MEMORIAL ON THE MERITS OF THE DISPUTE SUBMITTED BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

PART I

INTRODUCTION

1. This Memorial on the merits of the dispute between the Government of the United Kingdom and the Government of Iceland is submitted to the Court in pursuance of the Order made by the Court on 15 February 1973. That Order was made in the light of the Judgment delivered by the Court on 2 February 1973, in which the Court found that it has jurisdiction to entertain the Application filed by the Government of the United Kingdom on 14 April 1972, and to deal with the merits of the dispute. As was indicated in that Application, the subject of the dispute before the Court is the legality or otherwise of the claim by the Government of Iceland (now asserted through certain Regulations made on 14 July 1972) to extend the exclusive fisheries jurisdiction of Iceland, with effect from 1 September 1972, to a distance of 50 nautical miles from the coast of Iceland. The Order made by the Court on 15 February 1973, fixed 1 August 1973, as the time-limit for the filing of the Memorial of the Government of the United Kingdom on the merits.

2. Accordingly, and in compliance with Article 42 of the Rules of Court, this Memorial places before the Court a statement of the facts relevant to the merits of the dispute, a statement of the principles of law which fall to be considered in relation thereto, and the submissions of the Government of the United Kingdom arising out of those facts and those principles of law. Part II of this Memorial contains a history of the dispute up to the date of the Application instituting proceedings and also an account of subsequent events which is intended to bring the story as nearly as possible up to the date on which this Memorial was filed. Part III presents the facts concerning the need for conservation of the resources of the fisheries in the area in dispute, the use made hitherto by British and Icelandic fishing vessels of those fisheries and their present dependence on them, and other related matters. Part IV contains a statement of the history and development of the rules of law relevant to the dispute and a statement of what, in the view of the Government of the United Kingdom, represents the current law governing the dispute. Part V sets out the facts concerning certain activities carried out by the Government of Iceland in intended enforcement of that claim and considers the rules of law applicable to those activities and the legal consequences which flow from them. Part VI contains a summary of the conclusions of fact and law put forward by the Government of the United Kingdom in this case and sets out the formal submissions to the Court made herein by the Government of the United Kingdom.

PART II

HISTORY OF THE DISPUTE

A. Introduction

3. Though the particular dispute with which the Court is concerned in this case may be said to have arisen only in the course of the last two years, it will be helpful to the Court to trace its origins somewhat further back in the history of relations between the United Kingdom and Iceland concerning fisheries jurisdiction in waters in which the vessels of both countries claimed the right to fish. A convenient commencement for this is the period immediately before the beginning of the present century. Accordingly, this Part of this Memorial will first (in Section B thereof) trace the history of the matter from that point of time until the filing, on 14 April 1972, of the Application instituting proceedings. In Section C it will carry the story from the date of the Application up to the latest convenient date before the filing of this Memorial itself. (That date is 30 June 1973. It is hereinafter referred to as "the date by which this Memorial was compiled". However, the Government of the United Kingdom reserve the right to ask the Court for leave to submit subsequently certain further factual material relating to events after that date and to make further submissions on that material.)

B. History up to the Filing of the Application Instituting Proceedings

Steps leading up to the Convention of 1901

4. As is described more fully in Section B of Part IV of this Memorial, numerous fishing disputes arose between the European Powers in the 19th century. They arose partly from the uncertainty concerning the rules which should be applied to bays, islands, islets and sand banks in delimiting the territorial sea; partly from the difficulty of policing fishery operations; and partly, particularly towards the end of the century, from the difficulties that occurred in carrying on trawling and drift-net fishing in the same localities at the same time.

5. In order to avoid or reduce these disputes and at the instance of the Government of the Netherlands, a Conference of the North Sea Powers was convened at The Hague in 1881. In drew up the Convention for Regulating the Police of the North Sea Fisheries which was signed by representatives of the United Kingdom, Belgium, Denmark, France, Germany and the Netherlands on 6 May, 1882 [1]. The Convention applied only to the subjects of the High Contracting Parties. Its object was to regulate the police of the fisheries in the North Sea outside territorial waters. It was therefore necessary to define in precise terms the sea areas outside which it should apply and this was done in Article II. That Article reads as follows:

---

[1] British and Foreign State Papers 1881-1882, Vol. LXXIII, pp. 39 *et seq.*

"The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks. As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles.

The present Article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the Power to whom the shore belongs."

The area to which the Convention applied was, under Article IV, bounded on the north by the parallel of the 61st degree of latitude and thus excluded the ocean surrounding the Faroe Islands and Iceland.

6. Iceland had since 1814 been a dependency of Denmark but, under a new Constitution of 1874, had been granted a considerable degree of autonomy. In 1889 Iceland passed a law prohibiting trawling "within the territorial waters of Iceland" and in 1894 a further law was passed making it an offence for a vessel even to be in Icelandic territorial waters with a trawl on board, except in cases of distress. At this time Denmark, while not making any formal claim to a territorial sea greater than 3 miles, contended that it was not bound by any international convention to the limit of 3 miles as regards the maritime territory of Iceland. Denmark also began to formulate the 10-mile rule for bays as a rule of general law while the contention of the Government of the United Kingdom at that time was that the 10-mile rule was a conventional rule only. (See, generally, Section B of Part IV of this Memorial.) However, in 1894 a temporary *modus vivendi* was reached whereby it was agreed that British trawlers could use certain Icelandic ports if they would not trawl within an *ad hoc* line drawn across Faxa Bay, and in 1898 the Althing (the Icelandic Parliament) amended the Law of 1894 to the extent that trawlers might enter Icelandic territorial waters for coaling and provisioning and for passage or in fogs and in other circumstances than extreme distress.

The Convention of 1901

7. The temporary *modus vivendi* provided the basis for the Convention between the United Kingdom and Denmark for Regulating the Fisheries Outside Territorial Waters in the Ocean Surrounding the Faroe Islands and Iceland which was signed at London on 24 June 1901 [1] and which continued to govern the position until after the Second World War. This Convention was closely modelled upon the Convention for Regulating the Police of the North Sea Fisheries of 1882 (see para. 5 above) but Article II is somewhat more precise. It reads as follows:

"The subjects of His Majesty the King of Denmark shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of the said islands, as well as of the dependent islets, rocks and banks.

As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles.

[1] *United Kingdom Treaty Series* No. 5, 1903.

> The present Article shall not prejudice the freedom of navigation or anchorage in territorial waters accorded to fishing boats, provided they conform to the Danish Police Regulations ruling this matter, amongst others the one stipulating that trawling vessels, while sojourning in territorial waters, shall have their trawling gear stowed away in-board."

Under Article XXXIX the Convention was to continue in force until the expiration of two years from notice by either party for its termination.

The Period Between 1901 and the Conclusion of the 1958 Conference

8. No significant developments in bilateral fisheries relations between the United Kingdom and Iceland took place during the period between the conclusion of the Convention of 1901 and the end of the Second World War. On a number of occasions (for example, at The Hague Conference of 1930: see para. 173 below) the Government of Iceland indicated some dissatisfaction with the position which obtained under the Convention of 1901 and under customary international law, but there appears to have been no suggestion that Iceland was entitled, as a matter of law as the law then stood, to a wider exclusive fisheries jurisdiction. However, this dissatisfaction appears to have gained ground in Iceland by the years immediately after the end of the war and on 5 April 1948—by this time Iceland had achieved full independence from Denmark and was therefore responsible for its own international relations—the Althing passed the "Law concerning the Scientific Conservation of the Continental Shelf Fisheries". (The full text of an English translation of this Law is set out in Annex 1 to this Memorial.) Article 1 of this law authorized the Ministry of Fisheries to "issue regulations establishing explicitly bounded conservation zones within the limits of the continental shelf of Iceland; wherein all fisheries shall be subject to Icelandic rules and control; Provided that the conservation measures now in effect shall in no way be reduced". Article 2 provided that the regulations promulgated under Article 1 should be enforced only to the extent compatible with agreements with other countries to which Iceland was or might become a party. The Commentary on the law submitted to the Althing (a copy of an English translation of which is also set out in Annex 1 to this Memorial) stated with reference to Article 1 that "at present, the limit of the continental shelf may be considered as being established precisely at a depth of 100 fathoms. It will, however, be necessary to carry out the most careful investigations in order to establish whether this line should be determined at a different depth." The Commentary also specified the Convention of 1901 and the International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1937[1] as agreements with which, so long as they remained in force, the provisions of the Law might be incompatible.

9. On 3 October 1949, the Government of Iceland gave notice to the Government of the United Kingdom of the denunciation of the Convention of 1901, and, in accordance with Article XXXIX, the Convention ceased to be in force after 3 October 1951. It was clear that the Government of Iceland was preparing to issue regulations under the Law of 1948, which would purport to apply to the United Kingdom and its nationals.

---

[1] H.M. Stationery Office, *Miscellaneous No. 5 (1937)*, Cmd. 5494; Hudson, *International Legislation*, Vol. VII (1935-1937), p. 642.

10. At a meeting held in London in January 1952 the Minister of Fisheries of the Government of Iceland informed the Government of the United Kingdom in general terms of the proposed regulations. It was, however, clear that the Government of Iceland had already settled upon their course of action and were not prepared to negotiate or to modify their plans in any way to meet the views of the United Kingdom. The Government of the United Kingdom warned the Government of Iceland that failure to negotiate an *ad hoc* line to take account both of British fishing interests and of the need for conservation measures would cause deep resentment among the British trawler owners and fishermen and would risk provoking retaliatory action. The Regulations were nevertheless made by the Government of Iceland. They were dated 19 March 1952, and came into operation on 15 May 1952. Their effect was to establish a baseline joining the outermost points of the coasts, islands and rocks and across the opening bays and to prohibit all foreign fishing activities within a line drawn 4 nautical miles from this baseline.

11. In Notes addressed to the Government of Iceland on 2 May and 18 June 1952, the Government of the United Kingdom protested against the claim to a 4-mile limit and against the latitude which the Government of Iceland had taken in interpreting the Judgment of the International Court of Justice in the *Anglo-Norwegian Fisheries* case [1] on the validity of baselines. The Government of Iceland rejected these protests. The British trawler owners at Grimsby, the port used mainly by the Icelanders, then decided to withhold from Icelandic vessels the landing facilities under their control, as a retaliatory measure for the exclusion of their vessels, by unilateral action, from fishing grounds which they had played a large part in developing and where they had fished for many years. The Icelandic fishing interests then provided landing facilities of their own, but, when they began landing their fish at Grimsby, the skippers and mates there and elsewhere decided not to sail their vessels while Icelandic-caught fish was being landed and sold. The port fish merchants thereupon decided not to buy or handle Icelandic-caught fish and the skippers and mates then resumed fishing. (It should be made clear that it was the Trawler Officers' Guilds at Grimsby and elsewhere, representing not the owners but the skippers and mates, who decided that they would not sail their vessels so long as Icelandic-caught fish was being brought in and it was the port fish merchants who decided that they would not buy Icelandic-caught fish until the dispute was settled. The term "landing ban" is frequently used in this connection. It must be emphasized that no ban was ever imposed by the Government of the United Kingdom. The so-called "landing ban" was simply the effect of the refusal of merchants at the ports to buy Icelandic-caught fish, reinforced by the threat of the fishermen to refuse to go to sea if landings of Icelandic-caught fish continued.)

12. There followed a number of attempts to find ways to resolve this dispute, whether through direct bilateral discussions, through a possible reference of legal issues to the International Court of Justice or through the possible agency of some technical body such as the Permanent Commission established under the Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1946 [2] or the International Council for the Exploration of the Sea. These all proved abortive but it was eventually found possible to set up discussions under the auspices of the Organization for European Economic Co-operation in which the representatives of both

[1] *I.C.J. Reports 1951*, p. 116.
[2] 231 *UNTS* 199.

the Governments and both the fishing industries took part. In November 1956 these discussions resulted in an agreement of which the following were the principal elements. Landings of Icelandic-caught fish in United Kingdom ports were to be resumed, but such landings were not to exceed a total annual value of £1.8 million. British trawlers were to be allowed to take shelter in Icelandic-claimed waters without having completely to stow their fishing gear. (The trawlers had previously been required to cut loose their gear before seeking shelter and this requirement had caused considerable loss to the owners.) There was to be no further extension of Icelandic fisheries limits pending discussion by the United Nations General Assembly of the Report of the International Law Commission on the Law of the Sea (see para. 13 below). At the same time the Government of the United Kingdom stated that the agreement should not be interpreted as a recognition of the legal validity of the methods employed by the Government of Iceland for determining fisheries limits.

13. The result of the discussion by the General Assembly which this agreement envisaged, that is to say, the convoking of the first United Nations Conference on the Law of the Sea which met at Geneva from 24 February 1958 to 27 April 1958, and the proceedings and outcome of that Conference, is described more fully in paragraphs 184-199 of this Memorial. At this point it is sufficient to say that the Conference did not reach agreement on the maximum breadth of the territorial sea or on fisheries limits. However, it adopted a resolution requesting the General Assembly to study at its 13th Session, in 1959, the advisability of convoking a second international conference for further consideration of the questions left unsettled. After the conclusion of the Conference the Government of Iceland declared that they regarded themselves as having complete freedom of action both as regards the extent of their fisheries limits and as regards the drawing of the relevant baselines.

The Period Between the Conclusion of the 1958 Conference and the Exchange of Notes of 1961

14. This declaration and an announcement of intention which the Government of Iceland made on 1 June 1958 were followed up on 30 June 1958 when the Government of Iceland issued a decree (Decree No. 70) which was to come into effect on 1 September 1958, purporting to extend Iceland's fishery limits to 12 miles from new baselines. Even before this decree had been issued, the Government of the United Kingdom made further attempts to settle the dispute by negotiation. A series of informal discussions was held in the North Atlantic Treaty Organization in Paris between representatives of the United Kingdom, France, the Federal Republic of Germany and Iceland with a view to achieving a compromise solution. Compromise proposals put forward by the United Kingdom included a scheme in which a substantial share of the total yield of the fisheries throughout the whole area surrounding the coasts of Iceland would have been guaranteed to the Icelanders and important areas would have been reserved for Icelandic small boat fishing. There was also an alternative proposal under which a continuous belt outside the limit claimed by Iceland since 1952 would have been reserved for Icelandic fishermen. An arrangement of this kind would have lasted for three years or for a shorter time if, meanwhile, a second Conference on the Law of the Sea had reached agreement on territorial waters and fisheries limits. However, these talks broke down at the end of August. A communiqué issued in London on 1

September 1958 explained that they had failed because, in return for any interim arrangements, the Icelandic delegation had demanded prior acknowledgement of Icelandic "rights" to extend their fisheries limits to 12 miles.

15. On 1 September 1958 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" situated between 4 and 12 miles from the baselines. A full account of this phase of the dispute was given in the Memorial on Jurisdiction which the Government of the United Kingdom filed with the Court on 13 October 1972. During this phase, the Althing passed the following Resolution on 5 May 1959:

> "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 the scientific protection of the fish banks of the Continental Shelf, from 1948, and that a smaller fishing limit than 12 miles from the base lines around the country was out of the question."

As the Memorial on Jurisdiction also describes, there were then further attempts at negotiation after which the situation was further modified by the Second United Nations Conference on the Law of the Sea which met in Geneva from 17 March 1960 to 26 April 1960 (see paras. 200-211 below). Although the Conference itself reached no agreement on fisheries limits, its deliberations on that matter did provide a basis upon which the Government of the United Kingdom were eventually able, in August 1960, to persuade the Government of Iceland to enter into direct negotiations once more. The Memorial on Jurisdiction described in detail the history of those negotiations. As is there shown, they led to the Exchange of Notes of 11 March 1961 (see Annex A to the Application Instituting Proceedings), which in effect put the dispute to rest for another decade.

Period Between 1961 and Filing of Application Instituting Proceedings

16. There were no significant developments in the history of the dispute during the period between the conclusion of the Exchange of Notes of 1961 and the general election which took place in Iceland in July 1971. Both Governments gave effect during that period to the terms of the agreement embodied in that Exchange of Notes and they co-operated with each other in furthering the activities of international bodies concerned with conservation and the rational exploitation of fisheries, such as the North-East Atlantic Fisheries Commission. Nevertheless, the Government of Iceland continued to maintain that they were under an obligation, by virtue of the Resolution of the Althing of 5 May 1959 (see para. 15 above), to work for a further extension of Iceland's fisheries jurisdiction and they therefore declined to become a party to the European Fisheries Convention of 1964[1] although they had participated in the Conference at which it was adopted and had voted

[1] 581 *UNTS* 57.

for the Resolution on Conservation which was also adopted at that Conference (see para. 222 below).

17. However, after the general election of July 1971 and the formation of a new Government in Iceland, the dispute was revived in an acute form. A policy statement was issued by the new Government which included the following passage:

> "TERRITORIAL WATERS
>
> The Fisheries Agreements with the United Kingdom and the Federal German Republic shall be terminated and a resolution be made about an extension of the fishery limit up to fifty nautical miles from the baselines, effective not later than 1 September 1972. At the same time a zone of jurisdiction of one hundred nautical miles shall be enacted for protection against pollution. The Government will in this matter consult the Opposition and give it an opportunity to follow its entire development."

(The rest of the policy statement is not relevant to the question of fisheries jurisdiction. The above passage is taken from an unofficial English translation supplied by the Ministry of Foreign Affairs of the Government of Iceland.)

18. The Government of the United Kingdom were naturally disturbed by what was said in the policy statement not only about the proposed extension of fisheries limits but also about the "termination" of the agreement constituted by the Exchange of Notes of 1961. Accordingly, on 17 July 1971, the British Embassy in Reykjavik delivered to the Secretary-General of the Ministry of Foreign Affairs of the Government of Iceland an aide-mémoire which expressed their concern, reminded the Government of Iceland of the provisions of the Exchange of Notes of 1961 relating to the reference of disputes to the International Court of Justice, pointed out that that Exchange of Notes was not open to unilateral denunciation or termination, and fully reserved the rights thereunder of the Government of the United Kingdom. A copy of the text of this aide-mémoire is annexed to this Memorial as Annex 2.

19. Following the delivery of the aide-mémoire of 17 July 1971, talks were held in London on 18 August 1971 between Ministers of the two Governments. No reconciliation of their views was achieved and, on 31 August 1971, an aide-mémoire was handed to the British Ambassador in Reykjavik by the Secretary-General of the Ministry of Foreign Affairs of the Government of Iceland. After referring to some of the relevant provisions of the Exchange of Notes of 1961 and in particular to the provision therein for the reference of disputes to the International Court of Justice, and after asserting that "the object and purpose of [that provision] have been fully achieved", the aide-mémoire went on to say that, in view of certain alleged considerations which it described, "the Government of Iceland now finds it essential to extend further the zone of exclusive fisheries jurisdiction around its coasts to include the area of sea covering the continental shelf. It is contemplated that the new limits, the precise boundaries of which will be furnished at a later date, will enter into force not later than 1 September 1972." The aide-mémoire concluded by indicating that the Government of Iceland were prepared to hold further meetings between representatives of the two Governments "for the purpose of achieving a practical solution of the problems involved". A copy of the full text of the aide-mémoire of 31 August 1971 is annexed to this Memorial as Annex 3.

20. On 27 September 1971 the British Embassy in Reykjavik delivered

to the Secretary-General of the Ministry of Foreign Affairs of the Government of Iceland an aide-mémoire in reply to the latter's aide-mémoire of 31 August 1971. This reply placed on record the view of the Government of the United Kingdom that such an extension of the fisheries zone around Iceland as was described in the aide-mémoire of 31 August would have no basis in international law. It also recorded the rejection by the Government of the United Kingdom of the view expressed by the Government of Iceland that the object and purpose of the provision, in the Exchange of Notes of 1961, for recourse to judicial settlement of disputes relating to an extension of fisheries jurisdiction around Iceland had been fully achieved. It reserved all the rights of the Government of the United Kingdom under the Exchange of Notes of 1961 including the right to refer disputes to the International Court of Justice. It then went on to note the proposal of the Government of Iceland that there should be further discussions and it indicated that, without prejudice to the legal position of the Government of the United Kingdom as just outlined, they were prepared to enter into further exploratory discussions. The full text of the aide-mémoire of 27 September 1971 is annexed to this Memorial as Annex 4.

21. Both Governments having thus expressed their readiness to hold further discussions, a first round of exploratory talks at official level was held in London on 3 and 4 November 1971. The Icelandic Delegation stated that there was universal agreement in Iceland to the effect that the fisheries limits had to be extended. They explained that their Government had already declared that the limits would be extended to 50 miles not later than 1 September 1972, thus implementing the policy which had been enunciated as early as 1948 through the Law concerning the Scientific Conservation of the Continental Shelf Fisheries (see para. 8 above). In the view of the Government of Iceland the object and purpose of the Exchange of Notes of 1961 had been achieved and its provisions were no longer applicable. They would, however, endeavour to find a practical solution to the problems which would arise for the British fishing industry when the Icelandic fisheries limits were extended. The necessary adjustment would consist of a phasing-out period, during which some British fishing activities would continue within the new limits. But the details of the nature and extent of such activities would have to be worked out.

22. The United Kingdom Delegation reiterated the view of their Government that the Exchange of Notes of 1961 was still in force, and that the compromissory clause had been inserted precisely to meet such a situation as now seemed likely to arise. They recognized Iceland's dependence on fisheries and her fears for the future but in their view these could not justify a unilateral extension of limits though they might prove to justify international conservation measures. They drew attention to the availability of the machinery of the North-East Atlantic Fisheries Commission to provide such measures. They pointed out that it would not be difficult for the few countries directly involved in fishing on the Icelandic grounds to reach agreement on an effective catch-limitation scheme which would stand a very good chance of later acceptance by other members of the Commission.

23. The Icelandic Delegation did not share the confidence of the United Kingdom Delegation in the effectiveness of multilateral conservation measures. In any event, they said; the problem was one not of conservation but of division of stocks. A coastal State was now widely recognized to be in a special position and to have a right to exclusive fisheries limits. Their purpose was to protect Icelandic fishing against massive competition by "supertrawlers" from Spain, Portugal, Poland, the Soviet Union and Japan and to

facilitate the planned expansion of Iceland's own fishing industry. Multilateral conservation measures could not do this.

24. The United Kingdom Delegation repeated that British rights in the waters around Iceland were firmly based on traditional use, specific agreement and customary international law and that the United Kingdom was bound to protect them against a unilateral extension. If, however, Iceland was ready to work for an agreed arrangement to regulate fishing in these waters, the United Kingdom would be glad to co-operate and the Delegation undertook to produce more detailed proposals for a catch-limitation scheme at the next meeting. In addition to the catch-limitation scheme the United Kingdom Delegation might be prepared to consider any special reasons which Iceland might have for protecting particular areas. The ultimate aim would be agreement between all countries fishing in the area.

25. The second round of exploratory talks at official level was held in Reykjavik on 13 and 14 January 1972. The United Kingdom Delegation explained their catch-limitation proposal. The basis on which it rested was that the Government of Iceland would not proceed with their proposal for the repudiation of the Exchange of Notes of 1961 and the unilateral extension of fisheries jurisdiction. They reminded the Icelandic Delegation that at the 1968 meeting of the North-East Atlantic Fisheries Commission the United Kingdom had expressed its readiness (which it had on various occasions subsequently reaffirmed) to take part in the negotiation of any arrangements for the limitation of catches in the Iceland area that scientific evidence might show to be necessary (see para. 110 below). In accordance with the Resolution on Special Situations relating to Coastal Fisheries which was adopted at the United Nations Conference on the Law of the Sea on 26 April 1958 (see para. 190 below), the Government of the United Kingdom accepted that such arrangements should recognize any preferential requirements of the coastal State resulting from its dependence on the fisheries concerned. The most recent scientific evidence available to the North-East Atlantic Fisheries Commission showed that stocks of demersal fish in the Iceland area were in a satisfactory condition and could indeed sustain more intensive exploitation. Nevertheless, having regard to the concern expressed by the Government of Iceland that an intensification of fishing by other countries might lead to a depletion of the stocks and to the fact that the Commission was not yet empowered to recommend measures of catch-limitation (see paras. 97-101 below), the Government of the United Kingdom would be prepared, as an interim measure pending the elaboration of a multilateral arrangement within the Commission, to limit the total catch by British vessels in waters around Iceland (i.e., in the International Council for the Exploration of the Sea Area Va) to the average taken by such vessels during the 10 years, 1960-1969, i.e., 185,000 metric tons. This would be a reduction of 22,000 tons from the 1971 level. The Government of the United Kingdom considered that it would be quite feasible to negotiate a full scale catch-limitation agreement on a multilateral basis, but their proposal was for an interim arrangement as a first step to meet the Icelandic requirement for quick action. In effect it was a unilateral British offer to limit the tonnage of fish caught by British vessels. The Government of the United Kingdom believed that the Federal Republic of Germany would be ready to make a similar offer. They did not ask for any limitation of catch by Icelandic vessels.

26. This proposal did not find favour with the Icelandic Delegation which countered with a proposal of their own, the substance of which was that the Government of Iceland would proceed with their purported extension of

jurisdiction; that British vessels would be permitted to fish in the area in dispute for a limited phase-out period; that they would in that period be permitted to take only a limited catch; that certain kinds of British vessels would be totally excluded even in that period and others would be permitted to fish only in certain parts of the area and perhaps only during certain seasons of the year; and that the details of all these limitations should be a matter for further negotiation.

27. In view of the different approaches of the two Delegations, as described in the preceding paragraphs, to the appropriate basis for a "practical solution of the problems involved", these discussions did not lead to an agreement. Meanwhile, the Althing had had before it a draft of a further Resolution on this matter and, on 15 February 1972 it adopted an amended form of that draft. This Resolution, as so adopted, reiterated that "the continental shelf of Iceland and the superjacent waters are within the jurisdiction of Iceland" and resolved that "the fishery limits will be extended 50 miles from baselines round the country, to become effective not later than 1 September 1972", that "the Governments of the United Kingdom and the Federal Republic of Germany be again informed 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 and that their provisions do not constitute an obligation for Iceland" and that "efforts to reach a solution of the problems connected with the extension be continued through discussions with the Governments of the United Kingdom and the Federal Republic of Germany". The full text of an English translation of the Resolution is annexed to this Memorial as Annex 5.

28. The passage of this Resolution was followed, on 24 February 1972 by the delivery of an aide-mémoire to the British Ambassador in Reykjavik by the Minister for Foreign Affairs of the Government of Iceland. (A copy of the full text of that aide-mémoire is annexed to this Memorial as Annex 6; the enclosures to that aide-mémoire are not so annexed but they were placed before the Court, so far as they are relevant to the question of fisheries jurisdiction, in Annex H to the Application instituting proceedings.) At the same time as he delivered this aide-mémoire, the Minister for Foreign Affairs read a formal statement, the text of which is annexed to this Memorial as Annex 7. The aide-mémoire stated that, for the reasons indicated in their earlier communications on the matter, the Government of Iceland "considers the provisions of the Notes exchanged [in 1961] no longer to be applicable and consequently terminated" and announced that "the Government of Iceland has accordingly decided to issue new regulations providing for fishery limits of 50 nautical miles from the present baselines, to become effective on 1 September 1972, as set forth in the Resolution of the Althing unanimously adopted on 15 February 1972".

29. In the light of the Government of Iceland's aide-mémoire of 24 February 1972, and the statement which accompanied it (which together reiterated the definitive decision of the Government of Iceland to extend their exclusive fisheries zone to 50 nautical miles with effect from 1 September 1972, and their definitive rejection of the representations relating to the illegality of such action that had been addressed to them by the Government of the United Kingdom), the Government of the United Kingdom concluded that they had no course open to them but to have the dispute referred to the International Court of Justice as provided for by the Exchange of Notes of 1961. The Government of Iceland, who had previously been informed that this would be the probable outcome of their insistence on a

unilateral extension of their exclusive fisheries zone, were notified of this decision by the British Ambassador in Reykjavik on 3 March 1972. On 14 March 1972 an aide-mémoire from the Government of the United Kingdom, formally re-stating their position in reply to the Government of Iceland's aide-mémoire of 24 February 1972, and giving formal notice of their intention to invoke the agreed procedure for obtaining the adjudication of the International Court of Justice thereon, was delivered to the Minister for Foreign Affairs of the Government of Iceland by the British Ambassador in Reykjavik. Having in mind the imminence of the threatened action by the Government of Iceland, the aide-mémoire indicated that the United Kingdom's application to the International Court of Justice would be made "shortly" but it went on to point out that "the British Government are very willing to continue discussions with the Government of Iceland in order to agree satisfactory practical arrangements for the period while the case is before the International Court of Justice". A copy of the full text of the aide-mémoire is annexed to this Memorial as Annex 8.

30. As forecast in the aide-mémoire of 14 March 1972, the Application instituting proceedings in this case on behalf of the Government of the United Kingdom was filed with the Registrar of the Court on 14 April 1972.

C. History after the Filing of the Application Instituting Proceedings

Negotiations up to the Request for Interim Measures of Protection

31. Even after the commencement of proceedings in this case, the Government of the United Kingdom continued to seek an agreed arrangement, by negotiation with the Government of Iceland, to regulate the position after 1 September 1972. These negotiations were now directed not so much at a settlement of the substantive dispute as at the establishment of an interim régime which would last only until the Court had given its decision on the legality of the proposed action by the Government of Iceland or until that question had been disposed of in some other way. With this objective in view, British officials visited Reykjavik for discussions with the Minister of Fisheries of the Government of Iceland, and with Icelandic officials, on 19 and 20 April 1972. At those discussions they proposed interim arrangements which would be entirely without prejudice to the respective positions of the parties in relation to the proceedings before the Court. Under these, British vessels would, on and after 1 September 1972, and so long as the arrangements were in force, continue to fish without hindrance in the area in dispute—for practical purposes this was envisaged as being ICES Area Va, excluding areas within the 12-mile line—but their total annual catch of demersal fish taken in that area would be limited to the average annual catch taken by such vessels during the 10 years, 1960-1969, i.e., 185,000 metric tons. These interim arrangements would remain in force pending a more permanent settlement of the dispute by negotiation or otherwise. If, however, the dispute had not been previously settled, the two Governments would, at the request of either of them made at any time after 1 September 1975, review together the working or the continuation of the arrangements. This proposal did not immediately commend itself to the Icelandic negotiators but it was made clear to them that it constituted a formal British proposal to which the considered response of the Government of Iceland was awaited. The Government of the United

Kingdom indicated that they were ready to resume discussions in London or Reykjavik as soon as that response was available.

32. Accordingly, the Minister for Foreign Affairs of the Government of Iceland, accompanied by the Minister of Fisheries, visited London for talks with United Kingdom Ministers on 23, 24 and 25 May 1972. They said that they would not be content with a mere catch-limitation scheme, since this would appear to leave British vessels free to fish, as they had traditionally done, up to the Icelandic 12-mile limit for most or perhaps all of the year. They therefore proposed:

(i) that limitations should be imposed on the size and type of vessels allowed to fish;
(ii) that all waters from the 12-mile limit out to 25 miles should be reserved to Icelandic vessels;
(iii) that the zone between the 25-mile line and the 50-mile line should be divided into six areas, each of which would be closed to British vessels except for three or four months of the year (the close seasons varying from area to area);
(iv) that certain additional areas should be closed for conservation purposes for one or two months each year;
(v) that certain areas should be reserved for line and net fishing (i.e., so that all trawling, Icelandic and foreign, would be prohibited there);
(vi) that Iceland would have the right to enforce its rules and regulations in the whole area out to the 50-mile limit; and
(vii) that the arrangement should operate until the end of 1973.

33. The United Kingdom Ministers explained that they could not accept the basic elements of this Icelandic proposal which would give rise to particularly difficult enforcement problems and would exclude British vessels from the valuable part of their traditional fishing grounds. They were, however, prepared to consider reasonable conservation proposals (such as in subparas. (iv) and (v) of para. 32 above) which might be grafted on to the catch-limitation scheme. But this in turn was rejected by the Icelandic Ministers who said that, for them, is was not merely a matter of conservation or of a restriction on the total United Kingdom catch; there must be some measures which restricted British fishing activities in a way apparent to the Icelandic people. The United Kingdom Ministers therefore undertook to re-examine the catch-limitation scheme to see whether it could be put forward in another form which would go further to meet Icelandic wishes and susceptibilities. It was agreed that both sides should reflect further and meet again in the latter part of June.

34. Icelandic Ministers returned to London for further talks with United Kingdom Ministers on 19 and 20 June 1972. In fulfilment of the undertaking given at the previous meeting, the United Kingdom Ministers put forward a proposal based on "effort-limitation" which would limit the United Kingdom fishing effort off Iceland to a level corresponding to an average catch of 185,000 metric tons a year. The essence of the scheme was that, in the light of past statistics (which were produced and discussed with the Icelandic Ministers), the average catch which a vessel of a certain standard size and type would take could be expressed in terms of the actual time which it spent on the fishing grounds. On the basis of this relationship—which could be applied, with the necessary adaptations, to the operations of vessels of a different size or type—it would be possible to calculate the number of "effective fishing

days" (in terms of a standard vessel) which the United Kingdom fishing fleet as a whole would have to deploy in the Iceland area in order to catch whatever might be their agreed quota. The schema therefore proposed to allocate a total number of "effective fishing days" (corresponding to an annual catch of 185,000 tons) to the United Kingdom fishing industry who would then be free to arrange, in whatever manner suited them best, the distribution of this allocation to the vessels that needed to operate in the area. In this way it would be possible to avoid certain objectionable features of the Icelandic proposals, such as the total exclusion of certain kinds of British vessels and the exclusion of all British vessels from certain areas. However, this scheme also was not accepted by the Icelandic Ministers who insisted that no scheme would suffice which did not exclude British trawlers (but not Icelandic trawlers) from certain "closed areas". The United Kingdom Ministers accordingly undertook to consider the possibility of accepting certain closed areas if these could be justified on conservation grounds. It was agreed to resume the discussions in Reykjavik very shortly.

35. United Kingdom Ministers visited Reykjavik for discussions with Icelandic Ministers on 11 and 12 July 1972. Icelandic Ministers showed no interest in the British proposal for an "effort-limitation" scheme but instead put forward proposals under which all waters within an inner limit, ranging from 14 miles to 27 miles from baselines, would be closed to all British vessels. The area between this inner limit and the proposed 50-mile outer limit would be divided into six sectors, of which two would be open to British vessels at any one time, with no restriction on Icelandic fishing except in an additional conservation area. Since it was calculated that the effect of this would be to eliminate about 80 per cent. of the British catch, the United Kingdom Ministers rejected these proposals as a basis for negotiation. They did, however, indicate readiness to consider a combination of area closures and catch-limitation which would result in a reduction of the British catch to a level 20 per cent. below the 1960-1969 average, and they said that some special non-discriminatory closures on conservation grounds might be acceptable in the area immediately outside the 12-mile limit.

36. In these circumstances the discussions again failed to produce agreement. The Icelandic Ministers then announced that Regulations, to be issued on 14 July 1972, would exclude all foreign vessels from fishing within the 50-mile limit after 1 September 1972. The Regulations would also provide for two conservation areas in which Icelandic fishing would be restricted. They made it clear that the publication of the Regulations need not affect arrangements which might subsequently be concluded with other countries and they stated that, as regards the United Kingdom in particular, they would try to work out a possible arrangement and would be glad to hold further talks in London or Reykjavik. The United Kingdom Delegation said that they would always be ready to consider proposals but, in face of the announcement of the imminent introduction and implementation of the Regulations, they meanwhile reserved the rights of the United Kingdom in areas outside the present 12-mile limit and gave notice that they would seek an Indication of Interim Measures of Protection from the International Court of Justice.

37. In conformity with their announced decision, the Government of Iceland issued Regulations on 14 July 1972 purporting to carry into effect their declared intention unilaterally to extend the limits of Iceland's exclusive fisheries jurisdiction to a distance of 50 miles from baselines round Iceland on 1 September 1972, and thereafter wholly to exclude the fishing vessels of other countries, including those of the United Kingdom, from that part of

the high seas which is included within those extended limits. The text of the Regulations is at Annex 9 to this Memorial.

38. On 19 July 1972 the Request made by the Government of the United Kingdom for the Indication of Interim Measures of Protection was filed with the Court. On 24 July 1972, the British Ambassador in Reykjavik was instructed to inform the Government of Iceland that, since the latter had, in a Note transmitting to the Embassy a copy of the Regulations of 14 July 1972, reaffirmed their readiness to work for a practical solution of the problems involved, the Government of the United Kingdom were asking the Court to defer the oral hearing on the Request until 1 August 1972, in order to give time for consideration of any further proposals which the Government of Iceland might wish to put forward. No such proposals having been received, the oral hearing on the Request took place on 1 August 1972, and the Court's Order thereon was made on 17 August 1972.

39. After the filing with the Court, on 19 July 1972, of the Request for the Indication of Interim Measures of Protection and the hearing of oral argument thereon on 1 August 1972, but before the delivery of the Court's Order thereon on 17 August 1972, the Government of Iceland delivered a further Note to the Government of the United Kingdom. The text of that Note, dated 11 August 1972, is set out at Annex 10 to this Memorial. It will be seen that it implied modification in two main respects of the previous Icelandic proposal for a rotating system of closed areas (see paras. 32 and 35 above). First, the Government of Iceland stated that they would be willing to "discuss the possibility" that the inner limit of the zone in which British vessels might continue to fish (albeit subject to certain restrictions) should be the 12-mile line "in several regions". Secondly, the Note indicated that the previous proposal to limit the size of British vessels that would be permitted to operate might be modified so as to allow fishing by vessels of up to 180 feet in length or about 750 to 800 gross registered tonnage: the figures that had previously been mentioned were somewhat lower than these.

40. Though this latest Icelandic communication fell far short of what was needed if a satisfactory interim settlement was to be achieved, the Government of the United Kingdom considered that they ought to continue discussions with a view to trying to reach such a settlement. Accordingly, in a Note to the Government of Iceland which was delivered on 28 August 1972, they indicated their readiness to hold such discussions "at the earliest mutually convenient date". The text of that Note is set out at Annex 11 to this Memorial. Since the Court had by then made its Order of 17 August 1972, indicating the Interim Measures of Protection which should be taken by both parties, the Government of the United Kingdom took the view, which they made clear to the Government of Iceland, that any settlement which might be agreed between them should be compatible with that Order and in their Note they expressly recorded their own intention to co-operate in implementing the Order.

41. In reply to this the Government of Iceland delivered a further Note, dated 30 August 1972, the text of which is set out in Annex 12 to this Memorial They repeated that they did not consider the Court's Order to be binding on them "since the Court has no jurisdiction in the matter", but they left the way open to further discussions.

42. Accordingly, after the Government of Iceland had, in September 1972, rejected a proposal which had been made by the Government of the Federal Republic of Germany to hold a tripartite meeting of the officials of the three Governments, it was agreed at informal discussions in New York on 28 Sep-

tember 1972, between the Secretary of State for Foreign and Commonwealth Affairs of the Government of the United Kingdom and the Minister for Foreign Affairs of the Government of Iceland that there should be further talks between United Kingdom and Icelandic officials. These took place in Reykjavik on 5, 6 and 7 October 1972. The principal purpose of these talks was to consider possible arrangements under which various specific areas lying between the 12-mile and 50-mile lines might be closed to British vessels during certain periods of the year. On the United Kingdom side the objective was to try to find a pattern of closures, consistent with the Court's Order of 17 August 1972, which gave effect to conservation needs in a non-discriminatory way but gave due preference to the position of Iceland as a coastal State specially dependent on its coastal fisheries. A number of possible schemes were considered, each involving the closure at any one time of a fixed number of areas out of the six into which the whole zone between the 12-mile and 50-mile lines was to be divided. Two of them would have given a pattern of seasonal closures which left British vessels free to fish in areas in which, in 1971, they had taken approximately 170,000 metric tons of fish (the figure specified in the Court's Order of 17 August 1972). These were the schemes preferred by the United Kingdom officials. Two other schemes would have confined them to areas from which they had, in 1971, taken only approximately 156,000 metric tons. These were the schemes preferred by the Icelandic officials. A fifth scheme was also devised which, it was calculated, fell midway between these two positions, giving a potential catch, in 1971 terms, of approximately 163,000 metric tons. In addition, it was accepted that certain other areas would also be closed on pure conservation grounds (for example, because they were spawning areas) and certain other areas would be closed to all trawlers and seine-net fishing vessels at certain times of the year in order to protect Icelandic fishing with fixed gear. Futhermore, the Icelandic side made clear that they would also demand that the British fishing effort which could be deployed in the areas otherwise open to British fishing vessels should be further reduced by the exclusion of all such vessels above a certain size; the United Kingdom side indicated that this would not be acceptable. Except in relation to the areas set aside on pure conservation grounds and in relation to the larger Icelandic trawlers in the so-called "fixed gear areas", there was no suggestion that the activities of Icelandic vessels should be in any way restricted.

43. In these circumstances, officials were unable to agree upon a joint recommendation of any of these schemes but the position was referred to Ministers on both sides. However, the Government of Iceland then indicated that they were unable to endorse an arrangement even on the basis of either of the second group of two schemes referred to in paragraph 42 above (i.e., those relating to a catch of 156,000 metric tons) which they regarded as insufficiently restrictive of British fishing operations. They were not prepared to continue discussions on the basis of any of the patterns of closure devised by officials. However, there was then a further exchange of messages between Ministers of the two Governments through diplomatic channels and these eventually resulted in an agreement to hold further discussions at Ministerial level.

44. These further discussions took place in Reykjavik on 27 and 28 November 1972. The United Kingdom delegation pressed Icelandic Ministers to accept an area closure scheme on the lines that had been worked out by officials. But no meeting of minds could be achieved on this since, *inter alia*, Icelandic Ministers refused to accept the United Kingdom calculations as

to the effect, in terms of likely catch, of the particular closures that had been suggested: indeed, they disputed the possibility of ever calculating with any reliability what reduction of catch might be expected to result from any given scheme of area closures. It was apparently for this reason that they insisted on highly restrictive area closures—they required three out of six areas to be closed at any one time in a seasonal pattern which had a severely limiting effect—coupled with the exclusion of all vessels above a certain size. Faced with this argument, the British delegation suggested turning again to the idea which had been put forward during the discussions in June 1972 (see para. 34 above), that is to say, that instead of an area closure scheme or an overall catch-limitation scheme there should be an effort-limitation scheme under which the actual time spent on the fishing grounds by British vessels would be controlled and would be restricted to a quota of "effective fishing days" which took due account of the different catching capacities of different vessels according to their size, etc. But Icelandic Ministers professed themselves unable to believe that a scheme of the kind which had been proposed in June could be adequately policed or would produce the result, in terms of catch-reduction, that was attributed to it. They said that, while they were not opposed in principle to proceeding on the basis of an effort-limitation scheme, the actual scheme proposed by the British side was not acceptable to them and they had no alternative to put forward. In these circumstances, in the Icelandic view, there was no point in prolonging the current round of discussions. However, it was eventually agreed that there should be further study of the proposals that had been made and that a further meeting at Ministerial level should take place.

45. In due course, the Secretary of State for Foreign and Commonwealth Affairs of the Government of the United Kingdom and the Minister for Foreign Affairs of the Government of Iceland again met informally while they were both in Brussels on other business. At this meeting, in early December 1972, the Minister for Foreign Affairs asked the Secretary of State to put forward a proposal coupling an effort-limitation scheme (as had been previously proposed) with the closure, on a rotating basis, of a single area, the whole to produce a catch reduction of 25 per cent. of the 1971 total. The Secretary of State did put forward such a proposal. He then, and by subsequent messages, pressed the Minister for Foreign Affairs to agree to the resumption of formal discussions on the basis of that proposal. However, the reply from the Foreign Minister, which was eventually delivered through the British Ambassador in Reykjavik on 19 January 1973, was in the following terms: "I have discussed our meeting in Brussels and the contents of your messages of 29 December and 13 January with my colleagues. The conclusion is that the proposals involved are not acceptable and it is therefore my Government's view that the resumption of formal negotiations would not be helpful at this stage. We are, however, ready to discuss new proposals." At the same time the Minister for Foreign Affairs handed over a memorandum amplifying the views of the Government of Iceland, which were very largely unchanged from those put forward during the negotiations in the previous November. The text of that memorandum is set out in Annex 13 to this Memorial.

46. Even in the face of this evidence of the reluctance or inability of the Government of Iceland to engage in serious and reasonable negotiations, and despite the campaign of harassment of British vessels that was at the same time being conducted by Icelandic coastguard vessels (see paras. 53, 54 and 308-314 below), the Government of the United Kingdom did not abandon

their attempt to achieve an agreed interim settlement. On 22 January 1973, the British Ambassador in Reykjavik transmitted to the Minister for Foreign Affairs a personal message from the Secretary of State for Foreign and Commonwealth Affairs in reply to the Minister's own message of 19 January (see para. 45 above). After reminding the Minister of the circumstances in which the latest proposal had been put forward and of the Minister's own suggestion that the objective should be an arrangement which left the British fishing industry free to take up to 75 per cent. of its 1971 catch, the Secretary of State expressly proposed in his message "that discussions be resumed at an early date with the task of establishing whether it is possible to devise an arrangement which could reasonably be expected to produce this result". The text of a confirmatory copy of the message, which was left with the Minister for Foreign Affairs, is set out in Annex 14 to this Memorial.

47. No immediate reply was given by the Government of Iceland to the message described in paragraph 46 above. However, the British Ambassador in Reykjavik, acting on instructions, continued to press the Government of Iceland to agree to the early resumption of discussions. He also pressed for the discontinuance of the campaign of harassment of British fishing vessels which was being intensified and which, if persisted in, clearly risked producing a situation in which it would be impossible for negotiations for an amicable settlement of the dispute to be carried on. It was against this background that, on 8 March 1973, the British Ambassador in Reykjavik delivered to the Foreign Minister of the Government of Iceland yet another personal message from the Secretary of State for Foreign and Commonwealth Affairs in which the latter drew attention once more to his earlier proposal, reiterated his conviction "that the only way of dealing with this dispute in a reasonable fashion is by discussion and negotiation" and asked the Icelandic Foreign Minister to agree "to the resumption of negotiations at an early date". The full text of this message is set out in Annex 15 to this Memorial. In the light of the message, and also of his own repeated representations about continuing harassment of British fishing vessels, the British Ambassador thereafter had several discussions with Ministers of the Government of Iceland concerning the possibility of holding substantive negotiations and also concerning the possible content of any such negotiations. The Government of Iceland eventually agreed that officials of the British Government should go to Reykjavik for preliminary talks with Icelandic Ministers to clear the ground for discussions between Ministers of both Governments. The talks took place on 22 March and made some progress in identifying the issues and the areas of agreement and disagreement. The Government of the United Kingdom accordingly pressed, through the British Ambassador in Reykjavik, for an early date to be fixed for the holding of substantive negotiations at Ministerial level on both sides. However, it was not until the beginning of May that such negotiations took place.

48. On 3 and 4 May 1973, a Delegation led by Ministers of the Government of the United Kingdom again visited Reykjavik and held discussions with Ministers of the Government of Iceland. These discussions centred principally on the size of the catch which British fishing vessels should be permitted to take and on the restrictions which the Government of Iceland wished to see imposed with respect to the size and type of vessels employed and the areas in which British vessels could operate. At the beginning of the discussions the Government of Iceland put forward orally a set of proposals on all these matters. They confirmed these in writing at the end of the meeting. During the discussions the United Kingdom Delegation made a number of counter-

proposals which they confirmed in writing. But at the end of the discussions the two sides remained far apart. There is set out in Annex 16 to this Memorial the full text of a statement, reporting on the discussions, which was made to the House of Commons of the Parliament of the United Kingdom on 7 May 1973 by the Secretary of State for Foreign and Commonwealth Affairs. There is also set out in Annex 17 to this Memorial the text of the counter-proposals made by the United Kingdom Delegation at the discussions. Though the Government of Iceland undertook to study these, they were not then prepared to take the negotiations further. The hope was expressed on both sides at the end of the discussions that they might be resumed in the future, but no date for this was arranged and no further discussions were held before the date by which this Memorial was compiled (see para. 3 above). The proposals made by the United Kingdom Delegation remain open.

Events on the Fishing Grounds Since 1 September 1972

49. By its Order of 17 August 1972 indicating Interim Measures of Protection the Court required the Government of the United Kingdom, *inter alia*, to ensure that vessels registered in the United Kingdom did not take an annual catch of more than 170,000 metric tons of fish from the Sea Area of Iceland as defined by the International Council for the Exploration of the Sea as Area Va. At the same time it required the Government of Iceland to refrain from taking any measures to enforce their regulations of 14 July 1972 against vessels registered in the United Kingdom and engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone and to refrain from applying administrative, judicial or other measures against ships registered in the United Kingdom, their crews or other related persons, because of their having engaged in such fishing activities. Each Party was also enjoined to ensure that no action of any kind was taken which might aggravate or extend the dispute submitted to the Court or which might prejudice the rights of the other party in respect of the carrying out of whatever decision on the merits the Court may render.

50. The Government of the United Kingdom, for their part, have discharged the requirements thus laid on them. They have instituted a scheme, initially on an administrative basis and as from 30 October 1972, on a statutory basis, to ensure that the total catch by British fishing vessels remains within the limit set by the Court. Full details of this scheme have been supplied to the Court and to the Government of Iceland as required by paragraph (1) *(f)* of the Court's Order of 17 August 1972. The Government of the United Kingdom have also ensured, so far as it lay with them to do so, that no action has been taken which might aggravate or extend the dispute submitted to the Court or which might prejudice the rights of Iceland in respect of the carrying out of the Court's eventual decision on the merits.

51. In order to meet the campaign of harassment of British fishing vessels which is described below, the Government of the United Kingdom have made available, under the auspices of the Ministry of Agriculture, Fisheries and Food, a number of civilian support ships whose task has been to accompany the British fishing vessels and to provide them with any help, of a medical, meteorological, mechanical or similar nature, which they might require to ensure their safety. This is merely a continuation and expansion of a humanitarian service which has for some years been provided, by the Department of Trade and Industry of the Government of the United Kingdom, for British fishing vessels operating in the winter months in the waters off the

north-west of Iceland. The demands made on the service by such vessels naturally increased once it became apparent that, because of the threatening attitude of the Icelandic authorities, vessels, which were in distress or otherwise in need of such assistance could no longer put into Icelandic ports or move closer inshore without running the risk of arrest.

52. At a later stage, when the harassment became more intense, the Government of the United Kingdom also made available other civilian vessels (ocean-going tugs) who, in addition to augmenting the humanitarian support service, had the function of interposing themselves whenever necessary between British fishing vessels and the Icelandic coastguard vessels that were harassing them. These tugs were under strict orders to operate at all times in a purely defensive capacity and to comply with the requirements of good seamanship and the International Regulations for the Prevention of Collisions at Sea (as adopted at the International Conference on Safety of Life at Sea which met in London in 1960).

