom could go. When this was established his Government would wish to consider whether any basis which the United Nations could accept would be able to command a Parliamentary majority. On the question of what our industry would gain or lose through the new proposals, he thought that the proposed new baselines could not, in so far as they were consistent with the 1958 Convention, be said to *involve our industry in a loss*.

Sir Patrick Reilly said that not all the baselines were in accordance with the Convention though one or two might at a pinch be acceptable. On present instructions he was not authorized to accept any areas outside 12 miles. He said that he would like to throw out a suggestion on a personal basis while emphasizing that it had not been considered by Ministers. *We might perhaps go for something simpler, namely an arrangement whereby we would accept the new restrictions inside 12 miles and a reduction of the phase-out period to four years. We would not, however, accept any outside areas, nor any baseline changes, and we should need an assurance in a satisfactory form that there would be no extensions by Iceland beyond 12 miles. There would be no economic concessions.*

Under this arrangement, Iceland would get:

- (a) our *de facto* acquiescence in the 12-mile limit thus bringing the dispute to an end;
- (b) a very short transitional period;
- (c) very considerable restrictions on our fishing within 12 miles;
- (d) a safe market in the United Kingdom for their fish which could be expanded by their efforts.

Mr. Andersen said that he could say straight away that this kind of agreement would be quite impossible. He repeated the Icelandic difficulties about the form of assurance and said that, in the Icelandic view, the baselines were the key to the whole problem.

Sir Patrick Reilly asked whether this meant that if we could meet the Icelanders on baselines they would drop the areas outside 12 miles?

Mr. Andersen said they could not do so completely. They had presented the framework of an agreement and would like to know how far we could go on each point.

Sir Patrick Reilly said that there was no possibility of an agreement in so far as areas outside 12 miles were concerned, and any agreement on baselines would be very difficult.

Mr. Andersen said that if the United Kingdom delegation could accept no baseline changes and no outside areas then he would have to go away empty handed and this would be the end of the negotiations.

Mr. Olafsson said that in Iceland there was a divergence of view as to whether there should be any agreement at all. Some people thought that Iceland had already achieved recognition of the 12-mile limit, except by British trawlers. If the United Kingdom stuck to what the British fishing industry wanted, an agreement would never be achieved. He personally thought that the current opposition on the part of the British industry to landings of Icelandic frozen fish as well as other fish showed that they were not interested in an agreement.

Mr. Engholm said he quite understood that anything the Icelanders gave us within 12 miles would be looked on in Iceland as a concession. The Icelanders should realize, however, that our industry regarded any restrictions on their fishing outside 4 miles as a concession. We had to find a middle way between these two extremes. He went on to outline the legitimate needs and fears of our fishing industry and the reasons for their opposition to landings of Icelandic fish. He emphasized, however, that they were not opposed in principle to a settlement and if a reasonable agreement was in sight he felt sure they would be prepared to consider a modification of the landings agreement.

It was agreed to meet again at 3.30 p.m. on the same day.

*Item (vii)*

*Second Series, Second Meeting, 3.30 p.m., 28 October 1960*

ANGLO-ICELANDIC FISHERY TALKS

*Record of Second Meeting held at No. 12 Carlton House Terrace at 3.30 p.m. on 28 October 1960*

Present:

*United Kingdom*

Sir Patrick Reilly  
Mr. B. C. Engholm, MAFF  
Mr. T. F. S. Hetherington, Scottish  
Office  
Mr. R. H. Mason, Foreign Office  
Miss J. A. Gutteridge, Foreign Office  
Mr. M. S. Bethoud, Foreign Office  
Mr. A. Savage, MAFF

*Iceland*

Mr. Hans Andersen  
Mr. I. Olafsson

Sir Patrick Reilly said that we could not go further on economic concessions than we had done with our EFTA partners. He thought that, if it would help, our EFTA partners would probably be glad to agree to our giving the Icelanders the same concessions as they themselves received on frozen fish fillets. On the Landings Agreement it had been difficult enough to get the industry to think in terms of accepting any modification on the basis of the sort of agreement which we put forward in Reykjavik on 8 October. *A fortiori* it was out of the question to expect the industry to agree to any modification on the basis of the agreement which the Icelanders were now putting forward. The industry would insist on a minimum of three things in order to contemplate any such agreement. Firstly, the restrictions inside 12 miles should be no greater than those discussed at Reykjavik. Secondly, there should be a reasonable phase-out period. Thirdly, our industry would have the greatest difficulty in agreeing to any restrictions outside 12 miles. Lastly, they must have a satisfactory assurance regarding the situation after the phase-out period. On the latter point, Sir Patrick Reilly suggested that the Icelandic delegation should consider again the form of assurance which we put forward in Reykjavik, i.e., that Iceland should agree not to extend her limits against the United Kingdom beyond 12 miles except under:

- (a) a bilateral agreement with the United Kingdom, or
- (b) an international agreement embodying a generally accepted rule of law about fishery limits.

The Icelanders' present proposal was far less satisfactory. It was vitally important to find an acceptable wording.

Sir Patrick Reilly then asked whether Mr. Andersen accepted our position on tariff concessions.

Mr. Olafsson, after discussion with Mr. Andersen, said that they would like to see tariffs abolished on *all* fish products. This applied especially to fresh fish. He could not see that an abolition of our tariffs could cause any difficulty with our EFTA colleagues.

Mr. Engholm said that no reduction on the tariffs of fresh fish was contemplated under EFTA. We could not give such a concession to Iceland without also giving it to all our EFTA partners and indeed to all other members of GATT.

Mr. Olafsson said that in putting forward their suggestion for restricted areas his Government had tried to go as near as possible to meeting our wishes as expressed in Reykjavik with regard to peak periods. He knew that our wishes had not been completely met, except in the north. He went through the various areas showing to what extent in each our requirements on peak periods would be met under the proposed agreement.

Mr. Engholm said he agreed that although on the whole the Icelandic suggestions took peak periods into account, nevertheless, some areas were closed altogether. The total effect of the restrictions was to deprive our trawlers of more fish than under the proposals which had been worked out in Reykjavik. Our industry regarded the restrictions mentioned in Reykjavik as being heavy enough. Under the terms of the present suggested agreement our industry would certainly not be prepared to contemplate any revision of the Landings Agreement. He asked whether the restrictions between 6 and 12 miles were worth more to the Icelanders than whatever chance there was of some modification of the Landings Agreement; the Icelanders could not have both.

Mr. Andersen asked whether these were alternatives.

Sir Patrick Reilly said that a modification in the Landings Agreement was not in our gift—all we could say was that the extra restrictions between 6 and 12 miles made any modification a matter of extreme difficulty.

Mr. Engholm suggested that different sections of the Icelandic industry might attach a different importance to a modification in the Landings Agreement and to tariff reductions. He thought that if the rest of the agreement was acceptable our industry might be prepared to agree to some modification on the Landings Agreement, including the relationship between the different species. It was, however, a matter for the industry and we must know what "*quid*" the Icelanders were offering for this "*quo*".

Mr. Andersen said he hoped this was not the last talk. He must mull it over.

Mr. Engholm said that the questions of a possible abolition of the 60-40 relationship, the carry-over from one quarter to another and an increase in the overall quota would all be linked in the industry's mind.

Mr. Olafsson said that when the Landings Agreement was made in 1956 it was clear that the £1.8 million ceiling was meaningless, as the division by quarters and by species represented a means which our side had found for reducing the total figure. The agreement had been looked on by the Icelandic industry as unrealistic and involving them in a heavy sacrifice. Nor was it true

that the Icelandic industry were not interested in our markets during the summer. This summer, for instance, it had been difficult to restrain them from coming. In the winter there was very rarely any danger of Icelandic landings glutting the British market. Indeed, the Icelanders had an interest in not overloading our market. Thus if there was either an increase in the absolute amount of the Icelandic quota or a change in the proportions, there was no danger of the British market being glutted.

Mr. Engholm agreed that it would be a help to the Icelandic industry if there could be an increase in the quantity of cod they were allowed to land in the winter months. Last winter they had for the first time reached the ceiling. The industry would be prepared to sit round a table if the remainder of the agreement was reasonable.

To sum up, the industry were prepared to consider some modifications in the agreement for the winter months provided that the benefits gained were worthwhile and that they were not being asked to give too much in return. It was a question of balance.

Sir Patrick Reilly reiterated that our instructions as regards outside areas were categorical. He underlined the importance of obtaining a satisfactory wording on the assurance. As it stood at the moment it was left open to the Icelandic Government to extend unilaterally subject to arbitration, it was not clear by whom.

Miss Gutteridge confirmed that from a legal point of view we could not acquiesce in any formula which implied a right on the part of the Icelandic Government to extend unilaterally.

Mr. Andersen said this point could be left until last. If the rest of the agreement was all right a formula on the assurance could be found which was acceptable to both sides.

Miss Gutteridge agreed with this.

Sir Patrick Reilly recommended the language we had suggested in Reykjavik to Mr. Andersen.

Mr. Engholm asked Mr. Andersen to compare the wording we had put forward in Reykjavik carefully with that contained in the Althing Resolution and the words used by the Icelandic Prime Minister last summer.

Mr. Engholm said that as regards the *rules of conduct* it had been our thought that joint policing should give confidence to both our fishing industries.

Mr. Andersen asked whether Mr. Engholm meant policing outside 12. Mr. Engholm said he meant both outside 12 and also in the 6-12-mile area. Mr. Andersen said that his Government had given no thought to the question of joint policing in the 6-12-mile area. They had only thought of these rules as being applied outside 12 miles.

Mr. Engholm suggested that the Icelanders might now like to give this matter some thought.

Sir Patrick Reilly said that all the baselines proposed by the Icelanders were open to objection in the light of the 1958 Convention. We had, nevertheless, indicated that there were one or two on which we could stretch our consciences. This depended on the rest of the agreement—especially the question of the areas outside 12.

Mr. Andersen said that the opinion of the Icelandic Government was that if there could be no areas outside 12 there was no possibility of getting a package deal through.

Mr. Engholm asked whether that meant that outside areas were more important to the Icelanders than economic concessions.

Mr. Andersen said that they did not want to see anything go. Their instructions were rigid on this point, they must have some areas outside 12.

Sir Patrick Reilly said it would help us over the baseline question if the Icelanders could drop the outside areas: also if they did not press us for both of the economic concessions. He could not be more concrete than this: our instructions on outside areas were categorical.

Mr. Andersen asked whether we could not yield an inch on this.

Sir Patrick Reilly said no. There were no conservation reasons which could justify any of the outside areas proposed by the Icelanders. There was, however, a possibility of our being able to move towards the Icelandic position on baselines if the Icelanders would give up their outside areas.

Mr. Andersen said they must have their baselines and some areas outside 12. If he had to report back that we were holding out for nothing outside 12 and only suggesting vague concessions on baselines they might as well go home.

Sir Patrick Reilly asked which areas outside 12 were essential to the Icelanders.

Mr. Olafsson said that the two areas in Area B on the north-west coast, from 43-1, were essential.

