ORAL ARGUMENTS ON THE MERITS OF THE DISPUTE

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague, on 28 March, 2 April and 25 July 1974, President Lachs presiding

FIFTH PUBLIC SITTING (28 III 74, 10 a.m.)

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

Also present:

For the Government of the Federal Republic of Germany:

Professor Dr. Günther Jaenicke, Professor of International Law in the University of Frankfurt am Main, *as Agent*;
Dr. D. von Schenck, Head of the Legal Department, Ministry of Foreign Affairs,
Mr. G. Möcklinghoff, Ministry of Food, Agriculture and Forestry,
Dr. C. A. Fleischhauer, Ministry of Foreign Affairs,
Dr. D. Booss, Ministry of Food, Agriculture and Forestry, *as Counsel and Advisers*;
Dr. Arno Meyer, Federal Institute for Fisheries Research, *as Counsel and Expert.*

OPENING OF THE ORAL PROCEEDINGS

The PRESIDENT: The Court meets today to hear the oral arguments on the merits in the *Fisheries Jurisdiction* case brought by the Federal Republic of Germany against the Republic of Iceland. These proceedings, which concern the question of the extension by the Government of Iceland of its fisheries jurisdiction, were instituted by Application [1] filed on 5 June 1972; by that Application, the Court was asked to declare that Iceland's claim to extend its exclusive fisheries jurisdiction to a zone of 50 nautical miles around Iceland has no basis in international law and could therefore not be opposed to the Federal Republic and its fishing vessels, and that if Iceland, as a coastal State specially dependent on coastal fisheries, establishes a need for special fisheries conservation measures, such measures, as far as they would affect fisheries of the Federal Republic, may not be taken, under international law, on the basis of a unilateral extension by Iceland of its fisheries jurisdiction, but only on the basis of an agreement between the Federal Republic and Iceland, concluded either bilaterally or within a multilateral framework.

On 21 July 1972, the Federal Republic of Germany filed a request for the indication of interim measures of protection [2] in this case, and after a public hearing on 2 August 1972, the Court, by an Order [3] dated 17 August 1972, indicated certain measures of protection. In that Order provision was made for the matter to be reviewed before 15 August 1973; and by a further Order [4] dated 12 July 1973 the Court confirmed that the provisional measures indicated should, subject as therein mentioned, remain operative until the Court has given final judgment in the case.

By an Order [5] dated 18 August 1972, the Court decided that the first pleadings should be addressed to the question of the jurisdiction of the Court to entertain the dispute. By a Judgment [6] of 2 February 1973 the Court found that it has jurisdiction to entertain the Application filed by the Government of the Federal Republic of Germany on 5 June 1972 and to deal with the merits of the dispute.

By an Order [7] of 15 February 1973, the Court fixed 1 August 1973 as the time-limit for the Memorial of the Federal Republic of Germany on the merits and 15 January 1974 for the Counter-Memorial of the Government of Iceland. The Memorial [8] of the Federal Republic of Germany was duly filed within the time-limit fixed therefor. No Counter-Memorial has been filed by the Government of Iceland; the written proceedings being thus closed, the case is ready for hearing.

By a letter [9] from the Registrar dated 17 August 1973 the Agent of the Federal Republic of Germany was invited to submit to the Court any observations which the Government of the Federal Republic might wish to present

---

[1] See pp. 3-11, *supra*.
[2] See pp. 23-31, *supra*.
[3] *I.C.J. Reports 1972*, p. 30.
[4] *I.C.J. Reports 1973*, p. 313.
[5] *I.C.J. Reports 1972*, p. 188.
[6] *I.C.J. Reports 1973*, p. 49.
[7] *I.C.J. Reports 1973*, p. 96.
[8] See pp. 141-265, *supra*.
[9] See p. 456, *infra*.

on the question of the possible joinder of this case with the case instituted by the United Kingdom of Great Britain and Northern Ireland against the Republic of Iceland by an Application [1] filed on 14 April 1972, and the Agent was informed that the Court had fixed 30 September 1973 as the time-limit within which any such observations should be filed. By a letter [2] dated 25 September 1973, the Agent of the Federal Republic submitted the observations of his Government on the question of the possible joinder of the two *Fisheries Jurisdiction* cases. The Government of Iceland had been informed [2] that the observations of the Federal Republic on possible joinder had been invited, but did not make any comments to the Court. On 17 January 1974 [3] the Court decided not to join the present proceedings to those instituted by the United Kingdom against the Republic of Iceland.

It should be noted further the Court does not include upon the bench any judge of the nationality of either of the Parties. However, the Government of Iceland has not indicated any intention to avail itself of the right conferred on it by Article 31, paragraph 3, of the Court's Statute, to choose a person to sit as judge *ad hoc*; and the Government of the Federal Republic of Germany has informed[4] the Court that, taking account of the fact that the Government of Iceland declines to take part in the proceedings and to avail itself of the right to have a judge *ad hoc* on the bench, the Government of the Federal Republic, as long as this situation persists, does not feel it necessary to insist on the appointment of a judge *ad hoc*.

The Governments of Argentina, Australia, India, New Zealand, Senegal and the United Kingdom have asked that the pleadings and annexed documents in this case should be made available to them in accordance with Article 44, paragraph 2, of the 1946 Rules of Court. The Parties having indicated that they had no objection, it was decided to accede to these requests. In accordance with its usual practice, the Court decided, with the consent of the Parties, that the pleadings and annexed documents in the case should be made accessible to the public, pursuant to Article 44, paragraph 3, of the 1946 Rules of Court, with effect from the opening of the present oral proceedings. The Court further decided that a number of communications [5] addressed to the Court by the Government of Iceland should also be made accessible to the public at this time. The Parties have indicated that they have no objection to this course.

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

---

[1] **I**, pp. 3-10.
[2] See p. 456, *infra*.
[3] *I.C.J. Reports 1974*, p. 177.
[4] See p. 457, *infra*.
[5] See pp. 447, 450, 462 and 470, *infra*.

ARGUMENT OF MR. JAENICKE

AGENT FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

Mr. JAENICKE: Mr. President, Members of the Court, when I had the honour to address the Court in this case on the matter of jurisdiction, I had given expression to the hope that an affirmative judgment of the Court would by its authority persuade the Republic of Iceland to join the proceedings on the merits. Although the Court had by its Judgment of 2 February 1973, affirmed its jurisdiction by a nearly unanimous decision, the Government of Iceland has apparently not been convinced thereby that its negative attitude is not in harmony with Iceland's previous undertaking to submit such disputes to the Court. On the contrary, in a telegram [1] recently addressed to the Court on 11 January 1974 the Government of Iceland stated that its position with regard to the proceedings remained unchanged, and consequently no Counter-Memorial has been submitted, and no Agent for the Government of Iceland has appeared today.

It is not my concern to speculate on the reasons which have led the Government of Iceland to persist in its determination not to assist the Court in the exercise of its judicial functions. The various statements which have been made by members of the Government of Iceland since the beginning of the proceedings in this case, and the arguments used in the aforementioned telegram of the Minister for Foreign Affairs of Iceland, seem to indicate that the Government of Iceland does not wish to have the unilateral extension of its exclusive fisheries zone at present reviewed by the Court, probably in the expectation that a change of the existing law by the forthcoming Conference on the Law of the Sea might possibly provide some justification for its action. Whatever reasons may have motivated the attitude of the Government of Iceland, it is the firm position of the Government of the Federal Republic of Germany that, under the Charter of the United Nations, actions of Governments have to conform to the rules of current international law. If any change of these rules is sought which affects the rights or interests of another State, this cannot be brought about by unilateral action and use of force, but only by consultation, negotiation and, in case of dispute, judicial settlement. It had been in this spirit that the Governments of the Federal Republic and Iceland in their Notes exchanged on 19 July 1961, had agreed that in case Iceland would wish to extend its fisheries jurisdiction beyond 12 miles, any dispute between the parties relating to such an extension should, at the request of either party, be referred to the International Court of Justice. By concluding this agreement both parties had given expression to their confidence in the Court's competence to pass judgment on the lawfulness of any eventual claim by Iceland for an extended fisheries zone on the basis of the principles and rules of international law, and with due regard to the legitimate interests of both parties. The Government of the Federal Republic still has this confidence.

In the Memorial filed on 1 August 1973, the Government of the Federal Republic of Germany has already, in much detail, put forward the arguments

[1] See p. 461, *infra*.

in support of its position that the unilateral action of the Government of Iceland by which it purports to extend its exclusive fisheries zone to 50 miles has no foundation in international law. I do not wish to bore the Members of the Court by repeating all the arguments. I shall rather confine myself to concentrate on those issues which are, in my view, the most relevant in this case. I should, however, make clear at this point that all the arguments which have been advanced in the Memorial of the Federal Republic, including those which I shall not repeat here, are fully maintained.

Among the legal issues which have come up in the present case, I consider three of them as the most relevant. These are the following:

First, whether a new rule of general international law has emerged which would now allow a coastal State to establish an exclusive fishery zone beyond the 12-mile limit.

Second, whether and to what extent the special situation with respect to the fishery in the waters around Iceland is such as to give rise to a claim by Iceland for a larger share in the allowable catch in the waters around Iceland.

Third, what are the legal consequences of Iceland's unilateral action in proclaiming and enforcing an exclusive fishery zone against the fishing vessels of the Federal Republic of Germany in the area of the high sea beyond the 12-mile limit?

I shall deal with these issues in the order I have mentioned them. Therefore, I shall deal first with the question whether the present state of the law of fisheries allows coastal States to exercise a wider margin of jurisdiction over the fishery resources in the waters of the high seas before their coasts.

Today I need not go into the history of the law of the sea and in particular into the development of the rules concerning the coastal States' fisheries jurisdiction. This has already been done in the historical analysis contained in the Memorial of the Federal Republic, and I need not repeat here what has been said on this topic in Part IV, paragraphs 1 to 55 of the Memorial. On the basis of a careful analysis of the State practice in this field, the Memorial has come to the conclusion that, under present international law, a coastal State is entitled to extend its fisheries jurisdiction up to 12 miles from the coast or, more accurately, from the baselines from which its territorial sea is measured. This rule emerged from the legal convictions which crystallized during the 1958 and 1960 Conferences on the Law of the Sea, and has since then been strengthened by the subsequent practice of States. The new rule has found recognition in numerous international treaties and agreements, and I think it sufficient for this purpose to refer to the European Fisheries Convention adopted on 2 March 1964. But although it can now be considered as settled that current international law allows a coastal State to extend its fisheries jurisdiction up to the 12-mile limit, it is still an unresolved question whether this jurisdictional competence entails the right of the coastal State to reserve fishing in this zone exclusively for its own nationals or whether and to what extent other States, whose nationals have habitually fished in this zone, must be allowed to continue fishing in this zone.

In the present case the right of Iceland to have an exclusive fisheries zone of 12 miles from the present baselines from which the Icelandic territorial sea is measured is not in dispute between the Parties. The Federal Republic of Germany has recognized Iceland's claim for a 12-mile exclusive fishery zone *de facto* in the Exchange of Notes of 19 July 1961, and after the phasing-out time provided for in the Agreement the Federal Republic no longer claims access for its fishing vessels to this zone although its fishing vessels have

habitually fished there previously. The present dispute relates only to the question whether Iceland could show a valid legal title for claiming exclusive rights with respect to the fishery resources beyond the 12-mile limit.

It is true that claims for wider limits of fisheries jurisdiction have been made, and not only by Iceland but also by a number of other States, sometimes by claiming a wider territorial sea and sometimes by claiming a separate fisheries zone ranging from 50 to 200 miles. This minority practice which has not gone without opposition or protest by those States whose interests were affected thereby, has been reviewed in Part IV, paragraphs 78 to 91, of the Memorial of the Federal Republic and I need not comment on this practice today.