53. Finally, after the Icelandic campaign of harassment had reached the point where it was clear that British fishing vessels could no longer exercise their right to fish in the area unless they did so with naval protection, the Government of the United Kingdom authorized vessels of the Royal Navy on 19 May 1973 to provide such protection. In a desire to do everything reasonably possible to avoid exacerbating the situation, the Government of the United Kingdom had previously ordered their naval vessels to remain outside the 50-mile line although the area inside that line is on any view (including that of the Government of Iceland themselves) an area of the high seas and is thus an area in which they have always had every right to be. But by 19 May 1973 the violence used by Icelandic coastguard vessels had reached a pitch which made this policy no longer possible to maintain. By that date there had been no less than 20 incidents involving gun or rifle fire by Icelandic coastguard vessels and a number of attempts or threatened attempts by them to board British fishing vessels. Accordingly, vessels of the Royal Navy have since that date joined the civilian tugs in their task of providing protection in a purely defensive role. On no occasion has either any of the tugs or any vessel of the Royal Navy carried out any offensive action against Icelandic vessels. Nor has any tug or any vessel of the Royal Navy interfered with the operation or navigation of Icelandic vessels in any way beyond what has been strictly necessary to prevent, or to cause the discontinuance of, unlawful attacks by them on British fishing vessels.

54. The Government of Iceland have not complied with the requirements laid on them by the Order made by the Court on 17 August 1972. On the contrary, shortly after 1 September 1972, they instituted a campaign of harassment by Icelandic coastguard vessels of British fishing vessels operating inside the 50-mile line and that campaign has continued, with some periods of remission but overall with increasing intensity, thereafter. A more detailed account is set out in Part V of this Memorial.

55. This campaign of harassment failed in its attempt to drive British fishing vessels out of the area of high seas in question only because of the institution of naval protection on 19 May 1973. It has resulted in much material loss and damage to the trawler owners and to the trawlermen concerned. It has been conducted not only in total disregard of the Order made by the Court on 17 August 1972, but also in defiance of the accepted norms of international behaviour applicable to situations such as this where legal rights are in dispute. More specifically, it has been conducted with deliberate or reckless disregard for the safety and property of the British nationals involved.

In Part V of this Memorial, the Government of the United Kingdom will give an account, with greater particularity, of the conduct of which they complain and of the loss and damage that has been incurred by their nationals in consequence thereof. Part V also contains the observations which the Government of the United Kingdom wish to make to the Court on the legal consequences flowing from the said conduct and the said loss and damage.

PART III

FACTS CONCERNING THE CONSERVATION AND UTILIZATION OF THE FISHERIES

A. Introduction

56. The grounds on which the Government of Iceland claim that it is necessary for them to extend their fisheries limits may fairly be summarized as follows:

(1) The fish stocks are in danger and only control by Iceland of the waters over the continental shelf can effectively protect them (the "conservation problem"); and
(2) The exceptional dependence of the Icelandic population on the fishing industry makes it equitable that they should be entitled to take all the fish in that area (the "utilization problem") [1].

57. The United Kingdom, while not accepting that either of these propositions, if proved, would entitle Iceland, in law, to extend its limits unilaterally, denies that either proposition is true as a matter of fact. The United Kingdom's case is that, when the facts are examined, it appears:

(1) that the fish stocks are in no imminent danger and that all necessary measures of monitoring and control are being taken and can be taken under existing international arrangements; and
(2) that, while it is undoubtedly equitable that Iceland, as a coastal State particularly dependent on fishing, should be given some priority treatment in the waters of the area, it certainly is not just or equitable in present or any foreseeable circumstances that it should be permitted to take all the fish itself to the exclusion of the other States which over a very long period of years have shared the fishing with it.

B. The Conservation Problem

Introduction

58. There is no doubt whatever that the conservation of the fish stocks in the Iceland area is a matter of very great importance. Fish are an extremely valuable source of food and the number of fish in the sea is limited. The conservation and efficient exploitation of the fish stocks in the Iceland area is of importance not only to Iceland but also to the other countries who fish there and in particular to the United Kingdom. Furthermore, since a large proportion of the fish caught by Icelandic vessels is exported, the conservation and exploitation of the stocks is of importance to the populations who in the present or in the future may depend on the area as a source of food though they play no part in its exploitation.

[1] See the Government of Iceland's Memorandum, *Fisheries Jurisdiction in Iceland*, p. 28, *supra*, Enclosure 2 to Annex H to the Application instituting proceedings.

The Interest of the United Kingdom

59. The United Kingdom has a particular interest in the conservation and utilization of the fish stocks in this area. British vessels have been fishing in these seas for centuries. They have been trawling there for about 80 years and they have done so in a manner and on a scale comparable with their present activities for upwards of 50 years. The figures available over the last 50 years [1] show that of the demersal species (for which alone British vessels fish in these waters) they have taken a remarkably steady proportion of what (apart from the war years) has been a remarkably steady catch. Taking one year with another, the share taken by British vessels has been about half that taken by Icelandic vessels and about equal to that taken by the vessels of all other States together [1]. This catch forms an important part of the total catch of the British fishing industry [2] and the United Kingdom has always played a prominent role in the conservation of the stocks [3].

The Fisheries of the Iceland Area

60. Both pelagic and demersal fish are caught in the Iceland area. Pelagic fish (mainly herring and capelin) are (or were) [4] of great importance to the Icelanders but British vessels do not fish for them in the Iceland area, have not done so for many years and are unlikely to do so in the foreseeable future. It is demersal fish alone which are sought by British vessels in the Iceland area. The main species are cod, saithe, haddock and redfish. Of these by far the most important is the cod, which accounted for 75.9 per cent. of the United Kingdom catch in 1971.

61. Accordingly, in considering whether, as the Government of Iceland appear to assert, it is necessary, in order to conserve the fish stock, to exclude British fishing vessels from the high seas to a distance of 50 miles, it is primarily the cod stock and only secondarily the other demersal stocks which must be considered.

(a) *The cod fisheries*

62. There are two distinct cod fisheries in the Iceland area, the spawning fishery and the non-spawning fishery. The spawning fishery lies almost wholly within the 12-mile limit [5] and is accordingly exploited almost entirely by the Icelandic fishing industry. The non-spawning fishery lies largely outside that limit and is exploited partly by Icelandic vessels and partly by the vessels of other States which have for many years shared the fishery with Iceland.

63. The catch figures for 1971 were as follows:

Spawning fishery	*tons*	*Non-spawning fishery*	*tons*
Iceland	180,000	Iceland	75,000
		United Kingdom	162,000
		Western Germany	27,000
		Others	14,000
			278,000

[1] See the table at Annex 18 to this Memorial and the graph at Annex 19.
[2] See para. 137 below.
[3] See paras. 88-124 below.
[4] See paras. 83-87 below.
[5] See the map at Annex 20 to this Memorial.

Thus Iceland, with 255,000 tons out of 458,000, took rather more than half of the total catch in the two fisheries, a proportion which has not greatly changed over the last half-century.

(b) *The life history of the cod*

64. The significance of the two fisheries derives from the life history of the cod. Cod do not spawn until they are six or seven years old at the earliest. The annual spawning season takes place in March and April mainly off south-west Iceland [1] though minor spawning areas exist in fjords on the north coast. The fertilized eggs float downstream in the prevailing current system which carries them clockwise around Iceland as they develop into fry. By late summer the young cod, now fingerlings, are spread along the north coast where they move on to the sea bed over a wide area in shallow, but not necessarily inshore, water. The young cod gradually disperse along the north and east coasts over the next five to six years until they mature and migrate back upstream to breed off south-west Iceland where the cycle began. This spawning stock is joined by cod migrating from south and east Greenland to spawn at Iceland. The number varies from year to year depending on the size of the population at Greenland, but it is estimated to average between 20 per cent. and 30 per cent. of the total stock of cod spawning at Iceland. After spawning, "spent" cod from both sources disperse northward into deeper water around Iceland until they return at the next spawning season. This circular pattern is typical of all marine fish that lay floating eggs. Apart from the immigration from Greenland, there is no exchange of cod between Iceland and other areas of the North Atlantic.

(c) *The non-spawning fishery*

65. During the period of growth to sexual maturity the cod are found throughout the year on the north and east coast of Iceland and, to a lesser extent, on the west coast, both inside and outside the 12-mile limit. They are caught mainly by trawlers and exclusively for human consumption. Owing to the nature of the sea bottom, only part of the area is suitable for trawling. The main trawling grounds outside the 12-mile limit are shown on the map at Annex 20 to this Memorial. Icelandic vessels and those of some other countries (e.g., the Faroes) fish with line throughout the area but so far it has been possible to avoid conflict between the various types of fishing gear.

66. Cod reach a commercial size for human consumption at about three years of age and are subject to exploitation from then on. Young fish are protected by the mesh regulations [2].

(d) *The spawning fishery*

67. Mature cod migrate from the non-spawning stock and congregate off the south-west coast where they provide a spring fishery for spawning cod. The cod are caught as they assemble but *before* spawning has taken place. The physical condition of cod deteriorates rapidly at spawning and recently "spent" cod are seldom caught in any quantity. During the remainder of the year "recovered" mature cod appear to prefer a different depth zone from that

[1] See the map at Annex 20 to this Memorial.
[2] See para. 103 below.

used by the immature cod; they do appear in the non-spawning fishery but in relatively small numbers.

68. The catch in these fisheries depends on the size of the stock, and this in turn depends on the balance between the longer-term effect of fishing and the supply (recruitment) of young cod to the stock. The main effect of fishing is seen in the average age of the cod, but the average catch remains stable over a wide range of levels of exploitation. The main cause of changes in total catch is variation in recruitment.

(e) *Ages of cod caught*

69. Since the spawning fishery is situated wholly within the 12-mile limit and since only a part of the mature fish which have spawned and escaped capture in the spawning fishery return to the non-spawning fishery, it follows that cod caught by Icelandic vessels tend to be older than those caught by the vessels of other countries. The table at Annex 21 to this Memorial shows that in 1970 the mean age of cod caught by Icelandic vessels was 6.5 years, compared with 5.2 years for those caught by British vessels. The fish caught by Icelandic vessels in the non-spawning fishery, however (averaging 4.8 years), were actually younger than those caught by British vessels.

(f) *Recruitment*

70. The number of eggs from the spawning grounds which survive to become "recruits" to the fish stock varies largely from year to year. This variation in year class strength is caused by differences in the conditions encountered by the very vulnerable eggs and cod fry during the period of drift away from the spawning ground [1]. This has an important consequential effect on catches but in general changes in natural conditions have very little subsequent effect on the number of fish in the stock once they have safely completed the first year of life: a proportion die each year but mass mortality through starvation or adverse temperature conditions is unknown.

71. Within wide limits, the number of young fish recruited to the fishery does not depend upon the number of fish spawning. Each spawning female produces upwards of one million eggs but the number of eggs surviving to become yearlings is limited by the amount of plankton and other food capable of absorption by fry which is available on the route. Only a very small proportion of the eggs which start on the journey reach the end of it. Since the food supply in any particular year is limited, the fact that more start does not mean that more will arrive. This is illustrated by the fact that, while the spawning stock immediately after the Second World War was much greater than in more recent years, the number of fish recruited was no larger [2].

72. However, if the spawning stock is indefinitely reduced, there must come a point at which recruitment is affected. It is not known what that point is for the Icelandic cod stock or, for that matter, for any fish stock in the world. Scientific opinion differs widely as to the point at which account should be taken of the possibility that further reduction of the spawning stock will affect recruitment, and many scientists might take the view that the Icelandic spawning stock could safely be reduced somewhat below its present size.

73. The Government of the United Kingdom, however, are anxious to

[1] See para. 64 above.

[2] See the graph at Annex 22 to this Memorial.

allow a wide margin of safety and are willing to agree to restrictions which would prevent any further reduction in the size of the spawning stock. For example, the limitations on catch imposed on the United Kingdom by the Court in its Order Indicating Interim Measures of Protection in the present case, and on the Federal Republic of Germany in the case brought by that country, have been more than adequate for this purpose.

74. One of the results of the 42-mile exclusive fisheries limit granted to Iceland under the Exchange of Notes of 1961 [1] was to create a conflict of interest between Iceland, as the sole exploiter of the spring spawning fishery, and the other States who were thereafter confined to the fishery for non-spawning cod outside the limit throughout the year. It is in the interests of both that enough fish should spawn to maintain the population but, since Icelandic vessels catch mature fish in the spawning grounds before they spawn, it is in the interest of Iceland that the greatest possible number of spawners should arrive on the spawning grounds irrespective of the number required to maintain the population.

75. This is a conflict which can be resolved by agreement between the parties. The United Kingdom has no objection to Icelandic fishermen killing mature fish which are just about to spawn, provided that enough are left to maintain the population. Nor has the United Kingdom in principle any objection, should it prove necessary, to accepting by agreement restrictions on her own catch in order not only to assure a sufficient spawning stock to maintain the population but also to assure a sufficient surplus of spawners to provide the Icelanders with a reasonable catch.

76. So far, however, the problem of maintaining a sufficient spawning stock has not arisen. Over the years the proportion of mature fish arriving on the spawning grounds which have been killed before spawning has risen to 45 per cent. (1966-1970) [2] but, despite this, there is no evidence that the remaining spawners have at any time been insufficient to maintain recruitment at a satisfactory rate.

(g) *Other fish*

77. Species other than cod contribute 42.8 per cent. [3] of the catch of demersal fish in the Iceland area but only 24.1 per cent. (1971) of the United Kingdom catch. Haddock, saithe, redfish and plaice are the most important of these, providing 18.9 per cent. of the United Kingdom catch of all demersal species [4]. Saithe and redfish are found all round Iceland but, since the fish concerned are not wholly of Icelandic origin, it is not possible to estimate the effect of fishing at Iceland on the size of stocks. Plaice and haddock are also found all round Iceland but mainly on the west and north-west coasts. These originate from spawning grounds within the 12-mile limit off south-west Iceland and the condition of the stocks is largely determined by Icelandic fishing within that zone. The plaice stock is at a satisfactory level but the

---

1 Annex A to the Application Instituting Proceedings.

2 By calculation from table 13 to the *Report of the ICES/ICNAF Working Group on Cod Stocks in the North Atlantic* (ICES C.M. 1972/F: 4), a copy of which will be communicated to the Registrar of the Court in accordance with Article 43 (1) of the Rules of Court.

3 *Bulletin statistique des pêches maritimes*, 1971 (advance release); not yet published.

4 United Kingdom Sea Fisheries Statistical Tables, 1971, table 6B; a copy of these tables will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

haddock stock has dwindled since 1960 owing to reduced supplies of young fish. Non-Icelandic fishermen have taken rather less than one-third of the haddock catch in recent years [1]. This indicates that they cannot be responsible for the decline, but it is not certain whether it has been caused by adverse natural conditions, by a weak spawning stock or by the effects of Icelandic fishing for other species on inshore nursery grounds.

Conservation Measures—National or International

(a) *Introduction*

78. It has been asserted by the Government of Iceland that exclusive control by Iceland of fishing on the high seas up to a distance of 50 miles from her coast is necessary because effective conservation measures can only be taken by the coastal State; international measures of control, they allege, will prove ineffective. There is no evidence at all that this is so. Speaking generally, past experience does not suggest that conservation measures taken by single States have proved more effective than those taken by international agreement.

(b) *The view of the FAO*

79. This question was considered in a report entitled *Review of the Status of some Heavily Exploited Fish Stocks* [2] prepared by the Food and Agriculture Organization of the United Nations and presented to the United Nations Committee on the Peaceful Uses of the Seabed, etc., on 20 March 1973. This report, after reviewing the present status of the major fish stocks of the world (and describing the Iceland cod stock as "fully exploited" but not "depleted") states (para. 83):

> "Although many stocks are now heavily exploited, the number that are actually depleted, in the sense that their productivity has been significantly reduced, is small."

and continues:

> "84. There appears to be little relation between the success or otherwise of management actions and the type of jurisdiction within which the resource lies. There are, for instance, at least as many examples of depleted resources which were under the control of a single country (e.g., the sardine off South Africa) as of those occurring outside national jurisdiction (e.g., Antarctic whales, though other depleted whale stocks, such as sperm whales off western South America, have been mainly hunted within national jurisdiction)."

80. In the case of the Iceland area the existence of the North-East Atlantic Fisheries Commission, with adequate technical resources for monitoring the stocks and adequate powers to introduce any conservation measures which may be found necessary, makes conditions for international control

[1] ICES Report of North-Western Working Group, 1970, table 20: a copy of this report will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[2] FAO Fisheries Circular No. 313, FID/C/313: a copy of this report will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

particularly favourable. Accordingly, while the Government of the United Kingdom recognize the international importance of the conservation and effective exploitation of these fish stocks as a source of food, they are confident that any necessary measures can be taken by international agreement.

(c) *The growth of international conservation in the North Atlantic*

81. Indeed there has, in very recent years, been a strong movement towards international control of fishing by catch-quotas in the North Atlantic. The North-West Atlantic fisheries are controlled by the International Commission for the North Atlantic Fisheries (ICNAF). As is shown in the map at Annex 28 to this Memorial, catch-quotas for many kinds of fish (including cod) are already in force in most of the divisions of four out of the five subareas (Areas Nos. 2-5) [1]. Iceland, which, like the United Kingdom, is a member of ICNAF, has quotas in 8 out of the 11 divisions affected. In addition, catch-quotas have been agreed [2] in a number of other ICNAF divisions as indicated on that map. These quotas are due to come into effect in 1974. All the ICNAF quotas allow for 10 per cent. preference to the coastal State.

82. In the North-East Atlantic area (which includes Iceland), while other internationally agreed methods of control are in force [3], the introduction of catch-quotas is at present frustrated by the refusal of the Government of Iceland to ratify the activation of Article 7 (2) of the North-East Atlantic Fisheries Convention [4]. However, in ICES regions I, IIa, and IIb within the NEAFC area a scheme of catch-limitation has been agreed by delegates of the three countries chiefly concerned—the United Kingdom, the Soviet Union and Norway [5]. In divisions Vb1 and Vb2 (Faroes) catch-limitation proposals are under negotiation between the Governments of the United Kingdom, Denmark and other interested States [6]. In addition, at its 11th meeting in 1973, NEAFC initiated an examination of flatfish stocks in the North Sea (corresponding approximately to ICES Area IV) in preparation for catch-limitation measures [7]. Quotas are also being proposed for herring and other stocks.

(d) *The case of the Atlanto-Scandian herring*

83. In connection with the need for international control, and the inadequacy of relying on the coastal State alone, it is necessary to draw attention to the fact that Iceland has herself recently been involved in one of the worst cases of overfishing of which records are available—that of the Atlanto-

---

[1] ICNAF Annual Proceedings, Vol. 22, 1971-1972, Part II, Appendix IV, pp. 45, *et seq.*: a copy of this document will be communicated to the Registrar under Article 43 (1) of the Rules of Court.

[2] At the 23rd annual meeting of ICNAF, Copenhagen, June 1973: proceedings not yet published.

[3] See para. 103 below.

[4] See para. 98 below.

[5] NEAFC, Summary Record for 7th Session of 11th Meeting (NC 11/195, 7th Session), pp. 2-3: a copy of this record will be communicated to the Registrar under Article 43 (1) of the Rules of Court. This is a draft record, subject to amendment.

[6] NEAFC, Summary Record for 8th Session of 11th Meeting (NC 11/195, 8th Session), p. 1: a copy of this record will be communicated to the Registrar under Article 43 (1) of the Rules of Court. This is a draft record, subject to amendment.

[7] *Ibid.*, pp. 3-6.

Scandian herring. The Atlanto-Scandian herring stock had for centuries provided a valuable fishery for the drift-net and purse-seine fishermen of Iceland, Norway and Russia. The United Kingdom did not participate in this fishery at any time. In about 1960 technological improvements in purse-seine fishing, developed entirely by Icelandic fishermen, greatly increased the efficiency of the fleet and the consequential increase in catches led to a rapid increase in the amount of purse-seine fishing by Iceland and Norway. In 1966 and 1967 the combination of highly efficient techniques by a large fleet and a stock become large through good recruitment led to catches of 1½ million tons in each of these years. Since that time the effect of fishing and poorer recruitment has caused the stock to dwindle and the fishery for adult herring has ceased to exist. Regulations have now been imposed by the countries involved but the spawning stock remains extremely small and there has been no significant recruitment of young herring which could restore the fishery in the foreseeable future.

84. In this slaughter Iceland played a prominent role. Indeed, as far as the Iceland area is concerned Icelandic vessels caught on average over 80 per cent. of the herrings in this period. With these catches and those from sea areas adjoining the Iceland area the Icelandic fishing fleet exterminated almost single-handed the Icelandic spawning stock [1]. This being so, it is somewhat surprising to find that the pamphlet entitled *Iceland and the Law of the Sea* published by the Government of Iceland in 1972 [2] states (at p. 19) under the heading "The Need for Conservation":

> "As an indication of overfishing in Icelandic waters it may be pointed out that the herring catch by Iceland dropped from 763,000 tons in 1965 to 50,700 tons in 1970 . . ."

and later continues (on the same page):

> "The significance for the Icelandic economy of the harm already done to the herring and haddock stocks in Icelandic waters can perhaps best be understood in light of the fact that only five years ago the herring catch constituted more than 50% of the total catch of all species by the Icelanders whereas now that half, the herring, has been almost done away with. This is seen by the fact that in 1965 the total catch of all species caught by the Icelanders was 1,199,000 tons of which herring was 763,000 tons, but in 1970 the total catch of all species by Icelanders was 732,800 tons of which herring was only 50,700 tons."

85. What the Government of Iceland failed to draw to the attention of the readers of that pamphlet is that this disastrous piece of overfishing was almost entirely carried out, as far as the Iceland area is concerned, by Icelandic vessels. British vessels played no part at all. The actual figures as recorded in the *Bulletin statistique des pêches maritimes* are set out in tables in Annexes 23 and 24 of this Memorial and are illustrated in the graph in Annex 25. They show a rapid rise in the Icelandic catch from 136,400 tons in 1960, when the new methods were introduced, to a maximum of 590,000 tons in 1965, followed by a rapid decline to 27,600 tons by 1968. They also show that practically the whole catch was taken by Icelandic vessels.

86. The decline was not entirely due to the efforts of the Icelandic fisher-

---

[1] See the tables and graph in Annexes 23-25 to this Memorial.

[2] A copy of this pamphlet will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

men. The herring which are caught in the Icelandic area are a mixture consisting partly of fish which are spawned off the coast of Iceland and partly of fish which are spawned off the coast of Norway. Part of the decline was due to a reduction of the stock of Norwegian spawned herrings over the same period. But the role of Iceland in the destruction of the large stocks of herring which spawn off the coast of Iceland itself was even more marked. These herrings do not go far from Iceland and those caught are taken almost entirely in or near to the Iceland area (Va). The ICES Working Group on Atlanto-Scandian Herring under the chairmanship of the distinguished Icelandic biologist J. Jakobsson collected figures for the total catch of Icelandic herring (i.e., herring spawning off the coast of Iceland) taken by Icelandic and Norwegian fleets, of which the great majority were in fact taken by Icelandic vessels. These show an increase from 146,300 tons in 1960 to a maximum of 373,100 tons in 1962 followed by a decline to 79,400 tons in 1966 and 16,300 tons in 1970 [1].

87. Thus, while Iceland played a large part in the destruction of the Atlanto-Scandian herring as a whole, it was Icelandic vessels almost alone which did the damage as far as concerns the herring spawned off the Iceland coast itself. Accordingly, while the United Kingdom accepts that Iceland bitterly regrets her mistake and has taken measures of conservation with a view to repairing the damage (though so far without success), the case of the herring is not an example of the desirability, for which the Government of Iceland appear to contend, of leaving conservation to the coastal State.

International Control of Fishing in the Iceland Area

(a) *Introduction*

88. International control of fishing in the Iceland area is no new thing and, though the pressure of modern conditions may require stricter control than has served in the past, part, at least, of the credit for the remarkably stable pattern of fishing since 1953 [2] must be given to these earlier measures of international control.

(b) *The machinery of control*

(1) The International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1937 [3]

89. This was the first international convention for the regulation of methods of fishing (as opposed to fishing limits) which extended to the Iceland area. There were nine Contracting Governments, including Iceland, Germany and the United Kingdom. The Convention imposed a minimum mesh for the Iceland area of 70 mm. and also imposed minimum sizes for fish—that for cod being 24 cm.—and provided for the setting up of a Permanent Commission. Though substantially operated by the United Kingdom

---

[1] ICES Co-operative Research Report (1972), Series A, No. 30, table 20, p. 24: see the table at Annex 26 to this Memorial and the graph at Annex 27.

[2] See the figures set out in the table at Annex 18 to this Memorial and illustrated on the graph at Annex 19.

[3] HM Stationery Office, *Miscellaneous No. 5 (1937)*, Cmnd. 5494; Hudson, *International Legislation*, Vol. VII (1935-1937), p. 642.

as far as concerned British vessels, this Convention never became effective because of lack of ratification before the Second World War broke out [1].

(2) The Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1946 [2]

90. At the "Overfishing Conference" held in London in 1946, which was largely concerned with the problems of the North Sea, a new Convention was entered into for the North Atlantic, including Iceland. This Convention which replaced the Convention of 1937, and came into force on 15 April 1953, increased the mesh limit for the Iceland area to 110 mm., and the size limit in the case of cod to 30 cm. A Permanent Commission was set up.

(3) The North-East Atlantic Fisheries Convention of 1959 [3]

91. Fishing in the Iceland area is now regulated under the North-East Atlantic Fisheries Convention, signed in London on 24 July 1959. This Convention, which introduced a far wider range of conservation measures, was ratified by the United Kingdom on 27 August 1959, and came into force on 27 June 1963. The text is set out in full at Annex F to the Application instituting proceedings. The preamble to the Convention recites that:

> "The States Parties to this Convention
> Desiring to ensure the conservation of the fish stocks and the rational exploitation of the fisheries of the North-East Atlantic Ocean and adjacent waters, which are of common concern to them;
> Have agreed as follows:"

92. The area covered by the Convention corresponds to the ICES area as shown on the map at Annex 28 to this Memorial. The Iceland area is marked Va. The 14 Contracting States include Iceland and the United Kingdom, together with all the other States whose vessels fish to any extent in the Iceland area.

93. Article 3 of the Convention establishes a permanent North-East Atlantic Fisheries Commission (NEAFC), consisting of representatives of all the Contracting States, with headquarters in London. This Commission succeeded the much less powerful Permanent Commission set up under the Convention of 1946 [4] which ceased to have effect on the coming into force of the Convention of 1959. Article 6 provides that it shall be the duty of the Commission:

> "*(a)* to keep under review the fisheries in the Convention area;
> *(b)* to consider, in the light of the technical information available, what measures may be required for the conservation of the fish stocks and for the rational exploitation of the fisheries in the area;
> *(c)* to consider, at the request of any Contracting State, representations made to it by a State which is not a party to this Convention for the opening of negotiations on the conservation of fish stocks in the Convention area or any part thereof; and

---

[1] *BYBIL* 1944, p. 106.
[2] 231 *UNTS*, 199.
[3] 486 *UNTS*, 157.
[4] See para. 90 above.

(d) to make to Contracting States recommendations, based as far as practicable on the results of scientific research and investigation, with regard to any of the measures set out in Article 7 of this Convention."

94. Provision is also made for Regional Committees to perform these functions in respect of the Regions into which the area is divided. The Iceland area forms part of the northern Region (No. 1) together with the Faroes, East Greenland and the North-East Arctic [1].

95. The Commission is advised on scientific questions of fish conservation by the International Council for the Exploration of the Sea (ICES). This organization, founded in 1903, has its headquarters at Charlottenlund in Denmark. It collates fishing statistics from fishing nations, including all the members of NEAFC, and published the annual *Bulletin statistique des pêches maritimes* which is regarded as the main authoritative source of such statistics. It carries out reviews of particular stocks for NEAFC and in particular has carried out reviews of the cod stocks in the North Atlantic (including those of the Iceland Area—more recently in 1965, 1967, 1968, 1970 and 1972). These reviews, based upon statistics of the amount of fishing, the quantities landed and an age census of the fish caught, together with ancillary data, enable estimates to be made of the size of the resource and the rate of fishing (i.e., the percentage of the stock removed each year) and the evaluation of management strategies and particular conservation proposals.

96. Article 7 (1) of the Convention provides that:

"The measures relating to the objectives and purposes of this Convention which the Commission and Regional Committees may consider, and on which the Commission may make recommendations to the Contracting States, are

(a) any measures for the regulation of the size of mesh of fishing nets;
(b) any measures for the regulation of the size limits of fish that may be retained on board vessels, or landed, or exposed or offered for sale;
(c) any measures for the establishment of closed seasons;
(d) any measures for the establishment of closed areas;
(e) any measures for the regulation of fishing gear and appliances, other than regulation of the size of mesh of fishing nets;
(f) any measures for the improvement and the increase of marine resources, which may include artificial propagation, the transplantation of organisms and the transplantation of young."

As a result of reviews made by ICES, the Commission has recommended to the Contracting States, and the Contracting States have accepted and imposed on their fishing vessels, various conservation measures of the type described in Article 7 (1) of the Convention, namely, measures for the regulation of the size of mesh of fishing nets [2], for the minimum size of fish to be landed [2], and for the establishment of closed areas and seasons. Of these, the mesh and size regulations apply to the Iceland area [3].

---

[1] See the map at Annex 28 to this Memorial.

[2] See para. 103 below.

[3] For the recommendations now in force, see the list issued by the Commission of current recommendations agreed by the Commission up to and including its 10th Meeting: a copy of this list will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

97. No measures for regulating catch have yet been recommended in the Iceland area or elsewhere but, by Article 7 (2) of the Convention, power to recommend measures for regulating the amount of total catch, or the amount of fishing effort in any period, may be added to the Commission's existing powers under Article 7 (1) on a proposal adopted by not less than a two-thirds majority of the Delegations present and voting and subsequently accepted by all Contracting States in accordance with their respective constitutional procedures. Such a proposal empowering the Commission to recommend measures of both control and effort-limitation was unanimously adopted by the Commission (including, of course, the Icelandic delegation) at the 8th Meeting in 1970. This recommendation has now been accepted by all the Contracting States except Iceland.

98. Iceland's refusal to activate section 7 (2) was not announced until the NEAFC meeting in London in May 1973. At the previous NEAFC meeting in London on 9 May 1972, the Icelandic delegation had said that:

> "as mentioned at the special meeting [of NEAFC] at the level of Ministers in Moscow [on 15 December 1971], Iceland was now prepared to accept the activation of Article 7 (2). Formal notification would be sent to the Secretariat [1]."

No such notification was, however, received by the Secretariat and, at the 11th NEAFC meeting in London on 9 May 1973, the Icelandic delegate without warning reported that:

> "on account of the extension of Icelandic limits to 50 miles and the activities of some countries within the limits, the Icelandic Government had reconsidered the position and had decided to postpone the activation of Article 7 (2)."

In reply to a question from the President, the Icelandic delegate explained that:

> "he was unable to say when his Government would ratify Article 7 (2) powers. The Icelandic Government believed that coastal States had prime responsibility to manage and prior rights to use marine resources off their coasts. Catch quotas appeared to conflict with these rights and the problem would be raised at next year's Law of the Sea Conference which was the only forum for discussion of it. It would be very difficult for Iceland to accept a catch quota system which did not harmonize with its policy in regard to fishery limits [2]."

The Icelandic delegate was asked whether Iceland would consider ratifying the Article with a reservation on its application to Icelandic waters but later stated [3] that he had telephoned his Government but had to report that the Government of Iceland remained opposed in principle to activation of Article 7 (2) of the Convention in any circumstances. This decision was not to be altered. He added, however, that his Government would continue to respect measures agreed outside the framework of the Commission.

---

[1] NEAFC, Summary Record for 3rd Session of 10th Meeting (NC 10/175, 3rd Session), p. 7: a copy of this record will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[2] NEAFC, Summary Record for 2nd Session of 11th Meeting (NC 11/195, 2nd Session), p. 1: a copy of this record will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court. This is a draft record, subject to amendment.

[3] *Ibid.*, p. 7.

99. The Commission later approved the following resolution by nine votes to none, with four delegations abstaining and one delegation taking no part in the voting:

"*The Commission*

—*Noting* the decision of the Icelandic Government not to accept the proposal of the Commission that it should be empowered to recommend measures concerning limitation of catch and effort;

—*Recalling that* at the meeting of the Commission at Ministerial level in Moscow in December 1971, the Ministers of all Contracting States defined the speedy implementation of this proposal by all member States as the primary task of the Commission;

—*Considers that* this decision not to approve the proposal will have the regrettable and damaging result of depriving the Commission of powers which are indispensable to the effective performance of its responsibilities;

—*Expresses the hope that* the Icelandic Government will soon reconsider the decision, and

—*Invites* the other Contracting States to consider as a matter of urgency what steps may be taken in the meantime to remedy this deficiency in the Commission's powers [1]."

100. Accordingly, but for this sudden volte-face by the Government of Iceland, the Commission would now have power to recommend measures for regulating total catch or fishing effort in any part of the North-East Atlantic, including the Iceland area, if it considered on scientific evidence that such measures were necessary. The result of the Government of Iceland's belated refusal has been to force the other Contracting States to start again and seek other methods of regulating catch or effort even in those NEAFC regions in which Iceland has no interest at all.

101. Under Article 8 of the Convention the Contracting States undertake to give effect to any recommendation made by the Commission under Article 7 and adopted by not less than a two-thirds majority of the Delegations present and voting, with a proviso that any Contracting State may within 90 days object to the recommendation in which case it will not be binding on that State or other States who thereafter give notice within a further limited period. The United Kingdom would certainly accept any recommendation which the Commission might make on scientific evidence as to the limitation of catch or fishing effort in the Iceland area, though the Government of the United Kingdom at present consider that limitations on catch are a more effective method of conservation than limitations on effort and would urge this view on the Commission. Nor is there any reason to suppose that the other Contracting States would not accept and enforce such a recommendation. Notwithstanding the refusal of Iceland to activate Article 7 (2), the United Kingdom remains ready and willing to negotiate measures of catch-limitation [2].

102. Article 13 (3) of the Convention provides for measures of national control in the territories of the Contracting States and national and international measures of control on the high seas for the purpose of ensuring the

[1] NEAFC, 11th Meeting, Conclusions and Recommendations (NC 11/204), p. 4: a copy of this document will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court. This is a draft record, subject to amendment.

[2] See para. 124 below.

application of the Convention and the measures in force thereunder. A scheme of joint enforcement to which 13 Contracting States, including Iceland and the United Kingdom, are parties was made under this article in 1969 and came into force as from 1 July 1971 [1].

(c) *Regulation by NEAFC—mesh and size of fish*

103. The regulations as to mesh and size of fish in the Iceland area imposed under the Convention of 1946 [2] have been made more stringent by NEAFC. At present the limits in respect of the Iceland area are:

Type of net	*Appropriate width*
Seine net	110 mm.
Such part of any trawl net as is made of cotton, hemp, polyamide fibres or polyester fibres . . .	120 mm.
Such part of any trawl as is made of any other material	130 mm.

There are also further restrictions on devices obstructing nets and on size of fish, the minimum for cod now being 34 cm.

(d) *Regulation by NEAFC—other proposed measures*

104. Since the coming into force of the North-East Atlantic Fisheries Convention the United Kingdom has constantly expressed itself willing to collaborate in any conservation measures proposed by Iceland which are supported by scientific evidence and to play a full part in the scientific investigation of any such proposals. Iceland has, however, with one exception, made no concrete proposals for such measures. The only positive proposal made by Iceland (for an area closure) was found on scientific investigation to be of negligible effect [3].

1. Icelandic proposals to Fifth NEAFC Meeting, 1967

105. At the Fifth NEAFC meeting in 1967 the Icelandic Delegation proposed [4] that an area off the north-east coast of Iceland should be closed to all trawling in the months of July to December for an experimental period of 10 years and that ICES should be asked to study and evaluate the effect of the proposed measures and report to the Commission. In a memorandum, the Icelandic Delegation also drew attention to the need for consideration of the total problem of limiting fishing effort in Icelandic waters by, for example, a quota system under which the priority position of Iceland would be respected in accordance with internationally recognized principles regarding the preferential requirements of the coastal State where the people were overwhelmingly dependent upon the resources involved for their livelihood.

106. In introducing their memorandum the Icelandic Delegation stressed the crucial importance of the cod fisheries to the Icelandic economy and the

[1] A copy of this scheme will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[2] See para. 90 above.

[3] See para. 112 below.

[4] NEAFC Report of Fifth Meeting, p. 10: a copy of this Report will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

serious concern felt by Iceland at the decline of cod stocks in its waters. They maintained that the Commissions's mesh size provisions were insufficient to arrest this decline, that increased fishing effort was now producing reduced landings, that the mortality rate for immature cod was high and largely attributable to fishing and that the spawning potential of the stock had been seriously reduced, with consequent adverse effects on recruitment. The proposed closure would apply in an area where young cod were known to congregate and grow to maturity before migrating to spawn elsewhere and where they were extensively fished by foreign trawlers.

107. The Delegation of the United Kingdom stressed the importance of the catch off Iceland for the United Kingdom fishing industry. They shared the Icelandic concern for the stocks but doubted whether the proposed closure, which they considered to be discriminatory in that it applied to trawling but not other methods of fishing, would produce results which could be demonstrated in subsequent catches and which would lead to a significant increase in the spawning stock; they were not convinced of the existence of a stock/recruitment relationship in Icelandic cod. They considered that the Icelandic proposal could not be accepted until the whole question of how best to conserve the stocks had been studied closely but they said that they would be glad to co-operate in such a study.

108. Other Delegations expressed sympathy for the Icelandic position but considered that further scientific investigation was necessary and suggested that this could be entrusted to ICES. The United Kingdom Delegation pointed out that administrative as well as scientific considerations were involved, particularly in view of the suggestion in the Icelandic memorandum that wider forms of fishery management might be necessary, and they suggested that the matter might be examined by a working group upon which both scientists and administrators would be represented. After further consultation, the Commission unanimously passed the following resolution:

> "The Commission, after considering the proposals put forward by the Icelandic Delegation for the closure to trawling of an area off the North-East coast of Iceland and the observations made by other Delegations recommends:
>
> (i) that a working group be set up consisting of representatives of the Federal Republic of Germany, Iceland, Norway, the USSR and the United Kingdom to consider the Icelandic proposal and any modification of it that may appear desirable, and report to the Sixth Meeting of the Commission;
> (ii) that ICES should be invited to send a representative to meetings of the group;
> (iii) that members of the group should consist of both administrators and scientists;
> (iv) that the Icelandic Government should be invited to convene the first meeting of the group."

2. The Sixth NEAFC Meeting, 1968

109. At the Sixth NEAFC meeting[1] held in May 1968 the Commission considered the report of the working group set up in accordance with the

[1] NEAFC, Report of Sixth Meeting, p. 10: a copy of this Report will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

resolution passed at the Fifth Meeting to consider the proposal of the Delegation of Iceland that an area off the north-east coast of Iceland should be closed to trawling during certain months of the year, for an experimental period. The working group reported that it had examined the proposal in the light of information made available by its scientific advisers who had considered the proposed ban in the light of the 1965 Report of the North-Western Working Group and other available information. It recommended that further research should be undertaken on the size and age composition of the stocks, and their seasonal distribution within the proposed area of closure and on the origin of recruitment from different areas to the Icelandic spawning stock. It also recommended that the Commission should give further consideration to the Icelandic proposal although some members of the working group had felt that the evidence already available was sufficient to justify an experimental closure. The Commission also had before it the advice of the Liaison Committee of ICES.

110. The Delegation of Iceland, while recognizing that there were uncertainties in the scientific advice on the need for and effects of the proposed closure which should be removed by further research, nevertheless considered that the stocks in the area were endangered and that immediate action was required. They stressed the great dependence of Iceland upon its fishing industry and put forward the modified proposal that there should be an experimental closure off the north-east coast of Iceland while further necessary research was undertaken. The Delegation of the United Kingdom, while recognizing Iceland's deep concern, considered that the modified proposal was objectionable in principle. The proposed experimental measure differed fundamentally from others adopted by the Commission in the past in that it would be based on inadequate scientific information. Moreover, it would be discriminatory, since it would affect adversely those countries which fished the immature stocks while benefiting Iceland which caught mature fish within its fishery limits. There was no certainty that the effects of the proposed closure could be precisely determined since they would be distributed over the whole of the Icelandic fishery. There was no clear scientific evidence of an abnormal decline in the stocks which would justify drastic measures of the sort proposed. But, recognizing Iceland's concern, the United Kingdom Delegation reiterated their willingness to co-operate in a constructive approach to the regulation of fishing intensity in the Icelandic fisheries as a whole [1]. After further consideration, the Delegation of Iceland noted that their proposal did not meet with general approval. They agreed therefore not to press for an experimental closure, on the understanding that intensive research into the whole Icelandic fishery would be carried out so that the Commission might consider at a later meeting what, if any, conservation measures would be desirable. This suggestion was welcomed and the Delegations of the countries principally concerned were requested to prepare an appropriate resolution.

111. The Commission later resolved as follows:

> "With reference to the proposal for closure to trawling of an area off the North-East coast of Iceland and to the report of the Reykjavik Working Group held in January 1968, the Commission resolves to request the International Council for the Exploration of the Sea to make

[1] NEAFC, Summary Record for 8th Session of 6th Meeting (NC 6/90, 8th Session), p. 11: a copy of this record will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

arrangements to initiate, as soon as practicable, and to co-ordinate the following additional research:

(i) to study further by all means available the size and age composition of cod and haddock stocks around Iceland and in adjacent waters;
(ii) to identify the origin and proportion of recruitment from different areas, particularly Greenland, to the Icelandic spawning cod fishery;
(iii) to study by co-ordinated tagging experiments the dispersal and survival of immature and spawning fish;
(iv) to identify, if possible, discrete racial characteristics and to estimate by this means the proportions of the different races within the spawning stock of cod;
(v) to determine by exploratory fishing, echo surveys, etc., the importance of the areas north of Iceland and any other areas not at present fished as a source of recruits to the spawning stock of cod or in other ways;

with a view to preparing, for consideration at the Ninth Meeting of the Commission, new estimates of the effects of changes in fishing effort on the yield of the Icelandic cod and haddock stocks."

3. The Ninth NEAFC Meeting, 1971

112. At the Ninth NEAFC meeting, the ICES Liaison Committee duly reported to the Commission on these matters [1]. In summarizing their findings, the Chairman of the Committee said that, as far as cod was concerned, fishing effort at Iceland had continued to decline and in 1969 was at less than half the 1964 level. Catch rates had, however, increased. The Committee had made assessments, on the basis of various assumptions of variation of fishing effort, of changes in yield per recruit. Their conclusion had been that changes of effort would not make a significant change in the total yield. They had given consideration to the effect of closing an area off the north-east coast of Iceland to trawling for the period which the Iceland Delegation had proposed. In their opinion, the effect of this closure would be negligible, and if it led to diversion of effort to other areas, e.g., around Greenland, its effect would be even smaller. As regards haddock, the situation was that catches had declined continuously from 1962-1969, because of poor year classes and a decrease in British effort. The Icelanders had, however, increased their effort and more or less maintained the level of their catch. There was no cause to change the Committee's previous assessment.

113. In fact, despite the pessimistic outlook foreshadowed in the Icelandic proposal in 1967, the stock, catches and catch per unit effort had improved in the intervening years and continued to increase. But, notwithstanding this and the report of the ICES Committee, the Icelandic Delegation again asked the Commission to close this area to all trawling in the period July to December, this for an experimental period of five years. During further discussions the Icelandic Delegation made certain criticisms of the report of the ICES Committee. They later agreed, however, that it was true that Iceland was represented on the working group and that the group had all the available information before it. This merely illustrated, they said, that there was a

[1] NEAFC, Report of the ICES Liaison Committee for 1971 (NC9/141), pp. 5-10; a copy of this report will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

division of opinion in Iceland. They asserted that the fact that the stocks were in a comparatively good state was due to temporary and external factors. They had no doubt that Iceland had a right to expand its fisheries more than others. Its dependence was illustrated by the fact that the 1967 and 1968 failure of the herring fisheries had led to a fall in its gross national product of about 17 per cent. They alleged that the measurement of British effort had been faulty and that increased mobility of distant water fleets made the situation precarious and a remedy urgent [1].

114. After further discussion the Commission passed the following resolution:

"The Commission,

Taking note of the discussion, during the Ninth Meeting, of the Icelandic proposal for the closure to fishing of an area off the North-East coast of Iceland;

Appreciating Icelandic concern regarding the effects that might arise from an expansion of effort due to the redeployment of fishing from other areas or stocks;

Noting, with interest, the intention of ICES to join with ICNAF in a study of the scientific aspects of the cod fisheries of the North Atlantic as a whole;

Requests ICES, through the Liaison Committee, to provide such further scientific information as may become available from this study; and

Resolves that, at the next meeting of the Commission, or as soon as the additional information becomes available, Regional Committee 1 should give further consideration to the need for additional measures to regulate the cod and haddock fisheries at Iceland, in the context of the position in the North Atlantic as a whole [2]."

115. Accordingly, it is clear that at that stage (May 1971) not only was there no scientific evidence that the cod stock was in danger but Iceland was not itself alleging any such danger. It was merely expressing a fear that the increased mobility of fishing fleets might lead to danger in the future and at the same time claiming a right to expand its fisheries more than others. It is the United Kingdom's case that that position is substantially unchanged today.

116. On 14 July 1971, however, following a general election, the new Government of Iceland announced their intention to extend their exclusive fisheries limits [3]. Since then they have shown less interest in the control of fishing in the Iceland area by NEAFC.

4. Special Meeting of Ministers in December 1971

117. A special meeting of NEAFC at the Ministerial level was held at Moscow in December 1971. Particular stress was laid by the Ministers on the urgency of measures for limitation of catch and effort in the NEAFC area generally and of activating Article 7 (2) of the Convention [4]. The meeting

[1] NEAFC, Summary Record for 7th Session of 9th Meeting (NC 9/150, 7th Session), pp. 2-3: a copy of this record will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[2] NEAFC, 9th Meeting, Conclusions and Recommendations (NC 9/163), Annex C: a copy of this document will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[3] See para. 17 above.

[4] See paras. 97-100 above.

declined to discuss Iceland's claim to a 50-mile fishing limit. The United Kingdom, however, suggested [1] that all countries fishing for cod and haddock in the North-East Atlantic and in the area off Iceland (i.e., in ICES areas I, IIa, IIb and Va) should agree at the meeting that during 1972 their catches of these species be limited to a tonnage not exceeding that caught on average over the previous ten years. It was stressed that this would be an interim proposal and that the total catch and its divisions between countries would need to be considered subsequently in further detail for any permanent scheme. Although this proposal received some support it was opposed by the Icelandic delegate on the grounds that it would involve a relatively high sacrifice of demersal fishing by Iceland [2]. Iceland, had in fact, achieved its highest ever demersal catch the previous year (1970) [3] and no doubt hoped to increase it still further.

5. The 10th NEAFC Meeting, 1972

118. Two reports were available to the 10th Meeting of NEAFC held in May 1972. The first [4], from the ICES Liaison Committee, stated that the Icelandic scientists had submitted more data as to fishing effort in support of their case for a closure of the area off the north-east coast of Iceland. They concluded, however [5]:

> "The new information from Iceland indicates that in recent years the Iceland catch figures for that area are larger than the figures presented by Iceland at the Working Group meeting. In the absence of concrete, detailed Icelandic data the Liaison Committee is not able to reassess the effect of a closure."

119. The other report was from the ICES/ICNAF Working Group on Cod Stocks in the North Atlantic [6]. This report, which covered the whole of the North-West Atlantic (ICNAF) as well as the whole of the North-East Atlantic (ICES on behalf of NEAFC), came to the following general conclusions [7] as to the area as a whole:

> "(i) Increasing range and mobility of the fleets fishing for cod in the North Atlantic has increased their efficiency and their ability to concentrate on those stocks that happen to be most productive at a particular time.
> (ii) For virtually all the stocks considered the current fishing mortality has reached the level where further increases in fishing will at best produce very small increases in yield per recruit, and in some stocks will actually decrease the yield per recruit.
> (iii) There is a probability that spawning stocks as low, or lower, than the present could lead to a recruitment failure and consequently to

[1] NEAFC, Summary Record for 3rd Session of Special Ministerial Meeting (NC M/7, 3rd Session), p. 6: a copy of this record will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[2] *Ibid.*, p. 16.

[3] See the table at Annex 18 to this Memorial and the graph at Annex 19.

[4] NEAFC, Report of ICES Liaison Committee for 1972 (NC 10/165): a copy of this report will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[5] *Ibid.*, para. 34.

[6] ICES CM 1972/F: 4; see footnote to para. 67 above.

[7] *Op. cit.*, Section II, para. 1.

a very large drop in total catch. Taking this into account, and to some extent the economic benefits implied by an improved catch per unit effort, a desirable level of fishing mortality (effort) would be approximately half the present level. This would not affect the average long-term yield.

(iv) If such a reduction were achieved in a single year, then, given average recruitment, the cod catch would recover close to the current level after a transitional period of five years.

(v) The same benefit could be achieved by a phased reduction involving less immediate disturbance to the catch though it would take perhaps ten years to realize the full benefits.

(vi) If the displaced fishing effort remained fishing and could be redeployed on other lightly exploited species there would be an increase in the total catch of all species and a less severe immediate loss."

120. These considerations apply, however, less to the Iceland area than to other areas. In some areas (e.g., West Greenland and Labrador/Newfoundland) fishing mortality already exceeds what is regarded as the maximum permissible figure. This is not so in the Iceland area [1]. Furthermore, while for most stocks the catch in 1970 was 20-25 per cent. of the biomass (the total estimated weight of the stock), it was somewhat lower for the Iceland stock (16 per cent.) and much higher for the Arcto-Norwegian stock (41 per cent.) [2].

6. The 11th NEAFC Meeting, 1973

121. At this meeting the Icelandic delegation put forward no proposals for conservation in the Iceland area. Instead they announced their refusal to support measures for regulation of total catch or fishing effort in any part of the NEAFC area [3].

Iceland's Fears for the Fisheries

122. The Government of Iceland have, however, expressed a fear that the depletion of the fish stocks by intensified fishing by foreign fleets is imminent. The point is made explicit in their publication *Fisheries Jurisdiction in Iceland* [4] which, at page 28, 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. 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 table at page 35 of that document shows that the United Kingdom has not increased its fishing capacity over recent years. Those States which have (e.g., Poland, Spain, the Soviet Union) had not fished to any extent in the Iceland area up to 1972. Nor have they started to do so since. Furthermore, all these States are members of NEAFC and there is no reason to

[1] *Op. cit.*, p. 30, table 10.
[2] *Op. cit.*, Section III, para. 3.1.
[3] See paras. 98-99 above.
[4] Enclosure 2 to Annex H to the Application instituting proceedings. [See p. 27, *supra*.]

suppose they would not honour any restrictions on catch which might be found necessary as a result of scientific evidence.

