ORAL ARGUMENTS ON THE MERITS OF THE DISPUTE SUBMITTED BY THE GOVERNMENT OF GREAT BRITAIN AND NORTHERN IRELAND

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague,
on 25 and 29 March and 25 July 1974,
President Lachs presiding

FIFTH PUBLIC SITTING (25 III 74, 10 a.m.)

Present: *President* LACHS; *Vice-President* AMMOUN; *Judges* FORSTER, GROS, BENGZON, PETRÉN, ONYEAMA, DILLARD, IGNACIO-PINTO, DE CASTRO, MOROZOV, JIMÉNEZ DE ARÉCHAGA, Sir Humphrey WALDOCK, NAGENDRA SINGH, RUDA; *Registrar* AQUARONE.

Also present:

For the Government of the United Kingdom:

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

The Right Honourable Samuel Silkin, QC, MP, Attorney-General,

Mr. G. Slynn, Junior Counsel to the Treasury,

Mr. J. L. Simpson, CMG, TD, Member of the English Bar,

Professor D. H. N. Johnson, Professor of International and Air Law in the University of London, Member of the English Bar,

Mr. P. G. Langdon-Davies, Member of the English Bar,

Dr. D. W. Bowett, President of Queens' College, Cambridge, Member of the English Bar, *as Counsel;*

Mr. J. Graham, Fisheries Secretary, Ministry of Agriculture, Fisheries and Food,

Mr. M. G. de Winton, CBE, MC, Assistant Solicitor, Law Officers' Department,

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

OPENING OF THE ORAL PROCEEDINGS

The PRESIDENT: Before I turn to the subject of today's hearing, I wish to pay tribute to the memory of two former Members of this Court.

Judge John E. Read, who died on 23 December at the age of 85, was a Member of this Court for 12 years, from 1946 to 1958, but in fact his links with the International Court of Justice reached back into the preparatory stage, as he had in 1945 represented Canada on the United Nations Committee of Jurists for the preparation of the new Court's Statute. He brought vast experience to the Court, for he already had behind him a most distinguished career as a Professor of International Law and Legal Adviser to his Government, and he made a significant contribution to legal history by his advocacy in the famous two cases *I'm Alone* and the *Trail Smelter*.

Judge Read could, in fact, be regarded as a spokesman of a great legal tradition in which breadth of vision was pre-eminent. That breadth of vision could only be found in a man who was open of heart and mind. All those who came into contact with him were struck by his directness, his humour and his amiability. Thus he is remembered here with affection, as well as with respect for his impressive contribution to the work of the Court, and there may still be many citizens of The Hague who bring him to mind when they view the little "Canadian wood" at Madurodam which he founded in memory of his son and as a token of appreciation for the city which is also the seat of this Court.

I was privileged to see Judge Read in Ottawa only a few weeks before his death, and I found him still alert, still evincing the keen interest in the Court which he retained to the last.

No less great was the devotion to international justice of Judge Kotaro Tanaka, a Member of the Court from 1961 to 1970, who died on the first day of this month, at the age of 83. Judge Tanaka was a man of vast erudition, in terms both of jurisprudence and legal doctrine. In his own country, Japan, he had pursued an eminent career as a Professor of Law, advocate and Minister of Education, before being appointed Chief Justice of the Supreme Court in 1950.

By his colleagues on the Bench of this Court he will be remembered as the legendary oriental sage, reticent, invariably judicious, with a deep reserve of wisdom: the embodiment in fact of the judicial spirit. I have no doubt that his countenance made no little contribution to the solemnity of our public sittings. This exterior, however, was belied by the warm sensitivity to all manifestations of the human spirit which one discovered in him once one was admitted to make contact with him in private life. I may say from privileged experience that he was the most devoted of friends.

It is my sad duty to note the great impoverishment of the circle of eminent international jurists which the passing of John Read and Kotaro Tanaka represents.

The Court meets to hear the oral arguments on the merits in the *Fisheries Jurisdiction* case brought by the United Kingdom of Great Britain and Northern Ireland against the Republic of Iceland. These proceedings, which concern the question of the extension by the Government of Iceland of its fisheries jurisdiction, were instituted by Application [1] filed on 14 April 1972;

[1] See pp. 3-10, *supra*.

by that Application, the Court was asked to declare that Iceland's claim to extend its exclusive fisheries jurisdiction to a zone of 50 nautical miles around Iceland was without foundation in international law and 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 50 nautical miles from the baselines but are matters that may be regulated, as between Iceland and the United Kingdom, by arrangements agreed between those two countries.

On 19 July 1972, the United Kingdom filed a request [1] for the indication of interim measures of protection in this case, and after a public hearing on 1 August 1972, the Court, by an Order [2] dated 17 August 1972, indicated certain measures of protection. In that Order provision was made for the matter to be reviewed before 15 August 1973; and by a further Order [3] dated 12 July 1973 the Court confirmed that the provisional measures indicated should, subject as therein mentioned, remain operative until the Court has given final judgment in the case.

By an Order [4] dated 18 August 1972, the Court decided that the first pleadings should be addressed to the question of the jurisdiction of the Court to entertain the dispute.

By a Judgment [5] of 2 February 1973 the Court found that it has jurisdiction to entertain the Application filed by the Government of the United Kingdom of Great Britain and Northern Ireland on 14 April 1972 and to deal with the merits of the dispute.

By an Order [6] of 15 February 1973, the Court fixed 1 August 1973 as a time-limit for the Memorial of the United Kingdom on the merits and 15 January 1974 for the Counter-Memorial of the Government of Iceland. The Memorial [7] of the United Kingdom was duly filed within the time-limit fixed therefor. No Counter-Memorial has been filed by the Government of Iceland; the written proceedings being thus closed, the case is ready for hearing.

By a letter [8] from the Registrar dated 17 August 1973 the Agent of the United Kingdom was invited to submit to the Court any observations which the Government of the United Kingdom might wish to present on the question of the possible joinder of this case with the case instituted by the Federal Republic of Germany against the Republic of Iceland by an Application [9] filed on 5 June 1972 and the Agent was informed that the Court had fixed 30 September 1973 as the time-limit within which any such observations should be filed. By a letter [10] dated 26 September 1973, the Agent of the United Kingdom submitted the observations of his Government on the question of the possible joinder of the two *Fisheries Jurisdiction* cases. The Government of Iceland had been informed [11] that the observations of the United Kingdom on possible joinder had been invited, but did not make any comments to the

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[1] See pp. 71-78, *supra*.
[2] *I.C.J. Reports 1972*, p. 12.
[3] *I.C.J. Reports 1973*, p. 302.
[4] *I.C.J. Reports 1972*, p. 181.
[5] *I.C.J. Reports 1973*, p. 3.
[6] *I.C.J. Reports 1973*, p. 93.
[7] See pp. 267-432, *supra*.
[8] II, p. 455.
[9] II, pp. 3-11.
[10] II, p. 457.
[11] II, p. 456.

Court. On 17 January 1974 [1] the Court decided not to join the present proceedings to those instituted by the Federal Republic of Germany against the Republic of Iceland.

The Governments of Argentina, Australia, Ecuador, the Federal Republic of Germany, India, New Zealand and Senegal have asked that the pleadings and annexed documents in this case should be made available to them in accordance with Article 44, paragraph 2, of the 1946 Rules of Court. The Parties having indicated that they had no objection, it was decided to accede to these requests. In accordance with its usual practice, the Court decided, with the consent of the Parties, that the pleadings and annexed documents in the case should be made accessible to the public, pursuant to Article 44, paragraph 3, of the 1946 Rules of Court, with effect from the opening of the present oral proceedings. The Court further decided that a number of communications [2] addressed to the Court by the Government of Iceland should also be made accessible to the public at this time. The Parties have indicated that they have no objection to this course.

I thus declare the oral proceedings open in this case. The Court has not been notified of the appointment of an Agent for the Government of Iceland and no representative of the Government of Iceland is present in the Court.

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[1] *I.C.J. Reports 1974*, p. 6.
[2] II, 447, 450, 462 and 470.

STATEMENT BY MR. ANDERSON

AGENT FOR THE GOVERNMENT OF THE UNITED KINGDOM

Mr. ANDERSON: May it please the Court, when this case was instituted in April 1972 Mr. Henry Steel, who was then one of the legal advisers to the Foreign and Commonwealth Office in London, was appointed to be the United Kingdom's Agent, and so it was he who acted as Agent during the public sittings on the request for interim measures of protection and on the question of the Court's jurisdiction. Last summer, however, Mr. Steel was appointed to be the legal adviser to the United Kingdom Mission to the United Nations in New York and so, as his successor as Agent, it is my honour to appear before this Court today. The decisions of this Court provide constant guidance to the legal advisers to foreign ministries around the world, and so it is particularly valuable to have the experience of taking part in a case before this Court.

Mr. President, with the leave of the Court I will ask the Attorney-General, the Right Honourable Samuel Silkin, to present oral arguments on behalf of the United Kingdom.

ARGUMENT OF THE RIGHT HONOURABLE SAMUEL SILKIN

COUNSEL FOR THE GOVERNMENT OF THE UNITED KINGDOM

The Rt. Hon. Samuel SILKIN: May it please the Court, I should like, if I may, to begin by associating Her Majesty's Government and my learned colleagues with the tributes which you, Mr. President, have paid to the two former Members of the Court.

On this the first occasion on which I have had the honour of addressing you, I should like to thank you, Mr. President, and Members of the Court, for your courtesy in arranging this oral hearing on a date to suit Her Majesty's Government. For compelling domestic reasons of which you are aware, and but for which I might not have been here, Her Majesty's Government were unable to appear at as early a date as the Court originally desired.

Those same reasons have led to my appearance today. It is a short time after my appointment, but a long time after the time when the broad lines of Her Majesty's Government's case were established in the Application and Memorial on the Merits. In this latter connection, I am conscious of my debt to my learned predecessor, Sir Peter Rawlinson, for his work on this case, and perhaps I may be allowed to add I am also conscious of my debt to my learned friends and those who have assisted me in preparing the case.

I feel sure that it is a matter of real regret for all who are taking part in these proceedings today that there is no-one here, as you have yourself said, Mr. President, to put before the Court the case for the Government of Iceland. It is certainly a matter of regret for Her Majesty's Government. Iceland and the United Kingdom have been friends and allies bound by the ties of a friendship which reaches back into history. In particular there had grown up over the many years during which they have shared the perilous fishing grounds of the North Atlantic a sense of comradeship between the fishermen of the United Kingdom and the fishermen of Iceland—a comradeship cemented by hundreds of acts of mutual assistance.

After a difficult period, relations generally between the United Kingdom and Iceland have improved following the conclusion late last year of an interim agreement. However, as I will explain later, that agreement was without prejudice to the positions of the two Governments on the substantive dispute.

If it was regrettable that the Government of Iceland should have repudiated the jurisdiction of this Court when these proceedings were initiated, it was surely inconsistent with that respect for international law which this Court is entitled to expect of Iceland that she should maintain that attitude even after the Court, by a majority of 14 to 1, had affirmed its jurisdiction in a judgment.

As a result, while the Court has been sent a number of telegrams and letters, it has not been and evidently will not be presented with any coherent statement of the Icelandic case. This in its turn has placed considerable difficulties in the way of the United Kingdom in presenting the case to the Court and assisting the Court. For, while such difficulties will always arise when one of the parties finds itself alone before the Court, they are particularly evident in a case such as this. For here it is Iceland which is asserting a new right—a right to exercise jurisdiction over British vessels fishing on parts of the high

seas. It is Iceland which is claiming that she has a right which she certainly did not have before. The claim is prima facie inconsistent with settled law. Yet Iceland has not come before the Court to explain the basis on which she advances this claim.

What then would have been the appropriate way for such a case to be argued before the Court, assuming that the proceedings were initiated by the United Kingdom and not, as they might have been, by Iceland herself? Surely it would have been for the United Kingdom to allege first, as is admittedly the case, that Iceland had claimed with effect from 1 September 1972 the legal right to an exclusive fisheries limit of 50 miles, and secondly that Iceland had attempted to prevent fishing by the vessels of other nations, including the United Kingdom, on the high seas within that limit. It would then have been for Iceland to set out the matters which in her view justified such a new claim in law. When the United Kingdom had seen what was the nature of the Icelandic claim, she could have replied to it. That would have been the natural and convenient way for this case to have been conducted. But since this cannot be so, it appears to Her Majesty's Government that it falls to the United Kingdom to see that all necessary materials, whether they tell for or against the United Kingdom case, are put before the Court. We take this approach in the light of Article 53 of the Statute, which requires the Court to satisfy itself that a claim is well founded in fact and law.

In my endeavour not only to present the United Kingdom's case but also to give the Court such assistance as I can, I shall try to indicate various arguments which might have been adduced against the United Kingdom at this lectern, and in particular those on which Iceland appears to rely judging by public statements and the letter [1] from the Foreign Minister of Iceland to this Court of 11 January 1974. The plan which we have adopted in our Memorial on the Merits of the Dispute in an attempt to fulfill this task is as follows. First, we have set out in detail the history of the dispute. Secondly, we have dealt with the facts relating to the conservation and utilization of the fisheries in the Iceland area. In doing this, we have sought to show that claims which the Government of Iceland appears to put forward in support of its action are unfounded. We have, we hope, demonstrated to the satisfaction of the Court, by facts and figures in the Memorial, either from Icelandic or from unimpeachable international sources, that from the point of view of conservation and even from the point of view of the Icelandic economy it is not desirable, much less necessary, that Iceland should be permitted to take all the fish in the area for herself. But in our submission, however desirable Iceland might find it to take all the fish, that would not give her a legal right to do so. We have thought it right to present the true facts about the fisheries. This is because Iceland's whole case, as it has been presented to the world, has been coloured by certain assertions, which, through continual reiteration, have acquired a certain plausibility. This plausibility disappears when the assertions are more closely examined.

We also ask the Court to draw from these facts another important conclusion, which is directly relevant to the relief which Her Majesty's Government seek in these proceedings. That is that the conservation of the fish stocks in the area can, and indeed should, be adequately assured by agreements based on scientific evidence and made through existing agencies.

The third part of our Memorial presents our submission as to the law relating to fisheries jurisdiction as it affects this case. We start with a historical

[1] II, p. 462.

summary and then pass on to examine the law as it stands today. In our submission it is still the general rule today that States do not have the right unilaterally to interfere with fishing on the high seas beyond the 12-mile limit.

We then examine a number of grounds upon which Iceland seeks or might seek to argue that the law has changed so as to permit her to do so. In our submission there is no possible foundation in law for her claims. But, as the Court will be well aware, our case is not wholly or mainly a negative case. While we deny that Iceland has any right, under colour of conserving the fish stocks or any other ground, to take them all for herself, we do not deny that it is desirable that all necessary steps of conservation should be taken. On the contrary, it is our submission that it is the legal duty of all interested States first, to take the necessary steps for the conservation of the fish stocks of the high seas, which are *res communis*, and secondly, to enter in good faith into negotiations to conclude the necessary agreements to achieve this end, agreements which will ensure that the various needs of the contracting parties —and of the international community as a whole—are given adequate protection.

We have set out our arguments on this duty in paragraphs 300 to 307 of our Memorial. It is an important part of our case which I shall refer to in detail later.

Such then is the scheme of our Memorial and this is the scheme which I propose to follow in developing these arguments before the Court today.

First then, as to the history of the dispute . . .

It was in the early years of the 15th century that fishing vessels from England and Scotland first made their appearance in the seas around Iceland. I need not, however, ask the Court to consider the history of British fishing off Iceland down all the intervening centuries. It is sufficient to take up the history about the middle of the 19th century. It was then that steam began to be increasingly used as a means of propulsion for fishing vessels. The advent of steam was accompanied by the development of more efficient methods of fishing, notably the trawl. Thus in the latter part of the last century trawlers began fishing in increasing numbers at considerable distances from their own coasts and difficulties inevitably arose, notably in the North Sea area. These difficulties were of various kinds. There was uncertainty concerning the rules which should be applied to bays, to islets and sandbanks in delimiting the territorial sea.

In the absence of international agreements there was difficulty in policing fishery operations carried on by vessels of one nation off the coasts of another, particularly when trawling and drift-net fishing were carried on in the same localities at the same time. At the instance of the Government of the Netherlands a Conference of the North Sea Powers was convened here at The Hague in 1881 and drew up the multilateral Convention for Regulating the Police of the North Sea Fisheries. That Convention was signed in 1882. Iceland was at that period a dependency of Denmark and Denmark became a party to the Convention of 1882. The geographical area to which the Convention applied did not, however, include the waters around Iceland.

In 1901 the Convention between the United Kingdom and Denmark for Regulating the Fisheries Outside Territorial Waters in the Ocean Surrounding the Faroe Islands and Iceland was signed. This bilateral Convention was modelled on the multilateral Convention of 1882 to which I have referred. Though the bilateral Convention contained a provision allowing of denunciation on two years' notice, it in fact endured for 50 years and throughout this long period governed British fishing off Iceland.

Article II defines the sea area reserved to Icelandic fishing vessels. It is set out in full in paragraph 7 of our Memorial. In effect it gave Iceland an exclusive fishery zone of three miles.

In 1948—when Iceland had become fully independent of Denmark and was therefore responsible for the conduct of its own international relations—the Icelandic "Law Concerning the Scientific Conservation of the Continental Shelf Fisheries" was passed. The full text of an English translation of this law is set out in Annex 1 to the Memorial on the Merits of the Dispute which has been submitted to the Court by Her Majesty's Government. Article 1 provides that the Ministry of Fisheries shall issue regulations establishing explicitly bounded conservation zones within the limits of the continental shelf of Iceland wherein all fisheries shall be subject to Icelandic rules and control. Article 2 provides that the regulations promulgated under Article 1 shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party. The Reasons for the Law submitted to the Icelandic Parliament specified the Agreements with which, so long as they remained in force, the provisions of the Icelandic law might be incompatible.

On 3 October 1949 the Government of Iceland gave notice to the Government of the United Kingdom of denunciation of the Convention of 1901. Accordingly, the Convention ceased to be in force after 3 October 1951. Thus it became clear that the Government of Iceland was preparing to issue regulations under its Law of 1948 which would exclude British vessels from sea areas, in which they had for centuries exercised the right to fish.

At a meeting held in London in January 1952, the Icelandic Minister of Fisheries informed Her Majesty's Government in general terms of the action which the Icelandic Government was intending to take. It was clear that the Government of Iceland had already settled upon its course of action and was not prepared to negotiate or modify its plans in any way to meet the views of Her Majesty's Government. The Icelandic Regulations purporting to apply to British vessels came into operation on 15 May 1952. Their purpose was to establish a baseline joining the outermost points of the coast, islands and rocks and closing off bays; within a line drawn four nautical miles from this baseline all foreign fishing activities were prohibited. The effect of the Regulations was to extend considerably the sea area reserved to Icelandic fishermen.

An account of the events of the next four years is given in paragraphs 10, 11 and 12 of our Memorial and I do not think I need repeat it today.

Ultimately discussions were held under the auspices of the Organization for European Economic Co-operation. In those discussions representatives of both the Governments and both the fishing industries took part. In November 1956 the discussions resulted in an agreement between the British and Icelandic fishing industries. Landings of Icelandic-caught fish in United Kingdom ports were resumed but were limited to a total annual value of £1,800,000. British trawlers were allowed to take shelter in waters claimed by Iceland without having completely to stow their fishing gear. There was to be no further extension of Icelandic fishing limits pending the discussion in the General Assembly of the United Nations of the Report by the International Law Commission on the Law of the Sea. Her Majesty's Government made it clear that this Agreement of November 1956 should not be interpreted as a recognition of the legal validity of the methods employed by the Government of Iceland for determining fisheries limits.

The discussion in the General Assembly of the United Nations resulted in

the convening at Geneva in 1958 of the first of the United Nations Conferences on the Law of the Sea.

The Court will recall that the 1958 Conference failed to reach agreement on the breadth of the territorial sea or on the extent of exclusive fishery jurisdiction.

On 30 June 1958 the Government of Iceland issued a decree, which was to come into effect on 1 September 1958, purporting to extend Iceland's fishery limits to 12 miles from new baselines. There followed a period of some 18 months during which British trawlers were able to fish in the area between 4 and 12 miles from the new baselines established by Iceland only under naval protection.

In the autumn of 1959, the General Assembly of the United Nations decided to convene a further United Nations Conference on the Law of the Sea in 1960. Its agenda was limited to the two questions of the breadth of the territorial sea and fishery limits. On 22 February 1960 British trawler owners announced that they would withdraw all their trawlers from the whole sea area around Iceland as a gesture of goodwill pending the second United Nations Law of the Sea Conference. Vessels of the Royal Navy were also withdrawn from the area around Iceland.

The Conference met in Geneva from 17 March to 26 April 1960. Of the significance of the deliberations of the Conference for the development of the international law of the sea I shall have more to say later. In the present context I will simply observe that the deliberations showed that States at that Conference were firmly opposed to extending territorial seas to 12 miles. They were, however, tending towards acceptance of the principle that there should be an exclusive fishing zone of 12 miles.

Indeed a proposal for a territorial sea of 6 miles with a further 6-mile fishery zone in which the vessels of countries which had habitually fished there would have the right to continue fishing for a period of 10 years came very near to being accepted by the Conference.

Believing that the proceedings of the Second Geneva Conference might enable both Governments to view the dispute about the fishery limits of Iceland in a new light, Her Majesty's Government proposed fresh negotiations with the Icelandic Government on several occasions during the months of May to August 1960. The negotiations began in Reykjavik on 1 October 1960. I need not today dwell on the course which the negotiations took. A full account was given in paragraphs 19 to 42 of the Memorial on Jurisdiction submitted to the Court by Her Majesty's Government and my predecessor, Sir Peter Rawlinson, also referred to the negotiations in his speech in this Court on 5 January 1973. The Court itself in paragraphs 18 to 20 of its Judgment of 2 February 1973 referred to the negotiations so far as it found them material to the question which the Court then had to decide, which was its jurisdiction in the present proceedings.

I simply therefore remind the Court of the main provisions of the agreement which was ultimately reached between the two Governments on 11 March 1961. They are that the Government of the United Kingdom will no longer object to a 12-mile fishery zone around Iceland measured from specified baselines which relate solely to the delimitation of that zone; that for a transitional period of three years British fishing vessels will continue to be entitled to fish in certain specified areas within the outer 6 miles of the 12-mile zone during certain seasons of the year respectively specified for those areas; and that the Government of Iceland will continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of

fisheries jurisdiction around Iceland but shall give to the United Kingdom Government 6 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. For 10 years the Agreement worked satisfactorily and gave rise to no problems. The British catch did not rise over the 10-year period. It presented no threat to the fishery.

On 14 July 1971, however, following a general election in Iceland and the formation of a new Government there, a policy statement was issued by the Government of Iceland. It announced that the fisheries agreements with the United Kingdom and the Federal Republic of Germany would be terminated. It was intended that there should be an extension of the fishery limits of Iceland up to 50 nautical miles from the baselines. This extension was to take effect not later than 1 September 1972.

Of the exchanges which took place between Her Majesty's Government and the Icelandic Government in the following two years a full account was given in paragraphs 18 to 53 of our Memorial on the Merits of the Dispute and I need only pass them under brief review today. In the first phase of the negotiations Her Majesty's Government sought to persuade the Icelandic Government not only that the proposed extension of fishery limits to 50 miles would have no basis in international law but also that any Icelandic anxiety concerning the stocks of fish around Iceland could be allayed by catch limitation. The United Kingdom was prepared to limit the total British catch to the average taken by British vessels from the area in the years 1960 to 1969, that is to 185,000 tons a year. This voluntary and unilateral limitation might be the basis of multilateral conservation measures agreed with other interested States within the framework of the North East Atlantic Fisheries Commission. This phase of the negotiations was brought to an end on 24 February 1972 when the Icelandic Government gave to Her Majesty's Government formal notice of the intention to extend fishery limits to 50 miles with effect from 1 September 1972. On 14 April 1972 the Application by which these proceedings were commenced was filed with the Court by Her Majesty's Government.

Nevertheless negotiations continued. In this second phase the objective, so far as Her Majesty's Government were concerned, was however different. It was, if possible, to reach an interim agreement without prejudice to the position of either Party regarding the substantive dispute. To this end, Her Majesty's Government again offered a restriction of fishing. This phase of the negotiations came to an end on 14 July 1972 when the Icelandic Government issued legislation to extend its fishery limits to 50 miles from baselines with effect from 1 September.

