INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

FISHERIES JURISDICTION CASES

VOLUME I

(UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND *v.* ICELAND)

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRES DE LA COMPÉTENCE EN MATIÈRE DE PÊCHERIES

VOLUME I

(ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD c. ISLANDE)

ORAL ARGUMENTS ON REQUEST FOR THE INDICATION OF INTERIM MEASURES OF PROTECTION

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague, on 1 and 17 August 1972, President Sir Muhammad Zafrulla Khan presiding

FIRST PUBLIC SITTING (1 VIII 72, 10 a.m.)

Present: President Sir Muhammad ZAFRULLA KHAN; *Vice-President* AMMOUN; *Judges* Sir Gerald FITZMAURICE, PADILLA NERVO, FORSTER, GROS, BENGZON, PETRÉN, LACHS, ONYEAMA, DILLARD, IGNACIO-PINTO, DE CASTRO, MOROZOV, JIMÉNEZ DE ARÉCHAGA; *Registrar* AQUARONE.

Also present:

For the Government of the United Kingdom:

Mr. H. Steel, Legal Counsellor, Foreign and Commonwealth Office, *as Agent*;

Rt. Hon. Sir Peter Rawlinson, Q.C., M.P., Attorney-General,

Mr. J. L. Simpson, Second Legal Adviser, Foreign and Commonwealth Office,

Professor D. H. N. Johnson, Professor of International and Air Law, University of London,

Mr. G. Slynn, Member of the English Bar,

Mr. P. Langdon-Davies, Member of the English Bar, *as Counsel*;

Mr. P. Pooley, Assistant Secretary, Ministry of Agriculture, Fisheries and Food,

Mr. G. W. P. Hart, Foreign and Commonwealth Office, *as Advisers*.

OPENING OF THE ORAL PROCEEDINGS

The PRESIDENT: The Court meets today to consider a request for the indication of interim measures of protection, under Article 41 of the Statute and Article 61 of the Rules of Court, filed by the United Kingdom of Great Britain and Northern Ireland on 19 July 1972, in the *Fisheries Jurisdiction* case, between the United Kingdom and the Republic of Iceland.

The proceedings in this case were begun by an Application [1] by the United Kingdom, filed in the Registry of the Court on 14 April 1972. The Application founds the jurisdiction of the Court on Article 36, paragraph 1, of the Statute, and an Exchange of Notes between the Government of the United Kingdom and the Government of Iceland dated 11 March 1961. The Applicant asks the Court to declare that there is no foundation in international law for the claim by Iceland to be entitled to extend its fisheries jurisdiction by establishing a zone of exclusive fisheries jurisdiction extending to 50 nautical miles from the relevant baselines, and that that claim is therefore invalid, and that questions concerning the conservation of fish stocks in the waters around Iceland are not susceptible in international law to regulation by unilateral extension of exclusive fisheries jurisdiction but are matters that may be regulated by arrangements between the countries concerned.

The Government of Iceland was informed forthwith by telegram [2] of the filing of the Application, and a copy thereof was sent to it by airmail the same day. On 31 May, a letter [3] was received in the Registry from the Minister for Foreign Affairs of Iceland, dated 29 May, in which it was stated *(inter alia)* that there was on 14 April 1972, the date on which the United Kingdom Application was filed, no basis under the Court's Statute for the Court to exercise jurisdiction in the case, and that an Agent would not be appointed to represent the Government of Iceland.

On 19 July 1972, the United Kingdom filed a request [4] under Article 41 of the Statute and Article 61 of the Rules of Court for the indication of interim measures of protection. I shall ask the Registrar to read from that request the details of the measures which the United Kingdom asks the Court to indicate.

[The Registrar reads the details of the measures [5].]

On 19 July, the day on which the request was filed, details of the measures requested were communicated to the Government of Iceland by telegram [6], and a complete copy of the request was sent to it the same day by express air mail. In the telegram and the letter enclosing the copy of the request, the Government of Iceland was informed that in accordance with Article 61, paragraph 8, of the Rules of Court, the Court was ready to receive the observations of Iceland on the request in writing, and that the Court would

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[1] See pp. 1-10, *supra*.
[2] II, p. 371.
[3] II, p. 374.
[4] See pp. 71-78, *supra*.
[5] See pp. 77-78, *supra*.
[6] II, p. 385.

hold hearings, opening on Tuesday, 1 August at 10 a.m., in order to give the Parties the opportunity of presenting their observations on the request.

On 29 July 1972, a telegram [1] dated 28 July was received from the Minister for Foreign Affairs of Iceland, in which, after reiterating that there was no basis under the Statute for the Court to exercise jurisdiction, he stated that there was no basis for the request of the United Kingdom and that, without prejudice to any of its previous arguments, the Government of Iceland objected specifically to the indication by the Court of provisional measures under Article 41 of the Statute and Article 61 of the Rules of Court where no basis for jurisdiction is established.

I note the presence in Court of the Agent and Counsel of the United Kingdom, and declare the oral proceedings on the request for the indication of interim measures of protection, open.

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[1] II, p. 388.

ARGUMENT OF SIR PETER RAWLINSON

COUNSEL FOR THE GOVERNMENT OF THE UNITED KINGDOM

Mr. STEEL: May it please the Court; with the Court's permission, the Attorney-General, Sir Peter Rawlinson, will put the submissions of the United Kingdom Government.

Sir Peter RAWLINSON: May it please the Court:

In this request, Her Majesty's Government are seeking from this Court an indication of interim measures of protection. It does so at a time when the Court has not considered the merits of the case and when the respondent Party is not before the Court and appears to be challenging the right of the Court to exercise jurisdiction. Her Majesty's Government are fully conscious of the gravity of this request, as they are appreciative of the steps which the Court has taken, under Article 61 (2) of its Rules, to give the request priority and to treat it as a matter of urgency.

In the absence of any representative of the Iceland Government, it is my duty to the Court not only to explain the facts and circumstances which make it necessary to make this application but also to set out the legal principles which, in my submission, make it a proper case for the exercise of the Court's power.

The reason why Her Majesty's Government has been forced to institute these proceedings is that Iceland has threatened to extend the limits of her fisheries jurisdiction unilaterally to a distance of 50 miles from baselines drawn round her coasts and thereafter to exclude from that part of the high seas included within those extended limits all fishing vessels of other nations, including those of the United Kingdom. This, in the submission of Her Majesty's Government, is without any justification in international law.

Moreover, notwithstanding the pendency of these proceedings before the Court, Iceland, has persisted in her determination to put the restrictions into effect on 1 September next.

The fishing vessels of the United Kingdom and other nations have for very many years shared with those of Iceland the valuable fishing grounds in the high seas in the area of Iceland.

On 11 March 1961 Her Majesty's Government entered into a formal agreement with the Government of Iceland that, in view of the exceptional dependence of the Icelandic nation upon coastal fisheries for their livelihood and economic development, Her Majesty's Government would no longer object to a 12-mile fishing zone around Iceland, measured from certain specified baselines. This agreement was contained in an Exchange of Notes, which are set out in full in Annex A to the Application initiating proceedings in this case.

The Icelandic Note, the contents of which were accepted by Her Majesty's Government, contained the following passage:

> "The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months' notice of such extension and, in case

of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice."

The resolution of the Althing (which is the Parliament of Iceland) to which that Note referred had declared that a recognition of the rights of Iceland to fisheries limits extending to the whole continental shelf "should be sought".

In the submission of Her Majesty's Government, the meaning of that agreement is beyond doubt. If Iceland should seek to extend her fisheries limits beyond the agreed 12 miles, and should any dispute arise, the matter should, at the request of either party, be referred to this Court.

Now Iceland has sought to extend her jurisdiction. She has given due notice of her intention. A dispute has arisen.

On 14 July 1971, the very day on which they took office, the Icelandic Government issued a policy statement announcing their intention to extend fishery limits to 50 miles with effect from 1 September 1972. This announcement was made without any prior consultation with the United Kingdom Government.

Since Her Majesty's Government have at all times denied the right in international law of Iceland to extend the limits of her fisheries jurisdiction unilaterally, a dispute, in my submission, thereupon arose. It is a dispute within the definition of the Court in the *Mavrommatis* case (*P.C.I.J., Series A, No. 2*, p. 11), namely "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons". The Icelandic Government have recognized that their proposed action would cause great difficulties for the United Kingdom fishing industry and professed to be willing to discuss what they have called "a practical solution of the problems involved".

Accordingly, Her Majesty's Government did not immediately refer the matter to this Court. On the contrary, they first sought to settle the matter, if possible, by agreement.

The first round of talks between officials of the two Governments was held in London on 3 and 4 November 1971. In view of Iceland's professed concern about the danger to fish stocks of an expansion in fishing by foreign vessels, the United Kingdom delegates at that very early stage thereupon proposed that the solution of the problem which had arisen between the two Governments might be a catch-limitation scheme imposed on the United Kingdom fishing fleet. This would, in the first instance, be a bilateral Anglo-Icelandic agreement; but it would stand a very good chance of subsequent approval by the member States of the North-East Atlantic Fisheries Commission if it were an alternative, and not complementary, to the extension of Icelandic limits.