This body of State practice, which is mainly confined to the Latin American and African Continents, is not more than evidence of a dissatisfaction of these States with the existing law; it lacks the necessary uniformity and general acquiescence by those other States whose fishing rights are affected thereby. One could say no more than that there is a tendency among some States to extend the limits of their maritime jurisdiction farther out into the sea beyond the 12-mile limit, but it is still completely unsettled for what purpose such an extended jurisdiction could legitimately be claimed and how such an extension could be reconciled with the concept of the freedom of fishing on the high seas which is still part of the established law of the sea.

It has in fact been argued that there is a trend in recent State practice and doctrine to recognize the coastal State's special interest in preserving the marine environment, including the fishery resources, before it coast and its has further been argued that the recognition of this special interest might serve as a basis for the coastal State's right to a wider margin of jurisdiction over the waters before its coast, at least as long as effective international supervision over the activities beyond the present limits of national jurisdiction is not forthcoming.

Although the force of this argument should not be underestimated, it is sound only in so far as a coastal State acts on behalf of the international community in enforcing generally accepted standards in the preservation of the environment or in the conservation of the living resources of the sea. It would, however, be a perversion of this argument if it would be used as a legal pretext for a re-allocation of the living resources of the high seas to the sole benefit of the coastal State. There may be good ground to argue that the coastal State, under certain conditions, should be entitled to extend its jurisdiction beyond the 12-mile limit if this should become necessary in order to enforce generally accepted rules for the preservation of the marine environment and the conservation of the living resources before its coast.

Already, on 28 September 1945, the President of the United States issued a proclamation entitled "Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas". Therein the Government of the United States proclaimed its intention to establish conservation zones in those areas of the high seas contiguous to its coast where fishing activities are being maintained on a substantial scale; such fisheries conservation zones would be established either unilaterally, where fishing activities are maintained by United States nationals alone, or by agreement with other States where fishing activities are maintained jointly by United States nationals and nationals of other States.

The Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, which was adopted by the Conference on the

Law of the Sea in 1958, recognizes, in its Article 6, that the coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its coast and authorizes, in its Article 7, the coastal State to adopt unilateral measures of conservation in such areas, provided that negotiations with other States whose nationals are fishing within the same areas have not led to an agreement within 6 months. Such unilateral measures, however, must not discriminate in form or fact against foreign fishermen and, what is very important, if contested by other States, must be submitted to an international commission for impartial review. Thus, these provisions of the Convention could never serve as a basis for the establishment of an exclusive fisheries zone to the sole benefit of the coastal State.

It may then be argued that, under exceptional circumstances, there may be situations where the coastal State will have no other choice than to exercise jurisdiction beyond the 12-mile limit, for the purpose of taking urgent measures for the protection of the marine environment and its resources, and where such measures, if applied in a non-discriminatory manner, will probably meet with the recognition of the international community. If such an exceptional competence of the coastal State is recognized, this recognition rests on the assumption that the coastal State has acted in the area of the high seas before its coast as guardian of the interests of the international community, and not only in its own interests. It is, therefore, indispensable that the measures taken by the coastal State do not discriminate against other States and apply equally to both foreigners and nationals.

Now whatever may be said in favour of such an exceptional competence of the coastal State to issue and enforce regulations for the purpose of conservation beyond the 12-mile limit, it is not pertinent here because it cannot serve as a legal basis for Iceland's claim for an exclusive fisheries zone. The Icelandic Regulations of 14 July 1972 do not impose conservation measures upon Icelandic and foreign fishing in a non-discriminatory manner; their primary object is to exclude other than Icelandic fishing vessels from the 50-mile zone and to reserve the fishery resources in this zone exclusively to the nationals of Iceland. These Regulations are essentially discriminatory and aim at the re-allocation of the fishery resources in the waters of the high seas around Iceland to the sole benefit of Iceland. I shall show at a later stage of my statement that the Regulations of 14 July 1972 were meant to establish a truly exclusive fishery zone, and were not merely introduced as a tool for securing preferential fishing rights within the 50-mile limit.

It is therefore not necessary to dwell here any longer on the problem whether and under what conditions the establishment by Iceland of a conservation zone beyond the 12-mile limit might have been justified; the central issue of the present case is rather whether Iceland as a coastal State is entitled to claim the fishery resources in the waters of the high seas around its coast for its own exclusive use.

The international régime of fisheries is founded on the concept of the freedom of the high seas which accords each State an equal right of access to the fishing grounds of the oceans, with the exception of the limited zone before the coast where the coastal State has the exclusive right to exploit the fishery resources. Thus, the international régime of fisheries makes a clear division between the international area where the fishery resources have been allocated to the international community, and the national area where the fishery resources have been allocated to the coastal State. In the historic development of the law of fisheries the dividing-line between the international

and the national area has not been stable: its determination necessarily depended on the presence of a consensus among the international community of States in the continuous process of conflict and conciliation between the interests of the international community on the one hand and the interests of individual coastal States on the other. I had already stated earlier that since the 1958 and 1960 Conferences on the Law of the Sea a new rule of law has emerged which now has fixed the dividing line between the international and national area at a distance of 12 miles from the coast, or more accurately, from the baselines from which the territorial sea is measured.

Could it now be argued, as the Government of Iceland seem to intimate, that the law of the sea has again changed to the effect that each coastal State may now claim exclusive rights to the fishery resources of the high seas adjacent to its coast beyond the 12-mile limit up to 50 miles or more. It would have been for the Government of Iceland to convince us, by facts and arguments, that such a change in the law has taken place. However, the Government of Iceland has chosen not to argue this point before the Court. The Government of the Federal Republic has, in its Memorial, examined this question in great detail and concluded that the ascertainable practice of States does not support the view that the law has again changed to the effect that a State may validly claim all the fishery resources in the high seas adjacent to its coast, even beyond the 12-mile limit, without regard to the established fishing rights of other States in this area. As it is of primary importance in this case to ascertain the present state of the law with respect to the dividing line between the international and the national area, the Court will allow me to elaborate this point a little further.

The task to define the limits of the coastal State's jurisdiction over the waters before its coast confronts us with the complex process of the formation and change of customary international law, or to put it more carefully, of rules of law which are not founded on law-making treaties. It is a current view that the law of the sea is in a state of change and has to adapt itself to the changing needs and modern technological possibilities, so that new rules of law may develop more rapidly than former theories on the formation of customary international law would have anticipated. While this is, in its essence, probably true with respect to certain new fields of human activities, such as the exploitation of the resources of the seabed and subsoil of the high seas or other new technical uses of the sea—for example, the construction of artificial islands or harbours within the high seas, these phenomena cannot be used as a pretext for reversing the whole system of the law of the sea and to replace the freedom of the high seas by the coastal State's rule.

There are certainly situations where new rules of law are needed to fill a legal vacuum; such rules will be formed by the practice of States more rapidly than elsewhere. The outstanding example of this type of situation is the exploitation of the seabed and its subsoil which became technically possible after the Second World War. No rules of law were in existence with respect to the jurisdiction for the regulation of these new human activities on the high seas and quite naturally the coastal State, as the nearest to such activities, assumed jurisdiction. This action by coastal States, combined with the general recognition by the international community of the coastal State's primary interest in keeping such activities before its coast under control, led to the rapid formation of the doctrine of the continental shelf and its acceptance as a general principle of international law by the international community. By the formation of this new concept of law no established rights of other States were affected thereby, and the traditional freedoms of the high

seas remained unchanged in the superjacent waters. That is why unilateral action by coastal States could play such a predominant part in the formation of new rules with respect to the exploitation of the continental shelf.

The situation in the field of fishery limits is totally different: no legal vacuum exists with respect to the allocation of the fishery resources of the oceans. Fishing on the high seas beyond the limits of national jurisdiction belongs to the long-established uses of the high seas, was open to all nations, and indeed practised by them. Therefore any action of a coastal State which purports to move the dividing line between the international and the national fisheries area farther out into the sea does not cover a legal vacuum, but necessarily affects the fishing rights of other States, in particular of those States whose nationals had until then exercised the undisputed right of fishing in these waters of the high seas. Consequently, any change of law to this effect cannot be brought about by unilateral actions of coastal States but requires the consent or at least the acquiescence of those States whose fishing rights are affected thereby.

The Court in its Judgment of 20 February 1969 in the *North Sea Continental Shelf* cases, has made it very clear that new rules of customary international law cannot come into existence without the participation of those States whose interests are primarily affected thereby. In the *North Sea Continental Shelf* cases the Court had to consider whether a conventional rule had become a rule of general international law with binding effect also on those States which had not ratified the convention. I quote the following sentences from the Judgment:

> "With respect to the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law, it might be that, even without the passage of any considerable period of time, a very widespread and representative participation in the convention might suffice of itself, provided [and I emphasize the following words] *it included that of States whose interests were specially affected.*" (*I.C.J. Reports 1969*, p. 42.)

And later the Court continued:

> "Although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, [and I emphasize the following words again] *including that of States whose interests are specially affected, should have been both extensive and virtually uniform* in the sense of the provision invoked;—and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved." (*I.C.J. Reports 1969*, p. 43.)

One should note the particular emphasis which the Court has put on the requirement that those States whose interests are affected thereby participate in the formation of a new rule of customary law. Or, in other words, a new rule of customary law cannot emerge without the consent or at least the acquiescence of virtually all those States whose interests would be affected by the new rule. The Court has made the participation of the interested States an indispensable condition in those cases where the new rule had already been embodied in a general law-making convention; the Court's ruling must apply with even greater force to those cases where it is contended that an existing

rule of customary law had changed by subsequent practice, because here not only interests but established rights of other States are affected.

If we apply these considerations to the present case we must conclude that it is not sufficient evidence of a change of the law with respect to the distance up to which a State may claim exclusive rights over maritime areas, to point merely to the actions of some coastal States which have unilaterally proclaimed an extension of the limits of their territorial sea or fisheries zone; it is equally important and indeed indispensable that any such extension is recognized as lawful by those States which are most affected thereby, namely by those States which practise distant-water fishing. However, no evidence of such recognition has been submitted so far; on the contrary, the Government of the Federal Republic has protested in all cases where claims for exclusive fishery rights beyond the 12-mile limits have been made and brought to the knowledge of the Federal Government, and it is assumed that the other States with large distant-water fishing fleets have done likewise. As there is not the slightest evidence that the principal distant-water-fishing States have recognized claims for exclusive fishery zones beyond the 12-mile limit as well founded in law, it is, therefore, submitted that no new rule of customary law has emerged which would entitle a coastal State to claim exclusive rights over the fishery resources of the high seas beyond the 12-mile limit.

This conclusion could not be otherwise if one would, for the sake of argument, start from the Government of Iceland's assertion that in view of the wide variety of jurisdictional limits presently claimed by the States of the world, the continued existence of a customary law rule which defines the outer limit of coastal States' exclusive jurisdiction must be questioned. For even then, a coastal State would not be free, under the principles and rules of the law of the sea, to extend its jurisdiction to any limit which it thinks profitable for its economy and its nationals. As long as the law of the sea is founded on the over-riding principle of the freedom of the high seas which accords all States an equal, though not unlimited, right of access to the fishery resources of the oceans, it is the inescapable consequence that there must be a boundary or dividing-line between the international area of the high seas which is open to all nations and should be exploited to the benefit of the international community, and the national area within which the coastal State may reserve the resources for itself. This boundary or dividing-line, even if it were not any more defined in terms of a fixed distance of miles, cannot be left to be determined by each coastal State according to its individual interests but must await its proper determination by a consensus of the international community. In the formative process of such a new rule of general international law which should determine the criteria for the drawing of the boundary line between the international area and the coastal State's exclusive zone, the unilateral claims by coastal States for an extended zone of exclusive rights are nothing more than only one element; they manifest the particular interests of the coastal State, but cannot be taken as the sole denominator for the contents of such a rule. There are other important interests which have to be taken into account, to mention only the interests of States with a narrow or no coastline which should also have access to the fishery resources of the oceans, or the interests of those States which border enclosed parts of the high seas and are equally dependent on the fishery resources of the oceans for the nutrition of their peoples and, last but not least, the interests of the international community as such, which has a particular interest in the full, economic and equitable utilization and preservation of these resources as an important source of food for mankind. Thus, in order to prove the emergence of a new

rule of general international law, which would allow coastal States to extend their national exclusive fishing zone beyond the 12-mile limit, it is not sufficient to rely on the fact that a number of States have, in effect, claimed wider exclusive fishery zones. Such practice must in any case be supplemented by the recognition or at least acquiescence by those States which are adversely affected thereby, let alone the question whether such an enormous extension of national areas would not adversely affect also the interests of the international community as a whole. As there is no evidence that the claims by some coastal States for wider zones of exclusive fishing rights have been recognized by the international community, and as important distant-water-fishing States have protested against such claims, it is, therefore, submitted that there is no consensus on a new rule of general international law which would allow a coastal State to extend unilaterally its exclusive fishery zone farther out into the sea up to 50 miles or more from the coast without regard to the rights of other States and to the interests of the international community.