On 19 July 1972 Her Majesty's Government filed with the Court their request for interim measures of protection and the Court made its Order of 17 August of that year. The Court will recall the provisional measures which it then indicated. The first requirement was that the Parties should ensure that no action of any kind was taken which might aggravate or extend the dispute submitted to the Court. The second requirement was that the Parties should ensure that no action was taken which might prejudice the rights of either Party in respect of the carrying out of whatever decision on the merits the Court might give.

A requirement imposed specifically on the United Kingdom was that she should ensure that her vessels did not take an annual catch of more than 170,000 tons of fish from the sea area of Iceland as defined by the International Council for the Exploration of the Sea as Area Va. Legislation

was brought into effect in the United Kingdom in order to implement this obligation. The details were set out in the Agent's letters [1] of 19 December 1972 and 20 February 1974. The catch figures have also been supplied to the Registrar. The catch between 1 September 1972 and 31 August 1973 was 160,714 tons, well within the limit. I am now able to inform the Court that the catch for the six-month period from 1 September 1973 to 28 February 1974 was approximately 60,850 tons. That again is plainly well within the limit indicated in the Court's Order.

The requirements imposed by the Court specifically on Iceland were first that she should refrain from taking any measures to enforce the regulations of 14 July 1972 against Britissh vessels engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone; and secondly that she should refrain from applying administrative, judicial or other measures against British vessels, their crews or other related persons because of their having engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone.

Her Majesty's Government at once made it clear to the Government of Iceland that they would co-operate in carrying out the Order of the Court and they have consistently done so.

The Government of Iceland, on the other hand, stated that it would not consider the Order of the Court as binding in any way since, so it was alleged, the Court had no jurisdiction in the matter. The Icelandic Government also stated that it was prepared to continue efforts to reach a solution of the problems connected with the extension of the Icelandic fishery limits.

The Court will be aware that there have been difficulties on the fishing grounds while these proceedings have been pending. When Sir Peter Rawlinson addressed the Court in January of last year, he gave some account of the interference with British fishing vessels by the Icelandic coastguards which had taken place despite the interim measures of protection indicated by this Court.

I do not, however, intend to dwell on those matters because, happily, on 13 November 1973 an Agreement was concluded between the Parties, since when there has been no further trouble.

A copy of the Agreement has been delivered to this Court with the Agent's letter [2] of 21 November 1973 and there is no need for me to go into its terms in detail. It is an interim agreement under which the United Kingdom agrees to impose certain restrictions on the activities and catch of her fishing vessels in the Iceland area over a two-year period.

The important thing about this Agreement from the point of view of these proceedings is that it expressly states that it does not affect the legal position or rights of either Government with regard to the substantive dispute under the Agreement of 1961 which remains unresolved.

Nor is the Interim Agreement incompatible with the Order of the Court of 17 August 1972, which was continued by the Order of 12 July 1973, indicating interim measures of protection which the United Kingdom has continued to observe pending the judgment of the Court on the merits of the dispute.

The Interim Agreement does not amount to an abandonment by Iceland of her claim to a 50-mile exclusive fishery zone. Nor does it amount to an admission by the United Kingdom that Iceland has any right to impose

[1] II, pp. 405 and 464.
[2] II, p. 458.

restrictions unilaterally on United Kingdom vessels outside the agreed 12-mile limit.

It is perhaps unfortunate that the Foreign Minister of Iceland in his letter of 11 January 1974 to this Court felt it necessary to refer to the tension which was reduced by the Agreement as having been "provoked by the presence of British armed naval vessels within the 50-mile limit".

Now that we have this Agreement I would not have wished to refer at all to the unhappy events which preceded it. But since Iceland has raised the matter, I will say just a word.

Her Majesty's Government have ample evidence that the tension on the fishing grounds was not caused by the presence of vessels of the Royal Navy, but rather by the harassment of unarmed United Kingdom fishing vessels contrary to the interim measures indicated by this Court.

This harassment began and continued for over eight months before the arrival of the Royal Navy. It involved damage to valuable fishing gear and constant danger of collision. There were also several incidents in which unarmed vessels were fired upon and on occasion hit. It was only following such incidents that vessels of the Royal Navy were ordered to enter the fishing area on 19 May 1973.

However by 3 October 1973 the tension had been sufficiently reduced to make it possible for Her Majesty's Government to withdraw their naval vessels from the disputed area.

Six weeks later, following discussions between the British and Icelandic Prime Ministers at No. 10 Downing Street, the Interim Agreement was concluded by an Exchange of Notes in Reykjavik.

Before leaving the history of the dispute, there is one further aspect with which I must deal.

The facts regarding the harassment by Iceland of British vessels on the high seas have been set out in paragraphs 308 to 314 of the Memorial. That harassment was plainly contrary to international law. Nevertheless, in view of the conclusion of the Interim Agreement, Her Majesty's Government have decided not to pursue submission *(d)* in paragraph 319 of the Memorial, so that it is not necessary for me to trouble the Court with a recital of the facts of the various incidents. In the view of Her Majesty's Government, of course, any repetition of such acts of harassment would be contrary to international law.

I now turn to the facts relating to the conservation and the utilization of the fish stocks in the Icelandic area and the contentions which the Icelandic Government appear to be making on the subject.

First of all there is the contention of the Icelandic Government that its proposed measures are necessary for the preservation of the fish stocks. This claim, which has been constantly reiterated in Icelandic statements, is to be found, for example, in the Icelandic Foreign Ministry's publication *Fisheries Jurisdiction in Iceland* which for the information of the Court we have annexed to our Application instituting proceedings (enclosure 2 to Annex H, p. 28, *supra*) (the publication is dated February 1972).

The Icelandic Foreign Ministry there says:

> "Further implementation of the 1948 Law is becoming ever more urgent. Fishing techniques and catch capacity are rapidly being developed and about half of the catch of demersal fish in the Icelandic area has been taken by foreign trawlers (Fig. 2). The danger of intensified foreign fishing in Icelandic waters is now imminent. The catch capacity of the

> distant water fleet of nations fishing in Icelandic waters has reached ominous proportions (Fig. 3) and it is well known that their activities are increasingly being directed towards the waters around Iceland. The vital interests of the Icelandic people are therefore at stake. They must be protected",

and a little further down:

> "Theoretically, adequate conservation measures can be adopted through agreement between nations fishing in a given area. Experience has shown, however, that the implementation of such agreements has given very meagre results indeed. And it is difficult to devise a workable system. The coastal State, being vitally concerned, is in the best position to take the measures required."

What they are saying, in effect, is that the fish stocks are in imminent danger and can only be effectively protected by giving complete control to the coastal State—that is to say to Iceland.

In Part III of the Memorial we have carefully examined the actual facts regarding the state of these fishing grounds and these fish stocks, and there is ample scientific evidence available. In my submission that examination leads to the conclusion that there is no foundation for the allegation that the demersal fish stocks in the Iceland area are in imminent danger.

There was no such danger in February 1972 when this Icelandic claim was made and now two years later no such danger has materialized.

Nor can Her Majesty's Government accept that, even if there had been such a danger, control by the coastal State would have been the most effective method, let alone the only effective method, of dealing with it.

It is not clear whether Iceland is saying that this alleged necessity gives her a legal right to take unilateral action or whether she is saying that having regard to the necessity she intends to take unilateral action, whether it is legal or not.

Suffice it to say that, in my submission, while no necessity could justify the proposed extension of the limits, the alleged necessity did not—and does not—in fact exist.

May I examine the Icelandic statement more closely? "Fishing techniques and catch capacity are rapidly being developed and about half of the catch of demersal fish in the Icelandic area has been taken by foreign trawlers." That statement seems to imply that the recent rapid development of fishing techniques has driven the foreign proportion of the catch up to half, with the implication that the Icelandic share has fallen and is likely rapidly to fall still further. If that were so, of course, the Icelandic Government might have justifiable cause for alarm.

But in fact the exact opposite is the case. This is clearly shown by the table at Annex 18 to our Memorial (p. 398, *supra*). By and large over the 50 years between 1918 and 1968 the foreign share of the catch, except during the Second World War, was well over half. On the other hand, in the years since 1968 the Icelandic share has consistently been more than half.

This can be seen at a glance from column 5 of the table at Annex 18. Column 5 shows the percentage of the total catch caught by Icelandic vessels. To bring that table up to date, I may say that there was no change in this trend in 1972. The Icelandic share for that year was 55 per cent. That percentage can be written in under column 5 of the table against the year 1972.

Nor, looking at the last column in that table, has there been any change in

the total catch over the last few years which cannot be attributed to ordinary seasonal fluctuations.

Again, this is borne out by the 1972 figures which, for total catch, were 683,600 tons.

The truth of the matter is that, as far as the demersal stock is concerned, which is the only stock fished by United Kingdom fisheries in the Iceland area, both the total catch and the share of it taken by Icelandic and other fishermen have been remarkably steady for many years.

The United Kingdom has for many years taken about a quarter of the catch and the remaining quarter has been taken by a number of nations of which, in recent years, the Federal Republic of Germany has been the most prominent.

If what the Icelandic Government were saying in 1972 was that there had already been an increase in the share taken by the other nations participating in the fishery, then they were wrong. If what they were saying was that they feared that this would happen in the future, there were no grounds for that fear. If, on the other hand, their fear was that other nations which had so far not participated in the fishery were about to do so, there is no evidence to support that.

Furthermore, as has been shown in the Memorial, all the major Atlantic fishing nations which have so far taken no part in the fishery in the Iceland area are members of the North-East Atlantic Fisheries Commission and there is no reason to suppose that they would not observe measures of conservation which may be found necessary.

As far as the need for conservation is concerned, the United Kingdom concludes that there may well now be a case for agreement upon some system of catch limitation in the Iceland area—though the need is much less urgent there than in many parts of the North Atlantic. The reasons for that conclusion are set out in paragraphs 118, 119 and 124 of the Memorial.

In paragraphs 70 to 73 of the Memorial, the relationship of recruitment to the size of the spawning stock is described.

It is no doubt possible to reduce the spawning stock by overfishing to a level at which recruitment is affected. The conclusion which we reached from the evidence last July was that the current level of fishing allowed a margin of safety. Nothing has happened since to cast any doubt on that conclusion.

The test comes when one examines the level of recruitment for the future as evidenced by the "year classes" coming forward. The "year class" is the total of the fish of a particular species—in this case, cod—spawned in a given year. The bottom table at Annex 22 to the Memorial (after p. 405, *supra*) shows the relative year class strength for cod in the Iceland area. It shows the strength in relative terms.

The year classes of the late sixties were poor. If the danger the Icelandic Government apprehended in 1972—that the spawning stock was likely to be reduced to below the critical level—was justified, one would have expected that pattern to continue. It was well known when the Memorial was written that the 1970 year class was a strong one. That can be seen from Annex 22 to the Memorial in the bottom graph of relative year class strength. This year class is now beginning to enter the fishery and our hopes for it are being confirmed. Since that table was compiled, new information has come to hand for the next three year classes. The 1971 year class is an average one and, although the 1972 year class appears to be very poor, the 1973 year class by contrast appears to be very good.

The spawning stock does not, therefore, appear to have been adversely affected. Indeed, there is every likelihood that catches will continue to show over the next few years that remarkable pattern of stability to which I have referred.

In order to complete the picture, I should point out that as well as the process of recruitment just described, the spawning stock is increased by 20 to 30 per cent. each year by cod which migrate from the seas near Greenland into the Iceland area.

The foregoing survey does not mean that fishing of the cod stock in the seas around Iceland can be free and unrestrained. Careful husbandry is required.

I would, however, repeat with confidence what is said in paragraph 73 of the Memorial that the limitations on catch imposed by this Court in its Orders indicating interim measures of protection have been more than adequate for the purpose of preventing any further reduction in the size of the spawning stock.

The Interim Agreement of 13 November 1973 should have the same effect during its currency provided only that Iceland, on whom no catch restriction is placed, keeps her catch within reasonable bounds.

Accordingly, the conservation question is not a matter which can be called urgent, in the sense of calling for immediate and drastic measures. It is certainly a matter which can be dealt with by the North-East Atlantic Fisheries Commission, or rather which could be dealt with by the Commission under Article 7 of the Convention, if Iceland had not refused her co-operation.

The Court adjourned from 11.20 to 11.55 a.m.

QUESTIONS BY JUDGES JIMÉNEZ DE ARÉCHAGA AND DILLARD

The PRESIDENT: Before I call on the Attorney-General I wish to give an opportunity to two colleagues of mine to put some questions and they would formulate them now—Judge Jiménez de Aréchaga and Judge Dillard.

Judge JIMÉNEZ DE ARÉCHAGA: With respect to the concept of preferential fishing rights of States in a special situation, the Memorial examines the subject from the viewpoint of the resolution adopted at the *1958 Conference on the Law of the Sea. I would appreciate it if counsel for* the Applicant would examine the applicability to the present case of the concept of preferential rights, together with the procedure for implementing them, as they were defined in the amendment by Brazil, Cuba and Uruguay which was incorporated by a separate vote in the final proposal which nearly secured a two-thirds majority at the 1960 Conference, and which, according to the Memorial, reveals the general consensus on the permissible extent of a coastal State's fisheries jurisdiction.

My second question is: I refer to the record of the discussions leading up to the 1961 Exchange of Notes which was deposited in the Registry in the *jurisdictional phase of these proceedings and I also refer to paragraph 229* of the Memorial. My question is: is it contended by the Applicant that in the 1961 Exchange of Notes Iceland undertook the obligation not to extend its fishery limits beyond 12 miles, or to do so only pursuant to a bilateral or multilateral agreement or pursuant to a decision by this Court recognizing her right to do so under international law?

The third question is: in the light of the contention that a rule of customary law exists fixing for Iceland a maximum fisheries limit of 12 miles, what are, in the submission of the Applicant, the relevance and effect of the proposals and statements made on the subject of fisheries jurisdiction during the *General Debate held in the Sea-Bed Committee and its Subcommittee II* in preparation for the Third Conference on the Law of the Sea? Could they be regarded as part of the evidence on the current practice and opinion of States?

Judge DILLARD: Mr. President, I seek the assistance of counsel for the Applicant on two questions.

My first question is focussed on the submissions of the Applicant in paragraph 319 of its Memorial on the Merits, read in conjunction with paragraphs 300 and 318 *(a)*.

The question is this: is it the contention of the Applicant that its first three submissions, that is to say, submissions *(a)*, *(b)* and *(c)*, are so connected that it is necessary for the Court to adjudicate on the first in order to adjudicate on the second and third?

My second question, which is more abstract, focusses on possible divergences of views as to the *exclusive* character of Iceland's claimed extension of her fisheries jurisdiction. It invites an opinion on the nature and scope of the Icelandic Regulations of 14 July 1972 including the statement in Article 7 of those Regulations that they are promulgated in accordance with Law No. 44 of 5 April 1948 and the question enquires, in the light of the negotiations preceding and subsequent to the promulgation of those Regulations and in actual practice, whether the asserted claim to *exclusive* jurisdiction is not susceptible to a narrower meaning than is usually associated with the term

"exclusive". The question is also partially inspired by the allusion in paragraph 247 of the Memorial to what is there called "truly exclusive claims". The specific question is that:

Is it the contention of the Applicant that the Government of Iceland's claim is *exclusive* in the absolute sense that she reserves the right to exclude *all* fishing by foreign nationals in the extended areas *except* as she might, in her discretion, permit it; or is it that Iceland reserves the right not to exclude all fishing by foreign nationals, but to regulate and institute measures of control of such fishing either because of her special situation as a coastal State dependent on such fishing or in the interest of conserving the living resources of the sea in the extended areas?

Put more broadly: is it the contention of the Applicant that, basically, Iceland's claim contemplates not the accommodation but the extinction of the rights of the nationals of the United Kingdom to fish in the extended areas?

The PRESIDENT: The Agent shall be at liberty to reply immediately or at a later time. [1]

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[1] See pp. 479-493, *infra*.

ARGUMENT OF THE RIGHT HONOURABLE SAMUEL SILKIN (cont.)

COUNSEL FOR THE GOVERNMENT OF THE UNITED KINGDOM

The Rt. Hon. Samuel SILKIN: Mr. President, these are questions which, if the Court will permit, I will defer answers to, and which may perhaps be answered by my colleagues at a later time. As far as the last question is concerned I think it will be found that it is to a degree covered in my submissions, but I will see that it is specifically answered nevertheless.

Before the adjournment I had made observations on the first of the contentions of the Icelandic Government, that is to say that its proposed measures were necessary for the preservation of the fish stocks. I come now to the second claim by Iceland, that is to say that problems of conservation cannot effectively be dealt with by international agreement. Upon that Her Majesty's Government feel bound to say that this is not borne out either by what has happened in the past or by what is going on in the world today. Leaving aside all questions of international equity, it is very doubtful whether the fish would be better conserved by leaving them to the tender mercies of the coastal State than by limiting catches by international agreement.

We have referred in the Memorial to the conclusion of the Food and Agriculture Organization in their report entitled *Review of the Status of Some Heavily Exploited Fish Stocks.* In paragraph 84 of that Report, which is cited in paragraph 79 of the Memorial, it is stated that there are "at least as many examples of depleted resources which were under the control of a single country ... as of those occurring outside national jurisdiction". Unfortunately coastal States, although, as the Icelandic Government rightly says, they are vitally concerned, do not always take the measures required.

At this point I feel bound to refer to the history of the Atlanto-Scandian herring. This matter has been dealt with at some length in the Memorial because, unfortunately, it casts a grave doubt upon the credentials of the Icelandic Government in matters of fish conservation. The herring stock in the Iceland area and the North Atlantic generally was a stock with which Iceland, to quote her Memorandum, was "vitally concerned". Yet no sooner had she devised a new technique of exploiting it than she attacked that stock so hard and so unremittingly that for all practical purposes she wiped it out. A full account of the fate of that stock has been set out in the Memorial, and if any Member of the Court thinks that what I have just said is exaggerated I would ask him to check it by reference to those facts and figures.

Perhaps at this stage it is enough to compare the last part of the graph of the catches of demersal species in the Iceland area at Annex 19 of our Memorial showing the catches between 1960 and 1971 with the graph of the catches of herring in the same area over the same period. The demersal graph is to be found on page 400, *supra*, of the Memorial. It is a graphical representation of the table to which I have just referred. The herring graph, which is Annex 25 to the Memorial, is on page 408, *supra*. The demersal graph may be said to be a typical graph of the catches in a stock which is not being over-exploited. There may have been, as the Icelandic Foreign Ministry states, a rapid development of fishing techniques, but they have not damaged the stock.

The herring graph on the contrary shows what happens when a new technique is ruthlessly exploited. And that technique was both devised and applied by Icelandic fishermen. Other nations played a minor role; United Kingdom fishermen no part at all. Looking at that graph, that is to say Annex 25 on page 408, *supra*, one sees that in 1960 the total herring catch was 224,000 tons. Iceland took rather over 60 per cent. of that catch. The remainder was divided between four other nations, of which Norway was by far the most important. The table opposite the graphs shows the details.

In 1960 a new technique of catching herring was devised by Icelandic fishermen. There is no need to go into details. It was indeed a very effective technique. By 1965 the catch had been quadrupled, and nearly all of it was taken by Iceland. But the effect on the stock was very great. By 1967 the catch had dropped to little more than half the 1960 figure. Measures of catch limitation were then introduced, but it was too late. So far there has been no material recovery of the stock.

While no doubt the Icelandic Government regrets this mistake, it does show that the coastal State, though, to use the language of the Icelandic publication, "vitally concerned", does not necessarily take the conservation measures required.

Nor is it right to say that international agreement has produced meagre results. The stability of the demersal catch in the Iceland area itself owes much to the agreed limits on mesh and size of fish imposed under various treaties and since 1963 under the North East Atlantic Fisheries Convention. As was shown in paragraph 97 of the Memorial, under the North East Atlantic Fisheries Convention, provision was made for the introduction of catch quotas and now, with the exception of Iceland, all the member States have expressed willingness to introduce them.

Under the machinery of that treaty, the power to impose catch quotas depends upon the agreement of all the member States. All except Iceland have agreed. (Belgium, I should say, has agreed in principle, but the formal procedures of acceptance have not yet been fully completed.) Since the Memorial was delivered, Iceland has in fact agreed to accept the recommendation under Article 7 (2) but with the significant reservation that it shall not apply to the 50-mile zone around Iceland itself.

Meanwhile in the North-West Atlantic, international catch control is steadily advancing. I should like to invite the Court to look at Annex 28 to the Memorial, which comes on page 411, *supra*. Members of the Court will see indicated the catch quotas for cod agreed by the International Commission for the North-West Atlantic fisheries up to July of last year. The areas indicated by diagonal hatching are those for which cod catch quotas were then already in operation, while the speckled areas indicate those for which they had been agreed.

Since then the catch quotas which are shown on that map as having been agreed have all come into operation. That is to say the whole of the areas shown speckled can now be regarded as hatched. This includes the whole of the sub-areas 1 and 2, that is the west coast of Greenland and the northern part of the coast of Labrador and section 3M which can be seen as the only unhatched area off the Grand Banks of Newfoundland.

In the North-East Atlantic, there were no quotas in operation in July because of the difficulty over Article 7 (2) of the Convention, but quotas were already under negotiation over large areas marked by cross-hatching.

That is Spitsbergen, Bear Island, Barents Sea, the Norwegian coast and the Faroes.

Quotas in respect of the North Sea area were under preliminary negotiation.

Since last July, in spite of the difficulty over Article 7 (2) of the Convention, there has been a significant advance in the North-East Atlantic area and I shall be referring to two recent agreements of which notice has been given to the Court in the Agent's letters [1] of 14 and 20 March of this year.

The three countries mainly concerned—the United Kingdom, the Soviet Union and Norway—have agreed earlier this month on catch limitation measures for the whole North-East Arctic area. That is to say, Spitsbergen, Bear Island, Barents Sea and the Norwegian coast. Other countries, which fish in the area in a small way, are not bound by that agreement. But NEAFC members gave a general undertaking not to undermine agreements of this sort, reached outside the formal framework of the Commission.

The second development is well worth describing in detail. In September 1973, the countries which participate in the fishery in the Faroes Area, without waiting for complete acceptance of the recommendation under Article 7 (2), entered into a conservation arrangement. The countries concerned, which are all parties to the North-East Atlantic Fisheries Convention, are Belgium, Denmark, France, the Feneral Republic of Germany, Norway, Poland and the United Kingdom. As far as the cod and haddock are concerned, by far the largest participants in the past have been the United Kingdom and the Faroes themselves.

I will read, if I may, to the Court part of that agreement. The preamble runs:

> "The Parties to this Arrangement,
>
> Realizing that the scientific evidence available calls for immediate measures for the purpose of conservation of fish stocks in the Faroe Area (ICES Statistical Division Vb);
>
> Considering the exceptional dependence of the Faroese economy on fisheries, and
>
> Recognizing that the Faroe Islands should enjoy preference in waters surrounding the Faroe Islands;
>
> Have agreed as follows:
>
> *Article 1*
>
> The fishing for the demersal species cod and haddock in the ICES Statistical Division Vb shall be limited annually as prescribed in the catch limitation scheme hereto (Annex I), which shall be an integral part of the present Arrangement."

Annex I prescribes an annual catch for the Faroes of 32,000 tons, for the United Kingdom of 18,000 tons and for the other parties of 2,000 tons.

There are other provisions dealing with other species and other conservation measures to which I need not refer. In my submission, this is precisely the sort of agreement which should be entered into when it is shown that measures of catch restriction are necessary for conservation.

It is this sort of agreement *mutatis mutandis* which should be entered into in respect of the Iceland Area. Indeed it is the sort of agreement that I shall presently ask the Court to declare that parties to this case are under a duty to negotiate.

I have described that agreement at length not only because it demonstrates the type of agreement which Her Majesty's Government—and, one may

[1] II, pp. 471 and 472.

safely assume, the other signatories—regard as appropriate and proper. There are, in addition, two other factors of special interest.

First, the Faroese problem, though smaller in scale, has a close similarity with the Icelandic problem. The high dependence of the coastal State on fishing, the condition of the stocks, the degree of participation by other nations and the apprehended dangers are all present.

Secondly, the time-scale is of interest. The issues were raised by the Faroese home Government, and the Danish metropolitan Government, early in 1973. In April, the United Kingdom Government, whose fishermen had the greatest interest in the area, invited them to bilateral talks in Edinburgh. In May, a joint approach was made in London to the representatives of the other governments concerned, who had gathered there for the NEAFC meeting.