123. Nor does the improvement in fishing techniques present any immediate threat in the Iceland area. The non-Icelandic countries fishing there all fish with trawlers. The design of trawls has been virtually unchanged since 1924. Although freezer or factory trawlers are bigger than conventional vessels, their catch-rates are about the same as a conventional trawler. The policy of the United Kingdom fishing industry has been to scrap two conventional trawlers for each new freezer trawler. There have been improvements in navigational aids and echo-sounding equipment. Neither is likely to make any great impact in the demersal fisheries. Demersal fish location by echo-sounding equipment has not developed to anything like the extent to which purse-seiners use their sonar for the detection of pelagic fish. There is nothing wrong with capturing fish in the most efficient way possible, provided that the fishing is controlled so that the fishing mortality generated does not exceed a level which the stock can stand. There are obvious economic benefits from catching the permissible catch with a minimum of expense. It is in any case hard to reconcile Iceland's fears of increased fishing capacity by other countries with its own plans in this direction. According to figures supplied to OECD, six stern-trawlers were added to the Icelandic fishing fleet during 1972 of which one is of about 1,000 gross registered tons and the others from just under 500 gross registered tons to just over 700 gross registered tons. Furthermore Iceland has announced that a trawler-building programme comprising some 35 new vessels of various sizes will be carried out in 1973 and 1974 [1]. These new vessels are to replace some 17 old side-trawlers as well as some of the bigger herring vessels from the 1960s.

The Present Position

124. The Government of the United Kingdom conclude from the reports referred to in paragraphs 118 and 119 above that there is now a scientific case for the imposition of catch-quotas—though less urgent in the Iceland area than in other areas. They note that in the North-West Atlantic such measures have been agreed by the members of ICNAF and are in force. They are willing to negotiate such catch-limits with Iceland and the other countries concerned. They are willing, in accordance with the Resolution on Special Situations Relating to Coastal Fisheries of 1958 [2], that Iceland should be given preference in the allocation of such quotas. They have been attempting before the inception, and during the pendency, of this suit to agree such quotas [3]. They deny, however, that it is either necessary or desirable for the conservation of the stocks that Iceland should have exclusive rights over them.

C. The Utilization Problem

Introduction

125. It has been suggested by the Government of Iceland that the fact that Iceland is particularly dependent on fishing for its livelihood is in itself a

[1] OECD Draft Review of Fisheries in Member Countries, 1972, para. 12, p. 18: a copy of this document will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court.

[2] See para. 190 below.

[3] See paras. 22-48 above.

justification for the unilateral extension of its exclusive fisheries zone even if all the conservation problems can be solved without so doing [1]. It is said that the fishing grounds are the *conditio sine qua non* of the Icelandic people, that Iceland depends on fish products for its exports and that these exports are essential to Iceland which, owing to lack of resources of its own, has to import a large proportion of its needs from abroad. In order to develop its economy, it is said, Iceland must have all the fish in the area. The United Kingdom case is that this is simply not true. Not only does Iceland not need all the fish but it would be most inequitable if Iceland were allowed to take it.

The Icelandic Economy

126. Seventy years ago, the economic life of Iceland was primitive. The only occupations of any importance were farming and fishing, and there was little or no industry. Industrialization dates from the beginning of this century, and has been especially rapid in the post-war years. In 1969 only 12.9 per cent. of the working population was employed in farming (1960: 16 per cent.) and 14.2 per cent. in fisheries and fish processing (1960: 18.3 per cent.) [2]. As a result of post-war expansion, Iceland is now by any standards a moderately rich country, as measured in terms of either the usual economic criteria (such as gross national product *per capita*) or indicators of the standard of living of its people (such as housing, education and welfare, consumer durables, and so on).

(a) *Gross National Product*

127. Iceland's gross national product *per capita* in 1971 was rather more than $2,910 which placed it about half way down in the table of OECD countries. The corresponding figure for the United Kingdom was $2,455. Indeed, in four out of the five years up to 1971 Iceland's gross national product *per capita* exceeded that of the United Kingdom [3]. The rate of growth of gross national product, in real terms, is equally striking. It has been estimated by the Governor of the Central Bank of Iceland that the gross national product of Iceland has increased by an average of 3.7 per cent. per annum since the end of 1945, a rate of growth above that of the average of OECD countries. In more recent years, the overall rate has been much higher. Growth in real gross national product between 1960 and 1971 for selected countries is shown in the table at Annex 30 to this Memorial. In the case of Iceland, growth in this period was 73.1 per cent., a rate which exceeded those of most European countries and the United States of America and which was more than double the 34.5 per cent. growth rate recorded for the United Kingdom. Between 1970 and 1971 Iceland's gross national product increased, in real terms, by nearly 10 per cent., the highest rate of growth recorded in that period for OECD countries.

(b) *Consumer Expenditure*

128. Consumer expenditure in Iceland has also increased steadily in recent years. Total real consumer expenditure in Iceland increased by 66 per cent. [4]

---

[1] *Fisheries Jurisdiction in Iceland*, p. 37; Enclosure 2 to Annex H to Application instituting proceedings.

[2] See the table at Annex 29 to this Memorial.

[3] Main Economic Indicators, May 1973: OECD, pp. 150 and 151.

[4] National Accounts of OECD countries, 1960-1970: OECD, p. 10.

over the ten years up to 1970 and, in spite of a relatively high rate of growth in population, real consumer expenditure *per capita* increased by 43 per cent. over this period [1]. The corresponding rates of growth in *per capita* consumer expenditure in the United States of America and the United Kingdom were 33 per cent. and 19 per cent. respectively, while the average increase for EFTA countries was 30 per cent.

(c) *Dependence on fisheries: Diversification*

129. It is a fact that Iceland's prosperity is at present closely linked to the yearly successes (and failures) of its fishing industry. Fish and fish products even in 1970 accounted for about 80 per cent. of the total value of its exports and in 1969 fishing and fish processing contributed about 15 per cent. of its gross national product [2]. Iceland is undoubtedly heavily dependent upon fisheries as its principal source of foreign exchange earnings, and this very dependence continues to create serious difficulties for the economy of the country. But, no doubt with the dangers of this situation in mind, successive Governments in Iceland have pursued a policy of economic diversification. As long ago as 1966, even before the major economic blow brought about by the collapse of the herring fishery, Iceland adopted definite policies and made specific arrangements for industrial diversification which were considered major steps forward toward lessening its dependence upon the fishing industry. These policies have been attended with considerable success.

130. Iceland's geographical location at a point where a branch of the Gulf Stream converges with cold Polar currents has endowed the country with not only rich fish breeding grounds but also heavy precipitation which has formed the basis of abundant hydro-electric power resources. The country is also situated in an active volcanic belt providing reserves of geothermal power. Although at present Iceland is dependent upon the importation of 84 per cent. of its total energy requirements (of which petroleum products account for by far the largest share), short and long-term prospects are excellent, for its principal natural energy reserves remain virtually untouched. In broadening the base of its economy, Iceland is making most effective use of these two vast reserves. With a rather limited domestic market (both with respect to demand and availability of funds), Iceland has rightly concentrated on attracting those export-orientated industries which flourish on cheap and abundant power.

(d) *Hydroelectric power*

131. Iceland's water resources provided it in 1972 with 94 per cent. of its electricity requirements, together with practically universal central heating, and an increasing income from tourism. It has been estimated that, even at present levels of technological knowledge, well under 40 per cent. of the economically exploitable hydroelectric power resources have been tapped [3]. There is sufficient reserve potential to allow the generation of hydro-electric power at costs well below the economic minima in other countries. With the

[1] National Accounts of OECD countries, 1960-1970: OECD, pp. 39, 59, 191, 317; Main Economic Indicators, May 1973: OECD, p. 151.

[2] OECD Economic Surveys: "Iceland", March 1972, p. 7, table 2: a copy of this survey will be communicated to the Registrar under Article 43 (1) of the Rules of Court.

[3] *Op. cit.*, p. 34.

completion of the Burfell project total hydroelectric power potential will have increased by over 170 per cent. Two new plants under construction, on the Thjorsa-Tungnaa and Hrauneyjorfoss rivers, are expected to yield a further 1,700-1,800 million kW., and further plans under consideration involve the building of a new installation of equivalent capacity to the Aswan dam project and producing the cheapest electricity in the world.

132. In 1966 agreements were made with the Alusuisse (Swiss Aluminium Company) for the construction of a smelter at Straumsvik, involving a total investment of about $35 million. Exports of smelted aluminium now make a substantial contribution to foreign exchange earnings. In 1972 exports of aluminium represented 16.3 per cent., and manufactured goods in general represented 21.9 per cent., of the value of all exports [1]. In 1964 there were no exports of aluminium and exports of manufactured goods in general accounted for only 1.5 per cent. of the value of total exports [2].

(e) *Geothermal power*

133. Geothermal energy could provide, it has been estimated, a power equivalent to 7 million tons of oil per year but at only one-sixth of the cost of oil: the 1969 total fuel oil consumption was about 0.43 million tons. Experimental plants are already producing electricity at prices competitive with those of existing hydroelectric power installations. Besides providing limitless energy for central heating and glass-houses (Iceland grows a large amount of hot-house fruits, despite being close to the Arctic circle!), geothermal power has been harnessed for the diatomite industry at Lake Myvatn. Amongst the projects now under discussion in Iceland is that for a sea-chemicals industry based on the use of geothermal steam in the Reykjanes area. A proposed complete project would eventually produce a range of chemical products including salt, magnesium chloride and magnesium metal. Most of this project is still at the planning stage, but initial studies on economic feasibility have been favourable. The National Research Council, in its assessment of the possibilities for new industries, is considering development of a heavy water plant, also based on geothermal power, a seaweed-based industry and an oil refinery. Further expansion is anticipated in the production of diatomite and fertilizers.

(f) *Small-scale industries*

134. Apart from attracting foreign capital to develop power-hungry industries, Iceland stands to gain considerably through the contribution made by its smaller-scale traditional industries, in particular skins, wool products, ceramics and mink farming. Relying totally on local raw materials, their net contribution to exports is relatively high. The Industrial Development Fund, set up when Iceland joined EFTA, is providing loans to finance the expansion and rationalization of existing industries. Iceland's light industries now make a variety of products including biscuits, building components, carpets, clothing, confectionery, furniture, leather goods, margarine, plastics, paint, shoes, ships, cured skins, soft drinks and textiles.

135. Invisible earnings, led by tourism, are also making an appreciable

---

[1] *Statistical Bulletin*, Vol. 42, No. 2, May 1973, p. 21: The Statistical Bureau of Iceland and the Central Bank of Iceland.

[2] OECD Economic Surveys: "Iceland", March 1972, p. 58, table 1 (by calculation).

contribution; the table at Annex 31 to this Memorial shows the relatively high *per capita* receipts in this sector. Invisible earnings, as a whole, approximately doubled over corresponding periods in the years 1969 and 1970, and in 1971 transportation and travel represented over 23 per cent. of total exports of goods and services. As OECD comments, "the expected expansion of tourism might lead to particularly good opportunities for Iceland in the next decade" [1].

Limits on Iceland's Need for More Fish

136. The above description of the Icelandic economy puts the Icelandic claim to the fish stocks in a different light from that in which it is customarily presented. The dependence of Iceland on fishing has diminished and it is the intention of the Government of Iceland that this dependence should diminish still further. This is sound economic policy, but it is hardly compatible with the imperative need to take the whole of the fish in order to maintain a reasonable rate of growth.

The Effect on the United Kingdom Fishing Industry

137. The 50-mile limit proposed by Iceland would leave open only an insignificant part of the fishing grounds in the Iceland area [2]. The waters in the Iceland area constitute by far the most important of the United Kingdom distant-water fishing grounds and one of the longest established. British vessels fish in the Iceland area only for demersal fish [3]. Over the period 1967-1971 the United Kingdom's average annual catch from the Iceland area was about 170,000 metric tons [4]. It was valued at an average of £13 million and made up 44 per cent. by weight and 49 per cent. by value of all United Kingdom distant-water landings of these species. The landings from the Iceland area have accounted for 15.4 per cent. by weight and 19.8 per cent. by value, over the years 1967-1971, of the total landings of fresh and frozen fish (i.e., all the commercially important demersal and pelagic fish excluding shellfish) by British fishing vessels [5]. Over the same period the landings by British fishing vessels from the Iceland area accounted for 13.9 per cent. by weight and 15.1 per cent. by value of the total United Kingdom supplies of fish from all sources [6].

(a) *British vessels affected*

138. In the 12 months preceding 1 September 1972, a total of 195 British vessels fished in the Iceland area. These came from the ports of Hull, Grimsby, Fleetwood, North Shields and Aberdeen. Some of these were relatively small vessels which usually fish closer to the United Kingdom and only visit the grounds around Iceland from time to time. Others were freezer trawlers—there are 39 of these in the fleet, of which 23 visited the Iceland area during that period—which are also mainly intermittent visitors to the Iceland area,

---

[1] *Op. cit.*, p. 35.
[2] See the map at Annex 20 to this Memorial.
[3] See para. 60 above.
[4] See the table at Annex 18 to this Memorial.
[5] See the table at Annex 32 to this Memorial.
[6] See the table at Annex 33 to this Memorial.

having the capacity to stay at sea for long periods and to fish any of the grounds in the North Atlantic. About 94 per cent. by weight of the catch in 1971 was taken by "fresher" trawlers, that is to say, vessels which have no facilities for freezing fish at sea and are accordingly confined to voyages of not more than three weeks. The year 1972 was in these respects a normal year, showing perhaps a slightly higher effort deployed in the Iceland area than in some recent years. It will thus be seen that, leaving aside those vessels that do not regularly fish in the Iceland area, there remain between 160 and 170 vessels that rely on the Iceland area year by year for all or a significant part of their catch.

(b) *Other available fishing grounds*

139. The demersal fishing grounds within reach of the British fishing fleet are indicated on the map at Annex 28 to this Memorial. The respective proportions of the United Kingdom catch contributed by each of these areas in the years 1967-1971 is set out in the table at Annex 34 to this Memorial.

(c) *Opportunity of diversion*

140. It is not possible for the fishing effort from the Iceland area to be diverted at economic levels to other fishing grounds. The remaining grounds in the North-East Arctic (Barents Sea, Norwegian Sea, Bear Island, Spitzbergen) are approaching twice the distance away from the United Kingdom, with harsh (and during long periods of the year extremely harsh) weather and sea conditions. It is unsafe for trawlers not capable of withstanding such conditions to operate on these grounds. Catch rates in this area have already fallen from the high levels recorded in the late 1960s and the ICES Liaison Committee's report in May 1972 to the 10th Meeting of the North-East Atlantic Fisheries Commission predicted a continuing fall in catch levels for 1973. The Committee's report to the Commission's meeting in May 1973 pointed out that a sacrifice in catch in coming years could make a significant contribution to the future size of the spawning stock. In any case, any substantial diversion to this North-East Arctic area by trawlers (both British and others) displaced from the Iceland area would still further depress catch rates below economic levels.

141. There is no prospect of the displaced "fresher" trawlers making up their loss in catch by fishing the grounds of the North-West Atlantic since the longer voyage time (roughly two-and-a-half times the distance from Iceland) would leave them with an unprofitably short period of fishing. In effect, only freezer trawlers can operate on these distant-water grounds from which the United Kingdom took a catch of 7,652 tons in 1971. However, these vessels account for only 6 per cent. of the total United Kingdom catch in the Iceland area and their opportunities to increase their catches in the North-West Atlantic are severely limited by schemes of quota limitation, recently approved by the International Commission for the North-West Atlantic Fisheries (ICNAF), which became operative from January 1973 in four of the five sub-areas into which the Commission's area is divided. In these sub-areas, under the present arrangements, the United Kingdom's catch is limited to just over 24,000 tons and, although there is as yet no limitation in catches in the remaining sub-area (where the United Kingdom catch was 2,731 tons in 1971), it is evident that increased catches in the North-West Atlantic as a whole can at the best replace only a small fraction of the catch in the Iceland

area and can offer no solution to the difficulties of the "fresher" trawlers which constitute the great majority of the vessels which would suffer by exclusion from Icelandic grounds.

142. Distant-water trawlers displaced from Iceland could not profitably fish on near-water or middle-water grounds. The catch rates per hour in the North Sea, for example, are only one-sixth of those in the Iceland area (one-third when expressed as catch per day absent from port). Furthermore, these fisheries are mixed, unlike the essentially single-species grounds in the distant-water regions, and this factor would also seriously impair fishing operations and their financial returns. These grounds nearer home are in any case already fully exploited: any additional effort by British and other vessels diverted from the Iceland area would reduce catch rates, further deplete fish stocks and depress the economic performance of the traditional near-water and middle-water sectors of the British fleet and, in turn, the current returns of the British inshore fleet.

143. In general, therefore, modern distant-water trawlers, such as are used by the British fishing fleet in the Iceland area, equipped with expensive and sophisticated technical gear and having inflexibly high operating costs, could not, if excluded from the Iceland area, hope to gain, let alone sustain, fish yields which would keep them in business.

(d) *Economic consequences*

144. Given this lack of alternative fishing opportunity, the exclusion of British fishing vessels from the Iceland area would have very serious adverse consequences, with immediate results for the affected vessels and with damage extending over a wide range of supporting and related industries. There would very quickly have to be a withdrawal of some vessels from service. Most of those vessels now operating at or near the margin of profitability would have to be withdrawn at once, since they could not operate profitably on any of the grounds open to them. But others would have to follow and the number of vessels withdrawn would increase rapidly and include the more modern vessels as reducing catch rates depressed returns below operating costs in the areas to which they had been diverted or might otherwise be diverted. There is no ready market for second-hand distant-water trawlers. The scrapping of these vessels would constitute the loss of a considerable national asset.

145. Withdrawal of vessels would cause widespread unemployment amongst all sectors of the British fishing industry. At present there are about 18,000 fishermen in the United Kingdom: of these approximately 3,500 are employed on the 160-170 vessels referred to in paragraph 138 above as fishing regularly in the Iceland area. In addition it is estimated that a further 40,000-50,000 workers draw their living from the ancillary industries (e.g., shipbuilding and repairing, packing, transport and marketing). Three ports—Hull, Grimsby and Fleetwood—are especially reliant on the Iceland area, which accounted for 49.6 per cent., 49.6 per cent. and 69.2 per cent. respectively of landings at these ports in 1971 [1]. At Hull alone it is estimated that 7,000 workers (other than fishermen) derive their livelihood directly from the fishing industry. The problem would be made worse because the resultant unemployment would occur in those areas (Humberside and West Lancashire)

[1] See Annex 35 to this Memorial.

where there is a severe shortage of work and little scope for alternative employment: neither are the specialized skills of fishermen appropriate to work on shore.

146. Furthermore, to the limited extent that vessels displaced from the Iceland area could be redeployed in near-water and middle-water areas, the consequent reduction in the catch rate referred to above would affect the profitability of the vessels already fishing there and in turn force the more economically vulnerable out of service, with consequent unemployment at those ports (e.g., Lowestoft) which are concerned with the near-water and middle-water fishing fleet. Although the numbers involved would be smaller, it is expected that the impact would be proportionately greater because these smaller towns are even less able to absorb a sudden economic change of this magnitude. The employment structure at all fishing ports, both large and small, would be severely disrupted and many who have no direct connection with the fishing industry would be involved.

147. Confidence in the future of the industry as a whole would be destroyed and it would become more difficult than at present to attract investment. No industry could easily recover, if it recovered at all, from such a blow as would be inflicted on the United Kingdom fishing industry by the exclusion of the distant-water fleet from the principal fishing grounds on which it has traditionally relied and which provide nearly half its catch.

148. The exclusion of British vessels from the Iceland area would inevitably have adverse effects on consumers in the United Kingdom through higher fish prices and through greater variability in supplies. The United Kingdom market for fish is characterized by a high demand for demersal species, particularly cod, haddock and plaice. If supplies of fish taken from the Icelandic area by British vessels were cut off in the manner threatened, the immediate effect in the United Kingdom would be to reduce total supplies of fish available for consumption by an amount equal to that normally taken from the Iceland area. For reasons given above (see paras. 140-143), no diversion of British fishing effort from the Iceland area to other fishing grounds could be expected and any significant offsetting increase in supplies from the British fleet can therefore be discounted. The only source of alternative supplies to make good the loss suffered from the Iceland area would therefore be the world market. The entry of the United Kingdom into the world market as a major purchaser of fish would cause the present high world prices to rise to even higher levels. The cost to the United Kingdom of importing alternative supplies would be significantly higher than that of the supplies landed by British vessels from the Iceland area which they would be replacing. This additional cost would inevitably be reflected in higher price levels on the United Kingdom market. Higher prices, together with the greater fluctuation and unreliability of the supply situation which might be expected to attend any increase in British dependence on imported supplies, would cause hardship to consumers in the United Kingdom.

Conclusion

149. Iceland has a population of 204,000. It has a prosperous and rapidly diversifying economy. The policy of its Government, rightly, is to be less, not more, dependent on fish. Up to now it has enjoyed (taking one year with another) about half of the demersal catch and two-thirds of the total catch. The two countries who up to now have shared the greater part of the remaining half of the demersal catch are the Federal Republic of Germany, with 58

million inhabitants, and the United Kingdom, with 54 million. In the circumstances described above it can hardly be said that the Icelandic population is suffering hardship as a result of the present pattern of fishing or is likely to suffer hardship as a result of its continuance. From the point of view of the distribution of available fish stocks, it would be quite inequitable to double their potential catch at the expense of the needs of more populous countries.

PART IV

THE LAW RELATING TO FISHERIES JURISDICTION

A. Introduction

150. The preceding Parts of this Memorial have given a history of the dispute and have set out the factual position concerning the living resources of the area in dispute and the uses that have been made of them (and that are now being or are likely in the future to be made of them). This Part of this Memorial concerns itself with the general rules of law that are relevant to claims by coastal States to exercise fisheries jurisdiction in waters adjacent to their coasts. After some general observations concerning the approach to these matters which it is submitted that the Court should adopt, this Part will (in Section B thereof) give an historical analysis of the origins and development of the relevant rules of law and will then (in Section C) describe the current law and its application to the particular circumstances of the dispute before the Court.

B. Historical Analysis

General Approach

151. As will be shown below, it has for a considerable time been a rule of international law that a State is entitled to reserve exclusively for its own nationals the right to fish in its territorial sea. In more recent times a rule has developed to the effect that in certain circumstances a State may be entitled to reserve exclusively for its own nationals the right to fish in a zone extending beyond its territorial sea. There is, however, a fundamental difference between these two zones. A coastal State is obliged by international law to possess a territorial sea [1]. However, a coastal State is not obliged by international law to claim an exclusive fisheries zone extending beyond its territorial sea, although it may claim one under conditions prescribed by international law.

152. The consequence of this difference is that, although international law may concern itself to a considerable degree with the breadth of the territorial sea claimed by a State, it accepts without question the need for such a sea; whereas, in the case of an exclusive fisheries zone, international law concerns itself not merely with the breadth of the zone claimed but also with the question whether such a zone is necessary at all and if so on what grounds. In any case the territorial sea and the exclusive fisheries zone (where it exists)

---

[1] As Sir Arnold (now Lord) McNair put it: "To every State whose land territory is at any place washed by the sea, international law attaches a corresponding portion of maritime territory consisting of what the law calls territorial waters (and in some cases national waters in addition). International law does not say to a State: 'You are entitled to claim territorial waters if you want them.' No maritime State can refuse them. International law imposes upon a maritime State certain obligations and confers upon it certain rights arising out of the sovereignty which it exercises over its maritime territory. The possession of this territory is not optional, not dependent upon the will of the State, but compulsory." (Dissenting opinion in the *Anglo-Norwegian Fisheries* case, *I.C.J. Reports 1951*, p. 158 at p. 160.)

are both "sea areas" within the meaning of the Court's dictum in the *Anglo-Norwegian Fisheries* case to the effect that "the delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law" [1].

153. Thus the sovereign right of a State to delimit in the first instance the sea areas to which it is entitled (or which it is bound to possess) is matched by the duty under international law to respect the rules concerning the delimitation which international law prescribes for the protection of other States. Moreover, this correlation between rights and duties—a point emphasized by Judge Huber in the *Island of Palmas* case [2]—is not confined to the delimitation of the sea areas in question. It covers, too, the rights that may be exercised in the relevant zones and the corresponding duties.

154. This correlation was emphasized by Judge Alvarez in his individual opinion in the *Anglo-Norwegian Fisheries* case [3] when he said:

> ". . . 2. Each State may therefore determine the extent of its territorial sea and the way in which it is to be reckoned, provided that it does so in a reasonable manner, that it is capable of exercising supervision over the zone in question and of carrying out the duties imposed by international law, that it does not infringe rights acquired by other States, that it does no harm to general interests and does not constitute an *abus de droit*. . . .
>
> 3. States have certain rights over their territorial sea, particularly rights as to fisheries; but they also have certain duties. . . .
>
> 4. States may alter the territorial sea which they have fixed, provided that they furnish adequate grounds to satisfy the change.
>
> 5. States may fix a greater or lesser area beyond their territorial sea over which they may reserve for themselves certain rights: customs, police rights [4], etc. . . .
>
> . . . . . .
>
> 7. Any State directly concerned may raise an objection to another State's decision as to the extent of its territorial sea or of the area beyond it, if it alleges that the conditions set out above for the determination of these areas have been violated . . ."

History up to 1901

155. For the purpose of the present case it is not necessary to go further back into history than the 17th-century controversy between the concepts of *Mare Liberum*, associated with the Ducth lawyer, Hugo Grotius (whose treatise appeared in 1609) and *Mare Clausum*, associated with the English lawyer, John Selden (whose work was published in 1635). As is well known, the concept of *Mare Liberum*, or freedom of the seas, prevailed.

156. It was, however, conceded by supporters of *Mare Liberum* that the coastal State had certain rights over the sea adjacent to its coast, although the

---

[1] *I.C.J. Reports 1951*, p. 116 at p. 132.

[2] 22 *AJIL* (1928), p. 867 at p. 876.

[3] *I.C.J. Reports 1951*, p. 116 at pp. 145, 150-151.

[4] It is significant that in this Opinion, written in 1951, fisheries rights were not mentioned expressly.

extent and nature of these rights took some time to crystallize. Despite the stress which he laid upon freedom of navigation and freedom of fishing [1], Grotius considered that a State was entitled to exercise over the sea adjacent to its coast rights which bear some resemblance to those associated with the modern concept of the territorial sea. As he said in his main work, *De Jure Belli ac Pacis* (1625), sovereignty over a part of the sea may be acquired "by means of territory, in so far as those who sail over the part of the sea along the coast may be constrained from the land no less than if they should be upon the land itself" [2].

157. According to Professor Jessup, it remained for another Dutch jurist, Cornelius van Bynkershoek, in his work *De Domino Maris* (1702), to translate the idea of Grotius "into a maxim which seemed to capture the imagination and convince the intellect" [3]. The maxim was *imperium terrae finiri ubi finitur armorum potestas* and this, according to Jessup, is the origin of the "doctrine of cannon range which is preserved on some statute books to this day and which may be described as the direct progenitor of the three-mile rule".

158. Despite much research [4] the precise origins of the modern law of the territorial sea remain something of a mystery. It seems clear, however, that Bynkershoek did not invent the cannon-shot rule. It seems almost equally clear that he had not in mind any concept of a maritime belt. It was rather, says Walker, "a doctrine of port or fortress areas or zones within a range of actual guns mounted on the shore" [5]. As such, the doctrine of Bynkershoek was no more than a statement in more abstract terms of the Ordinance of the States General of 1652 to the effect that hostilities must not take place in neutral ports and, for the purpose of determining the area encompassed by a neutral port, there was no more effective test than "the actual discharge of an actual gun" [5]. Or, as Raestad puts it, "pas de canon, pas d'empire" [6].

159. Whereas French practice accorded on the whole with that of Holland, in the Scandinavian region there was a preference for expressing the extent of neutral waters in terms of a fixed distance rather than the range of guns. Referring to some negotiations between France and Denmark in 1691—it must be remembered that between 1380 and 1814 there was a joint kingdom of Denmark-Norway—Walker says: "It is probable that in these negotiations we find the meeting place of two distinct currents of practice. On the one hand there is the practice of France and other Powers as to neutrality in war-time, based on cannon range of actual cannon, i.e., protection to be given to those seeking refuge 'sous les canons des forteresses'. On the other hand, there is the practice of the Northern Powers of Europe fixing a territorial coastal belt

---

[1] According to T. W. Fulton, *The Sovereignty of the Sea* (1911), at p. 346, "Grotius places navigation and fishing in the sea on the same footing, or rather he looked upon interference with the freedom of fishing as a greater offence than interference with navigation". (See *Mare Liberum*, cap. V.)

[2] Lib. II, cap. III, section XIII (2).

[3] *The Law of Territorial Waters* (1927), p. 5.

[4] E.g., T. W. Fulton, *The Sovereignty of the Sea* (1911); Jessup, *op. cit.*; G. Gidel, *Le droit international public de la mer* (1932-1934); A. Raestad, in *Revue générale de droit international public*, 1912, p. 598; A. Raestad, *La mer territoriale* (1913); C. B. V. Meyer, *The Extent of Jurisdiction in Coastal Waters* (1937), and W. L. Walker in 22 *British Year Book of International Law*, 1945, p. 210.

[5] *Op. cit.*, p. 212.

[6] *Op. cit.*, p. 107.

measured by mileage—a practice which appears to have far more in common with the later three-mile limit than does the cannon range doctrine [1]."

160. In Scandinavia, accordingly, it was preferred to measure the extent of a State's jurisdiction from the shore in terms of leagues rather than cannon range. At this point it is necessary to draw attention to two further complications. First, in Scandinavia the league was of the order of 4 miles instead of 3 miles as in England and Germany; and that appears to be the origin of the fact that to this day Norway and Sweden (and, indeed, Iceland) claim a territorial sea of 4 miles instead of the 3 miles claimed by most States. Secondly, there was considerable variation in the number of leagues claimed in Scandinavia, a variation which may owe its explanation to the distance claimed usually being a rough attempt to assess the range of vision from the coast, which obviously is in itself very variable. At times the Danish Government seems to have claimed 4 or even 5 leagues. On the other hand, in the Franco-Danish negotiations which followed the Danish Ordinance of 1691, and which were unsuccessful, different distances were suggested for different coasts—2 leagues for the Norwegian coast as far as Trondhjem and a larger extent for Jutland.

161. The degree of the protection against capture in prize offered by neutral waters was no doubt the principal cause of controversy between the European Powers at this time as regards the extent of coastal jurisdiction but fishery disputes were not far behind. Here there were widespread variations in State practice. The Scottish kings asserted with a considerable degree of success a policy of excluding foreign fishermen not only from the many firths and lochs in their domain but also within a "land-kenning" of the coast—i.e., not nearer than the distance from which land could be discerned from the top of the mast of a fishing vessel, or about 14 miles on average. Sometimes, a double land-kenning (28 miles) was claimed [2]. England, however, laboured under a series of "Burgundy treaties", begun in 1407 and confirmed in 1496 in the famous *Intercursus Magnus* between Henry VII of England and Philip Archduke of Austria and Duke of Burgundy, which lasted for a century and a half. Under these treaties the fishermen of both countries were free to fish anywhere on the sea without licence or safe-conduct and were free to use each other's ports under stress of misfortune, weather or enemies, on paying the ordinary dues [3]. When James VI of Scotland became King James I of England in 1603 he attempted to apply the Scottish policy in England. This was principally to the disadvantage of the Dutch, who sent Ambassadors to London. These Ambassadors, relying on general international law as well as the treaties, demanded the liberty to fish to which they had grown accustomed and asserted "for that it is by the law of nations no prince can challenge further into the sea than he can command with cannon except gulfs within their land from one point to another".

162. This formulation by the Dutch Ambassadors comes near to the principle of a maritime belt and even the principle of a baseline system, as we know these principles today. It also suggests the merging of both neutrality limits and fishery limits into a common limit based on distance and governed by the range of cannon. At least another century and a half, however, were to elapse before such a merger could be said to have been achieved. In 1745 the King of Denmark-Norway, abandoning the earlier claim of 4 leagues,

---

[1] *Op. cit.*, p. 216.
[2] Fulton, *op. cit.*, pp. 83-84.
[3] *Ibid.*, pp. 72-73.

issued a decree fixing his neutrality limit at one league (4 miles). Two years later the same limit was applied by the same King to Russians fishing off the coast of Finmarken in northern Norway. Sweden for its part adopted a neutrality limit of 1 league (4 miles) in its Prize Regulations of 8 July 1788 (repeated in its Prize Regulations of 12 April 1808), and on 22 February 1812, a Danish-Norwegian Royal Decree enacted the following:

> "We wish to lay down as a rule that, in *all cases when there is a question of determining the limit of our territorial sovereignty at sea*, that limit shall be reckoned at the distance of one ordinary sea league from the island or islet farthest from the mainland, not covered by the sea." *(Italics added.)*

163. Though the Scandinavian kingdoms may be given the credit for having instituted the modern concept of a maritime belt, it is to the Italian writers Galiani (*Dei doveri dei principi neutrali*, 1782) and Azuni (*Sistema universale dei principi del diritto marittimo dell'Europa*, 1795) that there is often attributed the merger of the system of the 3-mile league with the system of cannon-shot, a merger which (leaving aside the separate Scandinavian practice of a 4-mile limit based on the different measure of the league prevailing there) was to become the generally adopted limit after about 1800. Valuable as the contribution of these Italian writers was, however, it was the practice of States that proved decisive.

164. An early instance of such a practice was the treaty of 1786 between Great Britain and France. This provided that neither Government should permit the ships belonging to the citizens or subjects of the other "to be taken within cannon-shot of the coast, nor in any of the bays, ports, or rivers of their territories by ships of war, or others having commissions from any prince, republic, or state whatever". The same wording was used in the treaty of 1794 between Great Britain and the United States. However, on 5 June 1794, the United States Congress passed an Act authorizing the District Courts to take cognizance of all captures made *within one marine league* of the American shores. In so doing, it was merely confirming in legislative form the executive instructions which President Washington had issued a year earlier (22 April 1793) when war broke out between Great Britain and France. This limit was adopted provisionally since, as the President put it, the Government "did not propose, at that time, and without amicable communication with the foreign Powers interested in the navigation of the coast, to fix on the distance to which they might ultimately insist on the right of protection". The President's proclamation also stated that the greatest distance to which any respectable assent among nations had ever been given was the range of vision, which was estimated at upwards of 20 miles, and the smallest distance claimed by any nation was "the utmost range of a cannon-ball, usually stated at one sea league". Similarly, deciding a prize case in the English High Court of Admiralty in 1805, Sir William Scott (later Lord Stowell) said: "We all know that the rule of the law on this subject is *terrae dominium finitur, ubi finitur armorum vis*, and since the introduction of firearms that distance has usually been recognized to be about three miles from the shore [1]".

165. More significant from the point of view of the present case was the application of the rule of the marine league to fisheries. As is stated in para-

---

[1] *The Anna*, 5 C Rob. 373. In an American case decided in 1812 Mr. Justice Story said: "All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores" (*The Ann*, 1 Gallison 62; 1 Federal Cases, 926).

graph 162 above, this was done in the case of the Norwegian province of Finmarken in 1747, the league in this case being the Danish/Norwegian league of 4 miles. In the Treaty of Paris between Great Britain and France (10 February 1763), which concluded the Seven Years War, liberty of fishing was granted to French subjects in the Gulf of St. Lawrence provided they did "not exercise the said fishery, except at a distance of three leagues [9 miles] from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said Gulf of St. Lawrence". Off Cape Breton Island French subjects were not to fish within 15 leagues (45 miles) of the shore. The provisions were confirmed in the Treaty of Versailles of 3 September 1783. However, in the Convention of London between Great Britain and the United States (20 October 1818) under which inhabitants of the United States were given the right to take, dry and cure fish in certain parts of the Canadian coast, the so-called "renunciatory clause" provided that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on, or within three marine miles of, any of the coasts, bays, creeks, or harbours of *His Britannic Majesty's dominions in America not included within the above*-mentioned limits".

166. In 1837 a mixed commission was appointed by the French and British Governments to examine disputes which had arisen between fishermen of the two countries over the oyster fisheries in the Bay of Granville between the British island of Jersey and the French coast. As a result of the commission's recommendations a Convention was concluded on 2 August 1839 between the United Kingdom and France. Under the Convention a closing line was drawn within which all fishing—not merely fishing for oysters—would be reserved exclusively for French subjects. This line was not a single baseline of the modern type but a series of lines determined by landmarks. In some areas the line was as far as 14 miles from the shore, but in other parts it was less than 3 miles from the shore. In other words, it was a purely *ad hoc* line. However, the parties took the opportunity to provide at the same time that "the subjects of Her Britannic Majesty shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark, along the whole extent of the coasts of the British Islands; and the subjects of the King of the French shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coasts of France . . . it is equally agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, *the mouths of which do not exceed ten miles in width, be measured from a* straight line drawn from headland to headland". Exactly the same principles were followed in the Anglo-Belgian Convention of 22 March 1852.

167. The two remaining significant events, in the evolution of State practice concerning this aspect of the matter, which occurred in the period now under consideration were the conclusion of the Convention of 1882 for Regulating the Police of the North Sea Fisheries and the conclusion of the Anglo-Danish Convention of 1901 for Regulating the Fisheries in the Ocean Surrounding the Faröe Islands and Iceland. The relevant provisions of those Conventions have been set out and described in Part II of this Memorial (see paras. 5 and 7 above). As these provisions show, the parties to them accepted that the limit of a coastal State's entitlement to exclusive fisheries was a line drawn 3 miles from low-water mark, with a possible closing-line, not exceeding 10 miles, for bays. The parties to the Convention of 1882 were the United Kingdom of Great Britain and Ireland, Belgium, Denmark, France, Germany and the

Netherlands. The Government of the United Kingdom of Sweden and Norway—Norway had been transferred from Denmark to Sweden in 1814—decided not to adhere to the Convention, although an additional article provided that they might do so for both countries or for either country. One of the reasons appeared to have been the opposition of Sweden and Norway to the 3-mile limit; another reason was their opposition to the 10-mile rule for bays[1]. The circumstances in which the Convention of 1901 was concluded, with particular reference to Iceland, are described in paragraphs 6 and 7 above.

168. As at the beginning of the 20th century, therefore, the evolution of general international law governing fisheries jurisdiction, as expressed through State practice relating at any rate to that part of the world's oceans that is in question in the present case, could fairly be summarized as follows:

(i) There was throughout the region of the North Sea and the North Atlantic a general trend towards the adoption of a 3-mile rule, measured from low-water mark, for the purpose of defining exclusive fishery limits, although, as has been shown, Sweden and Norway remained determined to uphold the 4-mile limit which they had established towards the end of the 18th and the beginning of the 19th century.

(ii) Closely associated with the 3-mile limit was the 10-mile rule for the closing-line across bays. Although this was defined in a manner rather more favourable to the coastal State in the Convention of 1882 than it had been in the Anglo-French Convention of 1839, it remained unacceptable to Sweden and Norway who considered that they had an historic right to treat all the waters of their fjords as internal waters irrespective of the width of the mouths.

Period from 1901 to 1945

169. In the early years of the present century there thus seemed to be very wide—though not universal—acceptance that the extent of a coastal State's fisheries jurisdiction was limited, broadly speaking, to a distance of 3 miles from its coast. For the most part, this was not conceived as a separate fisheries jurisdiction but rather as an incident of the coastal State's total jurisdiction over its territorial sea.

170. At this time there were four main practical purposes for which States needed to have authority to exercise jurisdiction over the seas off their coasts. These were (i) the need to regulate navigation, including the possible need to exercise criminal jurisdiction in collision cases, such as the *Franconia* case [2]; (ii) the need to regulate coastal fisheries; (iii) the need to preserve neutrality in time of war, and (iv) the need to prevent smuggling. (Other needs have since arisen, such as pollution control and the exploitation of the continental shelf, but they were not then present in the minds of those concerned.) The practical considerations affecting these four purposes were not the same in every case, and very early on in the 20th century the view was persuasively put forward that a more satisfactory régime would authorize jurisdiction to be exercised over different distances from the coast for different jurisdictional purposes. The field in which there appeared to be the strongest case for a wider national jurisdiction—wider, that is, in the sense of extending over a greater distance from the coast than could be justified for other purposes—was the field of

[1] See Fulton, *op. cit.*, p. 637.

[2] *Reg.* v. *Keyn* (1876), L.R. 2 Ex D. 63.

neutrality limits in time of war; a field in which the cannon-shot doctrine, adjusted to modern conditions, might be thought still to have a real relevance. Indeed, views to this effect had been put forward as early as the 1892 session of the Institute of Internationl Law in Geneva [1] and again in 1894 at the Paris session [2].

171. A similar discussion had subsequently taken place in the International Law Association at its conference in Brussels in October 1895. Explaining what had transpired in the Institute of International Law, Sir Thomas Barclay (who had been Rapporteur of the Third Committee of the Institute, dealing with the definition and régime of the territorial sea) had then said: "The Institute, after much discussion in committee and at the plenary sittings, adopted the distinction I proposed, that is to say, that the range of cannon should in principle determine the width of the neutral zone; while for fishery and other sovereign rights there should be a fixed and stationary limit, which the Institute extended from 3 to 6 miles, i.e., the greatest distance seawards which any European State at present lays claim to; within these 6 miles the adjacent State to be supreme in all things save the right of peaceful transit, which belongs, by universal comity, to mankind generally." The Association had then proceeded to adopt *nem con* a proposal to extend the width of the territorial sea to 6 miles [3].

172. It will be observed that Sir Thomas Barclay referred to "fishery and other sovereign rights". In so far as the right of a State to regulate fisheries, and in particular the right to reserve fisheries to its own nationals, is a "sovereign right"—as it must be because of the necessity to apply domestic legislation to foreign vessels, and possibly to enforce such legislation against such vessels by means of arrest—this points to the difficulties inherent in any attempt to separate the question of fishing zones from the question of the breadth of the territorial sea over which the coastal State has sovereignty. Nevertheless, the idea that fisheries, too, might be a field in which a coastal State could be accorded a special jurisdiction extending beyond its territorial sea was also being canvassed and, as early as the 1892 session of the Institute of International Law, Professor Aubert of the University of Christiania had proposed "de permettre à l'Etat, sur les côtes duquel la pêche se fait, d'étendre sa juridiction relative aux pêcheries (lois, police et pouvoir judiciaire) au-delà de la mer territoriale, sur la partie avoisinante de la pleine mer, de telle façon que cette juridiction, naturellement à condition d'une parfaite égalité, s'applique tant aux étrangers qu'aux nationaux". As for the width of this fisheries zone, Professor Aubert had continued: "Le principe le plus pratique me semble être cependant de voir une garantie suffisante dans ce fait que les mêmes lois seraient applicables tant aux nationaux qu'aux étrangers, et par conséquent de permettre à chaque Etat de fixer lui-même la limite [4]." The fisheries zone contemplated by Professor Aubert differed considerably from the 12-mile fisheries limit which, as is described in paragraphs 212-225 below, eventually became the rule of international law in the middle 1960s. In the first place, it was to be left to the coastal State to define the limits of the zone; and, secondly, the coastal State could not discriminate in the zone between nationals and foreigners. Nevertheless, in suggesting a separation of fisheries from the general rules applicable to the territorial sea, Professor Aubert had

---

[1] *Annuaire*, Vol. 12, pp. 104-154.
[2] *Ibid.*, Vol. 13, pp. 125-161, 281-331.
[3] *Report of the 17th Conference*, pp. 102-109.
[4] *Annuaire*, Vol. 12, pp. 104-154.

set in motion a trend of great significance in the evolution of international law which was eventually to culminate in the acceptance of the 12-mile exclusive fisheries zone.

173. Although the idea of a wider and separate system of fisheries jurisdiction was thus present in the minds of some jurists in this period, it advanced very little in the course of the first three decades of the 20th century and no substantial reflection of it can be found in State practice. The move towards wider national jurisdiction, as distinct from the territorial sea as such, focused rather on neutrality limits and, to an increasing extent, on customs, fiscal and similar matters (including in this description the enforcement of *such national legislation as the Eighteenth* Amendment to the Constitution of the United States of America—the Amendment which introduced "Prohibition"). The only international Conference of importance, convened in this period, that was concerned with general questions of maritime jurisdiction was the Conference for the Codification of International Law which met at The Hague between 12 March 1930 and 12 April 1930. Among the items which had originally been proposed for inclusion in the Agenda of that Conference were "Territorial Waters" and "Exploitation of the Products of the Sea", but the Assembly of the League of Nations decided in 1927 that, while the topic of "Territorial Waters" was "ripe" for discussion and could be included in the final Agenda, the subject of "Exploitation of the Products of the Sea" was not sufficiently "ripe" and should be set aside for the time being. Accordingly, though there was much discussion of the topic of the territorial sea—which in the end was unproductive in terms of the emergence of any *new rule of law to displace the accepted* 3-mile rule—there was no direct discussion of fisheries jurisdiction as a separate topic. But that question did, of course, receive attention as an aspect of coastal State jurisdiction over the territorial sea and, in this context, there was an interesting contribution by the delegate of Iceland which throws much light on the view taken by his Government concerning the relevant rules which his country accepted as governing the matter both under customary international law and under the Convention of 1901 (see paras. 7 and 167 above). Speaking in the Second Committee (Territorial Waters) on 5 April 1930, the Icelandic delegate (Mr. Björnsson) said:

> "I should like to explain in a few words the reasons why I voted for the 4-mile rule. In my country, 4 miles has been the limit since the middle of the seventeenth century for all purposes, including fisheries. In 1901, a Convention was concluded with Great Britain fixing a limit of 3 miles for fisheries, and therefore, we maintain that limit for fisheries and shall maintain it as long as the Convention is in force, though for all other purposes we maintain the limit of 4 miles, which has been the accepted limit for the last three hundred years.
>
> *In regard to fisheries, there are certain people in my country* who are of the opinion that the 3-mile limit is too narrow; some desire a 6-mile limit, but I think 4 miles (which is the historical basis) would be a fair limit, provided it were possible to have some rules for protecting the fisheries in certain areas outside the territorial waters.
>
> I regret that I am unable to agree entirely with Sir Maurice Gwyer [the British delegate] that fisheries are primarily of special interest to one or several nations in each particular case. Around Iceland, there is rather an international fishery; I think I may say that more than ten different nations fish in the waters round the coast of Iceland, and the number of

nations which go to the rich banks there for fishing is constantly increasing. Furthermore, there are many nations which, though they do not fish in the waters round the coast of Iceland, are interested in obtaining the produce of such fishing. Therefore, in my opinion, it is an international question how we deal with the waters round the coast of my country and certain other countries so far as concerns fisheries.

I will not deal further with the question at the moment; it may be possible for me to return to it when the proposals which the delegation for Iceland has submitted to the Committee are discussed. I should, however, like to express an innocent hope. We have seen that about half of the members of the Committee are in favour of the 3-mile limit with or without reservation, and that about half are against it. We cannot reach a conclusion as to the general rule which would be desirable; but I would express the hope that, in the future, it may be possible for the two parties to approach each other a little, and perhaps they may end by adopting our historic 4-mile rule [1]".

The reference made by Mr. Björnsson to "the proposals which the delegation for Iceland has submitted to the Committee" was a reference to a Draft Resolution and Commentary circulated to members of the Committee by Iceland on 31 March 1930. This reads as follows:

"The Conference calls attention to the desirability of the States interested giving sympathetic consideration to a request from a coastal State to assist or participate in scientific researches regarding the supply of fish in the sea and the means of protecting fry in certain local areas of the sea, and, further, to the desirability of their effectively carrying out any proposals resulting from such researches and designed to ensure the international regulation of fishing or restrictions on the use of certain fishing appliances in the areas concerned.

Reasons for the Proposed Observations

In the last thirty years, the use of dredging fishing tackle—especially the trawl—has increased very much in some places; for example, on fishing grounds in the sea round the coasts of Iceland. In the opinions of many persons, the use of such appliances has a peculiarly injurious effect, not only within the limits of the territory where its use is forbidden by several or most States, but also in certain areas outside these limits, especially where the fry lives. The view is taken that the fry is destroyed in enormous quantities, and also that the conditions of existence of the fry are adversely affected or ruined in those areas by the continual dredging. Without giving a yield worth mentioning to the fishing vessels, the stock of fish in the sea is liable to be much reduced on other neighbouring fishing grounds owing to the same cause.

It is of increasing importance to examine, on an entirely scientific basis, the general questions of the effects of fishing with dredging tackle in the said areas on the reduction in the supply of fish and on the future possibilities of improving fishing. Those researches have already been started, *inter alia*, on some grounds in the sea around Iceland, where the fishing is more international than in many other places, and they might give results within a period of some years.

---

[1] *Acts of the Conference for the Codification of International Law, held at The Hague from March 13th to April 12th 1930.* Meetings of the Committees, Vol. III. Minutes of the Second Committee, Territorial Waters, at p. 142.

As this question is of international interest and as it might be a subject for consideration whether the rules for controlling fisheries in territorial waters could not be extended to certain areas outside these limits, the Icelandic Government thinks it reasonable that the Conference should make a recommendation as proposed above, in connection with the international legal rules for territorial waters [1]."

174. The Second Committee of the Conference was unable to submit the text of a Convention on the Territorial Sea for signature. It did agree on two sets of articles, one relating to the legal status of the territorial sea, and the other to points mainly of a technical nature. It was in regard to the breadth of the territorial sea that difficulties were encountered and the Committee thought that, at least for the time being, the status of the territorial sea could not be regulated independently and the question of its breadth disregarded. But the Conference adopted unanimously a resolution recommending the Council of the League of Nations to convoke, as soon as it deemed it opportune, a new conference on the territorial sea [2].

175. In the period between The Hague Conference of 1930 and the end of the Second World War there were no major attempts, comparable to the Conference itself, to effect fundamental changes in the law, either in relation to the territorial sea in general or in relation to the possibility of separate zones of jurisdiction being established for particular purposes, and specifically for the regulation of fisheries. Such State practice as can be identified seems to have reflected the uncertainty on both these matters that the Conference left in its wake.

