AFFAIRE DES PÊCHERIES (ROYAUME-UNI c. NORVÈGE)

FISHERIES CASE (UNITED KINGDOM v. NORWAY)

SECTION A.—APPLICATION INSTITUTING PROCEEDINGS ¹

SIR ERIC BECKETT TO THE REGISTRAR OF THE COURT

Sir.

24th September, 1949.

I have the honour to refer to the declaration made by the United Kingdom and by Norway accepting the Optional Clause provided for in Article 36 (2) of the Statute of the International Court of Justice, and, under the jurisdiction thereby conferred upon the Court, to submit, in accordance with Article 40 (1) of the Statute and Article 32 (2) of the Rules of Court, an application instituting proceedings in the name of the United Kingdom of Great Britain and Northern Ireland against the Kingdom of Norway in the following case:

2. Differences have from time to time arisen between the Government of the United Kingdom and the Norwegian Government are entitled to reserve fishing exclusively to Norwegian vessels. In 1933 a certain line (hereinafter for convenience described as the red line) was agreed to as a modus vivendi between the two Governments, without prejudice to their respective legal claims, although the area enclosed by the red line was greater than that which, in the opinion of the Government of the United Kingdom, Norway was entitled to reserve under international law. Under the modus vivendi it was agreed that British fishing vessels fishing outside the red line would not be interfered with by the Norwegian authorities, and the Government of the United Kingdom would have no objection to the exclusion of British fishing vessels from fishing inside the red line.

3. On the 12th July, 1935, a Norwegian Royal decree (which was slightly amended in one particular by an amending decree of 10th December, 1937) was promulgated delimiting the Norwegian fisheries zone as regards that part of Norway which is situated northward of 66° 28.8 north latitude. This Decree of 1935, a copy of which is annexed to this application, both in the original Norwegian and in an English translation (as published in a collection of laws published for the use of legations and consulates by order of the Royal Norwegian Ministry for Foreign Affairs), was expressed

¹ Deposited with the Court on September 28th, 1949.

to be based on ancient rights and purported to delimit the Norwegian fisheries zone. For this purpose it provided certain base-lines, specified in detail in an annex to the said decree. The limits of the Norwegian fisheries zone under the decree is a certain distance to seaward from these base-lines. This distance is not given in the 1935 Decree itself, but is to be ascertained by reference to earlier decrees recited in its preamble. Thus, in the Decree of 1812, which is recited in the Decree of 1935 and which was then common to Denmark and Norway, the following rule is laid down (the text of the decree is in Danish):

"Vi ville have fastsat som Regel i alle de Tilfælde hvor Spørgsmaal er om Bestemmelse af Vor Territorial-Høiheds Grændse udi Søen, at denne skal regnes indtil den sædvanlige Sø Mils Afstand fra den yderste Ø eller Holme fra Landet, som ikke overskylles af Søen¹."

The unit of measurement referred to here is equivalent to onefifteenth (I/T5) of a degree of latitude (i.e. 4 sea miles, each of which is one-sixtieth (I/60) of a degree of latitude). In the Decrees of 1869 and 1889 (also referred to in the Decree of 1935) the unit is referred to by the Norwegian word "milom", which might be translated "Scandinavian league", which is also I/T5 of a degree of latitude. The base-lines of the Decree of 1935 are straight lines drawn between 48 successive fixed points selected on the mainland, on islands or rocks, starting from the extreme eastern boundary of Norway in Varangerfjord. The limits of the Norwegian fisheries zone specified in the 1935 Decree, which are hereinafter referred to as the 1935 line, include, by reason of the arbitrarily-selected base-lines, an area considerably more extensive than that comprised in the red line and even more greatly in excess of the area which Norway is entitled to reserve in accordance with international law.

4. The Government of the United Kingdom at once disputed, as it now disputes, the validity under international law of the limits of the Norwegian fisheries zone prescribed in the 1935 line. In 1938 negotiations took place for a settlement of the dispute and, pending such settlement and without prejudice to their respective legal rights, the Norwegian Government refrained from a full enforcement of the 1935 line against British fishing vessels, while the United Kingdom Government continued to observe the red line.

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

5. A draft convention for the settlement of the dispute, which resulted from the 1938 negotiations, was rejected by the Norwegian Government and, owing to the outbreak of the Second World War, was not the subject of any decision by the Government of the United Kingdom.