After two rounds of multilateral negotiations in Copenhagen, agreement was reached in September. Ratification followed quickly enough for the agreement to enter into force on 1 January 1974, which is, of course, *within* a year of the matter being raised. Certainly, in this case, the process of international negotiation was not slow, nor were results meagre.

In view of this rapidly developing network of control by catch quotas, it is hard to credit the Icelandic assertion that the adoption of adequate conservation measures by agreement is only a *theoretical possibility*.

On the contrary, it is a practical and effective method of dealing with the conservation problem and one which fishing States, and in particular the States which fish the North Atlantic, are in fact progressively adopting.

Indeed, if one looks at that map, one has the impression that the Iceland Area—ICES Area Va—*will* soon be *the only important cod fishery in the* North Atlantic where catch quotas are not in force.

In view of the apparent weakness of the Icelandic case as to the necessity for unilateral measures for conservation, one is driven to ask whether her real reason is not the second one she has given. That is the alleged need for her to take *all the fish in the interests of her own economy.*

Pausing there, I repeat that, in my submission, even if it were true that Iceland could not expand her economy unless she took all the fish in the area for herself, that would give her no legal right to do so.

But is it true? Naturally, it is with some diffidence that I speak about the *economy of another country* and so I shall not go into detail. Of course the facts as to that could have been recorded for the Court by Iceland had she been here. But I would simply say this.

First of all, let us get rid of the idea of Iceland as a nation of impoverished fishermen clinging precariously to life.

Iceland, in fact, has a high standard of living, as the Court will see from the table of OECD statistics—a copy of which has been delivered to the Court. Measured in terms of gross national product *per capita*, Iceland is placed about half-way up the table of the OECD countries. Her position in that table has, in fact, been steadily rising.

Of course I accept that the Icelandic economy is largely dependent on fish. But not entirely so by any means. As has been shown in the Memorial, her economy is becoming steadily more diversified and less dependent on fishing.

The importance of this fishery to the United Kingdom has been described in paragraphs 137 to 148 of our Memorial. The United Kingdom has a population of over 50 millions, living on islands which physically cannot produce enough food to feed the inhabitants. Fish is an important element in the protein supply. Fishing is an important source of employment, especially when the ancillary occupations on shore are brought into account. Fishermen,

notably from Hull, Grimsby and Fleetwood, have sailed for Iceland for generations. Fishing grounds nearer home are fully exploited by the vessels of many nations including Iceland. Nor is the United Kingdom the only nation other than Iceland which is dependent on this fishery. In particular, the Federal Republic of Germany has long relied on the area for an important part of her catch.

It may be that to enable Iceland to maintain a reasonable rate of expansion she should be permitted to take a larger share of the demersal fishery than in the past. If so, this can be dealt with, as in the case of the Faroes, by giving her, as the coastal State, a preferential quota in an agreed catch limitation scheme. But to allow a country with a population of about 205,000 which has for many years taken about half the demersal catch from this valuable fishery suddenly and from a date of its own choice to take it all, disregarding the needs of other nations, would obviously be inequitable.

I turn now to the law as it relates to the Icelandic claim. In Part IV of our Memorial we have traced at considerable—I hope not excessive—length the development of the law relating to the territorial sea and fishing limits. Our purpose in doing so was not of course to enter into academic debate on such questions as whether the 3-mile limit was a universal rule of law, though modified by exceptions such as the Scandinavian 4-mile limit; or whether the 3-mile rule was merely a general rule forming part of a wider and more flexible system; or again when exactly the 3-mile limit came into existence and whether its origin lay in the cannon shot or in the range of vision or simply in the league as a measure of distance.

These are interesting questions but they cannot affect the determination of the law which the Court must make in this case. Our purpose was rather to provide the general background against which the Court must make its determination of the modern law. This background, as I submit that history shows, is that there are only three possible solutions to the problem of the limits of the area over which a coastal State may exercise control in the matter of fisheries jurisdiction. The current expression, much used in connection with the preparation of the forthcoming United Nations Conference on the Law of the Sea, is "the limits of national jurisdiction", although I do not need to remind the Court that the problem with which it is now seised concerns only fisheries jurisdiction.

The first possible solution is that there should be a more or less universal treaty or convention settling the matter. Such a treaty might provide an identical limit for all countries or it might provide for local or regional variations, but in principle it would be universally accepted. No doubt this is the ideal solution but history demonstrates clearly that it has in fact never been achieved. Attempts to achieve it were made in 1930, in 1958 and again in 1960 but, although at times agreement seemed near, success so far has always eluded the negotiators. Let us hope they will be successful at the forthcoming Conference.

In the absence of a treaty or convention ". . . general or particular, establishing rules expressly recognized by the contesting States", to borrow the language of Article 38 (1) *(a)* of the Court's Statute, attention has to be focussed upon the second possible solution. This is to be found in Article 38 (1) *(b)* which speaks of "international custom, as evidence of a general practice accepted as law". So important is this solution that I shall have to devote considerable time to it.

As for the third possible solution, I need only mention it briefly because it is in fact no solution. It is sheer anarchy. It is that each State should have the

right singly to decide the limits of its national jurisdiction for itself. Such a condition would be not only intolerable but also quite unworkable because there would be no way of settling conflicting or overlapping claims. There is, however, no need to spend any further time on it because the Court has already excluded it. The Court has said in the *Anglo-Norwegian Fisheries* case:

> "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law." (*I.C.J. Reports 1951*, p. 132.)

I return therefore to the second possible solution—international custom. As regards the position of Iceland, it is not necessary for the Court to concern itself in detail with remote historical questions. The United Kingdom accepts the statement made by the Icelandic delegate, Mr. Bjornsson, at The Hague Conference on 5 April 1930, to the effect that "In my country, 4 miles has been the limit since the middle of the seventeenth century for all purposes, including fisheries". (Cited in Memorial, para. 173.)

It is also not in dispute that as between the United Kingdom and Iceland the limit was 3 miles between the date of the ratification of the Anglo-Danish Convention of 1901 and October 1951 when the denunciation of that Convention took effect. There may be room for argument as to what was the legal position between 1951 and the conclusion of the Exchange of Notes of 11 March 1961. During that time, Iceland was asserting at least a 4-mile, and later a 12-mile, limit, from extensive straight baselines whereas the United Kingdom did not accept Iceland's right to the 12-mile limit until 1961. The Icelandic decree No. 70 of 30 June 1958 asserting a 12-mile limit was avowedly an entirely new claim. And so of course was the claim to a 50-mile limit made in the Icelandic aide-mémoire of 24 February 1972, which in turn was followed up by the Regulations issued on 14 July 1972.

The question therefore is whether, given the state of general international law in 1971-1972, and having regard to the long practical and legal interest of the United Kingdom in the fisheries concerned, Iceland was entitled to assert her exclusive 50-mile claim against the United Kingdom from 1 September 1972.

For the Icelandic claim to be justifiable, it would have to be shown that around 1971-1972 international law permitted Iceland, despite the long-established interest and rights of the United Kingdom in the fisheries in the high seas around the Icelandic coast, either (i) to extend her territorial sea to 50 miles or (ii) notwithstanding her claim to a territorial sea of less than 50 miles, to make a claim to an exclusive fishing zone of that distance.

As has been shown in paragraph 197 of the Memorial, even the Canadian proposal (in document A/CONF.13/C.1/L.77/Rev. 3) that the territorial sea should extend for 6 miles from the coast was rejected at the Geneva Conference in 1958 (A/CONF.13/L.28/Rev. 1, para. 19). Proposals from India and Mexico jointly (A/CONF.13/C.1/L.79), and from the Soviet Union (A/CONF.13/C.1/L.80), that the territorial sea should extend for 12 miles from the coast were likewise rejected (A/CONF.13/L.28/Rev. 1, para. 20).

The Canadian delegation also proposed (in doc. A/CONF.13/C.1/L.77/Rev. 3) that there should at least be an exclusive fishing zone of 12 miles. This

proposal, though approved by a narrow majority in the First Committee, was not approved in plenary. It obtained 35 votes in favour, 30 against, with 20 abstentions and thus failed to secure adoption because of the requirement that a two-thirds majority must be obtained. (Record of the 14th Plenary Meeting, para. 59.)

A United States proposal (in doc. A/CONF.13/L.29) that there should be an exclusive fishing zone of 12 miles, qualified by the preservation of the right of States whose fishermen had traditionally fished in that outer 6-mile zone to go on doing so, found more favour in the plenary, obtaining 45 votes for 33 against, with 7 abstentions, but likewise failed to secure adoption because of the two-thirds rule. (Records of the 14th Plenary Meeting, para. 60.)

A more elaborate version of this proposal, this time submitted jointly by the United States of America and Canada, received as many as 54 votes in favour at the Second Conference in 1960, with 28 votes against and 5 abstentions, only to fall again because of the two-thirds rule. A proposal at this Conference to permit a territorial sea of 12 miles did not even get through the Committee of the Whole, being rejected there by 36 votes for, 39 against and 13 abstentions.

The Conference of 1958, whilst not agreeing to a figure for the maximum breadth of the territorial sea, did adopt the Convention on the Territorial Sea and the Contiguous Zone. The United Kingdom, although not fully satisfied with all features of that Convention, ratified it as part of its general policy of supporting efforts towards the codification and progressive development of international law. Article 24 concerns the contiguous zone—contiguous to the territorial sea. Paragraph 2 of the Article provides: "The contiguous zone may not extend beyond 12 miles from the baselines from which the breadth of the territorial sea is measured." It follows *a fortiori* that the territorial sea itself could not extend beyond 12 miles from these baselines.

The Conferences of 1958 and 1960 were broadly representative of the international community as it was then composed. The verdict of the conferences was at that time firmly opposed to attempts to extend the territorial sea to 12 miles. It was tending towards acceptance of the principle that there should be an exclusive fishing zone of 12 miles, provided that certain consequential questions could be resolved. These concerned the position of States which had traditionally fished there on the one hand and the preferential position of certain coastal States on the other.

The four conventions of 1958 entered into force in due course and the United Kingdom ratified all four of them.

As has been shown in paragraphs 212 to 225 of the Memorial, the period between and after the two Geneva Conferences saw the emergence of a wide measure of agreement regarding the limits of fisheries jurisdiction. It has not yet proved possible to carry this into effect by means of a general international agreement. However, a number of bilateral and regional agreements were concluded. For example, the Anglo-Danish Agreement of 27 April 1959 and the Anglo-Norwegian Agreement of 17 November 1960, not to mention the Anglo-Icelandic Agreement of 11 March 1961 and the Agreement of 19 July 1961 between Iceland and the Federal Republic of Germany, evinced a trend towards acceptance of the 12-mile limit as the general principle with provisions for protecting the interests of the States affected by that acceptance.

Twelve miles next gained widespread acceptance at the European Fisheries Conference in 1964 and that figure appeared in the multilateral Fisheries Convention which was adopted. Even States which did not attend the Conference, such as Poland and the Soviet Union, accepted its outcome.

As was shown in paragraphs 223 to 225 of the Memorial, acceptance of the 12-mile principle was not confined to Europe, but spread during the period from 1961 to 1966 to such countries as Canada, New Zealand, Japan and the United States. The decision of the Congress of the United States to legislate in 1966 for a 12-mile exclusive fisheries zone is particularly interesting. It was taken in the light of the express legal advice of the State Department. Writing to the Chairman of the relevant Senate Committee, the Assistant Secretary for Congressional Relations said that "since the 1960 Law of the Sea Conference there has been a trend toward the establishment of a 12-mile fisheries rule in international practice". He further advised that "in view of the recent developments in international practice, action by the United States at this time to establish an exclusive fisheries zone extending 9 miles beyond the territorial sea [i.e., 3 miles], would not be contrary to international law". His final advice was to the effect that "inasmuch as US establishment of a 12-mile exclusive fisheries zone would tend to support the trend already referred to, the passage of the proposed legislation would make it more difficult, from the standpoint of international law, to extend the zone beyond 12 miles in the future".

Her Majesty's Government do not contend that by 1966 there was a rule of law compelling a coastal State to have an exclusive fisheries zone of 12 miles corresponding to the rule of law, referred to in paragraph 151 of the Memorial, which possibly does compel a State to have a territorial sea of at least 3 miles. It is, however, reasonably clear that by 1966 a State did not offend against international law if it introduced an exclusive fisheries zone extending for 12 miles from the coast, provided of course that it paid reasonable regard to the interests of other States whose nationals had traditionally fished in the area which was to become the subject of the extension.

This answers the question whether an extension of an exclusive fisheries zone beyond 12 miles would be illegal; it would.

A different situation might arise in very exceptional circumstances where the coastal State claimed not an exclusive zone but a non-exclusive conservation zone.

The State proposing such a non-exclusive zone would have to come within one of the "special situations" mentioned in the resolution on Special Situations relating to Coastal Fisheries adopted at Geneva on 26 April 1958. It would have further to show that not only was there a demonstrated scientific need for conservation of the fish stock, but also that this need demanded an actual limitation of the catch within an area of the high seas adjacent to its territorial sea. It would have further to show that the other State or States concerned had failed unreasonably to collaborate with the coastal State to secure just treatment of the special situation such as by refusing to negotiate sincerely or, in the event of negotiations breaking down, it would have to submit the dispute to impartial conciliation or adjudication. It would have finally to show that it was willing and able to impose on itself the catch limitation that scientific research had shown to be necessary and which it sought to impose on others. It is only necessary to recite these conditions, and particularly the last two, to make it clear that the Icelandic claim does not fall within this category.

The Court adjourned from 1 to 3.05 p.m.

If the Court pleases, I will now deal in greater detail with the question which, in our submission, is fundamental to the dispute before the Court.

That question is: does international law permit Iceland to make and enforce the claim to a 50-mile exclusive fishery as against the United Kingdom? Conversely, one could frame the question in this way: is the United Kingdom obliged, first, to recognize the Icelandic claim to have a fisheries jurisdiction zone of 50 miles, and secondly, is the United Kingdom obliged to accept the claim to exercise jurisdiction so as to exclude vessels flying the British flag from fishing within that zone?

Before I examine the grounds on which Iceland might base those claims I should like, if I may, to make two preliminary observations.

The first observation concerns the question of the burden of proof. As Her Majesty's Government have made clear in paragraphs 228 to 230 of their Memorial, it is Iceland which is seeking to change the factual situation in the fishery and to challenge the established law. The law which developed after 1945 crystallized as a result of the Geneva Conferences of 1958 and 1960. Upon the basis of the Geneva Conventions, and State practice subsequent to those Conventions, the law could be stated in the following terms: a coastal State is entitled to claim an exclusive fishery zone up to 12 miles, subject only to recognition of any traditional fishing rights of other nations within that zone. Indeed, the Exchange of Notes of 1961 between Iceland and the United Kingdom reflected precisely that position and so Iceland must have considered 12 miles to be the maximum fishery limit at that time.

Iceland's challenge to the established law concerns the exercise of one of the freedoms of the high seas. Iceland itself has a territorial sea of 4 miles and thus the juridical nature of the waters with which the Court is now concerned is that of high seas. In the High Seas Convention of 1958, Article 1 states that all parts of the sea not included in the territorial sea or internal waters are high seas. Article 2 goes on to say that "the high seas being open to all nations", freedom of the high seas operates so as to accord to both coastal and non-coastal States "freedom of fishing". The Court will be aware that the Preamble to this Convention states that these rules were "generally declaratory of established principles of international law". That remains, in my submission, the established law. However, Her Majesty's Government will normally now accept a State's claim to fisheries jurisdiction of 12 miles where its territorial sea is less. I say nothing of what changes might be made in the future; that is a matter for speculation and is irrelevant to the issue now before the Court.

Since it is Iceland which challenges the established law, and, specifically, the livelihood of the United Kingdom fishermen, it must be for Iceland to prove to the Court conclusively that her claim is justified in law. The burden of proof rests very clearly upon those who wish to challenge the established law.

My second observation concerns the sources of international law which the Court should apply. As Article 38 of the Statute recognizes, the primary sources are three: treaties, custom and general principles. If, therefore, Iceland seeks to establish a legal right to exclusive fishing within 50 miles from her shores, it must be for Iceland to demonstrate that such a right derives from one or other of those three sources.

Mr. President, an observation so elementary may strike the Court as being trite and superfluous. I do not myself believe that it is so. As the Court will realize from reading the Memorial, Her Majesty's Government have felt it incumbent upon them to assist the Court by examining the possible arguments which Iceland might adduce, as I have already stated, if Iceland were here.

In so doing, Her Majesty's Government have introduced into the Memorial a discussion of various unilateral declarations by States, of declarations by a number of States acting jointly, of resolutions of the General Assembly of the United Nations and of the Economic and Social Council of the United Nations. In due course, I will comment more specifically on such matters when I turn to deal with the relatively new concepts of the patrimonial sea and sovereignty over natural resources. But there is a fundamental point which I wish to make at the very outset. This is that all such discussion is, in a sense, irrelevant to the main issue. The main issue must be whether Iceland now has the legal right she claims and whether the United Kingdom has the corresponding obligation. That, in its turn, throws the Court back upon the basic proposition that a legal right can only arise through one of the established sources of law. It is in this context that I have thought it right to stress so elementary a proposition. As I hope to demonstrate more fully to the Court shortly, however interesting this other material on declarations and resolutions may be, in the last resort the Court is faced with the inescapable question: is there a treaty, or a custom, or a general principle of law upon which Iceland can base her claim? With this question in mind, I would like now to turn to the various grounds upon which Iceland might seek to base her claim, if she were here.

First, there is the continental shelf doctrine. Quite clearly, Iceland is relying on the proposition that the coastal State is entitled to the fishery resources in the high seas above the continental shelf. That is apparent from the Icelandic Law of 5 April 1948, which referred to "conservation zones within the limits of the continental shelf of Iceland". It is reiterated in the Althing resolution of 15 February 1972 which referred to "the continental shelf of Iceland and the superjacent waters". And it is made explicit in a number of ministerial statements referred to in paragraph 232 of the United Kingdom Memorial.

How, then, can such a claim be reconciled with international law? Certainly there is no treaty binding either the United Kingdom or Iceland which supports it. On the contrary, the Geneva Convention on the Continental Shelf of 1958, to which the United Kingdom is a party, says precisely the opposite. By Article 2, paragraph 4, of that Treaty the natural resources of the shelf, over which the coastal State exercises sovereign rights, exclude—and I emphasize that—exclude free-swimming fish.

Is the Icelandic contention, then, supported by customary international law concerning the continental shelf? Again, the answer must be "no", for the very reason that Article 2 of the Convention of 1958 has been rightly regarded by this Court as "reflecting, or as crystallizing, received or at least emergent rules of customary international law". That pronouncement was made as recently as 1969 in the *North Sea Continental Shelf* cases. In the respectful submission of Her Majesty's Government, the Court's pronouncement was a correct statement of the law and an accurate reflection of State practice. Is the Icelandic claim supported, then, by a general principle of law? Clearly not, because one cannot contemplate a general principle which is at variance with the established treaty and customary rules.

Secondly, there is the question of preferential rights, and here I can be very brief. Iceland's claim is clearly, in our submission, to *exclusive* rights. Accordingly, if some concept of preferential rights were to form part of the law, it could not afford a basis for that claim.

Thirdly, there is the argument of the need for conservation, an argument which receives very great emphasis in the Icelandic Law of 1948, in the Althing Resolution of 15 February 1972 and in successive ministerial state-

ments. If this is related to the acknowledged sources of international law, then it must be observed that there exists no treaty between Iceland and the United Kingdom which supports the Icelandic claim to an exclusive fishing zone extending beyond the generally accepted limit merely on the ground of an alleged conservation need.

There is, however, extensive State practice, reflected in bilateral and multilateral treaties, upon which a customary rule of international law might be formulated. In paragraphs 270 to 278 of the Memorial, a pattern of State practice dealing with conservation needs has been spelt out. In some six different oceans, and over a period of many years, some 30 or more principal fishing States have established a pattern of consistent conduct which involves the regulation of conservation problems by agreement. This is a pattern of conduct in which Iceland herself has participated, notably in the Whaling Convention of 1946, the North-West Atlantic Fisheries Convention of 1949 and the Iceland/Norway/USSR Agreement of 1972 and indeed under the North-East Atlantic Fisheries Convention of 1959, as was pointed out in the Memorial. Indeed, Her Majesty's Government would regard the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958 as in large part, if not entirely, a crystallization of a general and concordant practice.

It is when one comes to formulate a possible customary rule, based upon the need for conservation, that the incompatibility between such a rule and the Icelandic claim becomes apparent. The practice of States and the Geneva Convention of 1958 which I mentioned, afford some evidence of the emergence of a customary rule on conservation and of its constituent elements. As parties to that Convention, Her Majesty's Government would not object to action being taken in accordance with its principles by a State which was not a party.

In my submission, these constituent elements would be the following:

First, there must exist scientific evidence of a need for conservation. Secondly, given such a need, the States concerned are under a duty to adopt the necessary measures of conservation by seeking agreement through negotiations conducted in good faith. Thirdly, measures of conservation must be justified by the scientific evidence and must be non-discriminatory in form and in fact as between the fishermen of the various States concerned, except in those cases where the States concerned agree on a system of catch limitation.

It remains to test the Icelandic claim by reference to those constituent elements.

As to the first, I have already stated that Her Majesty's Government does not dispute that there may now be a case for an agreement on some system of catch limitation.

As to the second element, Iceland has made it abundantly clear that she seeks to proceed unilaterally, and not by agreement as the law requires.

As to the third element, Iceland has made it equally clear that she *does* intend to discriminate against the fishermen of other States in favour of her own. In essence, Iceland has sought a monopoly over these fishing grounds and was not prepared to accept any restriction on her own fishing. This is totally at variance with the manner in which States regulate their common interests in a high seas fishery when a conservation need arises. The law is based upon the concept of *res communis* and this Court will readily see that monopolistic practices cannot be reconciled with such a concept. Conservation and discrimination are not synonymous.

Thus, on two of the three constituent elements in the customary and treaty rules relating to conservation of fisheries on the high seas, Iceland's claim fails.

I would emphasize that the Icelandic claim which fails by reference to international law is the unilateral claim to *exclusive* fisheries. The matter would be quite different if Iceland were prepared to proceed by way of agreement. Her Majesty's Government are fully prepared to examine any case for conservation, to participate in agreed conservation measures and to limit the British fishing effort where this is required by the scientific evidence or by the need to recognize the preferential rights of a coastal State. But the participation of Her Majesty's Government in any necessary conservation régime would arise from an agreement. This is the way in which international law requires the parties to the present dispute to proceed: by agreement and *not* by unilateral action; and by agreeing on conservation measures and a quota system, and *not* by asserting a monopoly.

I turn from that to the fourth possible ground upon which Iceland might seek to base her claim, that is the concept of what is called the patrimonial sea. I trust that the Court will understand the difficulty in which I am placed at this juncture by the absence of an Icelandic Memorial. I simply cannot say whether the Icelandic claim is really based upon the patrimonial sea concept. Whereas Icelandic legislation and ministerial statements have clearly invoked the continental shelf concept and the need for conservation—so that I could deal with those grounds with some confidence—there is nothing in the Icelandic legislation which specifically relates the Icelandic claim to this concept of the patrimonial sea. Only in the letter [1] dated 11 January 1974 addressed to the Registrar by the Icelandic Foreign Minister does one begin to find a reference to the somewhat similar concept of an economic zone. Her Majesty's Government do, however, accept, as I have said, that it is incumbent upon them to assist the Court, and therefore I propose to deal with this possible ground for the sake of completeness, in the belief that the Court might wish to have it examined, however tenuous its connection with the Icelandic claim might be. It is my submission that this concept of the patrimonial sea—or exclusive economic zone—cannot support the Icelandic claim.

The Court will be aware that this concept is one of very recent formulation. For a clear exposition of it one has to look at the Montevideo Declaration of May 1970, or the Declaration of Santo Domingo of June 1972. I do not think there can be any doubt that declarations of this kind are addressed to the forthcoming revision of the Law of the Sea, to be undertaken by the Third United Nations Conference on the Law of the Sea. This view is reinforced by the recommendation to African States which emerged from the Regional Seminar held at Yaoundé in June 1972. These were phrased in terms of the policy—I emphasize that word policy—which African States were urged to uphold at the forthcoming Law of the Sea Conference. And similarly, in the more recent *Declaration on the Issues of the Law of the Sea*, which issued from the meeting of the Council of Ministers of the OAU in May 1973 (*Report of the United Nations Sea-Bed Committee for 1973*, A/9021, Vol. II, p. 4), the section on the "Exclusive Economic Zone Concept including Exclusive Fishery Zone" is part of a series of declarations of policy, directed towards the issues at the forthcoming Conference on the Law of the Sea, and plainly *de lege ferenda*.

