SEPARATE OPINION OF JUDGE SIR GERALD FITZMAURICE

Although I entirely agree with the Judgment of the Court and the reasoning and considerations on which it is based, there are in my opinion certain factors which should additionally be brought out, or further stressed.

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1. In order to appreciate the true significance of the agreement embodied in the Exchanges of Notes that took place in March and July 1961 between, on the one hand, the Government of Iceland, and, on the other, the Governments of the United Kingdom and the Federal Republic of Germany, respectively, it is necessary to take into account the state of the law regarding exclusive fisheries jurisdiction, as it stood at that time, and after the breakdown of the second Geneva Law of the Sea Conference in the previous year (1960); and also as it was reflected in the Conventions that resulted from the work of the first Geneva Law of the Sea Conference in 1958. This is squarely relevant to the jurisdictional issue now before the Court because, as will be seen, it directly affects the situation that existed when the Parties entered into the 1961 Exchanges of Notes, and their motives in doing so. The following review will make this clear.

2. Although certain countries had (almost invariably for fishery reasons, whatever the ostensible grounds) claimed waters extending to more than 12 miles from the baselines of the coast—in some instances very much more than that—none of which claims had, however, received any general recognition,—there was no denial of the clear-cut distinction of principle and status between the territorial sea as part, or as an extension of, the land domain, and the high seas as *res communis* open to all—the limit of the one, marking and constituting the start of the other. Nor could—nor can—this distinction be denied without destroying the whole concept of the high seas, upon which a major part of maritime international law, as it has been evolved over several centuries, is founded.

3. Accordingly, while there might be ana was controversy as to the permissible extent, and as to the location of the outer limit of the territorial sea (or maritime belt as it was sometimes called) there was no doubt that within it the coastal State possessed *imperium (jurisdictio)* if not *dominium (proprietas)* or its equivalent (the 1958 Geneva Territorial Sea Conven-

tion, Article 1, calls it "sovereignty"); and that it possessed in consequence exclusive rights of various kinds there,—amongst others exclusive fishery rights. But there was equally no doubt that in waters outside the territorial belt—these being *by definition* high seas (see para. 5 below)—the coastal State had neither *imperium* nor (and still less) *dominium*, nor proprietorial or exclusive rights of any kind, fisheries in no way excepted.

4. In a zone known as the "contiguous zone", defined by Article 24 of the 1958 Territorial Sea Convention as being what the term implies—a "zone of the high seas contiguous to its territorial sea"—and limited in extent (by the same provision) to 12 miles from the coastline [1], the coastal State was allowed to "exercise the control necessary" for certain specified purposes [2] which did not include any right of jurisdiction over foreign vessels in order to prevent them from fishing there. In other parts of the high seas beyond the contiguous zone, the coastal State had no rights of jurisdiction or control at all, except in respect of its own vessels generally; and, in respect of foreign vessels, only as recognized in the 1958 Geneva High Seas Convention, namely for the suppression of piracy and the slave trade, flag verification in certain cases, and as part of the process known as "hot pursuit" started from within the territorial sea or contiguous zone in respect of something that would have justified arrest or stoppage if it could have been effected there.

5. From all this it followed that fishing in any areas that were high seas—i.e., that were not internal or territorial waters—could only be shared and not exclusive, since measures for preventing foreign fishing in such areas would be incompatible with their status as *res communis*, and the enforcement of such measures would not be for any of the purposes for which countries could, as described above, validly exercise jurisdiction on the high seas over vessels other than their own. This position was reflected in the provisions of the 1958 Geneva Conventions already referred to or quoted, but even more fully in Articles 1 and 2 of the High

[1] This of course implied a territorial sea of *less* than 12 miles in extent, or there would be nothing for the contiguous zone to be contiguous to. The further implication was that a State claiming a 12-mile belt of *territorial sea* had no need of a contiguous zone as well. But a country claiming only 3 or 6 miles of territorial sea could still have a contiguous zone of 9 or 6 miles, as the case might be.