Sir Patrick Reilly asked whether we could take it that this was the absolute maximum.

Mr. Olafsson said that this was the number 1 priority. Number 2 would be on the east coast from 16-20.

Sir Patrick Reilly said that both sides were obviously tied by very strict instructions. They would have to reflect very carefully over the weekend. He suggested that the next meeting should be on Monday, 31 October, at 3.30.

Mr. Andersen said that since the British delegation had left Reykjavik the Icelandic Government had been trying day and night to see how far they could go to meet the British position. He hoped we appreciated this fact.

*Item (viii)*

*Second Series, Third Meeting, 3.30 p.m., 31 October 1960*

ANGLO-ICELANDIC FISHERY TALKS

*Record of Third Meeting held at No. 12 Carlton House Terrace at 3.30 p.m.  
on 31 October 1960*

Present:

*United Kingdom*

Sir Patrick Reilly  
Mr. B. C. Engholm, M.A.F.F.  
Mr. A. J. Aglen, Scottish Office.  
Mr. R. H. Mason, F.O.  
Miss J. A. Gutteridge, F.O.  
Mr. A. Savage, M.A.F.F.  
Commander R. H. Kennedy, Admiralty  
Mr. D. Summerhayes

*Iceland*

Mr. Hans Andersen  
Mr. D. Olafsson

Sir Patrick Reilly said that both sides had now had time to reflect on Friday's meeting, which had unfortunately showed that the positions of the two sides were still far apart. If we wanted agreement there must be give and take. Both Governments were agreed on the importance of reaching a settlement. Perhaps the best method of proceeding now would be to set out the combinations of variables that could make up the basis for an agreement. Sir Patrick Reilly then listed these variables, which were:

- (i) *Transitional period.* What should be the restrictions on British trawling inside 12 miles and what should be the length of the transitional period?
- (ii) *Outside areas.* How many "outside areas" should be reserved for Icelandic small boats and where should these be?
- (iii) *Baseline changes.*
- (iv) *Assurance by Iceland* of no further extensions of fishing limits without mutual agreement.
- (v) *Economic co-operation.* There were two possibilities here: (a) lowering of the United Kingdom tariff on frozen fish, and (b) revision of the landings agreement.

He suggested going over the ground again to see where viewpoints could be brought closer together on all these points.

Taking (v) first Sir Patrick Reilly said it had been hoped from the United Kingdom side to work in some economic concession to Iceland, both under headings (a) and (b), but the form of agreement which could now be foreseen would hardly make this practical politics as far as the British fishing industry was concerned. He asked Mr. Andersen for his views on this point.

Mr. Hans Andersen said that the Icelandic Government had not covered this point in their brief, but he thought that the tariff concession was likely to be the most important for Iceland. The Landings Agreement was valid for ten years and would presumably continue after that, but Iceland stood to lose on the United Kingdom market when tariff barriers were lowered towards other countries (e.g., the EFTA countries) in the next few years. He could not, however, voice a definite opinion about this without consulting the Icelandic industry, who were excluded from these talks.

Sir Patrick Reilly pointed out that the Landings Agreement had been made between the two industries and he could not say what the British fishing industry might do in regard to it if we could not reach an agreement satisfactory to them. He also wanted it to be clearly understood that any concession on the frozen fish tariff would be on the same terms as for other EFTA countries, namely that it would be subject to there being no subsequent extension of fishing limits against the United Kingdom. Mr. Andersen said this was generally accepted on the Icelandic side and the point was also covered by the assurance that the Icelandic Government would be giving under point (iv).

Sir Patrick Reilly then brought up the question of outside areas. He said this was still a very difficult matter for the British side. It would be easier for us to help over baselines if Iceland would drop its demands for outside areas.

Mr. Engholm mentioned that if outside areas were granted, the British trawling industry would at best accept them with bad grace and friction might continue. It might even be that British trawlers would ignore any areas reserved to Icelandic small boats outside 12 miles. The agreement must be one that the British industry could "swallow".

Mr. Andersen agreed that this was a fact to be considered but the Icelandic Government believed that they could not get any agreement through the Althing without having some outside areas.

Mr. Engholm asked why outside areas were so attractive politically. It was agreed that there must be benefits to both sides but why must outside areas, which were of a temporary nature, be added to the lasting benefits that Iceland would be gaining.

Mr. Olafsson in answer to this point said that at previous meetings the Iceland delegation had tried to make it clear that their people and especially the small boat fishermen believed they had already gained 12 miles; therefore if concessions were granted to British trawlers inside 12 there must be compensation for Icelandic fishermen outside.

Mr. Engholm pointed out that extended baselines would give an immediate additional protection for Icelandic fishermen. The proposed outside areas would be only transitional, whilst baselines and any economic concession would be permanent and therefore more important.

Mr. Olafsson said this was not the case. Baselines and outside areas were regarded by Iceland as a separate problem from economic concessions.

Mr. Engholm asked whether this meant that economic concessions were not appreciated? Surely the granting of economic concessions *plus* extended baselines should together make up a sufficient inducement; why were outside areas necessary as well?

Mr. Olafsson repeated that some outside areas were quite definitely necessary for political reasons.

Sir Patrick Reilly said that from this it would appear that outside areas and baselines were the most important factors from the Icelandic point of view. Could we therefore set aside the economic concession item?

Mr. Andersen was not prepared to say that this was so. He suggested, however, first taking a look at the baseline question in more detail to see in the light of that how outside areas could be fitted into the pattern.

Mr. Engholm asked whether Iceland was to be divided into sections and something given to fishermen in each section.

Mr. Andersen confirmed that in general the Icelandic Government's intention was to compensate fishermen in every section of the island.

After further discussion on this point Mr. Engholm asked whether this amounted to saying that everyone around Iceland's coast had to have some concession either in the way of baseline extensions or outside areas? If this were so it would mean that the British industry would be getting something even less attractive than the straight 12 miles. Mr. Andersen interjected at this point that it might be worthwhile going into the baselines question in more detail.

Mr. Olafsson asked whether it would be any use to offer some reduction of baselines on the north coast in return for larger outside areas in this region.

Sir Patrick Reilly said it would seem that Iceland was asking for a large number of advantages and that these would be mainly permanent. Clearly this did not offer a very rosy prospect for agreement.

Mr. Andersen suggested again looking at the baseline question to see where this could be tied in with reductions in outside areas.

Sir Patrick Reilly suggested taking the Icelandic coast in four quarters and looking at each area individually. For the sake of argument it might be possible for the United Kingdom to accept one baseline in each area. We

might for example consider extended baselines between the following points around the coast:

- (i) Between points 1-5.
- (ii) Between points 12-16.
- (iii) Between points 35-51 (this was a very doubtful one).
- (iv) Between points 51-42.

What reduction in outside areas might the Icelandic Government be able to consider giving in return?

After a short break for consultation Mr. Andersen said that there appeared to be hope for advance on this basis. He acknowledged our reservations on the extended baselines between areas 35-51 and said that taking this into account the outside areas problem could be reduced on the Iceland side to the following points:

- (i) They would still need something on the north-west coast.
- (ii) There could be modifications in the area inside Grimsey.
- (iii) *All* other outside areas would be dropped.

Mr. Engholm pointed out that the restrictions on British fishing between 6 and 12 miles as at present foreseen would lose us two-thirds of the catch that we might otherwise have expected inside 12.

Sir Patrick Reilly then recapitulated the Icelandic proposals as they now stood. They amounted to:

- (i) Transitional fishing for British trawlers between 6 and 12 miles, with the restricted zones, for three years. The precise restrictions against our trawlers were still to be discussed.
- (ii) Baseline adjustments in three, or possibly four, areas.
- (iii) The granting of two small areas outside 12 miles for Icelandic small boats on the north-west coast.
- (iv) Economic concession no longer necessary.

The main point we therefore still had to discuss was the length of the transitional period. He asked how long it would be possible for Mr. Andersen and Mr. Olafsson to continue this round of talks in London. Mr. Andersen said he was ready to stay as long as needed. From the Icelandic Government point of view the reaching of an agreement on this important matter had the highest priority.

After subsequent discussion he agreed to a meeting of experts to take place on the following morning and for a further meeting of the delegations at 3.30 p.m. the same day (1 November).

Mr. Andersen then mentioned that a strong assurance about further extension would be a difficult matter for the Icelandic Government in view of their public opinion. He also implied that a satisfactorily worded assurance would depend on the sort of terms that Iceland could get on other points. He seemed to infer particularly that Iceland must be satisfied on the matter of baselines.

Sir Patrick Reilly said that Her Majesty's Government quite appreciated the point but it was also very necessary from the British side to consider the opinion and the future security of our industry.

Finally, Mr. Andersen said that he would like, if possible, to avoid the words "bilateral agreement" in any wording of the assurance.

*Item (ix)**Second Series, Fourth Meeting, 3.30 p.m., 1 November 1960*

## ANGLO-ICELANDIC TALKS

*Record of Fourth Meeting held at No. 17 Carlton House Terrace at 3.30 p.m.  
on 1 November 1960*

## Present:

<i>United Kingdom</i>	<i>Iceland</i>
Sir Patrick Reilly	Mr. Hans Andersen
Mr. B. C. Engholm, MAFF	Mr. I. Olafsson
Miss J. A. Gutteridge, FO	
Mr. R. D. C. McAlpine, FO	
Mr. A. Savage, MAFF	
Mr. A. J. Aglen, Scottish Office	
Commander R. H. Kennedy, Admiralty	
Mr. D. Summerhayes	

Sir Patrick Reilly said that during the morning the experts had considered the baseline problem in more detail but they wanted more time for reflection before reaching any final conclusion. The next points to be dealt with were:

- (i) the length of the transitional period; and
- (ii) the form of assurance to be given by the Icelandic Government.

On (i) Mr. Andersen said that the length of the transitional period would have to depend upon the general terms of the agreement. On a personal basis he might be able to recommend something better than three years, e.g., four or even five years, but this would have to be approved by his Government.

Sir Patrick Reilly pointed out that it had originally been thought on the British side that a transitional period of 10 years would be only fair, but in view of Iceland's special position as a country heavily dependent on fisheries, we had cut this to five years. This reduction had been based on our obtaining unrestricted fishing between 6-12 miles. Now, however, there were to be considerable restrictions within 12 miles as well as many other concessions to Iceland. In the circumstances it would be very helpful in obtaining the agreement of the British industry if a period of not less than five years were granted. We had understood that the period of three years suggested by Iceland was linked with the fact that there would be elections in 1963. Therefore, if four years were considered possible surely it would be just as easy to go to five.

Mr. Andersen said he would be prepared to recommend four years, or even five years provided the other terms were sufficiently attractive. Sir Patrick Reilly asked what was then the minimum that Iceland could accept in other respects in order to make a five-year transitional period possible? We had indicated our willingness to consider extended baselines at three points, and possibly also in the south-west but this last one presented very great difficulties for us.