All the considerations which I have just mentioned would already suffice to refute the contention that the law of the sea has changed or created a new rule to the effect that it is within the discretion of the coastal State to extend its jurisdiction over the fisheries before its coast unilaterally to a limit which it considers necessary to satisfy its individual interests. Nevertheless, I should make some comments on the question whether the rules which govern the fishery limits at present, are equitable. Although it is certainly not relevant for deciding the present dispute whether the law as it stands should, in the view of one of the Parties, be changed and although such consideration could never justify the unilateral violation of the rights of the other Party, the need for a change of the law, if established beyond doubt, might eventually have some bearing on the duty of both Parties to enter into meaningful negotiations for the re-settlement of their respective rights. It is only in this context that the opinions recently expressed by governments in the resolutions of international conferences and in the discussions on the floor of the United Nations Sea-bed Committee might acquire some relevance for the dispute between the Parties.

The Government of Iceland, in its telegram addressed to the Court on 11 January 1974, alleges that the concept of a so-called economic zone up to 200 miles, within which the coastal State should enjoy exclusive rights over the economic resources of the sea, its seabed and subsoil, including exclusive fishery rights, has found very wide support, in particular in the statements by delegations in the meetings of the United Nations Sea-bed Committee and in the General Assembly of the United Nations. The Government of Iceland goes even so far as to allege that these statements are not only aimed at what should be decided by the Law of the Sea Conference, but do already reflect what the law is today. It should not be denied that recently a number of States have by proclamation or legislative act claimed an extended exclusive fisheries zone beyond the 12-mile limit. The claims of some 20 States have already been reviewed in the Memorial of the Federal Republic of Germany filed on 1 August 1973—I refer in this respect to Part IV, paragraphs 79 to 91, of the Memorial. Since then similar claims for exclusive fishery zones by the following States have come to the knowledge of the Government of the Federal Republic: Somalia, 200-miles territorial sea, Tanzania, 50-miles territorial sea, Madagascar, 50-miles territorial sea, and Iran, an exclusive fishery zone comprising the waters above Iran's continental shelf in the Persian Gulf and 50-miles exclusive fishery zone in the Sea of Oman. Thus, not more than 25 States, including Iceland, have up till now actually claimed and tried to

enforce an exclusive fisheries zone beyond the 12-mile limit. In the preparatory discussions for the forthcoming Conference on the Law of the Sea in the United Nations Sea-bed Committee various proposals have been submitted which aim at the recognition of a so-called "economic zone", sometimes also called "patrimonial sea", within which the coastal State would have exclusive jurisdiction over the exploitation of the living and non-living resources of the high seas. But these proposals are mainly sponsored by the same States which already claim and attempt to establish such a zone before their coasts.

I refer in this respect to the proposals submitted on 7 August 1972 by Kenya; on 2 April 1973 by Colombia, Mexico and Venezuela, relating to the concept of the patrimonial sea; on 5 April 1973 by Iceland relating to the jurisdiction of coastal States over the natural resources of the area adjacent to their territorial sea; on 3 July 1973 by Uruguay, providing for a territorial sea up to a distance of 200 miles; on 13 July 1973 by Brazil, providing a territorial sea up to 200 miles; on 13 July 1973 by Ecuador, Panama and Peru providing the extension of the sovereignty of the coastal State up to a distance of 200 miles; on 13 July 1973 by Malta, providing for the extension of the jurisdiction of the coastal State to a so-called "belt of ocean space" up to 200 miles; on 16 July 1973 by China, providing an exclusive economic zone up to 200 nautical miles; on 16 July 1973 by Australia and Norway, providing for a right of the coastal State to establish a zone in which the coastal States should have sovereign rights over the natural resources for the primary benefit of its people and its economy; on 16 July 1973 by Argentina, providing for an area of sovereignty for the coastal State up to a distance of 200 miles; on 16 July 1973, by Canada, India, Kenya, Madagascar, Senegal and Sri Lanka relating to fisheries in an exclusive economic zone within an unspecified distance from the coast; on 16 July 1973 by Algeria, Cameroon, Ghana, Ivory Coast, Kenya, Liberia, Madagascar, Mauritius, Senegal, Sierra Leone, Somalia, Sudan, Tunisia and Tanzania relating to an exclusive economic zone up to 200 miles; and on 10 August 1973 by Pakistan, providing for an exclusive economic zone up to 200 miles.

These are the proposals made by some States in the United States Sea-bed Committee for an exclusive zone beyond the 12-mile limit. All these proposals are listed as United Nations documents under the symbol A/AC.138/SC.II/L. 10, 21, 23, 24, 25, 27, 28, 34, 36, 37, 38, 40 and 52, respectively.

As it appears from these documents, the States which advocate an extension of exclusive fishery rights beyond the 12-mile limit up to 200 miles or less are much the same as those which claim such an extension already. There are only a few additional States which seem to give unqualified support to the economic zone concept. All these are States which, by their geographical position, benefit most from an extension of their maritime jurisdiction. However, these proposals on which Iceland relies for the justification of its own claim for a 50-mile exclusive fisheries zone are only one side of the picture. A closer examination of these proposals, as well as of the numerous other proposals submitted for consideration in the United Nations Sea-bed Committee, reveals a much more complex and differentiated pattern of the views of States with respect to the coastal State's right over the fishery resources before its coast. For this purpose, I would like to draw the Court's attention to the following facts:

First, I should underline that the proposals submitted to the United Nations Sea-bed Committee for consideration are proposals *de lege ferenda*. Generally they do not purport to be a restatement of the existing law, but are bargaining positions which are built up for the negotiations in the conference. The same

is true for the various declarations of Latin American and African States which are usually referred to in support of claims for an extended jurisdiction of the coastal State. This is even true for the so-called Montevideo Declaration of 8 May 1970, which was signed by Argentina, Brazil, Chile, Ecuador, El Salvador, Panama, Peru, Nicaragua and Uruguay. Although this Declaration purports to be declaratory of basic principles of the law of the sea, among them the principle that each State should have the right to establish the limits of its maritime jurisdiction in accordance with its geographic and geological characteristics and the need for rational utilization of the marine resources, the preamble of this Declaration states more carefully that the principles contained in the Declaration are "emanating from the recent movement towards the progressive development of international law, which is receiving ever-increasing support from the international community". This means that even those States which signed the Montevideo Declaration did not want to go so far as to pretend that these principles had already obtained the recognition of the international community.

The other pertinent Declarations, namely the Santo Domingo Declaration of 7 June 1972 and the Declaration of the Organization of African Unity of 24 May 1973, although they support the right of coastal States to extend their jurisdiction over the resources in the waters beyond the limits of their territorial sea, clearly indicated that they were to be understood as declarations of common policies and proposals *de lege ferenda*. The Declaration of Santo Domingo, which was signed by the Governments of Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Trinidad and Venezuela, declares in its first operative paragraph that the coastal State has sovereign rights over the renewable and non-renewable natural resources which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the "patrimonial sea". But in the following operative paragraph 3, it recognizes that the breadth of this zone should be the subject of an international agreement, preferably of a worldwide scope. The Declaration of the Organization of African Unity on the issues of the law of the sea states, in paragraph 6 of its preamble, that Africa, on a basis of solidarity, needs to harmonize her position on various issues before the forthcoming United Nations Conference on the Law of the Sea; and in paragraphs 14 and 15 notes the recent trends in the extension of the coastal States' jurisdiction over the area adjacent to their coasts and the position and views of other States and regions. The Declaration then sets forth a set of principles as the common position of the African States, and among them the recognition of the right of each coastal State to establish an exclusive economic zone beyond its territorial seas, whose limits shall not exceed 200 nautical miles.

The limited significance in this respect of the United Nations General Assembly resolution 3016 (XXVII), on the Rights of States to Permanent Sovereignty over their Natural Resources, has already been examined in paragraphs 71 to 75 of Part IV of the Memorial of the Federal Republic. I need not repeat these arguments today.

From all these proposals and declarations nothing more follows than that a limited number of States which have sponsored those proposals, or subscribed to those declarations, take the position that the forthcoming Conference on the Law of the Sea should recognize the right of the coastal State to claim exclusive jurisdiction over the fishery resources within a zone adjacent to its coast, up to a limit of 200 miles.

To get a full and balanced picture of the opinions of governments on the

economic zone concept in the United Nations Sea-bed Committee, we should now examine the proposals submitted by those States which did not support the economic zone concept or offered support only under significant reservations. In this context I shall first turn to the proposals which were submitted by important distant-water-fishing States.

The Soviet Union, in its draft articles on fishing submitted to the United Nations Sea-bed Committee on 18 July 1972 (doc. A/AC.138/SC.II/L.6), adheres to the concept that the territorial sea or the exclusive fishery zone of a coastal State should not exceed 12 miles. Beyond that limit, only developing coastal States should have the preferential right to reserve to themselves annually such part of the allowable catch of fish as could be harvested by their fishing vessels, in order to have the opportunity to build up their national fishing industries. But, in principle, all the fish beyond the 12-mile limit, which the developing State could not so reserve for itself, might then be taken by other States with due regard to the needs of conservation. In its explanatory note to this proposal, the Soviet Union takes the view that the legitimate interests of the peoples of other States to use the fishery resources of the world oceans should not be overlooked and that, should the stocks of fish not taken by the coastal State perish without being used by other States, it would be an unjustifiable waste of valuable food resources so necessary to mankind. The Soviet Union recognizes that in those areas of the high seas which are not covered by regulatory measures of international fisheries organizations the coastal State may take regulatory measures, but only in agreement with the States whose nationals fish in the same area, and in a non-discriminatory manner.

The proposal of the Soviet Union is in harmony with the Declaration on Principles of Rational Exploitation of the Living Resources of the Seas and Oceans in the Common Interest of All Peoples of the World which had been adopted by a Conference of Ministers of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland and the Soviet Union held at Moscow on 6 to 7 July 1972; the contents of the Declaration were submitted to the United Nations Sea-bed Committee as document A/AC.138/85. This Declaration stressed the need for co-operation of all interested States in studying and regulating activities relating to the living resources of the sea as an essential condition for their rational use and for increasing the yield of fish from the seas and oceans, and the Declaration added that the partitioning among States of a substantial part of biologically inter-related areas of the high seas, through the establishment by coastal States of special zones of great widths—for example, more than 12 miles—and the proclamation of exclusive rights of coastal States over constantly migrating shoals of fish, would make this task impossible to fulfill. The Declaration starts from the basic principle that the fishing régime on the high seas should be based on the principle of the equal rights of all States to engage in fishing in these waters. Certain preferential rights should, however, be accorded to developing States to enable them to develop their national fishing industries and overcome their technological backwardness.