[2] These were for the prevention and punishment of "infringements of its [the coastal State's] customs, fiscal, immigration or sanitary regulations within its territory or territorial sea".

Seas Convention [3] which, according to its Preamble, was adopted as being "generally declaratory of established principles of international law". Article 1 of this Convention, and the relevant part of Article 2, in which the passages of especial significance in the present context have been italicized, were (and are) as follows:

Article 1

The term "high seas" means *all parts of the sea* that are not included in the territorial sea or internal waters.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty [4]. Freedom of the high seas . . . comprises, *inter alia*, both for coastal *and non-coastal* States:

(1) Freedom of navigation;
(2) *Freedom of fishing*;
(3) Freedom to lay submarine cables and pipe-lines;
(4) Freedom to fly over the high seas.

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6. The question of fishery conservation was separately dealt with by the 1958 Geneva Conservation Convention, and by the subsequent North-East Atlantic Fisheries Convention concluded in London on 24 January 1959, of which Iceland, the Federal Republic and the United Kingdom were all signatories, and the object of which, according to its preamble, was "to ensure the conservation of the fish stocks and the rational exploitation of the fisheries of the North-East Atlantic Ocean and adjacent waters, *which are of common concern to them*" (my italics) [5]. But agreed measures of conservation on the high seas for the preservation of common fisheries in which all have a right to participate, is of course a completely different matter from a unilateral claim by a coastal State to prevent fishing by foreign vessels entirely, or to allow it only at the will and under the control of that State. The question of conservation has therefore no

[3] Although the 1958 Geneva Conventions were not technically in force in 1961 —(they have all come into force since)—they represented a high degree of consensus among the 85 countries which attended the Conference.

[4] Since, in the absence of treaty or other sufficient agreement, sovereignty or its equivalent is necessary for the valid exercise of exclusive property rights in any area, in the sense of prohibiting and forcibly preventing fishing by others, this expression was really sufficient in itself to rule out exclusive fishery rights in any areas that were high seas.

[5] The phrase here italicized was intended to relate to all the waters covered by the Convention, including—and above all—those of the north-east Atlantic.

relevance to the jurisdictional issue now before the Court, which involves its competence to adjudicate upon a dispute occasioned by Iceland's claim unilaterally to assert exclusive jurisdiction for fishery purposes up to a distance of 50 nautical miles from and around her coasts.

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7. Nor did continental shelf doctrine afford any basis for the assertion of exclusive fishery claims by a coastal State merely on the ground that its continental shelf underlay the waters concerned. This was made quite clear by the 1958 Geneva Continental Shelf Convention and, as it happens, was reflected later in the Judgment of the Court in the *North Sea Continental Shelf* case (*I.C.J. Reports 1969*, p. 3). Article 2 of the Continental Shelf Convention—which provision was generally regarded as reflecting already received law—stated that the coastal State exercised "sovereign rights" over the shelf "for the purpose of exploring it and exploiting its natural resources" [6]. But the term "natural resources" was defined in such a way, in respect of "living organisms", as to cover only "sedentary species",—i.e., "organisms which . . . either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil"—(Art. 2, para. 4). The very purpose of this definition was to exclude what were colloquially known as "swimming fish", or fish which, whether they at all times swam or not, were capable of so doing—(and this of course included what are known as "demersal" species—fish which spend a part of their time on or near the ocean bed but are swimming fish). Clearly therefore the Convention reserved nothing to the coastal State by way of exclusive fishery rights, except in what might be called, in general terms, sedentary fisheries. It afforded no ground for the assertion of exclusive fishery rights in *waters* that were outside the territorial sea, and therefore high seas. This situation was reflected in the Judgment of the Court in the *Continental Shelf* case where, in distinguishing between territorial sea and continental shelf rights, it was pointed out (*I.C.J. Reports 1969*, p. 37, end of para. 59) that

"the sovereign jurisdiction which the coastal State is entitled to

[6] The object of this wording was, if not to exclude the notion entirely, at least to reserve the question of full unlimited sovereignty, *stricto sensu*, over the continental shelf.

exercise . . . not only over the seabed underneath the territorial waters, but over the waters themselves, . . . does not exist in respect of continental shelf areas *where there is no jurisdiction over the superjacent waters,* and over the seabed only for purposes of exploration and exploitation" [7]—(my italics).