This proposal was elaborated at a meeting in Reykjavik on 13 and 14 January 1972 when the British delegation proposed specifically that the British catch in the Icelandic area might be limited to 185,000 tons a year, a reduction of 22,000 tons from the 1971 level.

At this stage, the endeavour of the United Kingdom negotiators was to persuade the Iceland Government that, even if Iceland regarded her fishery interests as of over-riding importance, there was no need to renege upon the 1961 Agreement, and to deny that this Court had jurisdiction and to proceed to an extension of limits which would have no basis in international law. Iceland's fishery interests could be safeguarded by an agreement with Her Majesty's Government which there was every reason to think could and would be followed by agreements with other governments; but hopes that Iceland

might choose the path of agreement rather than that of conflict were doomed to disappointment.

On 15 February 1972, the Althing passed a resolution which reiterated the intention to extend Iceland's fisheries limits to 50 miles. On 24 February 1972, the Government of Iceland delivered an aide-mémoire to Her Majesty's Government which in effect served six months' notice on Her Majesty's Government that the extension of fisheries limits to 50 miles would be put into effect not later than 1 September 1972. After receipt of this aide-mémoire, negotiations had, in the words of the Court in the *Right of Passage* case (*I.C.J. Reports 1957*, p. 145), "reached a deadlock". Accordingly, the United Kingdom Government filed the Application instituting these proceedings on 14 April 1972.

However, discussions [1] between the two Governments did continue; but on the British side they now had a different objective. Although Her Majesty's Government had concluded that they must contest before this Court the legality in international law of the purported unilateral extension by Iceland of fishery limits to 50 miles, they sought to reach an interim arrangement which would apply until the judgment of this Court in the present proceedings. Such agreement would have made it unnecessary for Her Majesty's Government to request the indication of provisional measures.

The Government of Iceland was informed that the catch-limitation plan, which the British delegation had put forward in January, was to be regarded as a formal British proposal to form the basis of an interim arrangement, and that Her Majesty's Government awaited the considered response of the Government of Iceland. The considered response, when it came, was rejection. Among the Icelandic objections was that a catch-limitation scheme would not be capable of supervision and verification by the Icelandic authorities. Only by the operation of controls of ports of landing in the United Kingdom would it be possible to establish when the catch limit had been reached.

In order then to meet this objection, the United Kingdom delegation next offered a scheme of "effort limitation", that is to say, a scheme which would restrict the time spent on the fishing grounds by United Kingdom fishing vessels of differing efficiency. The restrictions would be devised so as to limit the amount of fish caught to the level of 185,000 tons proposed under the catch-limitation scheme, and the Icelandic authorities would be in a position to check independently, from their own observations, that the agreed restrictions were being observed. This proposal too was rejected; apparently because, although the Icelandic authorities would be able to check for themselves, they would not be able to show the public that British ships were being visibly restricted in their activities.

In an endeavour to meet this latest objection, Her Majesty's Government discussed with the Icelandic Government yet a third proposal, by which certain areas would, at certain seasons of the year, be closed to United Kingdom vessels. Her Majesty's Government were willing to contemplate such an arrangement so long as it could be justified on conservation grounds, or on grounds of the preference which Iceland, as a coastal State dependent on fisheries, might claim.

The negotiations failed, because again and again the United Kingdom negotiators were met with some Icelandic requirement which was inconsistent with the preservation of the rights of both Parties pending the judgment of

[1] II, pp. 391-392.

this Court on the merits, and which were therefore inappropriate to the interim arrangement pending judgment which Her Majesty's Government was seeking.

At one stage Iceland proposed that British vessels should be wholly excluded from a 25-mile limit. At another, Iceland put forward proposals which would have had the effect of reducing the British catch in the Iceland area to as little as 20 per cent. of the usual level. Running through the negotiations was Iceland's insistence that jurisdiction, in the sense of arresting, trying and punishing any vessels that might infringe whatever arrangements might be agreed between the two Governments, should be a matter for Iceland and Iceland alone, notwithstanding the fact that Iceland has yet to establish before this Court her right to exercise jurisdiction in the waters she claims.

On 14 July 1972, Iceland promulgated the regulations purporting to establish fishery limits off Iceland, drawn 50 miles outside baselines, and prohibiting all fishing activities by foreign vessels within these limits. The regulations are to come into effect on 1 September next. They were sent to the British Embassy in Reykjavik under cover of a Note, a copy of which forms Annex H of the Request for the Indication of Provisional Measures. In the final paragraph of that Note, the Government of Iceland express the hope that continued discussions will, as soon as possible, lead to a practical solution of the problems involved.

At the conclusion of the last round of negotiations on 12 July 1972, the British delegation had indicated one basis for an interim arrangement, and had offered to consider any specific proposal which the Government of Iceland might wish to put forward on that basis. None was forthcoming.

The United Kingdom filed its request for interim measures on 19 July. Nevertheless, the British Ambassador in Reykjavik was instructed on 25 July to inform the Government of Iceland that Her Majesty's Government had asked this Court for a postponement of the hearing of our request in order to give time for consideration of any specific proposals which the Icelandic authorities might wish to put forward. Her Majesty's Government remained ready to meet the Icelandic authorities at short notice, at whatever level was appropriate, if such proposals were forthcoming; none were. Since no such proposals have been made, there is no basis for further discussions. The United Kingdom is thus left with no alternative but to bring this request before the Court as a matter of urgency. To repeat the words of the Court in the *Right of Passage* case (*I.C.J. Reports 1957*, p. 145), the situation had "reached a deadlock".

I shall deal later and in detail with the effect which these regulations, if implemented, would have on the United Kingdom fishing industry and on the public; but let me now say generally that the effect would be drastic and immediate.

The Iceland area has, for many years, provided the United Kingdom fishing fleet with about one-fifth of its total catch, and very nearly one-half of the catch of the large distant-water fleet. Virtually all the fishing grounds available to United Kingdom vessels in the Icelandic area are within the proposed 50-mile limit. If United Kingdom fishing vessels were excluded from that area, while these proceedings are pending, not only would a very large quantity of fish be permanently lost to the United Kingdom public, but the fishing industry would be forced to scrap vessels and to turn off many men.

These consequences could not be corrected if the Court were, in its decision

on the merits, to uphold the contention of the United Kingdom that such unilateral exclusion by the Iceland Government is unlawful.

Accordingly, circumstances have arisen which, in my submission, require the indication of provisional measures by the Court, under Article 41 of the Statute, to preserve the rights of the Parties. The right of the Court to indicate such measures in the appropriate circumstances is firmly grounded: first, in the Statute of the Court; secondly, in the Rules which the Court has made in furtherance of its Statute; and, thirdly, in the practice of the Court. To substantiate that submission, I invite the Court to consider the principles and law which should guide its decision upon this Application.

Article 41 of the Statute recites that the Court "shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party". As with similar remedies in municipal law, the Court enjoys a discretion, but it is a discretion which must be exercised judicially.

Thus the Court will not make an Order: first, if it considers that in the circumstances there is no need for interim measures; and, secondly, if, in the opinion of the Court, there is no real urgency. Moreover, the Court itself may, at any time, indicate interim measures *proprio motu*.

With regard to the principle that an applicant must satisfy the Court upon the urgency for an interim order, I cite the *Interhandel* case (*I.C.J. Reports 1957*, p. 105): that case concerned the possible sale of some shares in the General Aniline and Film Corporation by the United States Government. Those shares, which had become vested in the United States Government as the result of trading-with-the-enemy legislation, were being claimed by the Swiss Government as the property of its nationals. The latter Government, fearing that the United States Government was about to sell the shares, requested the Court to prevent it from so selling, "so long as the proceedings in this dispute are pending" (p. 106).

In principle, that case was certainly a suitable case for the grant of interim relief; but the Court declined to grant such relief on evidence being produced that the shares could not be sold until after the termination of judicial proceedings in the United States, in respect of which there was no likelihood of a speedy conclusion; and furthermore, upon the United States Government giving an undertaking that it was not taking action at that time even to fix a time schedule for the sale of the shares.

On those facts, there clearly was no urgency in that case, and the Court understandably denied interim relief.

Contrast those facts with the facts in this dispute. Here the Government of Iceland is preparing to take within a month action which, if the Court should find in favour of the United Kingdom's claim on the merits, would render largely nugatory and ineffective any judgment of the Court.

Moreover, although Iceland's proposed measures only take effect on 1 September, in view of the need for fishing companies to plan in advance the grounds to which they direct their vessels, and that a voyage to Iceland takes perhaps three weeks to prepare and undertake, such measures already impede the operations of the United Kingdom fishing industry. Therefore, on the issue of urgency, I submit, there could hardly exist a clearer case.

The next condition for the granting of interim relief is that the measures requested must be for the purpose of preserving the respective rights of the parties. It was because the Permanent Court decided, on the facts, that this condition was not present that it denied Germany interim relief in the *Polish Agrarian Reform* case in 1933 (*P.C.I.J., Series A/B, No. 58*). In that case

Germany asked the Court to declare that Poland had, through its agrarian reforms, committed violations of the Polish Minorities Treaty of 28 June 1919. Germany also requested the Court to indicate interim measures "in order to preserve the status quo until the Court has delivered final judgment in the suit submitted by the Application". Thus Germany was asking the Court to order Poland to suspend its agrarian reform programme as it applied to Polish nationals of German race.