Mr. Andersen said that there were legal arguments to support the new straight baseline proposed in the south-west and quoted the following from an article in a legal journal concerning the judgment by the International Court in the *Norwegian Fisheries* case:

"As regards the British contention that the Norwegian lines did not 'respect the general direction of the coast', the Court said:

'It should be observed that, however justified the rule in question may be, it is devoid of any mathematical precision. In order properly to apply the rule, regard must be had for the relation between the deviation complained of and what, according to the terms of the rule, must be regarded as the *general* direction of the coast. Therefore, one cannot confine oneself to examining one sector of coast alone, except in a case of manifest abuse; nor can one rely on the impression that may be gathered from a large-scale chart of this sector alone. In the case in point, the divergence between the baseline and the land formations is not such that it is a distortion of the general direction of the Norwegian coast.'

He asked whether in the opinion of the British side this was an argument that could be applied to the present case. Miss Gutteridge and Commander Kennedy both said that in their opinion the argument put forward was not applicable to a baseline between points 35-51.

Sir Patrick Reilly then asked whether a revised baseline on the south-west coast was a necessary accompaniment to an agreement with a five-year transitional period. Mr. Andersen said that in his opinion this was definitely so. In order to be acceptable to the Icelandic Government an agreement would have to include both the new baseline on the south-west and the granting of an outside area on the north-west coast.

Sir Patrick Reilly then turned to the question of the assurance to be given by the Icelandic Government. He asked Miss Gutteridge to explain the British position on this. Miss Gutteridge said we were glad to know that an assurance was considered possible on the Icelandic side. We could not of course oppose any further extension of limits made by Iceland in accordance with international law. At the same time we held that extensions could only be by agreement and could not be unilateral even if a coastal State offered arbitration. For this reason we could not accept the last sentence in the text for the assurance proposed by the Icelandic Government. While in Reykjavik the British Delegation had worked out a formula which seemed to provide a possible basis agreeable to both sides and suggested that this formula should now be discussed. Miss Gutteridge handed over a copy of the following proposed text:

"Except in accordance with the terms of any subsequent agreement between the United Kingdom and Iceland, or any subsequent multi-lateral agreement which embodies a generally accepted rule of law in relation to fishing limits, the Icelandic Government will not take any action to exclude vessels registered in the territory of the United Kingdom from fishing in any area outside the 12-mile limit."

After studying the text Mr. Andersen said that it was necessary for the purpose of presentation to public opinion in Iceland to leave the Icelandic Government's hands "untied" in respect of possible further extensions of fishery jurisdiction. The Icelandic Government would therefore as a minimum want to cover in the wording of the assurance the possibility of applying customary law, as well as international law. Opinion in the world was always changing and Iceland would want to take advantage of that if it were favourable without waiting for changes in international law which always seemed difficult to achieve (e.g., the two Geneva Conferences).

Miss Gutteridge said she realized that customary law was important, but Her Majesty's Government were also strongly of the opinion that unilateral extension could not be justified, even when based on custom. She asked if it would be sufficient to insert in the assurance a specific "reservation of rights" by the Icelandic Government. Mr. Andersen indicated that this would not do.

Mr. Engholm pointed out that the Althing resolution of 1959 spoke only of "obtaining recognition" of Iceland's rights for conservation on the Continental Shelf, whereas the right to extend to 12 miles had been described as "inalienable". Did this mean that there was some distinction between the two cases? Mr. Andersen confirmed that there was such a distinction and that in his view further extension beyond 12 miles would only be on a basis of a change either of international law or of customary law. Sir Patrick Reilly said that this seemed to provide some basis for advance and suggested looking in detail at the formulas that had been put forward on the two sides.

After discussion, it was agreed that reference to a "bilateral agreement" between the United Kingdom and Iceland was unrealistic since the United Kingdom was most unlikely to enter into any such agreement in practice. The words "decisions by the Icelandic Government" were objectionable from the British side and subsequent reference to such a decision being subject to arbitration was not regarded as a sufficient safeguard. It was left that Miss Gutteridge would prepare a fresh draft which so far as possible would incorporate the requirements on both sides.

Sir Patrick Reilly suggested that the delegations had now taken matters as far as possible on the transitional period, and the form of assurance by Iceland. It might be useful now to take up the matter of rules of conduct. Was it the Icelandic view that these rules could only be jointly enforced outside 12 miles? Mr. Andersen confirmed that this was so and said that public opinion in Iceland could not contemplate co-operation between the Icelandic Coast Guards and the Royal Navy inside 12 miles. Mr. Engholm wondered in that case, if the rules of conduct were really worth pursuing in the case of the Icelandic fisheries. Mr. Andersen said he thought they were still valuable but for areas outside 12 miles only. He pointed out that under the 1882 and 1901 agreements the rules had only been applied outside Iceland's territorial limits. After further discussion it was agreed that the usefulness of rules of conduct was not entirely excluded but that from the Icelandic side there could be no question of applying the rules inside 12 miles.

Sir Patrick Reilly then proposed that the next meeting should be held on Thursday, 3 November. He thought it might be possible for this to be the last round of the discussions.

Mr. Andersen said that if he had to go home and report that he had not obtained satisfaction in London on the main points desired by the Icelandic Government, then the talks would have to be broken off entirely. What he would like would be to settle the main points of the agreement here in London and he was willing to stay as long as might be necessary to achieve this.

Sir Patrick Reilly said that he had not meant to imply that the Thursday meeting should be final in the sense that Mr. Andersen had implied. It had been his view that a further round of talks would be necessary in Reykjavik to iron out further differences. But if Mr. Andersen was able to remain for a longer period in London, it might be possible to consult British Ministers after the Thursday meeting and then to resume discussion in London.

It was agreed that the next meeting should be held at 3.30 p.m. on 3 November.

*Item (x)*

(a) *Second Series, Fifth Meeting, 10.00 a.m., 4 November 1960:*  
 (b) *Annexes 1 and 2*

(a)

## ANGLO-ICELANDIC FISHERY TALKS

*Record of fifth meeting held in the Foreign Office at 10 a.m.  
 on Friday, 4 November 1960*

Present:

*United Kingdom*

Sir Patrick Reilly  
 Mr. B. C. Engholm, MAFF  
 Mr. A. Savage, MAFF  
 Mr. A. J. Aglen, Scottish Office  
 Miss J. C. Gutteridge, FO  
 Mr. R. D. C. McAlpine, FO  
 Commander Kennedy, Admiralty

*Iceland*

Mr. Hans Andersen  
 Mr. David Olafsson

Mr. Andersen began by saying that he would still like to know how far the United Kingdom delegation could go to meet the Icelandic proposals.

Sir Patrick Reilly said that, as he had made clear earlier, the United Kingdom delegation's instructions precluded them from agreeing to either outside areas or baseline changes. The Icelandic delegation, for their part, had said that no agreement would be possible without these two conditions. The problem was to see if some compromise could be achieved between these two positions. If this seemed possible the United Kingdom delegation would be prepared to refer to Ministers to see if they would alter their instructions. We now seemed to be in sight of a position where the United Kingdom delegation could inform Ministers of the terms which could be accepted by the Icelandic Government and ask them to consider whether or not the delegation could be authorized to agree to them. The essential elements of an agreement on the basis which had been discussed so far would be:

- (i) the 12-mile fishery limit claimed by Iceland would no longer be opposed by the United Kingdom;
- (ii) there would be a transitional period during which British vessels would be allowed to fish in the 6-12 mile belt in certain areas and at certain seasons of the year;
- (iii) two areas outside 12 miles on the north-west coast, as defined in the Icelandic memorandum, would be reserved for Icelandic small boat fishermen at certain seasons during the transitional period. These would be the minimum areas acceptable to Iceland;
- (iv) the United Kingdom would be required to accept four baseline changes: the first two in the Icelandic paper, the last and the one on the south-west, i.e., between basepoints 35 and 51, there still being some possibility of compromise on the latter;
- (v) there would be an assurance by the Icelandic Government on no extension of fishery limits beyond 12 miles after the transitional period.

It had been recognized by the Icelandic delegation that the rules of conduct proposed by the *United Kingdom delegation* would be useful, but the Icelandic delegation could not agree to joint enforcement within 12 miles. It was also understood that if the agreement were to provide for any baseline changes or outside areas there could be no provision covering the Icelandic proposals on economic co-operation.

Mr. Andersen confirmed that the above was also his understanding of the position.

Sir Patrick Reilly suggested that the following questions should now be discussed: (i) exact definition of the inside areas; (ii) baselines; (iii) terms of the assurance. He thanked Mr. Olafsson and Mr. Engholm for their detailed study of the inside areas, but suggested that it was *not necessary to reach finality* on this point before the United Kingdom delegation referred to Ministers.

Mr. Olafsson said that, as he had told Mr. Engholm, the Icelandic delegation might be able to agree to some changes in favour of the United Kingdom in the periods for United Kingdom fishing on the east coast. The question of having a reserved net area on the south-west as part of an agreed solution of the baseline problem there would need further examination. His discussion with Mr. Engholm had shown, however, that if agreement would be reached on the other outstanding issues it should be possible to reach a satisfactory compromise over the inside areas.

Sir Patrick Reilly said that the four baseline changes now proposed were all difficult from the United Kingdom point of view. Only two might possibly be accepted. The one proposed on the south-west was much the most difficult from the legal, fishery and defence points of view.

Miss Gutteridge pointed out that as the coast was not deeply indented in this region, nor was there a fringe of islands, the two basic criteria under the 1958 Convention for a straight baseline system were not applicable in the present case.

Sir Patrick Reilly asked whether Mr. Andersen could consider a line between basepoints 36 and 38.

Mr. Andersen said he could not justify this line to his Government. The considerations involved on the Icelandic side were frankly political rather than juridical. The problem, as he saw it, was to find a suitable western basepoint; in the Icelandic view this should be point 51. Would a line between points 36 and 51 be acceptable?

Miss Gutteridge said this would be quite inadmissible from the legal point of view.

Mr. Engholm said it would also be unacceptable from the fishery point of view. The basepoint 51 had never previously been used.

Mr. Andersen asked if it would help if the proposed baseline changes were not effected until half way through the transitional period.

Sir Patrick Reilly said this would certainly be helpful, but it would not solve the issue of principle.

Mr. Andersen said that he might be able to accept 36-38 if the United Kingdom would drop their demand for the assurance.

Sir Patrick Reilly said that the assurance was a key point for the United Kingdom. He did not think it would be fruitful to pursue this line of approach.

Mr. Engholm asked whether, in view of the importance to Icelandic net fishermen of the eastern part of the south-west area the Icelandic Government would be prepared to forgo their demand for a baseline change in this area

if instead there were a reserved net area between 6 and 12 miles in the eastern part.

Mr. Olafsson said that there were usually heavy concentrations of nets throughout the area between points 35 and 38. This whole area, therefore, would have to be reserved under any such arrangement.

Mr. Engholm said that a reserved net area of this extent, which would cover almost the entire bay, would greatly reduce or even nullify the value to United Kingdom fishermen of the proposed inside area in this region.