Moreover it is safe to say that the whole notion of continental shelf rights would never have received the almost universal acceptance it did, not only at, but well before the Geneva Conference, unless it had been firmly understood from the start that those rights did not extend to the waters above the shelf, or to their non-sedentary contents.

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8. From the foregoing observations it is clear that at the material date, namely that of the Geneva Law of the Sea Conferences and for some years after, there was no *generally* recognized way of validly asserting exclusive fishery jurisdiction, as such, *per solum,*—i.e., except as part of a valid claim to territorial waters, which would automatically imply and carry with it the related fishery rights. From this it followed that there was no way of extending any area of exclusive fishery rights except by a valid extension of territorial waters, *unless it could be done by way of agreement with the other countries fishing in the areas concerned*—(a proviso which I have italicized because of its particular relevance to the jurisdictional issue now before the Court). It was indeed this situation which then accounted for and provided much of the motivation for the movement to extend the limits of the territorial sea, on the part of countries which, mostly, had little interest in any of the other aspects of an extended territorial sea, and sometimes a definite disinclination for them [8]. Furthermore, it was evident that there must come a point at which claims to territorial waters would verge on the absurd, where they went beyond anything in the nature of waters that could properly be regarded as 'territorial", in the sense of retaining some sort of physical relationship with the land to which they were supposed to be attached or appurtenant [9].

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[7] For the implications of these last dozen or so words, see preceding footnote.

[8] The territorial sea involves responsibilities as well as rights, which many countries were unable to discharge satisfactorily outside a relatively narrow belt, such as for example policing and maintaining order; buoying and marking channels and reefs, sandbanks and other obstacles; keeping navigable channels clear, and giving notice of dangers to navigation; providing rescue services, lighthouses, lightships, bell-buoys, etc.

[9] As its name implies, the territorial sea is that part of the sea which is attached to or washes the land territory and constitutes a *natural* extension seaward of the land

9. It was in these circumstances, and for these reasons, that the notion of detaching exclusive fishery rights from their association solely with, and their dependence on, territorial sea rights, first came to be propounded. But such a change in the legal position would require general agreement or understanding; or else, in particular areas, the consent of the countries whose fishing would be affected. It could not be done unilaterally. This notion accordingly became the basis of the principal proposal debated at the second (1960) Geneva Conference,—namely for up to 6 miles of territorial waters, and another 6 miles of exclusive fishery rights, making, in effect, a total fishery zone of 12 miles, or 9 miles for countries which elected only to claim 3 miles of territorial sea [10]. However, the proposal failed to gain acceptance, though only narrowly, and the Conference broke up without having reached any agreement either on territorial sea or fishery limits;—so that it was clear that, at the point then reached, no generally agreed change in the law had taken place.

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10. Such was the situation when, later in the same year (1960), and in the following year, the negotiations that led to the 1961 Exchange of Notes were begun and in progress;—and it becomes instantly apparent that Iceland had a strong interest in securing the immediate recognition of an exclusive 12-miles fishery zone, on the part of two of the principal countries fishing in North Atlantic waters, whose views on the subject of the extent of permissible limits were distinctly conservative,—a recognition conditioned only by a transitional period during which these countries' vessels would retain the right to fish in certain areas within the 12-mile zone for a restricted period. In addition, Iceland obtained immediate recognition of a comprehensive series of baselines around her shores from which the 12-mile fishery limit would be drawn—potentially a highly controversial matter [11]. The *quid pro quo* was Iceland's acceptance of recourse to the Court if at any time she claimed *further* to extend her

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domain. The *dictum* of the International Court of Justice in its *North Sea Continental Shelf* Judgment about the true nature of the concept of "adjacency" is as valid for undue extensions of the territorial sea as it is for distant points on the continental shelf bed,—see *I.C.J. Reports 1969*, at p. 30, para. 41.