The Court declined to make an Order on the ground that the essential condition, which must necessarily be fulfilled in order to justify a request for the indication of interim measures, is that such measures "should have the effect of protecting the rights forming the subject of the dispute submitted to the Court" (p. 177).

Taking what Professor Verzijl has described in *The Jurisprudence of the World Court* (Vol. I, p. 341) as a "formalistic" view of the matter, the Court held that interim measures were not appropriate in a case where the subject of the dispute submitted to the Court concerned only past violations of a treaty.

Baron Rolin-Jaequemyns however declared that interim measures should have been ordered, since their indication "would considerably facilitate the *reparation*—so far as may be necessary—of these rights in the form of their preservation, rather than by compensation for their loss" (p. 180).

Judges Schücking and Van Eysinga also disagreed with the majority. They said:

> "Having regard to the continuous character of the acts impeached, the undersigned consider that any attempt to read into the words formulating the object of the dispute, in the Application instituting proceedings, a definite distinction between acts which have already been accomplished and those which belong to the future, would be an utter distortion of the clear meaning of the Application." (P. 186.)

In a powerful opinion, Judge Anzilotti said that the German Application was open to different interpretations, and on a point on which perfect clarity was essential. He could, he said, "readily understand that the Court should, on that ground, refuse to grant the request for interim measures of protection". But, and this is important, Judge Anzilotti held that "this should not prejudice the German Government's right to submit a fresh application indicating the subject of the suit with the necessary clearness and precisions, and to follow it up by a fresh Request for the indication of interim measures appropriate to the rights claimed" (p. 182).

The Judge considered that "if there was ever a case in which the application of Article 41 of the Statute would be in every way appropriate, it would certainly be so in the case before us".

This was because the ground of the complaint was acts of expropriation involving discriminatory treatment of Polish citizens of German race, contrary to the Minorities Treaty.

> "Founding itself on this reason [the learned Judge continued] it [the German Government] asks that the expropriations now in progress should be suspended, as an interim measure of protection, until the Court has finally decided whether the said expropriations are legal or illegal.
>
> If the *summaria cognitio* which is characteristic of a procedure of this kind, enabled us to take into account the *possibility* of the right claimed by the German Government, and the *possibility* of the danger to which

> that right was exposed, I should find it difficult to imagine any request for the indication of interim measures more just, more opportune or more appropriate than the one which we are considering." (P. 181.)

That then was a case where the Application instituting proceedings was deposited on 3 July 1933 and was accompanied by a request for the indication of interim measures deposited on the same date. Certain observations were made by the Parties before the Court less than three weeks later, and in the course of these observations, the representative of the Respondent challenged both the admissibility of the Applicant's claim and the jurisdiction of the Court (*P.C.I.J., Series C, No. 71*, pp. 41, 54). Judge Anzilotti on a preliminary view in that case, and taking into account merely a possible danger to a possible right of the Applicant, was prepared to order the Respondent to suspend a major programme of agrarian reform taking place in its own territory.

These separate opinions, I submit, are important because all the learned judges who expressed them obviously took a broad view of the Court's function on the principle of interim relief.

A narrower view of the Court's function may be found in the preamble of the Order made by President Huber in the *Sino-Belgian Treaty* case in 1927 where he suggested that an infraction of Belgium's rights under the Treaty of 2 November 1865 might occur; that "such infraction could not be made good simply by the payment of an indemnity or by compensation or restitution in some other material form"; and that "the object of the measures of interim protection to be indicated in the present case must be to prevent any rights of this nature from being prejudiced" (p. 7).

The cautious approach of President Huber, who at first declined to make an Order but later changed his opinion on receiving more documentary evidence, is understandable when it is recalled that this was the first request for the indication of interim measures to come before the Permanent Court, and that under the Court's Rules, as they then were, the Court, and even the President alone, had power to order interim measures without even hearing the Parties.

Even so, the President did in fact make an Order in that case, granting protection, *inter alia*, "against any sequestration or seizure not in accordance with generally accepted principles of international law and against any destruction other than accidental". Moreover, that particular measure concerned protection against sequestration or seizure of property and shipping, injuries which could have been made good "simply by the payment of an indemnity or by compensation or restitution in some other material form".

Furthermore, the President was prepared to make an Order despite the fact that he had not heard argument on China's contention that the Treaty of 1865 had ceased to be effective. It is to be noted that the President's Order led to a resumption of negotiations between the Parties which proved successful.

In the present case, accepting the narrowest possible view of the function of interim measures, namely protection against irremediable damage only, the United Kingdom, for reasons which have been set out in the written request, and which I shall explain further, is entitled to relief. But the Court has acted upon a much broader view of its function and role under Article 41 of its Statute.

This broader view was clearly stated by the Permanent Court in the case of the *Electricity Company of Sofia and Bulgaria (P.C.I.J., Series A/B, No. 79)* in 1939 when it said that Article 41 of the Statute applied "the principle universally accepted by international tribunals", viz.:

"The parties to a case must refrain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute."

This broad language would appear to extend the Court's role beyond the strict terms of Article 41 which refers simply to preserving "the respective rights of either party".

Nevertheless it is a logical consequence that, if rights are to be preserved, action should not be taken *pendente lite* which is capable of exercising a prejudicial effect in regard to the execution of any decision of the Court on the merits which has for its object the protection of those rights. As to allowing steps to be taken which might aggravate or extend the dispute, it is reasonable to assume that any such aggravation or extension might have prejudicial effect in regard to the execution of the Court's decision on the merits.

In this context it is significant that Article 41 provides that notice of the measures suggested by the Court is to be given forthwith to the Security Council as well as to the parties themselves, and in Article 38 of its Statute the Court is given the function of deciding "in accordance with international law such disputes as are submitted to it".

The Court, which was specifically created by the Charter as one of a team of agencies of the United Nations having as their purpose the settlement of international disputes, cannot be expected to discharge this wide responsibility to the international community if it has not the right to expect of the parties, and the power to ensure, that during the proceedings they shall abstain from actions capable of prejudicing the execution of the Court's eventual decisions and of aggravating or extending the dispute submitted to the Court.

In the case concerning *South-Eastern Greenland (P.C.I.J., Series A/B, No. 48)* in 1932, the Permanent Court clearly took the view that the prevention of "regrettable events" was mainly the responsibility of the Parties themselves, especially since they had both bound themselves to avoid incidents in declarations "officially proclaimed before the Court" which the Court found to be "eminently reassuring" (pp. 286-287).

Another reason given by the Court for declining to grant relief was that "even adopting the broader interpretation of Article 41 of the Statute, there would seem to be no reason to fear that the incidents contemplated by the Norwegian request will actually occur" (p. 285).

Indeed, in a straightforward territorial dispute, as in that case, the Court would not normally be expected to make an Order for interim measures, because it would clearly be the duty of the party against whom the Court's decision on sovereignty went to vacate the territory, and the other party's title could not be affected by any action his opponent might take in the meantime.

If, however, one of the parties were to commence operations on the territory in dispute capable of rendering the territory of less value to the other party, should that other party eventually be awarded the territory by the Court, then it is to be expected that the Court would order interim relief.

As the Permanent Court put it in the *South-Eastern Greenland* case:

". . . the incidents which the Norwegian Government aims at preventing cannot in any event, or to any degree, affect the existence or value of the sovereign rights claimed by Norway over the territory in question, were

these rights to be duly recognized by the Court in its future judgment on the merits of the dispute" (p. 285).

The present case before the Court, although it concerns an extension of fisheries jurisdiction around Iceland, is not in the normal sense a territorial dispute. Iceland is not claiming an extension of her territory. She claims only an extension of her fisheries jurisdiction over what is admitted to be a portion of the high seas. Neither is the United Kingdom claiming any territory.

The point at issue is simply whether the United Kingdom's continued enjoyment of freedom of fishing in this area of the high seas, which it expects to be confirmed by a decision of the Court on the merits of its claim, will be prejudiced by action taken during the proceedings against its fishing fleet by Iceland. If, as I shall show later, such prejudice is likely to occur—and indeed is in fact already beginning to occur—then I submit that the Court must in law grant interim relief.

The United Kingdom fully realizes that in any Order the Court may make, the Court has the responsibility of protecting the rights of Iceland just as much as the rights of the United Kingdom. This is so even if Iceland does not appear before the Court to give the Court the benefit of her views as to how these rights might best be protected in the meantime. Thus it may well be that Iceland, as a nation especially interested in the yield of the fisheries of the area in question, is entitled to some interim protection in case the Court should find in favour of her claim to extended fisheries jurisdiction.

For this reason the United Kingdom has submitted a suggestion, which I shall explain later, as to how Iceland's rights might be protected. I emphasize that this is *not* a territorial dispute where, for the reasons I have given, interim measures may sometimes not be appropriate. It is a dispute about the validity of a purported extension of fisheries jurisdiction where interim measures to protect the rights, certainly of one of the Parties, and perhaps of both of them, are not only appropriate but essential.

The final test, which a request for the indication of interim measures must satisfy before the Court can order interim protection, is that the Court should have jurisdiction to make such an Order, and here it is necessary to make a careful distinction.