176. There were no multilateral instruments in this period which throw any light on the attitude of States except perhaps the Declaration of Panama of 1939 [3] in which a number of American States purported to establish what were in effect neutrality limits extending to 300 miles from the coasts of the continent. This was effectively ignored by all the States who were actually engaged in the hostilities. There were, however, two bilateral treaties in the field of fisheries itself which deserve mention. An agreement between Denmark and Sweden, which was concluded on 31 December 1932, regarding fishing in the waters bordering those two countries provided for a general limit of "3 minutes of latitude" (i.e., 3 sea miles) from the coast of each country [4]. A treaty between Iran and the USSR which was concluded on 27 August 1935 [4], provided in Article 15 for an exclusive fisheries zone of 10 sea miles.

177. So far as concerns national legislation, there were indeed a few examples during this period of countries which purported to exercise fisheries jurisdiction, of one sort or another, as far out as 12 nautical miles (e.g., Brazil, by a Decree Law No. 794 of 19 October 1938; Ecuador, by Regulations of 2 February 1938; and the USSR, by Regulations of 25 September 1935) of 20 kilometres (e.g., France, by a Decree in 1936). But most countries appeared to assert no more than the traditional 3 miles or, in some cases where there were special historic claims (e.g., Spain), 6 miles.

178. In general, therefore, it can be said that the period immediately preceding and during the Second World War was a period of marking time so far as concerns international or national action at the State level. The idea of a separate fisheries jurisdiction, going somewhat wider than the territorial

[1] *Ibid.*, at pp. 188-189.
[2] *Acts of the Conference*. Vol. I. Plenary Meetings at pp. 54, 165.
[3] 34 *AJIL* (1940), Supplement, p. 17.
[4] *United Nations Legislative Series* ST/LEG/SER. B/6, p. 794.

sea (though rarely, if at all, more than about 12 nautical miles from the coast), was gaining some ground. But the law as accepted and applied by the overwhelming majority of States throughout the period was still that a State had no fisheries jurisdiction going beyond its territorial sea, which itself (save where there were special circumstances) extended to a distance of 3 miles.

The Period Between 1945 and the Geneva Conference of 1958

179. After the Second World War, when the attention of the international community was able to turn once again to general questions of law relating to maritime jurisdiction in peacetime, the two issues which came to the fore were the perennial question of the maximum breadth of the territorial sea and the much newer question of the extent of a coastal State's jurisdiction in relation to the submarine areas adjacent to it. As regards the former of these the major event in the early part of the period was the judgment of the International Court of Justice in the *Anglo-Norwegian Fisheries* case [1]. The dispute out of which this case arose was specifically, of course, a dispute about fisheries jurisdiction, but any dispute at that time about the question of the extent of the territorial sea necessarily had an important fisheries aspect since the idea of a fisheries jurisdiction separate from a State's jurisdiction over the territorial sea had by no means gained wide acceptance. Accordingly, the principles concerning delimitation laid down by the Court in that case, principles which were subsequently adopted by the International Law Commission and in due course by the Geneva Conference on the Law of the Sea in 1958, must be regarded as of the utmost importance in the evolution of the modern law relating to fisheries jurisdiction though they are not directly raised by the issues before the Court in the present case. No less important, however, was the more general principle enunciated by the Court, in a passage already quoted in paragraph 152 of this Memorial, that the fixing of limits of maritime jurisdiction is a matter which is not for the unilateral determination of the coastal State; it must conform, if it is to be accorded legal validity against other States, to rules of international law which are generally binding on all States.

180. The question of a coastal State's jurisdiction over the seabed and subsoil adjacent to its shores came into prominence immediately after the War primarily because of the technological developments which were making the exploitation of the resources of the area a practical operation of ever-increasing importance. In the legal field the process received a considerable impetus from the "Truman Proclamation" of 28 September 1945, which declared, *inter alia*, that "the Government of the United States of America regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control", and also that "the character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected" [2]. In the *North Sea Continental Shelf* cases, the Court pointed out the "special status" of the Proclamation and showed how it "soon came to be regarded as the starting point of the positive law" on the continental shelf [3].

---

[1] *I.C.J. Reports 1951*, p. 116.
[2] 40 *AJIL* (1946), Supplement, p. 45.
[3] *I.C.J. Reports 1969*, p. 3.

181. The history of the development, during this period, of the law relating to the continental shelf shows that, so far as concerns the living resources of the waters superjacent to the continental shelf, a clear distinction emerged between, on the one hand, those resources which could be regarded as part, as it were, of the continental shelf itself (i.e., the so-called sedentary species) and which therefore should be governed by the same legal régime as the shelf in such matters as the right to regulate, and to enjoy exclusive benefits from, their exploitation and, on the other hand, those resources which were not thus intimately linked with the continental shelf (i.e., other species of fish, whether demersal or pelagic) and which were therefore governed by a different legal régime. Without pursuing this history in detail, it may be pointed out that, although the Truman Proclamation itself referred only to "natural resources", it seems reasonably clear from the context that what the Government of the United States of America were primarily concerned with were mineral resources. This was certainly the general view of what the newly emerging law relating to the continental shelf was dealing with and it obviously was the view of the International Law Commission at an early stage of its work: see the commentary on Article 3 of Part II of the International Law Commission's Draft Articles on the Continental Shelf and Related Subjects contained in the Report of the Commission on its 3rd Session [1]. However, by the time of the Commission's 5th Session there had clearly been a change in international legal opinion, since the Commission then took the view that the term "natural resources" included "the products of sedentary fisheries, in particular to the extent that they were natural resources permanently attached to the bed of the sea". The Commission made it very clear, however, that the term did not include "so-called bottom-fish and other fish which, although living in the sea, occasionally have their habitat at the bottom of the sea or are bred there" [2]. This approach, which was also reflected in the legislation of many countries, remained constant throughout the rest of the Commission's preparatory work for the 1958 Geneva Conference and was in due course given definitive form in the Geneva Convention on the Continental Shelf which provides both that the natural resources of the continental shelf (over which a coastal State has sovereign rights of exploitation) include "living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil" (Art. 2.4) and also that "the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas" (Art. 3).

182. Accordingly, though there were, of course, a number of indications pointing in the contrary direction, notably in the State practice of certain States in one region of the world (viz. Central and Southern America) and though the weight to be attached to this practice as evidence of a dissentient trend of opinion is by no means to be ignored, it will be seen that the dominant tide of international opinion during this period flowed decisively in favour of the view that the emergence of those rules of law which gave a coastal State sovereign and exclusive rights to exploit, or control the exploitation of, the resources of the continental shelf adjacent to it in no way implied any extension of the traditional limits within which that State could claim to exercise

[1] *General Assembly Official Records*, 6th Session, Supplement No. 9 (A/1858), at p. 20.

[2] *Ibid.*, 8th Session, Supplement No. 9 (A/2456), para. 70 at p. 14.

fisheries jurisdiction in the superjacent waters, except—explicitly and therefore significantly—in respect of the so-called sedentary species.

183. However, it cannot be denied that the period immediately after the Second World War was, so far as the law of the sea was concerned (and that part of it which related to fisheries jurisdiction no less than any other), a period of questioning and uncertainty in which the soundness, or at any rate the future utility, of many of the old doctrines was being challenged without, for the most part, any overwhelming consensus of opinion clearly forming in support of the new ones. It was against this background that the International Law Commission, which in 1949 had included the law of the sea among the topics which is was to study with a view to codification, pursued its task of attempting to reduce that branch of the law to a comprehensive and generally acceptable code, faithfully reflecting modern views and modern needs. It is unnecessary to rehearse in detail here the history of the work of the International Law Commission on this matter. It is sufficient to remind the Court that in the Report covering the work of its 8th Session (23 April 1956 to 4 July 1956), which it submitted to the 11th Session of the General Assembly in 1956 [1], the Commission was able to put forward for consideration 73 draft articles (with commentaries) concerning the territorial sea, the high seas, fishing and the conservation of the living resources of the sea, the contiguous zone, and the continental shelf. In accordance with the Commission's recommendation, the General Assembly decided to convoke an international Conference of plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as might be appropriate. That Conference, the first United Nations Conference on the Law of the Sea, accordingly met in Geneva from 24 February 1958 to 27 April 1958.

The Geneva Conference of 1958

184. The range of matters covered by the 1958 Conference, both those in which it was successful in producing agreement and those in which no agreement could be secured, went far beyond the issues before the Court in the present case. The history and outcome of that Conference are, in any event, matters too well known to need detailed analysis in this Memorial. Accordingly the account given here will be very summary and will concentrate on those parts of the Conference's achievements and attempted achievements which bear directly on the present dispute.

185. First, the Conference's achievements. Though it failed to reach agreement on the maximum breadth of the territorial sea or of fisheries jurisdiction—as to which see paragraphs 191-199 below—it did reach agreement, which is now embodied in the Convention on the Territorial Sea and Contiguous Zone, on the principles which govern the delimitation of the territorial sea. Since it is generally accepted that these also govern the delimitation of any other zone of coastal State jurisdiction, the Conference did settle one aspect, which in the past had given rise to much dispute, of the problem of fisheries jurisdiction. Another indirect but most important respect in which what was achieved by the Conference affected the question of fisheries jurisdiction has already been touched on in this Memorial, that is to say, the clear enunciation of the principle that a coastal State's sovereign rights over

[1] *General Assembly Official Records*, 11th Session, Supplement No. 9 (A/3159).

its continental shelf have no bearing on the question whether it has any similar rights over the superjacent waters (see para. 181 above).

186. The principal provisions adopted by the Conference on the subject of fishing were, however, directed not so much at the question of the extent to which a coastal State could exercise exclusive jurisdiction but rather at the problem of the regulation of fishing on the high seas as an area in which no State could claim exclusive jurisdiction (except over its own nationals) although all States were under a duty to co-operate with each other for the good of the community as a whole. First, it is necessary to note the provisions of the Convention on the High Seas (which are expressed to be declaratory of customary international law). These proclaim very clearly that freedom of fishing is one of the freedoms of the high seas. Article 2 of the Convention provides that "the high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty". It goes on to say that freedom of the high seas, which "comprises, *inter alia*, both for coastal and non-coastal States . . . the freedom of fishing . . . shall be exercised by all States with reasonable regard, to the interests of other States in their exercise of the freedom of the high seas". But the Conference did not confine itself to this general proposition. It also adopted instruments setting out in detail the obligations of States in this field to give effect to the principles of international co-operation and interdependence.

187. The most important of these was, perhaps, the Convention on Fishing and Conservation of the Living Resources of the High Seas. The Convention applies to the living resources of the high seas generally and declares in its preamble that there is a clear necessity that the problems involved in conservation be solved, whenever possible, on the basis of international co-operation through the concerted action of all the States concerned. Article 1 reaffirms that all States have the right for their nationals to engage in fishing on the high seas, subject *(a)* to their treaty obligations, *(b)* to the interests and rights of coastal States as provided for in the Convention, and *(c)* to the provisions in the following Articles concerning conservation of the living resources of the high seas. The Article goes on to provide that all States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas. It does not authorize a State to take measures with respect to foreign nationals. Similarly, under Article 3, when the nationals of only one State are engaged in fishing a certain stock in a certain area any necessary conservation measures are for that State alone. Under Article 4, however, if the nationals of two or more States are engaged in fishing the same stock in the same area, those States shall at the request of any of them enter into negotiations with a view to prescribing by agreement for their nationals the necessary conservation measures.

188. The question of procedures to be followed in initiating and conducting negotiations is left open by the Convention. However, on 25 April 1958 the Conference adopted a resolution on International Fishery Conservation Conventions. It read as follows:

> "The United Nations Conference on the Law of the Sea,
>
> Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as expressed in paragraph 43 of its report, as to the efficacy of international conservation organizations in furthering the conservation of the living resources of the sea.

Believing that such organizations are valuable instruments for the co-ordination of scientific effort upon the problem of fisheries and for the making of agreements upon conservation measures,

Recommends:

1. that States concerned should co-operate in establishing the necessary conservation régime through the medium of such organizations covering particular areas of the high seas or species of living marine resources and conforming in other respects with the recommendations contained in the report of the Rome Conference;
2. that these organizations should be used so far as practicable for the conduct of the negotiations between States envisaged under Articles 4, 5, 6 and 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, for the resolution of any disagreements and for the implementation of agreed measures of conservation."

189. The Convention recognizes in Article 6 that a coastal State has a special interest in the maintenance of the productivity of living resources in any area of the high seas adjacent to its territorial sea. Article 7 authorizes a coastal State to adopt unilateral measures of conservation in any area of the high seas adjacent to its territorial sea, provided that negotiations with the other States concerned have not led to an agreement within six months. Such unilateral measures cannot, however, be adopted arbitrarily. They are valid in relation to other States only if the following requirements are fulfilled: *(a)* there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery; *(b)* the measures adopted are based on appropriate scientific findings; and *(c)* such measures do not discriminate in form or in fact against foreign fishermen. Any disagreement as to the validity of the measures may be referred to the Special Commission provided for by Article 9 of the Convention. Under Article 11 the decisions of the Special Commission are binding upon the States concerned.

190. At the Conference Iceland proposed an additional Article to the Convention, reading as follows:

> "Where a people is overwhelmingly dependent upon it coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.
>
> In the case of disagreement any interested State may initiate the procedure provided for in Article 57."

On 21 April 1958 this Article was adopted in Committee [1]. But when it was put to the vote in plenary on 25 April 1958, the result was 30 in favour and 21 against, with 18 abstentions [2]. The Article thus failed to obtain the required two-thirds majority. However, on 26 April 1958 the Conference adopted a resolution, originally proposed by South Africa, which, with amendments proposed by Ecuador and Ireland, read as follows [3]:

---

[1] *United Nations Conference on the Law of the Sea, Official Records*, Vol. V, p. 120.
[2] *Ibid.*, Vol. II, p. 46.
[3] *Ibid.*, p. 48.

"*Special Situations relating to Coastal Fisheries*

The United Nations Conference on the Law of the Sea,

Having considered the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development,

Having considered also the situation of countries whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to local fishing from small boats;

Recognizing that such situations call for exceptional measures befitting particular needs,

Considering that, because of the limited scope and exceptional nature of those situations, any measures adopted to meet them would be complementary to provisions incorporated in a universal system of international law,

Believing that States should collaborate to secure just treatment of such situations by regional agreements or by other means of international co-operation,

Recommends:

1. that where, for the purpose of conservation it becomes necessary to limit the total catch of a stock or stocks of fish in an area of the high seas adjacent to the territorial sea of a coastal State, any other States fishing in that area should collaborate with the coastal State to secure just treatment of such situation, by establishing agreed measures which shall recognize any preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of other States;
2. that appropriate conciliation and arbitral procedures shall be established for the settlement of any disagreement."

191. These, then, were the Conference's positive achievements in the field of fisheries jurisdiction. On the negative side, the Conference tried, but failed, to secure agreement on the maximum breadth of the territorial sea—i.e., the zone in which a coastal State has full sovereignty, a plenitude of jurisdiction—and it also failed in an attempt to embody in a new rule of law the idea, which had been gradually emerging over the previous half-century, that a State might exercise a fisheries jurisdiction in an area outside its territorial sea proper. Precisely because this idea had not yet gained wide acceptance, the two topics were not, of course, treated separately: the discussion of the possibility of establishing a distinct rule about fisheries jurisdiction emerged as a by-product, as it were, of the Conference's attempt to agree on the basic rule concerning the territorial sea.

192. The International Law Commission itself had been unable to agree a regulation on the breadth of the territorial sea for the Conference. In its draft articles it had included the following:

"1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.
2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.
3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many

States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.

4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference."

193. At the Conference there was inevitably conflict between those States, on the one hand, which expressed firm adherence to the 3-mile rule as the only limit recognized by international law and those States, on the other hand, which proposed that every State should be free to determine the breadth of its territorial sea up to a limit of 12 miles from the coastline or other baseline applicable.

194. On 31 March 1958 the Canadian Delegation introduced in the First Committee an amendment to the International Law Commission's draft to the effect that, while the territorial sea should extend to 3 miles, the coastal State should have the same rights in respect of fishing and the exploitation of the living resources of the sea in the contiguous zone, not extending beyond 12 miles from the baseline from which the breadth of the territorial sea is measured, as in its territorial sea [1].

195. On 2 April 1958 the United Kingdom Delegation introduced in the First Committee a proposal that the limit of the breadth of the territorial sea should not extend beyond 6 miles and that an extension to this limit should not affect existing rights of passage for aircraft and vessels, including warships, outside 3 miles [2].

196. On 16 April 1958 the United States Delegation proposed that the maximum breadth of the territorial sea should be 6 miles but that the coastal State should have the same right to regulate fishing in a zone having a maximum breadth of 12 miles from the applicable baseline as in its territorial sea, subject to the rights of nationals of other States, who had fished regularly in that zone for a period of 10 years, to continue fishing there [3]. In an amended proposal introduced by the United States Delegation on 18 April 1958 the period of 10 years was reduced to five [4].

197. On 16 April 1958 the Canadian Delegation, with those of India and Mexico, put forward a proposal which also abandoned the 3-mile limit and would have allowed a coastal State to claim a territorial sea of 6 miles with a further 6-mile zone in which it would have exclusive fishing rights. In addition, if a State had declared the breadth of its territorial sea to be more than 6 miles before the opening of the Conference, the breadth so fixed, up to but not exceeding 12 miles, should be the breadth of its territorial sea [5]. On 18 April 1958 the Canadian Delegation announced the abandonment of this proposal but at the same time put forward an amended proposal, which read as follows:

"1. A State is entitled to fix the breadth of its territorial sea up to a limit of six nautical miles measured from the baseline which may be applicable in accordance with Articles 4 and 5.

---

[1] *United Nations Conference on the Law of the Sea, Official Records*, Vol. III, pp. 89, 232.

[2] *Ibid.*, pp. 103, 247-248.

[3] *Ibid.*, pp. 153, 253.

[4] *Ibid.*, pp. 163, 253.

[5] *Ibid.*, pp. 154, 232.

2. A State has a fishing zone contiguous to its territorial sea extending to a limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured in which it has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea [1]."

198. On 19 April 1958 the First Committee rejected the United States proposal (see para. 196 above) by 38 votes to 36 with 9 abstentions. Earlier, paragraph 1 of the Canadian proposal (see para. 197 above) had been rejected and paragraph 2 adopted [2]. But in plenary session paragraph 2 of the Canadian proposal was not approved [3]. The United States proposal which had failed in Committee was reintroduced in plenary but it failed to obtain the required two-thirds majority. Voting was 45 in favour with 33 against and 7 abstentions [4]. The Plenary session also rejected proposals which would have permitted extensions of the territorial sea up to a maximum of 12 miles.

199. The Conference thus failed to reach agreement either on the maximum breadth of the territorial sea or on the permissible extent of any separate fisheries jurisdiction, although the concept of such a separate jurisdiction, not extending further from the coast than the contiguous zone on which the Conference did agree (see Article 24 of the Convention on the Territorial Sea and Contiguous Zone), had attracted respectable support. The Conference adopted a resolution requesting the General Assembly of the United Nations to study at its 13th Session, in 1959, the possibility of convoking a second international conference for the further consideration of the questions left unsettled.

The Geneva Conference of 1960

200. In response to this request, the General Assembly in due course did convoke a second conference which duly met in Geneva between 17 March 1960 and 26 April 1960. Its agenda had been limited by the General Assembly to the two questions of the breadth of the territorial sea and fisheries limits.

201. The discussions in Committee were, naturally, developments of the discussions that had taken place in the 1958 Conference and showed increasing acceptance of the idea that a coastal State might possess an exclusive fisheries jurisdiction outside its territorial sea, provided that this did not have the effect of conferring such a jurisdiction beyond a distance which was generally —*though not universally—fixed 12 miles from the coast*. In addition to the different views which were expressed about the actual breadth of the territorial sea and of any additional fisheries jurisdiction zone, there were also different views about what provision should be made for continued fishing by other States who had traditionally fished in the waters of such a zone.

202. One of the first proposals to emerge in Committee was one put forward by the Delegation of the USSR on 22 March 1960. It read as follows:

"Every State *is entitled to fix the breadth of its territorial* sea up to a limit of twelve miles. If the breadth of its territorial sea is less than this limit a State may establish a fishing zone contiguous to its territorial sea provided, however, that the total breadth of the territorial sea and the fishing zone does not exceed twelve nautical miles. In this zone a State

[1] *Ibid.*, pp. 162, 167, 232.
[2] *Ibid.*, pp. 176-177, 180.
[3] *Ibid.*, Vol. II, pp. 39, 116.
[4] *Ibid.*, pp. 39, 125.

shall have the same rights of fishing and of exploitation of the living resources of the sea as it has in its territorial sea [1]."

There was also a Mexican proposal to much the same effect except that it envisaged that the fisheries jurisdiction zone beyond the territorial sea might, in certain circumstances, extend further than 12 miles from the baselines, the new distance varying (more or less inversely) according to the breadth of the territorial sea claimed.

203. On 24 March 1960 the United States Delegation, recognizing that the proposal which they had put forward at the 1958 Conference (see para. 196 above) had been criticized for not placing any limitation on the future expansion of foreign fishing in the proposed outer 6-mile zone, re-submitted it with the following proviso added:

"Any State whose vessels have made a practice of fishing in the outer zone of another State during the period of five years immediately preceding 1 January 1958 (hereinafter referred to as 'the base period'), may continue to fish within the outer six miles of that zone for the same groups of species as were taken therein during the base period to an extent not exceeding in any year the annual average level of fishing carried on in the outer zone during the said period."

The new United States proposal also included an annex providing for negotiations between the coastal State and States fishing in the outer 6-mile zone and a procedure for the settlement of disputes. The leader of the United States Delegation said that while the proposal which he had just put forward did not provide for the preferential treatment, in the outer zone, of countries overwhelmingly dependent on their coastal fisheries, his Delegation was prepared to discuss appropriate proposals with other delegations [2].

204. On 25 March 1960 the Canadian Delegation introduced a proposal which was substantially the same as the one which they put forward at the 1958 Conference (see para. 197 above). They argued that the "six plus six" formula (i.e., a 6-mile territorial sea and a 6-mile zone contiguous to it in which fishing would be reserved exclusively to the coastal State) was the only effective alternative to extension of the territorial sea for the purposes of fisheries protection [3].

205. On 29 March 1960 the leader of the United Kingdom Delegation announced that his Delegation would support the United States proposal [4]. However, on 8 April 1960 the United States and Canadian Delegations announced that they had decided, in deference to the wishes of other delegations expressed in the course of the Conference, to withdraw their proposals of 24 and 25 March, and to submit a joint proposal. Their joint proposal abandoned the United States formula for limiting foreign fishing rights in the outer 6-mile zone by quantity and species and at the same time modified the Canadian proposal for a 6-mile fishing zone exclusive to the coastal State. The text was as follows:

"1. A State is entitled to fix the breadth of its territorial sea up to a maximum of six nautical miles measured from the applicable baseline . . .

---

[1] *Second United Nations Conference on the Law of the Sea, Official Records*, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, pp. 38, 164.

[2] *Second United Nations Conference on the Law of the Sea, op. cit.*, pp. 45, 166.

[3] *Ibid.*, pp. 49, 167.

[4] *Ibid.*, p. 58.

2. A State is entitled to establish a fishing zone in the high seas contiguous to its territorial sea extending to a maximum limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured, in which it shall have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

3. Any State whose vessels have made a practice of fishing in the outer six miles of the fishing zone established by the coastal State, in accordance with paragraph 2 above, for the period of five years immediately preceding 1 January 1958, may continue to do so for a period of ten years from 31 October 1960.

4. The provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas adopted at Geneva, on 27 April 1958, shall apply *mutatis mutandis* to the settlement of any dispute arising out of the application of the foregoing paragraph.

5. The provisions of the present Convention shall not affect conventions or other international agreements already in force, as between States parties to them, or preclude the conclusion of bilateral or multilateral agreements [1]."

206. On 11 April 1960 the United Kingdom Delegation announced their reluctant support for the joint United States-Canadian proposal—reluctant because, as they explained, the original United States proposal had seemed to them to be the fairest and most balanced proposal tabled at the Conference. However, they accepted that the 10-year phase-out provision was the only one which could bring together those who wanted a longer period and those who wanted a shorter period or none at all.

207. In the same speech, the United Kingdom Delegation commented on a further proposal, which had been made by the Icelandic Delegation, to confer preferential rights on a people "overwhelmingly dependent on its coastal fisheries for its livelihood and economic development". The leader of the United Kingdom Delegation noted that this proposal was precisely the same as the one that had been put before the 1958 Conference and that had there been rejected. He pointed out that:

"The situation was fundamentally different from when the proposal first came forward in 1958. Then it was being considered against the background of a six-mile exclusive fishery limit, whereas, under the present joint Canadian and United States proposal, after a very short time the coastal States would enjoy exclusive fishing within a twelve-mile zone. Moreover, under the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, those States would be able to take care of conservation requirements beyond the twelve-mile zone. Surely coastal fishing communities in general could feel that their essential interests would be safeguarded? If it could be assumed that Iceland's proposal was meant to relate only to the very few countries whose economies were overwhelmingly dependent on their fisheries, different questions arose. If there were enough fish for all within the contiguous zone during the proposed ten-year period, there would seem to be no case for preferences; but if there were not enough fish, consideration could be given to some limitation of distant-water fishing. The United Kingdom delegation would, therefore, be ready to consider the claims

[1] *Ibid.*, pp. 121, 173.

of such countries for preferential treatment within the twelve-mile zone during the ten-year period [1]."

208. On 13 April 1960 the United States-Canadian compromise proposal, supported by the United Kingdom Delegation, was approved in the Committee of the Whole by 43 votes to 33, with 12 abstentions. Under the Conference's Rules of Procedure, only a simple majority was required. The proposal by Iceland for preferential rights for a people "overwhelmingly dependent upon its coastal fisheries for its livelihood and economic development" was also adopted by the Committee by 31 votes to 11, with 46 abstentions. The United Kingdom Delegation voted against the proposal [2]. The 12-mile proposal of 22 March 1960 was withdrawn by the Soviet Delegation which voted for a proposal sponsored by the Mexican and Venezuelan and 16 Asian and African delegations. This latter proposal similarly entitled a State to fix the breadth of its territorial sea up to a maximum of 12 nautical miles but it was rejected in Committee, receiving only 36 votes to 39, with 13 abstentions [3].

209. On 19 April 1960 the Conference reassembled in plenary session after the Easter Recess. In addition to the Icelandic proposal concerning preferential fishing rights and the United States-Canadian proposal which had been approved in Committee, certain other proposals were tabled. Only two of these require mention in this Memorial. The first was put forward on 25 April 1960 by Brazil, Cuba and Uruguay. It was an amendment to the United States-Canadian proposal which read as follows:

"1. Insert the following new paragraph after paragraph 3:

'4. The provisions of paragraph 3 shall not apply or may be varied as between States which enter into bilateral, multilateral or regional agreements to that effect.'

2. Renumber paragraph 4, which becomes paragraph 5, and add the following paragraphs:

'6. Notwithstanding the provisions of the preceding paragraphs, but subject to the paragraphs below, the coastal State has the faculty of claiming preferential fishing rights in any area of the high seas adjacent to its exclusive fishing zone when it is scientifically established that a special situation or condition makes the exploitation of the living resources of the high seas in that area of fundamental importance to the economic development of the coastal State or the feeding of its population.

7. Any other State concerned may request that any such claim be determined by the special commission provided for in Article 9 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on 26 April, 1958.

8. A special situation or condition may be deemed to exist when:

(a) The fisheries and the economic development of the coastal State or the feeding of its population are so manifestly interrelated that, in consequence, that State is greatly dependent on the living resources of the high seas in the area in respect of which preferential fishing is being claimed;

---

[1] *Second United Nations Conference on the Law of the Sea, op. cit.*, pp. 126, 168.
[2] *Ibid.*, pp. 151, 152.
[3] *Ibid.*, p. 151.

(b) It becomes necessary to limit the total catch of a stock or stocks of fish in such areas, in accordance with the provisions of the Convention referred to in paragraph 2 above.

9. The commission will determine on the basis of scientific criteria whether special conditions exist, after a hearing at which both the coastal State and fishing States concerned shall have the right to present all relevant evidence, technical, geographical, biological and economic.

10. The coastal State, to the extent and for the period of time determined by the commission, shall have preferential fishing rights in the area in question, under such limitations and to such extent as the commission finds necessary by reason of the dependence of the coastal State on the stocks of fish, while having regard to the interests of any other State or States in the exploitation of such stock or stocks of fish [1]. ' ".

210. The other additional proposal which deserves mention here was a proposal put forward by the Icelandic Delegation to amend paragraph 3 of the joint United States-Canadian proposal by adding the following words: "The provisions of this paragraph shall not apply to the situation where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development [2]."

211. Voting on the various proposals took place in plenary on 26 April 1960. Both the Icelandic proposal adopted in Committee and the Icelandic amendment to the United States-Canadian proposal were rejected [3]. The sponsors of the amendment proposed by Brazil, Cuba and Uruguay agreed orally that its new paragraph 4 should be replaced by paragraph 5 of the United States-Canadian proposal, and the amendment as so modified was adopted [3]. The voting on the joint United States-Canadian proposal, as so amended, was 54 in favour and 28 against, with 5 abstentions [4]. Since a two-thirds majority was required for the adoption of a proposal in plenary, the proposal thus failed, by one vote, to be adopted and the Conference itself ended in failure, at any rate on the formal level.

The Period after the Geneva Conference of 1960

212. But though the 1960 Conference had thus failed to produce any formal agreement on the matters referred to it, the discussions which had taken place at that Conference, and at the 1958 Conference before it, on the problem of fisheries jurisdiction, and the proposals on that matter that had been tabled and put to the vote at both Conferences, proved in the event to be of great value in the evolution of new rules of customary international law. The general consensus which the Conference revealed on the permissible extent of a coastal State's fisheries jurisdiction was, in the years which succeeded the Conference, expressed in such an unmistakable pattern of State practice, acquiesced in by other States, that, by the middle or late 1960s, there could be little room for doubt that the law had changed.

213. Evidence of the new trend had emerged even between the two Conferences of 1958 and 1960. By an Exchange of Notes between the United King-

[1] *Second United Nations Conference on the Law of the Sea, op. cit.*, pp. 13, 14, 15, 173.
[2] *Ibid.*, pp. 26, 174.
[3] *Ibid.*, p. 21.
[4] *Ibid.*, p. 30.

dom and Denmark on 27 April 1959 [1], the Anglo-Danish Convention of 1901 (see para. 7 above), which was still in force with certain subsequent modifications in relation to the Faroe Islands, was modified again. Two lines were drawn around the Faroe Islands. The first line was 6 miles from the coast and the second line was 12 miles from the coast. The Government of the United Kingdom agreed to "raise no objection to the exclusion by the competent Danish or Faroes authorities of vessels registered in the United Kingdom from fishing in the area between the coast of the Faroe Islands and the [6-mile] line . . ." (para. 1). In other words, although it was provided that "nothing in the present Agreement shall be deemed to prejudice the views held by either Government as to the delimitation and limits in international law of territorial waters or of exclusive jurisdiction in fishery matters" (para. 7)—an understandable precaution in view of the forthcoming 1960 Conference—the United Kingdom accepted for the purposes of the arrangement an exclusive fishery limit of 6 miles. Further, it was provided that, "in view of the exceptional dependence of the Faroese economy on fisheries", in three areas between 6 and 12 miles from the coast fishing by vessels registered in the Faroe Islands or Denmark and by vessels registered in the United Kingdom should, between certain dates, be limited to fishing with long line and hand line (para. 3). This was a conservation measure concluded by agreement between the parties in the spirit of the 1958 resolution on Special Situations relating to Coastal Fisheries (see para. 190 above.) Finally, in paragraph 2, it was provided that "having regard to the fisheries traditionally exercised in waters around the Faroe Islands by vessels registered in the United Kingdom, the Government of Denmark shall raise no objection to such vessels continuing to fish in the area between the [6-mile] line . . . and the [12-mile] line".

214. This Anglo-Danish agreement was very far from granting to Denmark exclusive fisheries jurisdiction in a 12-mile zone off the Faroe Islands. However, it did show *(a)* recognition that exclusive fisheries jurisdiction need not be limited to the breadth of the territorial sea, which remained at 3 miles; *(b)* acceptance that in the 12-mile zone Denmark was entitled to a preferential position, since the restriction in the three areas between 6 and 12 miles to fishing by long line and hand line, as opposed to trawling, would operate in favour of the inhabitants of the Faroe Islands; and *(c)* acceptance that conservation measures outside the exclusive fisheries jurisdiction of the coastal State must be arrived at by international agreement rather than by unilateral action on the part of the coastal State.

215. Shortly after the collapse of the 1960 Geneva Conference, and while the Government of the United Kingdom was trying to pursue and bring to a successful conclusion their negotiations with the Government of Iceland (see para. 15 above), they were also in negotiation with the Government of Norway and on 17 November 1960 the two countries concluded a Fisheries Agreement [2] in which they provided for a two-stage extension of the Norwegian exclusive fisheries zone. Article II of this Agreement provided that "as from a date of which the Norwegian Government shall give due notice to the United Kingdom Government, the latter Government shall not object to the exclusion, by the competent authorities of the Norwegian Government, of vessels registered in the territory of the United Kingdom from fishing in an area contiguous to the territorial sea of Norway extending to a limit of 6 miles

[1] 337 *UNTS* 416.
[2] 398 *UNTS* 189.

from the baseline from which that territorial sea is measured". The date fixed by the Norwegian Government for the purpose of bringing Article II into operation was 1 April 1961. The Agreement also provided, in Article III, that "during the period between the date referred to in Article II of this Agreement [i.e., 1 April 1961] and the thirty-first day of October 1970, the Norwegian Government shall not object to vessels registered in the territory of the United Kingdom continuing to fish in the zone between the limits of 6 and 12 miles from the baseline from which the territorial sea of Norway is measured". This special adjustment period was allowed for because of traditional British fishing off the Norwegian coast, but Article IV provided that "after the thirty-first day of October 1970 the United Kingdom Government shall not object to the exclusion by the competent authorities of the Norwegian Government of vessels registered in the territory of the United Kingdom from fishing within the limit of 12 miles from the baseline from which the territorial sea of Norway is measured".

216. The preamble of the Anglo-Norwegian Agreement contained the following recitals:

> "Taking into account the proposal on the breadth of the territorial sea and fishery limits which was put forward jointly by the Governments of the United States of America and Canada at the Second United Nations Conference on the Law of the Sea in 1960 and which obtained 54 votes;
>
> Affirming their belief that an Agreement to stabilize fishery relations between the two countries should be based on the aforesaid proposal, and *should not contemplate the exclusion of fishing vessels from any area beyond the limits of the fishery zone referred to in that proposal.*" (Italics added.)

217. The Anglo-Norwegian Fisheries Agreement was, of course, followed shortly by the Exchange of Notes of 11 March 1961 between the Governments of the United Kingdom and Iceland, by virtue of which the Government of the United Kingdom accepted a 12-mile exclusive fisheries limit for Iceland, subject to certain phase-out rights for British fishing vessels in the outer 6 miles. (See para. 15 above and Annex A to the Application instituting proceedings.)

218. On 1 June 1963 Denmark took another step in furthering the acceptance of the new attitude to fisheries limits when it extended the fisheries zone for Greenland to 12 miles and also made a similar extension in regard to the Faroe Islands effective as from 12 March 1964. However, certain countries were granted exception from the application of the Greenland limits until 31 May 1973 [1].

219. The next country to follow suit was Canada, whose Government announced on 4 June 1963 their intention "to establish a 12-mile exclusive fisheries zone along the whole of Canada's coastline as of mid-May 1964" [2]. This intention was in due course put into effect by the Territorial Sea and Fishing Zones Act 1964 which provided for a territorial sea of 3 miles and for an exclusive fisheries zone extending 9 miles beyond that. However, in the implementation of this legislation, provision was in due course made for the continuation of fishing by vessels of the United States, France, the United Kingdom, Portugal, Spain, Italy, Norway and Denmark (all of whom had

[1] 3 *International Legal Materials* (1964), 1122.
[2] 2 *International Legal Materials* (1963), 664.

traditionally fished in certain areas within the exclusive zone) pending the conclusion of negotiations with those countries [1].

220. The trend thus being set by these instances of bilateral agreements or legislation by individual States, acquiesced in by the other countries concerned, was considerably advanced at the end of 1963 and the beginning of 1964 by an important event on the multilateral plane. This was the holding of the European Fisheries Conference in London between 3 December 1963 and 2 March 1964, and the resultant adoption, on 2 March 1964, of the European Fisheries Convention [2]. The original signatories of this Convention were Belgium, Denmark, France, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. It was, in due course, ratified or approved by all the signatories except Luxembourg. By arrangements concluded with the United Kingdom on 26 September 1964, 28 September 1964 and 30 September 1964, respectively, Poland, Norway and the USSR in effect accepted the validity of the Convention [3]. In due course, on 7 June 1966, Poland formally acceded to the Convention. Iceland participated in the Conference but refused to become a party to the Convention.

221. Under Article 1 of the European Fisheries Convention of 1964, each Contracting Party recognized "the right of any other Contracting Party to establish the fishery régime described in Articles 2 to 6 of the present Convention". The "fishery régime" referred to was one under which:

(a) "The coastal State has the exclusive right to fish and exclusive jurisdiction in matters of fisheries within the belt of six miles measured from the baseline of its territorial sea" (Article 2).

(b) "Within the belt between six and twelve miles measured from the baseline of the territorial sea, the right to fish shall be exercised only by the coastal State and by such other Contracting Parties, the vessels of which have habitually fished in that belt between 1 January 1953 and 31 December 1962" (Article 3).

(c) "Fishing vessels of the Contracting Parties, other than the coastal State, permitted to fish under Article 3, shall not direct their fishing effort towards stocks of fish or fishing grounds substantially different from those which they have habitually exploited. The coastal State may enforce this rule" (Article 4).

(d) "(1) Within the belt referred to in Article 3 the coastal State has the power to regulate the fisheries and to enforce such regulations, including regulations to give effect to internationally agreed measures of conservation, provided that there shall be no discrimination in form or in fact against fishing vessels of other Contracting Parties fishing in conformity with Articles 3 and 4.

(2) Before issuing regulations, the coastal State shall inform the other Contracting Parties concerned and consult those Contracting Parties if they so wish" (Article 5).

(e) "Any straight baseline or bay closing line which a Contracting Party may draw shall be in accordance with the rules of general international law and in particular with the provisions of the Convention on the Territorial Sea and the Contiguous Zone opened for signature at Geneva on 29 April 1958" (Article 6).

---

[1] *International Legal Materials* (1964), 922, 925.

[2] 581 *UNTS* 57.

[3] 539 *UNTS* 153; 548 *UNTS* 63; 539 *UNTS* 159.

222. In addition to adopting the Convention, the London Conference also adopted, on 17 January 1964, a resolution on Conservation, which read as follows:

> "Recognizing that all efforts to promote the stability and prosperity of the fishing industry ultimately depend on effective conservation measures to ensure the rational exploitation of the resources of the sea, and that the Commission recently established under the North-East Atlantic Fisheries Convention is the body internationally responsible for these matters,
>
> *The Conference* urges the Governments represented on the Commission to intensify their efforts
>
> To secure the introduction of such measures as may be necessary, not only to prevent over-fishing, but to ensure the profitable exploitation of the fisheries for the benefit of all the countries concerned;
>
> And for this purpose to ensure that the Commission is enabled to employ the full range of measures envisaged in the Convention, including measures of national and international control to ensure the effective observance of the regulations."

The Icelandic Delegation voted in favour of this resolution, which indeed was adopted unanimously.

223. In the years which followed the adoption of the European Fisheries Convention of 1964, numerous instances occurred of reliance on, and acquiescence in, the proposition that the limits set by international law for the exercise of fisheries jurisdiction by a coastal State had moved to 12 miles from that State's coastline. Thus, on 10 September 1965, New Zealand enacted the Territorial Sea and Fishing Zone Act 1965 which was closely modelled on the Canadian legislation referred to in paragraph 219 above. In effect, it claimed an exclusive fisheries zone of 9 miles beyond a territorial sea of 3 miles. This legislation was at first the subject of a vigorous protest by the Government of Japan but that Government eventually accepted it (subject to certain temporary provisions) by an agreement signed on 12 July 1967 [1]. Another example is the legislation enacted by Portugal on 22 August 1966 which apparently established a fisheries jurisdiction zone of 12 miles of which the inner 6 miles were for the exclusive enjoyment of Portuguese vessels and the outer 6 miles a zone in which Portugal exercised regulatory, but non-discriminatory, control [2].

224. Further examples could be adduced. But one which is particularly illustrative of the position which was being created during these years is the enactment by the Congress of the United States of America, on 14 October 1966, of an Act "to establish a contiguous fishery zone beyond the territorial sea of the United States". This provided that "the United States will exercise the same exclusive rights in respect of fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign States within this zone as may be recognized by the United States" (Section 1). The term "the zone" was defined as a zone having "as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is 9 nautical miles from the nearest point on the inner boundary [3]". Before the enactment of this legislation (which was a development of earlier legislation, enacted in May 1964 and relating primarily

---

1 6 *International Legal Materials* (1967), 736.
2 5 *International Legal Materials* (1966), 1094.
3 *Ibid.*, 1103.

to fishing for sedentary species on the United States continental shelf), the Chairman of the Committee on Commerce of the United States Senate asked for the advice of the State Department. This advice was supplied in a letter dated 18 May 1966, which was in the following terms:

"*Department of State,*
Washington, May 18, 1966.

Hon. Warren G. Magnuson
Chairman, Committee on Commerce,
US Senate.

Dear Mr. Chairman,

Your letter of June 30, 1965, enclosed copies of S.2218, introduced by Senator Bartlett, and S.2225, introduced by Senator Magnuson, on which the Department of State's comments were requested.

The purpose of the proposed legislation is to establish for the United States a 12-mile exclusive fisheries zone measured from the baseline from which the breadth of the territorial sea is measured but subject to the continuation of such traditional fishing by foreign states and their nationals as may be recognized by the US Government.

Although the Geneva Conference of 1958 adopted four conventions on the law of the sea, it was recognized that the conventions left unresolved the twin questions of the width of the territorial sea and the extent to which a coastal state could claim exclusive fishing rights in the high seas off its coast. The Conference adopted a resolution suggesting that the United Nations call a second conference to deal with these unresolved problems, which the United Nations did. At the second conference, which was held in 1960, the United States and Canada put forward a compromise proposal for a 6-mile territorial sea, plus a 6-mile exclusive fisheries zone (12 miles of exclusive fisheries jurisdiction in all) subject to the continuation for 10 years of traditional fishing by other states in the outer 6 miles. This compromise proposal failed by one vote to obtain the two-third vote necessary for adoption.

Since the 1960 Law of the Sea Conference there has been a trend toward the establishment of a 12-mile fisheries rule in international practice. Many states acting individually or in concert with other states have extended or are in the process of extending their fisheries limits to 12 miles. Such actions have no doubt been accelerated by the support for the proposals made at the Geneva Law of the Sea Conferences in 1958 and 1960, of a fisheries zone totalling 12 miles as part of a package designed to achieve international agreement on the territorial sea.

In view of the recent developments in international practice, action by the United States at this time to establish an exclusive fisheries zone extending 9 miles beyond the territorial sea would not be contrary to international law. It should be emphasized that such action would not extend the territorial sea beyond our traditional 3-mile limit and would not affect such traditional freedoms of the sea as freedom of navigation or of overflight. With one or two possible exceptions, it is not likely that such action would be unfavourably received by other governments in view of the provision for recognition of traditional fishing, which the Department regards as a desirable provision.

In the above circumstances, the Department has no objection from the standpoint of US foreign relations to establishing a 12-mile exclusive

fisheries zone subject to the continuation of such traditional fishing by foreign states as may be recognized by the US Government.

Whether the establishment at this time of a 12-mile exclusive fisheries zone would serve the longer term economic interests of the United States and the US fishing industry is, of course, a separate question which is discussed in a report prepared by the Department of the Interior. Inasmuch as US establishment of a 12-mile exclusive fisheries zone would tend to support the trend already referred to, the passage of the proposed legislation would make it more difficult, from the standpoint of international law, to extend the zone beyond 12 miles in the future.

Time has not permitted the Department to obtain the advice of the Bureau of the Budget with respect to this report.

Sincerely yours,

Douglas MACARTHUR II
Assistant Secretary for Congressional Relations.
(For the Secretary of State) [1]"

One of the most significant features of the history of this American legislation is the reception which it received abroad. Although the Government of Japan had apparently expressed concern about the 1964 legislation and had, as has been stated, formally protested at the New Zealand legislation of September 1965, they did not persist in disputing the legality of this legislation of October 1966. Instead, on 9 May 1967, they concluded a series of agreements with the Government of the United States, under which (subject to special arrangements concerning the salmon fishery and with a view to reconciling the interests of fishermen using different fishing gear, and subject also to certain temporary arrangements) they agreed to "take necessary measures to ensure that vessels and nationals of Japan will not engage in fishing, except such fishing as listed below, in the waters which are contiguous to the territorial sea of the United States of America and extend to a limit of 12 nautical miles from the baseline from which the United States territorial sea is measured [2]."

225. It will thus be seen that, by about the middle of the 1960s, a firm State practice had been established which set the limits of a coastal State's fisheries jurisdiction at 12 miles from its coast—or, more accurately, from the baseline from which its territorial sea is measured. This State practice was founded upon the consensus which had emerged at the 1958 and 1960 Conferences and which indeed had failed by only one vote to be incorporated in a Convention to be adopted by the latter Conference. It was expressed in numerous international agreements and acts of national legislation. It was acquiesced in by the vast majority of States, even those who had hitherto been most conservative in their approach to the matter. It is true that claims were currently being made by certain other States to the possession of even wider limits of fisheries jurisdiction, sometimes as part of their territorial sea [3]. But none of these wider claims had behind it the authority of the Geneva Conferences or any comparable expression of international opinion, nor the corroborating support of such a wide range of States making similar claims themselves. And every one of them was the subject of the most formal and explicit protest by other States. It can fairly be said, therefore, that, whatever view might then have been held about the future development of the law, the state of custom-

[1] 5 *International Legal Materials* (1966), 616.
[2] 6 *International Legal Materials* (1967), 745.
[3] See paras. 247-256 below.

ary international law at that time was that it embodied—but went no further than—the propositions which had so nearly failed to get acceptance at the Geneva Conference a few years earlier.

C. The Current Law

I. Introduction

226. During the course of the negotiations which led up to the Exchange of Notes of 11 March 1961 (see section 2 of Part B of the Memorial on Jurisdiction which the Government of the United Kingdom filed with the Court on 13 October 1972) it was clear that the two parties accepted that customary international law did not at that stage permit a coastal State to exercise exclusive fisheries jurisdiction beyond 12 miles from its coast. No such claim was then being made by Iceland (except as an objective to which her policy should be directed in conformity with the Law of 1948 [1] and the Althing Resolution of 1959 (see para. 15 above)). The doubt at that point was rather whether the law had gone so far as to sanction claims to establish limits as far out as 12 miles and, if it had, what the rights were of traditional fishermen from other States within those limits. These doubts were resolved, as between the two parties, by the Exchange of Notes of 1961. The whole purpose of the inclusion of the compromissory clause in the Exchange of Notes of 1961 was to provide for what should happen if, at some point in the future, Iceland should consider that the law had moved on further still. So far as concerns the rest of the international community, it has been shown in Section B of this Part of this Memorial that the process which went on after the Exchange of Notes of 1961 was one of building-up, consolidating, and gaining acceptance for, the concept of a 12-mile limit.

227. By their actions which have given rise to these proceedings, the Government of Iceland in effect contend that the law has now changed so as to authorize the extensive and exclusive jurisdiction which they now claim. The remainder of this Part of this Memorial will show that that contention is ill-founded.

II. The Burden of Proof

228. The burden of proof before international tribunals does not rest upon any distinction between "plaintiff" and "defendant" parties. Except on the issue of jurisdiction (which is not relevant to the present stage of this case), such a distinction has never been accepted by the International Court of Justice or by its predecessor, the Permanent Court of International Justice, or indeed by international tribunals generally. The distinction becomes impossible as between sovereign States, either of which may invoke the jurisdiction of the International Court of Justice. Indeed, were it otherwise, there would be an encouragement to States to use methods of maintaining their rights which would force the other party to initiate proceedings and thus adopt the role of "plaintiff" State. Such a result could not be in the interests of justice and any rule of evidence which would bring about such a result must, for that reason, be unsound. The true position is that both parties are under a basic obligation to assist the Court by assuming the burden of proving those contentions upon

[1] See Annex 1 to this Memorial.

which their case depends. They are, as it were, "equal" in this respect as in other respects [1].

229. However, the Court is entitled, perhaps even bound, to take note of the established statements of the law. In the present case, the State practice which emerged from the Geneva Conferences of 1958 and 1960, as expressed in the instruments referred to in paragraphs 213-224 of this Memorial and in particular, as between Iceland and the United Kingdom, in the Exchange of Notes of 1961, represent the established statements of the law. As has already been shown, these point conclusively to the proposition of law that an assertion of exclusive jurisdiction over fisheries beyond 12 miles is not permissible by unilateral act. Necessarily, therefore, if a party seeks to challenge the established law—whether by asserting an exception to the general rule or by asserting that the law has changed—the onus of maintaining that challenge rests upon that party. It is Iceland, not the United Kingdom, which is challenging the established law, and it is for this reason that the Government of the United Kingdom maintain that the burden of proving that international law now recognizes the right of a coastal State to make such an exclusive claim as Iceland is now making rests upon Iceland. Moreover, the fishing rights exercised by British vessels beyond the 12-mile limit are traditional, well-established rights to use the high seas which have hitherto been unchallenged and which have a clear legal foundation. Reference has already been made to the provisions of the Convention on the Territorial Sea and Contiguous Zone of 1958, the Convention on the High Seas of 1958 and the Convention on the Continental Shelf of 1958, as well as to the body of bilateral and multilateral treaty practice and of State practice, all of which confirm the freedom of fishing beyond 12 miles from properly drawn baselines. If Iceland seeks to challenge such established rights, it must be for Iceland to demonstrate to the Court that they no longer have any legal foundation. In the absence of a convincing demonstration by Iceland that that is the case, the Court can only endorse the continuing validity of those rights. To set aside such long-established legal rights, in the absence of convincing proof by Iceland, cannot be consistent with the Court's function to uphold the existing law and established legal rights.

230. Obviously, it would not be consistent with their duty to assist the Court for the Government of the United Kingdom to refrain from comment on the grounds by which Iceland might argue for an exception to the established law, or a change in that law. It is proposed, therefore, to turn to a discussion of these grounds. In so doing, the Government of the United Kingdom are obliged to a certain extent to speculate upon what those grounds might be. Just as, in arguing the case on the jurisdiction of the Court, the Government of the United Kingdom were embarrassed by the absence of pleadings by Iceland, so, too, at this stage there is an embarrassment and a difficulty in being forced to proceed on the basis of speculation about the arguments which Iceland might adduce. If, as is the hope of the Government of the United Kingdom, the Government of Iceland in due course file a Counter-Memorial, in accordance with the Order made by the Court on 15 February 1973, the Government of the United Kingdom will then be able to deal by way of Reply with any argument adduced by the Government of Iceland which they have not anticipated, or adequately anticipated, in this Memorial.