[10] This proposal would have caused the permissible fishery limit to coincide with the permissible limit of the contiguous zone (see para. 4 and footnote 1 above), and would in effect have given the coastal State exclusive fishery rights in that zone.

[11] The effect of baselines on the extent of the zone drawn from them is often overlooked by non-technical opinion. On an indented coast there are always several ways of establishing a baseline system, conservative or the reverse. The result, if the latter method is adopted, is considerably to enlarge the area of the zone concerned, by thrusting its outer limit seawards.

fishery limits;—and it is abundantly clear that the whole reason why the United Kingdom and the Federal Republic, and their respective fishing industries, were willing to make these concessions—which, at that time, need not have been made, and were injurious to them economically and in other ways—was precisely the fear of such possible further claims. Believing as they undoubtedly did that the state of the law as it then stood did not justify even a 12-mile fishery limit, *except by agreement*, the other two Parties were nevertheless willing to concede it, in return for (as they thought) a guarantee that further extensions could not be made unless the International Court found that they were legally warranted.

11. Such being the position, it is manifestly completely irrelevant to the question of the Court's competence to determine the validity of Iceland's claim to extend her limits *beyond* 12 miles, that if she had waited several more years she might have been able to justify the *12-mile* fishery zone irrespective of agreement to that effect;—and on this point I have nothing to add to what is said in paragraphs 30-34 of the Judgment of the Court. It is obviously galling to any man (but also a common experience) if he finds that owing to a subsequent decline in prices he has paid more for something than he need have done. But this is not in itself a ground on which he can ask for his money back.

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12. Turning now to some of the particular points that have arisen in connection with the jurisdictional clause in the Exchanges of Notes, on the basis of which the dispute has been referred to the Court, it will be convenient, before going further, to set the clause out, as it figured in the Exchange with the United Kingdom (the corresponding clause in the Federal Republic's Exchange being exactly the same, apart from a few small verbal differences not affecting the substance). It reads as follows:

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

In view of the clear and compelling terms of this provision, and of the fact that what is therein expressly specified as constituting the *casus foederis*, namely a further extension of Icelandic waters, has now occurred, it is difficult to make any sense of the contention that the obligation to have recourse to the Court is no longer operative because the 1961

Exchanges of Notes had achieved their purpose, and had therefore as it were lapsed or become obsolescent. This contention seems however to belong basically to the same order of argument as was put forward before the Court in the recent case of the *Jurisdiction of the ICAO* [12] *Council* (*I.C.J. Reports 1972*, p. 46) [13], and by both the then Parties, though with different objects,—on the one side to contest the jurisdiction of the ICAO Council to deal with a certain matter and, on the other side, to contest the competence of the Court to determine the question of the Council's jurisdiction in that matter. Reduced to its simplest terms, the process is to argue that a jurisdictional clause, even if it is otherwise duly applicable on its own language, can be *ipso facto* nullified or rendered inapplicable by purporting (unilaterally) to terminate or suspend the instrument containing it, or (as in the present case) to declare it to have become inoperative or to be spent, and the jurisdictional clause with it.

13. It is always legitimate to seek to maintain (whether correctly or not) that a jurisdictional clause is, *according to its own terms*, inapplicable to the dispute, or has lapsed [14];—and in that event it is for the tribunal concerned to decide the matter, in the exercise of the admitted right or function of the *compétence de la compétence*—(in the case of the Court, in the application of Art. 36, para. 6, of its Statute). But this must equally be so where the alleged cause of inapplicability or inoperativeness of the jurisdictional clause lies not in that clause itself but in the language of, or in considerations pertaining to, the instrument containing it,—for otherwise there would be no way of testing (in so far as it affected the jurisdictional clause) the validity of the grounds of inapplicability or inoperativeness put forward; and the *compétence de la compétence* would be nullified or would be nullifiable *a priori*,—in short, as the Court said in the *Council of ICAO* case (*I.C.J. Reports 1972*, p. 54, in para. 16 *(b)*) "means of defeating jurisdictional clauses would never be wanting"—since *(ibid.)*

> "If a mere allegation, as yet unestablished, that a treaty was no longer operative could be used to defeat its jurisdictional clauses, all such clauses would become potentially a dead letter."