In any contentious case the Court, before giving a decision on the merits, must satisfy itself that it has jurisdiction under Article 36 of its Statute, or, as the case may be, under Article 37 in addition. The Court's jurisdiction to indicate interim measures under Article 41 is related to, but not wholly dependent upon, its jurisdiction under Article 36. The position has been clearly stated by Sir Hersch Lauterpacht when he said, in the *Interhandel* case:

> "In deciding whether it is competent to assume jurisdiction with regard to a request made under Article 41 of the Statute the Court need not satisfy itself—either *proprio motu* or in response to a Preliminary Objection—that it is competent with regard to the merits of the dispute. The Court has stated on a number of occasions that an Order indicating, or refusing to indicate, interim measures of protection is independent of the affirmation of its jurisdiction on the merits and that it does not prejudge the question of merits . . . Any contrary rule would not be in accordance with the nature of the request for measures of interim protection and the factor of urgency inherent in the procedure under Article 41 of the Statute." (*I.C.J. Reports 1957*, p. 118.)

The capacity of the Court to order interim measures, if necessary in advance

of confirmation of its jurisdiction to deal with the merits, was closely examined by my predecessor as Attorney-General, Sir Frank Soskice, in the speech he made before this Court over 20 years ago on 30 June 1951 and which is reported in the *Anglo-Iranian Oil Company* case. I refer the Court to that speech, especially pages 407-418, although I do not propose to take up the time of the Court by reading the whole of the passages now. I would, however, refer to three particular passages, which I think may be of assistance to read at this stage. In the first the then Attorney-General is reported as saying as follows:

> "It will be convenient, Mr. President and Members of the Court, if, in the first instance, I recall the jurisprudence and pronouncements of the Court on the subject. On 8th January 1927, the President of the Court issued an Order for interim measures of protection in the case between Belgium and China arising out of the denunciation of the Treaty of 1865 between those two countries. At the time when the order was made, China had not expressly accepted the jurisdiction of the Court. In making the order, the President indicated: '*provisionally, pending the final decision of the Court in the case submitted by the Application of November 25th, 1926—by which decision the Court will either declare itself to have no jurisdiction or give judgment on the merits . . .*', the various measures of protection. In the second Order in the same case, the Court once more put on record the fact that the Order for Interim Measures of Protection was made independently of the question whether the Court had jurisdiction to deal with the case on the merits. It recalled 'that the present suit has been brought by unilateral application and that, as the time allowed for the filing of the Counter-Case has not expired, the respondent *has not had an opportunity of indicating whether he accepts the Court's jurisdiction in this case*'."

It goes on:

> "Another case in which an order relating to interim measures of protection was made before the Court accepted jurisdiction on the merits was that made on 11th May 1933 in the case concerning the *Administration of the Prince von Pless* (*P.C.I.J., Series A/B, No. 54*, at p. 153). The last recital preceding the operative part of the Order was as follows:
>
> > 'Whereas, furthermore, the present Order must in no way prejudge either the question of the Court's jurisdiction to adjudicate upon the German Government's Application Instituting Proceedings of May 18th, 1932, or that of the admissibility of that Application.' " (*I.C.J. Pleadings, Oral Arguments, Documents*, pp. 407, 408.)

Sir Frank Soskice then referred in his argument to passages in the work by Professor Hudson and in the *Polish Agrarian Reform and the Germany Minority* case. He cited a number of decisions of the Mixed Arbitral Tribunals, which he submitted illustrated and affirmed the same principles. And he continued in his argument:

> "The Court will find a statement of the effect of the decision of the Mixed Arbitral Tribunals in this matter in the following passage in Dr. Dumbauld's book on interim measures of protection:
>
> > 'Another important principle emphasized in the jurisprudence of the Mixed Arbitral Tribunals is that in order to grant interim measures

it is not necessary to decide whether the tribunal has jurisdiction in the main proceedings on its merits, but it suffices that *prima facie* there is a possibility of a decision in favour of the plaintiff and the tribunal's lack of jurisdiction is not manifest.' (*Interim Measures of Protection* 1932, p. 140.)

In the same work, Dr. Dumbauld states the principle as being of general application. He says:

'Equally fundamental is the rule that the principal proceedings *(Hauptsache)* are in no wise affected by interim measures. The action in chief and the action with a view to security are altogether independent of each other. In rendering its final judgment the Court is not bound by its interlocutory decisions, and may disregard it entirely.

Consequently jurisdiction to grant protection *pendente lite* is not dependent upon jurisdiction in the principal action. From this it follows that interim measures may be granted before a plea to the jurisdiction is disposed of; and that one court may provide a remedy *pendente lite* in aid of an action of which another court has cognizance.' (At p. 186.)

The author of another book on the same subject, published in 1932, expresses the same view even more clearly. I refer to the monograph, in German, of Dr. Niemeyer, entitled *Provisional Orders of the World Court. Their Object and Limits.* He rejects emphatically the view that a decision on jurisdiction is necessary before the Court can make an order for interim protection. He says:

'This would necessitate an exhaustive examination of the case; it would make necessary an examination of the evidence. In brief, the exact situation would arise which must be avoided: a protracted argument which would waste time, which would deprive the provisional measures both of their true character and of their urgency, and which would prejudge the eventual outcome of the final decision which is in no way connected with the object of provisional measures. A provisional order given in that way would achieve only a negligible degree of its intended effectiveness. It is, therefore, clear that, for reasons of practical convenience, there is no room for an examination of the question of jurisdiction on the merits in connection with a request for interim protection.' (P. 70.)

In the latest edition, published in 1943, of his treatise on the Permanent Court of International Justice, Professor Hudson summarizes the legal position as follows:

'Nor is jurisdiction to indicate provisional measures dependent upon a previous determination of the Court's jurisdiction to deal with the case on the merits.' " (At p. 425.)

I may add . . . that there is, so far as I am aware, no writer who has on this question expressed a view differing from that which I am now submitting to the Court.

Quite apart from the opinions expressed by writers on the subject, there are, I submit, Mr. President the strongest practical reasons to support the view which I have presented to the Court. To concede to a party the right to ask, before any interim order can be made, for a decision on the question of jurisdiction—a matter which, as the ex-

perience of the Court has shown, may necessitate weeks, if not months, of oral and written pleadings—would altogether frustrate the object of the request for interim measures of protection. Undoubtedly, it is conceivable that a party may abuse the right to ask for interim measures by asking for them in a case in which it is appârent that the Court has no jurisdiction on the merits. If that were to happen, the Court would find means to discourage any such abuse of its process. It may wish to satisfy itself that there is a *prima facie* case for the exercise of its jurisdiction. There is no such difficulty in the present case."

In my submission there is certainly no difficulty in this present case before the Court this morning. Finally, may I refer to a short passage in the argument advanced to the Court in 1951 in which Sir Frank Soskice referred to the case of the *Electricity Company of Sofia and Bulgaria*. He set out the Order which was made by the Court in the following terms and commented as follows:

" 'The Court,

indicates as an interim measure that, pending the final judgment of the Court in the suit submitted by the Belgian Application on January 26th, 1938, the State of Bulgaria should ensure that no step of any kind is taken capable of prejudicing the rights claimed by the Belgian Government or of aggravating or extending the dispute submitted to the Court.' (P. 199.)

I submit [said Sir Frank] that this is the most complete statement of the principles on which the Court should act in granting interim relief. I submit further that the principles so enunciated precisely cover the circumstances which the Court is now considering."

So much then, Mr. President, for the argument in 1951, in the *Anglo-Iranian Oil Company* case. In that case, despite the fact that the Imperial Government of Iran had appointed no agent, but had confined itself to sending a telegram stating that that Government hoped that the Court would declare that the case was not within its jurisdiction, the Court ruled that it could not be accepted *a priori*, that the claim based on the United Kingdom's complaint of an alleged violation of international law fell completely outside the scope of international jurisdiction and that this consideration sufficed "to empower the Court to entertain the request for interim measures of protection" (p. 93).

Although in the submission of Her Majesty's Government the law was clear before 1951, I submit that there is no doubt whatsoever that it has been definitively clarified by the Order made by this Court on 5 July 1951 (*I.C.J. Reports 1951*, p. 89).

Mr. President and Members of the Court, there are three views on the capacity of the Court then to order interim measures before confirming its jurisdiction to deal with the merits. The first, and possibly the widest, view is that of the Court itself, as expressed in the *Anglo-Iranian Oil Company* case. And according to this view it appears to be sufficient for the appellant to show that *a priori* his claim does not fall "outside the scope of international jurisdiction".

This statement was of course made in the context of that particular case, but it clearly shows that, in considering a request for the indication of interim measures of protection, the Court does not require the applicant to do more than show that prima facie there are reasonable grounds for believing that the Court possess jurisdiction to deal with the merits. This I submit must be right in principle. I repeat that passage from Sir Hersch Lauterpacht:

"Any contrary rule would not be in accordance with the nature of the request for measures of interim protection and the factor of urgency inherent in the procedure under Article 41 of the Statute."

Secondly, there is the view of Sir Hersch Lauterpacht where, discussing the principles underlying the suggestion in a more general way than the Court understandably was able to do so in the context of a particular case, he said that interim measures ought not to be ordered "in cases in which there is no reasonable possibility, *prima facie* ascertained by the Court, of jurisdiction on the merits"; and that the correct principle is that:

"... the Court may properly act under the terms of Article 41 provided that there is in existence an instrument such as a Declaration of Acceptance of the Optional Clause, emanating from the Parties to the dispute, which prima facie confers jurisdiction upon the Court and which incorporates no reservations obviously excluding its jurisdiction" (*Interhandel* case, *I.C.J. Reports 1957*, pp. 118-119).