More recently still, the Fourth Conference of Heads of State or Governments of Non-Aligned Countries which was held from 5 to 9 September 1973, adopted a resolution concerning the Law of the Sea. After noting in the preamble "the need for further co-ordination between Non-Aligned Countries

[1] II, p. 462.

to ensure recognition of certain principles at the Conference on the Law of the Sea", the resolution supported "the recognition of the rights of coastal States in seas adjacent to their coasts . . . within zones of national jurisdiction not exceeding 200 miles . . . for the purposes of exploiting natural resources . . ." (UN doc. A/9330, p. 53). Clearly the resolution speaks of recognition as an aim, as something to be sought at the forthcoming Conference.

I do not believe that the Court would wish me to embark upon a discussion of the arguments for or against a revision of the law of the sea which might adopt the concepts of the "patrimonial sea" or an "economic zone". These remain inchoate concepts and there are many different proposals. Those are matters for the representatives of all the States concerned in the forthcoming Conference and little purpose will be served by speculating upon what the outcome of their deliberations will be. I would merely say this: if the conference were to reach some agreement on, for example, a convention embodying such a concept, that would clearly have its impact upon the development of the law and may establish a basis for the exercise of such jurisdiction in the future. But speculations of that kind cannot affect the present case.

The important point—and the only point relevant to the dispute before the Court—is that, whether Iceland regards her claim as justified by this concept or not, it is a concept *de lege ferenda* and not a part of the established law. Indeed, if one examines the concept in the light of the recognized sources of international law according to Article 38 of the Statute, it could not be otherwise. There is no treaty—certainly not between the United Kingdom and Iceland—recognizing any such legal concept. There is no concordant, general practice of States, backed by any *opinio juris* which reflects the recognition of this concept as a rule of customary international law. On the contrary, there are at this stage different and tentative proposals by a number of States as to what the law should be, when revised after a process of negotiation; and this possibly on a regional basis in sea areas far removed from the region with which the Court is now concerned. And there is certainly no evidence of the concept as a "general principle of law". Thus, we are inevitably forced to the conclusion that, even if Iceland were to seek to rely on that concept, it cannot afford a legal basis for the Icelandic claim.

I therefore come to the fifth and last possible basis for the Icelandic claim: the doctrine of "permanent sovereignty over natural resources". This is a doctrine somewhat related to the concept of the patrimonial sea, at least in the minds of advocates of the latter. And much of what I have just said regarding the patrimonial sea applies equally to this doctrine. The Court will be aware that the linking of the doctrine of sovereignty over natural resources to the matter of maritime jurisdiction is very recent indeed. It first occurred at the General Assembly of the United Nations when on 18 December 1972 it adopted resolution 3016 of the Twenty-seventh Session. There has been a repetition in subsequent resolutions of the Economic and Social Council and in General Assembly resolution 3171 of 17 December 1973. However, the delegations were perfectly well aware that they must not prejudge the decision of the forthcoming Law of the Sea Conference on the limits of national jurisdiction. Thus, the Icelandic delegate in the debate in the plenary of the General Assembly of 17 December 1973 has said the following:

> ". . . it has been maintained that operative paragraph 1 prejudges the outcome of the Law of the Sea Conference. The co-sponsors certainly have nothing of that sort in mind and are indeed all actively involved in, and interested in the success of, the forthcoming Law of the Sea Con-

ference. The draft resolution we have here proposed is not a juridical text aimed at creating marine law or establishing new boundaries on the ocean. Far from it. It is purely and simply a draft resolution dealing with economic matters and sovereignty over natural resources. That is why the limits of that sovereignty over natural resources are nowhere defined in the draft resolution, apart from the reference to the sea-bed area 'within national jurisdiction'. I should like to stress that nobody, however, knows today what 'national jurisdiction' means in this respect and how far out from the coast it extends. That is not a matter for us to resolve in the Second Committee or here in the Assembly, but a matter which is solely up to the Law of the Sea Conference. We are not dictating anything to the Conference in this respect or prejudging the issue, but are simply referring to the sea-bed area within national jurisdiction as it will later be defined by the Law of the Sea Conference.

The same may be said of the resources of the superjacent waters. Operative paragraph 1 of the draft does not prescribe any limit for the extent of coastal State jurisdiction in this respect. That is again for the Law of the Sea Conference to decide and not for us to dictate.

We are in this paragraph simply reaffirming the sovereignty of States over the resources of the superjacent waters as far out as the Conference will later decide. It is totally wrong, therefore, to maintain that by this wording we are prejudging the work of the Conference. The decision on the limits is left entirely to its discretion.

We are well aware of the fact that some States believe that the rights of coastal States over the superjacent waters extend only 12 miles out. Others maintain that the limit is 50 miles or even 200 miles. The draft resolution does not support any of these limits but leaves the issue open for the Law of the Sea Conference to decide." (A/PV.2203.)

In other words, it has been fully recognized that these resolutions leave open the question. They contemplated a possible extension of the doctrine of permanent sovereignty to resources within the limits of national jurisdiction *whatever those limits might be.* In short, they made no attempt to determine those limits. The resolutions are, therefore, for the purposes of the dispute now before this Court, totally irrelevant.

This conclusion, Mr. President, is not a very surprising one. Much has been said, and written, on the effect of resolutions of the General Assembly and similar bodies. Her Majesty's Government has no wish to deny the valuable role which bodies such as the General Assembly play in promoting the progressive development and codification of international law. However, as this Court will be well aware, when one is concerned not with the obligations of States as members of a particular international organization and dealing with matters internal to the organization, but is concerned with propositions of general international law, there is no claim that resolutions create law as such. Such resolutions are not a source of law, for the purpose of Article 38, and do not pretend to be. It is for this reason that it is the practice of the General Assembly to promote law-making by treaty, whether concluded through its own deliberative procedures or by way of an international conference convened specifically for the purpose. In relation to the revision of the law of the sea, the Assembly has already decided upon the latter procedure—the Third United Nations Conference on the Law of the Sea—the first substantive session of which begins this year. The treaty is a true source of law, and this the Assembly well recognizes. The Assembly does not attempt to

substitute its own resolutions for the treaty as a source of law. Indeed, only a moment's reflection will show how such an attempt would not only run counter to Article 38 of the Statute but would also create havoc with the constitutional procedures for ratification of treaties which most States have. Member States of the United Nations and similar bodies do not intend their resolutions to be regarded as sources of general law and it does no service to the cause of international law to pretend that they are so.

In summary, the position I submit is as follows. In seeking to challenge the established law and to exclude United Kingdom fishermen, the burden of proving that international law permits Iceland's unilateral claim to a 50-mile exclusive fishery limit and requires its recognition by the United Kingdom rests firmly upon Iceland. None of the grounds of justification which might be alleged—be they the continental shelf doctrine, preferential rights, a conservation need, the patrimonial sea or permanent sovereignty—afford any true justification in international law. That conclusion emerges inescapably from an examination of the sources of international law.

There remains one final argument which I feel in duty to this Court bound to explore. This is that, although not necessarily based upon any of the grounds I have previously examined, there nevertheless exists a body of State practice, similar to that which Iceland proposes to adopt, which must be recognized as creating a new customary rule supporting Iceland's position. I would emphasize that this argument does require Iceland to show that a *new* customary rule has been created, contrary to the previous customary rule.

As the Court will have seen, Her Majesty's Government has tried to set out, for the assistance of the Court, such State legislation or claims as are known to Her Majesty's Government and might support Iceland's claim to a fisheries jurisdiction in excess of 12 miles. This appears at paragraphs 245 to 256 of our Memorial.

Any argument which Iceland might adduce, based upon an allegation of similar practice by other States is, inevitably, an argument that Iceland's own practice conforms to customary international law. There is no alternative. The sources of law are specified in Article 38 and the argument must be tested in the light of those sources. The only one which is even remotely appropriate is Article 38 *(b)*—"International custom, as evidence of a general practice accepted as law".

The letter addressed to the Registrar of the Court by the Icelandic Minister for Foreign Affairs, dated 11 January 1974, is in effect an argument that there does exist sufficient evidence of a general practice accepted as law. Admittedly, it does not use that phrase. But if the Icelandic Minister cannot cite any treaty binding on Her Majesty's Government, nor any "general principle of law", he must perforce be relying on the proposition that the Icelandic claim is consistent with customary international law. As I have said, there is no alternative.

Thus, the Court must look to the criteria which govern the establishment of a new rule of customary international law. I would emphasize that, since the Icelandic claim to jurisdiction is a challenge to the established law, it does require proof of a new rule. Any new rule must conform to certain established criteria which are well known.

First, there must be a concordant practice by States; what Article 38 *(b)* terms a "general practice". I believe that, by practice, what is meant is actual practice, the active assertion of a right or claim as opposed to a mere assertion of a right *in abstracto*. A paper claim, a unilateral declaration or piece of legislation which is not actually enforced against other States will not con-

stitute actual practice. The letter from the Icelandic Foreign Minister does not, with respect, face up to this difficulty. To say that a proposal for an exclusive economic zone, to be made at a future conference, enjoys very wide support is not at all the same thing as demonstrating that there exists now a general practice accepted as law. To equate the two things is to misconstrue totally the nature of the practice required as proof of customary international law. The essence of State practice is that it is actual conduct, involving the assertion of a right or claim, which is of a kind that other States may either acquiesce in or protest against. But how can other States protest against proposals to be put before a forthcoming conference? They have no basis for such a protest. States have every right to support whatever proposals seem to them to be desirable. Correspondingly, such proposals cannot qualify as State practice and the attempt to treat them as such not only destroys the distinction between *lex lata* and *lex ferenda* but wreaks havoc with all the accepted notions of what is meant by a rule of customary international law.

Then there is the further question of how "general" the practice must be. Even assuming the practice is actual, and not abstract; assuming also that it is concordant or uniform, the question remains "How many States must subscribe to it before it qualifies as a rule of general, customary international law?"

No-one would suggest that complete unanimity is required—for that would give any one State a virtual veto over the development of new rules. But equally no-one would suggest that a minority practice would suffice—for that would lead to a total breakdown of international law as a body of rules of general application. It would fragment under the impact of minority practices until there remained no law, universally recognized as such, and international law as we know it would virtually disappear. What is required then, is a practice so widely and generally observed that it can be said to represent the practice of the international community as a whole, including those States specially affected. I remind the Court of what was stated in the *North Sea Continental Shelf* cases:

> ". . . a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests were specially affected. In the present case, however, . . . the number of ratifications and accessions so far secured is, though respectable, hardly sufficient." (*I.C.J. Reports 1969*, p. 42.)

The Court may recall that, at that time, the Convention had received 37 ratifications; yet this was not sufficient to enable the rule contained in Article 6 to be regarded as a customary rule, a rule of general application.

Again, it may be useful to recall the Court's Judgment in the *Anglo-Norwegian Fisheries* case. The issue there was whether the 10-mile rule for bays was a rule of customary international law. The United Kingdom adduced evidence of its adoption by a number of States: by the United Kingdom herself, by Germany, France, Belgium, Denmark, the Netherlands, the United States, Spain, Portugal and Uruguay. And, in addition, the United Kingdom showed that, at the 1930 Hague Codification Conference, the majority of States had favoured the 10-mile rule. (See *Pleadings*, Vol. 1, pp. 68-71.) In reply, Norway cited exceptions to the 10-mile rule by Canada, Australia, the United States, France, Tunisia, the USSR, Sweden, Portugal and Argentina: a total of 9 States, or 10 including Norway herself. The Court concluded that the 10-mile rule could not, therefore, qualify as a rule of general application. If I may recall the actual words used by the Court, they are as follows:

". . . although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law." (*I.C.J. Reports 1951*, p. 131.)

Thus, to make an admittedly broad generalization, 37 States are *not* enough to provide the requisite general practice, and 10 may be sufficient to prevent it. I say the generalization is broad because, obviously, it is not simply a matter of counting heads. Much will depend upon the particular rule alleged and the degree of involvement in the practice of the rule by the States concerned. What is clear, however, is that the Court rightly demands a very high degree of generality before it will accept that some practice has constituted a new rule of customary international law. In the *North Sea Continental Shelf* cases, the Court stated that ". . . State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform . . ." (*I.C.J. Reports 1969*, p. 43). The phrases "virtually uniform" and "States whose interests are specially affected" are, in my submission, both crucial and correct.

I turn now to the remaining criteria for the emergence of a new customary rule. They can be dealt with briefly.

The second requirement for a new customary rule is that the practice must be continued over a considerable period of time. I would remind the Court of what was stated on this point in the paragraph from which I have just quoted in the *North Sea Continental Shelf* cases:

"Although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary law . . . an indispensable requirement would be that within the period in question, short though it might be, State practice . . . should have been both extensive and virtually uniform . . . and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved." (*I.C.J. Reports 1969*, p. 43.)

Whilst the Court was concerned with the question of the formation of a new custom on the basis of a conventional rule, in my submission the position is not dissimilar in the present case. All I wish to add on the time element is that, whilst the contemporary view may be to lessen the insistence upon a long period of practice, it is evident that a repetition of conduct is required. Occasional or isolated acts will not do.

Thirdly, the practice must be based upon the necessary *opinio juris*, the belief that it is required by or consistent with prevailing international law.

And, fourth, the practice must receive general acquiescence by other States. Or, to put it in other terms, it must not be opposed by the active protest of other, interested States.

I believe those four essentials of a new customary rule of law correctly state the law. It remains for us now to examine the State practice upon which Iceland might seek to rely to prove that a new rule of customary international law has evolved, permitting a coastal State to claim exclusive fisheries up to a limit of 50 miles from her baselines.

The Court will appreciate why this practice has been summarized in a somewhat tentative way in paragraphs 245 to 248 of our Memorial as being an argument which Iceland might have put forward. We referred to the argument because we considered it right to do so. It is not, however, necessary

that Her Majesty's Government should urge it upon the Court. It is an area in which it is difficult to show how far any particular claim has met with a formal protest by other States. As Her Majesty's Government has emphasized at paragraph 246 of the Memorial, States are under no obligation to publish the protests they make or receive. What we do know is that the Icelandic claim has met with the most emphatic protests by interested States.

Subject to the limitations inherent in any attempt to summarize State practice, it appears that even the construction most favourable to Iceland can produce a total of only 25 States, including Iceland, which today claim exclusive fisheries beyond 12 miles. The number now claiming an exclusive fishery zone of 12 miles or less is over 80. To the details given at paragraph 245 of our Memorial we must now add five further States: Pakistan which in March 1973 claimed a fishery zone of 50 miles; Tanzania, which on 24 August 1973 claimed a territorial sea of 50 miles; Iran, with a claim to a fisheries zone of 50 miles; the Malagasy Republic with a claim to 50 miles' territorial waters and a further 100 miles as a continental shelf; and the Somali Republic with a claim to a territorial sea of 200 miles.

Her Majesty's Government have reserved their rights in respect of each of those claims. Even if we were to assume that the 24 other States had claims identical to that of Iceland—which is not, in fact, the case—it is clear that a minority practice of this kind, and of so limited an application, could not conceivably qualify as a "general practice", as the "virtually uniform" practice which the Court regards as necessary to support a new rule of customary international law. The law could not countenance a situation in which some 25 States could virtually legislate for the rest of the world, so as to create new law and confer upon themselves new legal rights, opposable to the existing legal rights of the majority. About 148 States, including about 118 coastal States, now form the international community.

When one says that international law rests essentially upon the consent of States, it means that the minority cannot change the law so as to bind all States. Thus, once a rule is established, based upon a common consent, it cannot be for the minority to change the rule. The Court's insistence upon a practice which is "virtually uniform" is, therefore, the only realistic way of reconciling the growth of new customary rules with the sovereignty of States.

I accept that many of the States which today claim 12 miles fishery jurisdiction or less have announced that they will support proposals for an economic zone of 200 miles at the Law of the Sea Conference. But for many of these States such support will be conditional upon agreement on a variety of conditions and safeguards. It will, in short, be part of what I might call a "package deal". In my submission that does not convert one element in the proposed "package", namely the concept of the economic zone or the limit of 200 miles, into *lex lata* at this time, that is to say, even before the negotiators have gathered together. Such a view would tend to nullify the whole purpose of the forthcoming conference.

The Icelandic argument must fail on this very first essential of custom. However, for the sake of completeness, I will, if I may, make one or two further, brief observations which may assist the Court.

There is no real evidence that the practice of these 25 States is "concordant" or uniform. Indeed, I cannot even assure the Court that it is all "practice". Some of the jurisdictional claims may well not be enforced at all against other States, or nationals of other States, so that their evidentiary value is highly speculative. As to the need for uniformity, it is certainly true that there is no uniformity as to limits. The zones claimed vary from 12 to 200 miles and

include such varying limits as 18 miles, 25 miles, 30 miles, 50 miles, 70 miles, 120 miles and 130 miles. Perhaps more important is the factor that they are by no means all clearly "exclusive". This is particularly true of claims by Latin American States which make up almost half of the number of States claiming exclusive fisheries jurisdiction beyond 12 miles. Many of these States in practice make provision for the continuation of fishing by foreign fishermen—so that it may well be that, in their actual application, these jurisdictional claims are fully consistent with international law and the rights of other nations.

The basis of these claims again varies considerably. Some appear related to an asserted extension of the continental shelf doctrine so as to apply it to swimming fish, whilst others are based upon an assertion of a conservation need. It is impossible to say whether, in such cases, the conservation need can be scientifically demonstrated or whether foreign fishing interests, with established fishing practices, are affected; certainly these matters are outside the knowledge of Her Majesty's Government.

The extraordinary diversity of these claims leads, I think, to two quite separate conclusions.

First, there can be no question of any uniform practice which might support a proposition by Iceland concerning the establishment of a new rule of customary international law permitting an exclusive fisheries zone of 50 miles—and this quite apart from the decisive argument that it is a minority practice in any event.

Second, the Court's judgment in the present dispute can have no bearing upon these other, widely disparate claims. I realise, of course, that in any event Article 59 of the Court's Statute confines the binding effect of any judgment to the particular case before it and the particular parties involved. But, in the submission of Her Majesty's Government, any judgment by the Court could not be treated—by analogy or extrapolation—as having any bearing on the question of the legality of these other, widely differing claims.

I would make one final observation regarding custom. It has never been suggested, either by Iceland or anybody else, that the Icelandic claim falls under the special category of a "local" or "regional" custom. Nevertheless, it may be useful to clarify why this concept is inappropriate here. The Icelandic claim is a claim *erga omnes*, a claim which purports to give her rights over high seas resources as against *all* States. There is no question of this being a purely regional or local matter, which affects only certain States within a defined region or community. Indeed, even if it were, the one paramount requirement of a local or regional custom is that it should be based upon the consent, express or tacit, of *all* the States concerned. Here we have precisely the opposite situation. Taking the "region" as the North-East Atlantic, the position in fact is that all the States *except* Iceland abide by the 12-mile limit. Iceland is in a minority of one in pursuing her present claim and, as these proceedings witness, both the United Kingdom and the Federal Republic of Germany have protested emphatically against the claim. We must therefore set aside the concept of local or regional custom. It can have no application to the present dispute.

We reach, therefore, a very clear conclusion. Whatever argument or ground is advanced to justify the Icelandic claim, it has no basis in present international law which can warrant the claim being made and enforced against the United Kingdom. Her Majesty's Government are not under a duty or obligation to recognize the claim. The possible grounds of justification referred to both in the written Memorial and in my own oral statement to the Court are

both unsound in law and unacceptable by reference to the sources of law enumerated in Article 38 of the Statute.

As indicated in the written Memorial, this negative conclusion does warrant some examination of the role which this Court can play in the resolution of disputes such as the present one. Indeed, upon examination, it appears to Her Majesty's Government that the role of the Court is far from negative.

Having rejected all the grounds of legal justification which Iceland might advance—as the Court must surely do according to the present law—the Court is not, of course, free to innovate by finding completely new grounds of justification, not part of the existing law. The Court cannot legislate: that much is clear. Her Majesty's Government fully recognize that, amongst a number of States, there is dissatisfaction with the present state of the law. Were that not so, there would be no need to contemplate a new Law of the Sea Conference. However, the revision of the law is not a matter for this Court, but for a plenipotentiary conference in due course. It is not, I submit, for the Court to seek to anticipate what future revision might be made. Members of the Court will be well aware of the difficulties involved in the task of compromise and protracted negotiation which will be essential before agreement upon any revision can be reached.

Indeed, upon reflection, one can easily see that the Court helps most by clarifying what is the existing law. In this way, the Court lends the weight of its authority to the position adopted by the General Assembly, namely that the revision of the law is a matter for the forthcoming Conference.

In what I have said so far, I have been addressing argument to the submissions contained in subparagraphs *(a)*, *(b)* and *(c)* of paragraph 319 of the Memorial.

I have already referred to subparagraph *(d)*; that was the submission in which we asked the Court to declare that Iceland was under an obligation to make compensation to the United Kingdom. As I have already explained to the Court, in deference to the happier relations now prevailing between the two countries, we have decided to withdraw that submission.

I now come to subparagraph *(e)* of paragraph 319 and, if the Court permits me, I will read that in full:

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

By this submission Her Majesty's Government recognizes the role and importance of equitable principles in the solution of a problem of the kind

now before the Court, where the resources of the sea are the subject-matter of the dispute and where the Court has a constructive function to perform. Her Majesty's Government in submission do not, of course, ask the Court to act in any legislative capacity or to act *ex aequo et bono*. What they do is to ask the Court to apply equitable principles to the issues which as it has done on a previous occasion. I refer to the *North Sea Continental Shelf* cases, where the Court said: ". . . it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles . . ." (*I.C.J. Reports 1969*, p. 47). While not disposed to apply "equity simply as a matter of abstract justice", the Court did however clearly indicate in those cases that the need to apply equitable principles had its foundation in ". . . very general precepts of justice and good faith . . ." (*I.C.J. Reports 1969*, p. 46.)

Nor need I remind the Court of the words of one of the best known members of the tribunal which immediately preceded it in this building. It was Judge Manley Hudson who said: "What are . . . known as principles of equity have long been considered to constitute a part of international law . . ." and again ". . . under Article 38 of the Statute, if not independently of that Article, the Court has some freedom to consider principles of equity as part of the international law which it must apply" (*The Diversion of Water from The Meuse* case, *P.C.I.J., Series A/B, No. 70*, pp. 76 and 77).

In relation to the present case, there are, in my submission, three relevant rules of law. First, the Parties are under an obligation to negotiate in good faith. Given a dispute of the present kind, this obligation is paramount. As we have shown in our Memorial, the whole pattern of State practice in cases where a conservation need is established and the interests of two or more States are involved is to regulate the exploitation of the resource by common agreement. This is the manner in which all the objections to unilateral action can be met. There can be no criticism that the Parties are pre-judging the legislative role of a plenipotentiary conference, for they proceed by agreement and without prejudice to any general rule of obligation. There can be no criticism aimed at the Court that it has surpassed its judicial function, for the Court does no more than remind the Parties of a pre-existing obligation which operates automatically when disagreement over a common resource arises.

This obligation is not difficult to fulfil in the present case. The machinery exists. The North-East Atlantic Fisheries Commission is already in being, capable of ascertaining the facts and of indicating, as an expert body, what measures of conservation or catch limitation might be needed. Her Majesty's Government stands ready to embody in an agreement with Iceland whatever measures might be recommended on an objective scientific basis.

Indeed, the Parties have already reached an interim agreement. Her Majesty's Government see no reason why, on the basis of equitable principles such as I shall refer to shortly, the Parties should not proceed to an agreement which would fully and finally resolve this dispute. A final agreement would, of course, differ materially from the interim agreement, but the point which I wish to emphasize at this juncture is that the path to a solution of this dispute lies through agreement and that leads me to the second basic rule. That is, that once there exists adequate proof of a conservation need, the Parties are under a duty to reach agreement upon a conservation régime. Their agreement, whether bilateral or multilateral, must embody equitable principles. I cannot emphasize too strongly that it is the proof of the scientific need for conservation which transforms the relationships between the interested States and enjoins the application of equitable principles. The reason is clear.