---

[1] See, generally, Witenberg, "La théorie des preuves devant les jurisdictions internationales", *Recueil des cours*, 1936 II, p. 44; Sandifer, *Evidence Before International Tribunals*, 1939, pp. 92-93.

III. The Grounds upon Which Iceland Might Seek to Argue that the Law Has Changed so as to Permit an Exception to the General Rule or, Alternatively, that the General Rule Has Itself Changed

231. On the basis of the various statements that have been made by the Government of Iceland from time to time and in various contexts, it seems to the Government of the United Kingdom that the Government of Iceland might seek to justify their claim by reliance on one or other of the following grounds:

(i) the continental shelf doctrine;
(ii) the concept of "preferential rights";
(iii) the need for conservation;
(iv) the concept of the "patrimonial sea"; and
(v) the doctrine of "Permanent Sovereignty over Natural Resources".

These will now be considered in turn.

(i) *The continental shelf doctrine*

232. 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 [1], in the Icelandic Memorandum on *Fisheries Jurisdiction in Iceland* of February 1972 [2], 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 [3], 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 [4].

233. It is evident that the Convention on the Continental Shelf of 1958 does not support that proposition since, by the very terms of Article 2.4, the "natural resources" to which that Article refers do not extend to free-swimming fish [5]. It may also be recalled that in the *North Sea Continental Shelf* cases, the International Court of Justice accepted that this Article was "then regarded as reflecting, or as crystallizing, received or at least emergent rules of customary international law . . . [6]".

234. Thus, the accepted doctrine of the continental shelf, as embodied in the Convention of 1958 and as reflecting customary international law, is quite contrary to the Icelandic proposition. The position was accurately summarized in an official publication submitted to the Mexican Legislature, explaining the reason for reform of Articles 27, 42 and 48 of the Mexican Constitution, in the following terms:

> ". . . la pretensión de ejercer soberania sobre todas las aguas que cubren la plataforma continental es, en la actualidad, contraria al derecho internacional. Dicha tesis fue clara y terminantemente repudiada por la

[1] See Annex 5 to this Memorial.
[2] See Enclosure 2 to Annex H to the Application instituting proceedings, p. 27.
[3] *Ibid.*, p. 52.
[4] *Ibid.*, p. 55.
[5] See also para. 181 above.
[6] *I.C.J. Reports 1969*, p. 39.

> Conferencia de las Naciones Unidas sobre el Derecho del Mar, en la que estuvieron representados 86 Estados, es decir, practicamente toda la communidad internacional. Como indicación de la voluntad de la communidad de naciones a este respecto, bastaía recordar que el artículo 3 de la Convención, que establece el régimen de alta mar, es decir, de mar libre, de las aguas y espacio suprayacentes, fue aprobado en la Conferencia de Ginebra sin un solo voto contrario y con solo tres abstenciones . . . es, incuestionablemente, la expresión del derecho vigente en este materia. La situación es tan clara y definida que la propria Convención llega a prohibir la interposición de reservas contra el citado artículo [1]."

It is in a very real sense, inadmissible to question the distinction made in the established law between sedentary species, which pertain to the coastal State, and free-swimming species, which do not; or even the distinction between the mineral resources of the shelf and the fishery resources of the high seas above the shelf. That distinction is one which has emerged in State practice, which has been endorsed and accepted by the Convention of 1958 and which is now the law. As the Court itself put it in the *North Sea Continental Shelf* cases:

> "the sovereign jurisdiction which the coastal State is entitled to exercise . . . not only over the seabed underneath the territorial waters, but over the waters themselves, . . . does not exist in respect of continental shelf areas *where there is no jurisdiction over the superjacent waters* . . . [2]" (italics added).

Moreover, the distinction is not only the established law; it rests upon sound and compelling reasons. It cannot be supposed that the 1958 Conference made a distinction which was nonsensical and unmerited. On the contrary, that distinction was based upon practical and persuasive reasons.

235. There is, first, the reason that the mineral resources of the shelf are finite and non-renewable. Once exhausted, they are spent forever. It was thus desirable to conceive of such resources as part of the patrimony of the coastal State. Moreover, unlike free-swimming fish, the mineral resources (and also the sedentary species to some extent) are fixed and immobile so that their attachment to the shelf as a natural prolongation of the land-mass of the coastal State is a physical fact. A further, and most compelling, reason is that the exploitation of the mineral resources of the shelf cannot be accomplished without the development of a highly elaborate system of co-operation and co-

---

[1] *Derechos del Pueblo Mexicana: México a través de sus constituciones*. Published by the XLVI Legislatura de la Camara de Disputados, Mexico, Vol. IV, p. 821; cited by Sepulveda, *La Politica Exterior de México: Realidad y Perspectivas* (1972), p. 144. The following is an English translation of the passage quoted:

> ". . . the claim to exercise sovereignty over all the waters which cover the continental shelf is, at present, contrary to international law. This thesis was clearly and finally repudiated by the United Nations Conference on the Law of the Sea, at which 86 States were represented, that is to say, practically all the international community. As an indication of the wishes of the community of nations in this respect, it is sufficient to record that Article 3 of the Convention, which establishes the high seas régime, that is to say, the freedom of the seas, for the superjacent waters and airspace, was approved in the Geneva Conference without a single contrary vote and with only three abstentions. It is, unquestionably, the expression of the law binding in this matter. The situation is so clear and defined that the same Convention goes as far as to prohibit the making of reservations to the said article."

[2] *I.C.J. Reports 1969*, p. 37.

ordination with the coastal State. Anyone familiar with the techniques of offshore drilling will know of the extent to which shore-based facilities are, in practical terms, essential to the conduct of these operations. (Paradoxically, the same considerations may not apply to operations in deeper waters where different techniques have to be used and the availability of shore-based facilities becomes less crucial.) It was inconceivable, therefore, that coastal States should not have exclusive rights. For non-coastal States to have begun *such operations off the shores of the coastal State would have been to initiate* situations with far-reaching effects upon the coastal State, the implications of which were abundantly clear in 1958. The same considerations simply did not apply to the free-swimming species of the high seas. Their "renewable" character called for a quite different treatment, principally in the sense that the conservation of such resources was regarded as a matter of obligation for *all* States, just as the benefit of the resources pertained to all States. The allocation of exclusive rights of exploitation of such a high seas resource to coastal States would have deprived many States of their existing rights. It would have produced discrimination against land-locked States. It would have afforded no real guarantee of the conservation of those resources for the common benefit. Indeed, given the mobility of free-swimming fish, there existed no basis for a conceptual attachment to the coast of one State. Thus the distinction made in the Convention on the Continental Shelf of 1958 was based upon rational and realistic grounds.

236. However, and irrespective of the rationality of the rule, the law must be applied by the Court as it is unless Iceland can demonstrate that the law has changed. Such a change could come about only through the enactment of a new treaty of general application—such as might emerge from the forthcoming United Nations Conference on the Law of the Sea—or by the emergence of a new customary rule of international law. There is no new treaty of general application as yet. It therefore falls to Iceland to prove the emergence of some new customary rule, in accordance with the criteria which govern the establishment of any rule of customary international law.

237. Those criteria are well-established. They have been summarized as follows:

> "*(a)* concordant practice by a number of States with reference to a type of situation falling within the domain of international relations;
> *(b)* continuation or repetition of the practice over a considerable period of time;
> *(c)* conception that the practice is required by, or consistent with, prevailing international law; and
> *(d)* general acquiescence in the practice by other States [1]."

These criteria find support not only in Article 38 of the Statute of the Court, which refers to international custom "as evidence of a general practice accepted as law", but also in the jurisprudence of the Court.

238. The requirement that the practice be a general one is inherent in the notion of a general, customary rule. In the *Anglo-Norwegian Fisheries* case the Court stated that:

> ". . . although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other

[1] Doc. A/CN.4/16, *Yearbook of the International Law Commission*, 1950, Vol. II, p. 26.

States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law [1]."

239. In the *North Sea Continental Shelf* cases the Court, in referring to the process whereby a conventional rule can also become a customary rule, binding on States not parties to the convention, stated that:

"... a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests were specially affected. In the present case, however, ... the number of ratifications and accessions so far secured is, though respectable, hardly sufficient [2]."

It may be noted, in passing, that at that time there were 37 States which had ratified the Convention, a number appreciably in excess of the number of States now asserting an exclusive fisheries jurisdiction in excess of 12 miles.

240. In the *Asylum* case, though that case concerned a local custom, the Court used words intended to convey a requirement common to all customary rules in saying:

"The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party ... that the rule invoked by it is in accordance with a constant and uniform usage practised by the States in question ... This follows from Article 38 of the Statute of the Court, which refers to international custom 'as evidence of a general practice accepted as law' [3]."

Similarly, in the *Rights of Passage* case the Court based its decision in part on evidence of "a constant and uniform practice" [4]. As one writer has recently expressed it:

"It is not suggested that any mere general coincidence of views among States, that a given practice should be a matter of international law, is enough, unless the practice is in fact followed sufficiently consistently by a sufficient number of States [5]."

Indeed the Court has emphasized the requirement of uniformity of State practice in quite unequivocal terms. As it said in the *North Sea Continental Shelf* cases:

"... an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform ...[6]".

---

[1] *I.C.J. Reports 1951*, p. 131.
[2] *I.C.J. Reports 1969*, p. 42.
[3] *I.C.J. Reports 1950*, pp. 276-277.
[4] *I.C.J. Reports 1960*, p. 40.
[5] Thirlway, *International Customary Law and Codification* (1972), p. 56. The Soviet writer, Professor Tunkin, has stated that "agreement is the essence of custom as a mode of creation of norms of international law", thus placing the requirement of coincidence of views or practice at a level which demands virtually complete uniformity of practice: *Co-existence and International Law*, 95 *Recueil des cours*, 1958, III, pp. 13-14. This may be too high a burden of proof but it emphasises the reluctance to accept a purely minority practice. And see D'Amato, *The Concept of Custom in International Law* (1971), Ch. 7, where he emphasizes that the consent required is *aggregate* consent, and not universal consent.
[6] *I.C.J. Reports 1969*, p. 43.

241. The stringency of these requirements for proving a new general custom has a very obvious justification. Were it not so, the general rules of international law could be completely eroded by "minority practice"; the coherence of international law would collapse under the impact of departures from the generally agreed rule decided upon unilaterally by a minority of States. Such a position is the more intolerable where, as in 1958, customary rules of international law are embodied in treaties as part of a conscious process of codification. Such was the clear intent of those provisions of the Continental Shelf Convention of 1958 to which reference was made earlier [1]. To allow variation of agreed rules upon the assertion of a "custom" newly created by minority practice would be tantamount to allowing a minority of States to legislate for the marjority.

242. Nor can it be said that, in the present case, these considerations do not apply since only a "local custom", an exceptional case, is in question. There are certainly situations in which local customs, as exceptions to the general rule, are applicable and this has been recognized by the Court in the *Asylum* case and the *Rights of Passage* case, cited earlier. But these situations arise either in a geographically defined area or within identifiable State-relationships where the departure from the general rule is consented to by all the States concerned, expressly or tacitly. To quote from a recent study:

> "To return to the question of a new rule of customary law of limited acceptance conflicting with the provisions of a general codifying treaty . . . an established usage contrary to the treaty will, if the necessary requirements of consistency and *opinio juris* are satisfied, give rise to a rule of local customary law in derogation from the treaty-rules, *applicable only to the States which have expressly or tacitly accepted it* or can be regarded as linked in a geographical or other community with the States which have established the custom, unless such fellow-members of the community have actively opposed the custom [2]."

The same requirement of consent was emphasized by Judge Ammoun, when he said "In the absence of express or tacit consent, a regional custom cannot be imposed on a State which refuses to accept it [3]".

243. Iceland has not relied upon any assertion of a local custom, and, in the nature of things, an assertion of a right to exercise jurisdiction over the high seas is the assertion of a right *erga omnes*. It is this characteristic of a local custom, that it is not opposable to States generally, which distinguishes it from general custom. As has been said,

> "Qu'en est-il pour la coutume locale? Celle-ci est effectivement appliquée comme règle de droit international par certains Etats seulement; elle n'a pas l'autorité général qui lui permettrait d'être opposable *erga omnes*. La volonté va être, ici, un facteur essentiel pour la formation de

---

[1] *Ante*, paras. 181 and 233. It is not the contention of the Government of the United Kingdom that *all* provisions of the 1958 Convention were declaratory of existing customary law. But those provisions invoked in paras. 181 and 233 clearly were such.

[2] Thirlway, *op. cit.*, p. 139 (italics added). And see *Jurisdiction of the European Commission of the Danube, P.C.I.J., Ser. B., No. 14* at p. 17: "by usage having juridical force simply because it has grown up and been consistently applied with the unanimous consent of all the States concerned." The Court is summarizing the conclusions of the Special Committee, but significantly without disagreeing with this assessment of the requirements for a local custom, in this case the custom being that governing the powers of the European Commission of the Danube.

[3] *North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, p. 131.

> la coutume locale et pour son opposabilité puisque la coutume locale ne sera opposable qu'aux Etats qui ont contribué à sa formation. Elle ne peut être étendue à un Etat tiers qui la répudie et elle ne peut lui être étendue que s'il la reconnaît soit expressément, soit tacitement en y 'adhérant par son attitude' (ce qui au-delà du simple silence exige un acte de volonté positif ou une abstention 'qualifiée') [1]".

All States with rights in the high seas—as recognized by Article 2 of the High Seas Convention of 1958 and also by Article 3 of the Continental Shelf Convention of 1958—are affected by such assertions of exclusive jurisdiction over waters previously regarded as high seas and the concept of a "local" custom is clearly inappropriate to such a situation if such a custom purports to be based upon the consent of a limited number of States. For the establishment of a special rule of jurisdiction over the high seas, even though its application is confined to a specific geographical area, there would have to be evidence of consent by the community of States as a whole, and not merely of consent by the States within that geographical area. In relation to the high seas around Iceland, there is no consent, express or tacit, to the Icelandic claim by the States affected by it.

244. Nor is it possible to equate the present practice of a minority of States asserting claims similar to that of Iceland with the practice of States which, in a relatively brief period prior to 1958, founded the customary law of the continental shelf. That practice was not inconsistent with prevailing international law but was accorded general acquiescence as filling a *lacuna* in the law. The "practice" which Iceland might invoke to support its extensive, exclusive fisheries claim is, in contrast, contrary to the present law as settled by the 1958 Conventions and has been the subject of repeated protest by those States whose legitimate interests on the high seas have been adversely affected by the practice. It is inconceivable that a new customary law could develop upon the basis of such a minority practice, contrary to the established law and to the practice of the great majority of States and in the face of repeated protest by those States adversely affected.

245. It may assist the Court if the extent of this minority practice were now to be examined. Not all the legislation of the various States concerned is available and, particularly in relation to recent claims, reliance has to be placed on secondary sources; what follows is therefore a summary of the position which the Government of the United Kingdom believe to be as accurate as reasonably possible, based upon the best evidence available to them. In broad terms, it appears that in addition to Iceland some 19 States claim *exclusive fisheries jurisdiction beyond 12 miles: these States are Argentina, Brazil,* Chile, Ecuador, El Salvador, Gabon, The Gambia, Ghana, Guinea, Haiti, the Maldives, Morocco, Nicaragua, Nigeria, Oman, Panama, Peru, Senegal and Uruguay. That is, in total, 20 States out of the 114 known coastal States. Then there is Cameroon which in 1967 legislated for a territorial sea of 18 miles but is not known to have yet fixed by decree any limit for exclusive fishing. Costa Rica, by decree in 1972, claimed a 200-mile zone, but expressed as a zone for conservation powers and not exclusive fishing. Mauritania claimed a 30-mile territorial sea in 1972, although it is not clear whether this claim has superseded the 1963 Code which established a 12-mile fisheries zone, with the preservation of certain foreign fishing in the outer 6 miles.

[1] Cohen-Jonathan, "La coutume locale" in *Annuaire français de droit international*, 1961, p. 119 at p. 133. D'Amato, *op. cit.*, p. 235, refers to special custom as dealing with "nongeneralizable" topics.

Pakistan's claim to 112 miles, by Presidential Proclamation of 1966, appears to be a claim to a conservation zone of 100 miles beyond the territorial sea, and not to exclusive fisheries. Sierra Leone has claimed a 200-mile territorial sea by the Interpretation Act of 1971, although, again, it is not certain whether this involves a claim to exclusive fisheries within the same limit. The Republic of Viet-Nam by decree in 1972 established a 50-mile exclusive fisheries zone, but licences fishing by foreign vessels. However, even if one adds this second category of claims which are not so clearly exclusive, that still produces a total of only 26 States out of 114 [1]. Simply on those figures, it is apparent that this minority is nothing like sufficient to constitute the "very widespread and representative participation" or the "general practice accepted as law" which the Court and Article 38 of its Statute have required to constitute a customary rule. Even apart from the total inadequacy of the number of States making these minority claims, there are two further features of the practice which destroy any argument that such practice might have created a new customary rule of law.

246. The first feature is the existence of emphatic protest by States adversely affected. The protest of the Government of the United Kingdom against the present Icelandic claims is sufficiently evidenced by the proceedings now before the Court. The position of the Government of the Federal Republic of Germany is similarly attested. The Government of the United Kingdom, for their part, have consistently protested against formal claims by other governments to exercise fisheries jurisdiction beyond 12 miles from their coasts whenever such claims have come to their attention. The protest of the United States against the Peruvian claims is common knowledge [2]. How far other States, affected by these various claims, have protested is not easily ascertainable since States are under no obligation to publish protests received. Yet it seems clear that such claims to exclusive fisheries jurisdiction beyond 12 miles have not met with the general acquiescence necessary to give them the status of customary international law.

247. The second feature is the lack of uniformity in these various claims to exclusive fisheries. For example, the Fishing Law of 25 October 1967 (Law 17,500) of Argentina (which claims a territorial sea of 200 miles) provides in Article 2 that:

---

[1] This is based upon the information contained in *Limits and Status of the Territorial Sea, Exclusive Fishing Zones, Fishery Conservation Zones and the Continental Shelf.* FAO Fisheries Circular No. 127, FID/C/127, Rome 1971; also on *International Boundary Study, Ser. A, Limits in the Seas, "National Claims to Maritime Jurisdictions"*, No. 36, March 1973, issued by the Geographer to the Department of State (copies of both of which documents will be communicated to the Registrar in accordance with Article 43 (1) of the Rules of Court), plus such additional information as the Government of the United Kingdom have been able to gather. The Republic of Korea has been excluded because, although the Presidential Proclamation of 18 January 1952 purports to establish an exclusive zone beyond 12 miles, in practice, and by virtue of the Japan/Korea Fisheries Agreement of 22 June 1965, the right to an exclusive zone is restricted to 12 miles. A number of States have jurisdictional claims to "conservation zones" in the waters of the epi-continental sea but, on examination, it appears that these claims are not claims to *exclusive* fisheries and have not been treated as such by the FAO publication cited above. In this category are India, Sri Lanka, the United States.

[2] The United States first protested on 2 July 1948: subsequent retaliatory action is succinctly summarized in 64, *Department of State Bulletin*, 1971, 781-782. And see the United States protest against the legislation proposed by Canada in so far as it would assert a fisheries jurisdiction beyond 12 miles: 62 *Department of State Bulletin*, 1968, 610-611.

"Resources within 12 nautical miles from the coasts may only be exploited by Argentine vessels. The Executive Branch shall also establish annually an area of the Argentine territorial sea reserved for exploitation by Argentine vessels [1]."

Thus the absolute prohibition of foreign vessels is confined to the 12-mile zone and Decree 8,802 of 22 November 1967 (*Boletin Oficial*, 24 November 1967) in fact promulgates Provisional Regulations for Granting Permits to Foreign Ships to Exploit the Living Resources of the Argentine Territorial Sea. The retention of power to permit continued foreign fishing is, as we shall see, a feature of a number of these claims. The legal significance of such an express power is not beyond doubt. It might be argued that, where such an express power is stated, the claims are not properly treated as truly exclusive claims. Perhaps the safer view is that the question whether the claim is truly exclusive will have to be determined by the actual manner of application of the legislation. The power to issue permits at least opens the possibility that the coastal State will so apply its legislation, and grant permits, as to recognize the continuing validity of any established, traditional fishing rights so that any allegation of an incompatibility with international law is avoided. Certainly this possibility appears to have been retained by a number of Latin American claims.

248. The Brazilian legislation, which also operates against the background of a claim to a territorial sea of 200 miles, is different. Article 4 of Decree-Law 1,098 of 25 March 1970 (*Diário Oficial*, 30 March 1970) provides:

"The Brazilian Government shall regulate fishing, bearing in mind rational exploitation and conservation of the living resources of the territorial sea and also research and exploration activities.

(1) Regulations may determine the zones in which fishing should be reserved exclusively to Brazilian vessels.
(2) In the zones of the territorial sea that remain open to fishing for foreign vessels, such vessels may carry out their activities only when they are duly registered and authorized, and they are obliged to respect Brazilian regulations.
(3) Special regulations for fishing, research, and exploration of the territorial sea may be defined by international agreement, in principle on the basis of reciprocity [2]."

This Decree-Law, of itself, is not inconsistent with the general customary rule; it would leave open the possibility of regulating fisheries beyond 12 miles by agreement. It is only by Decree 68,459 of 1 April 1971 (*Diário Oficial*, 2 April 1971), made pursuant to Article 4, that the exclusive fisheries zone is determined to be 100 miles, and even here it is not clear how far this is based on a scientifically proven need for conservation rather than representing an exclusive claim *simpliciter*.

249. The Chilean legislation is different again. The Presidential Declaration of 23 June 1947 contains the proviso that "the present Declaration of sovereignty does not disregard the similar legitimate rights of other States on a basis of reciprocity . . ." and subsequent Decree 130 of 11 February 1959, Decree 1078 of 14 December 1961 (*Diário Oficial*, 16 January 1962), and Decree 332 of 4 June 1963 (*Diário Oficial*, 27 June 1963), envisage the grant

[1] Cited by García-Amador, *Latin-America and the Law of the Sea*, Law of the Sea Institute, University of Rhode Island, Occasional Paper No. 14, July 1972, p. 8.
[2] Cited in García-Amador, *op. cit.*, p. 10.

of permits to foreign vessels to fish "in Chilean jurisdictional waters" and "within the 200-mile zone established in the Declaration of Santiago . . .[1]"

250. The municipal law of Ecuador is more akin to that of Brazil. Article 628 of the Civil Code (*Suplemento al Registro Oficial*, 20 November 1970) establishes a zone described as "the adjacent sea, to a distance of 200 nautical miles measured from the low-water mark. . . . Different zones of the territorial sea shall be established by executive decree. . . ." The possibility of fishing by foreign vessels under licence is not, however, excluded: it is envisaged specifically by the Law on Fishing and Fishery Development No. 110-CI of 6 March 1969 (*Registro Oficial*, 10 March 1969), and Decree 7733 of 15 October 1969 (*ibid.*, 27 November 1969).

251. El Salvador is another State which claims a territorial sea of 200 miles. But the law of El Salvador (1955 Fishing Act, *Diário Oficial*, 7 November 1955) distinguishes coastal fishing (up to 12 miles), sea fishing (between 12 and 200 miles) and deep-sea fishing (beyond 200 miles) and confines coastal fishing to nationals or residents of El Salvador. However, Article 2 of the Law for Development of Sea and Deep Sea Fishing, issued by Legislative Decree 97 of 22 September 1970, defines "sea-fishing" as fishing between 60 and 200 miles rather than 12 and 200 miles. And Article 4 of the 1970 Law goes on to envisage the registration of even foreign enterprises ("any natural or juridical person, whether or not a resident of the Republic") for either "sea" or "deep-sea" fishing. Thus the law of El Salvador seems to envisage registration of foreign enterprises whether fishing in the 60-200-mile zone or even beyond the 200-mile limit.

252. The Nicaraguan Executive Decree 1-L of 5 April 1965 (*La Gaceta*, 8 April 1965), establishes a "national fishing zone" up to 200 miles from the coast. Within this zone a licensing system operates under the Special Law on Fishing (Legislative Decree 557, 20 January 1961).

253. Haiti has an exclusive fishing zone of 15 miles (12 plus 3) by Decree of 6 April 1972. Panamanian law appears to make distinctions between different species of fish. The provisions of Decree Law of 1959 and Law 33 of 1961, as revised by Decree 42 of 24 January 1965 (*Gaceta Oficial*, 3 May 1965), refer mainly to shrimp fishing; those of Decree 168 of 20 July 1966 (*Gaceta Oficial*, 26 July 1966), to anchovy and herring; whilst Decree 202 of 14 October 1964 (*Gaceta Oficial*, 22 October 1965), appears to be of more general application in prohibiting "the taking of all marine species within the territorial sea or within an area 12 miles from the coast, by fishing vessels of 10 gross tons or over. . . ." However, Law 31 of 2 February 1967 (*Gaceta Oficial*, 4 February 1967), has proclaimed sovereignty over a zone of territorial sea 200 miles in width.

254. The Peruvian assertion of national sovereignty over the sea superjacent to the continental shelf dates back to Supreme Decree 781 of 1 August 1947 and specified a limit of 200 miles. Subsequent decrees, however, namely, the General Fishing Law, Decree Law 18810 of 25 March 1971 (*El Peruano*, 26 March 1971), and Supreme Decree 011-71-PE, of 25 June 1971 (*El Peruano*, 30 June 1971), do contemplate fishing activities by foreign vessels "in Peruvian jurisdictional waters" (Art. 29) under licence.

255. Uruguay has asserted a claim to a territorial sea of 200 miles under Law 13,833 of 23 December 1969 (*Diário Oficial*, 5 January 1970), but under Article 4 reserves commercial fishing to Uruguayan vessels in a 120-mile zone though "without prejudice to international treaties which Uruguay signs on a

[1] Texts extracted from García-Amador, *op. cit.*, p. 13.

basis of reciprocity". And under Article 5 fishing by foreign vessels between 12 and 200 miles is permissible under licence or in conformity with the provisions of international treaties.

256. Outside Latin America, there is further evidence of variation. Gabon claims a territorial sea of 25 miles, The Gambia of 18 miles, Nigeria of 30 miles, Guinea of 130 miles, Morocco a fishing zone of 70 miles, Oman of 50 miles, Senegal of 122 miles, the Maldives of 100 miles, Mauritania of 30 miles, Sierra Leone of 200 miles and the Republic of Viet-Nam of 50 miles.

257. It therefore appears that there is no body of uniform State practice which—quite apart from the relatively small number of the States involved—could support the assertion of a new customary rule of international law. There is no uniformity as to the distance of fishing zones; some are truly exclusive whilst others envisage foreign fishing either under licence or pursuant to agreement; some are based upon the continental shelf concept and some are not; some are based upon the claimed need to conserve resources and others are not. This body of State practice is no more than evidence of dissatisfaction with the existing law. Conceivably, given greater continuity, a higher degree of application by all Latin American States and acquiescence by the community of States as a whole, a local or regional custom might develop in Latin America. Even in relation to claims to jurisdiction beyond 12 miles made by States outside Latin America, there is always the possibility that such claims may find a general acceptance by the community of States, as exceptions to the general rule, as "special rights"—perhaps akin to the concept of "historic waters". This possibility is greater in those cases where there are no other competing claims to the use of the fishery resources. The process of recognition of such claims by the community at large, as exceptions to the general rule, would require both time and very clear evidence of a general acquiescence in such claims. But this is speculation about the future. This potential for the creation of a local or regional custom, which may exist in Latin America or elsewhere, *cannot* exist in relation to Iceland. The position is quite the reverse, for in the area of the North-East Atlantic Iceland is the *only* State to claim exclusive fisheries beyond 12 miles and there is thus no comparison between the Latin American or other claims which reflect a general practice in an area and the Icelandic claim which is contrary to the general practice in the area. The one clear conclusion is that at the present time there is no evidence of a general customary rule of international law which permits a coastal State to exclude foreign vessels from fishing more than 12 miles from its coast as part of an "exclusive claim" to fishery resources; equally there is no evidence that the Icelandic claim has received general acquiescence by the community of States as a recognized exception to the general rule.

(ii) *The concept of "preferential rights"*

258. The 1958 Geneva Conference adopted the resolution on Special Situations relating to Coastal Fisheries [1] with situations such as that of Iceland specifically in mind. It may be useful to recall certain clauses of that resolution:

[1] See para. 190 above, which also describes the Icelandic proposal for an article in the Convention importing binding obligations on all States with regard to the preferential rights of coastal States. For a brief summary of the Conference's treatment of the concept of preferential rights see Oda, *International Control of Sea Resources* (1963), pp. 122-123.

"The United Nations Conference on the Law of the Sea,

Having considered the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development. . . .

Recommends:

1. That where, for the purpose of conservation, it becomes necessary to limit the total catch of a stock or stocks of fish in an area of the high seas adjacent to the territorial sea of a coastal State, any other States fishing in that area should collaborate with the coastal State to secure just treatment of such situation, by establishing agreed measures which shall recognise any preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of the other States; . . ."

This was the resolution adopted overwhelmingly, with Iceland concurring, by 67 votes to none, with 10 abstentions, on 26 April 1958.

259. In 1960 Iceland made the following proposal to the Conference:

"Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement any interested State may initiate the procedure provided for in the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the United Nations Conference on the Law of the Sea of 1958."

This proposal, having originally been accepted in Committee, was rejected by the Plenary Meeting, receiving 24 votes in favour and 48 against, with 15 abstentions [1].

260. Clearly, there are differences of substance between the resolution adopted in 1958 and the Icelandic proposal rejected in 1960. The Icelandic proposal had in mind a new article imposing binding, legal commitments whereas the resolution did not import legal commitments *stricto sensu*. It may be assumed that the majority of States felt that the concept of preferential rights, whilst deserving recognition, could not at that stage usefully be expressed in terms of legal obligation. Indeed, requirements of "collaboration" and "just treatment" are of a character not easily susceptible to precise legal regulation in general terms and divorced from the facts of particular situations. In addition, the Icelandic proposal conceded an initiative to the coastal State whereas the resolution places the emphasis upon agreement and collaboration between all the States concerned. Nevertheless, certain propositions may be extracted from these developments. First, the concept of "preferential rights" was accorded formal recognition and was designed specifically to deal with situations such as the Icelandic situation; second, the concept was broadly accepted by Iceland; third, the concept depended upon proof of a need for conservation; fourth, it called for collaboration between all the States concerned and envisaged objective conciliation or arbitration of any differences; fifth, and most emphatically, the concept of preferential rights had nothing to do with exclusive rights.

[1] See paras. 207, 208 and 211 above.

261. It seems apparent from the Althing Resolution of 15 February 1972 [1], from the aide-mémoires of the Government of Iceland of 31 August 1971 [2] and 24 February 1972 [3], and from the various statements and documents issued by the Government of Iceland that the present Icelandic claim to exclusive fisheries over a 50-mile zone is not based upon this concept of preferential rights. Although the premisses of Icelandic economic independence and the need for conservation are frequently reiterated, and although these are the identical premisses upon which the concept of preferential rights was established, nothing is now said of this concept.

262. No explanation has been given by Iceland for this failure to invoke the very concept designed to deal with the situation facing Iceland. Much sympathy may be evoked for a State faced with a situation which it feels is in principle inequitable but for which the law provides no apparent remedy. Indeed, in such a situation a court may be tempted to devise a remedy and rely upon such "general principles of law" as would suggest a remedy, perhaps in the form of a customary right articulated in terms appropriate to a novel situation. It is not the contention of the Government of the United Kingdom that this would ever be a proper course for the Court to take. But quite apart from general considerations of the limits of the judicial function which such a contention would raise, it would in any event be the wrong course in situations like the present one. Here the law has already devised concepts to deal with the very situation in question. How, therefore, can a State ignore these concepts and seek to advance an argument for some novel, customary right unknown to the law and specifically rejected within recent years by the overwhelming majority of States?

(iii) *The need for conservation*

263. The Icelandic claim to extend Iceland's jurisdiction over high seas fisheries is sometimes said to rest upon the asserted need for conservation. Thus, the Icelandic Law concerning the Scientific Conservation of the Continental Shelf Fisheries, dated 5 April 1948 [4], was accompanied by a statement of reasons and a Commentary [4] which included the following:

> ". . . the countries which engage in fishing mainly in the vicinity of their own coasts . . . have recognized to a growing extent that the responsibility of ensuring the protection of fishing grounds in accordance with the findings of scientific research is, above all, that of the littoral State. . . . In so far as the enactment of measures to assure the protection of stocks of fish is concerned, the views of marine biologists will have to be taken into consideration, not only as regards fishing grounds and methods of fishing, but also as regards the Seasons during which fishing shall be open, and the quantities of fish which may be caught."

The Resolution adopted by the Althing on 15 February 1972 [1] stated in paragraph 4:

> "That effective supervision of the fish stocks in the Iceland area be continued in consultation with marine biologists and that the necessary

[1] Annex 5 to this Memorial.
[2] Annex 3 to this Memorial.
[3] Annex 6 to this Memorial.
[4] Annex 1 to this Memorial.

measures be taken for the protection of the fish stocks and specified areas in order to prevent over-fishing."

Successive statements by representatives of the Government of Iceland [1] have reiterated that it is the need for conservation which justifies the claim to extend the Icelandic jurisdiction.

264. If this is the true basis of the Icelandic claim, three separate questions are posed:

First, is there a scientifically proven need for conservation of the stocks in question?

Second, if so, by what means may Iceland, as a coastal State, take the measures necessary to effect conservation?

Third, are the measures actually taken justified by the scientific evidence of the need for conservation, appropriate to the particular case and, in so far as they affect the interests of other States, in accordance with international law?

(a) *The evidence of a scientifically proven need for conservation*

265. This is a precondition of any claim to adopt conservation measures. It will be recalled that the Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958 defined "conservation of the living resources of the High Seas" as "the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products" (Art. 2). Moreover, the right of the coastal State to take measures for conservation was, under Article 7.2, made subject, *inter alia*, to the following conditions:

"*(a)* that there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) that the measures adopted are based on appropriate scientific findings;

(c) . . . . . .

In relation to the cod-stocks off Iceland, there is, fortunately, avialable scientific evidence. That evidence has been fully reviewed in Part III of this Memorial. It in no way supports the view that unilateral conservation measures are required by any considerations relating to the fish stocks.

(b) *The means whereby Iceland, as a coastal State, might take measures of conservation*

266. Even supposing that Iceland had adduced evidence showing a need for conservation measures, international law does not permit arbitrary, unilateral action by a coastal State. One reason for this is perhaps that it cannot be assumed that the coastal State will safeguard the common interest in a *res communis*. The fate of the Atlanto-Scandian herring is testimony to this fact [2].

267. The Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958 places the duty of acting to conserve resources on *all* States, not just the coastal State. In the terms of Article 1 (2):

---

[1] *Fisheries Jurisdiction in Iceland*, Ministry for Foreign Affairs, Reykjavik, February 1972, Appendices III-IV: given as Enclosure 2 to Annex H to the Application instituting proceedings.

[2] See paras. 83-87 above.

> "All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas",

and in the terms of Article 4 (1):

> "If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living resources in any area or areas of the high seas, those States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected."

The whole emphasis is upon action *by agreement*. It is only when "agreement with respect to conservation measures" has not been reached that, under Article 7, the coastal State may proceed to take unilateral action. And even such unilateral action is not final, but subject to the right of the other States affected to have recourse to the special Commission to be established pursuant to Articles 9-11 of the Convention.

268. It is, of course, true that Iceland is not a party to this Convention. As remarked earlier, the question why a State like Iceland, which professes to be concerned about conservation, fails to accept and invoke existing machinery which was designed specifically to deal with conservation is one which has not been answered by Iceland. However, it is clear that the obligation to proceed to deal with a problem of conservation by agreement rather than by unilateral action is founded not upon this Convention but upon principle and the practice of States.

269. It may be recalled that the resolution on Special Situations relating to Coastal Fisheries [1] regarded the appropriate means as "agreed measures", not unilateral action. The practice of States abounds with examples of measures for regulating fisheries being taken by agreement between the interested States. The following is an illustrative rather than an exhaustive list.

270. *The North Sea and Atlantic:* The Convention for Regulating the Police of the North Sea Fisheries of 1882 [2] initiated a pattern of international co-operation which was continued in the Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1946 [3] and this, in turn, was replaced by the North-East Atlantic Fisheries Convention of 1959 [4]. Comparable co-operation was provided for by the International Convention for the North-West Atlantic Fisheries of 1949 [5], dealing with an area including the Newfoundland Grand Banks which had produced fishing controversies for some 400 years. There may be cited, in addition, the Atlantic Tuna Convention of 1966 [6] concluded under the auspices of FAO; the USA/USSR

[1] See paras. 190 and 258 above.

[2] See para. 5 above.

[3] 231 *UNTS* 199.

[4] 486 *UNTS* 157: see also Annex F to the Application instituting proceedings. The area covered was the N.E. Atlantic, the Arctic Ocean, part of the Baltic and Mediterranean waters. Parties are Belgium, Denmark, France, Federal Republic of Germany, Ireland, Iceland, Netherlands, Norway, Portugal, Poland, Spain, Sweden, United Kingdom, USSR.

[5] 157 *UNTS* 157. Parties are Belgium, Bulgaria, Canada, Denmark, France, Federal Republic of Germany, Iceland, Italy, Japan, Norway, Poland, Portugal, Spain, United Kingdom, United States and USSR.

[6] 6 *International Legal Materials* (1967), 293; signed by United States, Spain, Korea, Japan.

Agreement on Fishery Problems in the Western Areas of the Middle Atlantic Ocean of 1967 [1]; the USA/USSR King Crab Fisheries Agreement of 1969 [2]; the USA/Cuba Shrimp Convention of 1958 [3]; the Brazil/USA Shrimp Conservation Agreement of 1972 [4]; the Convention on the Conservation of the Living Resources of the South-East Atlantic of 1969 [5]; the Canada/Norway Agreement on Sealing and the Conservation of the Seal Stocks in the North-West Atlantic of 1971 [6]; and the Iceland/Norway/USSR Agreement on the Regulation of the Fishing of the Atlanto-Scandian Herring of 1972 [7].

271. *The Baltic:* A Convention of 1929 [8] provided for closed seasons and in 1932 a Convention for the Plaice Fisheries in the Skagerrak, Kattegat and Sound [9] was concluded. Denmark, the Federal Republic of Germany and Sweden concluded an Agreement Concerning the Protection of the Salmon Population in the Baltic Sea in 1962 [10]. More recently there have been the Seal Fishing Agreements between the USSR and Finland, the latest in 1969 [11].

272. *The Black Sea:* A Convention regulating fisheries in this area was concluded in 1959 between Bulgaria, Romania and the USSR.[12]

273. *The Pacific:* This area has seen a considerable number of conservation agreements: the North Pacific Ocean Convention of 1952 [13]; the Alaska Crab Agreement of 1964 [14]; the Agreement on Fishing off Alaska of 1964 [15]; the Convention concerning the High Seas Fisheries of the North-West Pacific Ocean of 1956 [16]; the North Pacific Fur Seals Convention of 1957 [17]; the Halibut Preservation Convention of 1953 [18]; the Japan/Korea Agreement concerning Fisheries of 1965 [19]; the Sockeye Salmon Agreement of 1930 [20]; the Agreements between Chile, Ecuador and Peru signed at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific in 1952 [21]; the Japan/New Zealand Fisheries Agreement of

---

1 7 *International Legal Materials* (1968), 144; renewed in 1968, 8 *International Legal Materials* (1969), 502.

2 8 *International Legal Materials* (1969), 507.

3 358 *UNTS* 63.

4 11 *International Legal Materials* (1972), 453.

5 74 *Revue générale de droit international public* (1970), 1012.

6 Lay, Churchill and Nordquist, *New Directions on the Law of the Sea*, p. 414.

7 *Ibid.*, p. 449.

8 115 *LNTS* 93; parties were Denmark, Germany, Poland, Danzig, Sweden.

9 89 *LNTS* 199; parties were Sweden, Denmark, Norway.

10 Lay, Churchill and Nordquist, *op. cit.*, p. 446.

11 9 *International Legal Materials* (1970), 507.

12 377 *UNTS* 203.

13 205 *UNTS* 65; parties were United States, Japan, Canada.

14 533 *UNTS* 31; parties are Japan and United States.

15 4 *International Legal Materials* (1965), 176; parties are United States and USSR.

16 53 *AJIL* (1959), 763; parties are Japan and USSR.

17 314 *UNTS* 105; parties are United States, Canada, Japan, USSR.

18 222 *UNTS* 77; parties are United States and Canada. This replaced earlier conventions of 1923, 1930, 1937.

19 4 *International Legal Materials* (1965), 1128.

20 184 *LNTS* 305; parties are United States and Canada. And see the Protocol of 1956 dealing with pink salmon in the Fraser River system, 290 *UNTS* 103.

21 *United Nations Legislative Series, Laws and Regulations on the Régime of the Territorial Sea*, ST/LEG/SER.B/6, 723. These Agreements established a Standing Committee which is believed not to be active at the present time.

1967 [1]; the Agreement on North-East Pacific Fisheries of 1969 [2]; and the Tropical Tuna Commission Convention of 1949 [3].

274. *The Antarctic:* In relation to pelagic whaling, the post-war era has seen the International Convention for the Regulation of Whaling of 1946 [4] and, more recently, the Arrangements for the Regulation of Antarctic Pelagic Whaling of 1962 [5]: the Agreement concerning an International Observer Scheme for Factory Ships engaged in Pelagic Whaling in the Antarctic of 1963 [6]; the Agreement of 1970 regulating whaling for the campaign 1970-1971 [7]; and the subsequent Agreement of 1 August 1972 [8].

275. The picture which emerges from this brief survey is that, for many years and in some six oceans and seas, 30 or more States have participated in international agreements regulating high seas fisheries. This is not a universal pattern, and oceans such as the Indian Ocean, parts of the Mediterranean [9] and the seas off Africa are not yet the subject of such agreements. Yet this is explicable in that the fisheries in these areas have not been subject to the intense exploitation and competition between different fishing States which would call for international regulation and control. But where a need for conservation, regulation and control has arisen, then the means sought to achieve it has been that of international agreement and not unilateral State action [10].

276. It is apparent that, among Latin American States, the interest in international regulation by agreement, manifest in their participation in the

---

[1] 6 *International Legal Materials* (1967), 736.

[2] 8 *International Legal Materials* (1969), 509; parties are United States and USSR. This extended an earlier agreement of 1967 for a further two years.

[3] 80 *UNTS* 3; parties are United States, Ecuador, Mexico, Japan, Panama, Costa Rica, Colombia.

[4] 161 *UNTS* 73. The original signatories were Argentina, Australia, Brazil, Canada, Chile, Denmark, France, Netherlands, New Zealand, Norway, Peru, South Africa, USSR, United Kingdom, United States; not all of these ratified, there were also some accessions by non-signatories and there have also been some withdrawals. The parties currently are Argentina, Australia, Canada, Denmark, France, Iceland, Japan, Mexico, Norway, Panama, South Africa, USSR, United Kingdom, United States.

[5] 486 *UNTS* 263; parties were Japan, Netherlands, Norway, United Kingdom, USSR.

[6] 3 *International Legal Materials* (1964), 107; signatories were Japan, Netherlands, Norway, USSR, United Kingdom.

[7] 76 *Revue générale de droit international public* (1972), 184.

[8] *Keesing's Contemporary Archives*, September 23-30, 1972, 25486A; this Agreement establishes quotas for the three States whaling in the Antarctic, namely, Japan, Norway and the USSR. For a detailed review of arrangements over whaling see Johnston: *International Law of Fisheries* (1965), pp. 396-410.

[9] See the Spain/France Exchange of Notes of 20 March 1967, published in Lay, Churchill and Nordquist, *op. cit.*, Vol. I, p. 60.

[10] Even if one takes the controversial Canadian legislation of 26 June 1970 as applied by Notice of 15 December 1970 [see 10 *International Legal Materials* (1971), 437-9], it may be noted that the Canadian fishery jurisdiction was confined to a 12-mile belt, albeit from new "closing-lines" which in effect brought under Canadian control areas previously regarded as high seas, and the Canadian Government indicated from the outset that they were prepared to negotiate agreements with other interested States and to recognize their legitimate rights in the areas. Agreements were accordingly concluded with Denmark, France, United Kingdom and Portugal on 27 March 1972 and with the United States on 15 April 1972. These allow the continuation of traditional rights until 1986. See 10 *International Legal Materials* (1971), 437-441 and 76 *Revue générale de droit international public* (1972), 813-815.

Whaling Convention of 1946, the Tropical Tuna Commission Convention of 1949 and the South Pacific Fisheries Agreements of 1952, has not been maintained. Yet Cuba participated in the Convention on the Conservation of the Living Resources of the South-East Atlantic of 1969.

277. Iceland's own record is worthy of comment. Iceland was a party to the Whaling Convention of 1946, to the North-West Atlantic Fisheries Convention of 1949, to the North-East Atlantic Fisheries Convention of 1959 and to the Iceland/Norway/USSR Agreement on the Atlanto-Scandian Herring of 1972. It is apparent, therefore, that Iceland has been prepared to adopt an international approach to conservation problems, proceeding by multilateral agreement, in relation to other high seas fishery resources. As indicated earlier, the North-West Atlantic Fisheries Convention regulates an area, controversial for 400 years, which includes the Grand Banks off Newfoundland. The question which must be posed is why, in relation to the fisheries off the Newfoundland coasts, Iceland considers that international regulation—and the preservation of fishing rights for Iceland—is the proper means of resolving the problems of conservation and yet, in relation to the fisheries off the Icelandic coast, considers that the proper means is unilateral action to the exclusion of foreign vessels. Iceland, as a non-coastal fishing State in relation to the fisheries off Newfoundland, enjoys a quota of 8,083 metric tons of cod, 100 metric tons of American plaice and 100 metric tons of yellowtail flounder under the North-West Atlantic Fisheries Convention. If Iceland is prepared to accept conservation by an agreed quota system, preserving quotas for non-coastal States, under that Convention, the question which must be asked again is why a similar system is not acceptable for fisheries off Iceland.

278. These questions are the more pertinent because any real problems of conservation off the Icelandic coasts can be fully met under the North-East Atlantic Fisheries Convention of 1959 [1]. As explained in detail earlier in this Memorial [2], the North-East Atlantic Fisheries Commission has powers to investigate evidence of a conservation need, to recommend conservation measures and, subject to the consent of all the Contracting States, to introduce measures of catch limitation. The Convention thus provides a framework for highly effective conservation measures, but the extraordinary position has now arisen that Iceland has shown itself to be the one Contracting State which is not prepared to agree. It is thus Iceland which has the sole responsibility for depriving the Commission of the power to initiate, if required, the most effective measure of conservation. An attitude of this kind, taken by a State which seeks to justify its claim by an alleged need for conservation, involves contradictions which perhaps only the Government of Iceland can explain. In any event, a serious doubt is raised not only as to the factual justification, but also as to the *bona fides*, of the Icelandic claim that it is conservation needs that justify the exclusion of fishermen of other countries. Certainly, the Icelandic unilateral action is totally incompatible with the procedure laid down in the Convention, to which Iceland is a party, for dealing with any allegation of a need for conservation—a procedure which is also, as explained above, the procedure for dealing with such problems that is indicated by the practice of States. That procedure consists of the objective consideration, through agreed machinery, of the relevant scientific evidence and then, if the evidence is held to justify it, the taking, again by agreement with other interested States, of measures of a non-discriminatory character,

[1] 486 *UNTS* 157: see also Annex F to the Application instituting proceedings.
[2] See paras. 91-102 above.

based on that scientific evidence. It leaves no room for unilateral action by any one State.

(c) *The justification, according to international law, of the measures by reference to the scientific evidence of the need for them and to their regard for the interests of other States*

279. As demonstrated above [1], the Government of Iceland have failed to make out a case, based on scientific evidence, of a need for conservation which would justify their claim that drastic interference with the traditional pattern of fishing is required. The Government of the United Kingdom would, however, add that, if such evidence were provided to the satisfaction of the North-East Atlantic Fisheries Commission, they would of course comply with any measures of conservation called for by the Commission.

280. But there is also another factor to be considered, that is to say, those requirements imposed by international law which relate to the mode of application of such measures by the interested States. It has been the law, and still is, that in principle such measures must be based on scientific evidence (and must therefore be appropriate to the situation disclosed by that evidence) and must also be applied by all interested States *without discrimination*. Both of these requirements were made express conditions of conservation measures to be taken under the Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958. Subparagraphs *(b)* and *(c)* of Article 7.2 impose on the coastal State, which is taking unilateral measures pending agreement, the requirement:

> "*(b)* That the measures adopted are based on appropriate scientific findings.
> *(c)* That such measures do not discriminate in form or in fact against foreign fishermen",

and the powers of the Special Commission are subject to certain criteria which are specified in Article 10 and which include the following:

> " (ii) That the specific measures are based on scientific findings and are practicable; and
> (iii) That the measures do not discriminate, in form or in fact, against fishermen of other States."

281. The fact that the measures sought to be taken by Iceland in the present case are inappropriate—indeed, irrelevant—to the scientific evidence that is available has been fully demonstrated earlier in this Memorial [1] and need not be pursued here. Equally, no further demonstration is needed here of the fact that, in seeking to take these measures, Iceland has shown negligible regard for the interests of other States, let alone the principle of non-discrimination. The principle of non-discrimination flows from the most basic principle of international law, the freedom of the high seas. As Article 2 of the High Seas Convention indicates, the freedom of fishing results from the concept that the high seas are "open to all nations". The resources of the high seas are *res communis*. There is, however, no incompatibility between the basic principle of non-discrimination and the companion principle that interested States may (and indeed should), *by agreement*, acknowledge the special situation of

[1] See Part III of this Memorial.

coastal States which, in the terms of the resolution of the 1958 Conference, calls for "just treatment". A more detailed treatment of this companion principle is attempted later in this Memorial [1].

(iv) *The concept of the "patrimonial sea"* [2]

282. Though foreshadowed in earlier statements, this concept achieved a more precise formulation in the Montevideo Declaration on the Law of the Sea of 8 May 1970 [3], and, more recently, in the Declaration of Santo Domingo of 9 June 1972 [4], the relevant passage of which reads as follows:

"*Patrimonial Sea*

1. The coastal State has sovereign rights over the renewable and non-renewable natural resources, which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.

