COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS, AVIS CONSULTATIFS ET ORDONNANCES

1974

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS, ADVISORY OPINIONS AND ORDERS

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FISHERIES JURISDICTION CASE

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

MERITS

JUDGMENT OF 25 JULY 1974

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AFFAIRE DE LA COMPÉTENCE EN MATIÈRE DE PÊCHERIES

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

FOND

ARRÊT DU 25 JUILLET 1974

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ARRÊT

INTERNATIONAL COURT OF JUSTICE

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25 July 1974

FISHERIES JURISDICTION CASE

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

MERITS

Failure of Party to appear—Statute, Article 53.
History of the dispute—Interpretation of interim agreement pending settlement of substantive dispute—Effect on obligation of Court to give judgment.

Jurisdiction of the Court—Effect of previous finding of jurisdiction—Interpretation of compromissory clause.
Icelandic Regulations of 14 July 1972—Extension by coastal State of fisheries jurisdiction to 50 miles from baselines round coast—Extension challenged as contrary to international law—Law of the sea—Geneva Conferences of 1958 and 1960—Concepts of fishery zone and preferential rights of coastal State in situation of special dependence on coastal fisheries—State practice—Exceptional dependence of Iceland on fisheries—Conservation needs—Preferential rights no justification for claim to extinguish concurrent rights of other fishing States—Historic rights of United Kingdom—Regulations of 14 July 1972 not opposable to United Kingdom—Reconciliation of preferential rights of coastal State and rights of other fishing States—Obligation to keep conservation measures of fishery resources under review—Negotiation required for equitable solution—Obligation to negotiate flowing from nature of Parties' respective rights—Various factors relevant to the negotiation.

JUDGMENT

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

In the Fisheries Jurisdiction case,

between

the United Kingdom of Great Britain and Northern Ireland,

represented by

Mr. D. H. Anderson, Legal Counsellor in the Foreign and Commonwealth Office,

as Agent,

assisted by

the Rt. Hon. Samuel Silkin Esq., 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,

and by

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,

and

the Republic of Iceland,

THE COURT,

composed as above,

delivers the following Judgment:

1. By a letter of 14 April 1972, received in the Registry of the Court the same day, the Chargé d'Affaires of the British Embassy in the Netherlands transmitted to the Registrar an Application instituting proceedings against the Republic of Iceland in respect of a dispute concerning the then proposed extension by the Government of Iceland of its fisheries jurisdiction.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was at once communicated to the Government of Iceland. In accordance with paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. By a letter dated 29 May 1972 from the Minister for Foreign Affairs of Iceland, received in the Registry on 31 May 1972, the Court was informed *(inter alia)* that the Government of Iceland was not willing to confer jurisdiction on the Court and would not appoint an Agent.

4. On 19 July 1972, the Agent of the United Kingdom filed in the Registry of the Court a request for the indication of interim measures of protection under Article 41 of the Statute and Article 61 of the Rules of Court adopted on 6 May 1946. By an Order dated 17 August 1972, the Court indicated certain interim measures of protection in the case; and by a further Order dated 12 July 1973, the Court confirmed that those measures should, subject as therein mentioned, remain operative until the Court has given final judgment in the case. By a letter of 21 November 1973, the Agent of the United Kingdom informed the Court, with reference to the Orders of 17 August 1972 and 12 July 1973, of the conclusion on 13 November 1973 of an Exchange of Notes constituting an interim agreement "relating to fisheries in the disputed area, pending a settlement of the substantive dispute and without prejudice to the legal position or rights of either government in relation thereto". Copies of the Exchange of Notes were enclosed with the letter. A further copy was communicated to the Court by the Minister for Foreign Affairs of Iceland under cover of a letter dated 11 January 1974. The Exchange of Notes was registered with the United Nations Secretariat under Article 102 of the Charter of the United Nations.

5. By an Order dated 18 August 1972, the Court, considering that it was necessary to resolve first of all the question of its jurisdiction in the case, decided that the first pleadings should be addressed to the question of the jurisdiction of the Court to entertain the dispute, and fixed time-limits for the filing of a Memorial by the Government of the United Kingdom and a Counter-Memorial by the Government of Iceland. The Memorial of the Government of the United Kingdom was filed within the time-limit prescribed, and was communicated to the Government of Iceland; no Counter-Memorial was filed by the Government of Iceland. On 5 January 1973, after due notice to the Parties, a public hearing was held in the course of which the Court heard the oral argument of counsel for the United Kingdom on the question of the Court's jurisdiction; the Government of Iceland was not represented at the hearing.

6. By a Judgment dated 2 February 1973, the Court found that it had jurisdiction to entertain the Application filed by the United Kingdom and to deal with the merits of the dispute.

7. By an Order dated 15 February 1973 the Court fixed time-limits for the written proceedings on the merits, namely 1 August 1973 for the Memorial of the Government of the United Kingdom and 15 January 1974 for the Counter-Memorial of the Government of Iceland. The Memorial of the Government of the United Kingdom was filed within the time-limit prescribed, and was communicated to the Government of Iceland; no Counter-Memorial was filed by the Government of Iceland.

8. By a letter 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 on 5 June 1972 by the Federal Republic of Germany against the Republic of Iceland (General List No. 56), 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 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 was informed that the observations of the United Kingdom on possible

joinder had been invited, but did not make any comments to the Court. On 17 January 1974 the Court decided by nine votes to five not to join the present proceedings to those instituted by the Federal Republic of Germany against the Republic of Iceland. In reaching this decision the Court took into account the fact that while the basic legal issues in each case appeared to be identical, there were differences between the positions of the two Applicants, and between their respective submissions, and that joinder would be contrary to the wishes of the two Applicants. The Court decided to hold the public hearings in the two cases immediately following each other.

9. On 25 and 29 March 1974, after due notice to the Parties, public hearings were held in the course of which the Court heard the oral argument of counsel for the United Kingdom on the merits of the case; the Government of Iceland was not represented at the hearings. Various Members of the Court addressed questions to the Agent of the United Kingdom both during the course of the hearings and subsequently, and replies were given either orally at the hearings or in writing. Copies of the verbatim record of the hearings and of the written questions and replies were transmitted to the Government of Iceland.

10. The Governments of Argentina, Australia, Ecuador, the Federal Republic of Germany, India, New Zealand and Senegal requested that the pleadings and annexed documents in this case should be made available to them in accordance with Article 44, paragraph 2, of the Rules of Court. The Parties having indicated that they had no objection, it was decided to accede to these requests. Pursuant to Article 44, paragraph 3, of the Rules of Court, the pleadings and annexed documents were, with the consent of the Parties, made accessible to the public as from the date of the opening of the oral proceedings.

11. In the course of the written proceedings, the following submissions were presented on behalf of the Government of the United Kingdom:

in the Application:

"The United Kingdom asks the Court to adjudge and declare:

(a) That there is no foundation in international law for the claim by Iceland to be entitled to extend its fisheries jurisdiction by establishing a zone of exclusive fisheries jurisdiction extending to 50 nautical miles from the baselines hereinbefore referred to; and that its claim is therefore invalid; and

(b) 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 aforesaid baselines but are matters that may be regulated, as between Iceland and the United Kingdom, by arrangements agreed between those two countries, whether or not together with other interested countries and whether in the form of arrangements reached in accordance with the North-East Atlantic Fisheries Convention of 24 January 1959, or in the form of arrangements for collaboration in accordance with the Resolution on Special Situations relating to Coastal Fisheries of 26 April 1958, or otherwise in the form of arrangements agreed between them that give effect to the continuing rights and interests of both of them in the fisheries of the waters in question."

in the Memorial on the merits:

"... the Government of the United Kingdom submit to the Court that the Court should adjudge and declare:

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

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

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

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

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

12. At the hearing of 25 March 1974, the Court was informed that, in view of the conclusion of the interim agreement constituted by the Exchange of Notes of 13 November 1973 referred to above, the Government of the United Kingdom had decided not to pursue submission *(d)* in the Memorial. At the close of the oral proceedings, written submissions were filed in the Registry of the Court on behalf of the Government of the United Kingdom; these submissions were identical to those contained in the Memorial, and set out above, save for the omission of submission *(d)* and the consequent re-lettering of submission *(e)* as *(d)*.

13. No pleadings were filed by the Government of Iceland, which was also not represented at the oral proceedings, and no submissions were therefore presented on its behalf. The attitude of that Government was however defined in the above-mentioned letter of 29 May 1972 from the Minister for Foreign Affairs of Iceland, namely that there was on 14 April 1972 (the date on which the Application was filed) no basis under the Statute for the Court to exercise jurisdiction in the case, and that the Government of Iceland was not willing to confer jurisdiction on the Court. After the Court had decided, by its Judgment of 2 February 1973, that it had jurisdiction to deal with the merits of the dispute, the Minister for Foreign Affairs of Iceland, by letter dated 11 January 1974, informed the Court that:

> "With reference to the time-limit fixed by the Court for the submission of Counter-Memorials by the Government of Iceland, I have the honour to inform you that the position of the Government of Iceland with regard to the proceedings in question remains unchanged and, consequently, no Counter-Memorials will be submitted. At the same time, the Government of Iceland does not accept or acquiesce in any of the statements of facts or allegations or contentions of law contained in the Memorials filed by the Parties concerned."

*
* *

14. Iceland has not taken part in any phase of the present proceedings. By the above-mentioned letter of 29 May 1972, the Government of Iceland informed the Court that it regarded the Exchange of Notes between the Government of Iceland and the Government of the United Kingdom dated 11 March 1961 as terminated; that in its view there was no basis under the Statute for the Court to exercise jurisdiction in the case; that, as it considered the vital interests of the people of Iceland to be involved, it was not willing to confer jurisdiction on the Court in any case involving the extent of the fishery limits of Iceland; and that an agent would not be appointed to represent the Government of Iceland. Thereafter, the Government of Iceland did not appear before the Court at the public hearing held on 1 August 1972 concerning the United Kingdom's request for the indication of interim measures of protection; nor did it file any pleadings or appear before the Court in the subsequent proceedings concerning the Court's jurisdiction to entertain the dispute. Notwithstanding the Court's Judgment of 2 February 1973, in which the Court decided that it has jurisdiction to entertain the United Kingdom's Application and to deal with the merits of the dispute, the Government of Iceland maintained the same position with regard to the subsequent proceedings. By its letter of 11 January 1974, it informed the Court that no Counter-Memorial would be submitted. Nor did it in fact file any pleading or appear before the Court at the public hearings on the merits of the dispute. At these hearings, counsel for the United Kingdom, having

drawn attention to the non-appearance in Court of any representative of the Respondent, referred to Article 53 of the Statute, and concluded by presenting the final submissions of the United Kingdom on the merits of the dispute for adjudication by the Court.