Mr. Olafsson commented that even with a new baseline from 35 or 36 to 51 there would be areas outside this line where there are heavy net concentrations. In forgoing any reserved net area with a baseline between 35 and 51 the Icelanders would thus be making a sacrifice.

Mr. Andersen said that the furthest he could go would be to agree to a new baseline between either points 35 and 39 or 36 and 51. He also confirmed that the intention would be not to introduce the new baselines until about two-and-a-half years from the date of the agreement; they would, however, have to be introduced before the next Icelandic elections.

From the discussion which followed it emerged that:

- (i) baselines between either 36 and 38 or between 36 and 39 would be unacceptable to Iceland;
- (ii) baselines between either (a) 35 and 39 or (b) 36 and 51 would be acceptable to Iceland. In the case of (b) only however, there would have to be a reserved net area to the west of the Westmann Islands.

Miss Gutteridge said the alternatives in (ii) above presented serious legal difficulties. If any baseline changes were accepted as part of the agreement Her Majesty's Government would want to safeguard their legal position as far as possible. We should, therefore, want a clause making it clear that the United Kingdom was accepting the baseline changes for the purpose only of this agreement.

Mr. Andersen said that his Government would prefer there to be no implication that the baseline changes were a matter on which they had to reach agreement with other Governments. He claimed that the *International Court had ruled that the coastal State is entitled to draw its own baselines.*

Miss Gutteridge reminded Mr. Andersen that this ruling was conditioned on the baseline changes being justifiable in international law and that the Court had expressly drawn attention to the fact that any proposal to alter baselines had an international aspect.

Mr. Andersen suggested that baselines might be covered in an Exchange of Notes in which the Icelandic Government would inform Her Majesty's Government of their intention to extend their baselines and the latter would take note in whatever form suited them.

Miss Gutteridge said that we would want an explicit reservation of our legal position in the United Kingdom Note—Mr. Andersen did not demur.

Mr. Olafsson said that if a baseline change on the south-west were not introduced for two-and-a-half years this would leave the net areas exposed for that period. This would create difficulties; since this was the area where there was the greatest concentration of nets. Fifteen years ago there was a protected area in the eastern sector extending beyond 12 miles. In answer to a question by Mr. Engholm, he confirmed that Icelandic trawlers are allowed to fish within 12 miles in the south-west area, but pointed out that this was

only in the western sector where there were in fact frequent incidents between trawlers and net fishermen and that there were only about 40 Icelandic trawlers which fished there while foreign trawlers fishing in the area would probably number over 100. He personally thought there would have to be a reserved net area until after two-and-a-half years under either of the alternatives offered by Mr. Andersen.

Sir Patrick Reilly, summing up, said that, as he understood the latest Icelandic position, acceptance of a new baseline between either 35 and 39 or 36 and 51 with a moratorium of two-and-a-half years would involve a reserved net area for this period between the existing baseline and the proposed new one. On the face of it this would much reduce the value of the moratorium as part of a compromise. To assess the effect on our fishing, however, we would need exact details of the sort of reserved area the Icelandic delegation had in mind. Mr. Olafsson undertook to supply details later.

Sir Patrick Reilly then asked Miss Gutteridge to explain the United Kingdom position regarding the assurance.

Miss Gutteridge said that the United Kingdom delegation had carefully considered the points which Mr. Andersen had made at the last meeting and how they could be met. They appreciated Mr. Andersen's desire that the draft should cover the possibility of a further extension of Icelandic fishery limits in conformity with a new rule of customary law, as distinct from an international agreement. The difficulty, however, would be how to establish that such a customary rule existed. In the United Kingdom view such a rule would not only have to reflect the practice of a number of States, but also be generally accepted, i.e., established by general consent and recognized as such by the International Court of Justice. Miss Gutteridge then handed over the attached United Kingdom draft (Annex 1).

Mr. Andersen asked whether the reference in the draft to the International Court meant that Her Majesty's Government did not like the arbitration provision for the settlement of disputes laid down in the 1958 Convention on Conservation.

Miss Gutteridge asked whether, in proposing that a decision by the Icelandic Government to extend Iceland's fishery limits beyond 12 miles should be subject to arbitration, the Icelandic Government had been contemplating arbitration before or after the decision had taken effect.

Mr. Andersen said that this point was covered in the Convention.

Mr. Engholm pointed out the distinction between the nature of arbitration envisaged in the Conservation convention, where not only legal, but also administrative and scientific considerations had to be taken into account, and that envisaged in the present case where the issue would be purely legal. For this reason the arbitration system laid down in the Convention would not be appropriate to the kind of dispute we were now discussing.

Mr. Andersen, after expressing a preference for arbitration, said that the United Kingdom proposal would cause difficulty for his Government. For one thing there had to be a case before the Court. Who would bring it? He suggested deleting the words: "and recognized as such by the International Court of Justice".

Miss Gutteridge said that Iceland could bring a case before the Court if it wanted. Miss Gutteridge then suggested the redraft at Annex 2.

Mr. Andersen said he could accept this, though he would still prefer arbitration.

Sir Patrick Reilly said he thought the point had now been reached where the United Kingdom delegation must refer to Ministers. This would take

time, however, and an adjournment of at least a week would be needed. Summing up, he said that the Icelandic proposals as they now stood were, he thought, as follows:

- (i) Continued fishing by United Kingdom vessels between 6 and 12 miles in certain areas and at certain seasons for a transitional period; the areas and seasons to be finally defined after the adjournment;
- (ii) to be politically acceptable in Iceland an agreement of this kind would have to include as a minimum the two areas on the north-west coast. The Icelandic delegation would not press for others if the rest of the agreement were satisfactory;
- (iii) an undertaking by the United Kingdom not to object to certain baseline changes, the minimum being the four under discussion, the proposal in regard to the one on the south-west, however, being modified so that a line between either points 36 and 51 or 35 and 39 would be acceptable to Iceland. Implementation of the changes would be delayed for a period dependent on the length of the transitional period. During the moratorium Iceland would want a reserved net area (to be defined later) in the western sector between the existing baseline and the proposed new one, the effect of which, as far as he could see, would be considerably to reduce the value of the moratorium.

There followed some discussion on the length of the transitional period in which Mr. Andersen made the following points: the assurance was now the key—on this the United Kingdom delegation were driving him into a corner. If he accepted this he must have a lot on baselines. If the United Kingdom accepted the baseline change on the south-west originally proposed by him, namely 35-51 the period could be five years; if either of the alternative lines—36-51 or 35-39 were accepted it would be four years. Of the two, Iceland would prefer 35-39. The baseline changes must take effect before the next elections, i.e., on 1 June 1963 at the latest. The transitional period might be a year longer if the United Kingdom could grant some economic concessions. To this latter point Sir Patrick Reilly replied that he had only been able to pursue the discussions on the present basis because the economic concessions had been dropped.

Sir Patrick Reilly then asked whether he could take it definitely that an agreement on the basis he had outlined with an assurance on the lines of the United Kingdom draft, as amended at the meeting, would be acceptable to the Icelandic Government.

Mr. Andersen said that it would.

Sir Patrick Reilly said it could not be assumed that such an agreement would be acceptable to the United Kingdom. The proposed outside areas and baseline changes were still a very serious stumbling block.

Mr. Engholm said that although Her Majesty's Government could, of course, make any agreement they considered to be in the national interest, an agreement in which the British fishing industry did not at least acquiesce could be valueless. If the industry were not prepared even to acquiesce in an agreement including outside areas two dangers would be likely to arise which the Government would be able to do nothing to prevent. First our trawlers might refuse to respect the outside areas and there would be incidents; secondly action might be taken to prevent imports of Icelandic fish. An agreement which was not honoured by the industry would not help either side.

Mr. Andersen said he was under the impression that the industry was in the Government's pocket.

Sir Patrick Reilly denied this. The problem was one which very closely affected the livelihood of our fishermen.

Mr. Andersen pointed out that in the United Kingdom a local interest was at stake; in Iceland it was the national interest.

Sir Patrick Reilly said that if Her Majesty's Government thought that an agreement on the lines which had been discussed was in the best interests of the country as a whole they might try to persuade the industry to accept it, but there would be no guarantee whatever that the industry would accept it.

Mr. Andersen said that his Government would be taking risks in entering into any agreement. If it were less than satisfactory to the Althing they would fall. He agreed to an adjournment and said that he would be remaining in London. Mr. Olafsson would be returning to Reykjavik on the following day.

It was *agreed* to hold the next meeting in the Foreign Office at 3.30 p.m. on Monday, 14 November.

(b)

#### ANNEX 1

*Assurance by the Icelandic Government on no extensions of fishery limits beyond 12 miles. United Kingdom Draft*

The Icelandic Government will not take any action to exclude vessels registered in the United Kingdom from fishing in any area outside the 12-mile limit except in accordance with the terms of a subsequent international agreement embodying a generally accepted rule of law in relation to fishery limits, or in conformity with a rule of international law, established by general consent and recognized as such by the International Court of Justice, which would permit such an extension of fishery jurisdiction.

#### ANNEX 2

*Assurance by the Icelandic Government on no extensions of fishery limits beyond 12 miles. Revised draft*

6. The Icelandic Government will not take any action to exclude vessels registered in the United Kingdom from fishing in any area outside the 12-mile limit except in accordance with the terms of a subsequent international agreement embodying a generally accepted rule of law in relation to fishery limits, or in conformity with a rule of international law, established by general consent, which would permit such an extension of fishery jurisdiction. Any dispute as to whether such a rule exists may be referred at the request of either party to the International Court of Justice.

*Item (i)**Third Series, First Formal Meeting, 2 p.m., 2 December 1960**Record of Conversation with Icelandic Foreign Minister at 2 p.m.  
on 2 December 1960*

## Present:

Mr. G. I. Gudmundsson  
 Mr. H. Andersen  
 Mr. H. Bjornsson

Her Majesty's Ambassador  
 Sir Patrick Reilly  
 Mr. B. C. Engholm

After thanking the Foreign Minister for receiving Mr. Engholm and himself at the outset of their visit, Sir Patrick Reilly, said that they on the United Kingdom side greatly regretted that a misunderstanding should have arisen over the outcome of the last discussions in London. They had thought these discussions encouraging. The Icelandic representatives were able, experienced and tough but they had shown a spirit of compromise and indeed this had been shown by both sides. The United Kingdom side thought that they had made their position entirely clear. It was that they had gone beyond their instructions and reference to Ministers was therefore necessary. It had been their understanding that the position reached was acceptable to the Icelandic Government and British Ministers had been so informed. The latter were naturally very disappointed to learn that this was not so. He did not wish to take up the Minister's time by going over the past. He regretted very much that Mr. Engholm and he could not stay longer. They had, however, thought it worthwhile to come, in order to find out whether there was still a possible basis for agreement.

2. Sir Patrick Reilly went on to say that it had always been recognized on both sides that the agreement must be a "package deal" and all the discussions had been conducted on this basis. An agreement on the basis contemplated in the Icelandic paper of 28 October, and even on that reached at the end of the London talks, would be so very much less favourable to the United Kingdom than what they had hoped to obtain that Her Majesty's Government took the view that "economic co-operation" arrangements on the lines originally discussed could not now be justified. This had been made clear at the outset of the London talks and the whole discussion there had been on this basis. Sir Patrick Reilly regretted that he must again make it quite clear that this remains Her Majesty's Government's position.