It is therefore hard to understand how anyone who supported the decision in that case, without any qualification on this point, can fail to support the decision of the Court on the analagous jurisdictional question in the

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[12] ICAO—the International Civil Aviation Organization.

[13] The immediately relevant passages are in paragraphs 16 *(b)* and 32 of the Judgment, *I.C.J. Reports 1972*, pp. 53-54 and 64-65.

[14] This might have been the case if, for instance (as is often done), the obligation to have recourse to the Court had been undertaken only for a specified period; or if it had appeared to relate not to an actual purported extension of Iceland's fisheries jurisdiction, but only to the validity or effect of the notice given about it.

present case, in which Iceland, alleging a sort of self-evident "fulfilment of the object" of the 1961 Exchanges of Notes, contests (though without actual appearance in the proceedings) not only the competence of the Court to determine the merits of the dispute relating to the purported extension of Icelandic waters, but (going further in this respect than either of the Parties in the *ICAO* case did) the Court's competence even to enquire at all into the question of its jurisdiction.

14. In fact, the object of the Exchanges of Notes is fulfilled only in respect of Iceland, which has indeed obtained all she sought for under it. Her 12-mile fishery zone was recognized and has been operating for more than a decade; her baselines were recognized; and she is no longer burdened with the transitional right of the other two Parties to fish in some parts of the zone. These, admittedly, are all executed clauses in respect of which no further question arises or can arise; but this has no relevance to the real issue because, for the other two Parties, the object of the Exchanges is far from fulfilled and has only just started to operate, —namely, their right of recourse to the Court, and Iceland's corresponding obligation to accept that recourse if she is purporting to go beyond the agreement, and further to extend her fishery limits—as she has done.

15. Nor can it be contended that this was a mere formality, or stipulated only *ex abundanti cautela*, and that no such extension was seriously contemplated at the time,—for the reference contained in the jurisdictional clause to the intention of the Government of Iceland to "continue to work for the implementation of the Althing Resolution of May 5, 1959, concerning the extension of fisheries jurisdiction around Iceland", shows not only that just such an extension was contemplated, but that it was intended by the one Party, actively anticipated by the others, and duly provided for by means of the jurisdictional clause, which becomes devoid of all sense if it does not apply to exactly the case that has arisen, since it had and could have had no other object [15]. Iceland cannot therefore be heard to argue *ex post facto* that the clause has in the meantime lapsed; for all that has happened in the interval is not anything to cause it to lapse, but the very thing which has caused it to come into play—namely Iceland's purported extension of fisheries jurisdiction.

16. Moreover, it was by Iceland's own act that this occurred. She was not obliged to claim a further extension of waters. Had she not done so, the United Kingdom and the Federal Republic would have had no right to activate the jurisdictional clause in order, for instance, to obtain an anticipatory decision from the Court as to whether Iceland would be legally entitled, if so minded, or at some future date, to extend her

[15] Except of course to allow *Iceland* also to make an application to the Court if circumstances arose to make her want to do so—see para. 20 below.

fishery limits. They had to wait until (and if) she did purport to do so. But Iceland, having exercised her right (as foreshadowed by the jurisdictional clause itself) to *claim* an extension (for of course it can, at this stage at least, rank as no higher than that), cannot now deny her countervailing obligation under that same clause to submit to adjudication, and the right of the other parties to require it. If a repetition may be forgiven therefore, the simple truth is that in 1961 the United Kingdom and the Federal Republic were willing to recognize a 12-mile limit for Iceland, even though they might not consider that international law as it then stood obliged them to do so (nor clearly did Iceland),—but they were willing to do this precisely in order to safeguard themselves against unilateral acts of further extension that did not have, or did not eventually receive, the sanction of the International Court of Justice after reference of the matter to it. This is exactly the situation that has now arisen, and the competence of the Court to deal with it on the merits can admit of no doubt.