If we presuppose a resource which is *res communis*, and under-exploited, the principle of freedom of fishing of course means exactly what it says. There is no reason for restrictions on fishing effort on anybody's part. But once that situation changes and the common resource is in danger of over-exploitation, then the common interest demands its conservation. Freedom of fishing can no longer be absolute and each State must, in equity, have regard to the interests of other States. That is the whole basis of the North-East Atlantic Fisheries Convention of 1959 to which both Iceland and the United Kingdom are parties. That Convention in the preamble contains the following recital:

> "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." (Application, Annex F, p. 17, *supra*.)

And there, at the end of the quotation, you have the clear proposition that, given a conservation need, the matter is one of *common concern*, not for unilateral action but for common action and, inevitably, on the basis that each party must have regard to the interests of the other parties. Article 2 of the High Seas Convention of 1958 is to precisely the same effect. Having set out the four basic freedoms, including freedom of fishing, it concludes by stating: "[these freedoms] . . . shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas" (Memorial, p. 331, *supra*).

In a very real sense, the freedom of fishing becomes coupled with a duty to exercise that freedom in such a manner that the rights of other States are not injured. The concept of reasonable regard to the interests of others imports the necessity to produce a just and equitable apportionment of the resource. Certainly there can be no easy or automatic formula for that, but State practice does indicate factors likely to produce a just and equitable result. Her Majesty's Government accept that there is no closed category of the factors or considerations relevant to producing a just and equitable result. It is perhaps at this juncture that the Parties can benefit most of all from the assistance of the Court. As suggested at paragraph 306 of the Memorial, certain factors seem evidently relevant. Their importance is such that, with the permission of the Court, I should like to read them *verbatim*:

> "(i) The special position of Iceland as a State dependent on coastal fisheries in the sense of the Resolution on Special Situations relating to Coastal Fisheries adopted at the 1958 Geneva Conference.
> (ii) The need to afford to Iceland such preferential share of the total catch as would be equitable, taking into account the economic dependence of all other States interested in the fisheries.
> (iii) The fact that Iceland has full opportunity for participating in the management of the resources in accordance with the provisions of the North-East Atlantic Fisheries Convention of 1959.
> (iv) The need to take account of the established interests and acquired rights of other States fishing in the area, with due weight being paid to the length of time for which those interests have been maintained and those rights enjoyed and the economic implications of any change in them for the communities whose livelihood may depend upon them.
> (v) The need to resolve disputes within the framework of established

machinery, including that of the North-East Atlantic Fisheries Convention of 1959, or by reference to arbitration or judicial settlement, rather than by unilateral action.

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

The Court will see that the first three of those factors are designed specifically to produce an equitable and just result for Iceland. Iceland's entitlement to a special position as an economically dependent coastal State, her entitlement to a preferential share and her opportunity to participate in the management of the resources can be recognized and given full weight.

But, correspondingly, equity would demand that the established, acquired rights of United Kingdom fishermen must also be recognized. This is the importance of the fourth factor. The United Kingdom fishermen are not newcomers to these resources. They have fished there as a matter of full legal right for centuries, and their economic dependence upon them is just as real.

The preservation of existing rights is no novelty, but is established practice in relation to high seas fisheries. If one examines the very many conservation agreements to which reference is made at paragraphs 270 to 274 of the Memorial, it is evident that they envisage arrangements which, whilst recognizing the special needs of coastal States, equally take account of and protect the traditional rights of other fishing States, striking an equitable balance between the two.

Indeed, even where coastal States have extended their exclusive fishing zones up to 12 miles, the practice followed by most States has been to respect any traditional fishing rights acquired by foreign fishermen. Thus, one finds this is done in the legislation of many countries, such as that of Canada in 1970, the United States in 1966, Spain in 1967, Japan in 1967, Australia in 1967, and the various European States parties to the 1964 European Fisheries Convention. The same pattern emerges in the very many bilateral treaties concluded by States which have proceeded in this way. It is a practice which reflects the concern of the overwhelming majority of States at the Geneva Conference of 1958 and that of 1960 to preserve the so-called historic rights of non-coastal States. There is reason to believe that all rights in a resource regarded hitherto as *res communis* are protected in this way. If I may give an analogous example: Article 5 (2) of the Convention on the Territorial Sea and the Contiguous Zone of 1958, in permitting a change to a system of straight baselines, required the coastal States to recognize the preservation of rights of innocent passage in areas of water which, as a result of the change, became internal waters rather than territorial waters. Thus, this fourth factor is wholly in accord with the established law and practice. The fifth and sixth factors emphasize the need to resolve difficulties within the established framework of the NEAFC Convention of 1959, rather than by unilateral action, and to take heed of the general context of international law within which all States must operate. The law may well change over the years. The parties would be required as a matter of equity and common prudence to take note of such changes.

The third, and last, basic rule is that equity demands that the parties recognize that the resource in question is *res communis*. Both parties have obligations towards the international community as a whole. They do not have absolute freedom to agree upon a pattern of exploitation which would

lead to the eventual annihilation of the fish-stocks. They must, in short, accept a responsibility to deal with these resources as part of the common heritage of all mankind.

Her Majesty's Government believe that, by the exercise of a positive role in setting out the obligations incumbent upon the parties in reaching a just and equitable result, this Court can make an important contribution to the settlement of this dispute. As the Court will see, this is in essence, what the final submission of Her Majesty's Government amounts to. It is complementary to the other three remaining submissions.

Mr. President, I have now presented the detailed oral arguments of Her Majesty's Government on the issues which arise in this case. The Agent for the United Kingdom will transmit to the Registrar a written statement of the submissions. These submissions are as follows:

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

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

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

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

Those are the submissions of the United Kingdom which I make, on its behalf, in this case. I would like, if I may, to thank you, Mr. President and Members of the Court, for the very patient hearing which you have given me. As I think you may be aware, urgent affairs of State unhappily require me to return to London later today but the Agent will, of course, remain at the disposition of the Court, together with counsel, and as I believe that the Court would prefer that the answers to its questions—and any further questions which it may wish to put—should be given orally, counsel will be available to give those answers at a date and time which will be convenient to the Court.

QUESTIONS BY JUDGES PETRÉN AND SIR HUMPHREY WALDOCK

The PRESIDENT: In addition to the questions put this morning, some other questions by Members of the Court will be put to the Agent of the United Kingdom now. It is Judge Petrén whom I will ask to kindly address his question.

Judge PETRÉN: My question will be the following one: is it the opinion of Her Majesty's Government that the interim agreement of 13 November 1973 definitively regulated the relations of the two Parties, so far as the fisheries in question were concerned, for the two years covered by that agreement, i.e., for the period from 13 November 1973 to 13 November 1975, or would it in the opinion of Her Majesty's Government be possible for the Court now to replace that regulation with another?

Judge Sir Humphrey WALDOCK: Would counsel for the Applicant kindly assist the Court by specifying precisely the consensus that they maintain appeared in 1960 at the Second United Nations Conference on the Law of the Sea and, manifested in practice, became a general rule? Was it *(a)* the joint United States-Canadian proposal for a 6-mile territorial sea and 6-mile exclusive fisheries, subject to a phasing-out period; or *(b)* that proposal as amended by Brazil, Cuba and Uruguay; or *(c)* the 12-mile exclusive fishery limit allowed by the joint United States-Canadian proposal and inherent in the minority proposal for a 12-mile territorial sea; or *(d)* some other principle or understanding?

Second question: Would counsel for the Applicant kindly specify what in their view is the legal basis of the concept of preferential rights or preferential position in the allocation of catch quotas which the United Kingdom appears to recognize in its Memorial on the Merits. Is the 1958 resolution on Special Situations Relating to Coastal Fisheries now regarded by the United Kingdom as expressive of a rule of law, or does it consider this concept essentially as a matter of equity?

Third question: Will counsel for the Applicant kindly give the Court some further indication as to what, in their view, the concept of a coastal State's preferential rights or preferential position entails in relation to *(a)* the general right to freedom of fishing mentioned in Article 2 of the Geneva Convention on the High Seas and *(b)* the concept of historic or traditional fishing rights?

Fourth question: Leading counsel for the Applicant has referred to the recent multilateral agreement concerning the Faroes as an illustration of an appropriate application of the concept of the preferential rights or preferential position of a coastal State in a special situation. Will counsel please indicate:

(a) whether and to what extent in that agreement the concept of historic or traditional fishing rights was also applied;

(b) more generally, to what extent the concepts of preferential rights, or preferential position of a coastal State, and of historic or traditional rights, have received application or been discussed in bodies operating under the North-East and North-West Atlantic Fisheries Conventions, or in connection with any other Atlantic Fisheries agreements such as that between Norway, the Soviet Union and the United Kingdom concerning Arctic Cod.

Fifth and final question: Will counsel for the Applicant kindly indicate whether they draw any distinction between *(a)* historic or traditional fishing rights as a basis for the phasing-out arrangements connected with the 12-mile exclusive fisheries zone, and *(b)* those rights as a basis for determining catch quotas outside that zone?

The PRESIDENT: I understand some further questions [1] will be addressed to the Agent of the United Kingdom tomorrow in writing, and they will probably be forwarded to him in the course of tomorrow.

Now we are at the close of today's hearing, I wish to thank the Agent of the United Kingdom and the Attorney-General for the assistance they have granted the Court in this matter. A number of questions, as you have noticed, have been put by Members of the Court this morning and this afternoon, and some will be addressed to the Agent tomorrow. The Court will therefore hold a further sitting to hear the replies to be given on behalf of the United Kingdom. Subject to that, and on the usual understanding that the Agent of the United Kingdom will remain at the disposal of the Court for any further information it may require, I declare the hearing closed. The date for any further hearing for the replies to the questions put or to be put by Members of the Court will be announced shortly.

The Court rose at 4.55 p.m.

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[1] See pp. 505, 507, *infra*, and **II**, p. 473.

SIXTH PUBLIC SITTING (29 III 74, 10 a.m.)

Present: [See sitting of 25 III 74.]

ARGUMENT OF MR. SLYNN

COUNSEL FOR THE GOVERNMENT OF THE UNITED KINGDOM

The PRESIDENT: The Court meets this morning in the *Fisheries Jurisdiction* case of the United Kingdom against the Republic of Iceland in order to afford the Agent of the United Kingdom the opportunity to reply to a series of questions put by Members of the Court.

Mr. ANDERSON: Mr. President, Members of the Court, on 25 March a number of questions were asked of the United Kingdom in this case. These questions have been very carefully considered and we are grateful to the Court for granting us the time which has elapsed since 25 March in order to prepare our answers. In the unavoidable absence in London on public business of the Attorney-General, with the leave of the Court I will ask Mr. Gordon Slynn, Junior Counsel to the Treasury, to give the United Kingdom's answers to the Court's questions.

Mr. SLYNN: Mr. President, it seems to me, and to those who appear with me who have in their various specializations contributed greatly to the preparation of the answers to these questions, that the most helpful course would be to take the questions in turn, as they were asked by Members of the Court, and to deal with them, rather than to seek to group them together in so far as there is a relation between some of the questions. To the extent that any material given in one answer is relevant also to a later answer, I shall incorporate it by reference rather than by repetition, as I anticipate that the Court would prefer.

I begin, therefore, Mr. President, if I may, with the questions put to Her Majesty's Government by Judge Jiménez de Aréchaga on 25 March.

The first of those questions, the text of which appears at page 451, *supra*, refers to the concept of preferential fishing rights of States in a special situation and asks the Applicant to examine the applicability to the present case of the concept of preferential rights, together with the procedure for implementing them, as they were defined in the amendment by Brazil, Cuba and Uruguay which was incorporated in the final proposal which nearly secured a two-thirds majority at the 1960 Conference.

Mr. President, it would, I think, be of most assistance to the Court, in answering this question, if I begin by stating what we understand to be the background of that Special Situations resolution of 1958, and of the amendment proposed by the three Powers in 1960, and if I then turn to examine the applicability of the concept of preferential rights and the procedure for implementing them to which the question refers.

As is set out in paragraphs 187 to 190 of the United Kingdom Memorial, the resolution on Special Situations Relating to Coastal Fisheries, adopted by the United Nations Conference on the Law of the Sea at Geneva in 1958, arose in the context of discussions concerning the special interest of the

coastal State. As Her Majesty's Government sees it, according to classical international law the only States which were regarded as having an interest in fishing in a particular area of the high seas were those States who actually fished there. Under this law such States—those who actually fished there—were entitled to exercise this freedom subject only to the requirement, which is stated in the declaratory rule contained in Article 2 of the High Seas Convention concluded at Geneva on 29 April 1958, that they must do so "with reasonable regard to the interests of other States in their exercise of the freedom of the high seas". They, in their turn, were of course entitled to expect similar treatment from other States exercising their freedoms of the sea, whether of navigation or fishing or any other recognized freedom. Coastal States which did not fish in a particular area of the high seas, even if that area was adjacent to their own territorial sea, were not regarded as having any interest at all in the maintenance of the productivity of the living resources in such area, let alone a special interest.

Mr. President, some 20 years ago, as Her Majesty's Government sees it, this situation came increasingly to be regarded as unacceptable for two separate although associated reasons. The first of these reasons is that there was held to be insufficient protection against the over-fishing of the stocks, especially in certain areas. The second reason is that it was felt by certain coastal States that they ought to be regarded as having an interest in the maintenance of the productivity of marine resources which were fairly close to them, even though those resources were situated outside the limits of their territorial sea.

This interest was said to be based on a number of factors. Sometimes it was argued that although the coastal State was not yet in a position to exploit the resources in question, it ought to be able to do so at a future time, and the possibility of its doing so ought not to be precluded by excessive exploitation of the stock by others in the meantime. Alternatively, it was argued that whilst the coastal State was in a position to exploit the resources in question to some extent, it could not do so as effectively as some nations which were better equipped for the purpose. Moreover, it was maintained that the resources in question were of more significance to the coastal State than to other States, either because the economy of the coastal State as a whole was dependent on the resources to an exceptional extent or, perhaps put at its lowest, because the actual population living along the coastline was very dependent upon those resources.

It is all these factors, as Her Majesty's Government sees it, which lay behind the decision of the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 to recommend that, in formulating conservation programmes, account should be taken of the special interest of the coastal State in maintaining the productivity of the resources of the high seas which were contiguous to its coast. Mr. García Amador of Cuba, who was then Vice-Chairman of the International Law Commission and also Deputy Chairman of the Rome Conference, submitted to the Commission a series of draft articles based on the work of the Rome Conference. After making certain amendments, the Commission introduced these articles into its final report. I refer particularly to Articles 54 and 55.

Article 54 of the report affirmed the special interest of the coastal State in the maintenance of productivity of the living resources of the high seas adjacent to its territorial sea.

Article 55 allowed the coastal State to introduce a conservation régime provided that international agreement had proved impossible to achieve and

subject to three important requirements which are set out in subparagraph 2 of Article 55. These requirements, as I say, are important, and I specifically refer the Court to them.

They were these: firstly, that scientific evidence shows that there is an urgent need for measures of conservation; secondly, that the measures adopted are based on appropriate scientific findings; and thirdly, that such measures do not discriminate against foreign fishermen (*Yearbook of the International Law Commission* for 1965, Vol. II, p. 290).

With certain modifications, those Articles 54 and 55 came to be incorporated as Articles 6 and 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, which was adopted at Geneva on 29 April 1958. It was, as Her Majesty's Government understands it, the hope of some States that with the adoption of these provisions there would be less pressure for an extension of the territorial sea from 3 to 6 miles, and when that proved to be a vain hope, at least from 6 to 12 miles.

But when in 1958 the United States came forward with its proposal that there should be a territorial sea of 6 miles and then an exclusive fishing limit of 12 miles, many coastal States remained dissatisfied. They were dissatisfied because in their view the proposal went too far in allowing nationals of other States who had fished regularly within the 12-mile zone, for a period at first set at ten years, but later reduced to five years, to go on doing so.

It was moreover objected that no restrictions were imposed, either on the intensity of the fishing that these nationals might conduct or on the time for which they might conduct it. The United States, acknowledging this defect when it introduced a revised version of its proposal at the 1960 Conference, sought to restrict the continuation of such fishing by nationals of other States to fishing for the same groups of species as were taken during the base period—the base period being the five years immediately preceding 1 January 1958. That restriction, it was proposed, should be to an extent not exceeding in any one year the annual average level of fishing carried on in the outer zone during the period (A/CONF.19/C.1/L3).

Later, in a further attempt to satisfy critics of the proposal, the United States, when it joined with Canada in submitting the proposal which finally failed to secure adoption in the plenary by one vote, substituted an even more drastic restriction on the right of nationals of other States to continue fishing in the outer 6 miles of the fishing zone established by the coastal State. The restriction suggested was to take away this right altogether after a so-called phase-out period, which was to last only for a period of 10 years from 31 October 1960.

When it became clear that even this concession was not likely to win enough votes to secure adoption of the proposed package deal, the United States and Canada made yet another concession. They decided to adopt the three-Power amendment moved by Brazil, Cuba and Uruguay (A/CONF. 19/L.12) after it had in its turn undergone a minor textual amendment proposed by the delegate of France. The terms of the three-Power amendment have been set out in paragraph 209 of the United Kingdom Memorial. It is perhaps not necessary that I should read it in detail since it will be very much in the mind of the Court.

The purpose of the three Power amendment was explained at some length by the delegate of Cuba, and also, though more briefly, by the delegate of Brazil. These explanations which were given must of course be seen in the context of the position as it stood at the end of the 1958 Conference. That Conference, it will be recalled, had accepted in a convention the basic propo-

sition that "a coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea".

Mr. President, while a special interest may be held to some extent to imply a priority or a preferential interest, the 1958 Conference was not willing to proceed very far in that direction. It rejected in plenary a proposal by the Icelandic delegate to the effect that:

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

It may be further noted that this Icelandic proposal provided that in the case of disagreement any interested State might set in motion the machinery for arbitration to be established under the proposed Convention on Fishing and Conservation of the Living Resources of the High Seas.

Even so, the most that the Conference was prepared to do was to adopt a resolution, proposed by South Africa and amended by Ecuador and Ireland, which in time became the resolution on Special Situations relating to Coastal Fisheries, the text of which resolution is set out in paragraph 190 of the Memorial of the United Kingdom. The resolution recommends that there should be recognition of "any preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of other States".

It is to be noted that this recognition of preferential requirements is limited to the situation 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". It was to be the subject of agreed measures; and, for the settlement of any disagreement where agreed measures were not arrived at, appropriate conciliation and arbitral procedures were to be established.

If I may now revert to the three-Power amendment of 1960, the delegate of Cuba, who was in fact Mr. García Amador who had been responsible for giving legal form to the recommendations of the International Technical Conference held in Rome in 1955, explained that the purpose of the amendment put forward was to "confirm preferential fishing rights explicitly and unequivocally". But these preferential rights would only become operative, to use his own words, "if it should become necessary"—*if* it should become necessary—"to reduce intensive fishing in order to maintain or restore the optimum sustainable yield from that stock or those stocks". He went on: "in the absence of the circumstances described the coastal State could not claim preferential rights; indeed, in that case the coastal State would manifestly not need to claim preferential rights." "Nor", he said, "could it be argued that the rights to be conferred were being conferred gratuitously and unjustifiably, and might be exercised or claimed for purposes incompatible with their true purpose."

The delegate of Cuba went on to explain that a safeguard against abuse lay in the provision for compulsory arbitration according to scientific criteria.

Equally, however, the amendment which was proposed was not harsh to the coastal State since it substituted for what might be called the "overwhelmingly dependent" test which had been proposed by Iceland the less

exacting test of whether the coastal State was "greatly dependent" on the living resources concerned. And finally, Mr. Amador, the delegate of Cuba, in concurring with a view which had already been expressed by the delegate of Brazil, Mr. Gilberto Amado, said, in drawing attention to "the significant progress achieved within so short a time by the idea and principles of the interests and special rights of coastal States with regard to the conservation and exploitation of resources of the sea—hardly five years previously, at the International Technical Conference on the Conservation of the Living Resources of the Sea, held at Rome in 1955, the very notion of the special interest of coastal States had not been considered compatible with the concept then held of freedom of fishing—[that] the recognition of preferential fishing rights in a form both effective and equitable, as formulated in the amendments, should be the next step forward to be taken by the Conference" (tenth plenary meeting).

Mr. President, having thus explained, I hope in sufficient though not too great detail, the background both of the Special Situations resolution of 1958 and of the three-Power amendment of 1960, I now consider the effect of these developments on the law of the sea and in particular their applicability to the present case.

Since the Special Situations resolution was but a resolution, not having a binding character, and since the three-Power amendment to which the question refers only became part of a proposal which was itself rejected, it might be said that the immediate and direct effect of these developments was not very great. Nor, it must be accepted, was there a State practice in the period shortly after the 1960 Conference in the matter of the preferential requirements or preferential rights of the coastal State which can bear any comparison with what occurred in relation to the recognition of the principle of the 12-mile exclusive fishery limit as such.

On the other hand, Her Majesty's Government does not contend that the concept of preferential requirements or preferential rights of the coastal State became dormant in the period after 1960. Still less that it was moribund during that period. Far from it. Although it took longer to emerge than the 12-mile exclusive fishing limit, the concept of the special or preferential rights of the coastal State has come to have and, in the view of Her Majesty's Government, is now having a significant place in the law of the sea.

Further developments of this concept may of course emerge as a result of the present case. Such developments are also possible at the next Law of the Sea Conference.

Even by now, in the view of Her Majesty's Government, it may be said with confidence that it is accepted law that where a need for conservation can be scientifically demonstrated in an area of the high seas adjacent to its territorial sea and extending further than the 12-mile exclusive fishery limit, a coastal State is not merely entitled to insist that conservation measures should be taken but it is also entitled to claim that in any scheme of limitation which is worked out account should be taken of the special needs of the coastal State. These needs of the coastal State find their expression in the form of a preferential share, it being understood that by "preferential" is not meant necessarily either a majority share, or even a greater share than that of any other single State, but rather a share that is greater than would be justified merely by the historical performance of the coastal State; and I refer to "historical performance" because that is the criterion which is principally applicable when considering the position of the non-coastal States. Her Majesty's Government, of course, recognizes that a coastal State will often

have considerable historical performance to show as well. In that event, it will, in the view of Her Majesty's Government, usually be equitable that the share to which the coastal State is entitled on the basis of historical performance should be added to by a further allocation on the basis of its position as a coastal State. The result may well be to allow the coastal State an actual majority share, but the "preferential" part of it is that part which was added to the share derived from historical performance by virtue of its position *qua* coastal State.

In the view of Her Majesty's Government the three-Power amendment of Brazil, Cuba and Uruguay played just as important a part in the development of the law as did the 1958 Special Situations resolution. Although the resolution pointed the way, the three-Power amendment was considerably more specific than the resolution in at least three respects.

In the first place it indicated the criteria for establishing the need for conservation; in the second place it indicated the means of establishing the existence of those criteria; and in the third place it indicated the machinery for settling disputes which might arise.

In the answer which I shall give to the fourth question put to Her Majesty's Government by Judge Sir Humphrey Waldock, I shall be giving examples of schemes that have been worked out in practice and I shall attempt to show the principles underlying those schemes.

The Court will observe, I think, that although in those schemes the proposals of the three-Power amendment have not been followed in every detail, yet those schemes have been arrived at in the spirit of the three-Power proposals.

Mr. President, a final word in answer to this question, which Her Majesty's Government is grateful for, it having drawn attention to a number of matters of importance. Her Majesty's Government accepts that the concept of preferential fishing rights of coastal States and the spirit of the proposals embodied in the three-Power amendment are applicable, are relevant, to the solution of the present dispute.

If I may then turn to the second question put to Her Majesty's Government by Judge Jiménez de Aréchaga, the second question refers to the record of discussions leading up to the 1961 Exchange of Notes and to paragraph 229 of the United Kingdom Memorial; the text of the question is again set out at page 451, *supra*, of the verbatim record.

In short, the question asks whether the Applicant contends that in the Exchange of Notes Iceland undertook the obligation not to extend its fishery limits beyond 12 miles or to do so only pursuant to a bilateral or multilateral agreement or pursuant to a decision by this Court recognizing her right to do so in international law.