3. There remained a series of variables in the package.

- (a) The extent of the restrictions on the United Kingdom fishing inside the 12-mile limit.
- (b) The extent of such restrictions outside.
- (c) Proposed baseline changes.
- (d) The date on which these changes would take effect.
- (e) The length of the transitional period.

Sir Patrick Reilly did not wish to discuss these points at length now. It was clear that the proposed restrictions inside and outside the 12-mile limit greatly reduced the benefits which the United Kingdom would get from the agreement, and so especially did the baseline changes. They had therefore welcomed the suggestion that the baseline changes should be postponed

perhaps for two-and-a-half years, and had been much disappointed to hear that the Icelandic Government now found this postponement very difficult. Naturally the value of the agreement to the United Kingdom would depend to a great extent on the length of the transitional period. They had understood that this could be five years, if Her Majesty's Government could meet the Icelandic Government fully on baselines, and four if they could go a considerable way to meeting them.

4. Finally there was the key point of the formula for the assurance about further extensions outside the 12-mile limit. Her Majesty's Government considered that such an assurance must cover three essential points, which were as follows:

- (1) The Icelandic Government will not claim an extension of fishery limits beyond 12 miles except in accordance with a *rule* of international law which has been clearly established (*a*) by embodiment in an international agreement, or (*b*) accepted by general consent as a rule of customary international law.
- (2) Any dispute about whether such a rule of international law has been established shall be submitted to the International Court of Justice: and pending the Court's decision, any measure taken to give effect to such a rule will not apply to British vessels.
- (3) The assurance on this point will form an essential part of the agreement.

If these three points could be met then Her Majesty's Government would do all they could to help the Icelandic Government on the form and presentation of the assurance. In particular, if a reference to the Althing's Resolution of 5 May 1959 was important they would have no objection to including one.

5. Sir Patrick Reilly repeated that this was the key problem. He must with regret make it clear that the latest wording suggested by the Icelandic Government did not meet the essential points satisfactorily and the possibility of concluding the discussions successfully turned on the solution of this problem. After all the efforts made by both sides it would be lamentable if they had to conclude that no agreement was possible. He therefore urged that Icelandic Ministers should authorize Mr. Andersen and his colleagues to discuss a formula which would cover the three essential points and suggested that discussions should be concentrated on this subject during their present visit. Naturally if an agreement on the formula could be reached in time to allow discussion of other points, they would be very glad.

6. Mr. Gudmundsson said that the Icelandic Government had very much regretted that there had been a misunderstanding about the outcome of the London discussions which they thought had shown useful progress. The position reached then seemed to them in general acceptable as a basis for further discussion. There were, however, two or three points which were very difficult or even impossible for them. The first of these and the most difficult, was the question of the date of entry into force of the new baselines. It was quite hopeless for the Icelandic Government to consider postponing this for two-and-a-half years. It was essential that the new baselines should enter into force together with the agreement.

7. The second difficult point was the formula for the assurance. The text proposed in London was not acceptable to the Icelandic Government. On the other hand, there did not seem to be any real differences of opinion between the two sides. The Icelandic Government must state that their aim was the Continental Shelf. They were, however, ready to state their intention to base their action on rules of international law and also their willingness to submit

any dispute to the International Court. He thought, therefore, that it would not be impossible to reach agreement on a mutually acceptable formula.

8. The third difficult point was the length of the transitional period. Four years would be very difficult for the Icelandic Government, but was not entirely excluded. Five years, however, was quite hopeless.

9. Finally there was the question of any economic arrangements. It must of course be understood that the landings ban would be withdrawn with the entry into force of the agreement. On the other hand, the Icelandic Government understood Her Majesty's Government's position about the revision of the Landings Agreement and about tariff concessions. He did not think that this point need cause much difficulty. In conclusion Mr. Gudmundsson said that the Icelandic Government were very anxious to reach agreement. They were prepared to take a real risk in order to obtain one, but they were not prepared to incur certain suicide. Their main weapon against their opponents was the baseline changes, and they must be able to use that weapon now.

10. Mr. Engholm said that the Landings Agreement was of course a matter for the industry. He could, however, say with some confidence that if an agreement was reached which was regarded as acceptable by the industry in the United Kingdom, the latter would not wish to put obstacles in the way of a resumption of landings of Icelandic fish within the limits of the existing Landings Agreement. The question of the date of the entry into force of the new baselines was of course a very difficult one for the United Kingdom side but this was one of the various variables which needed to be discussed together.

11. Mr. Gudmundsson referred to the timing of any further discussions. He said that the Government would like to be able to submit the agreement to Parliament before it rose for Christmas. It seemed doubtful however whether there was really time for this, in view, particularly, of the other engagements of Mr. Engholm and Sir Patrick Reilly.

12. Mr. Engholm said that Her Majesty's Government were of course very anxious for an early agreement.

13. *It was agreed* that there should be a further discussion of the possibility of completing the negotiations before Christmas and that the first step was to concentrate on the discussion of the assurance. Mr. Gudmundsson said that he would arrange for Sir Patrick Reilly and Mr. Engholm to be received by the Prime Minister and other Ministers as soon as he conveniently could.

*Item (xii)*

*Third Series, Second Formal Meeting, 4 p.m., 2 December 1960*

*Record of Conversation with Icelandic Prime Minister, and Ministers of Justice, Fisheries and Foreign Affairs at 4 p.m. on 2 December 1960*

Present:

Mr. Olafur Thors	Her Majesty's Ambassador
Mr. Bjarni Benediktsson	Sir Patrick Reilly
Mr. Emil Jonsson	Mr. B. C. Engholm
Mr. Gudmunder I. Gudmundsson	
Mr. Hans Andersen	
Mr. H�enrik Bjornsson	

After preliminary courtesies, Sir Patrick Reilly said that, as Mr. Thors knew, British Ministers and the Prime Minister himself were taking a close interest in the settlement of the fishery dispute. The Prime Minister had very much appreciated the opportunity for a conversation with Mr. Thors and Sir Patrick Reilly knew that they would wish him to convey to the latter his warm greetings.

2. Sir Patrick Reilly said that he much regretted that a misunderstanding had arisen after the last discussions in London. These had been useful and after them British Ministers had approved new instructions for the United Kingdom Delegation which represented a considerable step forward to meet the Icelandic Government's wishes. They were therefore greatly disappointed that there appeared to have been a set-back. Mr. Engholm and he had however been encouraged by their earlier conversation with the Foreign Minister to think that in fact the two sides were closer together than they had believed.

3. Sir Patrick Reilly recalled that the agreement had always been conceived as a package deal and explained why it was now impossible for Her Majesty's Government to agree to measures of "economic co-operation" such as had been discussed at an early stage. He added that the key problem was the formula for the assurance and he rehearsed the three essential points which Her Majesty's Government considered it should cover. He hoped that Icelandic Ministers would agree that there should be discussions with officials directed at finding a mutually acceptable formula which covered these three points.

4. Mr. Olafur Thors made a cordial reference to the Prime Minister's visit. The Icelandic Government had been very grateful for the trouble the Prime Minister had taken to respond to Mr. Thors' suggestion that they should meet. He asked Sir Patrick Reilly to convey his greetings to the Prime Minister.

5. Mr. Thors went over the Icelandic Government's political difficulties on familiar lines. He then indicated that the Icelandic Government understood Her Majesty's Government's position about economic co-operation and that they would not press this point. The question of the assurance was, however, very difficult for them. Finally he said that the question of baseline changes was vital and that it was quite impossible for the Icelandic Government to contemplate any postponement of the changes. Mr. Gudmundsson said that the most difficult feature of the problem of the assurance was how to deal with the point to which Her Majesty's Government evidently attached so much importance that, if there was a dispute, no measure to apply an extension of fishery limits would be taken pending reference to the International Court.

6. Mr. Benediktsson agreed with Mr. Gudmundsson. He admitted that Her Majesty's Government's attitude on this point was reasonable, but he said that it was very difficult to present to Icelandic public opinion. It might perhaps be possible to find some form of words which would imply an obligation not to apply the extension until the Court had decided, without stating it explicitly in words on which the Opposition would fasten.

7. Mr. Benediktsson added that in this connection it was important to consider what form exactly the assurance should take and indeed what should be the form of the whole agreement. He indicated that Icelandic Ministers had not yet examined this question. He suggested that one solution might be that there should be no formal agreement but that the understandings reached should be embodied in declarations made by each side. If there was to be a

formal agreement, what form should it take? It might, for instance, be in the form of an Exchange of Notes. Another point which needed consideration was what should be done about other countries. Would they have to be given the same concessions as the United Kingdom received? A possible way of avoiding this might be to explain the problem in NATO and ask the other NATO Governments concerned not to press for the same terms as the United Kingdom.

8. Sir Patrick Reilly and Mr. Engholm emphasized that Her Majesty's Government would consider it very important that the agreement should be embodied in a formal agreement of one kind or another.

9. In conclusion, Mr. Thors, while agreeing that the assurance formula should be discussed between officials gave a warning that this was not the only difficult point which remained to be settled. He referred in particular to the length of the transitional period. He said that many Government supporters thought that this should not extend beyond the election, i.e., not more than two-and-a-half years. He emphasized that anything more than three years would be extremely difficult for the Icelandic Government.

*Item (xiii)*

*Third Series, Note of Events between Second  
and Third Formal Meetings*

RECORD OF EVENTS ON 2 AND 3 DECEMBER 1960

Following on the meeting with the Icelandic Prime Minister and his Ministerial colleagues on 2 December a meeting took place at 5.00 p.m. between United Kingdom and Icelandic officials to discuss the terms of the assurance formula. The following were present:

Mr. Hans Andersen	Her Majesty's Ambassador
Mr. Henrik Bjornsson	Sir Patrick Reilly
	Mr. B. C. Engholm
	Miss J. A. C. Gutteridge

2. Sir Patrick Reilly and Miss Gutteridge explained why the Icelandic formula proposed in telegram No. 354 from Reykjavik on 28 November did not cover the essential United Kingdom points. It was imprecise on what constituted international law and indeed suggested quite wrongly that resolutions of international conferences and dicta of international law bodies might rank as international law. Moreover it merely said that the Icelandic Government would be guided by such matters rather than being bound to seek their objective in accordance with international law. Finally it did not provide that no action should be taken against United Kingdom vessels in advance of a decision of the Court.

3. Mr. Andersen said that they attached importance to such matters as resolutions of international conferences and the existence of historic rights and would wish to be able to use these in support of any action that the Icelandic Government might feel justified in taking to extend its fishery jurisdiction. But it would still be for the International Court to decide whether such action was in fact in accordance with International Law. This

was a big concession by the Icelandic Government and should provide the United Kingdom with adequate safeguards. As regards action pending a Court decision, his Ministers had explained that they could not commit themselves generally on this although they would be prepared to consider any form of words which could be devised which contained such an implication without openly saying so. Mr. Andersen went on to stress that for psychological reasons any assurance would have to be in a positive form as possible giving the appearance that the Icelandic Government was not going back in any way on the Althing Resolution of 1959 but was proposing to make further progress towards securing its objective.