Japan, in its proposal for a régime of fisheries on the high seas, submitted to the United Nations Sea-bed Committee on 14 August 1972 as document A/AC.138/SC.II/L.12, likewise seeks to preserve the freedom of fishing by all States in the waters of the high seas beyond the 12-mile limit. These proposals do, however, provide for certain preferential rights of coastal States which are intended to ensure sufficient protection for coastal fisheries of States, particularly of developing States, in relation to the activities of distant-water

fisheries of other States, in areas of the high seas adjacent to their 12-mile limit. Thus, the proposals attempt, in their own words, "to formulate a broad and equitable accommodation of interests of States in the exploitation and use of the living-resources of the high seas, taking into account the dependence on fishing of both coastal and other States". With respect to the preferential treatment that should be accorded to coastal States, the Japanese proposals distinguish between *developing* and *developed* coastal States.

A *developing* coastal State should be entitled to reserve annually for its flag that portion of the allowable catch of a stock of fish it can harvest on the basis of the fishing capacity of its coastal fisheries, and that portion may become greater according to the rate of growth of the fishing capacity of that State until it has developed that capacity to the extent of being able to fish a major portion, e.g., approximately 50 per cent. of the allowable catch of the particular stock of fish.

A *developed* coastal State, on the other hand, should be entitled to reserve for its flag that portion of the allowable catch of a stock of fish which is necessary to maintain its locally conducted small-scale coastal fisheries, and in determining *that* portion interests of traditionally established fisheries of other States should be duly taken into account. No preferential rights of the coastal State should, however, be recognized in respect of highly migratory stocks of fish; the conservation and regulation of such stocks should remain within the province of the existing international or regional fishery organizations.

The United States have made it clear, by an intervention of their delegate on 29 March 1972, that they were opposed to the creation of a zone of exclusive coastal State jurisdiction beyond the 12-mile limit. In their revised draft fisheries article, submitted to the United Nations Sea-bed Committee on 4 August 1972 as document A/AC.138/SC.II/L.9, they proposed a new approach for the solution of the conflict of interests between States with predominantly coastal-based fishing fleets and those with predominantly distant-water-fishing fleets, a conflict of interests which exists in some way already within the fishing industry of the United States themselves. The new approach of the United States consists in providing for different régimes according to the categories of fish, namely, for so-called "coastal" and "anadromous" resources and for the so-called "highly migratory oceanic" resources. The United States propose that the coastal State should be entitled to regulate and have preferential rights to the so-called "coastal" resources in the waters adjacent to its territorial sea up to the limits of the migratory range of these species, while the so-called "highly migratory oceanic" resources should not come under the coastal State's jurisdiction, but their exploitation should be regulated by appropriate fisheries' organizations in which all States have an equal right to participate.

With respect to the so-called coastal species, the coastal State should, in order to assure the maximum utilization and equitable allocation of these resources, apply the following principles: the coastal State should provide access by other States to that portion of the resources not fully utilized by its own vessels, on the basis of the following priorities: in the first place access should be accorded to States that have traditionally fished for a specific species; in the second place access should be accorded to States in the region, particularly landlocked States and other States with limited access to the resources with whom joint or reciprocal arrangements have been made; in the third place access should be accorded to all other States without discrimination.

The coastal State and the appropriate international fishery organization, each with respect to the species under its jurisdiction, should be entitled to impose catch limitations or other conservation measures, but such measures and their implementation should not discriminate in form or fact against any fishermen. This concept proposed by the United States needs further elucidation, in particular with respect to the question what species should be categorized as coastal or highly migratory, and how the migratory range of the coastal species which sets the limit for the coastal States jurisdiction would be determined. But it is at least clear that the United States are, in principle, opposed to the establishment of wide exclusive fisheries zones.

A similar approach to the matter was taken by Canada in its working paper on the management of the living resources of the sea, which has been submitted to the United Nations Sea-bed Committee on 27 July 1972 as document A/AC.138/SC.II/L.8. Canada also recommended a functional approach to the allocation of the living resources of the sea. Its proposals distinguish among others between the category of the so-called coastal species which *inhabit nutrient-rich areas adjacent to the coast, or at least return to the* shallow coastal areas to reproduce, and on the other hand the category of the so-called wide-ranging species which include most of the large pelagic fish such as tuna and others. Here, too, the coastal State's preferential right to utilize the coastal species is recognized; for the category of the wide-ranging species, however, an international authority composed of the States interested in the catch of such species is recommended as the most appropriate mechanism for management of these resources.

The Court adjourned from 11.25 to 11.50 a.m.

Mr. President, Members of the Court, I had just finished talking about the proposals made by the distant-water fishing States in the United Nations Sea-bed Committee. In this context I should now refer to the position of the members of the European Communities, which comprise among others such important distant-water fishing States as the United Kingdom, the Federal Republic of Germany and France. These States have not yet come forward in the United Nations Sea-bed Committee with proposals of their own with respect to the fisheries régime on the high seas. It is, however, no secret that these States still adhere to the concept of the freedom of the high seas beyond the 12-mile limit; their delegates have voiced their opposition to wide exclusive fishing zones in the discussions which have taken place in the United Nations Sea-bed Committee.

The Federal Republic of Germany, not being at that time a member of the United Nations, could not take part in the discussions of the United Nations Sea-bed Committee as a full member. Therefore the Federal Republic has not been able to express its views in this Committee, and its silence to the views which were expressed by other States in this Committee cannot be used in any way as a legal argument against the Federal Republic. I should recall at this point that in each case where it comes to the notice of the Federal Republic that a State had by proclamation or legislative act extended its maritime jurisdiction beyond the 12-mile limit, the Government of the Federal Republic lodges a diplomatic protest to the effect that the Federal Republic does not recognize any such extension.

So much for the position which had been taken by the distant-water-fishing States in the proceedings of the United Nations Sea-bed Committee. I shall

now turn to another group of States which have nothing to gain by the establishment of wide economic zones, and which must rather fear that their right to fish on the high seas will become meaningless if most of the fishing grounds are closed to them. These are those States which on account of their small coast, or of the particular geographical configuration of their coastline, would not be able to claim, under the concept of the economic zone, equivalent broad areas in the high seas before their coasts as most of the States which advocate the economic zone concept.

In the same position are those States which border enclosed parts of the high seas such as the riparian States of the Baltic Sea, the North Sea and the Mexican and the Persian Gulf. Finally, there are the so-called land-locked States, which have no coastline and therefore could not claim any area of the high seas should they wish to take up fishing activities on the high seas. Some of these States which fall under the categories I have just mentioned, and which might summarily be called disadvantaged States under the economic zone concept, have come forward with proposals which claim fishing rights in the economic zones of the advantaged States should this concept become law. I refer in this respect to the draft articles on resource jurisdiction of coastal States beyond the territorial sea, submitted by Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore to the United Nations Sea-bed Committee on 16 July 1973 as document A/AC.138/SC.II/L.39. These States claim that should an exclusive economic zone be established adjacent to the territorial sea, disadvantaged States, which cannot or do not declare such a zone, should have the right to participate in the exploitation of the living resources of the zone of neighbouring coastal States on an equal and non-discriminatory basis.

Two land-locked African States, Uganda and Zambia, in their draft articles on the proposed economic zone, submitted to the United Nations Sea-bed Committee on 16 July 1973 as document A/AC.138/SC.II/L.41, propose that instead of the establishment of an exclusive economic zone for each coastal State, regional or sub-regional economic zones should be established, within which the fisheries should be reserved for the exclusive use by all the States within the relevant region or sub-region. In the same direction goes the proposal submitted by Jamaica in its draft articles on regional facilities for developing geographically disadvantaged coastal States, submitted to the United Nations Sea-bed Committee on 13 August 1973 as document A/AC.138/SC.II/L.55. The concept of this proposal is spelled out in Article 1, paragraph 1, where it is said:

> "In any region where there are geographically disadvantaged coastal States, the nationals of such States shall have the right to exploit, on a reciprocal and preferential basis, the renewable resources within maritime zones beyond 12 miles from the coasts of the States of the region for the purpose of fostering the economic development of their fishing industry and satisfying the nutritional needs of the population."

Geographically disadvantaged coastal States are defined in this proposal as those developing States which:

> "for geographical, biological or ecological reasons—
>
> (i) derive no substantial advantage from the extension of their maritime jurisdiction; or
> (ii) are adversely affected by the extension of maritime jurisdiction of other States;

(iii) have short coastlines and cannot extend uniformly their national jurisdiction."

Finally, there is a proposal by Zaire, an African State with a very small coastline, which was submitted on 17 August 1973 to the United Nations Sea-bed Committee as document A/AC.138/SC.II/L.60. The draft articles on fishing proposed by Zaire provide that landlocked States and geographically disadvantaged States should have the right to participate on a footing of equality and without discrimination in the exploitation of the living resources of the economic zones of neighbouring coastal States.

I should mention in this context, also, the proposal concerning a so-called intermediate zone submitted by the Netherlands to the United Nations Sea-bed Committee as document A/AC.138/SC.II/L.59 on 17 August 1973. This rather complicated proposal was meant as a compromise proposal for the purpose of equalizing the positions of geographically advantaged and disadvantaged States in an economic zone concept, should the Law of the Sea Conference adopt such a concept.

The Netherlands proposal provides that the coastal State would be entitled to make the exploitation of the living and non-living resources in such a zone subject to a licence under rules and regulations to be established by the competent international organizations. The coastal State should, however, in case it is a so-called advantaged State, accord such licences not only to its own nationals but also to nationals of so-called disadvantaged States. The proportion of licences accorded to nationals and foreigners from such disadvantaged States would have to be determined either by agreement between the States concerned or by decision of the competent international authority on the basis of the relative amount of sea area which would accrue to each State under the economic zone concept. This relative amount would have to be measured in relation to its total land area and adjusted in case of disproportions resulting from a grossly unequal distribution of resources in the respective zonal areas.

All these proposals which I have just mentioned of the geographically disadvantaged States, show that those States which cannot derive substantial benefit from the economic zone concept are not prepared to accept such a concept if it would imply exclusive exploitation rights of the coastal State within wide areas of the high seas. Such a concept would indeed, if adopted by the Conference on the Law of the Sea, lead to the monopolization of the control over the fisheries of large areas of the high seas in the hands of a limited number of geographically advantaged States.

The opposition against the economic zone concept which made itself felt in the proceedings of the United Nations Sea-bed Committee, forced the States which advocate the economic zone concept to modify it in their later proposals submitted to the Committee. In the hope of winning the support of geographically disadvantaged States, their later proposals provide for a limited access by such disadvantaged States to the economic zone. In some of the more recent proposals which contain the economic zone concept, it is provided that the coastal States should accord, in their economic zones, neighbouring disadvantaged States at least a preferential treatment over third States in granting fishing licences, as long as fishing is not reserved exclusively for their own nationals. I may refer in this respect to some of the proposals I have already mentioned earlier; there is a proposal of Uruguay (UN doc. A/AC. 138/SC.II/L.24) which advocates an extension of the territorial sea of the coastal States up to a distance of 200 nautical miles, but provides also that

coastal States should, through bilateral or subregional agreements as the case may require, accord to States having no sea coast which are their neighbours or which belong to the same subregion, preferential treatment over third States with regard to fishing rights in that area of the territorial sea for that part of the catch which is not reserved exclusively for their nationals.

Similarly, the proposal submitted by Ecuador, Panama and Peru which also provides for an extension of the sovereignty of the coastal State up to a distance of 200 miles (UN doc. A/AC.138/SC.II/L.27), contains the provision that in regions or subregions in which certain coastal States, owing to geographical or ecological factors, are unable to extend the limits of their sovereignty and jurisdiction up to distances equal to those adopted by other coastal States in the same region or subregion, the former States shall enjoy in the national sea of the latter a preferential régime in relation to third States in matters of fishing on the basis of regional, subregional, or bilateral agreements between the States concerned. The proposal submitted by Argentina (doc. A/AC.138/SC.II/L.37) contains a similar provision.

Other recent proposals which provide for the establishment of an economic zone are more liberal, in so far as they would accord national treatment to neighbouring disadvantaged States. Under this category I should refer to the draft article on fisheries submitted by Canada, India, Kenya and Sri Lanka (doc. A/AC.138/SC.II/L.38), which would allow coastal States to establish an exclusive fisheries zone beyond the limits of their national territorial sea, but provide also that neighbouring developing coastal States should allow each other's nationals the right to fish in a specified area of their respective fisheries zones on the basis of long and mutually recognized usage and economic dependence on the exploitation of the resources of that area. They provide further that nations of a developing land-locked State should enjoy the privilege to fish in the neighbouring area of the exclusive fisheries zone of the adjoining coastal State on the basis of equality with the nationals of that State.