15. The Court is thus confronted with the situation contemplated by Article 53, paragraph 1, of the Statute, that "Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim". Paragraph 2 of that Article, however, also provides: "The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law."

16. The present case turns essentially on questions of international law, and the facts requiring the Court's consideration in adjudicating upon the Applicant's claim either are not in dispute or are attested by documentary evidence. Such evidence emanates in part from the Government of Iceland, and has not been specifically contested, and there does not appear to be any reason to doubt its accuracy. The Government of Iceland, it is true, declared in its above-mentioned letter of 11 January 1974 that "it did not accept or acquiesce in any of the *statements of fact* or allegations or contentions of law contained in the Memorials of the Parties concerned" (emphasis added). But such a general declaration of non-acceptance and non-acquiescence cannot suffice to bring into question facts which appear to be established by documentary evidence, nor can it change the position of the applicant Party, or of the Court, which remains bound to apply the provisions of Article 53 of the Statute.

17. It is to be regretted that the Government of Iceland has failed to appear in order to plead its objections or to make its observations against the Applicant's arguments and contentions in law. The Court however, as an international judicial organ, is deemed to take judicial notice of international law, and is therefore required in a case falling under Article 53 of the Statute, as in any other case, to consider on its own initiative all rules of international law which may be relevant to the settlement of the dispute. It being the duty of the Court itself to ascertain and apply the relevant law in the given circumstances of the case, the burden of establishing or proving rules of international law cannot be imposed upon any of the parties, for the law lies within the judicial knowledge of the Court. In ascertaining the law applicable in the present case the Court has had cognizance not only of the legal arguments submitted to it by the Applicant but also of those contained in various communications addressed to it by the Government of Iceland, and in documents presented to the Court. The Court has thus taken account of the legal position of each Party. Moreover, the Court has been assisted by the answers given by the Applicant, both orally and in writing, to questions asked by Members of the Court during the oral proceedings or immediately thereafter. It should be stressed that in applying Article 53

of the Statute in this case, the Court has acted with particular circumspection and has taken special care, being faced with the absence of the respondent State.

18. Accordingly, for the purposes of Article 53 of the Statute, the Court considers that it has before it the elements necessary to enable it to determine whether the Applicant's claim is, or is not, well founded in fact and law, and it is now called upon to do so. However, before proceeding further the Court considers it necessary to recapitulate briefly the history of the present dispute.

*
* *

19. In 1948 the Althing (the Parliament of Iceland) passed a law entitled "Law concerning the Scientific Conservation of the Continental Shelf Fisheries" containing, *inter alia*, the following provisions:

"*Article 1*

> 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; Provided that the conservation measures now in effect shall in no way be reduced. The Ministry shall further issue the necessary regulations for the protection of the fishing grounds within the said zones . . .

Article 2

> The regulations promulgated under Article 1 of the present law shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party."

20. The 1948 Law was explained by the Icelandic Government in its *exposé des motifs* submitting the Law to the Althing, in which, *inter alia*, it stated:

> "It is well known that the economy of Iceland depends almost entirely on fishing in the vicinity of its coasts. For this reason, the population of Iceland has followed the progressive impoverishment of fishing grounds with anxiety. Formerly, when fishing equipment was far less efficient than it is today, the question appeared in a different light, and the right of providing for exclusive rights of fishing by Iceland itself in the vicinity of her coasts extended much further than is admitted by the practice generally adopted since 1900. It seems obvious, however, that measures to protect fisheries ought to be extended in proportion to the growing efficiency of fishing equipment.
>
> . . . . . .

> In so far as the jurisdiction of States over fishing grounds is concerned, two methods have been adopted. Certain States have proceeded to a determination of their territorial waters, especially for fishing purposes. Others, on the other hand, have left the question of the territorial waters in abeyance and have contented themselves with asserting their exclusive right over fisheries, independently of territorial waters. Of these two methods, the second seems to be the more natural, having regard to the fact that certain considerations arising from the concept of 'territorial waters' have no bearing upon the question of an exclusive right to fishing, and that there are therefore serious drawbacks in considering the two questions together."

21. Commenting upon Article 2 of the 1948 Law, the *exposé des motifs* referred to the Anglo-Danish Convention of 1901, which applied to the fisheries in the waters around Iceland and established a 3-mile limit for the exclusive right of fishery. This Convention, which was subject to termination by either party on giving two years' notice, was mentioned as one of the international agreements with which any regulations issued under the Law would have to be compatible so long as the Convention remained in force. In the following year, on 3 October 1949, the Government of Iceland gave notice of the denunciation of the Convention, with the result that it ceased to be in force after the expiry of the prescribed two-year period of notice on 3 October 1951. Furthermore, during that interval this Court had handed down its Judgment in the *Fisheries* case (*I.C.J. Reports 1951*, p. 116) between the United Kingdom and Norway, in which it had endorsed the validity of the system of straight baselines applied by Norway off the Norwegian coast. Early in 1952, Iceland informed the United Kingdom of its intention to issue new fishery regulations in accordance with the 1948 Law. Then, on 19 March of that year, Iceland issued Regulations providing for a fishery zone whose outer limit was to be a line drawn 4 miles to seaward of straight baselines traced along the outermost points of the coasts, islands and rocks and across the opening of bays, and prohibiting all foreign fishing activities within that zone.

22. The 1952 Fisheries Regulations met with protests from the United Kingdom, regarding Iceland's claim to a 4-mile limit and certain features of its straight-baseline system, which the United Kingdom considered to go beyond the principles endorsed by the Court in the *Fisheries* case. After various attempts to resolve the dispute, a *modus vivendi* was reached in 1956 under which there was to be no further extension of Iceland's fishery limits pending discussion by the United Nations General Assembly in that year of the Report of the International Law Commission on the Law of the Sea. This discussion resulted in the convening at Geneva in 1958 of the first United Nations Conference on the Law of the Sea.

23. The 1958 Conference, having failed to reach agreement either on the limit of the territorial sea or on the zone of exclusive fisheries, adopted a resolution requesting the General Assembly to study the advisability of convening a second Law of the Sea Conference specifically to deal with these questions. After the conclusion of the 1958 Conference, Iceland made on 1 June 1958 a preliminary announcement of its intention to reserve the right of fishing within an area of 12 miles from the baselines exclusively to Icelandic fishermen, and to extend the fishing zone also by modification of the baselines, and then on 30 June 1958 issued new "Regulations concerning the Fisheries Limits off Iceland". Article 1 of these proclaimed a new 12-mile fishery limit around Iceland drawn from new baselines defined in that Article, and Article 2 prohibited all fishing activities by foreign vessels within the new fishery limit. Article 7 of the Regulations expressly stated that they were promulgated in accordance with the Law of 1948 concerning Scientific Conservation of the Continental Shelf Fisheries.

24. The United Kingdom did not accept the validity of the new Regulations, and its fishing vessels continued to fish inside the 12-mile limit, with the result that a number of incidents occurred on the fishing grounds. Various attempts were made to settle the dispute by negotiation but the dispute remained unresolved. On 5 May 1959 the Althing passed a resolution on the matter in which, *inter alia*, it said:

> ". . . the Althing declares that it considers that Iceland has an indisputable right to fishery limits of 12 miles, that *recognition should be obtained of Iceland's right to the entire continental shelf area in conformity with the policy adopted by the Law of 1948, concerning the Scientific Conservation of the Continental Shelf Fisheries* and that fishery limits of less than 12 miles from base-lines around the country are out of the question" (emphasis added).

The Resolution thus stressed that the 12-mile limit asserted in the 1958 Regulations was merely a further step in Iceland's progress towards its objective of a fishery zone extending over the whole of the continental shelf area.

25. After the Second United Nations Conference on the Law of the Sea, in 1960, the United Kingdom and Iceland embarked on a series of negotiations with a view to resolving their differences regarding the 12-mile fishery limits and baselines claimed by Iceland in its 1958 Regulations. According to the records of the negotiations which were drawn up by and have been brought to the Court's attention by the Applicant, the Icelandic representatives in their opening statement called attention to the proposals submitted to the 1960 Conference on the Law of the Sea concerning preferential rights and to the widespread support these proposals had received, and asserted that Iceland, as a country in a special situation, "should receive preferential treatment even beyond 12

miles". Fishery conservation measures outside the 12-mile limit, including the reservation of areas for Icelandic fishing, were discussed, but while the United Kingdom representatives recognized that "Iceland is a 'special situation' country", no agreement was reached regarding fisheries outside the 12-mile limit. In these discussions, the United Kingdom insisted upon receiving an assurance concerning the future extension of Iceland's fishery jurisdiction and a compromissory clause was then included in the Exchange of Notes which was agreed upon by the Parties on 11 March 1961.

26. The substantive provisions of the settlement, which were set out in the principal Note addressed by the Government of Iceland to the Government of the United Kingdom, were as follows:

(1) The United Kingdom would no longer object to a 12-mile fishery zone around Iceland measured from the baselines accepted solely for the purpose of the delimitation of that zone.

(2) The United Kingdom accepted for that purpose the baselines set out in the 1958 Regulations subject to the modification of four specified points.

(3) For a period of three years from the date of the Exchange of Notes, Iceland would not object to United Kingdom vessels fishing within certain specified areas and during certain stated months of the year.

(4) During that three-year period, however, United Kingdom vessels would not fish within the outer 6 miles of the 12-mile zone in seven specified areas.

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

In its Note in reply the United Kingdom emphasized that:

> ". . . in view of the exceptional dependence of the Icelandic nation upon coastal fisheries for their livelihood and economic development, and without prejudice to the rights of the United Kingdom under international law towards a third party, the contents of Your Excellency's Note are acceptable to the United Kingdom and the settlement of the dispute has been accomplished on the terms stated therein".

27. On 14 July 1971 the Government of Iceland issued a policy statement in which, *inter alia*, it was said:

> "That the agreements on fisheries jurisdiction with the British and the West Germans be terminated and that a decision be taken on the extension of fisheries jurisdiction to 50 nautical miles from base lines, and that this extension become effective not later than September 1st, 1972."