Mr. President, it will be recalled that the first operative paragraph of the 1961 Exchange of Notes, which is Annex A to the United Kingdom's Application instituting proceedings, in effect embodied an agreement on a 12-mile limit for the Icelandic fisheries zone. The Court will recall that it was couched in the form: "The United Kingdom Government will no longer object to a 12-mile fishery zone around Iceland . . ."

The penultimate paragraph of the Exchange of Notes, which the Court will have noted, allowed for the possibility of some change in the rules of general international law on the question of fishery limits in the future. The origins of that penultimate paragraph have been reviewed in detail in the United Kingdom Memorial on Jurisdiction, between paragraphs 23 and 43.

The conclusion which Her Majesty's Government drew in its submission to

the Court at paragraph 43, and which it still contends is the correct interpretation of that agreement, is that Iceland agreed not to extend its jurisdiction until such time as any extension beyond 12-miles would be permitted by international law. Whether at any particular point in time, an extension would be permitted by international law would be determined by an agreement between the parties or, if the parties were not in agreement, then by a judgment of this Court.

The third question (p. 451, *supra*) refers to the contention that a rule of customary law exists fixing for Iceland a maximum fisheries limit of 12 miles, and the question asks, what is the relevance of the effect of the proposals and statements made on the subject of fisheries jurisdiction during the general debate held in the Sea-bed Committee and its Sub-Committee II in preparation for the Third Conference on the Law of the Sea? It is asked whether these proposals and statements can be regarded as part of the evidence of the current practice and opinion of States.

Mr. President, these statements and proposals were reviewed in some detail by Professor Jaenicke in his oral argument before the Court on 28 March in the *Fisheries Jurisdiction* case brought by the Federal Republic of Germany against Iceland, and accordingly it would perhaps not assist the Court further for me to repeat those matters again this morning. It perhaps would suffice and assist most if I were merely to draw particular attention to a few short paragraphs of the Report of the Committee for 1973 concerning the question of fisheries.

The paragraphs in that report are many, and it is perhaps not entirely easy to select the few which would be of the greatest assistance because there is in many of them material which is of value in answering the present point. I will, if I may, select just a few and read those.

Paragraph 60, which is on page 52 of the Report, reads as follows:

> "60. Concerning fisheries, statements were made on the right of coastal States to establish an exclusive fishery zone beyond their territorial sea. According to those statements, the coastal State would exercise sovereign rights for the purpose of exploration, exploitation, conservation and management of the living resources, including fisheries, in that zone, and could adopt, from time to time, such measures as they might deem appropriate. Reference was also made to the role of the appropriate institutions of the coastal State in the settlement of disputes pertaining to the delimitation of the exclusive fishery zone and the formulation and application of the régime therein. Views were expressed on the breadth of such an exclusive fishery zone. It was also stated that fishing operations in such a zone should be conducted with due regard to the interests of other States in the other legitimate uses of the sea.
>
> 61. As for the management and conservation of living resources, references were made to the international responsibilities of coastal States in that respect, to the need for co-operation between coastal States and the appropriate regional and global organizations, to the right of coastal States to establish regulations regarding fishing activities and conservation programmes and to the need for such regulations and programmes to be of a non-discriminatory character."

I pass to paragraph 66:

> "66. Statements and draft articles on the patrimonial sea or exclusive economic zone referred to 12 and 200 nautical miles respectively in con-

nexion with the maximum limits of the territorial sea and the patrimonial sea or economic zone.

67. Maximum limits proposed regarding the territorial sea, a zone of national sovereignty and jurisdiction, exclusive economic zone or patrimonial sea, preferential zone beyond the territorial sea, economic seabed area, national ocean space and fisheries zone ranged from 12 to 200 nautical miles."

And perhaps I might interpolate in this context that the word "ranged" may be of some significance.

"68. Statements were also made regarding coastal State jurisdiction over sea-bed resources or fisheries based on geological, geomorphological, economic or biological criteria, either alone or in combination with distance limits.

69. On the other hand it was stated that extension of the exclusive rights of the coastal States over the water column and its resources beyond 12 nautical miles was unjustified." (Doc. A/9021, Vol. I.)

Mr. President, there are many other passages in the Report which set out the kind of proposals and statements to which the question refers but plainly it would be tedious to the Court for me to read that out in greater detail. Perhaps I may, with respect, merely refer the Court to, in particular, paragraphs 50 to 59 and 72 to 75 of that document.

The statements and proposals to which the question refers are not, of course, made in the course of negotiations, they are made in the context of preliminary discussions prior to negotiations which will take place at the later Law of the Sea Conference. Such discussions give to States an opportunity to indicate what in their view the law ought to be. The indications given are, as the question describes them, "proposals". Such proposals or indications in themselves are not evidence of existing State practice. They are not evidence of the existing law. They are not, as such, of any relevance to, nor, it is submitted, should they have any effect upon, the determination of the issue before the Court in the present case. It is perhaps hardly necessary to add that such indications, such proposals, do not acquire relevance or effect by the fact that a number of States indicate that they will support those proposals.

Mr. President, the Court may think that the position in this respect was well illustrated by what the Attorney-General said in his oral argument before the Court on 25 March about the possible arguments which Iceland might have put forward to the Court on the basis of the concept of the patrimonial sea or the concept of an economic zone. These concepts are not part of the existing law. They are inchoate, they are tentative and they take many different forms. They remain to be negotiated at the forthcoming Law of the Sea Conference. If they are embodied in some as yet unascertained form in a convention, then that convention may have its effect upon the law and upon decisions of this Court in subsequent disputes if they arise. In the submission of Her Majesty's Government, it is premature to have regard to them at this stage.

The same considerations apply to this kind of proposal as apply to resolutions of the General Assembly and in particular to resolution 3171 which was before the General Assembly on 17 December 1973. I may perhaps remind the Court of the extract from the speech of the delegate of Iceland, one of the co-sponsors of the resolution, to which the Attorney-General referred and which is set out at pages 465 to 466, *supra*, without actually reading it again.

Mr. President, some of the statements to which the question refers may of course go further than merely making proposals and they may contain claims put forward by the delegate—for example, as to what is the area over which the State he represents claims the right to exclusive fisheries. That kind of statement may help the Court by throwing light on the practice of a particular State if that practice is doubtful or obscure. In answer to the question, so much is accepted, but it is submitted that statements of this kind are not the best evidence of the practice of the State. The best evidence is the actual practice of the State itself as applied and enforced against other States or as acquiesced in or accepted by other States.

What really matters in the view of Her Majesty's Government, and what is contemplated by Article 38 (1) *(b)* of the Court's Statute when it refers to "a general practice" is the actual practice, the actual assertion of a right or claim as opposed to a mere declaration or assertion in a speech or on paper which has not yet been put to the test. It is to that evidence, in the view and submission of Her Majesty's Government, that the Court should have regard in considering what the Attorney-General described as the "inescapable question" whether there is a treaty or a custom or a general principle of law upon which Iceland can base her claim.

It is submitted that the statements and proposals referred to do not provide evidence of a concordant practice, or a practice extensively or uniformly applied, or of a practice applied over a sufficient period of time or one receiving the general acquiescence of other States. What was accepted, the Court may feel, at the 1958 and 1960 Conferences and at the European Fisheries Conference in 1964, is of much greater weight in showing what the law is than statements made in the course of the preliminary meetings to which the question refers.

Moreover, Mr. President, even if it were right, as Her Majesty's Government of course contends that it would not be right, for the Court to seek to have regard to what the final outcome of the Law of the Sea Conference might be, the range of proposals and statements made so far makes it impossible to forecast at this stage what will be the final outcome of that conference.

In summary in answer to this third question, Her Majesty's Government considers that the proposals and statements are respectively of no or little relevance and have no or little evidentiary value to the Court in the solution of the present dispute.

May I, Mr. President, then turn to the other questions put to Her Majesty's Government.

The PRESIDENT: Before you do so may I ask Judge Jiménez de Aréchaga whether he wishes to pursue some of the issues you dealt with in his questions?

Judge JIMÉNEZ DE ARÉCHAGA: No thank you, Mr. President.

Mr. SLYNN: If I may then, Mr. President, turn to the questions put by Judge Dillard, the text of which appears at page 451, *supra*. The first question refers to paragraph 319 of the United Kingdom Memorial read in conjunction with paragraphs 300 to 318a. It asks whether the Applicant contends that its first three submissions *(a)*, *(b)* and *(c)* are so connected that it is necessary for the Court to adjudicate on the first in order to adjudicate on the second and third of those submissions. Perhaps it would be of assistance before directly answering that if I indicate the distinctions between those three submissions *(a)*, *(b)* and *(c)* as set out in the United Kingdom Memorial at paragraph 319.

Submission *(a)* corresponds exactly to the claim which Iceland is making. It has to be read in the light of Article 59 of the Statute of the Court, which provides that the decision of the Court has no binding force except between the Parties and in respect of the particular case.

The intention and purpose of submission *(b)* is to say that the limits which were agreed to in the Exchange of Notes of 1961 correspond to the limits now generally recognized in international law and that any unilateral assertion of fisheries jurisdiction beyond those limits—whether it be out to 50 miles or to any distance—would not in law be valid as against the United Kingdom.

The third submission, submission *(c)*, is aimed rather at any action which Iceland might take against British fishing vessels in the sea area which is beyond the limits agreed to in the Exchange of Notes of 1961, which would be inconsistent with the character of the waters as high seas and would therefore be contrary to international law. As an example of the type of action envisaged by submission *(c)*, perhaps I might cite the interference with British fishing vessels which are simply on passage through the area and are not actually fishing there.

It follows when these three submissions are analysed in this way that *(a)*, *(b)* and *(c)* are not so connected that the second and third cannot stand without the first, and in the view of Her Majesty's Government it is therefore open to the Court to adjudicate on the second and the third of those submissions without adjudicating upon the first, it being of course understood and accepted that submissions *(b)* and *(c)* are based on general international law and are of course not confined merely to the effect of the Exchange of Notes.

I turn then to the second question (p. 451, *supra*) put by Judge Dillard which refers to possible divergence of views as to the exclusive character of Iceland's claimed extension of her fisheries jurisdiction. The question refers to the Icelandic Regulations of 14 July 1972 and it asks whether the claim asserted by Iceland to exclusive jurisdiction is not susceptible of a narrower meaning than is usually associated with the term "exclusive". The question specifically asks whether Iceland's claim is seen by the Applicant to be "exclusive" in the absolute sense as defined, namely that Iceland reserves the right to exclude all fishing by foreign nationals in the extended areas except as she might in her discretion permit it, or whether the claim is not to exclude all fishing by foreign nationals but is merely to regulate and institute measures of control of such fishing, either because of Iceland's special situation as a coastal State dependent on such fishing or in the interest of conserving the living resources of the sea in the extended areas. Put more broadly the question asks whether the Applicant contends that Iceland claims not merely to accommodate but rather to extinguish the rights of United Kingdom nationals to fish in the extended areas.

Mr. President, I accept, as the question postulates, that when a State claims an exclusive fisheries zone, it is sometimes difficult to determine whether the State is claiming either—

(a) the right totally to prevent all foreign nationals from fishing in the zone; or
(b) the right to exclude most foreign nationals from fishing in the zone, but subject to the duty upon it to permit certain foreign nationals to continue to fish there; or
(c) the exclusive right not to exclude but to regulate all fishing activities in the zone, subject to its duty to permit some or perhaps all foreign nationals to continue to fish there.

Of these three possibilities, it is our submission that in the absence of clear indication to the contrary, the presumption must be that it is the first one which is intended, that is, the right to exclude all foreigners. This presumption arises partly from the very concept of an exclusive zone and from the natural meaning of the words. It arises also more particularly from the fact that the United States-Canadian proposal of 1960, to which the concept of an exclusive fisheries zone outside the territorial sea can be traced back, expressly said:

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

It is beyond question that in its territorial sea the coastal State has exclusive fishery rights in the sense of the first possibility, possibility *(a)*, to which I have referred.

The second of the three possibilities which I mentioned arises because a coastal State, while proclaiming an exclusive fisheries zone in principle, may recognize that it is under a legal duty to permit certain foreign nationals to go on fishing there. This duty may be owed to the States from which the foreign fishermen come either because there is a treaty still in force or because under customary law that State has acquired the right for its nationals to continue fishing in the zone in question.

The third possibility, possibility *(c)*, which is that of the exclusive right of the coastal State to regulate all fishing activities in the zone, whilst being under a duty to permit either all or some foreign nationals to continue fishing there, may likewise arise either under treaty or as a result of customary law. For example, in the *North Atlantic Coast Fisheries* case (Scott, *Hague Court Reports*, 1910, p. 146) it was held by the Permanent Court of Arbitration that Great Britain, while obliged under the Convention of London to permit fishing by inhabitants of the United States in certain areas of Canadian territorial waters, was entitled exclusively to regulate fishing activities in that zone. That is the treaty aspect. So far as customary law is concerned, Her Majesty's Attorney-General, at page 460, *supra*, of his speech on Monday, 25 March, referred to the possibility of a "non-exclusive conservation zone" being claimed by a coastal State. By that phrase he meant an exceptional situation where a coastal State, having failed to obtain the necessary co-operation from other States in the matter of conservation, might be entitled to proclaim a zone in which, while not excluding foreigners, that State would be able to insist that they should observe non-discriminatory regulations concerning either catch limitation or perhaps some other measures of conservation.

Because of the difficulty of distinguishing between these types of exclusive zone—and no doubt other variations are possible and may perhaps already have occurred to Members of the Court—it is necessary, in the view of Her Majesty's Government, to proceed with considerable caution in examining State practice in the matter of exclusive zones. The Attorney-General made this point at page 470, *supra*, and the Court will find in paragraph 247 of the United Kingdom Memorial, as Judge Dillard has pointed out in the question, that the United Kingdom indicated that when a State accompanies its claim to an exclusive zone with an express power to grant permits to foreign fishermen the claim may not be a "truly exclusive" claim.

Having said this, it is now necessary to examine once again the Icelandic Regulations of 14 July 1972, and particularly Articles 2 and 7 thereof. (See Annex 9 to the United Kingdom Memorial, p. 384, *supra*.)

Article 2 of those Regulations states somewhat baldly:

> "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."

So it has there the words "within the fishery limits all fishing activities by foreign vessels shall be prohibited in accordance with" those provisions.

Article 7 stated:

> "These Regulations are promulgated in accordance with Law No. 44 of 5 April 1948, concerning the Scientific Conservation of the Continental Shelf Fisheries . . . When these Regulations become effective, Regulations No. 3 of 11 March 1961, concerning the Fishery Limits off Iceland shall cease to be effective."

Article 2 of the 1948 Law, which is Annex 1 to the United Kingdom Memorial, provided as follows:

> "The regulations promulgated under Article 1 of the present law [that is, regulations establishing explicitly bounded conservation zones within the limits of the continental shelf of Iceland, wherein all fisheries shall be subject to Icelandic rules and control] shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party."

Mr. President, Her Majesty's Government has no doubt that the Regulations of 14 July 1972 were intended to implement, and are being applied in a manner designed to ensure the implementation of, a zone of the first type, that is to say a zone in which Iceland claims the right totally to prevent all foreign nationals from fishing in that zone.

It is of course true that in her law of 1948 Iceland referred to the possibility of her fisheries regulations being "enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party."

One has also in the Icelandic commentary on Article 2, which is to be found in Annex 1 of the United Kingdom Memorial (p. 382, *supra*), a reference which is made to two international agreements—the Anglo-Danish Convention of 1901 and the International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1937. Here it was expressly stated:

> "Should the provisions contained in this draft law appear to be incompatible with these agreements, they would not, of course, be applied against the States signatories to the said agreements, as long as these agreements remain in force."

Soon after enacting that law of 1948, Iceland set about terminating the Anglo-Danish Convention.

Likewise, in 1972, Iceland made it quite clear that with the coming into force of her new regulations, the Exchange of Notes of 11 March 1961 between Iceland and the United Kingdom and the Exchange of Notes of 19 July 1961 between Iceland and the Federal Republic of Germany would be terminated and that their provisions would no longer "constitute an obligation

for Iceland". I refer to the policy statement of the Government of Iceland of 14 July 1971 (para. 10 of the United Kingdom Application); to the aide-mémoire of the Government of Iceland of 31 August 1971, which is Annex 3 to the United Kingdom Memorial (p. 382, *supra*); the Resolution adopted by the Althing on 15 February 1972, which is Annex 5 to the United Kingdom Memorial (p. 382, *supra*); and to the aide-mémoire of the Government of Iceland of 24 February 1972, which is Annex 6 to the United Kingdom Memorial (p. 383, *supra*).

As for the other international agreement mentioned in the commentary on Article 2 of the Icelandic Law of 1948, namely the Fishing Nets and Size Limits of Fish Convention of 1937, this has now been replaced by the North-East Atlantic Fishery Convention of 1959.

As was pointed out by the Attorney-General in his speech on Monday, at pages 450 and 454, *supra*, Iceland has so far only been prepared to accept the key recommendation under Article 7 (2) of the Convention—that is, the recommendation under which it would have been possible to introduce into the Iceland area an internationally agreed system for catch quotas, subject to "the significant reservation that it shall not apply to the 50-mile zone around Iceland itself". Mr. President, it is difficult to construe this reservation as other than an intimation that the 50-mile zone is intended to be a "truly exclusive" zone, in the sense of the first possibility to which I referred.

The Government of Iceland has frequently indicated its willingness to enter into negotiations with the Government of the United Kingdom and also with the Government of the Federal Republic of Germany. For example, in its aide-mémoire of 31 August 1971 (United Kingdom Memorial, Annex 3) it suggested a meeting with representatives of the United Kingdom Government "for the purpose of achieving a practical solution of the problems involved". Again in its aide-mémoire of 24 February 1972 (United Kingdom Memorial, Annex 6), Iceland reiterated the hope that "the discussions now in progress will as soon as possible lead to a practical solution of the problems involved".

In fact, both before and after the introduction of the new regulations on 1 September 1972, there have been frequent, if interrupted, negotiations between the two Governments, right up to the conclusion of the interim agreement of 13 November 1973. But, Mr. President, the Icelandic Government has never given any indication that it accepts that the United Kingdom continues to enjoy any right under international law to fish within the 50-mile zone. It has not given any indication that any discussions were held because Iceland was under any legal duty to negotiate. It is quite clear that such negotiations as took place—and I, of course, exclude entirely from consideration in this context negotiations which were held solely for the purpose of arriving at an interim agreement once the dispute had been referred to the Court were held purely because, on the Icelandic side, in the view of Her Majesty's Government, it was thought expedient to hold them, and I remind the Court of the quotation I have just read, "for the purpose of achieving a practical solution of the problems involved".

Mr. President, it is only possible for Her Majesty's Government to construe the intentions of the Government of Iceland in the light of what they say and what they do. I refer in this context firstly to the statement of Mr. Johannesson, the Prime Minister of Iceland, at the meeting of the Nordic Council on 19 February 1972 (Appendix III to the Memorandum on *Fisheries Jurisdiction in Iceland* (p. 49, *supra*), reproduced as Enclosure 2 to Annex H of the United Kingdom Application (pp. 27-66, *supra*)). On page 50, *supra*,

when referring to the United Kingdom and the Federal Republic of Germany, he said this:

> "At the same time we are engaged in discussions with the two nations who have the greatest interests in the Icelandic fisheries. Although we cannot agree that their over-exploitation of the Icelandic fishing grounds over a long period of time gives them a right to continue their activities in the area we want to make an effort to seek a solution of the problems which face their trawling industries because of the extension of the limits."

The significant words in that statement are: "Although we cannot agree that their over-exploitation of the Icelandic fishing grounds over a long period of time gives them a right to continue their activities in the area." In our submission, it could hardly have been indicated more plainly that, in the view of the Icelandic Government, while the United Kingdom and the Federal Republic of Germany may have interests in the 50-mile zone which it might be expedient for the Government of Iceland to seek to accommodate, those two other nations had no rights in respect of that zone.

I turn secondly to a statement by Mr. Josepsson, the Minister of Fisheries of Iceland. He was no less explicit than the Prime Minister of Iceland when speaking at the Ministerial Meeting of the North-East Atlantic Fisheries Commission on 15 December 1971. He said this:

> "We consider it paradoxical that vessels of other nations should have the right without licence to use their gear, as bottom trawl, on our continental seabed, and we consider it unnatural that they should be able without our permission to prosecute fishing in the sea above our continental shelf. In the matter of fishing rights, we believe the only conceivable way to prevent overfishing and secure a rational exploitation of the fish stocks is for coastal States to have a wide fishery jurisdiction and to be capable beyond dispute of making rules necessary for the inshore fisheries. Side by side with an extensive fishery jurisdiction, we consider it necessary that the nations concerned should work in collaboration and consultation on rules regarding fisheries outside the fishery jurisdictions of the respective countries, that is to say on the high seas . . . We Icelanders are ready to collaborate. But we emphasize that our collaboration in making rules regarding fisheries in this area does not alter our fundamental opinion that each individual coastal State should have sovereign rights over all fisheries up to a reasonable and natural limit in the area of its continental shelf." (Appendix V to the same enclosure, p. 55, *supra*.)

Mr. President, in this passage, while there is, I accept, a hint that foreigners may be permitted to fish under Icelandic control in the exclusive fishing zone, there is not the slightest suggestion that they have any right so to do. "Consultation" and "collaboration", to which the statement refers, appear to be restricted to the area outside the exclusive zone. Moreover, the reference to "sovereign rights" over all fisheries in the exclusive zone suggests a zone that is intended, in the terms of the question, to be "truly exclusive", while it is no less significant that the Minister, in defiance of generally accepted concepts, seems to be claiming that the waters of the exclusive zone, though they may be outside the territorial sea, and also the waters above the continental shelf, have lost the character of high seas.

If one looks at the actions of the Icelandic Government—its refusal to

accept the Orders for interim measures of protection which were made by this Court; its harassment of British trawlers, which now happily has terminated as a result of the Interim Agreement; and, despite frequent assertions of the need for conservation, if one looks at its large trawler building programme, which is referred to in paragraph 123 of the United Kingdom Memorial—these actions hardly give grounds for confidence to foreign States that the Government of Iceland considers that their nationals have any right to fish in the exclusive 50-mile zone, as well as its own.

It is perhaps a fair comment that if Iceland had intended something less than the first possibility to which I have referred, she has had ample opportunity by words or deeds to make it clear. Mr. President, it is quite plain that she has not done so. For all these reasons, and bearing in mind the experience which they have had in their negotiations with the Government of Iceland, Her Majesty's Government have no doubt that, in the terms of Judge Dillard's question, Iceland is claiming a fisheries zone that is exclusive in the absolute sense; and also that her claim contemplates not the accommodation but the extinction of the rights of the nationals of the United Kingdom to fish in the extended areas.

The PRESIDENT: Does Judge Dillard wish to pursue some of the issues involved in these questions?

Judge DILLARD: No thank you, Mr. President.

The Court adjourned from 11.24 to 11.45 a.m.

Mr. SLYNN: May I turn now to the first question asked by Judge Petrén, the text of which appears at page 477, *supra*, of the verbatim record. That question asks whether it is the opinion of Her Majesty's Government that the interim agreement of 13 November 1973 definitively regulated the relations of the two Parties, so far as the fisheries in question were concerned, for the two years covered by that Agreement—that is for the period 13 November 1973 to 13 November 1975—and asked would it, in the opinion of Her Majesty's Government, in the alternative, be possible for the Court now to replace that regulation with another.

Mr. President, the response of Her Majesty's Government to that question is as follows: the interim agreement is a treaty in force between the two Governments and accordingly is binding upon them in accordance with its terms. It regulates the relations between the two Governments so far as British fishing is concerned in the areas shown on the map which is annexed to the agreement.

The agreement is described as an interim agreement and paragraph 7 provides that the agreement will run for two years from the present date, that is to say, two years from 13 November 1973.

The judgment of the Court in this case will state the rules of customary international law between the Parties, defining their respective rights and obligations. That judgment will be binding upon the Parties in accordance with Article 94 of the Charter of the United Nations. However, in the view of Her Majesty's Government, that would not mean that the judgment would completely replace the interim agreement with immediate effect in the relations of the Parties, because the Agreement would, as Her Majesty's Government understands it, remain as a treaty in force. The Parties would be under a duty fully to regulate their relations in accordance with the terms of the judgment as soon as the interim agreement ceased to be in force, that is to

say, on 13 November 1975, or of course at such earlier date as the Parties might agree.

In so far as the judgment may possibly deal with matters which are *not* covered in the interim agreement, in the understanding of Her Majesty's Government the judgment would have immediate effect.