4. After a further general discussion the following formula was agreed between both sides for submission to Icelandic Ministers:

"The Icelandic Government will continue to work for the implementation of the Althing Resolution of 5 May, 1959, but agrees that any extension of fishery jurisdiction around Iceland will be in accordance [with the terms of a subsequent bilateral agreement between the Government of the United Kingdom and the Government of Iceland] or with the terms of any international agreement embodying a generally accepted rule of law in relation to fishery limits, or in conformity with a rule of international law, established by general consent, which would permit such an extension of fishery jurisdiction. If the Icelandic Government intend to apply a measure adopted in pursuance of such a rule to vessels registered in the United Kingdom, any dispute between the Contracting Parties as to the existence or applicability of the rule shall be referred, at the request of other <sup>1</sup> Contracting Party, to the International Court of Justice."

5. On 3 December, after a morning meeting of the Icelandic Cabinet, officials reassembled at 2.00 p.m. for a further meeting. Mr. David Olafsson attended in addition to those who were present on the previous occasion. At this meeting Mr. Andersen explained that his Ministers had considered the formula drafted the previous evening but could not accept it. They considered that the furthest which they could go would be the terms of the assurance originally proposed by them on 28 November. They did not consider that anything other than this could be got through the Althing. As regards the form of the assurance, Mr. Andersen said that Ministers were thinking in terms of a declaration by the Icelandic Government or at the most, possibly an Exchange of Notes.

6. In reply Sir Patrick Reilly said that, as had already been explained, the formula suggested by the Icelandic Government was totally unacceptable to the United Kingdom and if this was the final position of the Icelandic Government he thought that further negotiations would be useless. He added that the only other idea which the Icelandic Government might wish to consider was that instead of agreeing not to take any action against United Kingdom vessels in advance of a decision by the International Court, six months' notice of any proposed action should be given so that in the event of a dispute the matter could be referred to the International Court before any measure was actually applied. A draft of a suggested sentence to give effect to this was handed to Mr. Andersen. In addition the United Kingdom officials made it clear that a unilateral declaration by the Icelandic Government

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<sup>1</sup> Sic: ? "either" intended: see para. 1 of item (xiv).

would be [*some words have obviously been accidentally omitted from the original record at this point*] prepared to consider an Exchange of Notes, provided that this constituted an agreement between the two Governments. Mr. Andersen said that he would report the views of the United Kingdom Delegates to his Ministers.

7. At 7.00 p.m. on 3 December, Mr. Andersen, Mr. Bjornsson and Mr. Olafsson called to see Sir Patrick Reilly and Mr. Engholm and said that, since the previous discussion, they had been considering the matter further in conjunction with their Ministers. As a result they wished to know whether a formula on the following basis would be more acceptable to the United Kingdom Delegates:

The Icelandic Government will continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of fisheries jurisdiction around Iceland. Six months' notice will be given of the application of any such extension and in case of dispute the measures will be referred to the International Court of Justice.

Sir Patrick Reilly promised that this would be considered immediately and the observations of the United Kingdom Delegates would be telephoned to the Icelandic representatives that evening. Following further consideration of the Icelandic formula, Sir Patrick Reilly informed Mr. Bjornsson that this formula was helpful in that it provided some advance on the previous Icelandic position. Nevertheless it still did not cover one of the essential points, namely that any further action by the Icelandic Government towards extending its fishery jurisdiction should be in accordance with international law. He therefore proposed a revised formula which read as follows:

The Icelandic Government will continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of fisheries jurisdiction around Iceland in conformity with international law. Six months' notice will be given of the application of any such extension, and any dispute as to whether the measures to be applied are in accordance with international law will be referred, at the request of either party, to the International Court of Justice.

Mr. Bjornsson promised that this would be considered by Icelandic Ministers with a view to a further meeting between officials the following morning.

*Item (xiv)*

*(a) Third Series, Third Formal Meeting, Noon on 4 December 1960:*

*(b) Annexes A and B*

*(a)*

*Record of Meeting with Icelandic Delegation at noon on 4 December 1960*

Present:

Mr. Hans Andersen  
Mr. Henrik Bjornsson  
Mr. David Olafsson

Her Majesty's Ambassador  
Sir Patrick Reilly  
Mr. B. C. Engholm  
Miss J. A. C. Gutteridge

Mr. Andersen said that the Icelandic Cabinet had considered the amendments to the new Icelandic formula of the assurance which the United Kingdom Delegation had proposed the previous evening. They had decided that they could not accept them, with the exception of the words "at the request of either party". Mr. Andersen explained that the Icelandic Ministers considered that it would be impossible to justify to Parliament and public opinion the inclusion of the words "in conformity with international law". These words contained the implication that Icelandic action hitherto had not been in conformity with international law and were therefore bound to arouse severe criticism. The Icelandic Ministers considered that they were quite unnecessary, in view of the provision for reference to the *International Court* which would of course make its decision on the basis of international law.

2. The United Kingdom representatives said that it was their considered view that the new formula would not be acceptable to Her Majesty's Government unless it contained some reference to international law. The problem of presentation was just as difficult on the United Kingdom as on the Icelandic side and it had in fact been aggravated by the history of the present negotiations. They found it impossible to understand why the words "in conformity with international law" which had been used by the Icelandic Government themselves, in the first sentence of the formula put forward in their own paper on 28 October, were now described as impossible to justify to Icelandic public opinion.

3. Mr. Andersen replied that he could only say that the matter had been very carefully considered by the Icelandic Ministers and his instructions were that the proposed amendments were unacceptable. As regards the use of the wording "in conformity with international law" in the Icelandic formula of 28 October he said first, that the rest of that formula had of course not been accepted: and secondly, since 28 October the Icelandic Government had been continuing political consultations and no doubt these had shown that the phrase in question was not acceptable.

4. After a break for consultation, Sir Patrick Reilly repeated that the United Kingdom side much regretted that they could not accept the Icelandic formula without inclusion of any reference to international law, since their considered opinion remained that in its present form it would not be acceptable to United Kingdom Ministers. In a further effort to assist the Icelandic Government in the presentation of the formula they had drafted three alternative formulae. Each of these contained only one reference to international law. Two were alternative ways of putting it into the second sentence of the assurance. The third put it into the first sentence and was designed to use language taken from the Althing Resolution of 5 May 1959. They thought that the first two had better chances of approval by United Kingdom Ministers, but they were prepared to submit the third to them if it would be acceptable to the Icelandic Government.

5. The drafts in question were as follows:

1.(a)

The Icelandic Government will continue to work for the implementation of the Althing Resolution of 5 May 1959. Six months' notice will be given of the application of any such extension, and any dispute as to whether there is in existence a rule of international law which would permit such an extension of fishery jurisdiction will be referred, at the request of either party to the International Court of Justice.

## 1.(b)

The Icelandic Government will continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of fisheries jurisdiction around Iceland. Six months' notice will be given of the application of any such extension and in case of dispute the measures in question will be referred to the International Court of Justice, at the request of either party, for decision as to whether there is in existence a rule of international law which would permit such an extension of fishery jurisdiction.

## 2.

The Icelandic Government will continue to work for the recognition under international law of an extension of the fisheries jurisdiction around Iceland in accordance with the terms of the Althing Resolution of 5 May 1959. Six months' notice will be given of the application of any such extension, and any dispute in respect of such extension will be referred, at the request of either party, to the International Court of Justice.

Mr. Andersen said that he would put these drafts to his Ministers. He commented that they were all variations on the same theme which the latter had already declared to be unacceptable.

6. Sir Patrick Reilly asked whether Icelandic Ministers had considered further the form of the assurance. Mr. Andersen said that they had not, but that it was his understanding that they were contemplating its embodiment in an Exchange of Notes. Indeed he thought that it was their idea that the whole agreement should take the form of one or more Exchanges of Notes. Sir Patrick Reilly said that the United Kingdom side now agreed that it would be best for the assurance to take the form of an Exchange of Notes, but it was of course essential that this should state that the Exchange of Notes constituted an agreement between the two Governments. He gave Mr. Andersen the draft of an Exchange of Notes on the subject at Annex A. As regards the whole agreement, Sir Patrick Reilly said that their idea was that there should be a short formal agreement with two Exchanges of Notes, the second dealing with baselines, to which there would, however, be a reference in the Agreement itself.

7. Mr. Andersen, suggested that the meeting should go on to consider other outstanding points such as the actual baselines and so on. Sir Patrick Reilly said that they thought that it would be logical to discuss next a point of principle on the question of baselines on which they had categorical instructions. At his request Miss Gutteridge explained that Her Majesty's Government considered it essential that it should be made clear in the agreement that any baseline changes concerned baselines selected and accepted for the purpose of delimiting the fishery zone referred to in the agreement and for that purpose only, i.e., that they would not relate to the territorial sea. Mr. Andersen indicated that this was quite understood and would cause no difficulty. Sir Patrick Reilly gave Mr. Andersen the draft of an Article and Exchange of Notes on the point omitting any reference to the actual new baselines. (See Annex B.)

8. Sir Patrick Reilly said that he thought it would be premature to discuss the other outstanding points Mr. Andersen had just raised until the question of the assurance had been settled. He briefly rehearsed the five variables and pointed out that if the Icelandic position on some of these was now in fact fixed irrevocably, then this would have an effect on the settlement of the other points.

(b)

## ANNEX A

*Draft Exchange of Notes*

## No. 1

Your Excellency,

I have the honour to refer to the Fishery Agreement between Iceland and the United Kingdom signed today, and to state as follows the position in regard to any extension of fishery jurisdiction beyond the limits of the 12-mile zone referred to in Article I of the Agreement:

The Icelandic Government will continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of fisheries jurisdiction around Iceland in conformity with international law. Six months' notice will be given of the application of any such extension, and any dispute as to whether the measures to be applied are in accordance with international law will be referred, at the request of either party, to the International Court of Justice.

2. I have the honour to suggest that this Note and Your Excellency's reply thereto shall be regarded as constituting an Agreement between our two Governments in regard to the matters set out in this Note.

## No. 2

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date reading as follows:

[as in No. 1]

2. I have the honour to state that the United Kingdom Government, whilst affirming that it cannot recognize any extension of fisheries jurisdiction which is not in accordance with international law confirms that Your Excellency's Note and my present reply thereto shall be regarded as constituting an Agreement between our two Governments in regard to matters set out in Your Note.

## ANNEX B

*Drafts of an Article in the Agreement and of an Exchange of Notes relating to Baselines, given to Icelandic Delegation on 4 December 1960*

## (a) DRAFT ARTICLE

The United Kingdom Government shall not object to the exclusion, by the competent authorities of the Icelandic Government, of vessels registered in the territory of the United Kingdom from fishing within a fishery zone of

12 miles contiguous to the coast of Iceland and measured from the baselines specified for the purpose of delimiting that zone.