This led the Government of the United Kingdom, in an aide-mémoire of 17 July 1971, to draw the attention of Iceland to the terms of the 1961 Exchange of Notes regarding the right of either Party to refer to the Court any extension of Iceland's fishery limits. While reserving all its rights, the United Kingdom emphasized that the Exchange of Notes was not open to unilateral denunciation or termination. This prompted discussions between the two countries in which no agreement was reached; in an aide-mémoire of 31 August 1971 Iceland stated that it considered the object and purpose of the provision for recourse to judicial settlement to have been fully achieved; and that it now found it essential to extend further the zone of exclusive fisheries jurisdiction around its coasts to include the areas of the sea covering the continental shelf. Iceland further added that the new limits, the precise boundaries of which would be furnished at a later date, would enter into force not later than 1 September 1972; and that it was prepared to hold further meetings "for the purpose of achieving a practical solution of the problems involved".

28. The United Kingdom replied on 27 September 1971 and placed formally on record its view that "such an extension of the fishery zone around Iceland would have no basis in international law". It then controverted Iceland's proposition that the object and purpose of the provision for recourse to judicial settlement of disputes relating to an extension of fisheries jurisdiction had been fully achieved, and again reserved all its rights under that provision. At the same time, however, the United Kingdom expressed its willingness, without prejudice to its legal position, to enter into further exploratory discussions. In November 1971 the United Kingdom and Iceland held discussions. At these talks, the British delegation stated their view that Iceland's objectives could be achieved by a catch-limitation agreement. In further talks which took place in January 1972 the United Kingdom expressed its readiness to negotiate any arrangements for the limitation of catches that scientific evidence might show to be necessary, and in which any preferential requirements of the coastal State resulting from its dependence on fisheries would be recognized. It further proposed, as an interim measure pending the elaboration of a multilateral arrangement, to limit its annual catch of demersal fish in Icelandic waters to 185,000 tons. The Icelandic Government was not, however, prepared to negotiate further on this basis.

29. On 15 February 1972 the Althing adopted a Resolution reiterating the fundamental policy of the Icelandic people that the continental shelf

of Iceland and the superjacent waters were within the jurisdiction of Iceland. While repeating that the provisions of the Exchange of Notes of 1961 no longer constituted an obligation for Iceland, it resolved, *inter alia*:

"1. That the fishery limits will be extended to 50 miles from base-lines around the country, to become effective not later than 1 September 1972.

. . . . . .

3. That efforts to reach a solution of the problems connected with the extension be continued through discussions with the Governments of the United Kingdom and the Federal Republic of Germany.
4. That effective supervision of the fish stocks in the Iceland area be continued in consultation with marine biologists and that the necessary measures be taken for the protection of the fish stocks and specified areas in order to prevent over-fishing . . ."

In an aide-mémoire of 24 February 1972 Iceland's Minister for Foreign Affairs formally notified the United Kingdom Ambassador in Reykjavik of his Government's intention to proceed in accordance with this Resolution.

30. On 14 March 1972, the United Kingdom in an aide-mémoire took note of the decision of Iceland to issue new Regulations, reiterated its view that "such an extension of the fishery zone around Iceland would have no basis in international law", and rejected Iceland's contention that the Exchange of Notes was no longer in force. Moreover, formal notice was also given by the United Kingdom that an application would shortly be made to the Court in accordance with the Exchange of Notes; the British Government was however willing to continue discussions with Iceland "in order to agree satisfactory practical arrangements for the period while the case is before the International Court of Justice". On 14 April 1972, the United Kingdom filed in the Registry its Application bringing the present case before the Court.

31. A series of negotiations between representatives of the two countries soon followed and continued throughout May, June and July 1972, in the course of which various proposals for catch-limitation, fishing-effort limitation, area or seasonal restrictions for United Kingdom vessels were discussed, in the hope of arriving at practical arrangements for an interim régime pending the settlement of the dispute. By 12 July there was still no agreement on such an interim régime, and the Icelandic delegation announced that new Regulations would be issued on 14 July 1972 which would exclude all foreign vessels from fishing within the 50-mile limit after 1 September 1972. The United Kingdom delegation replied that, while ready to continue the discussions for an interim régime, they reserved the United Kingdom's rights in areas outside the 12-mile

limit and would seek an Order for interim measures of protection from the Court. The new Regulations, issued on 14 July 1972, extended Iceland's fishery limits to 50 miles as from 1 September 1972 and, by Article 2, prohibited all fishing activities by foreign vessels inside those limits. Consequently, on 19 July 1972, the United Kingdom filed its request for the indication of interim measures of protection.

32. On 11 August 1972 the Icelandic Foreign Ministry sent a Note to the United Kingdom Embassy in Reykjavik, in which the Icelandic Government renewed its interest in the recognition of its preferential rights in the area, an issue which had already been raised in 1967 by the Icelandic delegation to the North-East Atlantic Fisheries Commission. In a memorandum presented at the Fifth Meeting of that Commission, the Icelandic delegation had drawn attention to the need for consideration of the total problem of limiting fishing effort in Icelandic waters by, for example, a quota system under which the priority position of Iceland would be respected in accordance with internationally recognized principles regarding the preferential requirements of the coastal State where the people were overwhelmingly dependent upon the resources involved for their livelihood. In the Note of 11 August 1972 it was recalled that:

> "The Icelandic representatives laid main emphasis on receiving from the British side positive replies to two fundamental points:
>
> 1. Recognition of preferential rights for Icelandic vessels as to fishing outside the 12-mile limit.
> 2. That Icelandic authorities should have full rights and be in a position to enforce the regulations established with regard to fishing inside the 50-mile limit."

Thus, while Iceland invoked preferential rights and the Applicant was prepared to recognize them, basic differences remained as to the extent and scope of those rights, and as to the methods for their implementation and their enforcement. There can be little doubt that these divergences of views were some of "the problems connected with the extension" in respect of which the Althing Resolution of 15 February 1972 had instructed the Icelandic Government to make "efforts to reach a solution".

33. On 17 August 1972 the Court made an Order for provisional measures in which, *inter alia*, it indicated that, pending the Court's final decision in the proceedings, Iceland should refrain from taking any measures to enforce the Regulations of 14 July 1972 against United Kingdom vessels engaged in fishing outside the 12-mile fishery zone; and that the United Kingdom should limit the annual catch of its vessels in the "Sea Area of Iceland" to 170,000 tons. That the United Kingdom has

complied with the terms of the catch-limitation measure indicated in the Court's Order has not been questioned or disputed. Iceland, on the other hand, notwithstanding the measures indicated by the Court, began to enforce the new Regulations against United Kingdom vessels soon after they came into effect on 1 September 1972. Moreover, when in August 1972 the United Kingdom made it clear to Iceland that in its view any settlement between the parties of an interim régime should be compatible with the Court's Order, Iceland replied on 30 August that it would not consider the Order to be binding upon it "since the Court has no jurisdiction in the matter".

34. By its Judgment of 2 February 1973, the Court found that it had jurisdiction to entertain the Application and to deal with the merits of the dispute. However, even after the handing down of that Judgment, Iceland persisted in its efforts to enforce the 50-mile limit against United Kingdom vessels and, as appears from the letter of 11 January 1974 addressed to the Court by the Minister for Foreign Affairs of Iceland, mentioned above, it has continued to deny the Court's competence to entertain the dispute.

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35. Negotiations for an interim arrangement were, however, resumed between the two countries, and were carried on intermittently during 1972 and 1973. In the meantime incidents on the fishing grounds involving British and Icelandic vessels were becoming increasingly frequent, and eventually discussions between the Prime Ministers of Iceland and the United Kingdom in 1973 led to the conclusion of an "Interim Agreement in the Fisheries Dispute" constituted by an Exchange of Notes dated 13 November 1973.

36. The terms of the Agreement were set out in the Icelandic Note, which began by referring to the discussions which had taken place and continued:

> "In these discussions the following arrangements have been worked out for an interim agreement relating to fisheries in the disputed area, pending a settlement of the substantive dispute and without prejudice to the legal position or rights of either Government in relation thereto, which are based on an estimated annual catch of about 130,000 metric tons by British vessels."

The arrangements for the fishing activities of United Kingdom vessels in the disputed area were then set out, followed by paragraph 7 which stipulated:

> "The agreement will run for two years from the present date. Its

> termination will not affect the legal position of either Government with respect to the substantive dispute."

The Note ended with the formal proposal, acceptance of which was confirmed in the United Kingdom's reply, that the Exchange of Notes should "constitute an interim agreement between our two countries".

37. The interim agreement contained no express reference to the present proceedings before the Court nor any reference to any waiver, whether by the United Kingdom or by Iceland, of any claims in respect of the matters in dispute. On the contrary, it emphasized that it was an interim agreement, that it related to fisheries in the disputed area, that it was concluded pending a settlement of the substantive dispute, and that it was without prejudice to the legal position or rights of either Government in relation to the substantive dispute. In the light of these saving clauses, it is clear that the dispute still continues, that its final settlement is regarded as pending, and that the Parties meanwhile maintain their legal rights and claims as well as their respective stands in the conflict. The interim agreement thus cannot be described as a "phasing-out" agreement, a term which refers to an arrangement whereby both parties consent to the progressive extinction of the fishing rights of one of them over a limited number of years. Nor could the interim agreement be interpreted as constituting a bar to, or setting up any limitation on, the pursuit by the Applicant of its claim before the Court. On the face of the text, it was not intended to affect the legal position or rights of either country in relation to the present proceedings. That this was the United Kingdom's understanding of the interim agreement is confirmed by a statement made by the British Prime Minister in the House of Commons on the date of its conclusion: "Our position at the World Court remains exactly as it is, and the agreement is without prejudice to the case of either country in this matter." The Government of Iceland for its part, in the letter of 11 January 1974 already referred to, stated that:

> "This agreement is in further implementation of the policy of the Government of Iceland to solve the practical difficulties of the British trawling industry arising out of the application of the 1948 Law and the Althing Resolution of 14 February 1972, by providing an adjustment during the next two years. It also contributes to the reduction of tension which has been provoked by the presence of British armed naval vessels within the fifty-mile limit."