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17. With regard to the question of "changed circumstances" I have nothing to add to what is stated in paragraphs 35-43 of the Court's Judgment, except to emphasize that in my opinion the only change that could possibly be relevant (if at all) would be some change relating directly to the, so to speak, operability of the jurisdictional clause itself [16],—not to such things as developments in fishery techniques or in Iceland's situation relative to fisheries. These would indeed be matters that would militate for, not against, adjudication. But as regards the jurisdictional clause itself, the only "change" that has occurred is the purported extension of Icelandic fishery limits. This however is the absolute *reverse* of the type of change to which the doctrine of "changed circumstances" relates, namely one never contemplated by the Parties: it is in fact the actual change they did contemplate, and specified as the one that would give rise to the obligation to have recourse to adjudication.

18. Furthermore, if the contention that this obligation has become unduly onerous, in a manner never originally envisaged, is analysed, it will be seen to amount to this: that if the Court, in adjudicating on the merits, should decide against Iceland, the burden of conforming to the decision would, on account of interim developments, be greater than it

[16] For instance if the character of the International Court itself had changed in the meantime so that it was no longer the entity the Parties had had in mind, e.g., if, owing to developments in the United Nations, the Court had been converted into a tribunal of mixed law and conciliation, proceeding on a basis other than a purely juridical one.

formerly would have been. One has only to state the argument in this form, for its lack of all substance to become plainly apparent. It could never be a sufficient ground in law on which the validity of the act complained of should not be tested,—and to test it is all that the adjudication clause aims at.

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19. With regard to the question of so-called "duress", it is difficult to take a complaint of that kind seriously coming from the Party which was the main beneficiary of the Exchanges of Notes,—and the recipient of all the immediate concrete concessions made in them,—for the transitional fishing rights within the 12-mile zone reserved to the other Parties was really simply a temporary derogation from or mitigation of the full extent of the main concession made, and not a real *quid pro quo* [17]. The real *quid pro quo* was of course the adjudication clause. It follows that on its true analysis, the "duress" contention resolves itself into an allegation that Iceland's agreement to the adjudication clause in particular was only obtained under pressure. But quite apart from the point made in paragraph 20 below, and the considerations adduced in the Judgment of the Court, paragraphs 19-23 as to the history of the 1960-1961 negotiations, showing that this could not have been the case, it is surely the normal, and to be expected thing, with reference to any agreement, to find that it provides for rights and obligations operating for *both* sides. Without the adjudication clause there would have been no *quid pro quo* at all for the United Kingdom and the Federal Republic,—and it is that which would have been abnormal. Hence, on further analysis, it can be seen that the "duress" point really involves the view that what Iceland received, she ought to have received as of *right* in any event, without having to give anything in return. The weight to be attached to the "ought" in this suggestion may well turn on matters of opinion, but it has no place as a legal factor, and cannot be reconciled with the situation or the circumstances as existing at the time.

20. Nor should it be overlooked that the adjudication clause was itself reciprocal, not one-sided. Iceland equally could initiate proceedings before the Court,—and this was no mere piece of "common-form"

[17] The matter can readily be tested,—for although the Parties elected to embody the 12-mile zone concession and the reservation of transitional rights in two separate and formally independent provisions, a more elegant, and strictly more correct method, would have been to provide in one single article for a recognition of Iceland's exclusive rights in the major parts of the zone immediately, but, for the other parts, only after a transitional period. The true character of the transaction, as consisting of a greater and a lesser concession—but both of them concessions—would then have been evident. Only if Iceland could have claimed the 12-mile zone as of *right* (which was never the basis of the agreement) would it have been possible to regard the transitional rights as a concession moving from Iceland, and not as an integral part of a concession the whole of which was made by the other two Parties.

drafting, for if one of the other Parties should react to Iceland's purported extension of her fishery limits, not by recourse to the Court but by measures of naval protection, it would then have been open to Iceland to invoke the adjudication clause, which was in consequence a safeguard for her, as well as for the other two Parties. Where then was the element of "duress"?