Thirdly, there is the view expressed by Judges Winiarski and Badawi in their dissenting opinion in the *Anglo-Iranian Oil Company* case (*I.C.J. Reports 1951*, pp. 96-98), where they said:

"... the Court ought not to indicate interim measures of protection unless its competence, in the event of this being challenged, appears to the Court to be nevertheless reasonably probable".

In the submission of Her Majesty's Government, that view is wrong in principle. For that view would necessarily involve the Court in prejudging the question of its jurisdiction without having heard proper argument, and it could have a serious prejudicial effect on the applicant's position if he were denied interim relief on the ground that the Court, on a purely summary view, had come to the conclusion that it would probably hold later on that it was not entitled to exercise jurisdiction.

But notwithstanding and, even so, in the submission of Her Majesty's Government, whichever of these three tests is applied, although I repeat, the third view is in my submission clearly wrong, it matters not in the present case. For, in my submission, the Court has jurisdiction to deal with the merits on all three tests. First, the United Kingdom's claim is certainly based on a complaint of a violation of international law and it certainly "cannot be accepted *a priori* that a claim based on such a complaint falls completely outside the scope of international jurisdiction". Second, it cannot be argued, to adapt Sir Hersch Lauterpacht's phrase, that "there is no reasonable possibility *prima facie* ascertainable by the Court, of jurisdiction on the merits". Third, and finally, even if the Court were to follow the stricter view of Judges Winiarski and Badawi, there is every reason why it should appear to the Court, upon "a consideration, entirely summary in character", to borrow their phrase, of the ground upon which the Government of the United Kingdom alleges that the Court has jurisdiction that "its competence, in the event of this being challenged, appears ... to be nevertheless reasonably probable".

As I have said, Mr. President and Members of the Court, Her Majesty's Government founds the jurisdiction of the Court on the penultimate paragraph of the exchange of Notes of 11 March 1961 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Iceland. That Note, after referring to the intention of the Ice-

landic Government to continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of fisheries jurisdiction around Iceland, provides, and I repeat again, "in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice". This exchange of Notes contains no termination clause, and it is therefore covered by what Lord McNair has referred to in *The Law of Treaties, 1961*, as the "general presumption against the existence of any right of unilateral termination of a treaty".

I should now, Mr. President, refer briefly to the letter sent to the Registrar of the Court of 29 May 1972 by the Minister for Foreign Affairs of Iceland. In that letter the Foreign Minister gave a number of reasons why his Government were unwilling to recognize the jurisdiction of the Court in this case or to appoint an agent, as they would normally have been expected to do under Article 35 (3) of the Rules of Court.

It is the understanding of Her Majesty's Government that this letter does not constitute a preliminary objection within the meaning of Article 62 (1) of the Rules. It does not therefore have the effect of suspending the proceedings on the merits. Accordingly Her Majesty's Government have the right to expect that after the Court has given its ruling at the conclusion of the present hearings, it will give directions for the filing of the Memorial and Counter-Memorial of the Parties, as required by Articles 37 and 41 (2) of the Rules.

Her Majesty's Government believe that it is not only unnecessary, but would also be wrong in principle, for the Court to examine at this stage the arguments on the question of jurisdiction proffered by the Icelandic Foreign Minister in his letter of 29 May. Such an examination would be entirely incompatible with the urgency of the present proceedings.

The Court will have read that telegram from the Foreign Minister of Iceland filed with the Registrar of the Court on 29 July, just three days before this hearing. If this telegram is directed to suggest that the Request for the Indication of Interim Measures is inadmissible, then I emphasize that the rights for which the United Kingdom has requested protection under Article 41 of the Statute are the rights of the United Kingdom, that is to say its rights as a State under public international law to ensure that its fishing vessels be permitted to fish on the high seas in the neighbourhood of Iceland outside the 12-mile limit as agreed upon in the Exchange of Notes of 11 March 1961.

If, on the other hand, the telegram is intended to suggest that the claim as formulated in the United Kingdom Application of 14 April 1972 is inadmissible, then, first, the United Kingdom is claiming its right under public international law as a State and second, even if it were found to be proceeding on behalf of the private interest of its nationals, this it is entitled to do, under public international law, and third, questions of admissibility, like those of jurisdiction should be dealt with at a later stage of the proceedings.

Her Majesty's Government, in any event, contend that the Icelandic arguments are entirely without foundation and do not affect in any way the right of the Court to exercise jurisdiction in this case. Nevertheless, if it is the wish of the Court to accelerate the normal procedure and to take up the question of jurisdiction before the Parties have filed pleadings on the merits, we are at the disposal of the Court and stand ready to do so at a convenient time.

I submit therefore that there are no considerations relating to the jurisdiction of the Court which should inhibit the Court from indicating interim measures in this case if, in the opinion of the Court, circumstances require that such measures be taken. It is abundantly clear that "the indication of

such measures in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction" (*Anglo-Iranian Oil Company* case, *I.C.J. Reports 1951*, p. 93).

There is thus no reason to fear that the rights of Iceland would in any way be prejudiced if the Court were to exercise its jurisdiction under Article 41 of its Statute and so were to indicate interim measures as sought by Her Majesty's Government.

The Court adjourned from 11.10 to 11.30 a.m.

I now turn to the effect which the proposed regulations, if implemented, would have on the United Kingdom fishing industry and on the public.

The regulations promulgated by Iceland to take effect on 1 September, are set out in Annex A to the request.

Article 1 starts as follows: "The fishing limits off Iceland shall be drawn 50 nautical miles outside baselines drawn between the following points."

The regulations then specify some 31 points by name and by reference to geographical co-ordinates. These baselines appear to differ in certain respects from those which were agreed upon between the United Kingdom and Iceland in the 1961 Exchange of Notes as the basis for the 12-mile limit. This is a matter to which we may have to revert at a later stage in these proceedings but it does not affect our present case.

The article continues: "Limits shall also be drawn round the following points 50 nautical miles seaward."

Two offshore points are then defined, one to the north and one to the east of Iceland.

Article 2 is quite categorical: "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."

Articles 3, 4 and 5 concern the regulation of Icelandic vessels within the 50-mile limit.

Article 6 provides that violation of the provisions of these regulations is to be subject to certain penalties including fines of up to 100,000 Icelandic Kronur.

Article 7 provides that:

> "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, Regulation 3 of 11 March 1961, concerning the Fishery Limits off Iceland shall cease to be effective."

Those, Mr. President and Members of the Court, are the regulations imposing the 12-mile limit which formed the subject of the 1961 agreement between Iceland and the United Kingdom.

Law No. 44 of 5 April 1948, which is referred to in the Article 7 which I have just read to the Court, is set out in enclosure 2 to Annex H of the Application initiating these proceedings, at page 45, and Article 2 of that Law provides that "the regulations promulgated under Article 1 of the present law"—which now by virtue of Article 7 include these regulations—"shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party".

Since, however, Iceland has made it clear that she proposes to repudiate the 1961 agreement, United Kingdom vessels have nothing to hope from that provision.

Article 8 of the regulations provides that the regulations become effective on 1 September 1972.

In the request, Her Majesty's Government has recited in some detail the economic results which would flow from such a drastic exclusion from these very important fishing grounds. Her Majesty's Government has shown the impossibility of redeploying any considerable portion of the fishing fleet in other areas. We have referred to the unemployment and the permanent loss of vessels which would follow, and to the financial and economic consequences. I hope that there has been set out therein sufficient detail for the purposes of this application.

In essence our case is very simple.