38. The interim agreement of 1973, unlike the 1961 Exchange of Notes, does not describe itself as a "settlement" of the dispute, and, apart from being of limited duration, clearly possesses the character of a provisional arrangement adopted without prejudice to the rights of the Parties, nor does it provide for the waiver of claims by either Party in respect of the matters in dispute. The Applicant has not sought to withdraw or discontinue its proceedings. The primary duty of the Court is to discharge

its judicial function and it ought not therefore to refuse to adjudicate merely because the Parties, while maintaining their legal positions, have entered into an agreement one of the objects of which was to prevent the continuation of incidents. When the Court decided, by its Order of 12 July 1973, to confirm that the provisional measures in the present case should remain operative until final judgment was given, it was aware that negotiations had taken place between the Parties with a view to reaching an interim arrangement, and it stated specifically that "the provisional measures indicated by the Court and confirmed by the present Order do not exclude an interim arrangement which may be agreed upon by the Governments concerned . . ." (*Fisheries Jurisdiction (United Kingdom* v. *Iceland), Interim Measures, Order of 12 July 1973, I.C.J. Reports 1973*, p. 303, para. 7).

39. In response to questions put by a Member of the Court, counsel for the United Kingdom expressed the view that the interim agreement, as a treaty in force, regulates the relations between the two countries so far as British fishing is concerned in the specified areas. The judgment of the Court, the United Kingdom envisages, will state the rules of customary international law between the Parties, defining their respective rights and obligations, but will not completely replace with immediate effect the interim agreement, which will remain a treaty in force. In so far as the judgment may possibly deal with matters which are not covered in the interim agreement, the judgment would, in the understanding of the United Kingdom, have immediate effect; the Parties will in any event be under a duty fully to regulate their relations in accordance with the terms of the judgment as soon as the interim agreement ceases to be in force, i.e., on 13 November 1975 or such earlier date as the Parties may agree. In the view of the United Kingdom, the Court's judgment will:

> ". . . constitute an authoritative statement of the rights and obligations of the parties under existing law and may provide a basis for the negotiation of arrangements to follow those contained in the Interim Agreement".

40. The Court is of the view that there is no incompatibility with its judicial function in making a pronouncement on the rights and duties of the Parties under existing international law which would clearly be capable of having a forward reach; this does not mean that the Court should declare the law between the Parties as it might be at the date of expiration of the interim agreement, a task beyond the powers of any tribunal. The possibility of the law changing is ever present: but that cannot relieve the Court from its obligation to render a judgment on the basis of the law as it exists at the time of its decision. In any event it cannot be said that the issues now before the Court have become without object; for there is no doubt that the case is one in which "there exists at

the time of the adjudication an actual controversy involving a conflict of legal interests between the Parties" (*Northern Cameroons, Judgment, I.C.J. Reports 1963*, pp. 33-34).

41. Moreover, if the Court were to come to the conclusion that the interim agreement prevented it from rendering judgment, or compelled it to dismiss the Applicant's claim as one without object, the inevitable result would be to discourage the making of interim arrangements in future disputes with the object of reducing friction and avoiding risk to peace and security. This would run contrary to the purpose enshrined in the provisions of the United Nations Charter relating to the pacific settlement of disputes. It is because of the importance of these considerations that the Court has felt it necessary to state at some length its views on the inferences discussed above. The Court concludes that the existence of the interim agreement ought not to lead it to refrain from pronouncing judgment in the case.

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42. The question has been raised whether the Court has jurisdiction to pronounce upon certain matters referred to the Court in the last paragraph of the Applicant's final submissions (paragraphs 11 and 12 above) to the effect that the parties are under a duty to examine together the existence and extent of the need for restrictions of fishing activities in Icelandic waters on conservation grounds and to negotiate for the establishment of such a régime as will, *inter alia*, ensure for Iceland a preferential position consistent with its position as a State specially dependent on its fisheries.

43. In its Judgment of 2 February 1973, pronouncing on the jurisdiction of the Court in the present case, 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" (*I.C.J. Reports 1973*, p. 22, para. 46). The Application which the Court found it had jurisdiction to entertain contained a submission under letter *(b)* (cf. paragraph 11 above) which in its second part raised the issues of conservation of fishery resources and of preferential fishing rights. These questions, among others, had previously been discussed in the negotiations between the parties referred to in paragraphs 27 to 32 above and were also extensively examined in the pleadings and hearings on the merits.

44. The Order of the Court indicating interim measures of protection (*Fisheries Jurisdiction (United Kingdom* v. *Iceland), Interim Protection, Order of 17 August 1972, I.C.J. Reports 1972*, p. 12) implied that the case before the Court involved questions of fishery conservation and of preferential fishing rights since, in indicating a catch-limitation figure for the Applicant's fishing, the Court stated that this measure was based on "the exceptional dependence of the Icelandic nation upon coastal

fisheries" and "of the need for the conservation of fish stocks in the Iceland area" (*loc. cit.*, pp. 16-17, paras. 23 and 24).

45. In its Judgment of 2 February 1973, pronouncing on its jurisdiction in the case, the Court, after taking into account the aforesaid contentions of the Applicant concerning fishery conservation and preferential rights, referred again to "the exceptional dependence of Iceland on its fisheries and the principle of conservation of fish stocks" (*I.C.J. Reports 1973*, p. 20, para. 42). The judicial notice taken therein of the recognition given by the Parties to the exceptional dependence of Iceland on its fisheries and to the need of conservation of fish stocks in the area clearly implies that such questions are before the Court.

46. The Order of the Court of 12 July 1973 on the continuance of interim measures of protection referred again to catch limitation figures and also to the question of "related restrictions concerning areas closed to fishing, number and type of vessels allowed and forms of control of the agreed provisions" (*I.C.J. Reports 1973*, p. 303, para. 7). Thus the Court took the view that those questions were within its competence. As the Court stated in its Order of 17 August 1972, there must be a connection "under Article 61, paragraph 1, of the Rules between a request for interim measures of protection and the original Application filed with the Court" (*I.C.J. Reports 1972*, p. 15, para. 12).

47. As to the compromissory clause in the 1961 Exchange of Notes, this gives the Court jurisdiction with respect to "a dispute in relation to such extension", i.e., "the extension of fisheries jurisdiction around Iceland". The present dispute was occasioned by Iceland's unilateral extension of its fisheries jurisdiction. However, it would be too narrow an interpretation of the compromissory clause to conclude that the Court's jurisdiction is limited to giving an affirmative or a negative answer to the question of whether the extension of fisheries jurisdiction, as enacted by Iceland on 14 July 1972, is in conformity with international law. In the light of the negotiations between the Parties, both in 1960 (paragraph 25 above) and in 1971-1972 (paragraphs 28 to 32 above), in which the questions of fishery conservation measures in the area and Iceland's preferential fishing rights were raised and discussed, and in the light of the proceedings before the Court, it seems evident that the dispute between the Parties includes disagreements as to the extent and scope of their respective rights in the fishery resources and the adequacy of measures to conserve them. It must therefore be concluded that those disagreements are an element of the "dispute in relation to the extension of fisheries jurisdiction around Iceland".

48. Furthermore, the dispute before the Court must be considered in all its aspects. Even if the Court's competence were understood to be confined to the question of the conformity of Iceland's extension with the rules of international law, it would still be necessary for the Court to

determine in that context the role and function which those rules reserve to the concept of preferential rights and that of conservation of fish stocks. Thus, whatever conclusion the Court may reach in regard to preferential rights and conservation measures, it is bound to examine these questions with respect to this case. Consequently, the suggested restriction on the Court's competence not only cannot be read into the terms of the compromissory clause, but would unduly encroach upon the power of the Court to take into consideration all relevant elements in administering justice between the Parties.

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49. The Applicant has challenged the Regulations promulgated by the Government of Iceland on 14 July 1972, and since the Court has to pronounce on this challenge, the ascertainment of the law applicable becomes necessary. As the Court stated in the *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.)

The Court will therefore proceed to the determination of the existing rules of international law relevant to the settlement of the present dispute.

50. The Geneva Convention on the High Seas of 1958, which was adopted "as generally declaratory of established principles of international law", defines in Article 1 the term "high seas" as "all parts of the sea that are not included in the territorial sea or in the internal waters of a State". Article 2 then declares that "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty" and goes on to provide that the freedom of the high seas comprises, *inter alia*, both for coastal and non-coastal States, freedom of navigation and freedom of fishing. The freedoms of the high seas are however made subject to the consideration that they "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".

51. The breadth of the territorial sea was not defined by the 1958 Convention on the Territorial Sea and the Contiguous Zone. It is true that Article 24 of this Convention limits the contiguous zone to 12 miles "from the baseline from which the breadth of the territorial sea is measured". At the 1958 Conference, the main differences on the breadth

of the territorial sea were limited at the time to disagreements as to what limit, not exceeding 12 miles, was the appropriate one. The question of the breadth of the territorial sea and that of the extent of the coastal State's fishery jurisdiction were left unsettled at the 1958 Conference. These questions were referred to the Second Conference on the Law of the Sea, held in 1960. Furthermore, the question of the extent of the fisheries jurisdiction of the coastal State, which had constituted a serious obstacle to the reaching of an agreement at the 1958 Conference, became gradually separated from the notion of the territorial sea. This was a development which reflected the increasing importance of fishery resources for all States.

52. The 1960 Conference failed by one vote to adopt a text governing the two questions of the breadth of the territorial sea and the extent of fishery rights. However, after that Conference the law evolved through the practice of States on the basis of the debates and near-agreements at the Conference. Two concepts have crystallized as customary law in recent years arising out of the general consensus revealed at that Conference. The first is the concept of the fishery zone, the area in which a State may claim exclusive fishery jurisdiction independently of its territorial sea; the extension of that fishery zone up to a 12-mile limit from the baselines appears now to be generally accepted. The second is the concept of preferential rights of fishing in adjacent waters in favour of the coastal State in a situation of special dependence on its coastal fisheries, this preference operating in regard to other States concerned in the exploitation of the same fisheries, and to be implemented in the way indicated in paragraph 57 below.

53. In recent years the question of extending the coastal State's fisheries jurisdiction has come increasingly to the forefront. The Court is aware that a number of States has asserted an extension of fishery limits. The Court is also aware of present endeavours, pursued under the auspices of the United Nations, to achieve in a third Conference on the Law of the Sea the further codification and progressive development of this branch of the law, as it is of various proposals and preparatory documents produced in this framework, which must be regarded as manifestations of the views and opinions of individual States and as vehicles of their aspirations, rather than as expressing principles of existing law. The very fact of convening the third Conference on the Law of the Sea evidences a manifest desire on the part of all States to proceed to the codification of that law on a universal basis, including the question of fisheries and conservation of the living resources of the sea. Such a general desire is understandable since the rules of international maritime law have been the product of mutual accommodation, reasonableness and co-operation. So it was in the past, and so it necessarily is today. In the circumstances, the Court, as a court of law, cannot render judgment *sub*

specie legis ferendae, or anticipate the law before the legislator has laid it down.