The baselines referred to in paragraph (1) of this Article shall be those described in Article I of the Icelandic Regulation No. 70 of 1 July 1958, concerning the Fisheries Limits off Iceland, subject to such modifications as are set out in Notes exchanged between the Contracting Parties on the date of signature of this Agreement.

(b) DRAFT EXCHANGE OF NOTES

Originating Icelandic Note

Sir,

I have the honour to refer to paragraph (1) of Article I of the Agreement on Fishery Relations between the United Kingdom and Iceland which was signed today, and to state that the Icelandic Government propose to introduce, not earlier than . . . , the following modification of the baselines described in Article I of the Icelandic Regulation No. 70 of 1 July 1958, concerning the Fisheries Limits off Iceland: and to use, for the purposes of delimiting the fishery zone referred to in Article I of the Agreement, the baselines referred to above as from the date on which they are introduced.

2. I am to suggest that if Her Majesty's Government in the United Kingdom confirm that they agree that the baselines specified above shall be used, as from the date on which they are introduced, for the purposes of the delimitation of the fishery zone referred to above, this Note and your Excellency's reply to that effect shall be regarded as constituting an Agreement between our two Governments on this matter.

DRAFT UNITED KINGDOM NOTE IN REPLY

Your Excellency,

I have the honour to acknowledge receipt of your Excellency's Note of . . . which reads as follows:

[as in Originating Note]

2. I have the honour to confirm that Her Majesty's Government in the United Kingdom agree that the baselines specified in your Excellency's Note shall be used for the purpose of the delimitation of the fishery zone contiguous to the coast of Iceland referred to in Article I of the Agreement, and will regard your Excellency's Note and my present reply to the above effect as constituting an Agreement between our two Governments on this matter.

3. I am, however, to inform your Excellency that in raising no objection, for the purposes of the Agreement, to the use of the baselines specified above, Her Majesty's Government in the United Kingdom reserve their position in regard to the principles of international law applicable to the delimitation of the territorial sea and of fishery limits in general by the use of straight baselines.

RECORDS OF ANGLO-ICELANDIC DISCUSSIONS,  
17 DECEMBER TO 20 DECEMBER, 1960

*Item (i)*

*First Meeting, Paris, 17 December 1960*

ANGLO-ICELANDIC FISHERIES DISPUTE

*Record of Conversation between the Secretary of State and the Icelandic Foreign Minister on 17 December in Paris*

Present:

The Secretary of State  
Sir Evelyn Shuckburgh  
Mr. R. H. Mason  
Mr. Ian Samuel

The Icelandic Foreign Minister  
Mr. Hans Andersen

The Icelandic Foreign Minister (Mr. Gudmundsson) began by saying that his original intention had been not to come to the NATO Ministerial meeting, but that his Prime Minister had asked him to come for the sole purpose of meeting the Secretary of State in a special effort to solve the dispute.

2. The Secretary of State replied that he was very grateful to Mr. Gudmundsson for coming all this way. He was very worried, and so was the Prime Minister, about the consequences of our failing to reach agreement on this dispute: it seemed that our positions were so close that we might hope to bridge the gap.

3. The Secretary of State suggested that we might start on the question of baselines. Our point here was that the revised baseline should be regarded as solely for the purpose of delimiting the fishery zone and should not be considered as applying to Iceland's territorial waters.

4. Mr. Gudmundsson said that that was the position of his Government also: there had never been any question on their part of regarding these revised baselines as applying for the purpose of Iceland's territorial waters.

5. The Secretary of State then said that, since the baseline question could be agreed, we might then go on to the next outstanding point, which was the form of the agreement. He could not understand why the form proposed by us seemed objectionable to the Icelandic Government: it was perfectly normal and fully in accordance with relations between allies to have formal agreements. If we could settle this point we should be much nearer a general settlement.

6. Mr. Gudmundsson said that the Icelandic Government's intention was that the draft should be submitted to the Althing and should be approved before Notes could be exchanged. It was their intention that the agreement should be fully binding but there was a special reason why the word "agreement" was objectionable to the Icelandic Government. He recalled that in 1901 the Danish Government, which then exercised sovereignty in Iceland, had concluded an agreement on fishery limits with Her Majesty's Government which gave British fishermen the right to fish within 3 miles of the Icelandic coast, and made no provision for baselines. As a result of this agreement,

which remained in force for 50 years, the fisheries off Iceland had been almost ruined. The formula which they now proposed was the same as that which had been proposed in 1958 in NATO and its importance was that the Icelandic Opposition could not object to it.

7. In reply to a question by the Secretary of State, Mr. Gudmundsson said that he had hoped to be able to submit the draft exchange of notes to the Althing within the next few days, but did not think that this would now be possible.

8. After some discussion as to whether it would be possible to find a form of words which would be binding as far as the International Court was concerned, but which would avoid the use of the word "agreement", Mr. Gudmundsson suggested the following: the second sentence of the introductory paragraph of the draft note from the Icelandic Government to Her Majesty's Government handed to the Icelandic Government by Mr. Stewart in Reykjavik on 14 December should be deleted and replaced by the following sentence:

"In view of these discussions my Government is willing to settle the dispute in the following manner . . ."

The final sentence of this draft should be deleted and replaced by the following:

"I have the honour to suggest that Your Excellency's reply to this note will confirm that its contents are acceptable to the United Kingdom Government and that the settlement of the dispute has been accomplished in the manner stated therein. The settlement will then become applicable forthwith."

9. The Secretary of State said that we would consult our Legal Advisers at once as to whether these suggested amendments would be acceptable to us from the legal point of view. [Miss Gutteridge confirmed by telephone that the first amendment would be acceptable and the Secretary of State told Mr. Gudmundsson.]

10. The Secretary of State then turned to the question of the area outside 12 miles from which our trawlers would be excluded during the transitional period, and to the related question of the length of the transitional period. He explained that we might be able to agree to a transitional period of three years but in that case there could be no outside areas.

11. Mr. Gudmundsson said that the most difficult aspect of this question was the need to reconcile fishing interests off the south-east coast with those off the north-west coast. The present proposal was that off the north-west coast there would be no areas outside, under a three-year transitional period, but equally there would be no areas inside. The people on the south-east coast, where our trawlers would have rights inside 12 miles, would complain that they were being made to pay for the agreement that there should be no fishing outside on the north-west coast. He himself and his party would be quite content to an arrangement as proposed but the Conservatives (who together with his party, the Social Democrats make up the Government) could not accept it.

12. In reply to a question by the Secretary of State, he said that a five-year transitional period was out of the question. There would be elections in three years' time and if British trawlers were still fishing within 12 miles an impossible political situation would arise.

13. This led on to a discussion on baselines, the upshot of which was that

Mr. Gudmundsson asked whether we could not consider making a further concession on the south-east coast, and the Secretary of State asked whether the Icelandic Government might not consider the present proposal.

14. Mr. Gudmundsson then said that further examination of the Secretary of State's message of 13 December, taking into account a remark made by representatives of the British fishing industry at the second Geneva Conference, had brought him to the tentative conclusion that the most important points for us both were:

- (i) *For the Icelanders*, acceptance by the United Kingdom of their 12-mile fishery jurisdiction;
- (ii) *For the United Kingdom*, an assurance from the Icelandic Government that they would not extend their fishery limits beyond 12 miles calculated from present baselines.

15. He thought that if we could reach an agreement on this basis there would be no need for us to continue with the present very difficult exercise of trying to adjust the areas inside 12 miles during which our trawlers could fish during a transitional period. It would be very easy to draw up an agreement on the basis of these two points, and the Icelandic Government would be able to give a firm assurance that they would not attempt to extend beyond 12 miles calculated from present baselines otherwise than with the agreement of the International Court. He emphasized that he was not authorized to make any proposal to this effect but in reply to a question by the Secretary of State he thought that the solution on these lines was "absolutely worth studying".

16. The Secretary of State said this meant that we should be asked to give up all our fishing within 12 miles immediately. Mr. Gudmundsson confirmed that this would be so if such an arrangement took effect forthwith. The Secretary of State went on to say that we might possibly be able to consider this but only on the condition that we had a watertight agreement with the Icelandic Government which would stand up in the International Court. He said that we should prefer to call it an agreement, but repeated that whatever form of words was used it must be binding.

17. It was agreed that both sides should think over this latter idea and that the Secretary of State and Mr. Gudmundsson should meet again on Sunday, 18 December.

*Item (ii)*

*Second Meeting, Paris, 18 December 1960*

ANGLO-ICELANDIC FISHERIES DISPUTE

*Record of Conversation between the Secretary of State and the Icelandic Foreign Minister—Paris, 18 December*

Present:

The Secretary of State  
Mr. R. H. Mason  
Mr. Ian Samuel

The Icelandic Foreign Minister  
Mr. Hans Andersen

The Secretary of State referred to his conversation with Mr. Gudmundsson

of the previous evening and said that we had now had time to examine the alternative wording for the last sentence of the first paragraph, and of the final paragraph of the Draft Exchange of Notes providing for fishing by British trawlers within 12 miles during the transitional period, which Mr. Gudmundsson had given to us. We were able to confirm that the first suggested amendment would be acceptable. We had some amendments to suggest to the draft for the final paragraph, the most important of which was that it should contain a sentence to the effect that the Exchange of Notes should be registered with the Secretariat of the United Nations in accordance with Article 102 of the United Nations Charter. Our object in proposing this amendment was to meet the Icelandic Government's objection to the use of the word "agreement" in the text of the Exchange of Notes. The Secretary of State handed to Mr. Gudmundsson a *bout de papier* (copy attached), giving the texts of the amendments which we now proposed.

2. The Secretary of State went on to say that in addition to these amendments, we wished to propose a Confidential Agreed Minute to the effect that both Governments agreed that the Exchange of Notes would constitute an agreement between them.

3. Mr. Gudmundsson said that, before replying to the Secretary of State on this point, he would like to give us a draft agreement covering Course 2, under which Her Majesty's Government would accept immediately Iceland's 12-mile fishery jurisdiction in return for an assurance that they would not extend further otherwise than with the agreement of the International Court. (A copy of this is attached.) Mr. Gudmundsson explained that the Icelandic Government would probably be able to accept such a settlement in the form of an agreement and that it would have the additional advantage, from the British point of view, of including an undertaking by the Icelandic Government to the effect that the existing baselines would not be altered otherwise than with the agreement of the International Court. Mr. Gudmundsson said that a Course 2 Agreement on these lines would be much easier for the Icelandic Government to accept than a Course 1 Agreement.

4. Turning to the Secretary of State's proposal for a Confidential Agreed Minute, Mr. Gudmundsson said that he also had the point in mind, that some assurance would be required regarding the validity of an Exchange of Notes covering Course 1. A Confidential Agreed Minute would not be acceptable to the Icelandic Government and he wished to propose that instead of a confidential exchange, the British Ambassador in Reykjavik should address a Note to the Icelandic Government to the effect that Her Majesty's Government intended to register the Exchange of Notes with the Registrar-General of the International Court, since in the event of a dispute, the terms of the Exchange would be invoked. The Icelandic Government would return a simple acknowledgment, thereby implying that they had no objection.