6. On the 16th September, 1948, the Norwegian Government informed the Government of the United Kingdom that the Norwegian Government was unable to continue the arrangement referred to in paragraph 4 above and considered it necessary to enforce fully the 1935 line. In reply the Government of the United Kingdom reaffirmed its view that the limits of the Norwegian fisheries zone prescribed in the 1935 Decree are incompatible with international law and refused to accept the 1935 line as applicable to British fishing vessels.

7. Subsequent negotiations have failed to achieve an agreement between the two Governments and, in consequence, a dispute exists between them, each maintaining in law the positions set out in the preceding paragraphs. In these circumstances the Government of the United Kingdom has deemed it appropriate to submit the dispute to the Court.

8. The subject of the dispute is the validity or otherwise under international law of the lines of delimitation of the Norwegian fisheries zone laid down by the Royal Decree of 1935 for that part of Norway which is situated northward of 66° 28.8 north latitude. Actuated by the same spirit of compromise as led it in 1933 to agree to the red line modus vivendi, the Government of the United Kingdom, for the purpose of the present dispute and without prejudice to the position that it maintains regarding the extent of Norwegian territorial waters in matters other than fisheries, is prepared to agree that the Norwegian fisheries zone shall be delimited on the assumption that the zone extends to seaward 4 sea miles from base-lines drawn in accordance with the principles of international law. It follows that the question at issue between the two Governments is whether the lines prescribed by the Royal Decree of 1935 as the base-lines for the delimitation of the fisheries zone have or have not been drawn in accordance with the applicable rules of international law.

9. Since 16th September, 1948, the Norwegian Government have interfered with certain British vessels fishing inside the 1935 line. Further, the Government of the United Kingdom do not know whether or not there will be further similar interferences with British fishing vessels during the period when this dispute is before the Court. The Government of the United Kingdom claims damages for all interferences, between 16th September, 1948, and the present date, with British fishing vessels outside the area which, according to the Court's decision, Norway is entitled to reserve exclusively

for Norwegian fishing vessels, assuming that Norway is entitled to a fisheries zone extending 4 sea miles seaward of base-lines drawn in accordance with the applicable principles of international law as laid down by the Court. The Government of the United Kingdom also reserve the right to claim in these proceedings in respect of all similar interferences occurring between the present date and the date of the close of the hearings before the Court. The Government of the United Kingdom will submit particulars of these interferences at such stage in the proceedings as the Court shall decide to be convenient.

10. The Government of the United Kingdom, in submitting this question to the Court, claims that

- (a) the Norwegian Government, when it prescribes the baselines from which the Norwegian fisheries zone is to be delimited, is bound to have regard to the applicable principles of international law which define the limits of national and territorial waters with particular reference to bays, islands and rocks; these principles will be set forth in the United Kingdom Memorial;
- (b) the base-lines prescribed by the Norwegian Government in the Royal Decree of 1935, as explained in paragraph 3 above, consist of straight lines joining points arbitrarily selected either on or off the Norwegian coast, in violation of the principles referred to in (a); the United Kingdom Memorial will indicate in detail in what manner the base-lines violate these principles;
- (c) as a result, the Royal Decree of 1935 unlawfully purports to close to British fishing vessels considerable areas of sea off the coast of Norway which under international law are high seas and, as such, open to the fisheries of all nations.

II. Accordingly the Government of the United Kingdom asks the Court, after considering the contentions of the Parties

(a) to declare the principles of international law to be applied in defining the base-lines, by reference to which the Norwegian Government is entitled to delimit a fisheries zone, extending to seaward 4 sea miles from those lines and exclusively reserved for its own nationals, and to define the said base-lines in so far as it appears necessary, in

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the light of the arguments of the Parties, in order to avoid further legal differences between them;

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

12. The undersigned has been appointed by the Government of the United Kingdom as its Agent for the purposes of these proceedings.

> (Signed) W. E. BECKETT, Legal Adviser to the Foreign Office.

Annex

(a) TEXT OF DECREE OF 1935 IN THE ORIGINAL NORWEGIAN

KONGELEG RESOLUSION

1935, 12 juli.

Med grunnlag i gamal nasjonal hevd,-

i samsvar med dei geografiske vilkåra langs den norske sjøsida, til verje for livskrava for den norske busetninga i den nørdste luten av landet,—

og i samhøve med dei kongelege resolusjonane frå 22 februar 1812, 16 oktober 1869, 5 januar 1881 og 9 september 1889,—

blir hermed fastsett grenselinene ute i sjøen for det norske fiskeområdet i den parten av Noreg som ligg nordanfor 66° 28,8' nordleg breidd.

Desse grenselinene skal bli utmælt soleis at dei fylgjer i breidd med rette grunnliner som blir dregne millom faste punkt på land, øyar eller skjer frå endepunktet for riksgrensa lengst aust i Varangerfjorden til Træna i Nordland fylke.