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21. In conclusion, and although the matter may be a somewhat sensitive one for me personally to refer to, I should like—since I shall not be participating in the next phase of the case—to comment briefly on the course followed by Iceland with reference to the proceedings before the Court, so far as they have gone up to date. It may have been understandable, though difficult to reconcile with the attitude to the Court which a party to its Statute ought to adopt, that Iceland should declare herself to be so convinced of the Court's lack of any competence to entertain the present dispute, that she would not take any part in the proceedings, and would not enter an appearance or be represented, even in order to argue the question of competence. Had she done this on a once-and-for-all basis, giving her reasons, and thereafter maintained silence, there would have been no more to be said except to call her absence misguided and regrettable. In fact however Iceland has sent the Court a series of letters and telegrams on the subject, often containing material going far beyond the question of competence and entering deeply into the merits, and has lost no opportunity of doing the same thing through statements made or circulated in the United Nations, and by other means [18], all of which have of course been brought to the attention of the Court in one way or another as, doubtless, they were intended to be. This process is unfortunately open to the interpretation of being designed, on the one hand, to place Iceland in almost as good a position as if she had actually appeared in the proceedings—(because the Court has in fact carefully considered and dealt with her arguments)—while on the other hand enabling her, in case of need, to maintain that she does not recognize the legitimacy of the proceedings or their outcome—as indeed she has already done with respect to the interim measures indicated by the Court in its Order of 17 August 1972.

22. There is yet time for Iceland to show that this interpretation is mistaken; and it is my sincere hope that she will do so.

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[18] Such as for instance the promotion in the recent (1972) United Nations Assembly of resolutions bearing on matters that are or may be *sub judice* before the Court in the present case.

23. There remains one matter affecting the position of the Federal Republic in these proceedings. Unlike the United Kingdom, the Federal Republic was not an original party to the Statute of the Court, but became a party for the purposes of the present case by making the requisite declaration under the resolution of the Security Council of the United Nations dated 15 October 1946, itself adopted pursuant to Article 35, paragraph 2, of the Statute of the Court. Under this provision the Court is only "open" to States parties to the Statute, or who become parties by the prescribed means, in the sense that they alone can have access to it; but this of course does not of itself confer jurisdiction upon the Court in respect of any particular dispute, that being a matter which turns on other considerations.

24. It was however in effect suggested in one of the Icelandic communications to the Court (the telegram of 28 July 1972) that the Federal Republic's declaration under the above-mentioned Security Council resolution was out of time, and therefore void, because it was made after the Federal Republic had received formal notice of Iceland's intention to claim an extension of her fishery limits. This suggestion cannot be correct, for the Security Council's resolution expressly permits the declaration to be "either particular or general", and defines a particular declaration as "one accepting the jurisdiction of the Court in respect only of a particular dispute . . . which [has] already arisen";—and clearly it is impossible for any State to make a declaration about a particular dispute unless that dispute is then in existence. In consequence, although the declaration in the present case might arguably have been *premature* if the Federal Republic, though notified of Iceland's intentions, had not yet formally disputed their legitimacy—(but this was not the case—see footnote [19])—it could not possibly have been *too late*. In my opinion however, such a declaration is in time if it is made at any moment previous to the lodging with the Registry of the Court of the application in the case, or even if it accompanies that application.

(Signed) Gerald FITZMAURICE.

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[19] The Icelandic notification to the Federal Republic was contained in a formal communication dated 31 August 1971, and the latter's declaration under the Security Council's resolution was made on 29 October 1971. But in the meantime, in a formal Note dated 27 September 1971, the Federal Republic had disputed the legitimacy of Iceland's intentions, on the ground that "the unilateral assumption of sovereign power by the coastal State over zones of the high seas is inadmissible under international law". It had also, in the same note, disputed Iceland's view that the adjudication clause of the 1961 Notes was no longer operative.