Similarly, the articles on an exclusive economic zone submitted by Algeria, Cameroon, Ghana, Ivory Coast, Kenya, Liberia, Madagascar, Mauritius, Senegal, Sierra Leone, Somalia, Sudan, Tunisia and Tanzania (UN doc. A/AC.138/SC.II/L.40), provide that nationals of a developing land-locked State and other geographically disadvantaged States should enjoy the privilege to fish in the exclusive economic zone of the adjoining neighbouring coastal States, and provide further that neighbouring developing States should grant reciprocal preferential treatment to one another in the exploitation of the living resources of their respective economic zones.

The most liberal proposal in granting access to the economic zone to other States is a proposal submitted by Malta (UN doc. A/AC.138/SC.II/L.28). Although it allows each coastal State to extend its jurisdiction to a belt of so-called national ocean space up to 200 miles and to reserve the exploitation of the living resources therein to its nationals, it is provided that this régime should not affect traditional subsistence fishing or the catching of fish for immediate human consumption by foreign fishermen in the national ocean space; in addition, the coastal State should be under an obligation to grant adjacent land-locked countries access to the living resources in the national ocean space on conditions similar to those applicable to nationals.

What then are the conclusions that have to be drawn from the complex picture of the proposals which have been tabled in the United Nations Seabed Committee?

The multitude of divergent proposals which were submitted to the Com-

mittee and the contradicting views which were expressed in the discussions of the Committee with respect to these proposals, which I cannot review here in detail, have made it apparent that the concept of an exclusive economic zone has not yet gained substantial and unreserved support from States other than those which originally advocated this concept. On the contrary, the concept of an exclusive economic zone has aroused much criticism not only from the quarters of the distant-water fishing States, but also from the quarters of those developing and developed States which are not in such a favourable geographical position as to be able to use the economic zone concept for claims of exclusive jurisdiction over vast areas of the high seas. It has been pointed out that if the economic zone concept were to become law nearly all important fishing grounds in the world would come under the exclusive jurisdiction of one or the other coastal State.

I should refer in this context specifically to the intervention by Ambassador Pardo of Malta on 8 August 1973 in the Second Sub-Committee of the United Nations Sea-bed Committee, where he expressed grave concern at the light-hearted readiness to transfer vast areas of the oceans, which he estimated as representing nearly 35 to 40 per cent. of the ocean space, from the international to the national jurisdiction without providing sufficient guarantees for a proper management of the fishery resources in the interst of the international community.

If one reads the 1973 Report of the Second Sub-Committee of the United Nations Sea-bed Committee, summarizing the views expressed in the discussion of the Sub-committee, it becomes apparent that with respect to the exploitation of the fishery resources beyond the territorial sea a proper balance between the different interests involved had not yet been found. I refer in this respect to paragraphs 52 to 53, 58 to 63, 72 to 76 and 83 to 84 of the Sub-committee's Report—the report is published as an Annex to the Report of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of Nations' Jurisdiction, published as Supplement No. 21 of the *Official Records* of the General Assembly's 28th Session, Volume I, pages 38 to 60.

In short, no generally accepted concept for the future legal régime of fisheries has as yet emerged from the preparatory work in the United Nations Sea-bed Committee. In particular, the concept of an exclusive zone did not find sufficient recognition among other States as to be of any juridical relevance for the present dispute before the Court.

Nevertheless, it is a fact that the present legal régime for the fisheries on the high seas is constantly being attacked, in particular by developing States, as being outmoded and unequitable. The Government of the Federal Republic has given careful consideration to the complaints which have been voiced against the present legal régime of fisheries from different quarters and for different reasons.

But the Federal Republic of Germany is still unable to perceive that a legal régime which would put practically all the fishery resources of the oceans under the national control of a limited number of States, could be regarded as more equitable than the present régime, which is founded on the equal right of each State to have access to the fishery resources of the oceans. How defective the present system of freedom of fishing on the high seas might be in practice, it cannot be denied that it is inherently equitable because it provides equal opportunities for all States and in so far corresponds to the principle of equality of States. I think that there are more alternatives available to remedy the deficiencies of the present régime of fisheries than the simple choice

between the concept of the freedom of fishing on the one hand and the coastal State's rule on the other.

The dissatisfaction with the existing régime of fisheries has mainly two sources:

The first more general complaint is directed against the lack of powers to deal effectively with the problem of the conservation of the living resources of the sea. It has been pointed out that the present régime, coupled with the development of modern fishing techniques and the increase of fishing effort, encourages the over-exploitation of the fish stocks, and that the existing fishery organizations are too slow and ineffective in adopting conservation measures and securing their observance. Whether it would be a sound alternative to give each coastal State exclusive jurisdiction over the waters before its coast for the purpose of conservation, is also questionable, because the record of coastal States has also not been very reassuring in this respect.

The second more special complaint against the present régime of fisheries comes from the quarters of the developing States. These States complain that under the principle of the freedom of their fishing the distant-water fishing States could exploit the fishery resources before their coasts, while they themselves, without an equally efficient fishing industry, are not capable of participating in the exploitation of these resources and would derive no immediate economic benefit therefrom. Whether developing States would derive more benefit from the fishery resources before their coasts if they were accorded the exclusive right to exploit the fishery grounds before their coasts, is, however, also questionable as long as they have not built up an efficient national fishing industry.

The establishment of wide areas of national jurisdiction in the oceans does not contribute to an effective management of the fishery resources in the interests of the international community. It is a primary interest of the international community that the fishery resources of the ocean will be fully utilized for the purpose of broadening the available food potential, and at the same time be guarded against over-exploitation.

It needs no further explanation that an international management of the fishery resources is needed in order to keep a proper balance between full utilization on the one hand and conservation on the other. Individual actions of coastal States within their respective national areas will rarely correspond to the migratory range of the different species of fish and will lack the necessary consistency with each other. Much more information and expertise will be available to the international fishery organizations than to the individual coastal State. Decisions of international fishery organizations seem to offer better guarantees for balanced and scientifically founded conservation measures than those taken by individual coastal States, sometimes under local political pressure. Certainly, the special interest of the coastal State in preserving the fishery resources before its coast must be recognized, and this interest might be a valuable and necessary element in forcing the competent international fishery organizations into action.

Thus, instead of establishing exclusive regulatory powers of the coastal State, the effort of the forthcoming Conference on the Law of the Sea should better be directed to the creation of world-wide, regional and functional fishery organizations and to the strengthening of their regulatory powers; these organizations should be enabled to act on majority decisions and their regulations should bind all States which participate in the fisheries under their competence.

However, the coastal State also should play its proper role in the process of

controlling and regulating the fisheries on the high seas. It had been rightly pointed out by some speakers in the discussions of the United Nations Seabed Committee that the proper role of the coastal State would be to act as guardian or trustee of the interests of the international community in the preservation of the fishery resources before its coast. It might even be conceivable to endow the coastal State with more direct than mere residual powers for imposing conservation measures in a specified area and for a specified stock of fish before its coast, subject of course to the supervisory authority of the competent fishery commission and subject further to the rule that any conservation measure imposed by the coastal State must be applicable equally against foreigners and nationals without discrimination in law or in fact. The useful work that has already been done by the International Commission for the North-West Atlantic Fisheries has already demonstrated the capabilities inherent in the concept of the international management of fishery resources by regional commissions. I submit that this is a better approach to the solution of the problem of international fisheries than by creating a lot of national exclusive fishery zones.

I shall now turn to the question of the equitable allocation of the fishery-resources of the oceans among the States of the world; this is one of the central problems with which the Conference on the Law of the Sea will be confronted. The complaints made by developing States about the present legal régime of high sea fisheries have their real source not so much in any inherent inequity of that régime but rather in the special factual situation of the developing States; which do not feel able to use the opportunities under the régime of the freedom of fishing to the full satisfaction of their national interests. By claiming exclusive rights over the fishery resources within a 200-mile zone before their coasts, these States pursue a double purpose, namely: first, to guard the available resources before their coasts against over-exploitation by distant-water fishing fleets until they will be able to develop an efficient and competitive fisheries industry of their own for exploiting these resources; and second, to obtain immediate benefits to their economy from the exploitation of the fishery resources before their coast by licensing foreign fishing in return for fees or other financial or economic assistance.

It is submitted that these interests of the developing States do not call for a fundamental change in the present legal régime of fisheries or, more specifically, for a reallocation of the fishery resources of the oceans. The interest of the developing coastal States to preserve the fishery resources before their coast for future utilization has nothing to do with resource allocation, but is rather a problem of providing adequate and effective machinery for the conservation of fishery resources all over the world; I have already dealt with this problem in my argument, and I can only repeat here that it can be solved better by international management than by transferring exclusive jurisdictional rights on each single coastal State. The interests of developing countries to derive some immediate benefit from the exploitation of the fishery resources before their coasts is understandable; but this problem has not really been created by the present régime of free fishing in the oceans. This problem has rather been created by the different levels of development of the States in the world. This problem could be solved better by sound international development policies than just by transferring ownership of the fishery resources of the oceans to a limited number of geographically advantaged developing and developed States and thereby creating new inequalities.

The real problems of resource allocation arise in those cases where certain

fishing grounds on the high seas are already fully exploited by fishermen from different countries and where the preservation of the fish stocks calls for catch and effort limitation for certain or all species caught in this area. It is here only that the problem of an equitable allocation of the resources among the participating States poses itself, with all the political, economic and legal intricacies connected with cases which require the exercise of distributive justice. In view of the development of more sophisticated fishing techniques, the wider range of action of modern fishing vessels and the increase of fishing effort, the situations where fully exploited fish stocks will have to be regulated will arise more often in the future. More fishing grounds and more species will need such regulation.

Thus, the equitable distribution of the available resources among fishing States will become one of the most important problems which the legal régime of fisheries on the high seas will have to solve. Although catch and effort limitations and the resulting allotment of national quotas are by their very purpose conservation measures, not all international fishery organizations have yet been endowed with the necessary powers to impose such catch and effort limitations and the allocation of national quotas.

The International Commission for the Fisheries of the North-West Atlantic is outstanding as an organization which has introduced such regulatory measures and demonstrated that the attribution of such functions to a regional international fisheries organization is a workable solution under the existing international legal régime of fisheries. Unfortunately, Iceland's attitude has so far prevented the member States of the North-East Atlantic Fisheries Commission from providing this Commission with similar powers. An account of the history of the North-East Atlantic Fisheries Commission and of the development of its regulatory powers has been given in Part II, paragraphs 26 to 52, of the Memorial of the Federal Republic of Germany, filed on 1 August 1973.

There is a strong case for urging the forthcoming Conference on the Law of the Sea to strengthen the role of the international fishery commissions by appropriate procedures and by obliging all States which participate in fishing activities under the geographical or functional competence of the commissions either to become a member of the Commission or to recognize the regulations issued by the Commission as binding for its fishing vessels. Such a system seems to offer better guarantees for an equitable allocation of the available resources among the participating States than to adopt the economic zone concept which would make a limited number of coastal States sole arbiters in this respect.

The central and most controversial issue, however, will be the determination of national quotas in a catch and effort limitation scheme. Much will depend on the choice and weight of the criteria which will determine the share of each State which participates in the fishing of a certain fish stock, and in particular, the share of the coastal State. Coastal States have claimed preferential treatment in the determination of their shares in the fishing of a certain fish stock, and those States which have a local fishing industry which depends on the fishery resources before their coasts have even claimed priority in exploiting the fishery resources before their coasts to the limit of their full capacity.