Dei faste punkta som grunnlinene skal gå imillom, er nøgje uppgjevne i særskilt vedlegg til denne resolusjonen.

Vedlegg

- 1. Endepunktet for riksgrensa, soleis som det er fastsett i "Tilleggsprotokoll til Protokoll over grenseopgangen mellem Norge og Finnland 1925".
- 2. Den austlegaste, ytarste odden på Kibergneset, som ligg på 70° 17,3' n. br. og 31° 4,3' l. o. Gr.

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- 3. Den ytarste odden på austsida av Hornøy, som ligg på 70° 23,3' n. br. og 31° 10,5' l. o. Gr.
- 4. Staurneset på Hornøy, som ligg på 70° 23,4′ n. br. og 31° 10,2′ l. o. Gr.
- 5. Kålneset på Reinøy, som ligg på 70° 23,9' n. br. og 31° 9,3' l. o. Gr.
- 6. Korsneset; som ligg på 70° 40,5' n. br. og 30° 13,4' l. o. Gr.
- 7. Molvikskjeret, som ligg på 70° 42,3' n. br. og 30° 6,3' l. o. Gr.
- 8. Kjølneset, som ligg på 70° 51,2′ n. br. og 29° 14,8′ l. o. Gr.
- 9. Skjeret med jarnstytta austanfor det skjeret som Tørrbå-båken står på, og som ligg på 71° 6′ n. br. og 28° 12,3′ l. o. Gr.
- Skjeret utanfor det skjeret som Tørrbå-båken står på, og som ligg på 71° 6,1′ n. br. og 28° 11′ l. o. Gr.
- Den ytarste odden på Avløysa ved Nordkyn, som ligg på 71° 8' n. br. og 27° 39,9' l. o. Gr.
- 12. Knivskjerodden, som ligg på 71° 11,1' n. br. og 25° 40,9' l. o. Gr.
- Avløysinga ved nordvestodden av Hjelmsøy, som ligg på 71° 6,9'
 n. br. og 24° 43,7' l. o. Gr.
- 14. Stabben, skjeret med jarnstytta nord av Ingøy, som ligg på 71° 6,1' n. br. og 24° 4,1' l. o. Gr.
- 15. Den nørdste Skagholmen, som ligg på 71° 5,8′ n. br. og 23° 59′ l. o. Gr.
- 16. Tørrskjeret som ligg på 71° 5,8' n. br. og 23° 58,8' l. o. Gr.
- 17. Tørrskjeret som ligg på 71° 5,7′ n. br. og 23° 58,6′ l. o. Gr.
- 18. Den vestlegaste Skagholmen, som ligg på 71° 5,7′ n. br. og 23° 58,4′ l. o. Gr.
- 19. Rundskjeret (Bondøyskjeret), som ligg på 70° 51,5' n. br. og 22° 48,7' l. o. Gr.
- 20. Darupskjeret, ved nordvestodden av Sørøy (Fuglen), som ligg på 70° 40,5' n. br. og 21° 59,1' l. o. Gr.
- 21. Vesterfallet i Gåsan, som ligg på 70° 25,2′ n. br. og 19° 54,9′ l. o. Gr.
- 22. Sannifallet, som ligg på 70° 18,3' n. br. og 19° 5,3' l. o. Gr.
- 23. Ytre Fiskebåen, som ligg på 70° 12,8' n. br. og 18° 38,1' l. o. Gr
- 24. Jubåen, som ligg på 70° 6,2′ n. br. og 18° 23,6′ l. o. Gr.
- 25. Saltbåen, som ligg på 69° 52,8′ n. br. og 17° 56,4′ l. o. Gr.
- 26. N. V. odden av Kjølva, som ligg på 69° 36′ n. br. og 17° 29,4′ l. o. Gr.
- 27. Tokkebåen, som ligg på 69° 29,5' n. br. og 16° 57,3' l. o. Gr.
- 28. Tørrskjeret N.N.O. av Glimmen, som ligg på 69° 21,4' n. br. og 16° 11,4' l. o. Gr.
- 29. Den nørdste av Svebåan, som ligg på 69° 20,3' n. br. og 16° 2,8' l. o. Gr.
- 30. Den vestlegaste av Skreingan, som ligg på 69° 15,6' n. br. og 15° 48' l. o. Gr.
- 31. Den nørdste av Flesan, nord av Langeneset, som ligg på 69° 6,1' n. br. og 15° 10,1' l. o. Gr.
- 32. Nordodden av Flesa i Floholman utanfor Skogsøy, som ligg på 68° 53,4' n. br. og 14° 41,1' l. o. Gr.