54. The concept of a 12-mile fishery zone, referred to in paragraph 52 above, as a *tertium genus* between the territorial sea and the high seas, has been accepted with regard to Iceland in the substantive provisions of the 1961 Exchange of Notes, and the United Kingdom has also applied the same fishery limit to its own coastal waters since 1964; therefore this matter is no longer in dispute between the Parties. At the same time, the concept of preferential rights, a notion that necessarily implies the existence of other legal rights in respect of which that preference operates, has been admitted by the Applicant to be relevant to the solution of the present dispute. Moreover, the Applicant has expressly recognized Iceland's preferential rights in the disputed waters and at the same time has invoked its own historic fishing rights in these same waters, on the ground that reasonable regard must be had to such traditional rights by the coastal State, in accordance with the generally recognized principles embodied in Article 2 of the High Seas Convention. If, as the Court pointed out in its dictum in the *Fisheries* case, cited in paragraph 49 above, any national delimitation of sea areas, to be opposable to other States, requires evaluation in terms of the existing rules of international law, then it becomes necessary for the Court, in its examination of the Icelandic fisheries Regulations, to take those elements into consideration as well. Equally it has necessarily to take into account the provisions of the Exchange of Notes of 1961 which govern the relations between the Parties with respect to Iceland's fishery limits. The said Exchange of Notes, which was concluded within the framework of the existing provisions of the law of the sea, was held by the Court, in its Judgment of 2 February 1973, to be a treaty which is valid and in force.

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55. The concept of preferential rights for the coastal State in a situation of special dependence on coastal fisheries originated in proposals submitted by Iceland at the Geneva Conference of 1958. Its delegation drew attention to the problem which would arise when, in spite of adequate fisheries conservation measures, the yield ceased to be sufficient to satisfy the requirements of all those who were interested in fishing in a given area. Iceland contended that in such a case, when a catch-limitation becomes necessary, special consideration should be given to the coastal State whose population is overwhelmingly dependent on the fishing resources in its adjacent waters.

56. An Icelandic proposal embodying these ideas failed to obtain the majority required, but a resolution was adopted at the 1958 Conference

concerning the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development. This resolution, after "recognizing that such situations call for exceptional measures befitting particular needs" recommended that:

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

The resolution further recommended that "appropriate conciliation and arbitral procedures shall be established for the settlement of any disagreement".

57. At the Plenary Meetings of the 1960 Conference the concept of preferential rights was embodied in a joint amendment presented by Brazil, Cuba and Uruguay which was subsequently incorporated by a substantial vote into a joint United States-Canadian proposal concerning a 6-mile territorial sea and an additional 6-mile fishing zone, thus totalling a 12-mile exclusive fishing zone, subject to a phasing-out period. This amendment provided, independently of the exclusive fishing zone, that the coastal State had:

> ". . . the faculty of claiming preferential fishing rights in any area of the high seas adjacent to its exclusive fishing zone when it is scientifically established that a special situation or condition makes the exploitation of the living resources of the high seas in that area of fundamental importance to the economic development of the coastal State or the feeding of its population".

It also provided that:

> "A special situation or condition may be deemed to exist when:
>
> *(a)* The fisheries and the economic development of the coastal State or the feeding of its population are so manifestly interrelated that, in consequence, that State is greatly dependent on the living resources of the high seas in the area in respect of which preferential fishing is being claimed;
>
> *(b)* It becomes necessary to limit the total catch of a stock or stocks of fish in such areas . . ."

The contemporary practice of States leads to the conclusion that the

preferential rights of the coastal State in a special situation are to be implemented by agreement between the States concerned, either bilateral or multilateral, and, in case of disagreement, through the means for the peaceful settlement of disputes provided for in Article 33 of the Charter of the United Nations. It was in fact an express condition of the amendment referred to above that any other State concerned would have the right to request that a claim made by a coastal State should be tested and determined by a special commission on the basis of scientific criteria and of evidence presented by the coastal State and other States concerned. The commission was to be empowered to determine, for the period of time and under the limitations that it found necessary, the preferential rights of the coastal State, "while having regard to the interests of any other State or States in the exploitation of such stock or stocks of fish".

58. State practice on the subject of fisheries reveals an increasing and widespread acceptance of the concept of preferential rights for coastal States, particularly in favour of countries or territories in a situation of special dependence on coastal fisheries. Both the 1958 Resolution and the 1960 joint amendment concerning preferential rights were approved by a large majority of the Conferences, thus showing overwhelming support for the idea that in certain special situations it was fair to recognize that the coastal State had preferential fishing rights. After these Conferences, the preferential rights of the coastal State were recognized in various bilateral and multilateral international agreements. The Court's attention has been drawn to the practice in this regard of the North-West and North-East Atlantic Fisheries Commissions, of which 19 maritime States altogether, including both Parties, are members; its attention has also been drawn to the Arrangement Relating to Fisheries in Waters Surrounding the Faroe Islands, signed at Copenhagen on 18 December 1973 on behalf of the Governments of Belgium, Denmark, France, the Federal Republic of Germany, Norway, Poland and the United Kingdom, and to the Agreement on the Regulation of the Fishing of North-East Arctic (Arcto-Norwegian) Cod, signed on 15 March 1974 on behalf of the Governments of the United Kingdom, Norway and the Union of Soviet Socialist Republics. Both the aforesaid agreements, in allocating the annual shares on the basis of the past performance of the parties in the area, assign an additional share to the coastal State on the ground of its preferential right in the fisheries in its adjacent waters. The Faroese agreement takes expressly into account in its preamble "the exceptional dependence of the Faroese economy on fisheries" and recognizes "that the Faroe Islands should enjoy preference in waters surrounding the Faroe Islands".

59. There can be no doubt of the exceptional dependence of Iceland on its fisheries. That exceptional dependence was explicitly recognized by the Applicant in the Exchange of Notes of 11 March 1961, and the Court

has also taken judicial notice of such recognition, by declaring that it is "necessary to bear in mind the exceptional dependence of the Icelandic nation upon coastal fisheries for its livelihood and economic development" (*I.C.J. Reports 1972*, p. 16, para. 23).

60. The preferential rights of the coastal State come into play only at the moment when an intensification in the exploitation of fishery resources makes it imperative to introduce some system of catch-limitation and sharing of those resources, to preserve the fish stocks in the interests of their rational and economic exploitation. This situation appears to have been reached in the present case. In regard to the two main demersal species concerned—cod and haddock—the Applicant has shown itself aware of the need for a catch-limitation which has become indispensable in view of the establishment of catch-limitations in other regions of the North Atlantic. If a system of catch-limitation were not established in the Icelandic area, the fishing effort displaced from those other regions might well be directed towards the unprotected grounds in that area.

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61. The Icelandic regulations challenged before the Court have been issued and applied by the Icelandic authorities as a claim to exclusive rights thus going beyond the concept of preferential rights. Article 2 of the Icelandic Regulations of 14 July 1972 states:

> "Within the fishery limits all fishing activities by foreign vessels shall be prohibited in accordance with the provisions of Law No. 33 of 19 June 1922, concerning Fishing inside the Fishery Limits."

Article 1 of the 1922 Law provides: "Only Icelandic citizens may engage in fishing in the territorial waters of Iceland, and only Icelandic boats or ships may be used for such fishing." The language of the relevant government regulations indicates that their object is to establish an exclusive fishery zone, in which all fishing by vessels registered in other States, including the United Kingdom, would be prohibited. The mode of implementation of the regulations, carried out by Icelandic governmental authorities vis-à-vis United Kingdom fishing vessels, before the 1973 interim agreement, and despite the Court's interim measures, confirms this interpretation.

62. The concept of preferential rights is not compatible with the exclusion of all fishing activities of other States. A coastal State entitled to preferential rights is not free, unilaterally and according to its own uncontrolled discretion, to determine the extent of those rights. The characterization of the coastal State's rights as preferential implies a certain priority, but cannot imply the extinction of the concurrent rights of other

States, and particularly of a State which, like the Applicant, has for many years been engaged in fishing in the waters in question, such fishing activity being important to the economy of the country concerned. The coastal State has to take into account and pay regard to the position of such other States, particularly when they have established an economic dependence on the same fishing grounds. Accordingly, the fact that Iceland is entitled to claim preferential rights does not suffice to justify its claim unilaterally to exclude the Applicant's fishing vessels from all fishing activity in the waters beyond the limits agreed to in the 1961 Exchange of Notes.

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63. In this case, the Applicant has pointed out that its vessels have been fishing in Icelandic waters for centuries and that they have done so in a manner comparable with their present activities for upwards of 50 years. Published statistics indicate that from 1920 onwards, fishing of demersal species by United Kingdom vessels in the disputed area has taken place on a continuous basis from year to year, and that, except for the period of the Second World War, the total catch of those vessels has been remarkably steady. Similar statistics indicate that the waters in question constitute the most important of the Applicant's distant-water fishing grounds for demersal species.

64. The Applicant further states that in view of the present situation of fisheries in the North Atlantic, which has demanded the establishment of agreed catch-limitations of cod and haddock in various areas, it would not be possible for the fishing effort of United Kingdom vessels displaced from the Icelandic area to be diverted at economic levels to other fishing grounds in the North Atlantic. Given the lack of alternative fishing opportunity, it is further contended, the exclusion of British fishing vessels from the Icelandic area would have very serious adverse consequences, with immediate results for the affected vessels and with damage extending over a wide range of supporting and related industries. It is pointed out in particular that wide-spread unemployment would be caused among all sections of the British fishing industry and in ancillary industries and that certain ports—Hull, Grimsby and Fleetwood—specially reliant on fishing in the Icelandic area, would be seriously affected.

65. Iceland has for its part admitted the existence of the Applicant's historic and special interests in the fishing in the disputed waters. The Exchange of Notes as a whole and in particular its final provision requiring Iceland to give advance notice to the United Kingdom of any extension of its fishery limits impliedly acknowledged the existence of United Kingdom fishery interests in the waters adjacent to the 12-mile limit. The discussions which have taken place between the two countries also imply an acknowledgement by Iceland of the existence of such

interests. Furthermore, the Prime Minister of Iceland stated on 9 November 1971:

> ". . . the British have some interests to protect in this connection. For a long time they have been fishing in Icelandic waters . . . The well-being of specific British fishing towns may nevertheless to some extent be connected with the fisheries in Icelandic waters . . ."