It seems that the claim for preferential treatment has, in principle, been recognized by the other States in the practice of the fishery commissions; the proposals for a new fisheries régime which have been made by such important distant-water fishing States as Japan, the Soviet Union and the United States

in the United Nations Sea-bed Committee will accord developing States the right to that part of the allowable catch which their fishing vessels would be able to harvest, or at least, as Japan proposes, such amount as would represent a major part of the total allowable catch. But no exclusive right of the coastal State to the fishery resources in the waters of the high seas before its coast beyond the 12-mile limit has yet been recognized in practice, although such claims have been made with respect to the so-called anadromous species, such as salmon, and even for so-called coastal species which do not migrate beyond the coastal area.

Under the principle of equitable allocation, a coastal State cannot claim priority under all circumstances because other States may likewise depend on the fishery resources of the same fishing ground, in particular because these other States may not be able to satisfy the demand of their home market from the fishing grounds before their own coast, or from elsewhere. The degree of dependence of each State which participates in the fishing of a certain fish stock may vary very much; many factors will have to be taken into account and no general and abstract rules could be formed in this respect. Therefore, the economic zone concept, which would once and for all decide the matter in favour of the absolute priority of the interests of the coastal State, without regard to the interests of other States, would be as inequitable as a system which would fail to recognize a special dependence of the coastal State on the exploitation of the fishing grounds in the waters adjacent to its coast. The theory that the fishery resources in the waters before the coast up to the arbitrary limit of 200 miles were the property of the coastal State not only lacks any foundation in the legal conviction of the international community but, and that is even more important, is inherently unjust because it allocates nearly all important fishing grounds of the oceans to a limited number of geographically advantaged States.

Therefore it is a demand of reason and equity that the distribution of the total allowable catch between the coastal State and those other States which are fishing on the same fishing ground should not be left to the unilateral decision of the coastal State on the sole basis of its own interests, but only to the decision of the competent international fisheries organization or, in the absence of such a decision, to an agreement between the States concerned. Such decisions or agreements will have to determine the margin of preference which should be accorded to the coastal State in the light of all relevant factors and with due regard to all interests involved, in particular to the dependence of each State on the fisheries in question.

I submit that there is no valid reason to assume that the present legal régime of fisheries, which is founded on the principle of the equal right of access to the fishery resources of the oceans, is inequitable and should therefore be abandoned. Although it needs more elaborate rules for the allocation of the available fishery resources and in particular a more efficient international machinery for the management and regulation of fishing for fully exploited fish stocks, its guiding legal principles serve the interests of the international community better than any other régime under which the fishery resources of the oceans would become subject to the exclusive rule of a limited number of coastal States.

The Court adjourned from 12.45 to 3 p.m.

I shall now proceed to the next major issue in this case, namely to the question whether the situation of the fisheries in the waters around Iceland

has special features which require special consideration. The history and the development of German and Icelandic fisheries in the waters around Iceland, the present situation of the fish stocks in these waters, the management and regulation of these resources under the auspices of the North-East Atlantic Fisheries Commission, and the degree of dependence of the Federal Republic of Germany and Iceland on the fisheries in these waters have already been dealt with in great detail in the first, second and third parts of the Memorial of the Government of the Federal Republic filed on 1 August 1973. I do not believe it necessary to repeat all the facts assembled in these parts of the Memorial today. These facts have not been disputed by the Government of Iceland in the proceedings before the Court. It is true that the Government of Iceland, in its telegram addressed to the Court on 11 January 1974, has raised a general objection to all the facts and arguments contained in the Memorial of the Federal Republic. However, this objection has not been brought forward in the proper form of a pleading before the Court and, what is even more important, lacks any substantiation.

However, before I approach the legal aspects of the special situation, if any, of the fisheries in the waters around Iceland, it may be useful for a proper evaluation of the situation of these fisheries to give the Court a concise picture of the situation of the different fish stocks in this area.

We have here with us in the delegation of the Federal Republic of Germany as counsel and expert Dr. Arno Meyer, member of the High Seas Fisheries Department of the Fishery Research Institute of the Federal Republic. Dr. Meyer has been connected with fisheries research for quite a long time and has participated many times as an expert and chairman of expert groups in the work of the North-West and the North-East Atlantic Fisheries Commissions and in the International Council for the Exploration of the Sea. He has been chairman of the Demersal Fish Northern Committee in the International Council for the Exploration of the Sea.

Mr. President, I would like to introduce Dr. Meyer to the Court and ask you to allow Dr. Meyer to take the floor for a statement, from the scientific point of view, on some biological facts and fishery-regulation aspects in the sea area of Iceland. I shall later continue the presentation of the case of the Federal Republic.

STATEMENT OF DR. MEYER

COUNSEL AND EXPERT FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

Dr. MEYER: Mr. President and Members of the Court. This morning an envelope was distributed to you. In my speech I shall refer to the tables and to the figures contained in that envelope and I will start here with figure 1.

The distribution of the fish stocks in Icelandic waters, their life-cycle, their behaviour, their migration and their reproduction is directly connected with the hydrography in this area. In the North Atlantic the warm saline water of the Gulf Stream is the main basis of life.

Figure 1 shows the course of this important Atlantic hot water heating, coming from the Caribbean Sea and crossing the Atlantic from south-west to

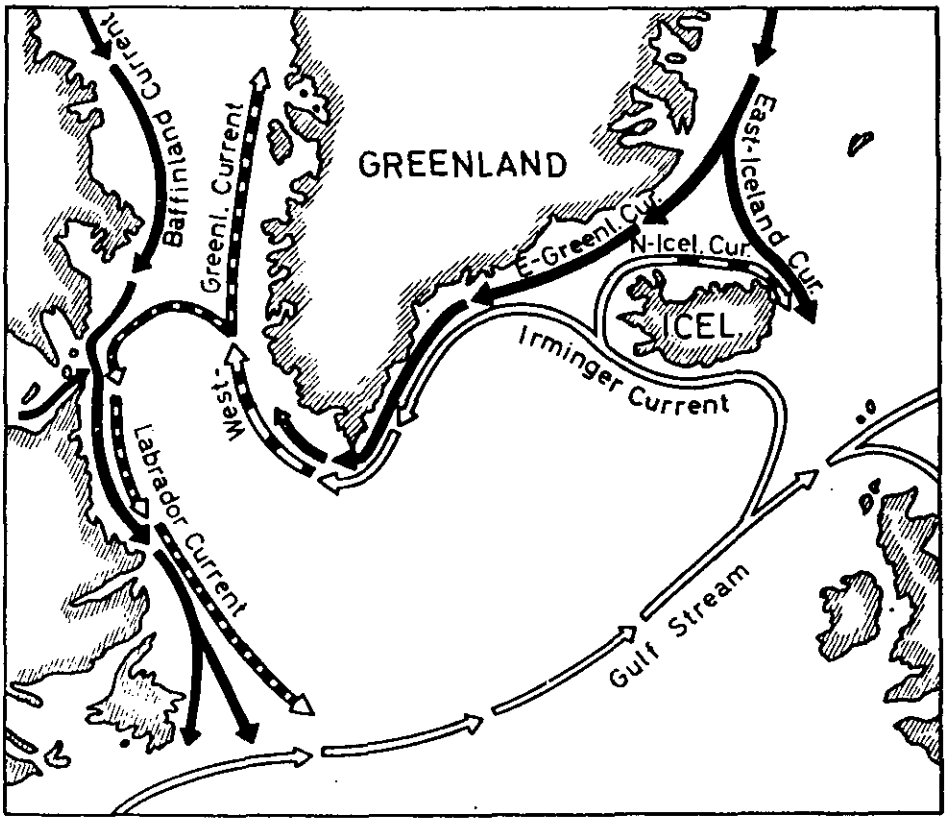

FIGURE 1. SURFACE CURRENTS IN THE NORTH ATLANTIC

north-east. You see on this figure that west of Scotland the Gulf Stream splits and the left branch, called the Irminger Current, transports warm water to the south and south-west coast of Iceland. A right branch of the Irminger Current, the so-called North Iceland Current, surrounds Iceland in a clockwise direction with gradually decreasing temperatures due to the mixture with the cold Arctic water of the East Iceland Current coming from the north. Thus the south and the west coast of Iceland are the warmest parts of this island. The east coast, however, is coldest. Off the coast of East Greenland, if you follow the Irminger Current, this Irminger Current turns south, runs parallel to the cold Arctic water of the East Greenland Current, and surrounds South Greenland and moves northwards and brings the warmth to West Greenland.

Now I turn to the fishery off Iceland, that is the ICES Region Va: the yearly average catch in Icelandic waters during the last 20 years was round about 1 million tons. This is shown in table 1. Only during the six years 1961

TABLE 1. THE INTERNATIONAL CATCH IN ICELANDIC WATERS DURING THE LAST 20 YEARS FROM 1953 TO 1972 (IN 1000 T)

1953	965	1963	1245
1954	942	1964	1399
1955	895	1965	1418
1956	891	1966	1257
1957	887	1967	883
1958	949	1968	798
1959	949	1969	936
1960	985	1970	1028
1961	1142	1971	1003
1962	1365	1972	970

to 1966 did the catch rise considerably above this level, up to 1.4 million tons in 1965. During the other 14 years from 1953 to 1960 and from 1967 to 1972 the international catch was rather constant with an average of 934,000 tons.

Iceland, the United Kingdom and the Federal Republic of Germany are the three main countries which exploit the fishing grounds around Iceland. The United Kingdom and Germany have been fishing off Iceland regularly since the end of the past century. The catches of other nations in Icelandic waters are negligible. Iceland, the United Kingdom and Germany take regularly 96 to 97 per cent. of the total catch, leaving only 3 per cent. for other nations.

The main fish species exploited are at present cod, capelin, saithe, redfish and haddock. Up to 1966 and 1967 herring also was of importance.

Figure 2 on the next page demonstrates in more detail the fisheries output of the Icelandic waters since 1960, during the last 13 years. The green solid line gives the total catch of all nations, which varied considerably during these 13 years between 1,418,000 tons in 1965 and 798,000 tons in 1968. If you follow this green line you find the figures there. The hatched green line further down, which represents the total catch of all demersal species shows, in contrast to the solid green line, a far more constant course swinging around an average of around 728,000 tons. The space between the two green lines represents the very much varying quantity of the two pelagic fish species,