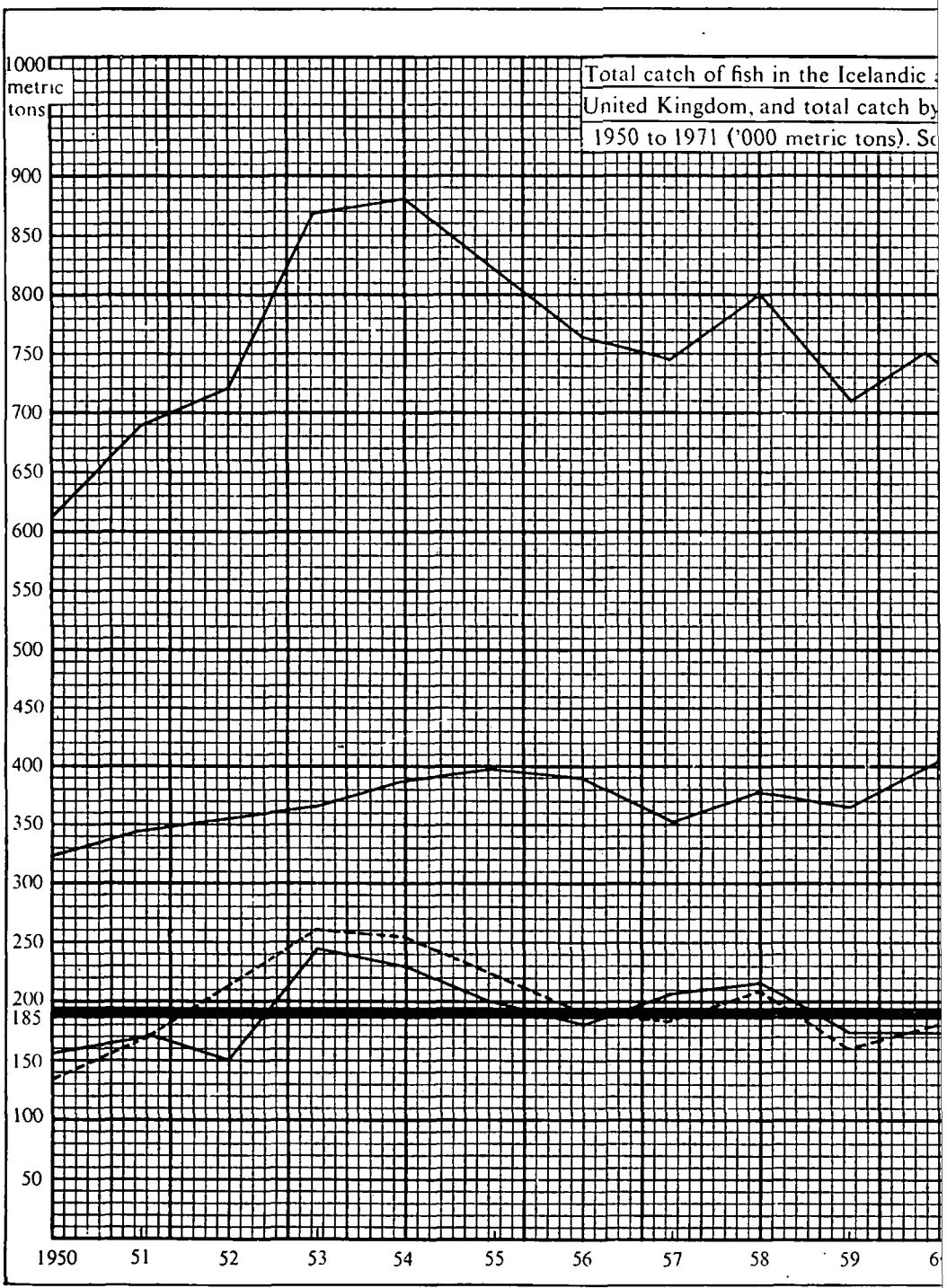
If a nation such as the United Kingdom, with a large and important fishing industry, is abruptly deprived of fishing grounds which her vessels have fished for many years and which, over a long period of time, have provided nearly one-half of that nation's distant water catch and approximately one-fifth of her total catch of all fish, demersal and pelagic, in all waters, that fishing industry must inevitably suffer grave dislocation, which will have disastrous economic effects on that industry and on other industries dependent upon it.

Apart from the hardship to the industry, there would arise widespread hardship to the population as a whole. Fish is an important part of the diet of the population of the United Kingdom, and in particular as a source of protein. If the proposed regulations are enforced, the population of the United Kingdom would be deprived at once of a source of fish supplying, on the 1971 figure, which is shown in column 9 of Annex C, something over £22 million worth of fish to the United Kingdom market. This is the landed price. The retail value is of course much higher.

This would undoubtedly lead to an immediate shortage and, we fear, a dramatic rise in the price. The supply of fresh wet fish through the fishmonger and processed fish such as fish fingers would be seriously affected. Housewives would find fish scarce in the shops. If it were obtainable, the price could well soar beyond the budget of the housewife for whose family fish is a traditional, important and regular item of food. Moreover much of the fish from the Iceland area and other distant water fisheries has for a long time been taken by the traditional fish and chip shops which are a popular feature of British towns and especially industrial towns, and at least one of which is usually found in most neighbourhoods, where fish is sold fried and hot, to be taken away and eaten off the premises. A large proportion of the population would at once feel the consequences of the proposed Icelandic regulations. As Her Majesty's Government has pointed out in the request there is no available alternative source of supply.

Let there then be no doubt that the Icelandic regulations, if implemented, would exclude fishermen of other nations, including those of the United Kingdom, from all but a minute part of the fishing grounds. This is, I hope, clearly shown by the map which is before the Court at Annex B1 [1] to the request for interim measures and, if I may, Mr. President, I invite the Court to study that map, so that I might shortly explain some of the features of the map.

[1] See p. 81, *supra*.


Total catch of fish in the Icelandic
United Kingdom, and total catch by
1950 to 1971 ('000 metric tons). Sc
1000 metric tons
900
850
800
750
700
650
600
550
500
450
400
350
300
250
200
185
150
100
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1950
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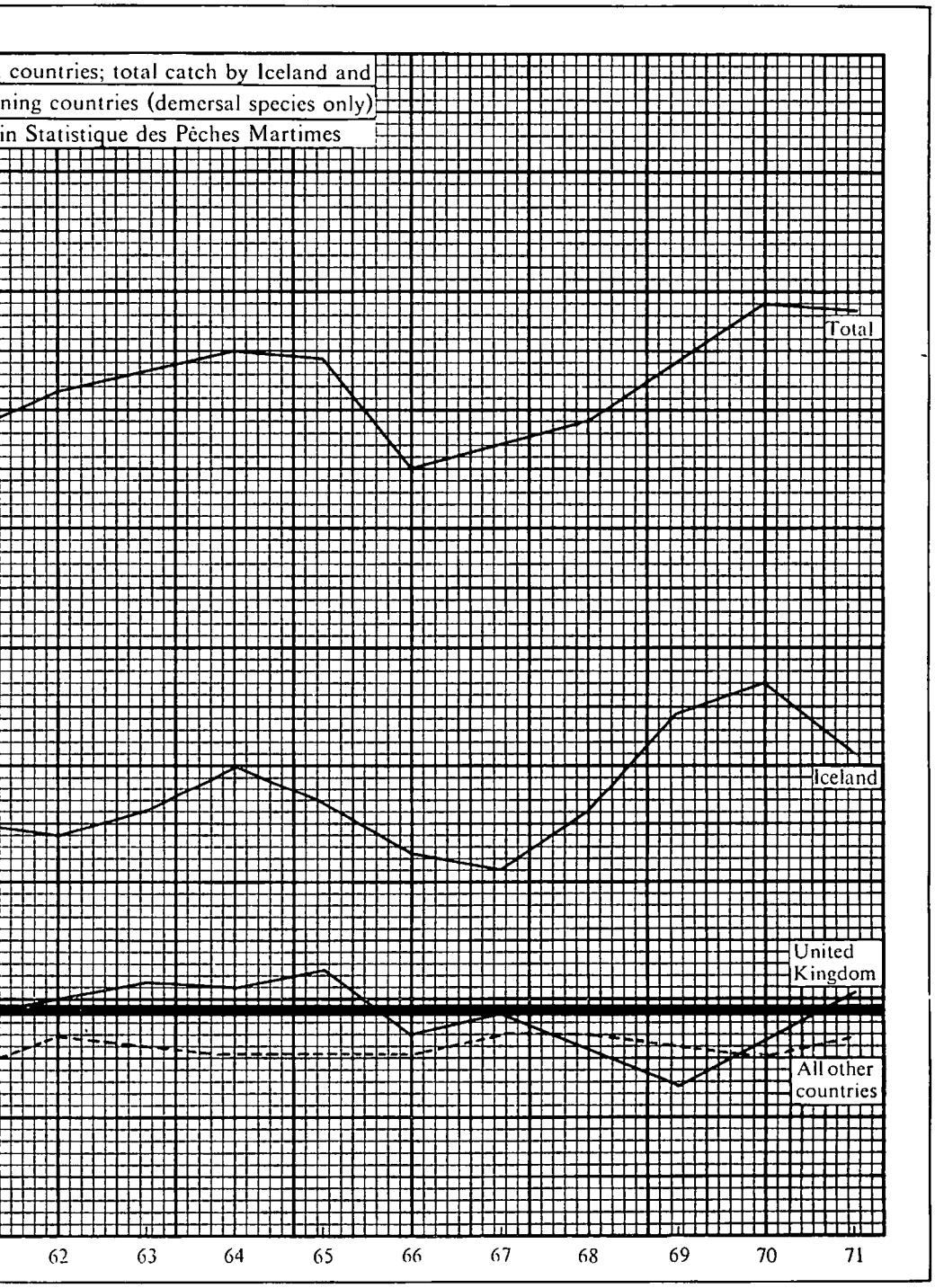
countries; total catch by Iceland and
ning countries (demersal species only)
in Statistique des Pêches Martimes
Total
Iceland
United Kingdom
All other countries
62
63
64
65
66
67
68
69
70
71

It is described thereon as the Iceland fishing grounds related to statistical rectangles. The innermost line is the coast line of Iceland. The next outer lines are the baselines which were agreed between the United Kingdom and Iceland in 1961 for the purpose of drawing the agreed 12-mile limit of fisheries jurisdiction. The broken line shows the 12-mile limit. Now there are of course many valuable fishing grounds within that limit, but they are not shown on the map because we are not concerned with them in this case.

The thin continuous black line outside that represents the 50-mile limit now claimed by Iceland. The fishing grounds outside the 12-mile limit are indicated by the shaded areas on the map.