The PRESIDENT: I ask Judge Petrén whether he wishes to pursue some of the issues involved in this question.

Judge PETRÉN: I thank the counsel for his explanation but I think it leads me to another question and that would be the following one: in paragraph 297 of its Memorial Her Majesty's Government expresses the following view:

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

Does learned counsel consider that it is quite compatible with this position adopted in the Memorial *now* to seek of the Court a decision more or less regulating the matters in question for a future which will open on 14 November 1975?

Mr. SLYNN: Mr. President, I wonder whether I might have the opportunity to consider that other question with those who appear with me on behalf of Her Majesty's Government and look perhaps in a little more detail at paragraph 297 of the Memorial before giving my answer. If Judge Petrén would permit me to do that, I would be grateful for that opportunity.

The PRESIDENT: You may answer at a later time [1].

Mr. SLYNN: Perhaps I could, then, turn to the first of the questions which were put to Her Majesty's Government by Judge Sir Humphrey Waldock, and the text of these questions is also set out on page 477 and continues on page 478, *supra*.

The first of those questions is as follows:

> "Would counsel for the Applicant kindly assist the Court by specifying precisely the consensus that they maintain appeared in 1960 at the Second United Nations Conference on the Law of the Sea and, manifested in practice, became a general rule? Was it *(a)* the joint United States-Canadian proposal for a six-miles territorial sea and six-miles exclusive fisheries, subject to a phasing-out period; or *(b)* that proposal as amended by Brazil, Cuba and Uruguay; or *(c)* the 12-mile exclusive fishery limit allowed by the joint United States-Canadian proposal and inherent in the minority proposal for a 12-mile territorial sea; or *(d)* some other principle or understanding?"

Mr. President, in paragraph 212 of the United Kingdom Memorial reference is made, I accept, to the general consensus which the 1958 Conference revealed; and in paragraph 225 of that Memorial reference is also made to the consensus which had emerged at the 1958 and the 1960 Con-

[1] II, p. 475.

ferences and which indeed had failed by only one vote to be incorporated in a Convention to be adopted by the latter Conference.

Her Majesty's Government do not contend that, in the matter of fishing limits, there was achieved either at the 1958 Conference or at the 1960 Conference a *consensus* according to the somewhat special meaning which that word has come to have in the United Nations. What they maintain—and what was intended by these passages in the Memorial—is that at the 1958 Conference there began a process, continued at the 1960 Conference, which led to the emergence of the rule of the 12-mile fishery limit. At the 1958 Conference the matter of fishery limits began to emerge as an issue separate from that of the territorial sea, although of course closely linked to the latter. In the case of the 1960 Conference, resolution 1307 of the Thirteenth Session of the General Assembly which convoked it did so for the express purpose of considering further the questions of the breadth of the territorial sea and fishery limits, thus recognizing that the two issues, though associated, were separate. As it happened, no formal agreement was obtained on either of these issues in 1960 and so closely were they still linked together that it would have been difficult for the Conference in the time available to achieve even an informal consensus on one of these issues separately.

What Her Majesty's Government *do* maintain is that there resulted from the 1958 and the 1960 Conferences a climate of opinion which increased the possibility of States on their own, and away from the multilateral conference table, doing one of two things—either they could arrive at arrangements on their own in the matter of fishery limits, or they could draft their own national legislation on that matter in a way which would reflect the majority view that, as Her Majesty's Government sees it, had emerged at those Conferences, whilst agreeing to defer for the time being the substantially more difficult issue of the breadth of the territorial sea. This, it is submitted, is what in fact happened, mainly after the termination of the 1960 Conference, although the Court will recall that the agreement of 27 April 1959 between the United Kingdom and Denmark relating to fishing in the area of the Faroe Islands was a first indication of the new trend even before the 1960 Conference was held.

Mr. President, in the view of Her Majesty's Government, what led to the emergence of the rule that a coastal State is, subject to certain safeguards in favour of other States, entitled to an exclusive fishery limit of 12 miles was essentially State practice in the period after the 1960 Conference. This Her Majesty's Government have said in paragraph 212 of the United Kingdom Memorial. The first example of this is the Anglo-Norwegian Agreement of 17 November 1960, and the second example is the Anglo-Icelandic Exchange of Notes itself of 11 March 1961. It is, however, significant that the Anglo-Norwegian Agreement, when referring to "the proposal on the breadth of the territorial sea and fishery limits which was put forward jointly by the Governments of the United States of America and Canada at the Second United Nations Conference on the Law of the Sea in 1960", still characterized it merely as a proposal on the basis of which they were willing to stabilize their fishery relations.

Her Majesty's Government do not admit that the 12-mile exclusive fishery limit was a rule of law at the time of the concluding of the Agreement with Norway, any more than they admit that it was a rule of law at the time of concluding the Exchange of Notes with Iceland in March 1961. The Court will recall that in that Exchange of Notes it was expressly stated by Her Majesty's Ambassador in Reykjavik that the contents of the Icelandic

Foreign Minister's Note were acceptable to the United Kingdom for the purpose of accomplishing the settlement of the dispute, if I may quote his words, "in view of the exceptional dependence of the Icelandic nation upon coastal fisheries for their livelihood and economic development, and without prejudice to the rights of the United Kingdom under international law towards a third party". In other words the United Kingdom *then* regarded its acceptance of Iceland's 12-mile limit *at that time* as a concession which it was not obliged under international law, as it *then* stood, to make.

It perhaps is not easy to point to any specific moment of time when it can be said that a new rule of customary international law has come into being. Perhaps it is sufficient for present purposes to say that in the view of Her Majesty's Government the European Fisheries Conference of 1964, and more particularly the Convention which was concluded at that Conference, constituted an important stage in the evolution of the new rule. It is, we submit, significant that at that conference a number of major fishing countries were able to deal with the question of fishery limits as a separate issue, thus disentangling as it were that question from the question of the breadth of the territorial sea. No longer were fishery limits regarded merely as part of a package designed to shore up agreement on the territorial sea. They in their own right were treated as a matter upon which States assembled in conference should strive to agree, and did in fact agree.

There followed upon this the Canadian legislation of 1964, the New Zealand legislation of 1965 and the legislation in the United States in 1966. These examples are referred to in three paragraphs of the Memorial of the United Kingdom, namely 219, 223 and 224, and this point culminates in the following statement which the Court will find set out in paragraph 225 of the Memorial; and I may perhaps be permitted to read just that:

> "It will thus be seen that, by about the middle of the 1960s, a firm State practice had been established which set the limits of a coastal State's fisheries jurisdiction at 12 miles from its coast—or, more accurately, from the baseline from which its territorial sea is measured. This State practice was founded upon the consensus which had emerged at the 1958 and 1960 Conferences and which indeed had failed by only one vote to be incorporated in a Convention to be adopted by the latter Conference. It was expressed in numerous international agreements and acts of national legislation. It was acquiesced in by the vast majority of States, even those who had hitherto been most conservative in their approach to the matter."

Mr. President, when considering the question whether a new rule of customary international law has come into being it is necessary also to have in mind the Court's statement in the *North Sea Continental Shelf* cases that—I quote from page 43 of the 1969 *Reports* of the International Court of Justice: "State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform." Applying this principle to the matter now under consideration, Her Majesty's Government maintain that it could not safely be said that the new rule had emerged until Japan, a State whose interests were certainly specially affected in the meaning of that principle, decided that it could not effectively challenge in law the legislation of New Zealand and the United States. As from that moment, in our submission, it was reasonable to maintain that, notwithstanding continuing disagreement on the breadth of the territorial sea, there was then by that stage a new rule of law to the effect that a coastal State was

entitled to an exclusive fishery limit of 12 miles. This new rule, in the submission of Her Majesty's Government, had thus come about as a result of widespread recognition of two matters, recognition which was reflected in the voting at both the *1958* and the *1960* Conferences, and which was confirmed subsequent to those Conferences by State practice.

The two matters to which I refer are firstly, that it was possible to separate the issue of fishery limits from that of the territorial sea, and secondly, that if that could be done, the figure of 12 miles was the correct limit in accordance with international law for the purpose of defining the zone in which the coastal State is entitled to exclusive fishery rights.

The answer then to the specific questions posed by Judge Sir Humphrey Waldock in points *(a)*, *(b)* and *(c)* of his first question is, therefore, that there was no actual consensus as early as 1960 on any of these three points. Point *(a)*, first point, as such is excluded because it contains a reference to a 6-mile territorial sea, on which there was insufficient agreement at the 1958 and the 1960 Conferences, and on which it is submitted there has been no significant State practice subsequent to those Conferences.

Point *(b)* of the question, in the view of Her Majesty's Government, is excluded for the same reason because, although it contains a reference to the amendment moved by Brazil, Cuba and Uruguay about which I have already addressed the Court in my answer to Judge Jiménez de Aréchaga's first question, that amendment left untouched the proposal for a 6-mile territorial sea.

Point *(c)* is perhaps the one that has the best claim to be considered as the basis of the consensus that finally emerged. Admittedly in that point there is a reference to a 12-mile territorial sea, on which there was never anything like agreement in 1958 and in 1960, but if, however, it is to be understood by point *(c)* that many States in favour of the joint United States-Canadian proposal were willing to implement that part of it which referred to the 12-mile fishery limit without waiting for agreement on the territorial sea, and if further it is understood by point *(c)* that many States in favour of a 12-mile territorial sea were subsequently willing to agree to a 12-mile fishery limit without pressing for the time being their claim to a 12-mile territorial sea, then Her Majesty's Government accept that the new rule, which they maintain was crystallized in the middle 1960s, had its origin in the various proposals put forward by Canada and the United States for a 12-mile fishery limit both in 1958 and in 1960, which culminated in their joint proposal of 1960.

Mr. President, I turn then to the second question, which is as follows:

> "Would counsel for the Applicant kindly specify what in their view is the legal basis of the concept of preferential rights or preferential position in the allocation of catch quotas which the United Kingdom appears to recognize in its Memorial on the Merits. Is the 1958 resolution on Special Situations Relating to Coastal Fisheries now regarded by the United Kingdom as expressive of a rule of law, or does it consider this concept essentially as a matter of equity?"

In relation to a high seas fishery such as that with which this dispute is concerned, as Article 2 of the High Seas Convention makes clear, the exercise of any particular freedom is subject to the obligation to pay regard to the rights of other States. The moment a case for conservation of a high seas fishery becomes clear on the scientific evidence, no one State can continue to fish without regard to the rights of other States. From this the United Kingdom maintains it follows that some system of restraints, some scheme for

sharing a limited resource becomes essential. A system of catch quotas is one of the most effective of such schemes.

A fair catch quota system inevitably imports into the problem of determining appropriate shares the consideration of what is equitable. Her Majesty's Government does not regard this matter of equity as different from the relevant rules of law but as an essential part of such rules. The Court itself, in the *North Sea Continental Shelf* cases referred to ". . . a rule of law which itself requires the application of equitable principles . . ." (*I.C.J. Reports 1969*, p. 47).

The factors which require to be considered in reaching such an equitable quota system are of course various and are by no means necessarily identical in every situation. Her Majesty's Government has sought in paragraph 306 of its Memorial to set out those factors which appear to be applicable to the present case, as likely to produce a just and equitable result. The Attorney-General read out the factors stated in that paragraph in his address to the Court and perhaps I need not read it again.

One of those factors, it is accepted, is certainly the preferential position of Iceland. Her Majesty's Government has no doubt that Iceland falls within the terms of the resolution on Special Situations relating to Coastal Fisheries which was adopted in 1958; it follows therefore that equity does demand an allocation to Iceland of a preferential share in the catch.

The basic rule of law is contained in Article 2 of the Convention on the High Seas. That Article was regarded as declaratory of international law in 1958. However the rights of other States to which Regard must be had are to be found in a body of law which during the decade of the sixties was evolving in State practice, taking as its starting point the consensus which began to emerge in 1958 and 1960. In the view of Her Majesty's Government it became evident from State practice that, at least by the latter part of the sixties, it was proper to consider the preferential position of the coastal State as one to which regard must be had under Article 2 of the High Seas Convention. The preferential position of the coastal State comes into play in relation to fishery resources the moment that absolute freedom in the exercise of their rights becomes impossible for all States who are engaged in the fishery: clearly it does so when there is scientifically proven the need for conservation.

Members of the Court will recall that the International Law Commission, in its commentary upon the draft Articles on the Law of the Sea, had this principle very much in mind. The Commission, referring to the draft of what in due course became Article 2 of the High Seas Convention, said this:

> "Any freedom that is to be exercised in the interests of all entitled to enjoy it, must be regulated. Hence, the law of the high seas contains certain rules, most of them clearly recognized in positive international law, which are designed, not to limit or restrict the freedom of the high seas, but to safeguard its exercise in the interests of the entire international community. These rules concern particularly:
>
> . . . . . .
>
> (iii) The rights of States relative to the conservation of the living resources of the high seas." (*Yearbook of the International Law Commission*, Vol. II, 1956, p. 278.)

The Commission itself did not spell out the concept of the preferential right of the coastal State. The 1958 Conference, building upon the broad principles outlined by the Commission, did however affirm the coastal State's special interest in the maintenance of productivity and it also, in the resolution

on Special Situations, recognized the preferential requirements of the coastal State in a special situation. The support for the three-Power amendment in 1960 to which I referred confirmed this trend. Hence, in the view of Her Majesty's Government, once it became accepted in State practice over the next few years that the rights of States embrace a preferential position for the coastal State, it followed that Article 2 of the High Seas Convention required all other fishing States to have due regard to that position.

In the submission of Her Majesty's Government, it follows that the 1958 resolution is not in itself the source of preferential rights or the legal basis for that concept. As I have indicated, the legal basis is perhaps more soundly located in Article 2 of the High Seas Convention. The 1958 resolution and the State practice which followed do indicate, it is submitted, the existence of a consensus of view among States as to those circumstances in which the concept of preferential rights becomes applicable. Her Majesty's Government does not, of course, regard the resolution as giving an exhaustive definition of the concept. The factual situations are likely to be so varied that in the view of Her Majesty's Government the 1958 Conference was right in its resolution to limit itself to the making of the two general recommendations.

In short, Mr. President, the resolution does not itself express the rule of law on the matter of preferential rights but rather indicates two factors—and there may of course be others—which will in general tend to produce the just treatment of these special situations.

I turn then to the third question, which appears on page 477, *supra*:

> "Will counsel for the Applicant kindly give the Court some further indication as to what, in their view, the concept of a coastal State's preferential rights or preferential position entails in relation to *(a)* the general right to freedom of fishing mentioned in Article 2 of the Geneva Convention on the High Seas and *(b)* the concept of historic or traditional fishing rights?"

I hope that it will be thought that in answering the previous question, I have indicated in sufficient detail that, in the view of Her Majesty's Government, the concept of a coastal State's preferential rights or preferential position essentially derives from Article 2 of the High Seas Convention and the subsequent State practice to which I have referred. It operates as a factor necessary to produce an equitable result whenever a fishery resource requires conservation, so that in that situation the States which had until then fished the resource may not continue to do so without restriction. In such a situation some system of sharing has to be devised.

If I may I will then turn to the second half of the question, which asks what is the relation between this concept of preferential rights and the concept of historic or traditional fishing rights.

The obligation to pay due regard to the interests of other States which is found in Article 2 of the High Seas Convention lies of course equally upon coastal States. Thus, the coastal State in a special situation must, in asserting its own preferential claims, have regard also to the rights of other fishing States. The equities in this kind of situation are not all on one side and the obligations of coastal and non-coastal States are reciprocal.

There are, it is submitted, in fact two problems. The first of those problems is the allocation of shares between the coastal and the non-coastal States: this, it is submitted, must be equitable. The second problem is the allocation of shares as between the various non-coastal States themselves. This, it is submitted, also must be equitable.

In the view of Her Majesty's Government, equity must demand that due weight be given—in the context of both these problems to which I have referred—to the question of the extent to which and the period for which a fishing practice has been pursued by a non-coastal State. This is essentially what is meant by an historic or by a traditional fishing right. Where the fishery practice is well-established and substantial, there must in equity be an entitlement to a greater share of any catch than in the case of a new or limited fishing practice. This is not simply a question of dealing with bare statistics. It is a question which concerns the fair treatment of matters which may affect the livelihood of whole communities.

In the view of Her Majesty's Government the concept of an historic or a traditional fishing right includes an economic element. Just as the coastal State's preferential right is based on overwhelming economic dependence, so too does the historic or traditional right involve this factor of economic dependence. It cannot, we submit, be equitable to ignore the economic impact upon the fishing communities of a non-coastal fishing State of a drastic cut in quotas: they, too, deserve a fair and equitable share.

Mr. President, having said this, I do not believe that it is possible to indicate to the Court the exact relationship or balance between the coastal State's preferential right on the one hand and the non-coastal State's historic or traditional right on the other. What is equitable plainly cannot be determined in the abstract; it must depend entirely upon the facts of the particular situation. All I would say is this, that difficult though it may be to reach a just and equitable result, in practice States do reach agreement on catch quotas, in practice they do reach agreement to achieve an equitable result and in the answer to the next question put by Judge Sir Humphrey Waldock I will try to illustrate, in the context to that question, how, in the Faroes agreement and in other agreements in the North Atlantic against the background of the facts of the particular situation, this has been achieved. It is perhaps convenient to consider that question again in the context of the fourth question posed by Judge Sir Humphrey Waldock, which I read:

> "Leading counsel for the Applicant has referred to the recent multilateral agreement concerning the Faroes as an illustration of an appropriate application of the concept of the preferential rights or preferential position of a coastal State in a special situation. Will counsel please indicate:
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> *(a)* Whether and to what extent in that agreement the concept of historic or traditional fishing rights was also applied;
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> *(b)* more generally, to what extent the concepts of preferential rights, or preferential position of a coastal State, and of historic or traditional rights, have received application or been discussed in bodies operating under the North-East and North-West Atlantic Fisheries Conventions, or in connection with any other Atlantic Fisheries agreements such as that between Norway, the Soviet Union and the United Kingdom concerning Arctic Cod."

In the Faroes Agreement, to which the first part of this question refers, apart from the preference which is given to the coastal State, the main criterion for the allocation of the catch quotas was the historic performance of the parties in the area. I will give details of that in the course of my answer but it is perhaps convenient to run parts *(a)* and *(b)* together, if Judge Sir Humphrey Waldock will permit me to do so.

Ever since the question of the limitation of fish catches in the North

Atlantic has been discussed as a practical possibility—and I interpolate, this has only been over the last five years or so—the concepts of preference for coastal States and of historical performance by States fishing in the area have played a very prominent part in the discussions of the various commissions concerned.

The first commission to investigate the question systematically was the International Commission for the North-West Atlantic Fisheries which in 1969 asked its Standing Committee on Regulatory Measures to consider what factors should determine the allocation of catch quotas. That Committee of the North-West Atlantic Fisheries Commission suggested that shares should be based mainly upon historical performance, but that other factors for consideration included provision for States with developing fisheries, for coastal States and for States with fleets which were incapable of being diverted to other fisheries.

The weight to be given to each of these factors would of course depend on the particular conditions of each separate quota scheme.

This report of the North-West Atlantic Fisheries Commission was considered in the course of 1969 by the North-East Atlantic Fisheries Commission's *ad hoc* Study Group which was concerned with the North-East Arctic and which reported in October of 1969.

That Committee's report in its turn was considered by the Standing Committee of the International Commission for the North-West Atlantic Fisheries in January of 1970. The North-East Atlantic Fisheries Commission Study Group report had added the new point that the percentage shares of different countries would not necessarily remain fixed at all levels of the total catch. It suggested, as its new point, that the lower the level of the total allowable catch, the greater might be the degree of preference accorded to those countries in the scheme having special needs, including, of course, the special needs of coastal States.

Since the North-East Atlantic Fisheries Commission had at that time no power to propose measures of catch limitation, its committee also noted the possibility of schemes being adopted in which countries accounting for the major part of the catch might agree on a quota scheme which they would observe as long as catches by countries outside the agreement did not exceed a level which was agreed upon by the parties.

These then, Mr. President, are the discussions which took place on the general principles applicable before negotiation began for catch quotas for the various fish stocks of the North Atlantic.

The negotiations to fix such quotas for the North-West Atlantic took place in 1972 and their progress, as far as cod stocks are concerned, is indicated on the map which is at Annex 28 to the Memorial of the United Kingdom, and the Court will recall that the information which that map gives was brought up to date by the Attorney-General when he addressed the Court on Monday.

In fixing these quotas the member States of the Commission for the North-West Atlantic Fisheries in most cases agreed to apply a formula which allocated 80 per cent. of the catch in proportion to the historic performance of member States in the fisheries, 10 per cent. to coastal States, which was in addition to their share based on historic performance, and a remaining 10 per cent. in respect of special needs such as those of recent entrants on the one hand and of established fleets which were incapable of being diverted on the other hand. In more general terms, the 10 per cent. for special needs was to be allocated to meet cases where a rigid application of quotas based on historic performance would have led to inequitable results.

The figure of 80 per cent. of the catch was allocated on the basis of historical performance, and this in its turn was divided into two parts. Forty per cent., that is, half the amount, was allocated in proportion to each country's average catch over the most recent 10-year period, that is, the period from 1961 to 1970; the other half, the other 40 per cent., was allocated in proportion to average catches over the most recent three-year period, that is to say, between 1968 and 1970. The Court will readily appreciate that the effect of this procedure was to give greater weighting to performance in more recent years.

Thus historic performance in the sense that I have referred to was at the very root of the calculation of the quotas in this system.

So much for the North-West Atlantic, which is the area in which the application of catch restriction is furthest advanced.

In the North-East Atlantic the situation is very different owing to the difficulty which has arisen over ratifying Article 7 (2) of the Convention, to which we have several times referred. This has meant that it has not been possible to agree catch quotas through the machinery of the North-East Atlantic Fisheries Commission.

The two agreements which have so far been made in this area in relation to demersal fish, to which I shall refer later, were both made *ad hoc* between the individual member States engaged in fishing in the areas in question.

However the same general principles have been followed as in the North-West Atlantic. The quotas have been allocated on the basis of historic performance with a substantial preference to the coastal State in each case.

The first of the two agreements in point of time was the arrangement regarding fisheries in the area of the Faroes, to which the Attorney-General referred on Monday [1].

That agreement was signed on 18 December 1973 and it came into force on 1 January 1974 and has been registered with the United Nations. It relates to the International Council for the Exploitation of the Sea Area Vb which is clearly marked on the map being Annex 28 [2] to the United Kingdom Memorial, and the Court will observe that that Area is to the south-east of the Iceland Area (Area Va).

The relationship of the catch quotas allocated by that arrangement to the historical performance of the parties can perhaps best be explained by reference to the table of figures which has been provided for the use of Members of the Court in connection with the answers which were requested from Her Majesty's Government. Perhaps I might invite Members of the Court to examine that table and I propose to refer to a number of the figures on it [3].

Mr. President, as can be seen, although there are seven signatories to the agreement, namely Belgium, Denmark, which of course conducts the foreign relations of the Faroes, France, the Federal Republic of Germany, Norway, Poland and the United Kingdom, by far the greatest part of the catch in the past has been taken by the coastal State and one other country, namely the United Kingdom.

One can see from the table at the top of the page that what has happened over the last ten years is that while the catch of the United Kingdom and the other non-coastal States has remained fairly steady, the total catch has risen, as a result of the increase in the Faroese catch.

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[1] See pp. 455-456, *supra*, and 513-516 and II, pp. 471, 475.

[2] See p. 411, *supra*.

[3] See p. 519, *supra*, and II, p. 475.

When it became necessary, or at any rate desirable, to limit the total catch, the Faroes was allocated an annual quota of 32,000 tons which is rather more than she has achieved in the past (Members of the Court will see that figure of 32,000 tons appearing as the first entry in the final column of the table at the top of the page), while the United Kingdom agreed to reduce her annual catch from a 5-year average of about 23,000 tons to 18,000 tons (again the Court will see those figures in the second line of the table) and all the other nations agreed together to reduce their annual catch from about 5,000 tons to a figure of 2,000 tons.

Mr. President, there is no doubt that the very large preference given to the coastal State in this case was due to the admittedly high dependence of the Faroese on fishing, a dependence, it can be said, at least equal to that of Iceland.

In the view of Her Majesty's Government, this is a very fair and equitable arrangement and it is submitted that the same principles could with advantage be applied in the Iceland area which lies just to the north-west of the area covered by this agreement.