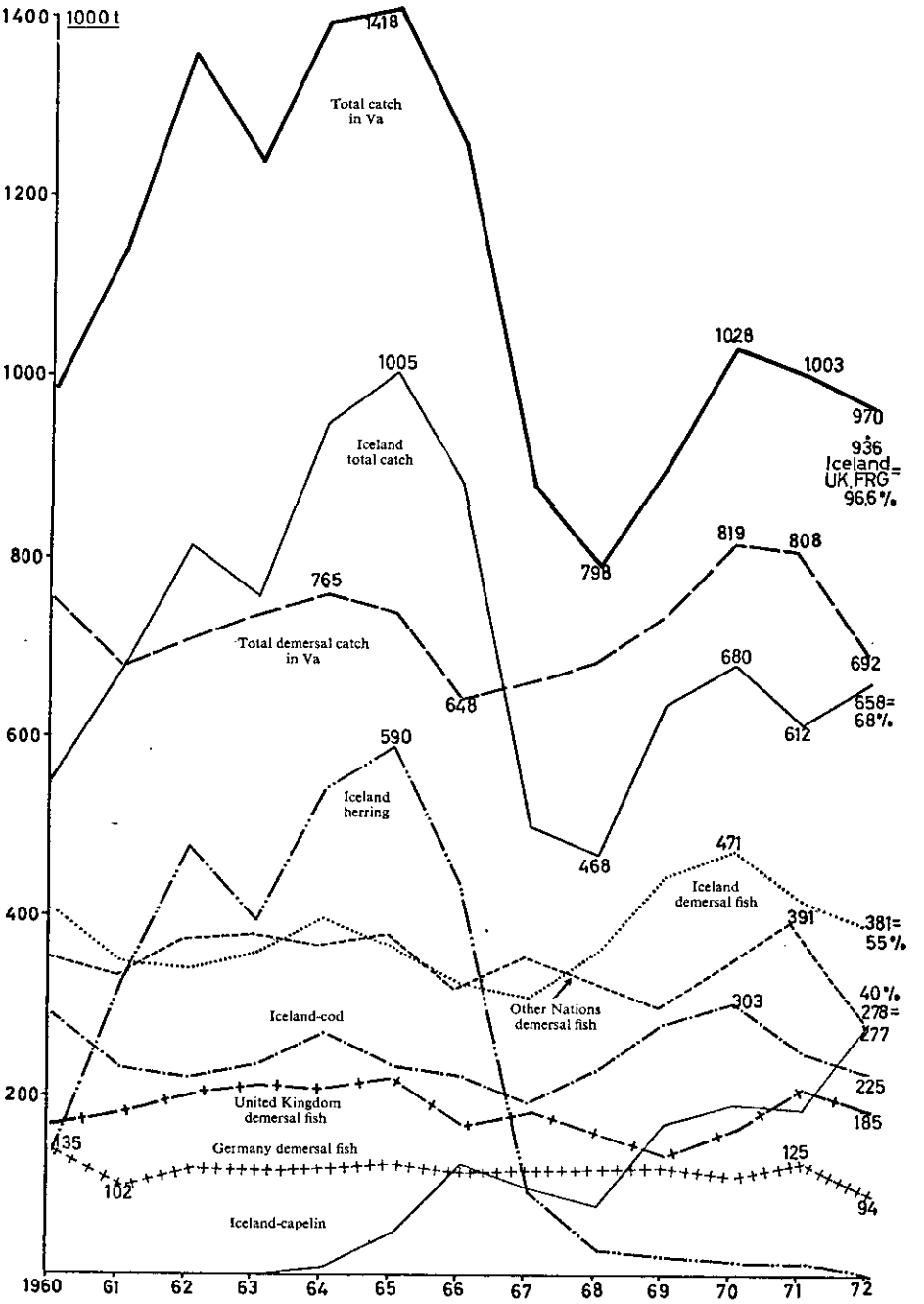

FIGURE 2. CATCHES IN ICES-AREA Va IN 1,000 T 1960-1972
(Source: *Bulletin statistique*)

TABLE 2. THE CATCH IN ICELANDIC WATERS (ICES REGION Va) FROM 1960 TO 1972 IN 1000 T
(Basic figures for fig. 1)

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	average 1960-72
Total catch (Va)	985	1142	1365	1245	1399	1418	1257	883	798	936	1028	1003	970	1110
Demersal catch-total	759	680	714	736	765	744	648	666	687	741	819	808	692	728
Iceland-total catch	542	676	818	758	951	1005	880	502	468	638	680	612	658	707
Iceland-herring in Va	136	326	478	396	544	590	430	94	28	24	16	12	0	256
Iceland-demersal catch	405	350	340	360	398	364	325	310	362	444	471	417	381	379
Iceland-cod	296	234	222	234	274	233	224	193	228	282	303	250	225	246
Iceland-capelin	-	-	-	1	9	50	125	97	78	171	192	183	277	91
Others-demersal catch	354	330	374	376	367	380	323	356	325	297	348	391	278	346
UK-demersal catch	173	184	203	213	210	224	169	186	157	135	165	210	185	186
Germany-demersal catch	135	103	123	122	123	125	117	119	120	119	113	125	94	118

herring and capelin, fish which are mostly turned into fishmeal and oil and therefore are of only small value. Decisive for the economy are the high-priced demersal fish and, among these, especially cod.

The 5 red lines in figure 2 respresent the catches made by Iceland itself. The great fluctuations in the total catch—that is the solid red line—are caused by the great fluctuations in the catches of pelagic fish, especially by herring—that is the line with dashes and two points—which, after a maximum catch of 590,000 tons in 1965, showed a drastic decline which was partly compensated by a considerable intensification of the capelin-fishery up to 277,000 tons in 1972. The capelin-fishery is this very thin red line starting in 1963 at the bottom and going upwards to the figure of 277,000 tons in 1972. For the economy of Iceland, however, the yearly yield of the demersal species is of greatest interest—and these demersal species are the red dotted line. This curve makes clear that after 1968 demersal catches made by Iceland increased considerably, with a maximum of 471,000 tons in 1970. During the years 1969 to 1972 Iceland took 52 to 60 per cent. of the total international catch of demersal species. The most important demersal species for Iceland is cod—that is the red line with dashes and points—with a maximum of 303,000 tons in 1970.

The last two blue curves in figure 2 show the catches of the United Kingdom and of the Federal Republic of Germany. The fisheries of both countries are rather constant and are nearly exclusively directed to demersal species. The average United Kingdom catch for the years 1960 to 1972 was 186,000 tons; this is 17 per cent. of the total catch and 26 per cent. of the total demersal catch. The average catch of the Federal Republic of Germany during the last 13 years was 118,000 tons, which is 11 per cent. of the total catch and 16 per cent. of the total demersal catch.

The basic figures for this figure 2, together with the average for the last 13 years, are given in table 2 on the preceding page.

The main fish species exploited are at present cod, capelin, saithe, redfish and haddock. Up to 1966-1967, as I said, herring was also of importance.

TABLE 3. MAIN FISH SPECIES CAUGHT OFF ICELAND (Va) IN 1972 BY ICELAND, UK AND FRG IN 1000 T
(In brackets percentage of totals)

Species	Total	Iceland	UK	FRG
Cod	399	225 (56)	147 (37)	12 (3)
Capelin	277	277 (100)	—	—
Saithe	108	60 (56)	14 (13)	31 (29)
Redfish	77	26 (34)	4 (5)	44 (57)
Haddock	39	29 (74)	8 (21)	1 (2)
Total of the 5 main species	900	617 (69)	173 (19)	88 (10)
Total of all species	970	658 (68)	185 (19)	94 (10)
Percentage of 5 main species from all species	93%	94%	94%	94%

These are the five main species. In 1972 these five species made up 93 per cent. —900,000 tons—of a total catch of 970,000 tons, and this is shown in table 3. This table 3—the main fish species caught off Iceland in 1972 by Iceland, the United Kingdom and the Federal Republic of Germany in thousand tons—gives also the percentages from the totals for each of these five main species separately for the different countries. These percentage figures show clearly that Iceland is the leading fishing nation in the ICES Region Va. It takes 69 per cent. of the five main species and 68 per cent. of all species. Next is the United Kingdom with 19 per cent., followed by Germany with 10 per cent. From the cod, which is the most important fish in Icelandic waters, Iceland in 1972 took 56 per cent. and the United Kingdom 37 per cent.—you can see these figures in brackets. For the last four years, the percentages were 61 for Iceland and 31 for the United Kingdom. The German interest in Icelandic cod has always been insignificant. In 1972 the German catch of cod made up only 3 per cent. of the total and during the last four years it was 4.8 per cent. The fishery on capelin is conducted by Iceland only. From the saithe, and especially from the haddock stock, Iceland takes by far the greatest quantity—56 per cent. and 74 per cent., respectively. Only in the redfish-fishery, the Federal Republic is since years the leading nation. The average of the last 20 years was 66 per cent.; in 1972 it was 57 per cent.

Other species, which in 1972 were caught in this region in less quantities, were catfish, Greenland halibut, ling, plaice, tusk and halibut, in quantities from 14,000 tons to 2,000 tons. But, if we compare these figures with those in table 3, it should be borne in mind that the commercial value—that means the first-hand price—of the catches of these six demersal species, which are caught in rather small quantities, is at least threefold higher than the commercial value of the 1972 maximum catch of 277,000 tons of capelin, because the capelin is only caught for reduction purposes, for fishmeal and for oil.

Now we turn to cod. From the earliest times cod has been the most important fish in Icelandic waters. During the last 45 years the total catch varied, before as well as after the war, between 350,000 to 550,000 tons. The considerable fluctuations in the total catch of cod are mainly caused by the great differences in the strengths of the year classes. Whether a year produces a rich or a poor year class is decided mostly during the few weeks when the larvae leave the floating eggs. A good year class results when at that very moment when the larvae start feeding just the adequate tiny plankton is available. If this is not the case and the spring-blooming of the plankton has not yet fully started, most of the larvae die and only a poor year class is the result. Rich year classes are rare in Icelandic waters. However, if the right food at the right moment is available, then some years later such a rich year class influences positively the outcome of the fishery for many years. And now please turn to figure 3.

Figure 3 shows for the years from 1928 to 1972—that is for a time now of 45 years—the percental age composition of the cod spawning stock during the spawning season. This figure demonstrates very clearly that some few rich year classes dominate the fishery for many years; this means in the thirties the very rich year class from 1922 followed by the good 1924 cod. You see at the bottom line of the figure the age of the cod from 4 to 18 years and at the left side of the figure the percentage scale for the different years of catch. In 1931—that is the fourth year from the top—nearly the whole spawning stock consisted of 9-year old cod—you see this in the long black line, this long chimney there—of the 1922 year class, which was very rich. Also in 1932—if you will follow down to the next year then these 1922 cod are 10 years old—

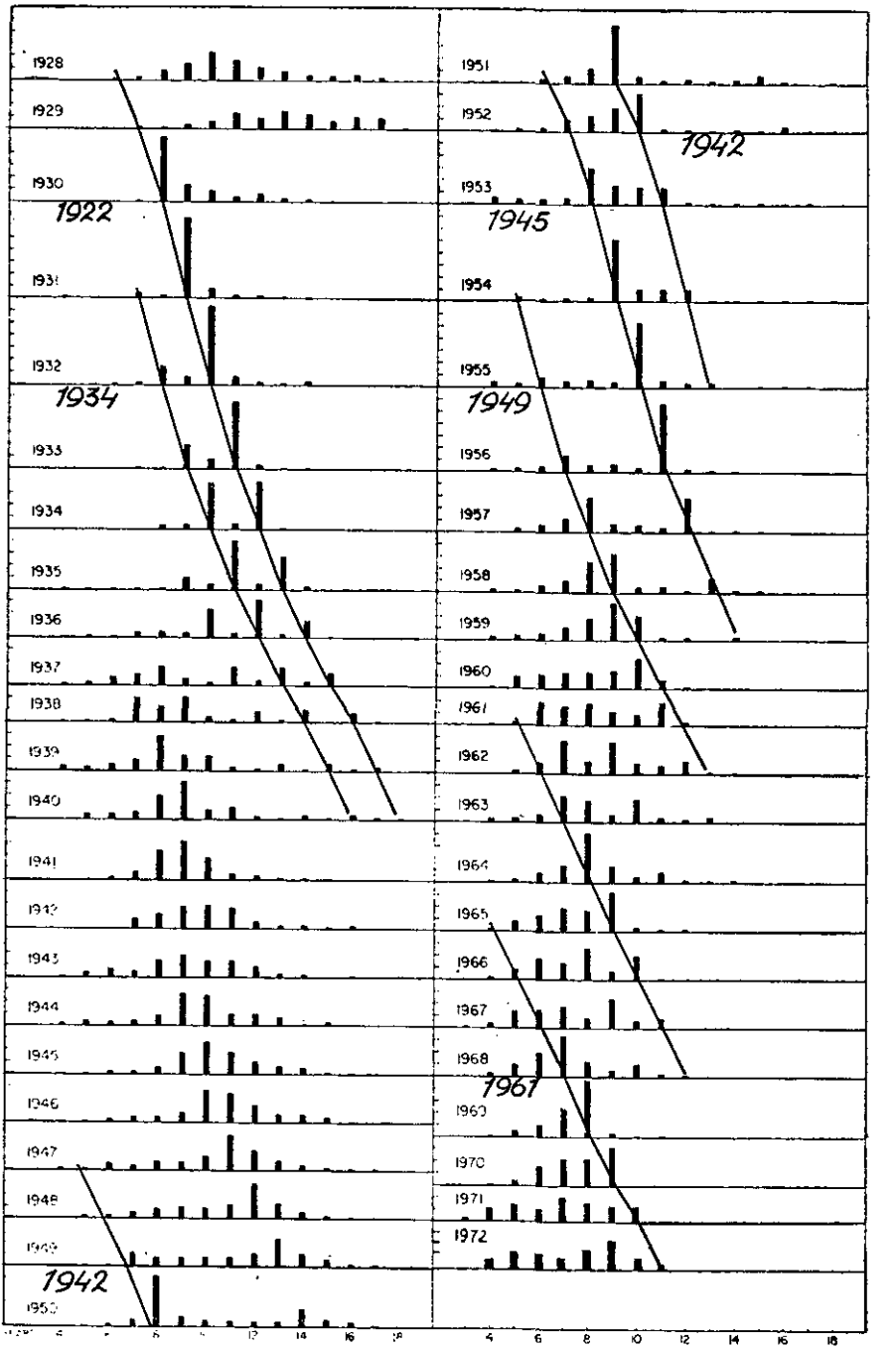

FIGURE 3. AGE COMPOSITION OF THE SPAWNING STOCK OF COD AT *ICELAND* 1928-1972

the 1922-born cod dominated, clearly, also in 1933. But in 1934 the two-year younger year class of 1924 is of equal strength—you can see this on the two chimneys there under 1934. If you follow the two red lines I have drawn in this figure, you will see that, up to the year 1940, these two good year classes were present and were running from 1928 for a time-series of 13 years through the fishery, and were of greatest importance. The most important year class after the war was the year class 1945. The last very good year class was born in 1961—this is the last green line you see on this figure. Why these year classes are marked with green colour will be explained later on.