The heavy broken line is the 400-metre isobath. That is a line similar to a contour line joining all points at which the sea reaches a depth of 400 metres, a figure which is sometimes taken arbitrarily as marking the limit of the Continental Shelf around Iceland.

Now, demersal fish are caught at varying depths by different methods of fishing, for example, by drift nets and purse seines near the surface, and by long lines and trawls on the bottom. The use of trawl nets which, with negligible exceptions, is the only method used by United Kingdom fishermen in the Iceland area, is restricted to grounds where the bottom is relatively free from obstructions which would impede or damage the trawl. While the principal trawling grounds from which the catch has been taken are indicated by the shaded areas on the map before the Court, their limits cannot be precisely defined, and a certain amount of fishing takes place from time to time in other places which are not fished with sufficient regularity to be regarded as established fishing grounds.

For the purposes of the International Council for the Exploration of the Sea, the whole area is divided into the statistical squares indicated on that map, and after each voyage trawlers are required to state the squares from which their catch is taken. The figures for 1971 have been used to form an estimate of the proportion of the catch taken outside the 50-mile limit. When the limit line—as you will see it does on occasion—crosses a square, a notional apportionment of the catch inside and outside the limit has been made, according to the proportion of the area of the square which lies outside or inside the limit line. This shows that only 4 per cent. of the total United Kingdom catch in the Iceland area was taken outside the proposed 50-mile limit.

This method of assessment can only be applied to fresher trawlers, because freezers are not required to attribute their catches to particular squares within the area, but there is no reason to suppose that their pattern of fishing differs significantly from that of the fresher trawlers, and in any event the freezer trawlers accounted for only 6 per cent. of the United Kingdom catch in the Iceland area.

These fishing grounds have, as I have said, been a very important source of fish for the United Kingdom over very many years. Not only has this source been important both in absolute terms and in terms of the percentage of the total United Kingdom catch it has supplied, but the catch obtained has remained remarkably consistent from year to year.

In Annex G to the request the court will see figures derived from the *Bulletin statistique des pêches maritimes* which go back to 1950, that is to say about the period when conditions returned to normal after the Second World War. This table shows year by year the total demersal catch in the Iceland area and how much of that catch was taken by Icelandic and United Kingdom vessels respectively.

Whatever fears the Icelandic Government may express about the future, there is no doubt that the picture which emerges from these figures for 21 years up to and including 1971 is of remarkable stability. This is illustrated by the graph of those figures (see pp. 110-111), copies of which have been put before the Court and, if I may, I would once again invite the Court to look at the document and to look in particular at that graph.

It is simply a graphical representation of Annex G which is among the Court's papers, but this is just a simple graph which I think will illustrate, I hope clearly, to the Court, the point that I am submitting. That document —the graph—is headed "Total catch of fish in the Icelandic area by all countries . . ." and so on.

The top line in the graph shows the total catch. Now that in itself is a remarkably consistent record. The lowest figure is 616,000 tons in 1950, rising to the highest figure recorded so far of 881,000 tons in 1954. That is the total catch. Since then, the total catch has varied very little from year to year and has certainly shown no tendency to decline in recent years. On the contrary, the catches for 1970 and 1971 are the highest since 1958.

Now the second line down from the top shows the catch taken by Icelandic vessels. Their share has consistently been larger than that of any other nation, and in 12 out of the last 21 years, including each of the last 4 years, has been larger than that of all the other nations put together.

The general trend of the Icelandic catch is upward, and the drop in 1971 from the high peak of 1970 is no greater than the fluctuation in the past between one year and another. There is certainly nothing in these figures which suggests any tendency to a decline in the Icelandic catch.

Well below the Icelandic graph are two intertwining lines. They represent the catches of the United Kingdom and all other nations respectively. The United Kingdom catch has consistently been higher than that of any other nation except Iceland. By and large, United Kingdom vessels have usually taken about half as much as those of Iceland, and about the same amount as the vessels of all other nations put together. The straight line, in heavy black ink, represents 185,000 tons which is the average United Kingdom catch for the years 1960 to 1969 which I shall refer to later when I refer to the interim measures which I invite the Court to indicate.

In my submission, the figures in the Annex and as represented on this graph show conclusively: first, that if the United Kingdom fishing vessels were to be excluded as is proposed by Iceland, the effect on the United Kingdom fishing industry would be immediate and disastrous; second, that if the status quo were allowed to continue for the period which must elapse before the Court gives its final decision on the merits, the Icelandic fishing industry will not be affected.

So, in terms used by the English courts in such matters, the "balance of convenience" is heavily in favour of maintaining the present position *pendente lite*. In terms of the Statute of this Court, that is the way in which "the rights of the parties" will best be "preserved". In terms of the French text of Article 41 of the Statute, such measures would be in the truest sense "mesures conservatoires".

The first of the interim measures which we ask the Court, then, to indicate is in subparagraph *(a)* of paragraph 20 of the request, and it is, if I may read it, as follows, "that, pending the final judgment of the Court" in this suit,

> "*(a)* the Government of Iceland should not seek to enforce the regulations referred to in paragraph 4 above against, or otherwise interfere

or threaten to interfere with, vessels registered in the United Kingdom fishing outside the 12-mile limit agreed on by the parties in the Exchange of Notes between the Government of the United Kingdom and the Government of Iceland dated 11 March 1961 (as set out in Annex A to the said Application)".

This deals with the direct interference with the vessels fishing or threats of such interference. But it is not only on the high seas that measures may be taken to enforce a fishing ban. The Government of Iceland might, for example, attempt to arrest a United Kingdom fishing vessel which was perfectly lawfully sailing within the 12-mile limit on the grounds not that it had been fishing within that limit but that it had been fishing on the high seas outside that limit contrary to their regulations. Or the Icelandic Government might take measures against a fishing vessel which, whether in distress or in the ordinary course of business, put in at an Icelandic port, on the grounds that it had in the past infringed the regulations. Furthermore, the possibility of other methods of interfering with the freedom of fishing such as measures against sister ships or the attempted organization of boycotts cannot be ruled out.

Accordingly, the measures set out in subparagraph *(a)* which I have just read are not enough in themselves to meet the requirements of the case. In my submission they should be supplemented by those set out in subparagraph *(b)* namely:

> "*(b)* the Government of Iceland should not take or threaten to take in their territory (including their ports and territorial waters) or inside the said 12-mile limit or elsewhere measures of any kind against any vessels registered in the United Kingdom, or against persons connected with such vessels, being measures which have as their purpose or effect the impairment of the freedom of such vessels to fish outside the said 12-mile limit."

Subparagraph *(c)*, the third of the subparagraphs of paragraph 20, requires further explanation.

The Government of Iceland have said that they fear that the United Kingdom fishing fleet intends to increase its effort in the Iceland area in the near future to the detriment of the Icelandic catch and of fish stocks. If this is their fear, it was of course perfectly open to them to come to the Court and ask for interim measures which would prevent this happening. They have not chosen to do so.

Her Majesty's Government does not accept that Iceland has any valid grounds for fearing a significant increase in the effort by United Kingdom fishing vessels. But as it appears that these fears may exist, however ill-founded, Her Majesty's Government are willing that they should be allayed pending the decision of this case. Accordingly, Her Majesty's Government have included in their request for the indication of interim measures, in sub-paragraph *(c)*, a request that the Court should indicate that the United Kingdom should itself place certain restrictions on its fishing vessels while these proceedings are pending.

The full text of the subparagraph runs as follows:

> "*(c)* in conformity with sub-paragraph *(a)* above, vessels registered in the United Kingdom should be free, save in so far as may be provided for by arrangements between the Government of the United Kingdom and the Government of Iceland such as are referred to in paragraph 21

(b) of the said Application, to fish as heretofore in all parts of the high seas outside the said 12-mile limit, but the Government of the United Kingdom should ensure that such vessels do not take more than 185,000 metric tons of fish in any one year from the sea area of Iceland, that is to say, the area defined by the International Council for the Exploration of the Sea as area Va and so marked on the map attached hereto at Annex B2".

This figure of 185,000 tons is the average United Kingdom annual catch in the Iceland area over the decade 1960 to 1969 and it was shown on the heavy black line on the graph which the Court recently examined. It is less than the United Kingdom catch last year which was 207,700 tons.

Moreover, while the United Kingdom invites the Court, if it considers it appropriate, to place United Kingdom vessels under this limitation *pendente lite*, Her Majesty's Government does not propose any corresponding restriction on Icelandic vessels. The measures requested in subparagraphs *(d)* and *(e)* are of a more general nature. They are based on the general measures indicated by the Court in the *Anglo-Iranian Oil Co.* case and are, in our submission, measures which it is desirable that the Court should indicate. In submitting these proposals, Her Majesty's Government have sought to adapt the form used by the Court in the *Anglo-Iranian Oil Co.* case to the requirements of the present case.

To return now to the measures requested in subparagraph *(b)*, it will be noted that Her Majesty's Government does not claim absolutely and without qualification that United Kingdom vessels should be free to fish as heretofore in the water outside the 12-mile limit. The claim is that they should be free to do so "save in so far as may be provided for by arrangements between the Government of the United Kingdom and the Government of Iceland such as are referred to in paragraph 21 *(b)* of the said Application", which is the Application instituting proceedings in this suit.