66. Considerations similar to those which have prompted the recognition of the preferential rights of the coastal State in a special situation apply when coastal populations in other fishing States are also dependent on certain fishing grounds. In both instances the economic dependence and the livelihood of whole communities are affected. Not only do the same considerations apply, but the same interest in conservation exists. In this respect the Applicant has recognized that the conservation and efficient exploitation of the fish stocks in the Iceland area are of importance not only to Iceland but also to the United Kingdom.

67. The provisions of the Icelandic Regulations of 14 July 1972 and the manner of their implementation disregard the fishing rights of the Applicant. Iceland's unilateral action thus constitutes an infringement of the principle enshrined in Article 2 of the 1958 Geneva Convention on the High Seas which requires that all States, including coastal States, in exercising their freedom of fishing, pay reasonable regard to the interests of other States. It also disregards the rights of the Applicant as they result from the Exchange of Notes of 1961. The Applicant is therefore justified in asking the Court to give all necessary protection to its own rights, while at the same time agreeing to recognize Iceland's preferential position. Accordingly, the Court is bound to conclude that the Icelandic Regulations of 14 July 1972 establishing a zone of exclusive fisheries jurisdiction extending to 50 nautical miles from baselines around the coast of Iceland, are not opposable to the United Kingdom, and the latter is under no obligation to accept the unilateral termination by Iceland of United Kingdom fishery rights in the area.

68. The findings stated by the Court in the preceding paragraphs suffice to provide a basis for the decision of the present case, namely: that Iceland's extension of its exclusive fishery jurisdiction beyond 12 miles is not opposable to the United Kingdom; that Iceland may on the other hand claim preferential rights in the distribution of fishery resources in the adjacent waters; that the United Kingdom also has established rights with respect to the fishery resources in question; and that the principle of reasonable regard for the interests of other States enshrined in Article 2 of the Geneva Convention on the High Seas of 1958 requires Iceland and the United Kingdom to have due regard to each other's interests, and to the interests of other States, in those resources.

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69. It follows from the reasoning of the Court in this case that in order to reach an equitable solution of the present dispute it is necessary that the preferential fishing rights of Iceland, as a State specially dependent on coastal fisheries, be reconciled with the traditional fishing rights of the Applicant. Such a reconciliation cannot be based, however, on a phasing-out of the Applicant's fishing, as was the case in the 1961 Exchange of Notes in respect of the 12-mile fishery zone. In that zone, Iceland was to exercise exclusive fishery rights while not objecting to continued fishing by the Applicant's vessels during a phasing-out period. In adjacent waters outside that zone, however, a similar extinction of rights of other fishing States, particularly when such rights result from a situation of economic dependence and long-term reliance on certain fishing grounds, would not be compatible with the notion of preferential rights as it was recognized at the Geneva Conferences of 1958 and 1960, nor would it be equitable. At the 1960 Conference, the concept of preferential rights of coastal States in a special situation was recognized in the joint amendment referred to in paragraph 57 above, under such limitations and to such extent as is found "necessary by reason of the dependence of the coastal State on the stock or stocks of fish, while having regard to the interests of any other State or States in the exploitation of such stock or stocks of fish". The reference to the interests of other States in the exploitation of the same stocks clearly indicates that the preferential rights of the coastal State and the established rights of other States were considered as, in principle, continuing to co-exist.

70. This is not to say that the preferential rights of a coastal State in a special situation are a static concept, in the sense that the degree of the coastal State's preference is to be considered as fixed for ever at some given moment. On the contrary, the preferential rights are a function of the exceptional dependence of such a coastal State on the fisheries in adjacent waters and may, therefore, vary as the extent of that dependence changes. Furthermore, as was expressly recognized in the 1961 Exchange of Notes, a coastal State's exceptional dependence on fisheries may relate not only to the livelihood of its people but to its economic development. In each case, it is essentially a matter of appraising the dependence of the coastal State on the fisheries in question in relation to that of the other State concerned and of reconciling them in as equitable a manner as is possible.

71. In view of the Court's finding (paragraph 67 above) that the Icelandic Regulations of 14 July 1972 are not opposable to the United Kingdom for the reasons which have been stated, it follows that the Government of Iceland is not in law entitled unilaterally to exclude United Kingdom fishing vessels from sea areas to seaward of the limits agreed to in the 1961 Exchange of Notes or unilaterally to impose restrictions on their activities in such areas. But the matter does not end there;

as the Court has indicated, Iceland is, in view of its special situation, entitled to preferential rights in respect of the fish stocks of the waters adjacent to its coasts. Due recognition must be given to the rights of both Parties, namely the rights of the United Kingdom to fish in the waters in dispute, and the preferential rights of Iceland. Neither right is an absolute one: the preferential rights of a coastal State are limited according to the extent of its special dependence on the fisheries and by its obligation to take account of the rights of other States and the needs of conservation; the established rights of other fishing States are in turn limited by reason of the coastal State's special dependence on the fisheries and its own obligation to take account of the rights of other States, including the coastal State, and of the needs of conservation.

72. It follows that even if the Court holds that Iceland's extension of its fishery limits is not opposable to the Applicant, this does not mean that the Applicant is under no obligation to Iceland with respect to fishing in the disputed waters in the 12-mile to 50-mile zone. On the contrary, both States have an obligation to take full account of each other's rights and of any fishery conservation measures the necessity of which is shown to exist in those waters. It is one of the advances in maritime international law, resulting from the intensification of fishing, that the former *laissez-faire* treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard to the rights of other States and the needs of conservation for the benefit of all. Consequently, both Parties have the obligation to keep under review the fishery resources in the disputed waters and to examine together, in the light of scientific and other available information, the measures required for the conservation and development, and equitable exploitation, of those resources, taking into account any international agreement in force between them, such as the North-East Atlantic Fisheries Convention of 24 January 1959, as well as such other agreements as may be reached in the matter in the course of further negotiation.

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* *

73. The most appropriate method for the solution of the dispute is clearly that of negotiation. Its objective should be the delimitation of the rights and interests of the Parties, the preferential rights of the coastal State on the one hand and the rights of the Applicant on the other, to balance and regulate equitably questions such as those of catch-limitation, share allocations and "related restrictions concerning areas closed to fishing, number and type of vessels allowed and forms of control of the agreed provisions" (*Fisheries Jurisdiction (United Kingdom* v. *Iceland), Interim Measures, Order of 12 July 1973, I.C.J. Reports 1973*, p. 303,

para. 7). This necessitates detailed scientific knowledge of the fishing grounds. It is obvious that the relevant information and expertise would be mainly in the possession of the Parties. The Court would, for this reason, meet with difficulties if it were itself to attempt to lay down a precise scheme for an equitable adjustment of the rights involved. It is thus obvious that both in regard to merits and to jurisdiction the Court only pronounces on the case which is before it and not on any hypothetical situation which might arise in the future.

74. It is implicit in the concept of preferential rights that negotiations are required in order to define or delimit the extent of those rights, as was already recognized in the 1958 Geneva Resolution on Special Situations relating to Coastal Fisheries, which constituted the starting point of the law on the subject. This Resolution provides for the establishment, through collaboration between the coastal State and any other State fishing in the area, of agreed measures to secure just treatment of the special situation.

75. The obligation to negotiate thus flows from the very nature of the respective rights of the Parties; to direct them to negotiate is therefore a proper exercise of the judicial function in this case. This also corresponds to the Principles and provisions of the Charter of the United Nations concerning peaceful settlement of disputes. As the Court stated in the *North Sea Continental Shelf* cases:

> ". . . this obligation merely constitutes a special application of a principle which underlies all international relations, and which is moreover recognized in Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of international disputes" (*I.C.J. Reports 1969*, p. 47, para. 86).

76. In this case negotiations were initiated by the Parties from the date when Iceland gave notice of its intention to extend its fisheries jurisdiction, but these negotiations reached an early deadlock, and could not come to any conclusion; subsequently, further negotiations were directed to the conclusion of the interim agreement of 13 November 1973. The obligation to seek a solution of the dispute by peaceful means, among which negotiations are the most appropriate to this case, has not been eliminated by that interim agreement. The question has been raised, however, on the basis of the deletion of a sentence which had been proposed by the United Kingdom in the process of elaboration of the text, whether the parties agreed to wait for the expiration of the term provided for in the interim agreement without entering into further negotiations. The deleted sentence, which would have appeared in paragraph 7 of the 1973 Exchange of Notes, read: "The Governments will reconsider the position before that term expires unless they have in the meantime agreed to a settlement of the substantive dispute."

77. The Court cannot accept the view that the deletion of this sentence which concerned renegotiation of the interim régime warrants the in-

ference that the common intention of the Parties was to be released from negotiating in respect of the basic dispute over Iceland's extension to a 50-mile limit throughout the whole period covered by the interim agreement. Such an intention would not correspond to the attitude taken up by the Applicant in these proceedings, in which it has asked the Court to adjudge and declare that the Parties are under a duty to negotiate a régime for the fisheries in the area. Nor would an interpretation of this kind, in relation to Iceland's intention, correspond to the clearly stated policy of the Icelandic authorities to continue negotiations on the basic problems relating to the dispute, as emphasized by paragraph 3 of the Althing Resolution of 15 February 1972, referred to earlier, which reads: "That efforts to reach a solution of the problems connected with the extension be continued through discussions with the Governments of the United Kingdom and the Federal Republic of Germany." Taking into account that the interim agreement contains a definite date for its expiration, and in the light of what has been stated in paragraph 75 above, it would seem difficult to attribute to the Parties an intention to wait for that date and for the reactivation of the dispute, with all the possible friction it might engender, before one of them might require the other to attempt a peaceful settlement through negotiations. At the same time, the Court must add that its Judgment obviously cannot preclude the Parties from benefiting from any subsequent developments in the pertinent rules of international law.

78. In the fresh negotiations which are to take place on the basis of the present Judgment, the Parties will have the benefit of the above appraisal of their respective rights, and of certain guidelines defining their scope. The task before them will be to conduct their negotiations on the basis that each must in good faith pay reasonable regard to the legal rights of the other in the waters around Iceland outside the 12-mile limit, thus bringing about an equitable apportionment of the fishing resources based on the facts of the particular situation, and having regard to the interests of other States which have established fishing rights in the area. It is not a matter of finding simply an equitable solution, but an equitable solution derived from the applicable law. As the Court stated in the *North Sea Continental Shelf* cases:

> ". . . 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, para. 85).