The second agreement to which I referred is that relating to the North-East Arctic which was signed in London on 15 March and which came into force at once. I am in a position now to inform the Court that this agreement [1], copies of which have been supplied to the Court, was registered with the United Nations on 25 March.

The North-East Arctic is the large cross-hatched area on the map at Annex 28 and lies just to the north of the Faroes. It consists of Spitzbergen, Bear Island, Barents Sea and the Norwegian Coast.

This area is one where there was firm scientific evidence of the clear need for catch limitation in order to conserve the cod stocks.

As the United Kingdom has pointed out in paragraph 120 of its Memorial, it was in this area that in 1970 the year's catch was found to amount to 41 per cent. of the total estimated weight of the stock as against 16 per cent. in the Iceland area.

This being so, the States mainly concerned, which are Norway, the Soviet Union and the United Kingdom, did not think it wise to wait for implementation of Article 7 (2) so that the matter could be dealt with through the convention machinery.

These three countries between them accounted for well over 90 per cent. of the total catch in the area. As I have explained to the Court, one of the possibilities envisaged by the North-East Atlantic Fisheries Commission was a scheme by which countries accounting for the major part of the catch might agree on a catch limitation which they would observe as long as catches by countries outside the agreement did not exceed a level agreed by the parties.

It was precisely this type of agreement which was made by these three countries.

Mr. President, the Court has, on the same table which the Agent of the United Kingdom has provided for the Court in his letter [2] of 28 March of this year, the figures relating to this agreement.

The figures in the first two columns give an indication of the parties' historic performance in this area. The Court will see that the figures are given for two periods and they cover the three countries Norway, the Soviet Union and the United Kingdom.

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[1] See pp. 517-518, *infra*, and **II**, pp. 473, 475.

[2] **II**, *p.* 475.

The parties agreed in the light of the scientific evidence to reduce their own catch from an annual average total of just under 800,000 tons (the Court sees the figure of 797,000 tons—an annual average of just under 800,000 tons in the years 1969-1972) to a total of 500,000 tons in 1974 (the Court has that figure in the final column of the second table).

They then, by an agreed formula, divided this total catch between themselves on the basis of their actual catches in former years.

The Soviet Union and the United Kingdom then each reduced their quota so calculated by one-tenth and they each added that tenth to the quota allotted to Norway.

The right-hand column, to which I have referred, shows the actual quotas allotted.

In this agreement the contracting parties bind themselves not to exceed these quotas so long as catches by other countries do not exceed 50,000 tons, which is a fair and equitable allowance having regard to their past performance in the area and to the need to restrict the catch.

The other countries which fish in the area all are or, in one case soon will be, members of the North-East Atlantic Fisheries Commission. The fact that they are not parties to the agreement arises rather from procedural difficulties than from any lack of appreciation of the necessity for catch limitation. Accordingly the parties to this agreement have no reason to believe that there will be any difficulty in practice.

Perhaps I may be allowed to say once more that this is a form of procedure which in our submission could with advantage be followed in the Iceland area which, as the Court can see from the map at Annex 28 [1], is adjacent to this area and immediately to the west.

Thus, Mr. President, not only has it been the general practice in the North Atlantic in the very recent past to allocate catch quotas by reference to historic performance modified by a preference firstly, to coastal States and, secondly, to other States with special needs, but there is at least one agreement which illustrates how consideration can in practice be given to the rights of States which are not parties to that agreement.

I turn now to the fifth question posed by Judge Sir Humphrey Waldock, which is to be found on page 478, *supra*, and that asks that counsel should indicate whether they draw any distinction between, on the one hand, historic or traditional fishing rights as a basis for the phasing-out arrangements connected with the 12-mile exclusive fishery zone and, on the other hand, those rights as a basis for determining catch quotas outside that zone.

In the submission of Her Majesty's Government there are important distinctions between, on the one hand, the concept of historic or traditional fishing rights as used in connection with phase-out agreements within the 12-mile zone and, on the other hand, the concept of historic or traditional fishing rights as used in relation to the high seas for determining catch quotas.

The former concept arose when, in 1958 and 1960 there emerged fairly widespread support for separating an exclusive fishing zone from the territorial sea and widening that exclusive fishing zone. The United States and Canadian proposal in 1960, for example, envisaged an exclusive fishing zone which, in so far as it lay outside the territorial sea, was technically part of the high seas. However, within that zone the coastal State was to have "the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea".

[1] See p. 411, *supra*.

Mr. President, once an exclusive fishing zone became permissible beyond the limits of the territorial sea, it would follow, in our submission, that non-coastal States would lose their previous rights to fish in those areas of the high seas which might then become part of this "exclusive" zone.

It was apparent that to cut off these rights of non-coastal States, without allowing any time for making the necessary economic adjustments, would be wrong; it was equally apparent that some coastal States were not prepared to envisage the continuation in perpetuity of the rights of non-coastal States in what was to be, in principle, an "exclusive" zone. Hence, as the Court is no doubt aware, the compromise which was sought in 1960 in the United States and Canadian proposal for what may be termed a "six-plus-six" formula, was that so-called historic rights should be phased-out over a period of ten years. In the event, the Court knows, that proposal was not adopted but it is a fact that many bilateral treaties have embodied the "phase-out" principle in respect of historic rights, although usually for shorter periods than ten years. On the other hand, it is also a fact that some of these agreements did envisage the indefinite continuation of traditional or historic rights. The European Fisheries Convention of 1964 is a notable example.

The three features of this concept of historic rights which I desire to stress are first, that it applied in a zone which was agreed to be in principle exclusive to the coastal State; secondly that these historic rights were in some cases limited in duration; and third, that it had nothing to do with conservation needs.

The position is totally different when one turns to a high seas fishery in its ordinary sense. There is no question of any exclusive zone and, as I have indicated earlier, the concept of the historic right or traditional fishing practice becomes relevant in determining what is equitable when a situation arises in which there is a conservation need.

There is no question of limiting the period for which a historic or traditional fishing right may continue to be enjoyed to a specific term of years. The time factor is controlled entirely by the conservation need. As long as the need remains, so long must the interested States retain their quota system and, correspondingly, the relevance of the historic or traditional rights remains, just as the relevance of the coastal State's preferential right remains.

The PRESIDENT: Sir Humphrey, do you wish to continue to question Mr. Slynn?

Judge Sir Humphrey WALDOCK: No, thank you, Mr. President.

Mr. SLYNN: I turn next to the question which was put by Judge Gros [1] to the Agent of the United Kingdom, which I will read out as I think it does not appear on the verbatim record.

> "In its Memorial and its oral arguments the Government of the United Kingdom has referred on several occasions to the positions adopted on the question of fisheries round Iceland by the countries directly concerned (for example: Memorial, paragraphs 240, 242, 243, 244, 280 and 306; the last-mentioned paragraph was read out at the sitting of 25 March 1974, p. 474, *supra*). In that connection, what conclusion can be drawn from the agreement of 22 July 1972 between the European Economic Community and Iceland, including Protocol No. 6 thereto, as regards the position of Iceland and that of the States of the European Economic Community?"

[1] II, p. 474.

Mr. President, where reference is made in paragraphs of the Memorial—paragraphs 240, 242, 243, 244, 280 and 306—to the countries "interested" or "*affected*" or "concerned", Her Majesty's Government had in mind those countries which have in the past fished in the Iceland area. Those countries, apart fron the United Kingdom and Iceland, are the Federal Republic of Germany and, to a lesser extent, the Faroes, Belgium and Norway.

With regard to the question of the positions of Iceland and of the States Members of the European Economic Community, the situation as we see it is as follows:

Three of the member States—Belgium, the Federal Republic of Germany and the United Kingdom—fish in the Iceland area. The remaining six member States do not fish there to any significant extent. Accordingly those six States are not "interested" in or "concerned" about the fisheries around Iceland in the sense that those terms were employed in the relevant paragraphs of the United Kingdom Memorial.

The agreement of 22 July 1972 was concluded between the European Economic Community, as such, and the Republic of Iceland. It was intended, in the words of its preamble, to "consolidate and to extend the economic relations existing between the Community and Iceland", that is to say, the Agreement (which entered into force on 1 April 1973) concerns economic relations generally.

Protocol No. 6 to the Agreement contains the "special provisions applicable to imports of certain fish products into the Community" from Iceland. Those provisions are in Article 1 of that Protocol; they concern tariffs and customs duties.

Paragraphs 1 and 2 of Article 2 read as follows:

> "(1) The Community reserves the right not to apply the provisions of this Protocol if a solution satisfactory to the member States of the Community and to Iceland has not been found for the economic problems arising from the measures adopted by Iceland concerning fishing rights. The Community shall inform Iceland of its decision on this matter as soon as circumstances permit and not later than 1 April 1973.
>
> (2) If it appears that a satisfactory solution cannot be found until after this date, the Community may postpone the decision on the application of this Protocol providing it informs Iceland accordingly. The Community shall inform Iceland as soon as the decision is taken."

At the present time the provisions of Article 1 of the Protocol are not being applied because the Community has postponed its decision in accordance with the terms of Article 2.

Accordingly, in the view of Her Majesty's Government, it is not possible to draw any particular conclusion from this Agreement which is relevant to the present dispute.

The PRESIDENT: I shall ask Judge Gros whether he wishes to continue. I understand from his gestures that he does not.

Mr. SLYNN: The final question, Mr. President, was the second question asked by Judge Petrén [1], which again is not I think in the verbatim record, so perhaps it would be convenient if I were to read it out in full. The question is as follows:

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[1] II, p. 474.

"In paragraph *(e)* of the final submissions the possibility is contemplated of bilateral negotiations between the United Kingdom and Iceland to lead to the establishment of 'such a régime . . . as, having due regard to the interests of other States, will ensure for Iceland, in respect of any such restrictions that are shown to be needed as aforesaid, a preferential position consistent with its position as a State specially dependent on those fisheries and as will also ensure for the United Kingdom a position consistent with its traditional interest and acquired rights in and current dependency on those fisheries.'

Is it here contemplated that the fisheries régime to be established bilaterally by the United Kingdom and Iceland would be based also upon an overall assessment of the interests of other States as being traditional interests or acquired rights?"

As I have already suggested in my answer to the third question posed by Judge Sir Humphrey Waldock, equity demands a just and equitable share not only between the coastal and the non-coastal States, but also between the non-coastal States themselves. Accordingly, the answer to Judge Petrén's second question is that certainly any agreement between the United Kingdom and Iceland would have to take account of the traditional fishing practices of other States. One of the advantages, of course, of using established international machinery, such as the North-East Atlantic Fisheries Commission, is that a more comprehensive review of the equities of the situation, in the light of the established rights of all the parties, becomes possible. The other interested States—for example the Federal Republic of Germany, France, Belgium, Norway and the Faroes—are members of the North-East Atlantic Fisheries Commission, so this would raise no practical difficulties. I would add only this that, in the view of Her Majesty's Government, the obligation to strive for a conservation régime acceptable to all the interested States derives not so much from the North-East Atlantic Fisheries Convention as from a more general principle of international law. It is, in the submission of Her Majesty's Government, this principle which lies at the basis of the Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958. It is for *this* reason that Her Majesty's Government, in its submission at paragraph 319 *(e)*, has referred expressly to the "duty to examine together in good faith, either bilaterally or together with other interested States and either by new arrangements or through already existing machinery for international collaboration in these matters such as the North-East Atlantic Fisheries Commission", the need for and the content of a conservation régime. Mr. President, the aim of Her Majesty's Government would be to achieve a multilateral agreement acceptable to all the interested States.

Yet, even if the United Kingdom and Iceland were to proceed on a purely bilateral basis, as might have to be the case if Iceland so insisted, in the submission of Her Majesty's Government, *both* States would be in duty bound to negotiate having regard to the interests of other non-coastal States with established fishing rights. In practice, it is considered that this could readily be done by consultation with those States.

The PRESIDENT: Does Judge Petrén wish to raise some further points in connection with that reply?

Judge PETRÉN: No, thank you, Mr. President, and as to the new question I asked today[1] I am quite happy to receive a written reply later.

[1] See p. 494, *supra*.

Mr. SLYNN: I am extremely grateful to be told that because it will enable us to consider the question and to give it more thought than would be possible if I were to give an immediate answer at this stage. We will, if we may, reply to the question in writing, Mr. President.

The PRESIDENT: Yes. I thank you, Mr. Slynn, for the assistance you have given to the Court by replying to the questions put to you by Members of the Court and, as to the question put to you by Judge Petrén, we hope you will be able to supply us with a written reply by Tuesday morning at the latest.

Mr. SLYNN: Yes, Mr. President. We will do our best to achieve that dead-line. If we have difficulties about time—because of course we have to go back to London—the Agent will be in communication with the Registrar and will inform him of any problems which may arise. But I hope we shall be able to comply with your request. We will certainly do our best.

The PRESIDENT: The Agent will, as I said earlier, remain at the disposal of the Court in order to supply it with whatever information [1] will still be required.

The Court rose at 1.10 p.m.

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[1] II, pp. 482-484.

SEVENTH PUBLIC SITTING (25 VII 74)

Present: [See sitting of 25 III 74, Vice-President Ammoun and Judges de Castro and Jiménez de Aréchaga absent.]

READING OF THE JUDGMENT

The PRESIDENT: The sitting is open.

The Court meets today for the reading in open Court, pursuant to Article 58 of the Statute, of its Judgment on the merits in the *Fisheries Jurisdiction* case brought by the United Kingdom of Great Britain and Northern Ireland against the Republic of Iceland.

To the Court's regret, Vice-President Ammoun is not with us today, and has been unable to participate in the decisions in the *Fisheries Jurisdiction* cases. Shortly after the beginning of the Court's deliberations, the Vice-President suffered an accident, and was obliged to spend some time in hospital, so that he was unable to contribute further to the deliberations. Judge Dillard also was absent for part of the deliberations because of illness but returned in time to participate in the remainder and in the vote.

Two other Members of the Court are unable to be present at today's sitting; Judge de Castro is absent for reasons of health, and Judge Jiménez de Aréchaga for family reasons. Both of them, however, participated throughout the Court's deliberations, and took part in the final vote in the case.

I shall now read the Judgment.

[The President reads paragraphs 14 to 78 of the Judgment [1].]

I shall now ask the Registrar to read the operative clause of the Judgment in French.

[The Registrar reads the operative clause in French [2].]

I myself append a declaration to the Judgment, as also do Judges Dillard, Ignacio-Pinto and Nagendra Singh. Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh and Ruda append a joint separate opinion to the Judgment; Judges de Castro and Sir Humphrey Waldock append separate opinions to the Judgment. Judges Gros, Petrén and Onyeama append dissenting opinions to the Judgment.

(Signed) Manfred LACHS,
President.

(Signed) S. AQUARONE,
Registrar.

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[1] *I.C.J. Reports 1974*, pp. 8-33.
[2] *Ibid.*, pp. 34-35.

DOCUMENTS SUBMITTED TO THE COURT AFTER THE CLOSURE OF THE WRITTEN PROCEEDINGS

ARRANGEMENT RELATING TO FISHERIES IN WATERS SURROUNDING THE FAROE ISLANDS [1]

The Parties to this Arrangement,

Realizing that the scientific evidence available calls for immediate measures for the purpose of conservation of fish stocks in the Faroe Area (ICES Statistical Division Vb);

Considering the exceptional dependence of the Faroese economy on fisheries, and

Recognizing that the Faroe Islands should enjoy preference in waters surrounding the Faroe Islands;

Have agreed as follows:

Article 1

The fishing for the demersal species cod and haddock in the ICES Statistical Division Vb shall be limited annually as prescribed in the catch limitation scheme annexed hereto (Annex I), which shall be an integral part of the present Arrangement.

Article 2

1. Contracting Parties directing their fisheries in the area solely towards demersal species other than those covered by Article 1 shall not conduct their demersal fisheries in a way significantly different from those of the years 1968 to 1972. Their annual catches from trawl fisheries shall not exceed by more than 10% the highest figure they have respectively achieved in those years as recorded by the International Council for the Exploration of the Sea.
2. The annual catches of Parties to whom paragraph 1 applies and whose fleets fish solely by line and gillnets in the area, shall not exceed by more than 25% the highest figure achieved over the years 1968 to 1972 as recorded by the International Council for the Exploration of the Sea.
3. Contracting Parties which have not habitually exercised fishing in the area shall limit their annual catches of demersal species mentioned in paragraph 1 to a maximum of 2,000 tons each.

Article 3

1. The sub-areas identified on the chart and accompanying description annexed hereto (Annexes II and III) shall be closed for trawl fishing by vessels of all the Contracting Parties annually during the following months:
   sub-area 1: February 15 to May 15
   sub-area 2: June 1 to November 30
   sub-area 3: April 1 to June 30 and October 1 to December 31
   sub-area 4: December 1 to March 31 and May 1 to May 31
   sub-area 5: March 1 to March 31
2. The maximum allowable size in terms of Gross Register Tons of trawlers fishing within the sub-areas mentioned in paragraph 1 shall not exceed the size habitually used before the end of the year 1973.

[1] See pp. 455-456, *supra*, and II, pp. 472 and 475.

Article 4

Notwithstanding the provisions in Article 3 small Faroese vessels may continue trawl fishing in the sub-areas mentioned in Article 3.1. for the following annual quantities of demersal stocks:

in sub-area 2: 1,250 tons; in sub-area 3: 1,250 tons; in sub-area 4: 500 tons.

These quotas form part of the total Faroese quota according to the catch limitation scheme annexed hereto.

Article 5

Nothing in the present Arrangement shall be deemed to prejudice the views of any Contracting Party as to the delimitation and limits in international law of territorial waters, adjacent zones or of jurisdiction in fishery matters.

Article 6

1. The present Arrangement shall enter into force on January 1, 1974.
2. Any Contracting Party may request a review of the Arrangement.
3. Any Contracting Party may withdraw from the Arrangement by means of a notice in writing addressed to the depository Government who will notify the other Contracting Parties. Any such denunciation shall take effect six months after the date on which such notice is given.
4. This Arrangement shall be deposited with the Government of Denmark by which certified copies shall be transmitted to the Governments of all Contracting Parties.
5. *In witness whereof* the undersigned, being duly authorized thereto, have signed the present Arrangement.

Done at Copenhagen on the 18th December, 1973.

For the Government of Belgium
Sous réserve d'approbation parlementaire.
(Signed) A. LONNOY

For the Government of Denmark
(Signed) K. B. ANDERSEN

For the Government of France
(Signed) Pierre PELEN

For the Government of the Federal Republic of Germany
(Signed) Werner AHRENS

For the Government of Norway
(Signed) Arne SKAUG

For the Government of Poland
(Signed) R. PIETRASZKA

For the Government of the United Kingdom of Great Britain and Northern Ireland
(Signed) A. A. STARK

Annex I

CATCH LIMITATION SCHEME FOR COD AND HADDOCK IN ICES STATISTICAL DIVISION Vb

(Metric tons round fresh weight)

	Faroes	UK	Others	Total
Cod Haddock	32,000	18,000	2,000 [1]	52,000 [2]

[1] The Contracting Parties not mentioned by name in the scheme will use their best endeavours to ensure that their catches including by-catches do not exceed this amount.

[2] The Contracting Parties will use their best endeavours to ensure that the catches constituting the total quota do not exceed 30,000 tons for cod and 22,000 tons for haddock.

Annex II

MAP

Not reproduced]

Annex III

IDENTIFICATION OF SUB-AREAS 1 TO 5

Sub-area 1: 8 nautical miles from the limit of the fishing zone between a line 0° true from Eidiskoll and a line 90° true from Bispur.

Sub-area 2: 18 nautical miles from the limit of the fishing zone between a line 90° true from Bispur and a line 90° true from Akrabergi.

Sub-area 3: (a) 12 nautical miles from the limit of the fishing zone between a line 150° true from Akrabergi and a line 190° true from Akrabergi, and
(b) 6 nautical miles from the limit of the fishing zone between a line 190° true from Akrabergi and a line 240° true from Ørnanípuni.

Sub-area 4: 12 nautical miles from the limit of the fishing zone between a line 240° true from Trøllhøvda and a line 320° true from Bardi.

Sub-area 5: Faroe Bank (ICES Sub-Division Vb2) within the 200 m. isobath.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE GOVERNMENT OF THE KINGDOM OF NORWAY AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE REGULATION OF THE FISHING OF NORTH-EAST ARCTIC (ARCTO-NORWEGIAN) COD [1]

The Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics;

Desirous of regulating the fishing of North-East Arctic (Arcto-Norwegian) cod *(Gadus morhua)* with the object of protecting stocks;

Have agreed as follows:

Article I

For the purposes of this Agreement:

(a) "North-East Arctic Area" means Statistics Areas I and II of the International Council for the Exploration of the Sea, that is the sea areas lying between longitude 11°W and 68° 30'E, to the north of a line running from a position longitude 11°W and latitude 63°N in an easterly direction along the parallel of latitude 63°N to longitude 4°W, then south to latitude 62°N, thence east to the coast of Norway;

(b) "Competent Authorities" means:

for the United Kingdom, the Ministry of Agriculture, Fisheries and Food;
for Norway, the Ministry of Fisheries;
for the USSR, the Ministry of Fisheries for the USSR.

Article II

(1) The Contracting Parties undertake to take appropriate measures to regulate fishing by persons and vessels under their jurisdiction in the North-East Arctic Area so that the total catch of North-East Arctic (Arcto-Norwegian) cod taken in that area in 1974 shall not exceed the following limits:

United Kingdom	77,650 metric tons
Norway	242,850 metric tons
USSR	179,500 metric tons

(2) There shall be added to the quota for Norway permitted in accordance with paragraph (1) of this Article, 40,000 metric tons which represents the estimated average annual catch of coastal cod, which for the purposes of this Agreement is deemed to be a separate stock.

Article III

(1) If the total catch of North-East Arctic (Arcto-Norwegian) cod taken by countries other than the Contracting Parties exceeds 50,000 metric tons, the Contracting Parties shall, as soon as possible, review the operation of this

[1] See pp. 455-503, *supra*, and II, pp. 473, 475.

Agreement. Any Contracting Party may, after such review, withdraw from this Agreement by giving notice in writing to the other parties.

(2) The Competent Authorities of the Contracting Parties shall request the Competent Authorities of other countries fishing in the area to supply them with regular and up-to-date statistics of their catches of North-East Arctic (Arcto-Norwegian) cod through the medium of the North-East Atlantic Fisheries Commission.

Article IV

The Competent Authorities of each Contracting Party shall each month send to the Competent Authorities of the other Contracting Parties a report on their total catch of North-East Arctic (Arcto-Norwegian) cod for the previous month. These reports shall be reviewed jointly at any time at the request of a Contracting Party.

Article V

(1) If a Contracting Party exhausts its quota before the end of 1974, it may nevertheless permit its nationals and vessels to continue to fish provided that it limits such permission to fishing using gill nets, long lines and hand lines and that it first gives notice in writing of its intention to the other Contracting Parties.

(2) On receipt of such notice either of the other Contracting Parties may withdraw from the Agreement by giving notice in writing to the other parties.

Article VI

Nothing in this Agreement shall affect the rights, present or future claims or legal views of the Contracting Parties in regard to the nature and extent of fisheries jurisdiction or the principles of future catch limitation schemes.

Article VII

This Agreement shall enter into force on the day on which it is signed by all three Contracting Parties. This Agreement shall remain in force until 31 December 1974.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in triplicate at London this 15th day of March 1974, in the English, Norwegian and Russian languages, each text being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

(Signed) [Illegible]

For the Government of the Kingdom of Norway:
(Signed) [Illegible]

For the Government of the Union of Soviet Socialist Republics:
(Signed) [Illegible]

FAROESE AGREEMENT

	Catches of Cod and Haddock			*Quota*
	1962/71 (average)	*1967/71* (average)	*1969/71* (average)	('000 tons)
Faroes	18.6	22.1	25.7	32
U.K.	25.9	23.5	23.2	18
Others	4.5	5.3	5.3	2
	49.0	50.9	54.2	52

NORTH-EAST ARCTIC AGREEMENT

	Average Catch of Cod (8000 tons)		*Quota* (tons)
	1963/68 (6 years)	*1969/72* (4 years)	*1974*
Norway	205	370	242,850
USSR	310	290	179,500
United Kingdom	108	137	77,650
Total for contracting parties	623	797	500,000
Others	9	64	
Total for all countries	632	861	

See pp. 455-456, *supra*, and **II**, p. 475.