5. The Secretary of State said that Course 2 would be very difficult for us and we should much prefer Course 1. Could we not now consider the question of the areas inside 12 miles on the south-east coast. It would be helpful if Mr. Gudmundsson could give us some indication of what additional areas they had in mind from which our trawlers should be excluded.

6. Mr. Gudmundsson replied that he would be prepared to drop this requirement and face the political consequences in Iceland. There need be no alteration in the north-west nor in the south-east. There were some amendments to the areas set out in the Draft Exchange of Notes which he hoped would be acceptable to us. Otherwise they could accept the Draft for a Course 1 Agreement as it now stood. These were as follows:

- (a) Paragraph 1, 2 (D) of the draft:  
This should read Point 35 to Point 39.
- (b) Paragraph 3 (i):  
This should read "Between 63° 37' N. latitude . . ."

7. The Secretary of State said that we would consult our Legal Advisers on the points raised by Mr. Gudmundsson and it was agreed that there should be a further meeting in London on December 20.

*Item (iii)*

*Third Meeting, London, 19 December 1960*

ANGLO-ICELANDIC FISHERIES DISPUTE

*Record of Conversation between the Secretary of State and the Icelandic Foreign Minister—3 p.m., 19 December 1960*

Present:

The Secretary of State  
Sir Patrick Reilly  
Mr. B. C. Engholm  
Mr. F. A. Vallat  
Mr. R. H. Mason

The Icelandic Foreign Minister  
Mr. Hans Andersen

Mr. Gudmundsson began by saying that he did not think it would be possible for the Althing to agree to a settlement which would give our trawlers fishing rights within 12 miles (Course 1) before they rose for the Christmas recess. The Althing would reassemble on 12 or 15 January. The Icelandic Prime Minister was most anxious to have a settlement before the new year. A Course 2 agreement (immediate recognition by Her Majesty's Government of Iceland's 12-mile fishery jurisdiction in return for an assurance against further extension) would be much easier than Course 1 for the Icelandic Government to accept. The Icelandic Prime Minister was therefore anxious to have the choice between the two courses.

2. The Secretary of State said that he now understood that Mr. Gudmundsson was not in favour of including in the text of the Exchange of Notes covering a Course 1 agreement a passage about registration of the Exchange with the Secretariat of the United Nations. We had done what we could to meet the Icelandic objection to the use of the word "agreement" in the text and we had thought that this would be a good way of doing so. Surely the Icelandic Government would be able to claim credit for registering the Exchange with the United Nations: he thought that this was a highly "respectable" method of registering an international agreement.

3. Mr. Gudmundsson agreed but said that the word "agreement" had an unfortunate connotation for the Icelandic people in so far as it was applied to the fisheries off their coasts. He then repeated what he had said in Paris on 17 December about the Agreement which the Danish Government had entered into with His Majesty's Government in 1901.

4. The Secretary of State then asked whether we could not cover the point by a confidential agreed minute in which the Icelandic Government would

state that they had no objection to registration of the Exchange of Notes with the United Nations Secretariat. To this Mr. Gudmundsson replied that there could be no unpublished agreements as far as his Government was concerned.

5. The Secretary of State said that we could accept Course 1 either with the word "agreement" in the text or with a reference in the text to registration.

6. Mr. Gudmundsson agreed to discuss this further with his Prime Minister and to meet again on 21 December.

*Item (iv)*

*Fourth Meeting, London, 3.15 p.m., 20 December 1960*

ANGLO-ICELANDIC FISHERIES DISPUTE

*Record of Conversation between the Secretary of State and the Icelandic Foreign Minister—3.15, 20 December 1960*

Present:

The Secretary of State  
Sir Patrick Reilly  
Mr. F. A. Vallat  
Mr. B. C. Engholm  
Mr. R. H. Mason

The Icelandic Foreign Minister  
Mr. Hans Andersen

The Icelandic Foreign Minister (Mr. Gudmundsson) said that he had been in touch with his Prime Minister by telephone. Mr. Thors had discussed with his Cabinet and with the Government's supporters in the Althing whether it would be possible to accept before the Althing rose for the Christmas recess, the proposals discussed with Lord Home in the Foreign Office on 19 December, for a settlement which would give British trawlermen fishing rights within 12 miles for a transitional period. They had reached the conclusion that it would not be possible. The proposal required further examination and Mr. Gudmundsson believed that his best course would be to take the draft Exchange of Notes back to Iceland and explain the proposal to his Cabinet colleagues. He said that the difficulty arose over the requirement to register the Exchange of Notes with the United Nations: there would be no concealing the fact that this constituted an agreement and, as he had explained previously, there would be considerable political opposition in Iceland to a settlement of the dispute which took the form of an agreement.

2. Mr. Gudmundsson said that he had not discussed in any detail with his Prime Minister the possibility of a Course 2 Agreement—i.e. immediate *de facto* recognition of Iceland's 12-mile fishery jurisdiction drawn from present baselines in return for an assurance that the Icelandic Government would not seek further extensions otherwise than with the agreement of the International Court. He knew, however, that this would be much easier for the Icelandic Government to accept since it would contain no provisions for fishing rights within 12 miles. Mr. Thors had asked him what he thought were the prospects of a Course 2 agreement and he had replied that he was not optimistic.

3. Mr. Gudmundsson then said that he did not know whether the Icelandic Government could agree to Course 1 and asked whether it would be possible for us to agree to Course 2.

4. The Secretary of State replied that this would be very difficult for us: our fishing industry would not like it and it might lead to further difficulties for us elsewhere—for example in the Faroes and Greenland.

5. Mr. Gudmundsson said that he could not of course make a definite proposal, but he was sure that his Government could recommend a Course 2 settlement to the Althing and could also agree to registering it with the *United Nations*.

6. Mr. Engholm said that under a Course 2 agreement there would be a grave danger that the British fishing industry revise the Paris Agreement on landings of Icelandic caught fish in the United Kingdom. Mr. Gudmundsson remarked that talks which he and the Icelandic Minister of Justice, Mr. Benediktsson, had had in Geneva with representatives of the British Trawler Federation during the second International Conference on the Law of the Sea had left him with the impression that the British industry were primarily interested in an assurance that the Icelandic Government would not seek any further extensions of their 12-mile fishery limit.

7. The Secretary of State asked whether, if we accepted a Course 2 agreement, we could have a transitional period of one year. Mr. Gudmundsson replied that this would take us back once again to the question of baselines.

8. The Secretary of State said that he feared that if Mr. Gudmundsson returned to Iceland with no further advance towards an agreement, the whole question would be back in the melting pot again. How could we avoid slipping back into that position? It was essential that a settlement should have the force of an agreement and it must therefore be registered with the United Nations. Otherwise it would have no binding power if a dispute had to be referred to the International Court of Justice. He asked whether the Icelandic Government could not face their opposition on this point. If the Icelandic Government could agree to register a Course 2 agreement, he could not see why they would not be prepared to register a Course 1 agreement. We had to keep in mind always the possibility that if there were no agreement our trawlers would fish within 12 miles and this would raise the question of naval protection.

9. Mr. Gudmundsson replied that it would be impossible to register a Course 1 agreement and there could be no question of a Confidential Exchange of Notes to the effect that the Icelandic Government would not object to registration. He thought discussion within the Icelandic Cabinet might help.

10. The Secretary of State asked whether it would be possible to have an open Exchange of Notes covering the areas inside 12 miles during the transitional period, and a Confidential Exchange covering the assurance on further extensions beyond 12.

11. Sir Patrick Reilly suggested that we might have one Exchange of Notes on the baselines point, and another on reference of a dispute to the International Court.

12. The Secretary of State asked if Mr. Gudmundsson could not telephone Mr. Thors again and put to him the suggestion to two Exchanges of Notes. He was apprehensive about relations between our two countries if the talks broke down.

13. Mr. Gudmundsson replied that he was sure that Mr. Thors could not authorize a settlement on this basis without explaining it fully to both parties

in the Government. He would return to Iceland with a draft which he would discuss in the Cabinet and keep us informed of the outcome. He could initial nothing at the moment but assured the Secretary of State that the Icelandic Prime Minister was anxious for a settlement.

14. Mr. Vallat asked what two Exchanges of Notes in the form now contemplated would involve. If they were to be considered as an agreement they would still have to be registered. The Secretary of State said that we would explore the possibility of a "split" agreement and let Mr. Gudmundsson know what we were able to suggest. It was essential for us to have a cast-iron agreement.

*Item (v)*

*Fifth Meeting, London, 6.45 p.m., 20 December 1960*

*Record of Conversation between the Secretary of State and the Icelandic Foreign Minister in the Foreign Office at 6.45 p.m. on 20 December 1960*

Present:

The Secretary of State  
Sir Patrick Reilly  
Mr. Vallat  
Mr. Engholm

Mr. Gudmundsson

The Secretary of State said that since his previous meeting with Mr. Gudmundsson he had seen the Prime Minister. He had found him very anxious to reach an agreement and was seriously alarmed at the consequences of failure to do so. At the same time the Prime Minister and his colleagues considered that they must press the Icelandic Government to accept a "Course 1" settlement. They were anxious, however, to try to meet the Icelandic Government if there was any way in which they could help them from the point of view of presentation. He had therefore been wondering whether it would be possible to get over the difficulty about registration if the present draft of the Exchange of Notes was divided up, so that the part relating to the interim arrangements of the transitional period would be treated simply as an understanding between the two Governments and not registered with the United Nations Secretariat, and only the part dealing with the Assurance about reference to the International Court of Justice would be registered. There would thus be just a very brief agreement about the recourse to the Court. Did Mr. Gudmundsson think that this would help? Mr. Gudmundsson said that he thought that this might be all right. He could not, however, commit himself before he had had an opportunity to discuss it with the Prime Minister and his colleagues. He would have to go back to Reykjavik on 22 December in order to explain the position personally. It was very difficult to discuss this sort of thing on the telephone. He must emphasize again that his Prime Minister was in a very difficult position. The Government's majority was very small and they must persuade all their supporters to accept a settlement. The Opposition parties were dead against having any agreement at all.

2. The Secretary of State said that he must again emphasize the very great dangers which would result from a failure to get agreement.

3. Mr. Gudmundsson asked whether there was any hope for the second solution. He said that he personally had no doubt that Solution No. 1 was better in every way, except from the political point of view. The Secretary of State replied that he thought there was no hope of this solution and he thought that it was completely out. He pointed out that the suggested separation of the two parts of the settlement in fact brought us very close to Solution No. 2.

4. Mr. Gudmundsson explained that he would be leaving London on 21 December by train for Glasgow in order to make sure of catching the aeroplane from there to Reykjavik on 22 December. It was therefore agreed that a redraft of the Exchange of Notes on the lines discussed would be telephoned to Her Majesty's Ambassador at Reykjavik for communication to Mr. Gudmundsson on his return.

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