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* *

79. For these reasons,

THE COURT,

by ten votes to four,

(1) finds that the Regulations concerning the Fishery Limits off Iceland *(Reglugerð um fiskveiðilandhelgi Íslands)* promulgated by the Government of Iceland on 14 July 1972 and constituting a unilateral extension of the exclusive fishing rights of Iceland to 50 nautical miles from the baselines specified therein are not opposable to the Government of the United Kingdom;

(2) finds that, in consequence, the Government of Iceland is not entitled unilaterally to exclude United Kingdom fishing vessels from areas between the fishery limits agreed to in the Exchange of Notes of 11 March 1961 and the limits specified in the Icelandic Regulations of 14 July 1972, or unilaterally to impose restrictions on the activities of those vessels in such areas;

by ten votes to four,

(3) holds that the Government of Iceland and the Government of the United Kingdom are under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences concerning their respective fishery rights in the areas specified in subparagraph 2;

(4) holds that in these negotiations the Parties are to take into account, *inter alia*:

(a) that in the distribution of the fishing resources in the areas specified in subparagraph 2 Iceland is entitled to a preferential share to the extent of the special dependence of its people upon the fisheries in the seas around its coasts for their livelihood and economic development;

(b) that by reason of its fishing activities in the areas specified in subparagraph 2, the United Kingdom also has established rights in the fishery resources of the said areas on which elements of its people depend for their livelihood and economic well-being;

(c) the obligation to pay due regard to the interests of other States in the conservation and equitable exploitation of these resources;

(d) that the above-mentioned rights of Iceland and of the United Kingdom should each be given effect to the extent compatible with the conservation and development of the fishery resources in the areas specified in subparagraph 2 and with the interests of other States in their conservation and equitable exploitation;

(e) their obligation to keep under review those resources and to examine together, in the light of scientific and other available information, such measures as may be required for the conser-

vation and development, and equitable exploitation, of those resources, making use of the machinery established by the North-East Atlantic Fisheries Convention or such other means as may be agreed upon as a result of international negotiations.

Done in English, and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-fifth day of July, one thousand nine hundred and seventy-four, in three copies, of which one will be placed in the archives of the Court and the others transmitted to the Government of the United Kingdom of Great Britain and Northern Ireland and to the Government of the Republic of Iceland respectively.

(Signed) Manfred LACHS,
President.

(Signed) S. AQUARONE,
Registrar.

President LACHS makes the following declaration:

I am in agreement with the reasoning and conclusions of the Court, and since the Judgment speaks for and stands by itself, I would not feel it appropriate to make any gloss upon it.

Judge IGNACIO-PINTO makes the following declaration:

To my regret, I have been obliged to vote against the Court's Judgment. However, to my mind my negative vote does not, strictly speaking, signify opposition, since in a different context I would certainly have voted in favour of the process which the Court considered it should follow to arrive at its decision. In my view that decision is devoted to fixing the conditions for exercise of preferential rights, for conservation of fish species, and historic rights, rather than to responding to the primary claim of the Applicant, which is for a statement of the law on a specific point.

I would have all the more willingly endorsed the concept of preferential rights inasmuch as the Court has merely followed its own decision in the *Fisheries* case.

It should be observed that the Applicant has nowhere sought a decision from the Court on a dispute between itself and Iceland on the subject of the preferential rights of the coastal State, the conservation of fish species, or historic rights—this is apparent throughout the elaborate

reasoning of the Judgment. It is obvious that considerations relating to these various points, dealt with at length in the Judgment, are not subject to any dispute between the Parties. There is no doubt that, after setting out the facts and the grounds relied on in support of its case, the Applicant has asked the Court only for a decision on the dispute between itself and Iceland, and to adjudge and declare:

> ". . . that there is no foundation in international law for the claim by Iceland to be entitled to extend its fisheries jurisdiction by establishing a zone of exclusive fisheries jurisdiction extending to 50 nautical miles from the baselines hereinbefore referred to; and that its claim is therefore invalid" (*I.C.J. Reports 1973*, p. 5, para. 8 *(a)*).

This is clear and precise, and all the other points in the submissions are only ancillary or consequential to this primary claim. But in response to this basic claim, which was extensively argued by the Applicant both in its Memorial and orally, and which was retained in its final submissions, the Court, by means of a line of reasoning which it has endeavoured at some length to justify, has finally failed to give any positive answer.

The Court has deliberately evaded the question which was placed squarely before it in this case, namely whether Iceland's claims are in accordance with the rules of international law. Having put this question on one side, it constructs a whole system of reasoning in order ultimately to declare that the Regulations issued by the Government of Iceland on 14 July 1972 and "constituting a unilateral extension of the exclusive fishing rights of Iceland to 50 nautical miles from the baselines specified therein are not opposable to the Government of the United Kingdom".

In my view, the whole problem turns on this, since this claim is based upon facts which, at least under present-day law and in the practice of the majority of States, are flagrant violations of existing international conventions. It should be noted that Iceland does not deny them. Now the facts complained of are evident, they undoubtedly relate to the treaty which binds the States which are Parties, for the Exchange of Notes of 11 March 1961 amounts to such an instrument. For the Court to consider, after having dealt with the Applicant's fundamental claim in relation to international law, that account should be taken of Iceland's exceptional situation and the vital interests of its population, with a view to drawing inspiration from equity and to devising a solution for the dispute, would have been the normal course to be followed, the more so since the Applicant supports it in its final submissions. But it cannot be admitted that because of its special situation Iceland can *ipso facto* be exempted from the obligation to respect the international commitments into which it has entered. By not giving an unequivocal answer on that principal claim, the Court has failed to perform the act of justice requested of it.

For what is one to say of the actions and behaviour of Iceland which have resulted in its being called upon to appear before the Court? Its

refusal to respect the commitment it accepted in the Exchange of Notes of 11 March 1961, to refer to the International Court of Justice any dispute which might arise on an extension of its exclusive fisheries zone, which was in fact foreseen by the Parties, beyond 12 nautical miles, is not this unjustified refusal a breach of international law?

In the same way, when—contrary to what is generally recognized by the majority of States in the 1958 Geneva Convention, in Article 2, where it is clearly specified that there is a zone of high seas which is *res communis*—Iceland unilaterally decides, by means of its Regulations of 14 July 1972, to extend its exclusive jurisdiction from 12 to 50 nautical miles from the baselines, does it not in this way also commit a breach of international law? Thus the Court would in no way be open to criticism if it upheld the claim as well founded.

For my part, I believe that the Court would certainly have strengthened its judicial authority if it had given a positive reply to the claim laid before it by the United Kingdom, instead of embarking on the construction of a thesis on preferential rights, zones of conservation of fish species, or historic rights, on which there has never been any dispute, nor even the slightest shadow of a controversy on the part either of the Applicant or of the Respondent.

Furthermore, it causes me some concern also that the majority of the Court seems to have adopted the position which is apparent in the present Judgment with the intention of pointing the way for the participants in the Conference on the Law of the Sea now sitting in Caracas.

The Court here gives the impression of being anxious to indicate the principles on the basis of which it would be desirable that a general international regulation of rights of fishing should be adopted.

I do not discount the value of the reasons which guided the thinking of the majority of the Court, and the Court was right to take account of the special situation of Iceland and its inhabitants, which is deserving of being treated with special concern. In this connection, the same treatment should be contemplated for all developing countries in the same position, which cherish the hope of seeing all these fisheries problems settled, since it is at present such countries which suffer from the anarchy and lack of organization of international fishing. But that is not the question which has been laid before the Court, and the reply given can only be described as evasive.

In taking this viewpoint I am not unaware of the risk that I may be accused of not being in tune with the modern trend for the Court to arrogate a creative power which does not pertain to it under either the United Nations Charter or its Statute. Perhaps some might even say that the classic conception of international law to which I declare allegiance is out-dated; but for myself, I do not fear to continue to respect the classic norms of that law. Perhaps from the Third Conference on the Law of the Sea some positive principles accepted by all States will emerge. I hope that this will be so, and shall be the first to applaud—and furthermore I shall be pleased to see the good use to which they can be put, in

particular for the benefit of the developing countries. But since I am above all faithful to judicial practice, I continue fervently to urge the need for the Court to confine itself to its obligation to state the law as it is at present in relation to the facts of the case brought before it.

I consider it entirely proper that, in international law as in every other system of law, the existing law should be questioned from time to time —this is the surest way of furthering its progressive development—but it cannot be concluded from this that the Court should, for this reason and on the occasion of the present dispute between Iceland and the United Kingdom, emerge as the begetter of certain ideas which are more and more current today, and are even shared by a respectable number of States, with regard to the law of the sea, and which are in the minds, it would seem, of most of those attending the Conference now sitting in Caracas. It is advisable, in my opinion, to avoid entering upon anything which would anticipate a settlement of problems of the kind implicit in preferential and other rights.

To conclude this declaration, I think I may draw inspiration from the conclusion expressed by the Deputy Secretary of the United Nations Sea-Bed Committee, Mr. Jean-Pierre Lévy, in the hope that the idea it expresses may be an inspiration to States, and to Iceland in particular which, while refraining from following the course of law, prefers to await from political gatherings a justification of its rights.

I agree with Mr. Jean-Pierre Lévy in thinking that:

> "it is to be hoped that States will make use of the next four or five years to endeavour to prove to themselves and particularly to their nationals that the general interest of the international community and the well-being of the peoples of the world can be preserved by moderation, mutual understanding, and the spirit of compromise; only these will enable the Third Conference on the Law of the Sea to be held and to succeed in codifying a new legal order for the sea and its resources" ("La troisième Conférence sur le droit de la mer", *Annuaire français de droit international*, 1971, p. 828).

In the expectation of the opening of the new era which is so much hoped for, I am honoured at finding myself in agreement with certain Members of the Court like Judges Gros, Petrén and Onyeama for whom the golden rule for the Court is that, in such a case, it should confine itself strictly within the limits of the jurisdiction conferred on it.