- 33. Nordodden av den nørdste av Floholman utanfor Åsanfjorden, som ligg på 68° 44,7' n. br. og 14° 19,5' l. o. Gr.
- 34. Utflesskjeret, som ligg på 68° 39,4' n. br. og 14° 13,3' l. o. Gr.
- 35. Kverna, som ligg på 68° 19,5' n. br. og 13° 41' l. o. Gr.
- 36. Det nørdste tørrskjeret ved Skarvholman, som ligg på 68° 11' n. br. og 13° 9,9' l. o. Gr.
- 37. Vestodden av den vestlegaste Skarvholmen, som ligg på 68° 10,8' n. br. og 13° 9,3' l. o. Gr.
- 38. Vestodden av Strandflesa, som ligg på 68° 8,7' n. br. og 13° 4,2' l. o. Gr.
- 39. Nordbøen, som ligg på 67° 56,5' n. br. og 12° 47,4' l. o. Gr.
- 40. Flesa, nordvest av Værøy, som ligg på 67° 42,2' n. br. og 12° 35,4' l. o. Gr.
- 41. Hombøen nord av Skarvholman ved Røst, som ligg på 67° 32,3' n. br. og 12° 1,5' l. o. Gr.
- 42. Tørrbøen, som ligg på 67° 31,5' n. br. og 11° 59,1' l. o. Gr.
- 43. Nørdre Skjortbaken, som ligg på 67° 29,1' n. br. og 11° 52,2' l. o. Gr.
- 44. Havbøen, som ligg på 67° 25,9' n. br. og 11° 49,8' l. o. Gr.
- 45. Flesjan, som ligg på 67° 24,1' n. br. og 11° 51,1' l. o. Gr.
- 46. Vestodden av den vestlegaste Bremholmen ved Mykjen, som ligg på 66° 46,3' n. br. og 12° 26,8' l. o. Gr.
- 47. Vestodden av den vestlegaste Froholmen, som ligg på 66° 35.5' n. br. og 12° 2,3' l. o. Gr.
- 48. Vestkanten av Bøvarden, som ligg på 66° 28,8' n. br. og II° 56,6' l. o. Gr.

(b) TRANSLATION INTO ENGLISH OF THE NORWEGIAN ROYAL DECREE OF 1935

ROYAL DECREE

1935, July 12.

On the basis of well-established national titles of right;

by reason of the geographical conditions prevailing on the Norwegian coasts ;

in safeguard of the vital interests of the inhabitants of the northernmost parts of the country; and in accordance with the Royal Decrees of the 22nd February,

and in accordance with the Royal Decrees of the 22nd February, 1812, the 16th October, 1869, the 5th January, 1881, and the 9th September, 1889,

are hereby established lines of delimitation towards the high sea of the Norwegian fisheries zone as regards that part of Norway which is situated northward of 66° 28,8' north latitude.

These lines of delimitation shall run parallel with straight base-lines drawn between fixed points on the mainland, on islands or rocks, starting from the final point of the boundary line of the Realm in the easternmost part of Varangerfjorden and going as far as Træna in the county of Nordland.

The fixed points between which the base-lines shall be drawn are indicated in detail in a schedule annexed to this decree.