Now paragraph 21 *(b)* of this Application asks the Court when it comes to deal with the case on the merits, to declare that:

". . . questions concerning the conservation of fish stocks in the waters around Iceland are not susceptible in international law to regulation by the unilateral extension by Iceland of its exclusive fisheries jurisdiction to fifty nautical miles from the aforesaid baselines but are matters which may be regulated, as between Iceland and the United Kingdom, by arrangements agreed between those two countries, whether or not together with other interested countries and whether in the form of arrangements reached in accordance with the North-East Atlantic Fisheries Convention of 24 January, 1959, or in the form of arrangements for collaboration in accordance with the Resolution on Special Situations relating to Coastal Fisheries of 26 April, 1958, or otherise in the form of arrangements agreed between them that give effect to the continuing rights and interests of both of them in the fisheries of the waters in question."

I advise the Court that Her Majesty's Government attaches the greatest importance to this part of the case. I do not assert that no control of fishing in the Iceland area is, or ever will be, necessary. Far from it.

Her Majesty's Government's case is that any control which is required can be effectively carried out by international agreement by the machinery set up

under the North-East Atlantic Fisheries Convention, and that if it should be necessary to adopt measures restricting the total catch in the area, as may well happen, the undoubtedly strong claim of Iceland to preferential treatment can be adequately met. The text of that North-East Atlantic Fisheries Convention is set out in full at Annex F in the Application. The preamble is as follows:

> "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:".

The area covered by the Convention is shown on the map at Annex B2 to our request and includes Iceland. It is the unshaded portion of the ocean on the east side of the map which is divided into areas indicated by roman figures. The Iceland area is area Va.

The 14 contracting States include Iceland, the United Kingdom, the Federal Republic of Germany and all the States whose vessels fish to any extent in the Iceland area. Under that Convention, a permanent commission has been set up with its headquarters in London. This Commission is advised on scientific questions of fish conservation by the International Council for the Exploration of the Sea (ICES).

Acting on this scientific advice, 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, such as the regulation of the size of mesh of fishing nets or for the minimum size of fish to be landed, falling short of regulating, however, the amount of catch. These measures apply, among others, to the Iceland area.

Even more important, the Commission, which consists of representatives of all the contracting States, has proposed to the contracting States under Article 7 (2) that the Commission should be empowered to recommend measures which include limitation of catch and of fishing effort, and this proposal has now been formally approved by all the contracting States except Belgium, Iceland and Poland whose formal approval is expected shortly.

Accordingly, when these formalities are completed, the Commission will be able to recommend measures of catch limitation in any part of the North-East Atlantic, including the Iceland area, if it is satisfied on scientific advice that such are necessary.

There is, therefore, certainly no necessity on conservation grounds for Iceland to take this drastic and unilateral step. Indeed, if implemented, the action threatened would preclude any possibility of resolving the differences between Iceland and those other nations who fish in the Iceland area of the high seas, through the machinery of the Convention.

Nor is there any reason why the special needs of Iceland should not receive recognition. Paragraph 21 *(b)* of the Application refers to the Resolution on Special Situations Relating to Coastal Fisheries adopted at Geneva on 26 April 1958, the full text of which is set out at Annex E to the Application. This resolution was accepted by Her Majesty's Government when it was adopted at Geneva, and its implementation remains the policy of Her Majesty's Government.

It recommends 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".

The United Kingdom recognizes that Iceland is a coastal State which is dependent upon this fishery, and that Iceland should receive preferential treatment if it should become necessary to limit the total catch in the Iceland area.

In the north-west Atlantic, a very similar Convention is in force, to which both the United Kingdom and Iceland are contracting States, setting up a similar Commission, known as the International Commission for the North-West Atlantic Fisheries. The parties to this Convention, of whom there are 15, have actually agreed measures of catch limitation covering the principal species in four out of the five of the sub-areas into which the Convention area is divided. This agreement was reached in Washington in June of this year.

In agreeing those measures the parties to that Convention have, in conformity with the spirit of the Geneva resolution, given preferential treatment to the coastal States.

Accordingly, Mr. President and Members of the Court, the issue in this case is not whether the fish stocks of the Iceland area should receive any protection which may be necessary. Her Majesty's Government have agreed that they should. Nor is the issue whether the protective measures should, if necessary, include a limitation on catch. Her Majesty's Government agrees that they should. Nor is it that Iceland's need for preferential treatment in allocation of catch quotas should be recognized. Her Majesty's Government agrees that it should.

The issue in this case is whether Iceland should be entitled by unilateral decision to take all the fish for herself, notwithstanding the disastrous effect this would have on those who, up to now, have shared the fishery with her.

At the proper time I shall argue that Iceland has no right in international law to do any such thing. At this stage my contention is simply that Iceland should not take such drastic and unilateral action while her right to do so is the subject of proceedings before this Court.

The contracted negotiations to which I have referred, with Her Majesty's Government meeting point by point the Icelandic objections but without achieving agreement, are evidence of Her Majesty's Government's determined and urgent desire to avoid litigation. Her Majesty's Government sought first an agreed settlement of the whole issue; when that failed, Her Majesty's Government sought fair and just conditions pending the decision of the true arbiter of this disagreement, namely this Court.

Whatever measures this Court may indicate, Her Majesty's Government will certainly co-operate in their implementation.

I should like, Mr. President, to thank the Court for the expedition with which, in accordance with the spirit and letter of the Rules, this application has been heard by the Court.

I much regret that reasons of State compel my immediate return to London

after the conclusion of these submissions, but my counsel will remain to afford the Court any additional information which it may seek.

I end, if I may, by emphasizing once again that this application arises out of an issue which is a matter of the utmost gravity for the United Kingdom for whom I appear in this Court.

I remind the Court of the solemn agreement made between the two Governments on 11 March 1961. I remind the Court of the unilateral and precipitate act of the Icelandic Government. I remind the Court of the length of time which must pass before a final decision can be given by the Court, and of the grave consequences which must follow from this act by the Iceland Government upon the fishermen, the people, and the economy of the United Kingdom.

In my submission there could be no stronger case to fall within Article 41 of the Statute. I repeat, Mr. President, that this is a matter of the gravest urgency to the United Kingdom and I respectfully but earnestly request the Court to indicate interim measures in the form presented in paragraph 20 of the request.

The PRESIDENT: On behalf of the Court, I wish to thank the Agent and counsel of the United Kingdom for their assistance. The oral proceedings on the request for the indication of interim measures of protection in this case are now completed, but I would ask the Agent of the United Kingdom to be at the disposal of the Court to furnish any further information [1] the Court may require. Subject to that reservation I declare the hearing closed. The decision of the Court on the request for the indication of interim measures of protection will be given in due course in the form of an Order.

The Court rose at 12.10 p.m.

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[1] **II**, pp. 391-392.

SECOND PUBLIC SITTING (17 VIII 72, 10 a.m.)

Present: [See sitting of 1 VIII 72.]

READING OF THE ORDERS

The PRESIDENT: The Court meets today to announce its decisions on two requests for the indication of interim measures of protection, under Article 41 of the Statute and Article 61 of the Rules of Court, made by the United Kingdom of Great Britain and Northern Ireland [1] and by the Federal Republic of Germany [2], in the proceedings instituted by those two States against the Republic of Iceland concerning the fisheries jurisdiction of Iceland. These are two separate cases pending before the Court, but the requests for interim measures of protection were made within two days of each other, the oral proceedings on the two requests were held on two successive days, and it has been considered convenient to announce the two decisions at a single sitting of the Court.

I shall first read the Order of the Court in the proceedings instituted by the United Kingdom of Great Britain and Northern Ireland against the Republic of Iceland.

[The President reads from paragraph 1 to the end of the Order [3].]

In accordance with the usual practice of the Court, I call upon the Registrar to read the French text of the operative clause of the Order.

[The Registrar reads the operative clause in French [4].]

The Vice-President, Judges Forster and Jiménez de Aréchaga append a joint declaration to the Order of the Court; Judge Padilla Nervo appends a dissenting opinion to the Order of the Court.

I now turn to the proceedings instituted by the Federal Republic of Germany against the Republic of Iceland, and shall now read the Court's Order in that case.

[The President reads from paragraph 1 to the end of the Order [5].]

I call upon the Registrar to read the French text of the operative clause of the Order.

[The Registrar reads the operative clause in French [6].]

The Vice-President, Judges Forster and Jiménez de Aréchaga append a joint declaration to the Order of the Court; Judge Padilla Nervo appends a dissenting opinion to the Order of the Court.

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1 See pp. 71-78, *supra*.
2 II, pp. 23-31.
3 *I.C.J. Reports 1972*, pp. 13-18.
4 *Ibid.*, pp. 17-18. See also II, p. 61, and *I.C.J. Reports 1973*, p. 302.
5 *I.C.J. Reports 1972*, pp. 31-37.
6 *Ibid.*, pp. 36-37. See also II, p. 61, and also *I.C.J. Reports 1973*, p. 313.

In view of the urgency of a decision on a request for the indication of interim measures of protection, the two Orders of today have been read from a mimeographed text. The usual printed copies will be available in about ten days' time.

(Signed) ZAFRULLA KHAN,
President.

(Signed) S. AQUARONE,
Registrar.