2. The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea, as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area.

3. The breadth of this zone should be the subject of an international agreement, preferably of a world-wide scope. The whole of the area of the territorial sea and the patrimonial sea, taking into account geographic circumstances, should not exceed a maximum of 200 nautical miles.

4. The delimitation of this zone between two or more States, should be carried out in accordance with the peaceful procedures stipulated in the Charter of the United Nations.

5. In this zone ships and aircraft of all States, whether coastal or not should enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the Coastal State of its rights within the area. Subject only to these limitations, there will also be freedom for the laying of submarine cables and pipelines."

283. As shown earlier, the concept that a coastal State may claim sovereignty over *all* the economic resources of a marginal belt of 200 miles is inconsistent with the practice of the majority of States today. It is patently contrary to customary law, as well as to all four of the 1958 Geneva Conventions. Indeed, it is not even embodied in the internal legislation of the majority of the signatories of the Declaration of Santo Domingo, let alone accepted on the international plane.

---

[1] See paras. 300-307 below.

[2] For convenience and brevity the discussion in the following paragraphs is conducted in terms of the "patrimonial sea" concept. The considerations set out apply with equal aptness, however, to other but similar concepts which are currently being canvassed in preparation for the forthcoming Law of the Sea Conference, e.g., the concept of the Exclusive Economic Zone and the concept of a coastal State's resource jurisdiction zone.

[3] 64 *AJIL* (1970), 1021-1023.

[4] 66 *AJIL* (1972), 918-919. The States signing were Colombia, Costa Rica, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Dominican Republic, Trinidad and Tobago, and Venezuela. The following States participating in the Conference did *not* sign: Barbados, El Salvador, Guyana, Jamaica, Panama.

284. Accordingly, it is submitted that this concept of a patrimonial sea must be viewed as a proposal *de lege ferenda*, which the States concerned will no doubt propose for consideration at the forthcoming Third United Nations Conference on the Law of the Sea, to be convened in April-May 1974 [1]. Indeed, if one looks at the terms of the Declaration of Santo Domingo, the operative word in paragraphs 3, 4 and 5 is "should" not "is"; it is, on its own terms, a statement of policy aims for the future and not a statement of existing law. This view is reinforced by the terms of the somewhat similar recommendations which emerged from the Regional Seminar of African States held at Yaoundé from 20 June to 30 June 1972 [2]. These included a recommendation to establish an economic zone and called upon African States "to uphold the principle of this extension at the next International Conference on the Law of the Sea". In fact Kenya has already submitted Draft Articles on the Exclusive Economic Zone Concept for the specific purpose of placing this matter before the forthcoming Conference [3].

285. Whether the proposals based on "the patrimonial sea" concept, or other similar concepts, will commend themselves to a sufficient majority of States to become law must be a matter of conjecture. It is clear that there will be opposition to them—and, indeed, already has been opposition to them—not only from the traditional distant-water fishing States but also from developing States who foresee that they may themselves become distant-water fishing States in the not too remote future and from land-locked States or other States for whom, by reason of their geographical situation, the concepts hold no attraction. The merits of considerations such as these are not, of course, questions in which the Court would wish to involve itself, and those considerations are not matters which the Government of the United Kingdom would consider it appropriate to urge upon the Court. But they do have a real relevance in emphasizing that the issues are still far too open for these new concepts to be treated as anything other than possible indications of the way in which the law may, one day, perhaps, and no doubt with many qualifications which cannot as yet be envisaged, tend. They do not represent the law now.

286. It is, in any event, not clear whether Iceland relies on this concept of "the patrimonial sea". Indeed, claims based on that concept would differ in several respects from the claim actually formulated by Iceland. Apart from possible differences in the breadth of the zone claimed, the "patrimonial sea" concept has no necessary connection with the continental shelf, whereas the Icelandic claim appears to rest upon a continental shelf doctrine. Nor does "the patrimonial sea" concept necessarily envisage the degree of exclusivity of fishing which the Icelandic claim does.

(v) *The doctrine of "Permanent Sovereignty over Natural Resources"*

287. Closely linked with such concepts as that of "the patrimonial sea" is the doctrine which has become known as the doctrine of "Permanent

---

[1] General Assembly resolution No. 3029 (XXVII) of 18 December 1973.

[2] A/AC.138/79; reproduced in Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, *Official Records of the General Assembly*, Twenty-seventh Session, Suppl. No. 21 (A/8721), pp. 73-80.

[3] A/AC.138/Sc.II/L.10: *ibid.*, pp. 180-182.

Sovereignty over Natural Resources". It should be made clear that, except to the extent that the doctrine is alleged to have some bearing on the limits of a coastal State's jurisdiction in fisheries matters in the waters outside its territorial sea, the Government of the United Kingdom are not concerned in this Memorial with questions relating to the true scope of the doctrine or with arguments tending to establish or negate the moral or practical justification for it or that otherwise go to its merits, or with its legal status and validity, or with any other matters of that sort.

288. The advocacy of the doctrine has a history which goes back some years but it is only within recent months—long after these proceedings had been instituted—that any attempt has been made to extend it to deal with issues of the kind now before the Court. The first occasion was during the 27th General Assembly of the United Nations in 1972 when a draft resolution which was put forward on the topic (in the context of the Report of the Economic and Social Council) in the Second Committee—not, be it noted, in the First Committee, which is the one that deals with matters relating to the Law of the Sea—contained an operative paragraph in the following terms:

> "1. Reaffirms the right of States to permanent sovereignty over their natural resources, on land within their international boundaries, as well as those found within the sea bed and subsoil thereof within their national jurisdiction and in the superjacent waters."

289. Despite the strong reservations and indeed opposition that were expressed to the obviously question-begging nature of the phrase "and in the superjacent waters", and despite an amendment moved by Afghanistan (with the support of a number of other States including many of the land-locked States), to record that decisions concerning States' national jurisdiction over the territorial sea, contiguous zone, seabed and subsoil and the superjacent waters belonged to the forthcoming Law of the Sea Conference (an amendment which was rejected in the Plenary Meeting by 54 votes to 45, with 28 abstentions), the draft resolution was adopted by the Second Committee and eventually by the General Assembly, becoming General Assembly resolution No. 3016 (XXVII). The voting in the General Assembly was 102 in favour, none against and 22 abstentions. In due course a recommendation containing language to the same effect was adopted by the Committee on Natural Resources of the Economic and Social Council at its session in New Delhi in February 1973 [1], and a resolution in similar terms by ECOSOC itself, on the recommendation of its Economic Committee, at its session in New York in April/May 1973 [2].

290. It may be argued—it is not clear whether the Government of Iceland would themselves wish to go as far as this—that these various resolutions and recommendations constitute legal authority for the present claim of the Government of Iceland to be entitled to extend their exclusive fisheries jurisdiction over the waters embraced by a line 50 miles from the coast of Iceland. If so, the following observations must be made.

291. First, whatever weight it may be desirable to attach to views expressed by the delegations of States in their discussion of instruments of this kind in the forums in fact concerned, resolutions of the General Assembly passed in circumstances such as those of the instant case—and, even more so,

---

[1] E/C.7/L.13.
[2] E/RES/1737 (L IV).

resolutions of ECOSOC and recommendations of the Committees of ECOSOC—are not themselves capable of amending international law as expressed in the current practice of States and as embodied in a number of international treaties.

292. Secondly, these resolutions—or rather, this resolution, for in essence they were all the same resolution—represented a composite political package dealing with a number of topics and covering a number of highly controversial political issues, most of which had themselves no bearing on the question of maritime jurisdiction. The fact that some States found it expedient on those particular occasions to combine with other States to support the resolution is not a reliable indication of what their views are on the issue of maritime jurisdiction or how they will in fact vote on that issue when it comes up squarely for decision by itself in the competent forum, that is, the next Law of the Sea Conference.

293. Thirdly, the features of the resolution which are in question (that is, those that bear on the limits of national maritime jurisdiction) did in fact attract considerable opposition or misgivings at all stages. The actual voting figures on the resolution and on the various amendments that were proposed did not—perhaps for the reasons of political expediency just referred to—accurately represent the state of opinion on this matter as reflected in the views that were in fact expressed on it in the various committees and in ECOSOC and in the General Assembly itself.

294. Finally—and this point is of course connected with the point just made—a study of the various speeches and explanations of vote delivered in the course of the debates shows that it was well understood that, whatever the resolution itself might be taken to mean if literally construed, it was not capable of prejudicing (and most States did not intend it to prejudice) the decisions to be taken by the Law of the Sea Conference on what changes, if any, should be made in the law relating to the limits of maritime jurisdiction. Statements to that effect were made not only by those delegations which opposed or abstained on the vote on the controversial words, in the resolution (for example, the delegations of the United Kingdom and of a number of other countries, including many of the land-locked countries). They were also made in very clear terms by a number of delegations who actually voted in favour of the resolution. For example, in the debate in the Economic Committee of ECOSOC the Delegate of Finland said on 26 April 1973 [1];

> "His delegation would vote in favour of the draft resolution as a whole, despite its reservations regarding the formulation of some paragraphs. It was adopting such a course primarily to demonstrate its support of the principles involved and it did not wish to let inappropriate wording stand in the way of endorsement of those principles. However, he still hoped that consultations would take place with a view to improving some of the paragraphs and that the text would thus be adopted with the widest possible support.
>
> His Government viewed with sympathy the exceptional situation of Iceland, whose national economy was to such a crucial extent dependent on effective exploitation of her marine resources. He was fully aware that nations engaged in fisheries were not all on an equal footing. He wished therefore to reiterate the call his delegation had made on a number of

[1] E/AC.6/SR.607, pp. 23-24.

other occasions, when it had advocated special privileges for certain States. In his view, developing coastal States as well as developed countries predominantly dependent on fisheries should be granted specific privileges. There were in fact a few 'hard-core fishing nations' with economies that depended primarily on income from their fishing industry. It was in that light that his delegation fully endorsed the principles enunciated in paragraphs 1 and 6 of the text now before the Committee.

Nevertheless, his delegation's readiness to endorse the present draft resolution as a whole should not be construed as prejudicing his Government's position at the forthcoming Law of the Sea Conference, at which the relevant legal provisions would be established."

A number of statements to a similar effect were made by way of explanation of vote when the Economic Committee of ECOSOC adopted the draft resolution: for example, by the delegates of the USSR, France, Canada, the United States, Sweden, Uganda, Denmark, India, Italy and Turkey [1]. More significantly, the delegation of Iceland themselves made clear their awareness of the limitations within which the resolution necessarily operated. In the debate in the Second Committee of the General Assembly on 29 November 1972 the Icelandic delegate said [2]:

"The co-sponsors had, however, carefully refrained from touching upon the legal issue of the delimitation of the area of national jurisdiction; that question could only properly be solved by the forthcoming Conference on the Law of the Sea."

295. Accordingly the Government of the United Kingdom submit that, whatever might be the true nature and true legal effect of the doctrine of Permanent Sovereignty over Natural Resources, it does not constitute any legal authority for the action taken by the Government of Iceland which has given rise to these proceedings.

IV. Limitations on the Judicial Function

296. The nature of the arguments, actual or anticipated, which Iceland might seek to adduce in support of its claim makes it necessary for the Government of the United Kingdom to make certain observations on the limitations which are imposed upon the Court in the exercise of its judicial function. As has been demonstrated above, whether based on the doctrine of the continental shelf, or the notion of "preferential rights", or the necessity for conservation, or the concept of the "patrimonial sea", or the doctrine of "Permanent Sovereignty over Natural Resources", the Icelandic claim is contrary to the established law and relies upon a view of the law which is not only a minority view but, above all, *de lege ferenda*.

297. It is the submission of the Government of the United Kingdom that, *rather than take precipitate and unilateral action*, Iceland ought properly to have awaited the outcome of the forthcoming United Nations Conference on the Law of the Sea where the issues of the breadth of exclusive fisheries zones, fishing and conservation of the living resources of the high seas, including the question of the special rights of coastal States, are the very issues before the

[1] E/AC.6/SR.609, pp. 14-18.
[2] AC.2/SR.1502, p. 12.

Conference [1]. The matters raised by Iceland are not unique to Iceland; they are matters which concern many States and upon which action must be taken by general concurrence rather than by unilateral measures. Indeed, no legal system could survive if unilateral action of this kind, contrary to the established law, were to be permitted. As the Court has previously stated, a faculty of making a unilateral disavowal of obligation cannot be permitted "... in the case of general or customary law rules and obligations which, by their very nature, must have equal force for all members of the international community, and cannot therefore be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour [2]". Nor can it be said that the history of the 1958 and 1960 Geneva Conferences justifies Iceland in assuming that agreement cannot be reached and measures agreed to meet those needs of Iceland which the community of States as a whole recognizes to be just and deserving of legal protection. The 1958 and 1960 Conferences in fact laid the basis for a general recognition of the validity of exclusive fishing zones, up to a 12-mile limit and subject to "historic rights", and many States acted on this basis and negotiated international agreements to this effect: the Exchange of Notes of 1961 between Iceland and the United Kingdom is a case in point. It may well be that the 1974 Conference will provide an even greater measure of agreement over new rules to be incorporated into international law.

298. However, what a new Conference might agree about changes in the existing law is irrelevant to the present case before the Court. The Court's function under Article 38 of its Statute "is to decide in accordance with international law such disputes as are submitted to it . . .". As the Court itself has stated:

> "As is implied by the opening phrase of Article 38, paragraph 1, of its Statute, the Court is not a legislative body. Its duty is to apply the law as it finds it, not to make it [3]".

In the same case, the Court declined to innovate in the way suggested, saying:

> "This would be to engage in an essentially legislative task, in the service of political ends the promotion of which, however desirable in itself, lies outside the function of a Court of law [4]".

This counsel of judicial caution is not to deny the creative function of the Court in interpreting and applying the law; there may be many cases in which it falls to the Court to recognize and declare, on the basis of the practice of States generally, some new rule of customary international law. In effect, this is what the Court was able to do in the *North Sea Continental Shelf* cases [5]. But what the Court cannot do is to accept and apply, as law, a

---

[1] General Assembly resolution No. 2750 (XXV) of 17 December 1970, para. 2. And see the United Nations Seabed Committee's List of Subjects and Issues to be discussed at the Conference, dated 16 August 1972. Item 5 is the "Continental Shelf"; item 6 is "Exclusive Economic Zone beyond the Territorial Sea"; item 7 is "Coastal State Preferential Rights or Other Non-Exclusive Jurisdiction over Resources Beyond the Territorial Sea"; item 8 is "High Seas" which includes "Management and Conservation of Living Resources".

[2] *North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, pp. 38-39.

[3] *South-West Africa* case, *Second Phase*, *I.C.J. Reports 1966*, pp. 47-48.

[4] *Ibid.*, at p. 36.

[5] *I.C.J. Reports 1969*, p. 1.

minority practice; and it is on such a minority practice that Iceland now relies. Moreover, in a situation such as the present, when these issues will shortly fall to be decided by a Conference of States, there is all the more reason for the Court to confine itself scrupulously to its judicial function.

299. The reason for this is self-evident. It was well-expressed by Sir Hersch Lauterpacht when he wrote of "the hazardous course of judicial legislation" [1] and, speaking of courts in general, said:

> "They have to apply—and no more than that—the law. It is not within their province to speculate on the law or to explore the possibilities of its development. . . .
>
> Secondly, courts have to apply the law in force. It is not their function deliberately to change the law so as to make it conform with their own views of justice and expediency. This does not mean that they do not in fact shape or even alter the law. But they do it without admitting it; they do it while guided at the same time by existing law; they do it while remembering that stability and uncertainty *(sic)* are no less of the essence of the law than justice; they do it, in a word, with caution. The same considerations apply to the administration of international justice. Moreover, there exist in this sphere additional reasons for the exercise of restraint. These include, in the first instance, the importance of the subject-matter on which courts have to decide. They cannot experiment or innovate as easily in matters in which States have an interest as in those in which private individuals are concerned. If Governments are not prepared to entrust with legislative functions bodies composed of their authorized representatives, they will not be prepared to allow or tolerate the exercise of such activity by a tribunal enjoined by its Statute to apply the existing law [2]."

The decisions which States will soon have to make in regard to the issues before the forthcoming Conference will be decisions of the utmost consequence. It would not be consistent with the judicial function of the Court for it to embark upon a course which would pre-empt or appear to pre-empt those decisions.

V. The Judicial Function and Equity

300. It is the submission of the Government of the United Kingdom that by international law Iceland can have no claim to exclusive fisheries, on the basis of unilateral action, beyond 12 miles from agreed baselines. That, in essence, is the first of the submissions of the United Kingdom [3].

301. The United Kingdom, however, makes a second submission [4] and it is in relation to that second submission that the Court has an invaluable function of a positive character—as opposed to the negative ruling invited from the Court by the first submission. That function lies in the application to the present dispute of equitable principles.

302. In relation to a resource which is *res communis*, no problem arises so long as that resource is unlimited: the principle of freedom of fishing can be given its fullest expression in the sense of complete *laissez faire*. But, at the

---

[1] *The Development of International Law by the International Court* (1958), p. 19.
[2] *Ibid.*, pp. 75-76.
[3] See the Application instituting proceedings, para. 21 *(a)*.
[4] *Ibid.*, para. 21 *(b)*.

stage when that resource is in danger of over-exploitation, the basis for allowing complete freedom disappears and the notion that resources are *res communis* must transcend and predominate over the interests of any one State, be it coastal or non-coastal. Such disputes as may arise between States must then be resolved in a manner consistent with the interests of the community at large and in accordance with equitable principles. As the Court has said on a previous occasion, "it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles [1]". Of the three basic rules applied in the *North Sea Continental Shelf* cases, the first two are highly apposite in the present case: they are (1) the obligation to negotiate in good faith so as to proceed by agreement and (2) the obligation to apply equitable principles, taking all the circumstances into account.

303. The third is not apposite, since it related specifically to the juridical nature of the shelf and was distinguished by the Court from the issue of high seas resources. The Court there referred to:

> ". . . the sovereign jurisdiction which the coastal State is entitled to exercise and must exercise, not only over the seabed underneath the territorial waters but over the waters themselves, which does not exist in respect of continental shelf areas *where there is no jurisdiction over the superjacent waters, and over the seabed only for purposes of exploration and exploitation* [2]".

The Government of the United Kingdom accept the distinction between the superjacent waters and the seabed which was made by the Court. This is the distinction which, as shown earlier [3], is fundamental to the present law. There is, however, another rule which may be apposite: that is, that high seas fisheries resources are *res communis*, and their conservation is a duty imposed on *all* States. The body of State practice reviewed earlier [4] is evidence of this rule.

304. It may be useful to indicate, in greater detail, how the Government of the United Kingdom, subject to the guidance of the Court, would understand these three rules (that is to say, the first two of those identified by the Court in the *North Sea Continental Shelf* cases and the rule just described in para. 303 above), as applying to the present case.

(a) *The obligation to negotiate*

305. The obligation to negotiate in good faith can operate in a meaningful way only where the facts which form the basis of negotiations are objectively assessed. Clearly, in the present case, there is no agreement between the parties on the degree to which a conservation need exists. The United Kingdom would regard the obligation to negotiate as requiring it—and Iceland—to give every assistance to the North-East Atlantic Fisheries Commission in ascertaining, on the basis of scientific evidence, the real need for conservation and to accept and carry out the measures which that Commission might indicate, in accordance with Articles 7 and 8 of the 1959 Convention [5]. This it would do

---

[1] *North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, p. 47.

[2] *I.C.J. Reports 1969*, p. 37 (para. 59) (italics added).

[3] *Ante*, paras. 233 *et seq.*

[4] *Ante*, paras. 269-274.

[5] There is a scheme of joint enforcement to which Iceland and the United Kingdom are parties: see para. 102 above.

in good faith and with the utmost expedition, maintaining meanwhile any interim measures which the Court might direct. Any agreement with Iceland should embody these recommended measures, together with such other rules or limitations as might emerge from a consideration of equitable principles.

(b) *The obligation to apply equitable principles*

306. Although the Court has indicated that there are no legal limits to the considerations which States might take into account in applying equitable procedures [1], certain considerations seem self-evident. They are:

(i) The special position of Iceland as a State dependent on coastal fisheries in the sense of the resolution on Special Situations relating to Coastal Fisheries adopted at the 1958 Geneva Conference [2].

(ii) The need to afford to Iceland such preferential share of the total catch as would be equitable, taking into account the economic dependence of all other States interested in the fisheries.

(iii) The fact that Iceland has full opportunity for participating in the management of the resources in accordance with the provisions of the North-East Atlantic Fisheries Convention of 1959.

(iv) The need to take account of the established interests and acquired rights of other States fishing in the area, with due weight being paid to the length of time for which those interests have been maintained and those rights enjoyed and the economic implications of any change in them for the communities whose livelihood may depend upon them.

(v) The need to resolve disputes within the framework of established machinery, including that of the North-East Atlantic Fisheries Convention of 1959, or by reference to arbitration or judicial settlement, rather than by unilateral action.

(vi) The need to take account of all relevant principles of international law which are of general application and which relate to the conservation of fishery resources, to preferential rights and to responsibilities for good management.

(c) *The rule that high seas fishery resources are* res communis *and a resource for the benefit of all States, the conservation of which is a duty imposed on all States*

307. This rule is overriding and, as will be apparent, it is essentially the translation, into a principle operating in a universal context (so that it has application as between all interested States), of those considerations of equity which are listed above as applicable specifically between the United Kingdom and Iceland. It means that the United Kingdom and Iceland must negotiate not solely in consideration of their own interests but taking account of the fact that the resources about which they negotiate are part of a common heritage for which they have responsibilities as well as rights.

---

[1] *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 50).

[2] See para. 190 above.

PART V

COMPENSATION FOR INTERFERENCE WITH BRITISH SHIPPING

308. As has been stated in paragraph 54 above, the Government of Iceland instituted, very shortly after 1 September 1972 a campaign of harassment of certain British fishing vessels. These are the vessels which, in exercise of what the Government of the United Kingdom submit is their right to do so and in conformity with the Order made by the Court on 17 August 1972, have fished or have attempted to fish on the high seas inside the 50-mile line indicated in the Regulations of 14 July 1972 [1], but outside the 12-mile line established by the Exchange of Notes of 1961 [2]. This harassment carried out by Icelandic coastguard vessels has continued until the date by which this Memorial was compiled [3]. In the beginning there were periods during which it was pressed less vigorously than during others: in recent weeks, unfortunately, it has been waged with increasing intensity and violence.

309. The harassment conducted by the Icelandic vessels has taken a number of different forms. In some cases they have merely ordered the fishing vessels to haul in their nets and to leave the area, accompanying those peremptory orders by the threat of penal sanctions against the fishing vessels if, having failed to comply with the orders, they should ever find themselves within Icelandic territory. Most British fishing vessels have felt justified in disregarding these orders for which, in the submission of the Government of the United Kingdom, the Icelandic officers concerned could claim no authority in international law and which, in addition, were incompatible with the Order made by the Court on 17 August 1972. Other British fishing vessels, however, have understandably felt reluctant to expose themselves to the threat of punitive action, a threat which, however improper it might be in international law, the Icelandic authorities could no doubt make effective, by virtue of the Regulations of 14 July 1972, and the earlier Icelandic legislation there referred to, if the vessels concerned ever found it necessary or expedient to visit Icelandic ports. Those vessels have therefore complied under duress with the orders addressed to them by the coastguard vessels. They have thus been impeded under threat of *force majeure* in their lawful right to fish freely on the high seas and have thereby suffered serious material prejudice.

310. In other cases, the threat employed by the Icelandic coastguard vessels to back their orders to the fishing vessels has not been a threat of eventual penal sanctions but rather a threat of immediate and violent interference by the coastguard vessels themselves with the peaceful activities of the fishing vessels. It has been a threat, that is to say, that, if the fishing vessels did not immediately haul in their nets and depart from the area, the coastguard vessels would forcibly cut their warps (that is, their trawl-wires) by sailing across them with a cutting device. It will be appreciated that this is a tactic which, if successfully carried out, will result in the loss by the fishing vessel of the gear involved and perhaps a valuable part of its catch. It can also produce

---

[1] See Annex 9 to this Memorial.
[2] See Annex A to the Aplication instituting proceedings.
[3] See para. 3 above.

a situation of great danger to the life and limb of those on board the deck of the fishing vessel. When warps are being hauled through the water, they are under great tension. When a warp under tension is cut close to the trawler, it may whip back on to the deck of the trawler and cause deaths or serious injuries among the crew. Even if the attempt to sever the warps is unsuccessful, it cannot be made without the coastguard vessel indulging in dangerous manoeuvres which are contrary to all accepted rules of good seamanship and which cannot fail to imperil the fishing vessel itself and those on board her.

311. As in the cases described in paragraph 310 above, some British fishing vessels that have been faced with this threat of trawl-cutting have decided that it would not be right to incur the risk to life and property that might be entailed if they stood their ground and refused to be intimidated. Again, vessels which have understandably adopted this attitude and have been forced under threat of violence to curtail their fishing in the area have thereby suffered material loss and damage. Other British vessels, however, have refused to give way to this kind of intimidation. In many cases they have, when the threat has been put into practice, sought to nullify it by taking evasive action. In this they have from time to time been assisted by the defensive interposition of other British fishing vessels who have been in the vicinity or one of the civilian tugs or one of the vessels of the Royal Navy referred to in paragraphs 52 and 53 above. In most cases such evasive or defensive action has been effective and the attempt to sever trawl-wires has either not been pressed or has been unsuccessful. But in a number of cases it has indeed been successful. It must be added that there have also been occasions when the Icelandic vessels have indulged in these attacks without giving any warning to the British fishing vessels concerned and without giving them the chance, even by yielding to the threat of superior force, to avoiding being exposed to physical damage and injury.

312. As pointed out above, the very attempt to carry out such an attack, irrespective of its success, necessitates dangerous manoeuvres. On at least three occasions these have resulted in minor collisions between a coastguard vessel and a fishing vessel in which, though there was fortunately no loss of life or personal injury, the fishing vessels have suffered some damage. In addition to the damage inflicted on these vessels themselves and in addition to the damage directly inflicted when fishing vessels have actually had their gear severed, in all these cases (and whether or not the attack by the Icelandic vessels was successful) the fishing vessels concerned—both those under attack and those others who have come to their assistance—have been put to substantial loss and expense by reason of the forcible interruption of their peaceful fishing, as well as having been subjected to the indignity and danger of unprovoked and unlawful attack on the high seas.

313. Unjustifiable as is the conduct just described, the Icelandic vessels have not confined themselves to direct interference with fishing of that sort but have also engaged, especially in recent weeks, in other and even more violent and dangerous activities designed to drive British fishing vessels out of this area of the high seas. They have, on a number of occasions, threatened forcibly to arrest British fishing vessels on the high seas and on at least one occasion (on 14 May 1973, in the case of the trawler *Lord Alexander*) [1] they have attempted though unsuccessfully, to put that threat into execution. They have, on a number of occasions, threatened to open fire with rifles on the crews of British fishing vessels or on those of the civilian tugs and again

[1] See Annex 36 to this Memorial.

have carried this threat out [1], fortunately without causing injury to persons or loss of life. Finally, they have threatened to open fire with their main armament on British fishing vessels and on the civilian tugs and again they have carried this threat out, sometimes using blank shots, sometimes using live or solid shots. On one occasion (on 26 May 1973, in the case of the trawler *Everton*) an Icelandic vessel deliberately scored nine hits with solid shots on a single trawler, holing her badly below the water line [2].

314. There is set out in Annex 36 to this Memorial a fuller description of the more serious incidents that have taken place between 1 September 1972 and the date by which this Memorial was compiled [2] in this campaign of harassment of British nationals engaged in lawful activities on the high seas. Where possible that description includes an account of some of the material loss that was thereby suffered by the British nationals concerned but that account does not purport to be a final one. Each of these incidents has been the subject of a formal protest to the Government of Iceland made orally, but on express instructions from the Government of the United Kingdom, by the British Ambassador in Reykjavik. In these protests the British Ambassador has formally and explicitly reserved the right of the Government of the United Kingdom to seek proper compensation in due course. In addition, the Government of the United Kingdom have thought it proper to reinforce these oral protests by written notes of protest from time to time. Such notes of protest have been delivered by the British Ambassador in Reykjavik to the Ministry for Foreign Affairs of the Government of Iceland on 23 September 1972; 18 October 1972; 23 January 1973; 7 March 1973; and 17 May 1973. Their text is set out in full in Annex 37 to this Memorial. In their replies to these protests, the Government of Iceland have in general made no attempt to deny that their vessels have committed the acts in question, though they have occasionally contested the details of a particular incident. Nor have they attempted to disclaim responsibility for these acts. On the contrary, they have expressly and repeatedly affirmed that their vessels have been acting in accordance with orders given at the highest level of the Government of Iceland and in pursuance of the considered policy of that Government. They have asserted their intention to continue this deliberate use of force, against unarmed fishing vessels of another State on the high seas, in the enforcement of the purported extension of their exclusive fisheries jurisdiction.

315. In the submission of the Government of the United Kingdom, the acts of harassment that have been described in this Memorial and that have been carried out by the vessels of the Republic of Iceland on the direct authority of the Government of Iceland and in purported enforcement of the regulations made by that Government on 14 July 1972, are acts for which no authority or justification can be found in international law. They constitute the violation of a fundamental right of the United Kingdom in international law whereby, in the absence of agreed provision to the contrary which is binding on the United Kingdom, its nationals may fish freely, and without interference by the agents or officials of other States, in the particular area of the high seas that is concerned in this case. This violation of the legal rights of the United Kingdom has been committed by means of acts of arbitrary violence, dangerous to life and limb and in fact productive of material loss to the Government of the United Kingdom and to the British nationals concerned. In the submission of the Government of the United Kingdom it constitutes an inter-

[1] See Annex 36 to this Memorial.
[2] See para. 3 above.

national delinquency for which the Government of Iceland are obliged in international law to make full reparation to the Government of the United Kingdom. As the Permanent Court of International Justice said in its judgment in the *Chorzów Factory* case *(Jurisdiction)* [1]: "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form." It is clear from the views which the Court expressed in the *Corfu Channel* case [2] that this principle is not confined to cases in which there has been a breach of a treaty but includes any case where there has been a breach of a duty owed in international law by one State to another [3].

316. Accordingly, the Government of the United Kingdom now claim full compensation in respect of these unlawful acts of harassment that have been committed (or that may yet be committed before the judgment of the Court in this case) by the Government of Iceland in the enforcement or attempted enforcement of the purported extension of their exclusive fisheries jurisdiction. This compensation should, in the submission of the Government of the United Kingdom, include a sum representing the expenses to which the Government of the United Kingdom have themselves been put in providing assistance to British fishing vessels in the circumstances described in this Memorial. It should also reflect the injury done to the United Kingdom by the dangerous, high-handed, arbitrary and grossly lawless nature of the acts complained of. So far as it relates to the loss inflicted on nationals of the United Kingdom, it should include a sum reflecting not merely the value of the gear that has been lost by the British fishing vessels whose trawl-wires have actually been severed and the damage suffered by those vessels that have actually been involved in collisions with Icelandic coastguard vessels or that have been damaged by gunfire but also the loss of profit and loss of earnings suffered by the owners and crews of those fishing vessels and by the owners and crews of other vessels who have, as a result of the tactics employed by the Icelandic vessels, been forced or intimidated into curtailing their legitimate activities in the area in dispute. It should also include a sum reflecting the loss suffered by the owners and crews of British fishing vessels who have gone to the assistance of other vessels that have been under attack and have thereby themselves lost active fishing time.

317. The Government of the United Kingdom stand ready, at such time and according to such procedure as the Court may subsequently indicate, to furnish proof of the material damage which they and their nationals have actually suffered and to provide particulars of the compensation which they now ask the Court to declare payable by the Government of Iceland.

---

[1] *P.C.I.J., Series A, No. 9*, p. 29.
[2] *I.C.J. Reports 1949*, p. 4.
[3] See also Oppenheim, *International Law*, 8th ed., Vol. 1, pp. 352-355.

PART VI

FINAL SUBMISSIONS OF THE GOVERNMENT OF THE UNITED KINGDOM

A. Summary of Conclusions

318. In the submission of the Government of the United Kingdom, the material set out in the preceding Parts of this Memorial established the following:

(a) As a matter of law, Iceland is not entitled to establish an exclusive fisheries jurisdiction extending 50 miles from its coast. Specifically, Iceland is not entitled to assert, as against the United Kingdom, an exclusive fisheries jurisdiction extending beyond the limits which were agreed to in the Exchange of Notes of 1961 or to exclude British vessels from the area beyond those limits or to impose restrictions upon British vessels in that area.

(b) There may now be a case on conservation grounds for the introduction of some system of catch-limitation in the sea area surrounding Iceland, though there is no evidence that the demersal stocks are in imminent danger in the absence of such a system or that exceptionally severe restrictions on catch from those stocks need to be introduced. Adequate arrangements already exist, through the machinery of the North-East Atlantic Fisheries Commission, established by the North-East Atlantic Fisheries Convention of 1959, for monitoring the need for such a system and for establishing, and implementing any such system that is found to be needed.

(c) Iceland is a coastal State whose people are specially dependent on the fisheries in the area for their livelihood or economic development, within the contemplation of the resolution on Special Situations relating to Coastal Fisheries adopted at Geneva in 1958.

(d) The United Kingdom is a State whose vessels have traditionally used the fisheries in the area and whose fishing industry and ancillary industries are heavily dependent on those fisheries. The United Kingdom would, for that reason, suffer substantial damage if British fishing vessels were deprived of access to those fisheries. The United Kingdom's pattern of domestic consumption of fish taken by British vessels from those fisheries is also such that material damage would be suffered by the United Kingdom if British vessels were deprived of access to them.

(e) By virtue of Iceland's special position as described in subparagraph *(c)* above, it is equitable that any such system of catch-limitation as is referred to in subparagraph *(b)* above should give Iceland a preferential position. There is no case on conservation grounds or on grounds of Iceland's special dependency for her seeking an exclusive position. On the grounds of the United Kingdom's traditional interest and acquired rights in and current dependency on those fisheries, the United Kingdom is entitled a substantial position therein for British fishing vessels.

(f) Iceland and the United Kingdom are both under a duty to negotiate in good faith with each other to establish, as between themselves, a régime for regulating the fisheries of the area which will:

(i) include such restrictions on the exploitation of the resources of those fisheries as are required on conservation grounds, proved by properly attested scientific evidence;
(ii) establish such a preferential position for Iceland, in respect of any catch-limitation arrangements that are introduced to give effect to those restrictions, as is required by its special position as aforesaid; and
(iii) maintain such a position for the United Kingdom, in respect of any such catch-limitation arrangements, as is necessary to give effect to its traditional interest and acquired rights in and current dependency on those fisheries.

(g) The negotiations between Iceland and the United Kingdom, and the agreement which should emerge from them, may be bilateral or may involve the participation of other interested States but should in any event have regard to the interests of other States. The parties should preferably make use of the machinery already established for that purpose by international agreement, notably, the North-East Atlantic Fisheries Commission established by the North-East Atlantic Fisheries Convention of 1959.

(h) In the absence of any agreement enabling it in that behalf, Iceland has no jurisdiction over British fishing vessels in the area, and the activities by the Government of Iceland which are referred to in Part V of this Memorial (being activities intended to enforce the Regulations of 14 July 1972 against British fishing vessels) and any activities of a like nature that may be undertaken in future are unlawful. Specifically, they constitute a violation of the rights of the United Kingdom in international law and give rise to a liability on the part of the Government of Iceland to make compensation therefor to the Government of the United Kingdom.

B. Submissions of the Government of the United Kingdom

319. Accordingly, the Government of the United Kingdom submit to the Court that the Court should adjudge and declare:

(a) that the claim by Iceland to be entitled to a zone of exclusive fisheries jurisdiction extending 50 nautical miles from baselines around the coast of Iceland is without foundation in international law and is invalid;

(b) that, as against the United Kingdom, Iceland is not entitled unilaterally to assert an exclusive fisheries jurisdiction beyond the limits agreed to in the Exchange of Notes of 1961;

(c) that Iceland is not entitled unilaterally to exclude British fishing vessels from the area of the high seas beyond the limits agreed to in the Exchange of Notes of 1961 or unilaterally to impose restrictions on the activities of such vessels in that area;

(d) that activities by the Government of Iceland such as are referred to in Part V of this Memorial, that is to say, interference by force or the threat of force with British fishing vessels operating in the said area of the high seas, are unlawful and that Iceland is under an obligation to make compensation therefor to the United Kingdom (the form and amount of such compensation to be assessed, failing agreement between the Parties, in such manner as the Court may indicate); and

(e) that, to the extent that a need is asserted on conservation grounds, supported by properly attested scientific evidence, for the introduction of restrictions on fishing activities in the said area of the high seas, Iceland and the United Kingdom are under a duty to examine together in good faith (either bilaterally or together with other interested States and either by new arrangements or through already existing machinery for international collaboration in these matters such as the North-East Atlantic Fisheries Commission) the existence and extent of that need and similarly to negotiate for the establishment of such a régime for the fisheries of the area as, having due regard to the interests of other States, will ensure for Iceland, in respect of any such restrictions that are shown to be needed as aforesaid, a preferential position consistent with its position as a State specially dependent on those fisheries and as will also ensure for the United Kingdom a position consistent with its traditional interest and acquired rights in and current dependency on those fisheries.

31 July 1973.

(Signed) H. STEEL,
Agent for the Government of the United Kingdom.

Annex 1

LAW CONCERNING THE SCIENTIFIC CONSERVATION OF THE CONTINENTAL SHELF FISHERIES, DATED 5 APRIL 1948, TOGETHER WITH A COMMENTARY THEREON AS SUBMITTED TO THE ALTHING

[See Annex H to the Application, pp. 45-47, supra*]*

Annex 2

GOVERNMENT OF THE UNITED KINGDOM'S AIDE-MÉMOIRE OF 17 JULY 1971

[See Annex B to the Application, p. 13, supra*]*

Annex 3

GOVERNMENT OF ICELAND'S AIDE-MÉMOIRE OF 31 AUGUST 1971

[See Annex C to the Application, p. 14, supra*]*

Annex 4

GOVERNMENT OF THE UNITED KINGDOM'S AIDE-MÉMOIRE OF 27 SEPTEMBER 1971

[See Annex D to the Application, p. 15, supra*]*

Annex 5

RESOLUTION ADOPTED BY THE ALTHING ON 15 FEBRUARY 1972

[See Annex G to the Application, p. 25, supra*]*

Annex 6

GOVERNMENT OF ICELAND'S AIDE-MÉMOIRE OF 24 FEBRUARY 1972

[See Annex H to the Application, p. 26, supra*]*

Annex 7

STATEMENT READ BY MINISTER FOR FOREIGN AFFAIRS OF ICELAND ON 24 FEBRUARY 1972

[See Annex I to the Application, p. 67, supra*]*

Annex 8

GOVERNMENT OF THE UNITED KINGDOM'S AIDE-MÉMOIRE OF 14 MARCH 1972

[See Annex J to the Application, p. 68, supra*]*

Annex 9

ICELANDIC REGULATIONS OF 14 JULY 1972

(English translation)

Regulations concerning the Fishery Limits Off Iceland

Article 1

The fishery limits off Iceland shall be drawn 50 nautical miles outside baselines drawn between the following points:

1. Horn	66° 27′ 4 N	22° 24′ 3 W
2. Ásbúdarrif	66° 08′ 1 —	20° 11′ 0 —
3. Raudinúpur	66° 30′ 7 —	16° 32′ 4 —
4. Rifstangi	66° 32′ 3 —	16° 11′ 8 —
5. Hraunhafnartangi	66° 32′ 2 —	16° 01′ 5 —
6. Langanes	66° 22′ 7 —	14° 31′ 9 —
7. Glettinganes	65° 30′ 5 —	13° 36′ 3 —
8. Nordfjardarhorn	65° 10′ 0 —	13° 30′ 8 —
9. Gerpir	65° 04′ 7 —	13° 29′ 6 —
10. Hólmur	64° 58′ 9 —	13° 30′ 6 —
11. Hvítingar	64° 23′ 9 —	14° 28′ 0 —
12. Stokksnes	64° 14′ 1 —	14° 58′ 4 —
13. Hrollaugseyjar	64° 01′ 7 —	15° 58′ 7 —
14. Tvísker	63° 55′ 7 —	16° 11′ 3 —
15. Ingólfshöfdi	63° 47′ 8 —	16° 38′ 5 —
16. Hvalsíki	63° 44′ 1 —	17° 33′ 5 —
17. Medallandssandur I	63° 32′ 4 —	17° 55′ 6 —
18. Medallandssandur II	63° 30′ 6 —	17° 59′ 9 —
19. Mýrnatangi	63° 27′ 4 —	18° 11′ 8 —
20. Kötlutangi	63° 23′ 4 —	18° 42′ 8 —
21. Lundadrangur	63° 23′ 5 —	19° 07′ 5 —
22. Geirfuglasker	63° 19′ 0 —	20° 29′ 9 —
23. Eldeyjardrangur	63° 43′ 8 —	22° 59′ 4 —
24. Geirfugladrangur	63° 40′ 7 —	23° 17′ 1 —
25. Skálasnagi	64° 51′ 3 —	24° 02′ 5 —
26. Bjargtangar	65° 30′ 2 —	24° 32′ 1 —
27. Kópanes	65° 48′ 4 —	24° 06′ 0 —
28. Bardi	66° 03′ 7 —	23° 47′ 4 —
29. Straumnes	66° 25′ 7 —	23° 08′ 4 —
30. Kögur	66° 28′ 3 —	22° 55′ 5 —
31. Horn	66° 27′ 9 —	22° 28′ 2 —

Limits shall also be drawn around the following points 50 nautical miles seaward:

32. Kolbeinsey	67° 08′ 8 N	18° 40′ 6 W
33. Hvalbakur	64° 35′ 8 —	13° 16′ 6 —

Each nautical mile shall be equal to 1,852 metres.

Article 2

Within the fishery limits all fishing activities by foreign vessels shall be prohibited in accordance with the provisions of Law No. 33 of 19 June 1922, concerning fishing inside the fishery limits.

Article 3

Icelandic vessels using bottom trawl, mid-water trawl or Danish seine-netting are prohibited from fishing inside the fishery limits in the following areas and periods:

1. Off the north-east coast during the period 1 April to 1 June in an area which in the west is demarcated by a line drawn true north from Rifstangi (Base-point 4) and in the east by a line which is drawn true north-east from Langanes (Base-point 6).
2. Off the south coast during the period 20 March to 20 April in an area demarcated by lines drawn between the following points:

(a) 63° 32′ 0 N 21° 25′ 0 W
(b) 63° 00′ 0 — 21° 25′ 0 —
(c) 63° 00′ 0 — 22° 00′ 0 —
(d) 63° 32′ 0 — 22° 00′ 0 —

With these exceptions Icelandic vessels using bottom trawl, mid-water trawl or Danish seine-netting shall be allowed to fish within the fishery limits in accordance with the provisions of Law No. 62 of 18 May 1967, concerning Prohibition of Fishing with Trawl and Mid-water Trawl, cfr. Law No. 21 of 10 May 1969, or special provisions made before these regulations become effective.

Article 4

Trawlers shall have all their fishing gear properly stowed aboard while staying in areas where fishing is prohibited.

Article 5

Fisheries statistics shall be forwarded to the Fiskifélag Islands (Fisheries Association of Iceland) in the manner prescribed by Law No. 55 of 27 June 1941, concerning Catch and Fisheries Reports.

If the Ministry of Fisheries envisages the possibility of overfishing, the Ministry may limit the number of fishing vessels and the maximum catch of each vessel.

Article 6

Violation of the provisions of these Regulations shall be subject to the penalties provided for by Law No. 62 of 18 May 1967, concerning Prohibition of Fishing with Trawl and Mid-water Trawl, as amended, Law No. 40 of 9 June 1960, concerning Limited Permissions for Trawling within the Fishery Limits off Iceland under Scientific Supervision, Law No. 33 of 19 June 1922, concerning Fishing inside the Fishery Limits, as amended, or if the provisions of said Laws do not apply, to fines from kr.1,000.00 to kr.100,000.00.

Article 7

These Regulations are promulgated in accordance with Law No. 44 of 5 April 1948, concerning the Scientific Conservation of the Continental Shelf

Fisheries, cfr. Law No. 81 of 8 December 1952. When these Regulations become effective, Regulations No. 3 of 11 March 1961, concerning the Fishery Limits off Iceland shall cease to be effective.

Article 8

These regulations become effective on 1 September 1972.

Ministry of Fisheries, 14 July 1972.

Lúdvík Jósepsson.

Jón L. Arnalds.

Annex 10

GOVERNMENT OF ICELAND'S NOTE OF 11 AUGUST 1972

No. 39

The Ministry for Foreign Affairs presents its compliments to the British Embassy and has the honour to state the following:

In the discussions between representatives of the Icelandic and British Governments in July 1972 on the question of fisheries limits the Icelandic side made quite clear its willingness to continue the discussions.

The Icelandic representatives laid main emphasis on receiving from the British side positive replies to two fundamental points:

1. Recognition of preferential rights for Icelandic vessels as to fishing outside the 12-mile limit.
2. That Icelandic authorities should have full rights and be in a position to enforce the regulations established with regard to fishing inside the 50-mile limit.

As definite replies to these questions were not received the Icelandic representatives did not find it possible to make any substantial modifications of their proposals on fishing rights for British vessels. The Government of Iceland has now understood that important points of the questions discussed between the two Governments are meeting a more positive attitude than before. Trusting that the aforesaid two fundamental items stressed by the Icelandic side will be agreed to, the following is hereby stated regarding points stressed by the British representatives in the discussions:

(a) The Icelandic side is willing to discuss the possibility that the areas where British vessels are permitted to engage in fishing should border on the 12-mile line in several regions. Areas closed to Icelandic trawlers as well as to foreign trawlers would be excepted. This is based on the assumption that only two areas out of six be open to British vessels at a time, as earlier proposed by the Icelandic Government.

(b) The proposals concerning size of vessels might be modified so as to allow ships of up to 180 feet in length or about 750-800 gr. reg. tons to engage in fishing. Neither larger trawlers nor freezer trawlers and factory vessels would be permitted to conduct fishing operations.

(c) The term of the agreement would expire on 1 June 1974.

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

Ministry for Foreign Affairs.
Reyjavík, 11 August 1972

Annex 11

GOVERNMENT OF THE UNITED KINGDOM'S NOTE OF 28 AUGUST 1972

No. 49

Her Britannic Majesty's Embassy present their compliments to the Ministry for Foreign Affairs and have the honour to state that Her Majesty's Government have received and considered the decision of the International Court of Justice dated 17 August 1972, concerning the provisional measures to be applied pending its final decision in the proceedings instituted by Her Majesty's Government on 14 April 1972, against the Government of Iceland. In submitting their request for provisional measures Her Majesty's Government made it clear that whatever the Court's decision they would co-operate in carrying it out. This they will now do. In particular, Her Majesty's Government will shortly furnish the Court, and at the same time the Icelandic Government, with all relevant information, orders issued and arrangements made concerning the control and regulation of fish catches in the area referred to in the decision of the Court.

Her Majesty's Government would be glad to discuss the position with the Icelandic Government at the earliest mutually convenient date.

The Embassy avail themselves of this opportunity to renew to the Ministry for Foreign Affairs the assurances of their highest consideration.

British Embassy, Reykjavik.
28 August 1972.

Annex 12

GOVERNMENT OF ICELAND'S NOTE OF 30 AUGUST 1972

No. 42

The Ministry for Foreign Affairs presents its compliments to the British Embassy and has the honour to refer to the Embassy's Note No. 49 of 28 August 1972.

The Ministry has the honour to state that the Government of Iceland has informed the International Court of Justice that it will not consider the Order of the Court as binding in any way since the Court has no jurisdiction in the matter. On the other hand the Government of Iceland, as already indicated in the Ministry's Note of 11 August 1972, is prepared to continue efforts to reach a solution of the problems connected with the extension of the Icelandic fishery limits in conformity with the Resolution of the Althing of 15 February 1972.

The Ministry for Foreign Affairs avails itself of this opportunity to renew to the Embassy the assurances of its highest consideration.

Ministry for Foreign Affairs, Reykjavik.
30 August 1972.

British Embassy, Reykjavik.

Annex 13

Memorandum Handed Over by Minister for Foreign Affairs of Iceland on 19 January 1973

During the last round of negotiations between British and Icelandic representatives on the fishery question in Reykjavik on 27-28 November 1972, the British representatives submitted a new proposal in the final stage of the negotiations. This proposal was in substance similar to the former British proposals during the negotiations in London. The proposal is based on a catch effort limitation, i.e., its objective is to limit somewhat the size of the catch effort of British vessels in the Iceland area.

This proposal was rejected by the Icelandic representatives at the meeting in Reykjavik on 28 November. The main reasons why the Icelandic Government does not consider that this proposal can solve the problems involved in a satisfactory manner are:

1. According to this proposal all British fishing vessels would be able to fish up to the 12-mile limit around Iceland at any time. The Icelandic small boat fleet would then be in the same position as it was before the fishery limits were extended to 50 miles. It would then be faced with a foreign trawler fleet of great dimensions at all times including the largest and most efficient trawlers now in existence.

2. The control of the effective operation of the catch limitation scheme, i.e., that the agreed rules would be effectively applied, would in our opinion be very difficult and almost impossible. The catch limitation involved in the proposal would apply to the number of days which each individual vessel would fish in the Iceland area. The basis would then be the number of days of absence from port in the United Kingdom. The number of days can be checked in British ports but it would be impossible to check the number of days which each ship in each voyage would spend in the Iceland area or in Greenland, the Faroe Islands or Bear Island, because it frequently happens that the vessels go to more than one of these areas during the same voyage. The effort limitation based on this procedure would, therefore necessarily be very unclear and would arouse suspicion, apart from the fact that it would be very difficult to reach agreement as to the evaluation of the actual effort of each vessel.

3. The reduction of the effort anticipated in the proposal would in our opinion be much too small. Sir Alec Douglas-Home has now advanced the idea of adding to the proposal of the British representatives at the Reykjavik meeting the restriction that one of the six fishing areas around the country would be closed on a rotation basis in addition to the effort limitation proposal. This idea in our judgment changes very little. On the one hand the closed area in question would be too restricted to have any real effect for our small boat fleet and, on the other, the periods proposed in the areas are not acceptable. We, therefore, consider that the former proposal regarding catch effort limitation together with the idea of closing one area would not form a basis for negotiations.

