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.