Judge NAGENDRA SINGH makes the following declaration:

There are certain valid reasons which weigh with me to the extent that they enable me to support the Judgment of the Court in this case and

hence I consider them of such importance as to be appropriately emphasized to convey the true significance of the Judgment—its extent as well as its depth. These reasons, as well as those aspects of the Judgment which have that importance from my viewpoint are briefly stated as follows:

I

While basing its findings on the bilateral law, namely the Exchange of Notes of 1961 which has primacy in this case, the Court has pronounced upon *(b)* and *(c)* [1] the second and third submissions of the Applicant's Memorial on the merits, in terms of non-opposability to the United Kingdom. This suffices for the purpose of that part of the Judgment and is in accordance with the statement made by counsel [2] for the Applicant at the hearings, to the effect that the second and third submissions are separable from the first and it is open to the Court not to adjudicate on the first submission *(a)* [1] which relates to the general law.

In the special circumstances of this case the Court has, therefore, not proceeded to pronounce upon the first submission *(a)* of the Applicant, which requests the Court to declare that Iceland's extension of its exclusive fishery limit to 50 nautical miles is invalid being without foundation in international law which amounts to asking the Court to find that such extension is *ipso jure*, illegal and invalid *erga omnes*. Having refrained from pronouncing on that aspect it was, consequently, unnecessary for the Court to pronounce on the Applicant's legal contention in support of its first submission, namely, that a customary rule of international law exists today imposing a general prohibition on extension by States of their fisheries jurisdiction beyond 12 miles.

There is still a lingering feature of development associated with the general law. The rules of customary maritime law relating to the limit of fisheries jurisdiction have still been evolving and confronted by a widely divergent and, discordant State practice, have not so far crystallized. Again, the conventional maritime law though substantially codified by the Geneva Conferences on the Law of the Sea of 1958 and 1960 has certain aspects admittedly left over to be settled and these now constitute, among others, the subject of subsequent efforts at codification. The question of the extent of fisheries jurisdiction which is still one of the unsettled aspects could not, therefore, be settled by the Court since it could not "render judgment *sub specie legis ferendae*, or anticipate the law before the legislator has laid it down".

[1] See paras. 11 and 12 of the Judgment for the text of the submissions.
[2] Hearing of 29 March 1974, CR 74/3, p. 23.

This is of importance to me but I do not have to elaborate this point any further since I have subscribed to the views expressed by my colleagues in the joint separate opinion of the five Judges wherein this aspect has been more fully dealt with.

II

The contribution which the Judgment makes towards the development of the Law of the Sea lies in the recognition which it gives to the concept of preferential rights of a coastal State in the fisheries of the adjacent waters particularly if that State is in a special situation with its population dependent on those fisheries. Moreover, the Court proceeds further to recognize that the law pertaining to fisheries must accept the primacy for the need of conservation based on scientific data. This aspect has been properly emphasized to the extent needed to establish that the exercise of preferential rights of the coastal State as well as the historic rights of other States dependent on the same fishing grounds, have all to be subject to the over-riding consideration of proper conservation of the fishery resources for the benefit of all concerned. This conclusion would appear warranted if this vital source of man's nutrition is to be preserved and developed for the community.

In addition there has always been the need for accepting clearly in maritime matters the existence of the duty to "have reasonable regard to the interests of other States"—a principle enshrined in Article 2 of the Geneva Convention of the High Seas 1958 which applies even to the four freedoms of the seas and has weighed with the Court in this case. Thus the rights of the coastal State which must have preference over the rights of other States in the coastal fisheries of the adjacent waters have nevertheless to be exercised with due regard to the rights of other States and the claims and counter-claims in this respect have to be resolved on the basis of considerations of equity. There is, as yet, no specific conventional law governing this aspect and it is the evolution of customary law which has furnished the basis of the Court's Judgment in this case.

III

The Court, as the principal judicial organ of the United Nations, taking into consideration the special field in which it operates, has a distinct role to play in the administration of justice. In that context the resolving of a dispute brought before it by sovereign States constitutes an element which the Court ought not to ignore in its adjudicatory function. This aspect relating to the settlement of a dispute has been emphasized in more than one article of the Charter of the United Nations. There is Article 2, paragraph 3, as well as Article 1, which both use words like "*adjustment*

or *settlement* of international disputes or situations", whereas Article 33 directs Members to "*seek a solution*" of their disputes by peaceful means.

Furthermore, this approach is very much in accordance with the jurisprudence of the Court. On 19 August 1929 the Permanent Court of International Justice in its Order in the case of the *Free Zones of Upper Savoy and the District of Gex* (*P.C.I.J., Series A, No. 22*, at p. 13) observed that the judicial settlement of international disputes is simply an alternative to the direct and friendly settlement of such disputes between the parties. Thus if negotiations become necessary in the special circumstances of a particular case the Court ought not to hesitate to direct negotiations in the best interests of resolving the dispute. Defining the content of the obligation to negotiate, the Permanent Court in its Advisory Opinion of 1931 in the case of *Railway Traffic between Lithuania and Poland* (*P.C.I.J., Series A/B, No. 42*, 1931, at p. 116) observed that the obligation was "not only to enter into negotiations, but also to pursue them as far as possible, with a view to concluding agreements" even if "an obligation to negotiate does not imply an obligation to reach an agreement". This does clearly imply that everything possible should be done not only to promote but also to help to conclude successfully the process of negotiations once directed for the settlement of a dispute. In addition we have also the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*) citing Article 33 of the United Nations Charter and where the Parties were to negotiate in good faith on the basis of the Judgment to resolve the dispute.

Though it would not only be improper but quite out of the question for a court of law to direct negotiations in every case or even to contemplate such a step when the circumstances did not justify the same, it would appear that in this particular case negotiations appear necessary and flow from the nature of the dispute, which is confined to the same fishing grounds and relates to issues and problems which best lend themselves to settlement by negotiation. Again, negotiations are also indicated by the nature of the law which has to be applied, whether it be the treaty of 1961 with its six months' notice in the compromissory clause provided ostensibly for negotiations or whether it be reliance on considerations of equity. The Court has, therefore, answered the last submission ((*e*) [1] relettered as (*d*) of the Applicant's Memorial on the merits) in the affirmative and accepted that negotiations furnished the correct answer to the problem posed by the need for equitably reconciling the historic right of the Applicant based on traditional fishing with the preferential rights of Iceland as a coastal State in a situation of special dependence on its fisheries. The Judgment of the Court, in asking the Parties to negotiate a

[1] See paras. 11 and 12 of the Judgment for the text of the submissions.

settlement, has thus emphasized the importance of resolving the dispute in the adjudication of the case.

No court of law and particularly not the International Court of Justice could ever be said to derogate from its function when it gives due importance to the settlement of a dispute which is the ultimate objective of all adjudication as well as of the United Nations Charter and the Court, as its organ, could hardly afford to ignore this aspect. A tribunal, while discharging its function in that manner, would appear to be adjudicating in the larger interest and ceasing to be narrow and restrictive in its approach.

Thus, the interim agreement of 1973 entered into by the contesting Parties with full reservations as to their respective rights and which helped to avoid intensification of the dispute could never prevent the Court from pronouncing on the United Kingdom submissions. To decide otherwise would have meant imposing a penalty on those who negotiate an interim agreement to avoid friction as a preliminary to the settlement of a dispute.

Again, when confronted with the problem of its own competence in dealing with that aspect of the dispute which relates to the need for conservation and the exercise of preferential rights with due respect for historic rights, the Court has rightly regarded those aspects to be an integral part of the dispute. Surely, the dispute before the Court has to be considered in all its aspects if it is to be properly resolved and effectively adjudicated upon. This must be so if it is not part justice but the whole justice which a tribunal ought always to have in view. It could, therefore, be said that it was in the overall interests of settlement of the dispute that certain parts of it which were inseparably linked to the core of the conflict were not separated in this case to be left unpronounced upon. The Court has, of course, to be mindful of the limitations that result from the principle of consent as the basis of international obligations, which also governs its own competence to entertain a dispute. However, this could hardly be taken to mean that a tribunal constituted as a regular court of law when entrusted with the determination of a dispute by the willing consent of the parties should in any way fall short of fully and effectively discharging its obligations. It would be somewhat disquieting if the Court were itself to adopt either too narrow an approach or too restricted an interpretation of those very words which confer jurisdiction on the Court such as in this case "the extension of fisheries jurisdiction around Iceland" occurring in the compromissory clause of the Exchange of Notes of 1961. Those words could not be held to confine the competence conferred on the Court to the sole question of the conformity or otherwise of Iceland's extension of its fishery limits with existing legal rules. The Court, therefore, need not lose sight of the consideration relating to the settlement of the dispute while remaining strictly within the framework of the law which it administers and adhering always to the procedures which it must follow.

IV

For purposes of administering the law of the sea and for proper understanding of matters pertaining to fisheries as well as to appreciate the facts of this case, it is of some importance to know the precise content of the expression "fisheries jurisdiction" and for what it stands and means. The concept of fisheries jurisdiction does cover aspects such as enforcement of conservation measures, exercise of preferential rights and respect for historic rights since each one may involve an element of jurisdiction to implement them. Even the reference to "extension" in relation to fisheries jurisdiction which occurs in the compromissory clause of the 1961 treaty could not be confined to mean merely the extension of a geographical boundary line or limit since such an extension would be meaningless without a jurisdictional aspect which constitutes, as it were, its juridical content. It is significant, therefore, that the preamble of the Truman Proclamation of 1945 respecting United States coastal fisheries refers to a "jurisdictional" basis for implementing conservation measures in the adjacent sea since such measures have to be enforced like any other regulations in relation to a particular area. This further supports the Court's conclusion that it had jurisdiction to deal with aspects relating to conservation and preferential rights since the 1961 treaty by the use of the words "extension of fisheries jurisdiction" must be deemed to have covered those aspects.

V

Another aspect of the Judgment which has importance from my viewpoint is that it does not "preclude the Parties from benefiting from any subsequent developments in the pertinent rules of international law" (para. 77). The adjudicatory function of the Court must necessarily be confined to the case before it. No tribunal could take notice of future events, contingencies or situations that may arise consequent on the holding or withholding of negotiations or otherwise even by way of a further exercise of jurisdiction. Thus, a possibility or even a probability of changes in law or situations in the future could not prevent the Court from rendering Judgment today.

Judges FORSTER, BENGZON, JIMÉNEZ DE ARÉCHAGA, NAGENDRA SINGH and RUDA append a joint separate opinion to the Judgment of the Court; Judges DILLARD, DE CASTRO and Sir Humphrey WALDOCK append separate opinions to the Judgment of the Court.

Judges GROS, PETRÉN and ONYEAMA append dissenting opinions to the Judgment of the Court.

(Initialled) M.L.

(Initialled) S.A.