In conjunction with this conclusion it might be helpful to summarize the main points of our latest proposals and add a few comments:

1. We propose that three areas out of six should be open simultaneously. This means that approximately one-half of the fishing grounds outside 12 miles would be open at any time and through rotation all the areas would thus be open for some time throughout the year. Such areas of activity would be so extensive that they should provide the vessels with good catch possibilities. Restrictions for the benefit of the Icelandic small boat fleet in the three open areas would be limited and would also apply to the Icelandic trawlers. This system would provide the Icelandic small boat fleet with protection against foreign trawlers for a considerable period of time each year.
2. We propose to reduce the British trawler fleet in the Iceland area and in that manner reduce the effort. Therefore we suggest that freezers and factory ships would not be allowed to fish within the 50-mile limit. In 1971 25 British vessels of this type were used in the area although their catch was limited and they mostly fished in more distant areas. We also want to see size limitations on other vessels and in that connection we have proposed the maximum length of 180 feet or 750-800 g.r.t. In this manner the number of vessels fishing in Iceland would be reduced by about 40 vessels as compared with 1971. These vessels did not exclusively fish, they can easily use other grounds. We consider that under these proposals 120-130 British vessels which fished in the area in 1971 would continue their fishing for the duration of the agreement. These would actually be the vessels which mostly frequent the Iceland grounds and have the least possibilities of fishing elsewhere. It is clear that these proposals would imply some reduction of the fishing possibilities of British vessels, but such reduction would not at all be of the magnitude claimed by the British representatives. The proposal would mean *that* 120-130 vessels would continue to fish, i.e., the vessels which to the greatest extent have fished here, *that* 25 freezers which have fished to a limited extent here would not continue and *that* 40 vessels which have fished to a considerable extent would also be excluded. Those vessels have also used other grounds and can easily do so because of their size.
3. We also want to ensure that the Icelanders have the right and possibility to control the application of the agreed measures.
4. We propose that the agreement would be in force until 1 September 1974.

It is emphasized that the Icelandic Government would be ready to resume negotiations on the basis of the proposals which we have submitted. But it is deemed to be of little use to resume formal negotiations in the absence of developments which facilitate agreement.

Annex 14

CONFIRMATORY COPY OF MESSAGE FROM SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS TO MINISTER FOR FOREIGN AFFAIRS, DATED 22 JANUARY 1973

Sir Alec Douglas-Home has received your message of 19 January. He finds it regrettable that the Icelandic Government should take the view that the resumption of negotiations would not be helpful. You will recollect that in Brussels you specifically asked whether Sir Alec would put forward a proposal which would provide, by a combination of effort limitation and area limitation, for a 25 per cent. reduction in the British catch from the 1971 level. Sir Alec gave you a proposal which in our view would undoubtedly have produced a reduction of at least this amount. The action of the Icelandic Government in rejecting this proposal even as a basis for negotiation, following as it does their refusal to participate in proceedings before the International Court of Justice and accompanied by an intensified campaign of physical interference with British vessels, could suggest that they are determined to achieve their aims by force rather than by judicial process or by negotiation.

Sir Alec finds it hard to believe that a responsible Western European Government should decide to embark upon such a course. Should they do so, they will bear a heavy responsibility for the consequences. The British Government cannot acquiesce in a situation in which British trawlermen are deprived by force of traditional rights which they enjoy by virtue of international law and which they continue to exercise under the specific terms of an interim order of the International Court. The Icelandic Government should be in no doubt that such measures as may be necessary for the protection of British vessels will be taken. We shall, however, take only such minimal defensive action as is necessary to counter Icelandic harassment. Certain measures are now being put in hand.

Our policy remains to settle this dispute either by judicial process or by negotiation. As you know, we are awaiting the decision of the International Court on the question of jurisdiction. If the Court accepts jurisdiction, we shall continue proceedings on the substantive case. We shall, however, remain ready to negotiate with the Icelandic Government an arrangement on either a formal or an informal basis to cover the period until the Court's judgment on the substantive case is available or, if the Icelandic Government wish, until the Law of the Sea Conference has reached conclusions on a possible new international fishery convention.

Sir Alec was therefore glad to note your statement that the Icelandic Government are ready to discuss new proposals. We have now put forward in succession proposals based on tonnage limitation, area limitation and effort limitation. Each has in turn been rejected. He notes the proposals contained in the Memorandum annexed to your message. As was indicated by the British delegation at the July meeting, these contain certain provisions which are not acceptable to us. Nevertheless, since both sides now have proposals on the table, it would seem desirable to take matters further. Fishing is an uncertain business and there is clearly room for doubt as to the precise effect which either the British or the Icelandic proposals would have. However, if we could first establish an objective, we could then somehow try to devise

an arrangement to give effect to it. You indicated to Sir Alec personally and also to Lady Tweedsmuir during the formal negotiations that a possible objective might be an arrangement which would leave the British industry with the opportunity to take up to 75 per cent. of its 1971 catch. As Sir Alec said in Brussels, the British Government would be prepared to conclude an interim arrangement on this basis, pending a substantive settlement of the dispute. He therefore proposes that discussions be resumed at an early date with the task of establishing whether it is possible to devise an arrangement which can reasonably be expected to produce this result.

Sir Alec Douglas-Home will be informing Parliament fully about the Government's policy in this dispute this afternoon, including the exchange between you and him in Brussels.

22 January 1973.

Annex 15

MESSAGE FROM SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS TO MINISTER FOR FOREIGN AFFAIRS, TRANSMITTED BY BRITISH EMBASSY IN REYKJAVIK ON 8 MARCH 1973

The situation has taken a serious turn for the worse. The number of dangerous incidents involving our fishing fleet has now reached an unprecedented level. I would like to remind you of the proposals which, at your request, I made to you at the NATO Meeting last December. I know that you have said that they are unacceptable, but I am convinced that the only way of dealing with this dispute in a reasonable fashion is by discussion and negotiation. I therefore ask you to agree to the resumption of negotiations at an early date. In the meanwhile, I trust that the Icelandic Coastguard will cease its harassment of British trawlers.

If we cannot soon resume negotiations I see no alternative to a deteriorating situation. You will have seen that I told Parliament today that Her Majesty's Government remains ready to take whatever action is necessary to protect British trawlers in pursuit of their lawful activities.

Annex 16

STATEMENT MADE TO HOUSE OF COMMONS BY SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS ON 7 MAY 1973

1. British and Icelandic Ministers met in Reykjavik on 3 and 4 May.

2. The meeting was based on talks held by officials on 22 March, during which it had been agreed to work for an interim arrangement, without prejudice to the legal position of either side. This interim agreement would prevent overfishing, let Iceland increase her share of the catch, provide for a reasonable British catch, and avoid a recurrence of incidents. It would be based primarily on a limitation of the tonnage of fish caught by British vessels without a corresponding restriction on Iceland vessels. The Icelandic Delegation asked for additional restrictions on the numbers and types of vessels and the areas in which they would operate. It was agreed that these should be considered but that the total effect of the arrangement should not be such as to prevent the British fleet from reaching the agreed catch figure.

3. At the Ministerial talks this agreement was confirmed by both Delegations. The British Delegation recalled that the International Court of Justice in its Interim Order of 17 August 1972 had indicated a catch limit of 170,000 metric tons. In the interests of reaching a settlement, the Delegation proposed an annual catch limit of 155,000 tons. The Icelandic Delegation proposed 117,000 tons. It was agreed to work within this range. The British Delegation then offered a revised figure of 145,000 tons, representing an approximate mid-point between the Icelandic figure and that established by the International Court. The Icelandic Delegation refused, however, to make any further offer.

4. The Icelandic proposals for restrictions on areas and vessels were also discussed. The British Delegation put forward specific counter-proposals on all points. In the absence of agreement on the central question of tonnage it was impossible to settle these matters. But Icelandic Ministers have agreed to study the British proposals carefully.

5. Despite constant and dangerous provocation, the British Government has sought by every means to reduce tension. We shall continue to do so. If the Icelandic Government are determined to attempt to impose their will by force, the British Government will continue to give British vessels such support as may be necessary to enable them to fish in all areas up to the present Icelandic 12-mile limit. But if the Icelandic Government will enter into real negotiations, they will find us ready to work for a settlement.

Annex 17

British Counter-Proposals for an Interim Arrangement As Put Forward in Writing [1] at the End of Discussions in Reykjavik on 3 and 4 May 1973

The British proposals are based upon the agreed statement reached at the meeting of officials on 22 March, and confirmed by Ministers on 3 May.

2. According to this agreed statement, an interim arrangement should be based primarily upon limitation of the tonnage of fish caught by British vessels in the area under dispute; and the total effect of the arrangement should not be such as to frustrate the possibility of the British industry reaching the agreed catch limitation.

Catch Limit

3. Against this background, the British delegation put forward the following response to the specific further points raised by Icelandic Ministers. The primary issue is the catch limitation figure. The British delegation recall that British vessels are at present authorized, pursuant to the interim order of the International Court of Justice, to catch 170,000 tons annually. The British delegation have proposed a figure of 155,000 tons in the present context. They could not contemplate a figure as low as 117,000 tons, but are prepared to seek agreement on a figure within a range running from 117,000 tons to 155,000 tons. In an effort to reach agreement, they expressed their willingness to move to a figure approximately mid-way between the I.C.J. figure and the Icelandic figure, i.e., 145,000 tons.

Area Closures

4. The British delegation consider that, once agreement has been reached on a catch limitation figure, it should be possible to work out the remaining provisions of the agreement in a way compatible with it. The precise arrangements would depend on the balance of area and vessel restrictions. The Icelandic delegation have explained that their proposals are intended to be compatible with a figure of 117,000 tons. The British delegation recognize the difficulty of making precise calculations of the effect of these measures. They consider, however, that a catch limitation of 145,000 tons would be compatible with rotating area closures on the following basis:

Sept/Oct	B	D
Nov/Dec	D	B
Jan/Feb	A	F
Mar/Apr	F	C
May/Jun	C	E
Jul/Aug	E	A

[1] Confirming British counter-proposals which had been made during the course of the discussions.

It would not be possibie to add significant small boat area closures without frustrating this figure. The British delegation could envisage, as an alternative to the rotating closures, the following small boat area closures:

(a) North-west area as proposed by Iceland but open to British vessels from September to December.
(b) North area as proposed by Iceland, but open in July and August.
(c) Eastern area to be closed all year but reduced in size to run from the southern boundary north to Dalatangi.

Vessel Restrictions

5. *If the Icelandic delegation are prepared to accept either of the above* systems of area closures, or any combination of such measures which will produce the same effect, the British delegation will be prepared to seek the concurrence of the British industry in a limitation of British vessels fishing in the disputed area to a total of 150 compared with the current total of 195. Under such an arrangement, no freezer trawlers would operate within the disputed area and about 20 non-freezer trawlers would be excluded. Factory vessels are in any case not operated by the British industry.

Duration

6. The British delegation have proposed three years. As part of a generally satisfactory agreement, they would be prepared to compromise at 2½ years, to be embodied in the following formula:

> "The agreement will run for a fixed term of 2½ years, but the parties will reconsider the position before that term expires unless there has in the meantime been a settlement of the substantive dispute. In the absence of such a settlement, the termination of the agreement will not affect the legal position of either party with respect to the substantive dispute."

Control

7. The British delegation are prepared to agree to Icelandic checking and inspection of British vessels in the disputed area, but not to an Icelandic right of arrest or prosecution under Icelandic law. They would be prepared to work out in addition a further scheme of joint enforcement through an Icelandic-British Commission in order to ensure full compliance with the agreement.

4 May 1973.

Annex 18

UNITED KINGDOM, ICELANDIC, AND TOTAL CATCH OF DEMERSAL SPECIES IN THE ICELANDIC AREA

	United Kingdom		Iceland		Total catch by all ICES Member States in Icelandic waters ('000 metric tons) (VI)
(I)	Catch ('000 metric tons) (II)	Percentage of total catch (III)	Catch ('000 metric tons) (IV)	Percentage of total catch (V)	
1920	122·1	36·8	117·2	35·4	331·4
1921	*76·7*	*24·4*	*118·8*	*37·8*	*314·6*
1922	105·1	24·7	157·9	37·1	425·5
1923	126·2	...	n.a.	...	...
1924	159·2	33·7	214·0 (approx.)	45·3	472·0 (approx.)
1925	172·3	33·7	225·0 (approx.)	44·0	511·0 (approx.)
1926	162·2	35·1	163·8	35·4	462·1
1927	186·4	29·2	250·2	39·2	638·8
1928	153·7	25·1	279·8	45·6	613·1
1929	147·9	23·6	291·7	46·6	626·6
1930	163·4	22·5	352·2	48·5	725·9
1931	180·0	24·9	311·3	43·1	722·0
1932	195·1	28·0	287·8	41·3	697·2
1933	183·2	25·2	327·7	45·2	725·8
1934	177·8	26·5	312·1	46·5	671·6
1935	187·3	30·3	266·1	43·1	617·6
1936	177·3	38·4	142·5	30·8	462·1
1937	183·2	39·4	139·8	30·1	465·0
1938	164·4	33·7	144·9	29·7	487·8
1939	4·0	1·3	165·4	54·3	304·8
1940	51·3	21·5	187·7	78·5	239·0
1941	29·3	12·7	201·0	87·3	230·3
1942	35·6	12·9	240·0	87·1	275·7
1943	40·8	13·9	253·1	86·1	293·9
1944	47·9	13·5	307·0	86·5	354·8
1945	9·2	3·2	276·7	96·7	286·0
1946	54·0	16·0	252·0	74·6	337·7
1947	75·0	20·6	276·6	76·0	364·0
1948	122·3	22·4	371·6	68·1	545·4
1949	134·7	22·7	364·2	61·4	593·0
1950	155·8	25·3	323·0	52·4	616·0
1951	169·6	24·8	342·2	50·0	684·4
1952	149·1	20·6	352·9	48·7	724·1
1953	242·0	27·8	365·1	42·0	870·0
1954	234·4	26·6	388·6	44·1	881·1
1955	199·0	24·3	397·3	48·5	820·0
1956	181·7	23·7	391·9	51·1	767·0
1957	208·1	27·9	352·0	47·4	743·3
1958	217·5	27·3	374·3	46·9	797·4
1959	176·6	24·8	367·4	51·7	710·9
1960	*173·5*	*22·8*	*405·1*	*53·4*	*758·9*
1961	184·2	27·1	350·4	51·5	679·9
1962	203·5	28·5	340·0	47·6	714·7
1963	213·4	29·0	359·7	48·9	735·9
1964	210·2	27·5	398·1	52·1	763·6
1965	223·9	30·1	364·6	49·0	744·3
1966	169·5	26·1	325·0	50·1	648·2
1967	185·5	27·9	310·0	46·6	665·9
1968	156·8	22·8	361·6	52·6	687·4
1969	134·7	18·2	443·9	59·9	741·3
1970	164·7	20·9	471·3	59·8	788·1
1971	210·0	26·3	415·7	52·0	799·2

Source: Columns (II), (IV) and (VI) from *Bulletin statistique des pêches maritimes*. Figures for 1971 from *Bulletin statistique des pêches maritimes, 1971* (advance release): not yet published. Columns (III) and (V) by calculation.

Notes:

(1) Figures of catch for 1920-1935 given above include all species. Figures for 1936-1971 include only demersal species. United Kingdom fishing vessels catch only demersal fish at Iceland.

(2) For the period 1920-1924 figures of individual country catches also include fish caught by foreign vessels and brought into a country either as direct landings or imports.

(3) Catch figures for the United Kingdom during 1925-1927 include fish caught by foreign vessels landed in Scotland.

(4) Catch figures recorded by country for the period 1928-1971 cover only fish caught by vessels belonging to that country regardless of place of landing.

(5) 1936: *Bulletin statistique des pêches maritimes* notes that "The statistics of Iceland have been subject to great improvements in recent years; any comparison over a series of years, therefore, should be treated with some reservation".

(6) 1937-1949 (inclusive). Faröe Islands—figures incomplete or missing.

(7) 1939-1949 (inclusive). Poland—figures not available.

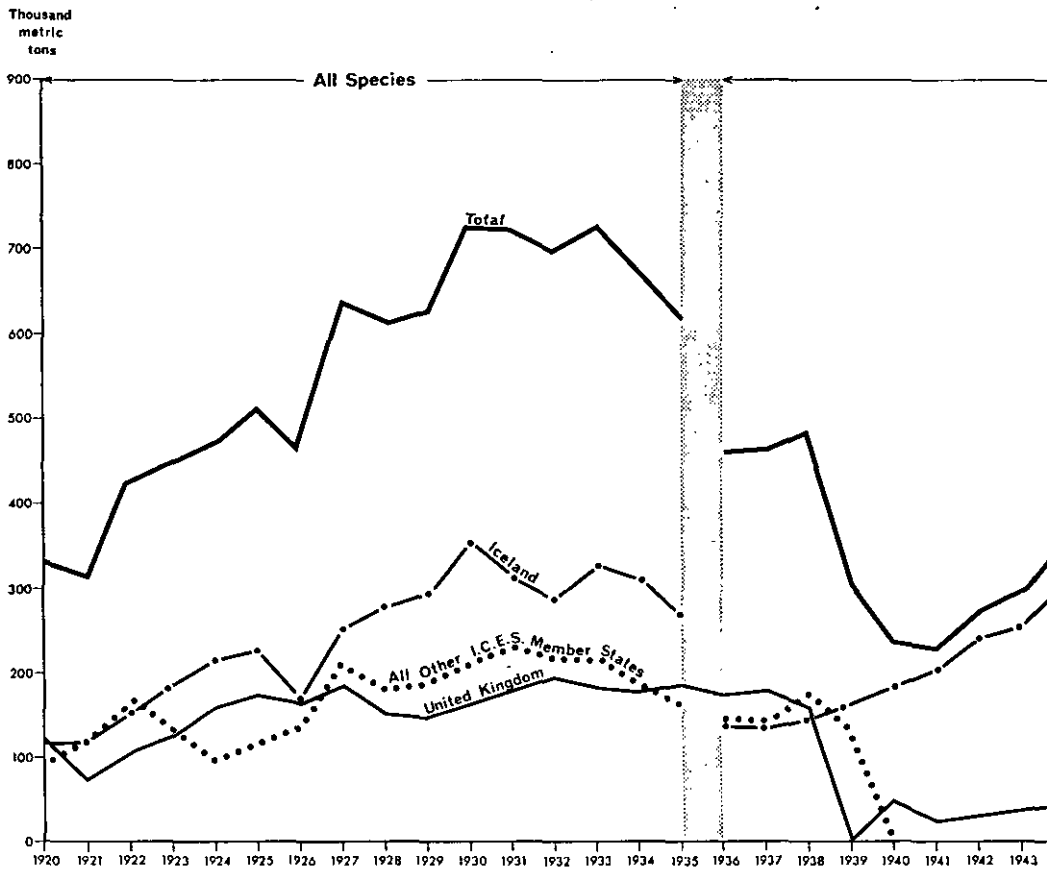
(8) 1939 and 1945. Figures for Scotland only; figures for the rest of the United Kingdom not available.

(9) 1945 and 1946. Germany—figures not available.

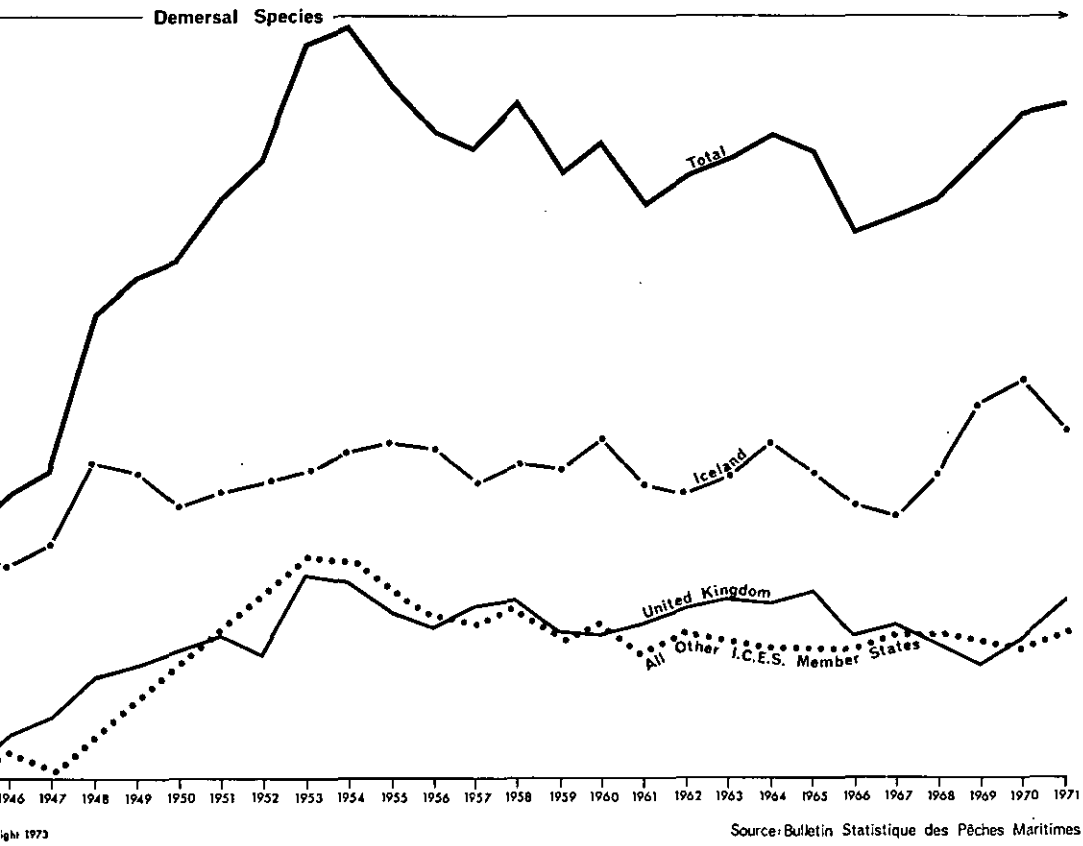
(10) Weights of fish are given, in accordance with the practice adopted by the International Council for the Exploration of the Sea ("ICES") and other international fisheries organizations, as "catch" weights, that is to say, the weight of fish actually caught. In some other tables they are given as "landings", that is to say, the weight of fish landed. The latter is a smaller figure since the fish are lightened by being gutted at sea. In practice the fish are weighed on landing rather than on being caught and the catch weight is obtained from the landed weight by applying a known factor for each species of fish depending on its anatomical characteristics. Very approximately, for most demersal species catch weights are 18-20 per cent. higher than landed weights. Catch weights are given in metric tons. Landings are generally quoted in hundredweights or long tons, but for the sake of consistency in these statistical Annexes they have been converted to metric tons using the conversion factor 1 long ton = 1.016 metric tons.

Annex 19

CATCH TAKEN AT ICELAND (ICES AREA Va), 1920-1971
('000 metric tons)



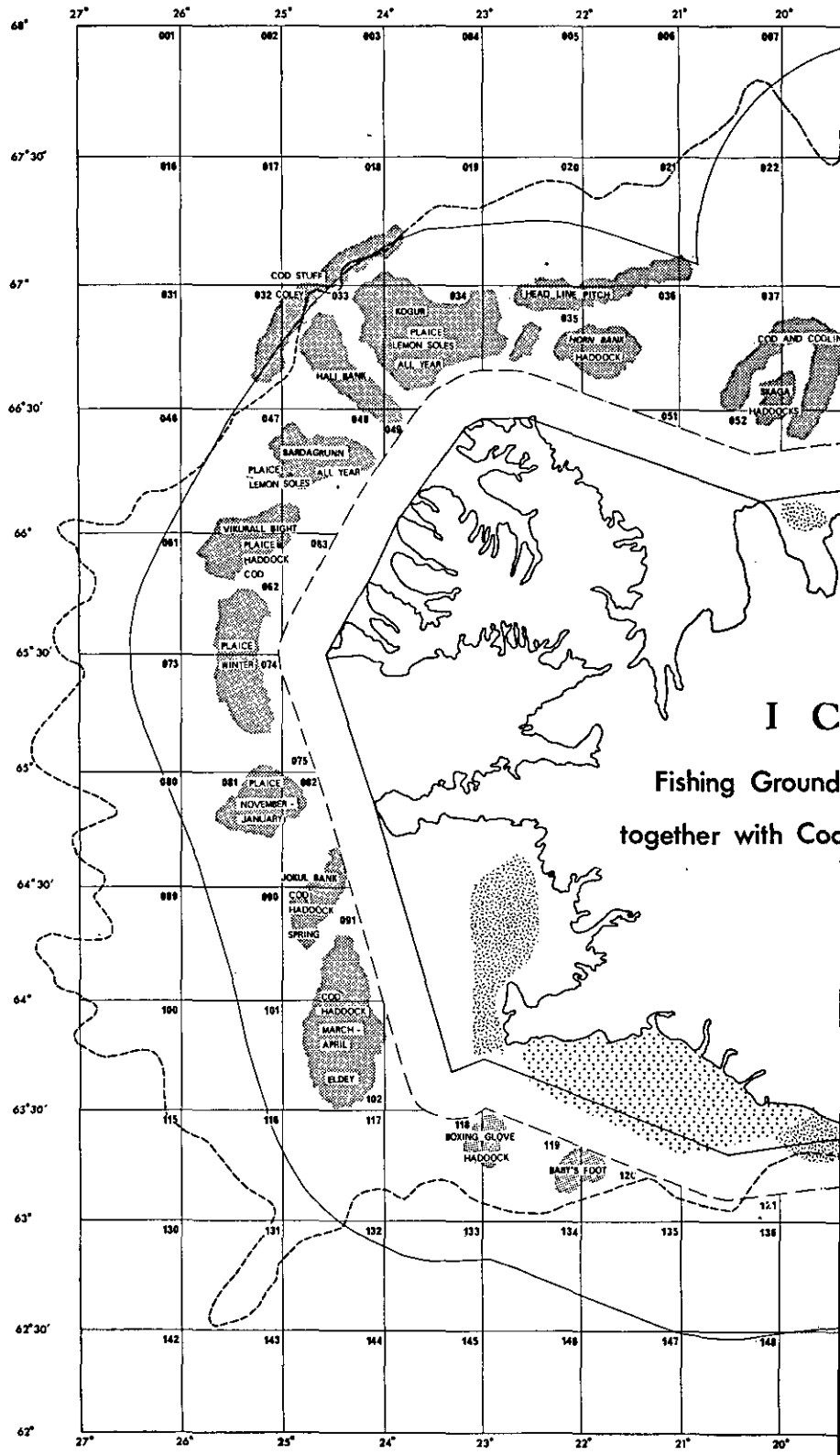
Drawn by Survey Section, Ministry of Agriculture, Fisheries and Food

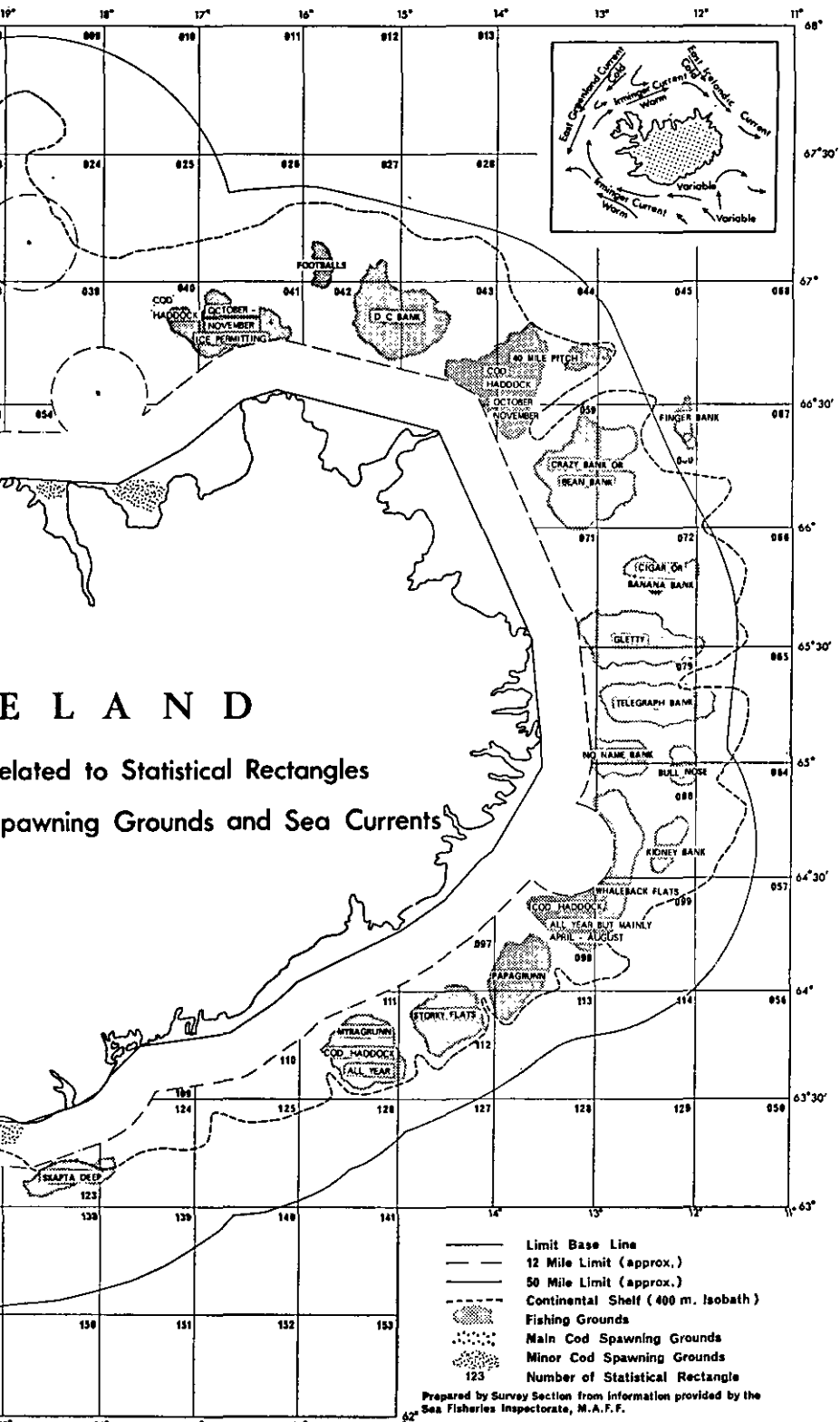


ight 1973

Source: Bulletin Statistique des Pêches Maritimes

Annex 20


I C
Fishing Ground
together with Coc
COD STUFF
KOGUR
PLAICE
LEMON SOLES
ALL YEAR
HALI BANK
HEAD LINE PITCH
HORN BANK
HADDOCK
COD AND CODLI
HAGA
HADDOCKS
BARDAGRUNN
PLAICE
ALL YEAR
LEMON SOLES
VIKURALL BIGHT
PLAICE
HADDOCK
COD
PLAICE
WINTER
PLAICE
NOVEMBER -
JANUARY
JOKUL BANK
COD
HADDOCK
SPRING
COD
HADDOCK
MARCH -
APRIL
ELDEY
BOXING GLOVE
HADDOCK
BAIRY'S FOOT
27°
26°
25°
24°
23°
22°
21°
20°
68°
67°30'
67°
66°30'
66°
65°30'
65°
64°30'
64°
63°30'
63°
62°30'
62°


East Greenland Current Cold
Irminger Current Warm
East Icelandic Current Cold
Irminger Current Warm
Variable
Variable
FOOTBALLS
COD HADDOCK OCTOBER - NOVEMBER ICE PERMITTING
D C BANK
40 MILE PITCH COD HADDOCK OCTOBER NOVEMBER
FINGER BANK
CRAZY BANK OR BEAN BANK
CIGAR OR BANANA BANK
GLETTY
TELEGRAPH BANK
NO NAME BANK
BULL NOSE
KIDNEY BANK
WHALEBACK FLATS COD HADDOCK ALL YEAR BUT MAINLY APRIL - AUGUST
APAGRUNN
STORRY FLATS
MYRAGRUNN COD HADDOCK ALL YEAR
SKAFTA DEEP
E L A N D
elated to Statistical Rectangles
pawning Grounds and Sea Currents
Limit Base Line
12 Mile Limit (approx.)
50 Mile Limit (approx.)
Continental Shelf (400 m. Isobath)
Fishing Grounds
Main Cod Spawning Grounds
Minor Cod Spawning Grounds
123 Number of Statistical Rectangle
Prepared by Survey Section from information provided by the Sea Fisheries Inspectorate, M.A.F.F.
This chart is illustrative and not definitive.
© Crown Copyright 1973

Annex 21

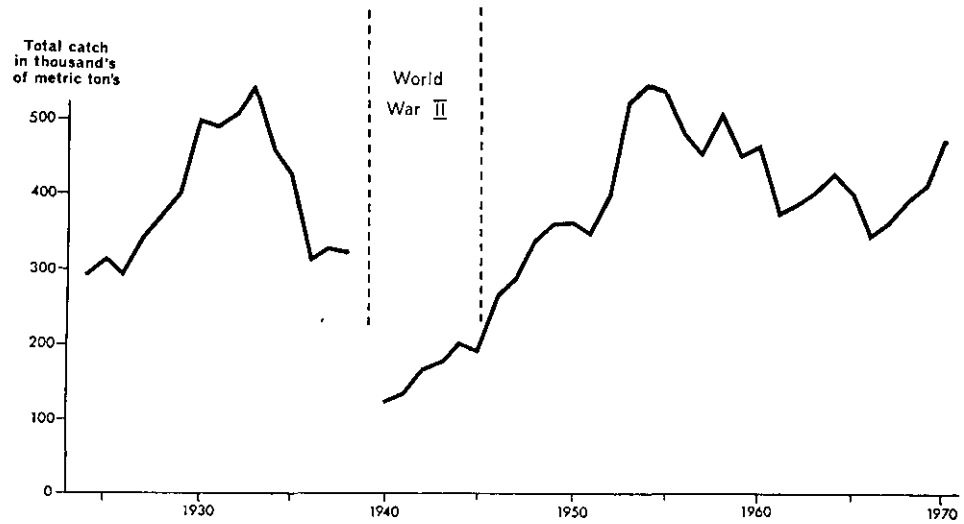
NUMBER OF COD OF EACH AGE CAUGHT AT ICELAND, 1970
(in millions to the nearest 100,000)

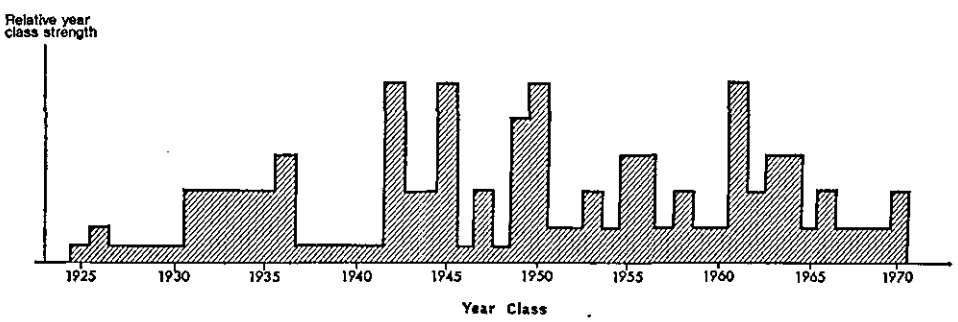
Age in years	Non-spawning fishery				Spawning fishery	Total fishery			
	United Kingdom	Iceland	Others	Total	Iceland	United Kingdom	Iceland	Others	Total
2	0·2	+	+	0·2	—	0·2	+	+	0·2
3	4·0	2·6	0·6	7·2	0·5	4·0	3·1	0·6	7·7
4	19·8	11·4	4·0	35·2	2·1	19·8	13·5	4·0	37·3
5	11·7	5·4	1·6	18·7	4·3	11·7	9·7	1·6	23·0
6	11·6	4·9	2·1	18·6	3·7	11·6	8·6	2·1	22·3
7	5·5	1·1	1·2	7·8	8·1	5·5	9·2	1·2	15·9
8	2·4	0·6	1·0	4·0	5·8	2·4	6·4	1·0	9·8
9	1·5	0·4	1·1	3·0	4·2	1·5	4·6	1·1	7·2
10	0·1	+	+	0·2	4·2	0·1	4·2	+	4·3
11	+	+	+	+	0·2	+	0·2	+	0·2
12 and over	+	..	..	+	0·1	+	0·1	..	0·1
Total	56·9	26·6	11·4	94·9	33·1	56·9	59·7	11·4	128·0
Metric Tons	130,508	83,539	36,033	250,080	224,797	130,508	308,336	36,033	474,877
Mean Age	5·1	4·8	5·7	5·1	7·2	5·2	6·5	5·7	5·6

+ Less than 50,000.
Source: From papers of the ICES Northwestern Working Group.

Annex 22

TOTAL CATCH OF COD IN ICELAND AREA (ICES Va)
BY ALL COUNTRIES RELATED TO RELATIVE YEAR CLASS
STRENGTH





Source: Compiled by M.A.F.F. Fishery Laboratory, Lowestoft
from I.C.E.S. statistical data
Drawn by Survey Section, Ministry of Agriculture, Fisheries and Food.

Annex 23

Herring: Catch by Iceland from All ICES Regions

('000 metric tons)

	North Sea (IVa, b, c)	Kattegat Skagerack (IIIa)	Icelandic Grounds (Va)	Faroese Grounds (Vb)	Norwegian Sea (IIa)	Spitzbergen Bear Island (IIb)	East Greenland (XIV)	North-West Coast Scotland, Northern Ireland (VIa)	Total
1960 ...	—	—	136·4	—	—	—	—	—	136·4
1961 ...	—	—	325·9	—	—	—	—	—	325·9
1962 ...	—	—	478·1	—	—	—	—	—	478·1
1963 ...	—	—	396·5	—	—	—	—	—	396·5
1964 ...	—	—	544·4	—	—	—	—	—	544·4
1965 ...	1·8	—	590·4	—	170·7	—	—	—	762·9
1966 ...	1·0	—	430·1	—	297·0	—	42·5	—	770·7
1967 ...	5·7	2·2	94·3	5·6	280·0	75·1	—	—	462·8
1968 ...	44·5	0·7	27·6	0·6	28·3	39·8	—	—	141·5
1969 ...	20·0	—	23·5	0·5	—	—	—	—	44·1
1970 ...	22·9	6·4	16·4	—	—	—	—	5·6	51·4
1971* ...	37·0	3·1	11·8	—	—	—	—	9·5	61·4

Source: Bulletin statistique des pêches maritimes.
* Advance release tables.
See Note (10) on Annex 18.

Annex 24

HERRING: CATCH TAKEN AT ICELAND (ICES AREA Va) BY ALL COUNTRIES

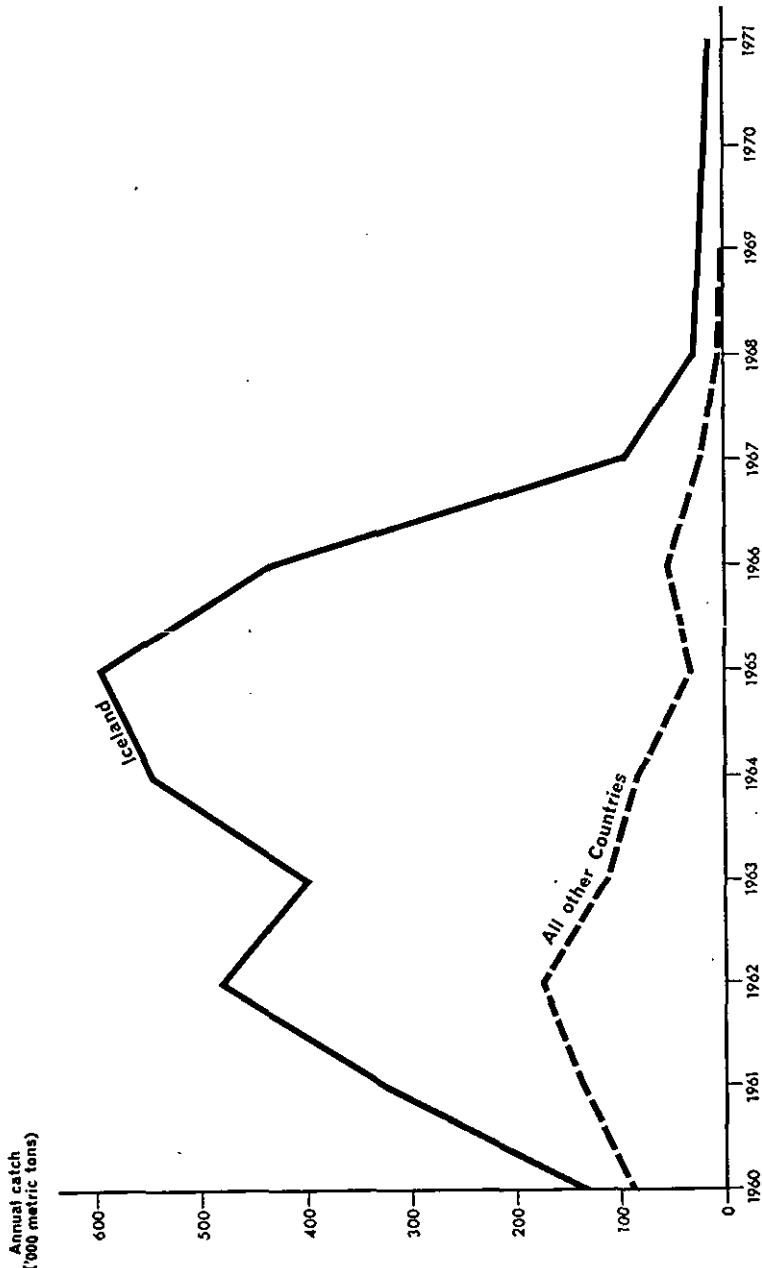
('000 metric tons)

	Faroes	Finland	France	Germany	Iceland	Norway	Poland	Sweden	USSR	Total	Percentage taken by Iceland
1960 ...	—	1·4	—	—	136·4	74·3	—	0·8	11·5	224·5	60·8
1961 ...	—	1·1	0·7	—	325·9	98·8	—	0·6	34·5	461·6	70·6
1962 ...	—	0·8	—	—	478·1	150·3	0·3	0·2	20·7	650·5	73·5
1963 ...	—	0·6	—	0·2	396·5	84·3	—	0·2	25·9	507·7	78·1
1964 ...	—	0·9	—	—	544·4	69·6	—	—	11·3	626·1	87·0
1965 ...	—	0·7	—	6·4	590·4	11·4	—	—	15·0	624·0	94·6
1966 ...	9·6	0·8	—	26·6	430·1	2·0	—	—	13·5	482·6	89·1
1967 ...	—	1·2	0·2	10·6	94·3	0·6	—	—	11·6	118·5	79·6
1968 ...	—	—	—	0·9	27·6	0·8	—	—	1·5	30·8	89·6
1969 ...	—	—	—	0·3	23·5	0·3	—	—	—	24·1	97·5
1970 ...	—	—	—	—	16·4	—	—	—	—	16·4	100·0
1971* ...	—	—	—	—	11·8	—	—	—	—	11·8	100·0

Source: Bulletin statistique des pêches maritimes.
* Advance release tables.
See Note (10) on Annex 18.

Annex 25

HERRING: CATCH TAKEN AT ICELAND (ICES AREA Va) BY ICELAND AND ALL OTHER COUNTRIES



Drawn by Survey Section, Ministry of Agriculture, Fisheries and Food.
Crown Copyright 1973.
Source: *Bulletin statistique des pêches maritimes.*

Annex 26

TOTAL CATCH OF NATIVE ICELANDIC SPAWNING HERRING

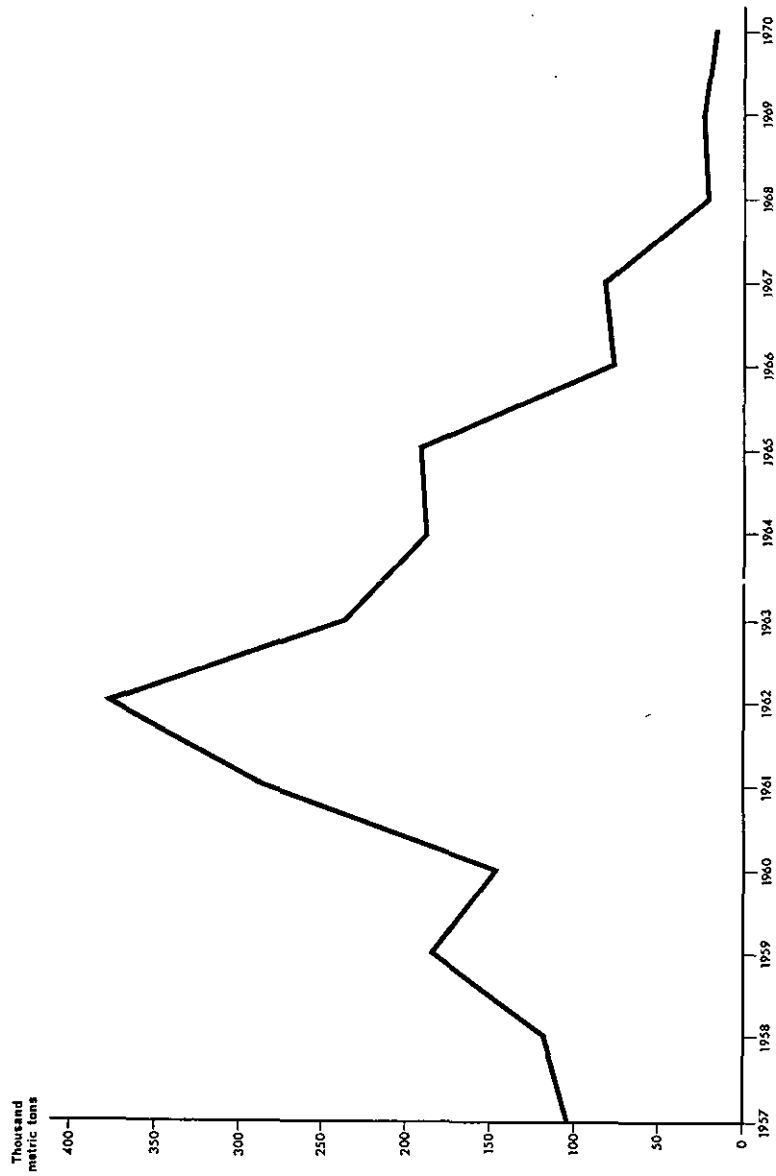
('000 metric tons)

Year	Spring spawners			Summer spawners			Grand total
	North coast	South coast	Total	North coast	South coast	Total	
1957	69·0	13·5	82·5	13·4	9·4	22·8	105·3
1958	72·9	10·8	83·7	9·8	23·7	33·5	117·2
1959	135·2	14·7	149·9	21·3	13·7	35·0	184·9
1960	98·8	19·0	117·8	17·9	10·6	28·5	146·3
1961	169·5	42·0	211·5	3·9	70·1	74·0	285·5
1962	220·3	59·9	274·2	2·4	90·5	92·9	373·1
1963	71·4	32·9	104·3 (*sic*)	8·2	122·1	130·3	234·6
1964	65·2	36·3	101·5	3·9	82·6	86·5	188·0
1965	25·2	43·7	68·9	2·9	120·0	122·9	191·8
1966	13·7	11·3	25·0	2·6	51·8	54·4	79·4
1967	2·4	12·9	15·3	0·4	67·3	67·7	83·0
1968	0·1	4·2	4·3	—	16·8	16·8	21·1
1969	—	3·6	3·6	—	19·4	19·4	23·0
1970	—	0·4	0·4	—	15·9	15·9	16·3

Source: Table 20, ICES Co-operative Research Report, Series A, No. 30.
See Note (10) on Annex 18.