Schedule

- 1. The final point of the boundary line of the Realm, as laid down in the "Additional Protocol to the Protocol on the Demarcation of the Frontier between Norway and Finland of 1925".
- 2. The most easterly, outermost point on Kibergneset, situated in 70° 17.3' N. lat. and 31° 4.3' E. long. Greenwich.
- 3. The outermost point on the eastern side of Hornöy, situated in 70° 23.3' N. lat. and 31° 10.5' E. long.
- 4. Staurneset on Hornöy, situated in 70° 23.4' N. lat. and 31° 10.2' E. long.
- 5. Kålneset on Reinöy, situated in 70° 23.9' N. lat. and 31° 9.3' E. long.
- 6. Korsneset, situated in 70° 40.5' N. lat. and 30° 13.4' E. long.
- 7. Molvikskjeret, situated in 70° 42.3' N. lat. and 30° 6.3' E. long. 8. Kjölneset, situated in 70° 51.2' N. lat. and 29° 14.8' E. long.
- 9. The rock with an iron pillar, eastward of the one on which Törrbåane beacon stands, situated in 71° 6' N. lat. and 28° 12.3' E. long.
- 10. The rock outside the one on which Törrbåane beacon stands, situated in 71° 6.1′ N. lat. and 28° 11′ E. long.
- 11. The outermost point on Avlöysa near Nordkyn, situated in 71° 8' N. lat. and 27° 39.9' E. long.
- 12. Knivskjerodden, situated in 71° 11.1' N. lat. and 25° 40.9' E. long.
- 13. Avlöysinga near the north-western point of Hjelmsöy, situated in 71° 6.9' N. lat. and 24° 43.7' E. long.
- 14. Stabben, the rock with an iron pillar northward of Ingöy, situated in 71° 6.1' N. lat. and 24° 4.1' E. long.
- 15. The northernmost Skagholmen, situated in 71° 5.8' N. lat. and 23° 59' E. long.
- 16. The dry rock situated in 71° 5.8' N. lat. and 23° 58.8' E. long.
- 17. The dry rock situated in 71° 5.7' N. lat. and 23° 58.6' E. long.
- 18. The westernmost Skagholmen, situated in 71° 5.7' N. lat. and 23° 58.4' E. long.
- 19. Rundskjeret (Bondöyskjeret), situated in 70° 51.5' N. lat. and 22° 48.7' E. long.
- 20. Darupskjeret, near the north-western point of Sørøy (Fuglen), situated in 70° 40.5' N. lat. and 21° 59.1' E. long.
- 21. Vesterfallet in Gåsan, situated in 70° 25.2' N. lat. and 19° 54.9' E. long.
- 22. Sannifallet, situated in 70° 18.3' N. lat. and 19° 5.3' E. long.
- 23. Outer Fiskebåen, situated in 70° 12.8' N. lat. and 18° 38.1' E. long.

- 24. Jubåen, situated in 70° 6.2' N. lat. and 18° 23.6' E. long.
- 25. Saltbåen, situated in 69° 52.8' N. lat. and 17° 56.4' E. long.
- 26. The north-western point of Kjölva, situated in 69° 36' N. lat. and 17° 29.4' E. long.
- 27. Tokkebåen, situated in 69° 29.5' N. lat. and 16° 57.3' E. long.
- 28. The dry rock N.N.E. of Glimmen, situated in 69° 21.4' N. lat. and 16° 11.4' E. long.
- 29. The northernmost of Svebåan, situated in 69° 20.3' N. lat. and 16° 2.8' E. long.
- 30. The westernmost of Skreingan, situated in 69° 15.6' N. lat. and 15° 48' E. long.
- 31. The northernmost of Flesan, northward of Langeneset, situated in 69° 6.1' N. lat. and 15° 10.1' E. long.
- 32. The northern point of Flesa in Floholman, outside Skogsöy, situated in 68° 53.4' N. lat. and 14° 41.1' E. long.
- 33. The northern point of the northernmost of Floholman, outside Åsanfjorden, situated in 68° 44.7' N. lat. and 14° 19.5' E. long.
- 34. Utflesskjeret, situated in 68° 39.4' N. lat. and 14° 13.3' E. long.
- 35. Kverna, situated in 68° 19.5' N. lat. and 13° 41' E. long.
- 36. The northernmost dry rock near Skarvholman, situated in 68° 11' N. lat. and 13° 9.9' E. long.
- 37. The western point of the westernmost Skarvholman, situated in 68° 10.8' N. lat. and 13° 9.3' E. long.
- 38. The western point of Strandflesa, situated in 68° 8.7' N. lat. and 13° 4.2' E. long.
- 39. Nordböen, situated in 67° 56.5' N. lat. and 12° 47.4' E. long.
- 40. Flesa, north-west of Væröy, situated in 67° 42.2' N. lat. and 12° 35.4' E. long.
- 41. Homböen, northward of Skarvholman near Röst, situated in 67° 32.3' N. lat. and 12° 1.5' E. long.
- 42. Törrböen, situated in 67° 31.5' N. lat. and 11° 59.1' E. long.
- 43. Northern Skjortbaken, situated in 67° 29.1' N. lat. and 11° 52.2' E. long.
- 44. Havböen, situated in 67° 25.9' N. lat. and 11° 49.8' E. long.
- 45. Flesjan, situated in 67° 24.1' N. lat. and 11° 51.1' E. long.
- 46. The western point of the westernmost Bremholmen, near Mykjen, situated in 66° 46.3' N. lat. and 12° 26.8' E. long.
- 47. The western point of the westernmost Froholmen, situated in 66° 35.5' N, lat. and 12° 2.3' E. long.
- 48. The western edge of Bövarden, situated in 66° 28.8' N. lat. and 11° 56.6' E. long.