Annex 27

TOTAL CATCH (THOUSAND METRIC TONS) OF ICELANDIC HERRING TAKEN BY ICELANDIC AND NORWEGIAN FLEETS



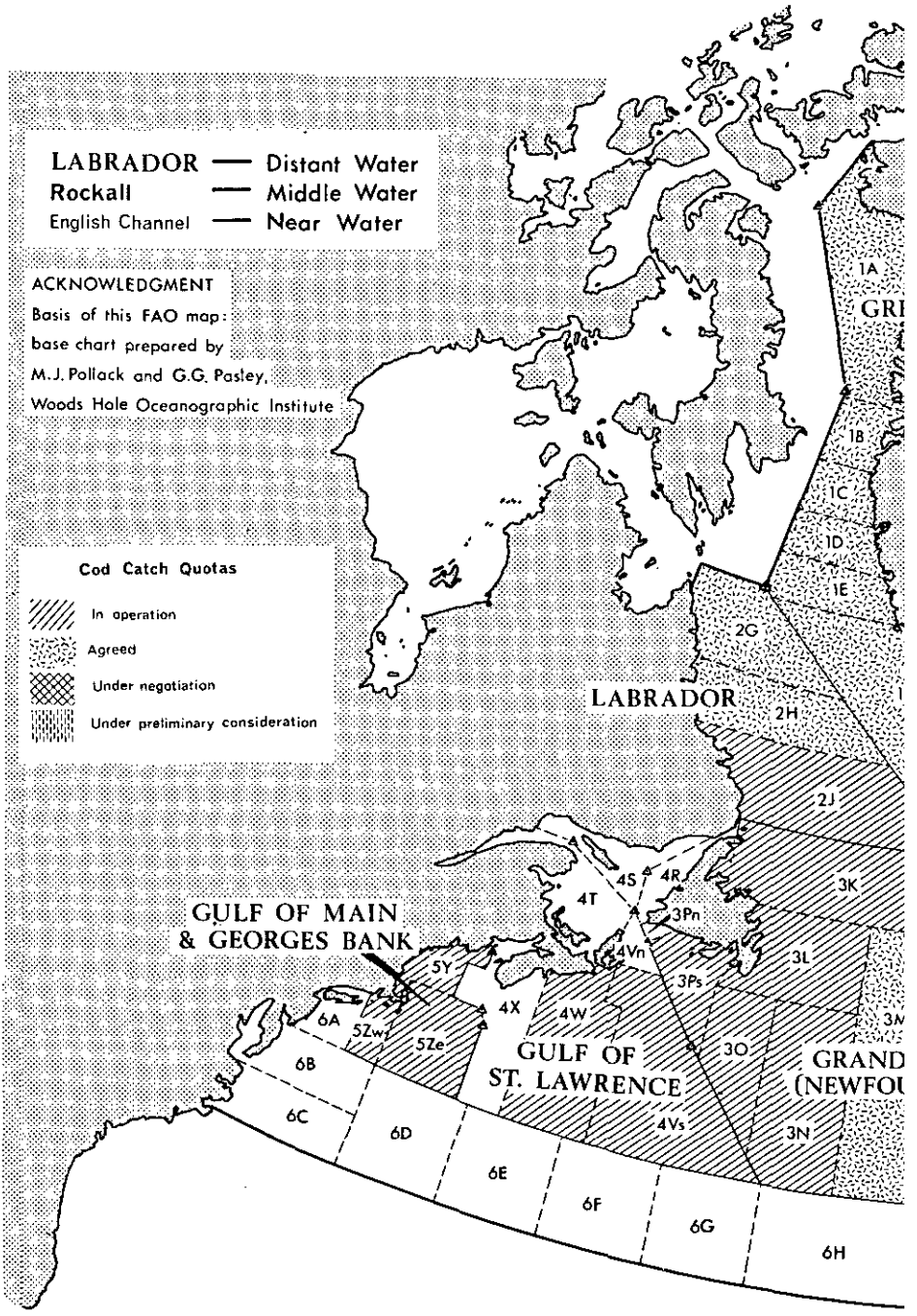
Annex 28

U.K. DISTANT AND MIDDLE WATER FISHING GROUNDS IN RELATION TO ICES AND ICNAF STATISTICAL REGIONS

(see pp. 412-413)

U.K. Distant and Middle Water Fishing Ground
ICES and ICNAF Statistical Region

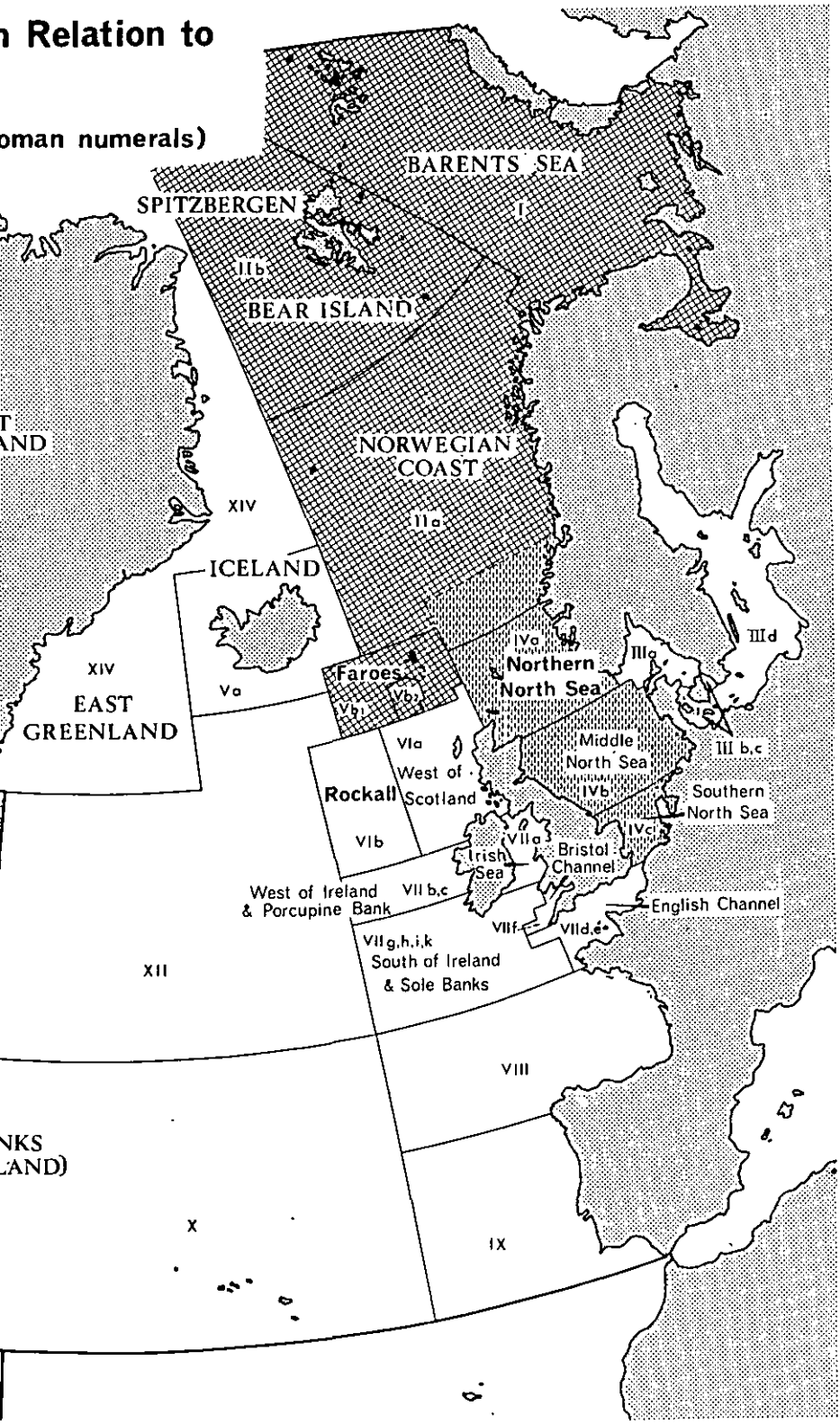
(The ICNAF area is denoted by Arabic numerals, ICES



 Drawn by Survey Section, Ministry of Agriculture, Fisheries and Food.

n Relation to

oman numerals)



Annex 29

DISTRIBUTION OF EMPLOYMENT IN ICELAND BY SECTOR

(Percentage)

	1960	*1963*	*1966*	*1968*	*1969*
Agriculture	16·0	13·7	12·8	13·0	12·9
Fishing	8·2	6·6	5·8	5·8	6·0
Manufacturing					
of which:					
Fish processing	10·1	9·9	8·4	7·2	8·2
Other	15·5	17·9	17·1	15·8	16·5
Construction	10·7	10·6	12·1	13·7	11·5
Electricity, gas, water, etc.	1·0	0·4	0·5	0·5	0·7
Commerce, banking, etc.	14·7	16·5	18·1	17·9	17·5
Transport and communication	8·2	9·6	9·5	9·0	8·8
Other services	15·7	14·8	15·7	17·1	17·9
Total	100·0(*a*)	100·0	100·0	100·0	100·0

(a) Rounded figure.
Source: OECD Economic Surveys: "Iceland", March 1972, p. 7, table 1.

Annex 30

GROWTH IN GROSS NATIONAL PRODUCT, 1960 TO 1971

($US thousand million at 1963 prices and 1963 exchange rate)

	1960	*1965*	*1968*	*1969*	*1970*	*1971*	*Percentage increase 1960–1971*
USA	530·6	672·0	772·9	793·1	788·9	810·6	52·8
EEC	309·7	392·0	442·2	469·8	492·5	507·3	63·8
OECD Europe	376·6	481·4	544·3	578·8	607·9	628·7	66·9
United Kingdom ...	79·06	93·14	100·32	102·52	104·73	106·37	34·5
Norway	4·89	6·36	7·30	7·67	7·95	8·35	70·8
Denmark	7·01	9·03	10·05	10·92	11·28	11·69	66·8
Sweden	14·52	18·83	20·59	21·79	22·79	22·86	57·4
Iceland	0·26	0·37	0·38	0·38	0·41	0·45	73·1

Source: Main Economic Indicators, May 1973: OECD, p. 150.

Annex 31

INTERNATIONAL TOURISM (1969)

(1)	(2)	(3)	(4)
	Number of tourists	*Receipts*	*Receipts per 1,000 inhabitants*
	('000)	($ million)	$
Iceland	44·1	4·0	1,920
United Kingdom	5,821·0	862·0	1,567
United States	12,347·0	2,058·0	1,013
Japan	511·9	148·0	1,505
Italy	12,086·8	1,632·0	3,270

Source: Columns (2) and (3) from table 155 of the *United Nations Statistical Yearbook* 1970 published by the Statistical Office of the United Nations in New York. Column (4) by calculation based on population figures contained in table 18.

Annex 32

Year	*Landings of fish other* than shellfish												Landings of shellfish	
	Total demersal landings		Total pelagic landings		*Total landings*		*Landings from* Iceland area		Landings from *Iceland area* as percentage of total landings		Landings from Iceland area as percentage of total demersal landings			
	Weight	Value	Weight	Value	Weight	Value	Weight	Value	Weight	Value	Weight	Value	Weight	Value
	'000 metric tons	£m.	'000 metric tons	£m.	'000 metric tons	£m.	'000 metric tons	£m.	Per cent	Per cent	Per cent	Per cent	'000 metric tons	£m.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1960 ...	693·4	48·2	121·9	2·8	815·3	51·0	153·4	10·3	18·8	20·2	22·1	21·4	28·0	2·1
1961 ...	654·1	46·6	101·0	2·6	755·1	49·2	163·3	11·6	21·6	23·6	25·0	24·9	*	2·4
1962 ...	687·7	45·7	109·1	3·1	796·8	48·8	178·4	11·8	22·4	24·2	25·9	25·8	30·0	2·5
1963 ...	674·2	47·9	147·2	3·1	821·4	51·0	187·1	13·4	22·8	26·3	27·8	28·0	28·2	2·5
1964 ...	687·7	51·1	142·4	3·2	830·1	54·3	184·7	14·5	22·3	26·7	26·9	28·4	28·4	2·9
1965 ...	733·8	54·4	164·6	3·6	898·4	58·0	195·7	15·4	21·8	26·6	26·7	28·3	27·8	3·0
1966 ...	715·7	54·4	200·2	3·7	915·9	58·1	147·4	11·6	16·1	20·0	20·6	21·3	34·1	3·6
1967 ...	710·8	53·7	151·3	3·3	862·1	57·0	161·6	11·7	18·7	20·5	22·7	21·8	42·2	4·0
1968 ...	729·5	54·1	140·9	3·2	870·4	57·3	136·1	9·2	15·6	16·1	18·7	17·0	41·8	4·8
1969 ...	727·9	55·9	175·5	4·0	903·4	59·9	117·0	8·5	13·0	14·2	16·1	15·2	50·6	6·0
1970 ...	731·0	64·0	187·6	5·5	918·6	69·5	142·6	13·2	15·5	19·0	19·5	20·6	56·4	6·7
1971 ...	715·1	78·9	206·0	6·2	921·1	85·1	180·9	22·4	19·6	26·3	25·3	28·4	54·5	7·5
1967–71 average ...	722·9	61·3	172·3	4·4	895·1	65·8	147·6	13·0	15·4	19·8	20·4	21·2	49·1	5·8

Notes:

(1) Quantities shown in terms of landed equivalent weight, *i.e.*, head on, *gutted, plus livers.*

(2) *Source:* Columns (2) to (9) and (14) and (15) from Sea Fisheries Statistical Tables 1960-1971.
Columns (10) to (13) by calculation.

(3) *In columns (8) and (9) a small* adjustment has been made to take account of the fact that in the Statistical Tables the figures for landings from different areas of origin do not include livers, whereas the figures for total landings do. The livers represent approximately 2.7 per cent. of landings by weight, and 0.5 per cent. by value.

(4) All weights have been converted from cwts. to metric tons.

(5) See Note (10) on Annex 18.

* Figures not available.

Year	Supplies of fish (excluding shellfish) to the United Kingdom (*i.e.*, landings by United Kingdom and foreign vessels, and imports of fresh, frozen and semi-preserved fish)						Landings from Iceland area by United Kingdom vessels				Supplies of shellfish	
	Total demersal supplies		Total pelagic supplies		Total supplies		Landings from Iceland area by United Kingdom vessels		Landings from Iceland area by United Kingdom vessels as a percentage of total supplies			
	Weight	Value	Weight	Value	Weight	Value	Weight	Value	Weight	Value	Weight	Value
(1)	'000 metric tons (2)	£m. (3)	'000 metric tons (4)	£m. (5)	'000 metric tons (6)	£m. (7)	'000 metric tons (8)	£m. (9)	Per cent (10)	Per cent (11)	'000 metric tons (12)	£m. (13)
1960	820·4	60·5	137·7	3·4	958·1	63·9	153·4	10·3	16·0	16·1	33·1	3·1
1961	808·6	60·9	117·7	3·1	926·3	64·0	163·3	11·6	17·6	18·1	*	4·5
1962	830·7	59·1	120·0	3·5	950·7	62·6	178·4	11·8	18·8	18·8	36·5	5·3
1963	806·5	61·1	164·9	3·5	971·4	64·6	187·1	13·4	19·3	20·7	34·3	5·2
1964	852·1	68·6	150·7	3·5	1,002·8	72·1	184·7	14·5	18·4	20·1	36·5	6·6
1965	905·4	74·4	170·5	3·9	1,075·9	78·3	195·7	15·4	18·2	19·7	35·8	6·6
1966	866·4	72·6	207·9	4·1	1,074·3	76·7	147·4	11·6	13·7	15·1	40·8	8·0
1967	862·6	70·6	163·4	3·7	1,026·0	74·3	161·6	11·7	15·8	15·7	48·9	8·2
1968	902·6	73·0	162·4	3·7	1,065·0	76·7	136·1	9·2	12·8	12·0	49·0	10·1
1969	878·0	74·3	190·4	4·4	1,068·4	78·7	117·0	8·5	11·0	10·8	57·5	11·8
1970	888·6	86·5	197·1	5·9	1,085·7	92·4	142·6	13·2	13·1	14·3	63·9	13·6
1971	846·1	102·3	213·0	6·5	1,059·1	108·8	180·9	22·4	17·1	20·6	63·2	15·2
1967–71 average	875·6	81·3	185·3	4·8	1,060·8	86·2	147·6	13·9	15·1	14·7	56·5	11·8

Notes:

(1) *Quantities shown in terms of landed equivalent weight, i.e., head on, gutted, plus livers.*

(2) *Source:* Columns (2) to (9) and (12) and (13) from Sea Fisheries Statistical Tables 1960-1971. Columns (10) and (11) by calculation.

(3) In columns (8) and (9) a small adjustment has been made to take account of the fact that in the Statistical Tables the figures for landings from different areas of origin do not include livers, whereas the figures for total landings do. The livers represent approximately 2.7 per cent. of landings by weight and 0.5 per cent. by value.

(4) *All weights have been converted from cwts. to metric tons.*

(5) See Note (10) on Annex 18.

* Figures not available.

Annex 34

AVERAGE ANNUAL LANDINGS OF DEMERSAL FISH IN THE UNITED KINGDOM, 1967-1971, BY AREA OF CAPTURE

	Quantity (000 metric tons)		*Percentage of total demersal landings*	
Distant-Water Grounds				
Iceland	147.7		20.4	
Barents Sea	91.1		12.6	
Norwegian Coast	58.9		8.2	
Bear Island/Spitzbergen	16.1		2.2	
Newfoundland	13.7		1.9	
West Greenland	6.5		0.9	
Labrador	4.4		0.6	
Gulf of St. Lawrence	0.9		0.1	
East Coast of Greenland	0.3		0.1	
		339.6		47.0
Middle and Near-Water Grounds				
North Sea	259.9		35.9	
West Scotland	65.2		9.0	
Faroes	33.3		4.6	
Irish Sea	14.6		2.0	
English Channel	5.3		0.7	
Bristol Channel	2.9		0.4	
Rockall	1.4		0.2	
West and South of Ireland	0.6		0.1	
Skagerrak	0.1		—	
		383.3		52.9
		722.9		100.0 *(a)*

(a) Rounded figure.

Source: Sea Fisheries Statistical Tables, 1967-1971. Quantities shown are landed equivalent weight, i.e., head on, gutted, plus livers. An adjustment has been made to the figures obtained from the Statistical Tables—which do not include livers—so as to present the table on the same basis as Annex 32. All weights have been converted from cwts. to metric tons. See Note (10) on Annex 18.

Relative Importance of United Kingdom Distant-Water Ports in 1971

Port (1)	Percentage of total demersal fish landed at each port caught in the Iceland area by United Kingdom vessels (2)	Percentage of total demersal fish landed from distant-water grounds caught in the Iceland area by United Kingdom vessels (3)	Percentage of total landings of demersal fish by United Kingdom vessels caught in the Iceland area (4)	Percentage of total distant-water landings by United Kingdom vessels (5)	Demersal catch on distant-water grounds as a percentage of total United Kingdom demersal landings (6)	Demersal catch on distant-water grounds as a percentage of total demersal landings at all United Kingdom ports (7)	Demersal landings from all grounds as a percentage of total United Kingdom demersal landings (8)
Grimsby	38·0	77·6	49·6	31·0	63·9	12·7	19·8
Hull	42·6	50·7	49·6	53·3	97·8	21·8	22·2
Fleetwood	15·2	99·1	69·2	9·8	69·9	4·0	5·7
North Shields	0·7	13·2	4·9	3·3	37·0	1·3	3·6
Aberdeen	3·5	83·0	6·5	2·6	7·8	1·1	13·8
All distant-water ports...	100·0	63·4	39·7	100·0	62·7	40·9	65·1

Source: British Trawlers Federation Statistical Section.

Annex 36

MAJOR INCIDENTS IN THE ICELANDIC CAMPAIGN OF HARASSMENT OF BRITISH VESSELS

5 September 1972. On the morning of 5 September, the Icelandic coastguard vessel *Aegir* approached the trawler *Peter Scott* at a position approximately 66° 47′ N., 21° 03′ W. At 1056 Greenwich Mean Time (GMT), the *Aegir* passed across the stern of the trawler and cut one warp. The trawl and the catch were recovered by the *Peter Scott*. Repairs to damage on the *Peter Scott* cost £150.

12 September 1972. On the morning of 12 September, five British trawlers were fishing at an approximate position 65° 49′ N., 24° 40′ W. At 0930 GMT, the Icelandic vessel *Aegir* approached them and warned the skipper of the trawler *SSAFA* that he was fishing within Icelandic fishing limits, adding that, if he did not haul his gear, the *Aegir* would take action for which he would be sorry. The skipper of the *SSAFA* hauled his gear at approximately 0941 GMT. The *Aegir* then gave the other trawlers a similar warning. The other trawlers refused to haul. The skipper of the trawler *Lucida* advised the captain of the *Aegir* that he would hold him responsible for any accident which might occur, as the *Lucida* was fishing in accordance with the Order made by the International Court of Justice on 17 August 1972. At 1020 GMT, the *Aegir* streamed her cutting gear and steamed at full speed across the *Lucida's* stern, deliberately severing both warps. Gear valued at £1,669.07 was lost.

12 September 1972. At 1357 GMT, at a position approximately 65° 49′ N., 24° 40′ W., the Icelandic vessel *Aegir* again approached the trawler *SSAFA* and at 1422 GMT unsuccessfully attempted to cut one warp of the trawler. As a result of this action, one towing block of the *SSAFA* was damaged.

12 September 1972. At 1448 GMT, at a position approximately 66° 00′ N., 25° 00′ W., the Icelandic vessel *Aegir* cut both warps of the trawler *Wyre Victory*, passing so close that the after warp flew back aboard the trawler, putting the crew of the *Wyre Victory* at considerable risk. Gear valued at £1,968.42 was lost by the *Wyre Victory*.

22 September 1972. At 1700 GMT, at a position approximately 65° 42′ N., 24° 57′ W., the Icelandic coastguard vessel *Odinn* approached a group of seven British trawlers fishing off Kopanes and warned them that their gear would be cut unless they hauled and left the area. The trawlers refused to comply. The *Odinn* came close and attempted unsuccessfully to cut the *Starella's* warps with sweeps. At 1923 GMT, the *Odinn* cut both warps of the trawler *Kennedy*. Gear valued at £2,070.34 was lost by the *Kennedy*.

22 September 1972. At 2020 GMT, at a position approximately 65° 42′ N., 24° 57′ W., the Icelandic vessel *Odinn* caught the *Wyre Captain* fishing alone and cut her warps. Gear valued at £1,705.38 was lost by the *Wyre Captain*.

17 October 1972. At 0945 GMT, at a position approximately 66° 14′ N., 24° 22′ W., the Icelandic vessel *Aegir* warned the trawler *Wyre Corsair* that she was fishing illegally and gave her 15 minutes to haul and leave the area. At 1010 GMT, the *Aegir* attempted to cut the warps of the *Wyre Corsair*. The British support ship *Othello* protested to the *Aegir* but was ignored.

At 1015 GMT, the *Aegir* cut both warps of the *Wyre Corsair*. The *Wyre Corsair* lost gear valued at £2,109.00.

17 October 1972. At 1620 GMT, at a position approximately 66° 30′ N., 22° 20′ W., inside the Icelandic 12-mile limit, the trawler *Wyre Vanguard* was returning home and was ordered to stop by the *Odinn*. Three shots were fired by the *Odinn*.

18 October 1972. At 0830 GMT, at a position approximately 66° 55′ N., 16° 00′ W., the Icelandic vessel *Aegir* warned the trawlers *Aldershot* and *Ross Revenge* to haul and threatened to cut their gear if they did not comply within 15 minutes. The commander of the British support ship *Othello* protested to the *Aegir*, which acknowledged the protest. At 0910 GMT, the *Aegir* cut the gear of the *Aldershot* and, as she turned away to port, collided with the *Aldershot's* stern. There were no casualties on board the *Aldershot* which steamed away to the Faroes. After the collision, the *Aegir* announced that she would without further warning cut the warps of all British vessels fishing in the area. As a result of the warp-cutting, the *Aldershot* lost gear valued at £1,732.31. The total cost of repairs, including replacement gear and the services of two British trawler escorts to the Faroes, was £16,765.50.

29 October 1972. At a position inside the 12-mile limit off the north-west coast of Iceland, the Icelandic vessel *Odinn* fired two shots at the trawler *Real Madrid*, which was sheltering from bad weather.

23 November 1972. At 1300 GMT, at a position approximately 66° 40′ N., 22° 00′ W., the Icelandic vessel *Odinn* ordered seven British trawlers to leave the area, alleging that they were harassing Icelandic lining gear. No prior warning of the lining position had been given, and the trawlers refused to comply. The British support ship *Ranger Briseis* warned the *Odinn*, but the warning was ignored. At 1530 GMT, the *Odinn* cut both warps of the trawler *Vianova* and unsuccessfully tried to cut the warp of the trawler *Wyre Captain*. Replacement gear for the *Vianova* cost £1,890.52.

27 December 1972, At 1930 GMT, at a position 65° 31′ N., 12° 05′ W., the Icelandic vessel *Odinn* ordered a group of British trawlers to haul and leave the area. The trawler *Benella* acknowledged receipt of the message but continued to fish. The *Odinn* then without further warning cut both warps of the *Benella*. The skipper of the *Benella* estimated the value of the gear which he had lost at £2,086.47.

7 January 1973. At 1145 GMT, at a position approximately 64° 30′ N., 13° 00′ W., the Icelandic vessel *Aegir* approached the trawler *Boston Blenheim*, and warned her to leave the area. She then cut one warp of the *Boston Blenheim*, and attempted to cut the warps of four other British trawlers.

7 January 1973. At 1530 GMT, at a position approximately 66° 25′ N. 13° 40′ W., the Icelandic vessel *Odinn* ordered the trawler *Westella* to haul her gear and proceed outside the claimed 50-mile limit. She then cut both warps of the *Westella*. The British support ship *Othello* protested to the *Odinn* and the protest was acknowledged. The skipper estimated the value of the gear at £2,000.

12 January 1973. At 1007 GMT, at a position approximately 66° 45′ N., 14° 30′ W., the Icelandic vessel *Odinn* cut both warps of the trawler *Ross Renown*. Replacement gear for the *Ross Renown* cost £2,122.78.

12 January 1973. At 1820 GMT, at a position approximately 66° 40′ N., 14° 30′ W., the Icelandic vessel *Aegir* cut both warps of the trawler *Ross Kandahar*. Replacement gear for the *Ross Kandahar* cost £1,773.21.

16 January 1973. At 2307 GMT, at a position approximately 66° 20′ N., 13° 00′ W., the Icelandic coastguard vessel *Tyr* cut the forward warp of the trawler *Vanessa*.

17 January 1973. At 1740 GMT, at a position approximately 66° 20′ N., 12° 40′ W., the Icelandic vessel *Tyr* approached the trawler *Luneda* and threatened to sever her warps if she did not haul her gear within ten minutes. The *Luneda* refused to comply. At 1818 GMT and 1825 GMT, the *Tyr* made two unsuccessful attempts to cut the trawler's warps. At about 1925 GMT, the *Luneda* started to haul her gear on completion of her trawl. While she was hauling, the *Tyr* cut both warps. The skipper of the *Luneda* estimated that gear worth £1,853.68 was lost as a result of this action. Gear worth £368.73 was lost earlier while attempting to avoid the *Tyr*.

23 January 1973. At 1430 GMT, at a position approximately 65° 20′ N., 12° 20′ W., the Icelandic vessel *Tyr* cut the forward warp of the trawler *Ross Altair*, while the *Ross Altair* was towing. No warning was given to the *Ross Altair*. The trawl was recovered by another trawler. Replacement gear and repairs cost £70.82.

5 March 1973. On the morning of 5 March, at a position approximately 67° 00′ N., 17° 00′ W., the Icelandic vessel *Aegir* was reported harassing British trawlers and warning them to leave the area. At 0955 GMT, the *Aegir* approached the trawler *Ross Resolution* and cut the trawler's forward warp.

5 March 1973. At 1200 GMT, at a position approximately 67° 00′ N., 17° 00′ W., the Icelandic vessel *Aegir* approached the British trawler *St. Chad* and attempted to cut the after warp of the trawler. The warp was partially severed.

5 March 1973. At 1600 GMT, at a position approximately 67° 00′ N., 17° 00′ W., the Icelandic vessel *Odinn* cut the forward warp of the trawler *William Wilberforce*.

5 March 1973. At 1545 GMT, at a position approximately 67° 00′ N., 17° 00′ W., the Icelandic vessel *Aegir* cut the after warp of the trawler *Port Vale*. The trawler succeeded in recovering her gear.

6 March 1973. At a position off the north-east coast of Iceland, the Icelandic vessel *Aegir* fired two blank rounds at the trawler *Brucella*, which was protecting the warps of the trawler *Vanessa*.

6 March 1973. At 0045 GMT, at a position approximately 67° 00′ N., 15° 30′ W., the Icelandic vessel *Odinn* cut both warps of the trawler *Real Madrid*.

6 March 1973. At 1032 GMT, at a position approximately 67° 00′ N., 17° 00′ W., the Icelandic vessel *Aegir* cut one warp of the trawler *Ross Kelvin*.

6 March 1973. At 1600 GMT, at a position approximately 67° 00′ N., 17° 00′ W., the Icelandic vessel *Aegir* cut both warps of the trawler *Brucella* and one warp of the trawler *Vanessa*. A complete set of gear was lost.

7 March 1973. At 1545 GMT, at a position approximately 66° 47′ N., 15° 44′ W., the Icelandic vessel *Aegir* was reported harassing a group of 10 British trawlers. At 1650 GMT, the *Aegir* cut both warps of the trawler *Spurs*.

7 March 1973. At 1900 GMT, at a position approximately 66° 45′ N., 15° 40′ W., the Icelandic coastguard vessel *Thor* approached the trawler *Grimsby Town* and steamed across the stern of the trawler, cutting both warps. No warning was given to the trawler. A full set of gear was lost.

8 March 1973. At 2045 GMT, at a position approximately 67° 00′ N., 16° 00′ W., the Icelandic vessel *Aegir* cut the after warp of the trawler *Real Madrid*. The trawler recovered its gear.

10 March 1973. At 1700 GMT, at a position approximately 66° 50′ N., 16° 30′ W., the Icelandic vessel *Aegir* approached the trawler *Newby Wyke* on the starboard side and then, without warning, crossed the stern of the trawler, cutting the after warp. The trawler recovered her gear, but lost her catch.

11 March 1973. At 1800 GMT, at a position approximately 66° 50′ N., 15° 15′ W., the Icelandic vessel *Aegir* approached the trawler *Ross Canaveral* and cut the trawler's after warp while the trawler was recovering gear which had become stuck on the bottom.

13 March 1973. At 2230 GMT, at a position off the south coast of Iceland, the Icelandic vessel *Thor* cut one warp of the trawler *Irvana*. The other warp was partially severed.

14 March 1973. At 0715 GMT, at a position approximately 66° 52′ N., 23° 50′ W., the Icelandic vessel *Thor* approached the trawler *Boston Explorer*. As the trawler was hauling her gear after completing her trawl, the *Thor* went across the stern of the trawler and cut one warp. The trawler retrieved her gear, but the trawl was ruined.

14 March 1973. At 1115 GMT, at a position approximately 67° 01′ N., 23° 04′ W., the Icelandic vessel *Thor* cut one warp of the trawler *Northern Sceptre*.

14 March 1973. At 0730 GMT, at a position off the north-west coast of Iceland, the Icelandic vessel *Thor* approached a group of about 30 trawlers and, without warning, cut both warps of the trawler *Boston Blenheim*. Gear valued at £2,305.00 was lost as a result of this action.

14 March 1973. At 0800 GMT, at a position approximately 66° 50′ N., 23° 35′ W., the Icelandic vessel *Thor* cut one warp of the trawler *Benvolio*. Replacement gear and repairs cost £267.90.

17 March 1973. At 1816 GMT, at a position approximately 66° 46′ N., 22° 43′ W., the Icelandic vessel *Odinn* cut one warp of the trawler *Robert Hewitt* and damaged the other warp. The warps were hauled in and spliced. When the trawler next shot away her gear to begin trawling, both warps parted as a result of the damage which the *Odinn* had caused and a complete set of gear was lost. Replacement gear cost £2,254.14.

18 March 1973. At 1745 GMT, at a position approximately 66° 30′ N., 22° 00′ W., the Icelandic vessel *Odinn* fired two live rounds across the bows of the tug *Statesman*. No damage was caused.

25 March 1973. At 2350 GMT, at a position approximately 63° 00′ N., 21° 00′ W., the Icelandic vessel *Aegir* cut both warps of the trawler *Wyre Defence*. Gear valued at £2,146.63 was lost.

25 March 1973. At 1600 GMT, at a position approximately 63° 00′ N., 21° 00′ W., the Icelandic vessel *Aegir* fired one live round across the bows of the trawler *Brucella*, which was protecting the warps of the trawler *Wyre Defence*, and three blank rounds were fired from a gun laid in the direction of the trawlers.

26 March 1973. At 1030 GMT, at a position off the south coast of Iceland, the Icelandic vessel *Aegir* cut both warps of the trawler *St. Leger*.

26 March 1973. At 1046 GMT, at a position approximately 63° 00′ N., 21° 00′ W., the Icelandic vessel *Aegir* fired six blank rounds at the trawler *St. Leger*, which had just had her warps cut by the vessel. The *Aegir* threatened to fire live shots if the trawler did not leave.

2 April 1973. At 1608 GMT, at a position approximately 64° 15′ N., 12° 50′ W., the Icelandic vessel *Aegir* approached a group of 13 British vessels and cut both warps of the trawler *Ross Resolution*. The trawler lost a full set of gear as a result of this action.

2 April 1973. At 1905 GMT, at a position approximately 64° 00′ N., 13° 00′ W., the Icelandic vessel *Aegir* fired three rounds (one live and two blank) at the tug *Englishman*. No damage was caused by the gunfire.

2 April 1973. At 1930 GMT, at a position approximately 64° 25′ N., 12° 52′ W., the Icelandic vessel *Aegir* cut the forward warp of the trawler *Kingston Emerald*. The trawler recovered her gear.

3 April 1973. At 1030 GMT, at a position approximately 63° 15′ N., 22° 30′ W., the Icelandic vessel *Tyr* cut both warps of the trawler *St. Leger*.

7 April 1973. At 0635 GMT, at a position approximately 63° 10′ N., 22° 20′ W., the Icelandic vessel *Odinn* cut both warps of the trawler *St. Dominic*. Gear valued at £2,887.77 was lost.

11 April 1973. At 2050 GMT, at a position approximately 63° 30′ N., 24° 00′ W., the Icelandic vessel *Odinn* without warning cut one warp of the trawler *Wyre Victory*. The trawler recovered her gear.

12 April 1973. At 0250 GMT, at a position off the south-east coast of Iceland, the Icelandic vessel *Thor* cut one warp of the trawler *Belgaum*.

12 April 1973. At 0300 GMT, at a position off the south-east coast of Iceland, the Icelandic vessel *Thor* cut both warps of the trawler *Primella*.

12 April 1973. At 0505 GMT, at a position off the east coast of Iceland, the Icelandic vessel *Thor* fired one blank round at the tug *Englishman*.

12 April 1973. At 1300 GMT, at a position off the east coast of Iceland, the Icelandic vessel *Thor* approached a number of British trawlers and streamed cutting gear. The *Thor* then fired two blank rounds at the trawlers.

12 April 1973. At 1730 GMT, at a position off the east coast of Iceland, the Icelandic vessel *Thor* again approached a number of British trawlers and fired one blank round.

12 April 1973. At 2300 GMT, the Icelandic vessel *Thor* fired one blank round at the trawler *Irvana*.

12 April 1973. At 1800 GMT, at a position approximately 63° 10′ N., 22° 00′ W., the Icelandic vessel *Odinn* approached a group of British trawlers and made an unsuccessful attempt to cut the warps of the trawler *Boston Explorer*. The *Odinn* then cut the forward warp of the trawler *Joseph Conrad*.

16 April 1973. At a position off the south-west coast of Iceland, the Icelandic vessel *Odinn* cut one warp of the trawler *Boston Kestrel*.

17 April 1973. At 1455 GMT, at a position off the east coast of Iceland, the Icelandic vessel *Thor* fired a blank round at the trawler *Primella*.

18 April 1973. At 1100 GMT, at a position off the east coast of Iceland, an Icelandic coastguard vessel cut both warps of the trawler *Aldershot*.

22 April 1973. At 1400 GMT, at a position off the east coast of Iceland, the Icelandic vessel *Aegir* cut one warp of the trawler *Volesus*.

23 April 1973. At 2015 GMT, at a position approximately 63° 10′ N., 22° 00′ W., the Icelandic vessel *Thor* cut both warps of the trawler *SSAFA*. The trawler lost a complete set of gear valued at £2,332.44.

23 April 1973. At 2100 GMT, at a position approximately 63° 10′ N., 22° 00′ W., the Icelandic vessel *Thor*, which had shortly before cut both warps of the trawler *SSAFA*, fired five blank rounds at a group of British trawlers. During this incident she collided with the British trawler *St. Leger* and fired three live rounds over the trawler. No casualties were reported. The *St. Leger* sustained a hole in the bow and steamed to the Faroes for repairs. At 2120 GMT, the trawler *Brucella* reported that her bridge had been hit by approximately 10 rounds of rifle fire from the Icelandic coastguard vessel *Arvakur*. The trawler *Portia* was also hit by rifle fire from the *Arvakur*; no

casualties were reported. At 2215 GMT, the *Thor* fired one round at the trawler *Macbeth*, not causing any damage.

24 April 1973. At 0940 GMT, at a position off the south-east coast of Iceland, the Icelandic vessel *Aegir* succeeded in cutting both warps of the trawler *Notts Forest* after six attempts. Gear was lost to the value of £2040.43.

25 April 1973. At a position off the south-west coast of Iceland, an Icelandic coastguard vessel cut one warp of the trawler *Lord Jellicoe*.

4 May 1973. At 1430 GMT, at a position approximately 66° 00′ N., 25° 00′ W., the Icelandic vessel *Tyr* approached the trawler *Wyre Victory*, uncovered her gun and threatened to open fire. The *Tyr* then cut the forward warp of the trawler.

12 May 1973. At 0850 GMT, at a position approximately 64° 00′ N., 13° 00′ W., the Icelandic vessel *Thor* fired a blank round at the tug *Englishman*. At 0922 GMT, the *Thor* fired a blank round at the trawler *Irishman*.

14 May 1973. At 2046 GMT, at a position approximately 66° 45′ N., 15° 00′ W., the Icelandic vessels *Thor* and *Tyr* approached a group of 24 British trawlers. The *Thor* had manned her guns before reaching the trawlers. At 2122 GMT the *Tyr* ordered the trawler *Lord Alexander* to stop under threat of fire, saying that she intended to board. The trawler *Macbeth* interposed herself between the *Tyr* and the *Lord Alexander*. The *Tyr* then fired one round in the direction of, and falling very close to, the trawler *Macbeth* and another shot in the direction of the main group of trawlers. No damage was caused to the trawlers.

26 May 1973. At 1400 GMT, at a position approximately 66° 45′ N., 18° 50′ W., the Icelandic vessel *Aegir* approached the trawler *Everton*, which was fishing alone outside the 12-mile limit. The *Everton* hauled and stowed her gear as the *Aegir* approached. The *Aegir* fired a number of blank shells in the direction of the *Everton*, saying she would fire live rounds if the trawler did not stop. The skipper of the trawler refused to comply. The *Aegir* then hit the bows and fish-hold of the *Everton* with nine rounds of live 57-mm. solid shells. No casualties were reported among the crew of the *Everton*, but she took in water as a result of this damage. The *Aegir* broke off the attack when the trawler *C. S. Forester* approached to assist the *Everton*. The *Everton* left the area escorted by the *C. S. Forester* and, at 1916 GMT, was joined by the tug *Statesman* which gave help in pumping.

1 June 1973. At 0903 GMT, at a position approximately 64° 15′ N., 12° 30′ W., the Icelandic vessel *Arvakur* cut one warp of the trawler *Gavina*.

1 June 1973. At 0915 GMT, at a position approximately 64° 15′ N., 12° 30′ W., the Icelandic vessel *Arvakur*, after two unsuccessful attempts to cut the warps of the trawler *Belgaum*, collided with the starboard bow of the trawler and then rammed the bridge of the trawler *Vivaria*, causing damage to that trawler's superstructure. The *Arvakur* then went astern and collided with the tug *Irishman*, which was attempting to protect the *Vivaria*, and caused a split in the stem of the *Irishman*.

7 June 1973. At 0928 GMT, at a position approximately 66° 26′ N., 24° 53′ W., the Icelandic vessel *Aegir* collided with the Royal Naval vessel *HMS Scylla* while the *Scylla* was interposing herself between the *Aegir* and a British trawler. The collision was caused by the *Aegir* turning hard to port into the *Scylla's* course as the *Scylla* was passing. The *Scylla* suffered damage to the upper deck fittings on her starboard quarter.

27 June 1973. At 1625 GMT, at a position approximately 66° 31′ N., 21° 17′ W., the Icelandic vessel *Thor* cut both warps of the trawler *Arctic Vandal*.

Annex 37

TEXT OF NOTES OF PROTEST CONCERNING HARASSMENT OF BRITISH VESSELS

(1)

Note left with Ministry for Foreign Affairs of Iceland by British Ambassador in Reykjavik on 23 September 1972

On 22 September, the Coastguard vessel *Odinn* severed the warps of two British trawlers, *Kennedy* FD 139 and *Wyre Captain* FD 228, and made an unsuccessful attempt to sever the warp of the trawler *Starella*. All the trawlers were fishing on the high seas outside the 12-mile limit.

On instructions from Her Majesty's Government, I protest strongly at these actions which destroyed the gear and catches and endangered the safety of the British trawlers. I reserve the right to claim compensation for the damage caused and the loss involved.

Once again, I urge that instructions be given to the Icelandic Coastguard vessels to stop these activities.

For our part, we have consistently urged British trawlers fishing around Iceland to exercise restraint and avoid provocation and we hope that they will continue to do this. But these attacks put their forbearance under great strain and the responsibility for any consequences must rest solely with the Icelandic authorities.

These warp-severing activities, with the close manœuvring and risk of collision involved, are exceedingly dangerous and could well result in an extremely serious incident. They endanger both ships and men.

Any further harassment of British trawlers outside the 12-mile limit is bound to prejudice the prospect of conducting successful negotiations between our two countries.

23 September 1972.

(2)

Note handed to Minister for Foreign Affairs of Iceland by British Ambassador in Reykjavik on 18 October 1972

Sir Alec Douglas-Home has instructed me to convey to you the following:

He is extremely concerned at the reports of further harassment of British trawlers by Icelandic Coastguard vessels. The Icelandic vessel *Aegir* has severed the gear of the British trawler *Wyre Corsair* which was fishing on the high seas outside the Icelandic 12-mile limit, in accordance with the order of the International Court of Justice. We shall in due course be claiming compensation in respect of the loss sustained. It has also been reported that the *Odinn* has fired across the bows of, and threatened to fire at, the trawler *Wyre Vanguard* which was on passage inside the 12-mile limit with gear stowed.

Before these latest incidents we were arranging for the British industry to apply unilaterally in advance of any agreement the scheme of the area closures indicated as 1 (A) in the report by British and Icelandic officials. This gesture of co-operation would have meant that during October no British trawlers would fish in the area marked "F" on the agreed chart and that from the beginning of November they would refrain from fishing in Area "E".

We understand that according to the Icelandic Coastguard *Odinn* fired only blanks. Nevertheless, we now find ourselves in a new and very much more serious situation. The earlier interference with legitimate British fishing very nearly led to most serious consequences. It was only by the exercise of great restraint on the part of the British Government and British trawlermen that these were averted. That restraint is still being exercised. It is important, however, that the Icelandic Government should not misinterpret it. We must reserve the right, in the event of further interference, to take without further notice such measures as we may consider appropriate to protect our vessels.

We hope that the Icelandic Government share our desire that the situation should not develop in this way. It is surely in the interest of both Governments that discussions should be continued. As the Foreign Secretary indicated in his message of 11 October, we see value in continuing them, but you will realize that we can only do so if we can be confident that British vessels will be free from harassment. It was unfortunate that this latest incident prevented the area closure from coming into force. We could not advise the industry to implement it in present circumstances but we would still be prepared to do so if we could be sure that they would not be subject to interference from Icelandic vessels.

We do not of course envisage that scheme 1 (A) should necessarily be adopted as the outcome of discussions. Its application at this stage on a voluntary basis would be intended purely as a gesture designed to create a favourable atmosphere in which an interim arrangement could be worked out. We hope the Icelandic Government will see advantage in proceeding in this spirit and that you will be able to let the Foreign Secretary have an early reply to his message of 11 October.

(3)

Note delivered to Ministry for Foreign Affairs of Iceland by British Embassy in Reykjavik on 23 January 1973

Note No. 6

Her Britannic Majesty's Embassy present their compliments to the Ministry for Foreign Affairs and have the honour, with reference to the Ministry's Note of 9 January 1973 [1], to state the following:

At 0145 hours on 8 January, the *Othello* had been lying stopped since 2300 hours on 7 January in the position mentioned in the Ministry's Note. *Maretta* was known by *Othello* to be nearby, but had not been in contact with *Othello*. During the incident, *Othello* overheard the exchanges between *Odinn* and *Maretta* (and other trawlers) but did not see the incident (visibility was very poor) or intervene in it. *Othello* remained stopped and did not move position

[1] For the text of the Ministry's Note of 9 January 1973, see below.

until 1420 hours that day. Accordingly, there is no basis in fact for the allegations and the protest contained in the Ministry's Note.

Even assuming that the facts regarding the *Othello* had been as stated in the Ministry's Note, there would still have been no grounds for a protest. The British Government have not agreed to and do not recognize any Icelandic fishery limits beyond those set out in the Agreement of 11 March 1961. The question of the compatibility of Iceland's claim to a 50-mile fishery limit with international law has been referred by the British Government to the International Court of Justice in accordance with the express agreement in that behalf between the two Governments. In this regard, the attention of the Icelandic Government is drawn again to the Order made by that Court on 17 August 1972, operative paragraph 1 *(c)* of which indicates that "the Republic of Iceland should refrain from taking any measures to enforce the Regulations of 14 July 1972 against vessels registered in the United Kingdom and engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone;" and paragraph 1 *(d)* that "the Republic of Iceland should refrain from applying administrative, judicial or other measures against ships registered in the United Kingdom, their crews or other related persons, because of their having engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone".

As the Ministry's Note recognizes, the *Othello* is a public vessel of the United Kingdom: as such, it is subject in respect of acts performed on the high seas to British jurisdiction only. The mission of the *Othello* is the same as that of the other support vessels which the British Government have provided for British fishermen in the Icelandic area since 1968. This mission, which remains unchanged, is to provide meteorological advice and humanitarian support. However, the Embassy wish to point out that all British vessels have the right to render appropriate assistance to others threatened with or subject to forcible interference or wilful damage on the high seas inconsistently with international law in general and, specifically, with the Order of the International Court of Justice dated 17 August 1972.

As regards the manœuvres executed by *Odinn* on 8 January in twice sailing around the *Maretta*, the Embassy draw the attention of the Icelandic Government to the impermissibility of threatening to use force against vessels engaged in peaceful activities on the high seas and to the danger to men and vessels created by such navigation.

The Embassy avail themselves of this opportunity to renew to the Ministry for Foreign Affairs the assurances of their highest consideration.

British Embassy, Reykjavik,
23 January 1973.

[*The text of the Ministry's Note of 9 January 1973 was as follows:*

No. 2.

The Ministry for Foreign Affairs presents its compliments to the British Embassy and has the honour to draw the Embassy's attention to the following:

At 0145 hours on January 8, 1973, the Icelandic Coast Guard vessel *Odinn* approached the British trawler *Maretta* FD245 fishing 26.0 nautical miles 075°

off Langanes. The *Odinn* sailed twice around the trawler but the trawler continued trawling. The trawler immediately contacted the *Othello* and requested assistance. The *Othello* was near by and proceeded to the *Maretta* and prevented further enforcement action by the *Odinn*.

The Government of Iceland strongly protests against this interference by a public vessel of the United Kingdom with law enforcement within the Icelandic fishery limits. Under Icelandic law assistance in illegal fishing in Icelandic waters is subject to penalties. The Government of Iceland reserves its right with regard to any such action including compensation for any damage resulting therefrom.

The Ministry for Foreign Affairs avails itself of this opportunity to renew to the British Embassy the assurances of its highest consideration.

Ministry for Foreign Affairs, Reykjavik,
January 9, 1973.]

(4)

Note delivered to Ministry for Foreign Affairs of Iceland by British Embassy in Reykjavik on 7 March 1973

No. 15

Her Britannic Majesty's Embassy present their compliments to the Ministry of Foreign Affairs and, acting on instructions from the Foreign and Commonwealth Office, have the honour to state the following:

At 0955 on 5 March on the high seas off Melrakkasletta the Icelandic coast guard vessel *Aegir* deliberately damaged the equipment of the British trawler *Ross Resolution* by cutting one of the trawl warps. Later that day, in the same area of the high seas, the Icelandic coastguard vessels *Aegir* and *Odinn* cut one or both warps of the British trawlers *Arctic Vandal*[1], *Port Vale*, *William Wilberforce* and *Real Madrid*. On 6 March the coastguard vessel *Aegir* severed warps of the British trawlers *St. Chad*, *Ross Kelvin* and *Brucella*.

Such action is known to be dangerous to life and limb: upon severance the wires recoil with great force and could strike anyone on deck. Her Majesty's Government protest against these unlawful acts of the Icelandic authorities.

The Embassy are instructed to refer to the oral protests made by Her Britannic Majesty's Ambassador against similar acts of wilful damage to the equipment of the following British vessels on the dates indicated:

	1972
Peter Scott	5 September
Lucida	12 September
Wyre Victory	12 September
SSAFA	12 September
Kennedy	22 September

[1] It was subsequently established that the damage sustained by the *Arctic Vandal* was less than originally believed and was in fact confined to a towing-block and the loss of some markers. The Ministry for Foreign Affairs were so informed by the British Embassy on 9 April 1973.

Wyre Captain	22 September
Wyre Corsair	17 October
Vianova	23 November
Benella	28 December
	1973
Boston Blenheim	6 January
Westella	6 January
Ross Renown	12 January
Ross Kandahar	12 January
Vanessa	16 January
Lunelda	17 January
Ross Altair	23 January

The Embassy must point out again to the Ministry that Her Majesty's Government, not having agreed to any extension of Icelandic jurisdiction over the high seas beyond that accepted in the Agreement of 17 *(sic)* March 1961, consider that there is no foundation in international law for the application of the Icelandic Regulations of 17 *(sic)* July 1972 to British vessels. The attention of the Ministry is again drawn to the Interim Order of the International Court of Justice of 17 August 1972, paragraphs 1 *(a)* and *(c)* of which read as follows:

> "*(a)* the United Kingdom and the Republic of Iceland should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court;"
>
> "*(c)* the Republic of Iceland should refrain from taking any measures to enforce the Regulations of 14 July 1972 against vessels registered in the United Kingdom and engaged in fishing activities in the waters around Iceland outside the twelve-mile fishery zone."

In accordance with the Charter of the United Nations, the International Court of Justice is the principal judicial organ of the United Nations: Iceland, as a party to the Court's Statute, has undertaken to comply with decisions of the Court (Article 94 of the Charter) and is under a duty to comply with the Interim Order. Her Majesty's Government for their part are complying with the Court's Interim Order: in particular, with regard to paragraph 1*(e)*, the Embassy draw the attention of the Ministry to the letter dated 19 December 1972 from the United Kingdom's Agent to the Registrar of the Court, a copy of which was transmitted by the Ambassador to His Excellency the Minister for Foreign Affairs under cover of a letter dated 3 January 1973. On 2 February 1973, the International Court of Justice decided that it had jurisdiction to deal with the dispute. This decision is also binding upon Iceland.

The Embassy are accordingly instructed to reiterate the oral protests made in the above-listed cases. It is only through good fortune that British fishermen have not been injured. The financial losses involved will be made known to the Ministry when the amounts have been fully assessed and at the proper time.

Her Majesty's Government earnestly call upon the Icelandic Government to end the cutting of warps, the dangerous manœuvring of coastguard vessels and other forms of harassment of British vessels on the high seas.

Her Majesty's Embassy avail themselves of this opportunity to renew to the Ministry of Foreign Affairs the assurances of their highest consideration.

British Embassy, Reykjavik,

7 March 1973.

(5)

Note delivered to Ministry for Foreign Affairs of Iceland by British Embassy in Reykjavik on 17 May 1973

No. 22

Her Britannic Majesty's Embassy present their compliments to the Ministry for Foreign Affairs and have the honour to draw the Ministry's attention to the following.

On Monday 14 May between 2100 and 2200 hours two Icelandic coastguard vessels the *Thor* and the *Tyr* approached a group of 24 British trawlers off the north coast of Iceland. The *Thor's* guns were manned before reaching the trawlers and her cutting gear was streamed. The *Tyr* ordered the trawler *Lord Alexander* to stop or she would fire, and said she intended to board. The trawler *Macbeth* then interposed herself between the *Tyr* and the *Lord Alexander*, thereby frustrating *Tyr's* attempts to board the latter. At this point *Tyr* fired a shot which fell close to the *Macbeth*. Later, *Tyr* fired another shot in the general direction of the main group of British trawlers. There is no foundation for the allegation that any of the British vessels attempted to ram any Icelandic vessel.

On instructions from Her Majesty's Government, the Embassy protest strongly at this interference with legitimate British fishing, at the threat to board a British trawler on the high seas and at the endangering of British lives by the firing of live rounds.

The Embassy avail themselves of this opportunity to renew to the Ministry for Foreign Affairs the assurances of their highest consideration.

British Embassy, Reykjavik,

17 May 1973.