Now, please, turn to the next figure. Figure 4 demonstrates very clearly how the appearance of rich year classes, eight to ten years after they were born, increases the catches on the spawning grounds. Thus the year class from 1922, and then the 1922 and 1924 cod together, produced the increase in total catch to more than 500,000 tons in the early thirties. The very rich year class 1945 made the total output increase from 1953 to 1956 with a new record of 546,000 tons. The last maximum of the catch curve for cod in the years 1969 to 1971 was due to the rich 1961 year class, directly followed by the good year classes 1962 and 1963, also marked in green colours.

Now please turn to the next figure. Figure 5 shows the position of the main spawning ground of the Icelandic cod in the coastal waters off south-west Iceland—that is the dotted area. The area of spawning lies mostly within the 12-mile limit and the greatest part of the cod catches made by Iceland is harvested here in this very area during the spawning season from March to May.

The fertilized eggs ascend to the surface layers and the fry is drifted away by the current in clockwise direction around Iceland. After round about a fortnight the larvae hatch and during spring and summer the very small codlings are settling in the fjords in the west and in the north, and some are reaching even the east coast of Iceland with the current.

Now, the next figure, figure 6: in July and August an international 0-group survey, with the participation of the research vessels from many nations, try to evaluate, with the help of echo-sounders and small-meshed pelagic trawls, the strength of the newly recruited year class. Figure 6 demonstrates the 1971 survey routes of five research vessels from the Federal Republic of Germany, Iceland, Norway and the United Kingdom.

The next figure, figure 7, shows the result of this international work, the distribution of the 0-group cod with the strongest concentrations in the north-western and northern fjords. Later in September some 0-group cod—you will remember that the survey stopped in August—will also reach the waters of the east coast of Iceland.

For explanation I should say that 0-group fish are all those fish in their first year of life. In the next year they are named 1-group fish. In figure 7, the black areas mean that here more than 500 0-group cod—that is small cod of about 4-5 cm.—were caught per nautical mile, fished with a small-meshed pelagic trawl.

To be able to judge the strength of the new recruited year class, such surveys must be repeated year by year. This kind of survey, which has to be carried out during a rather short time, can only be conducted on an international basis, for there is no country that has as many research ships and as many scientists and staff as are needed for such surveys and for other special surveys for the 1 and 2-group cod. Only on the basis of such 0-group and young fish surveys forecasts can be made. Only on the basis of such scientific material, combined with age composition data from all fishing grounds and the relevant

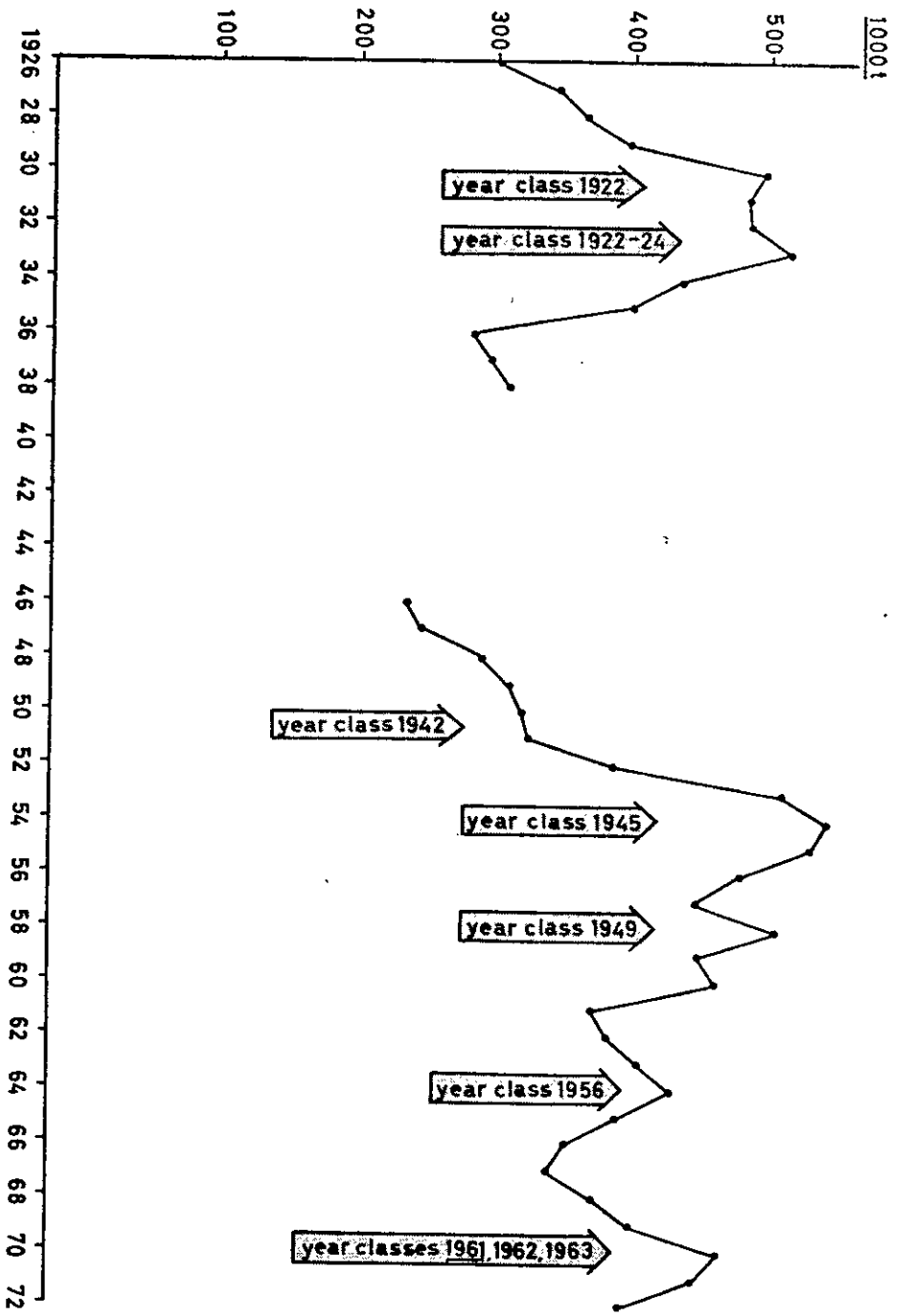

FIGURE 4. TOTAL CATCH OF COD IN ICELANDIC WATERS (VA) IN 1000 T FROM 1926 TO 1972

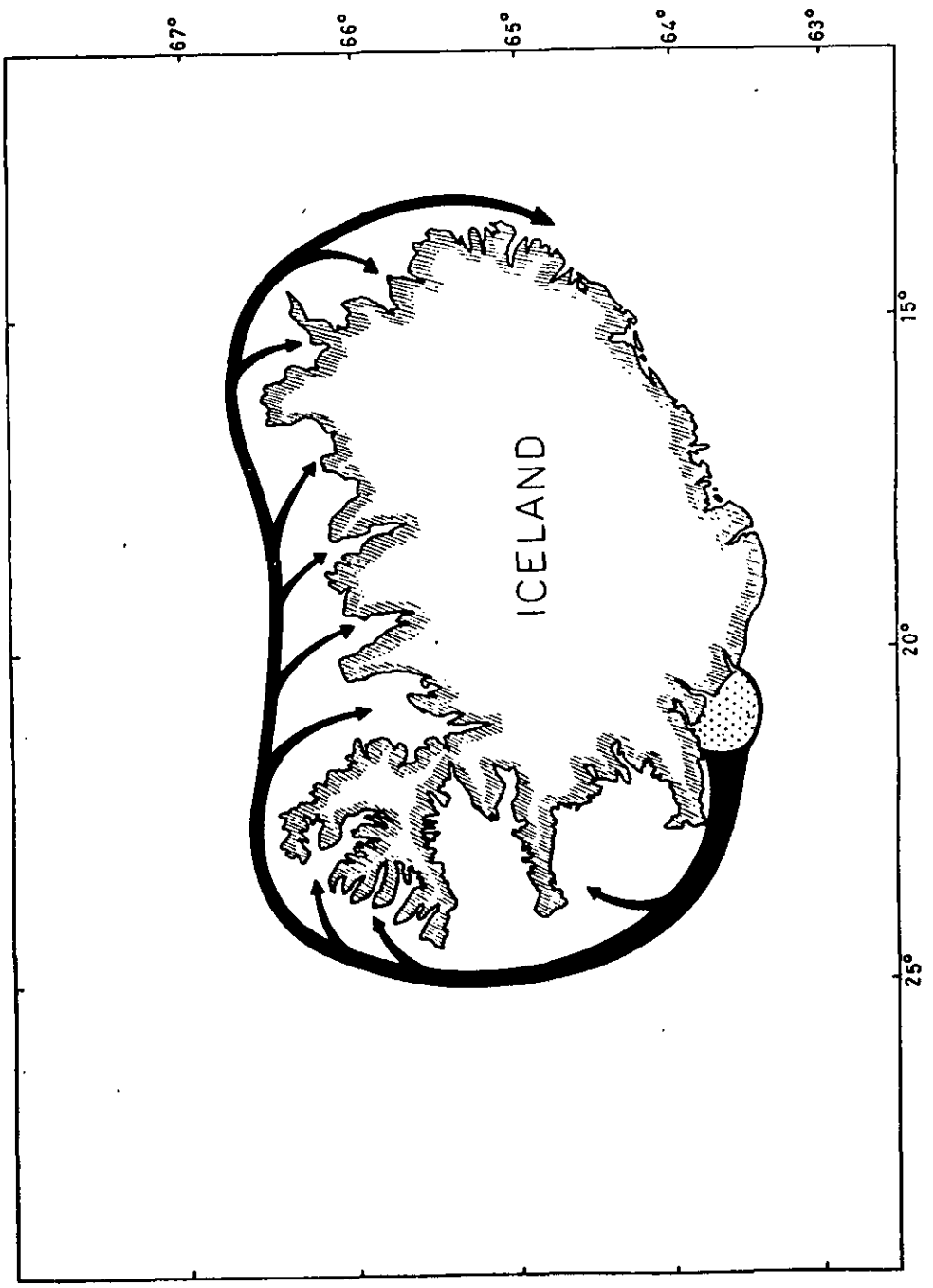

FIGURE 5. ICELAND COD; MAIN SPAWNING GROUND (DOTTED) AND DRIFT OF EGGS, LARVAE, AND O-GROUP COD

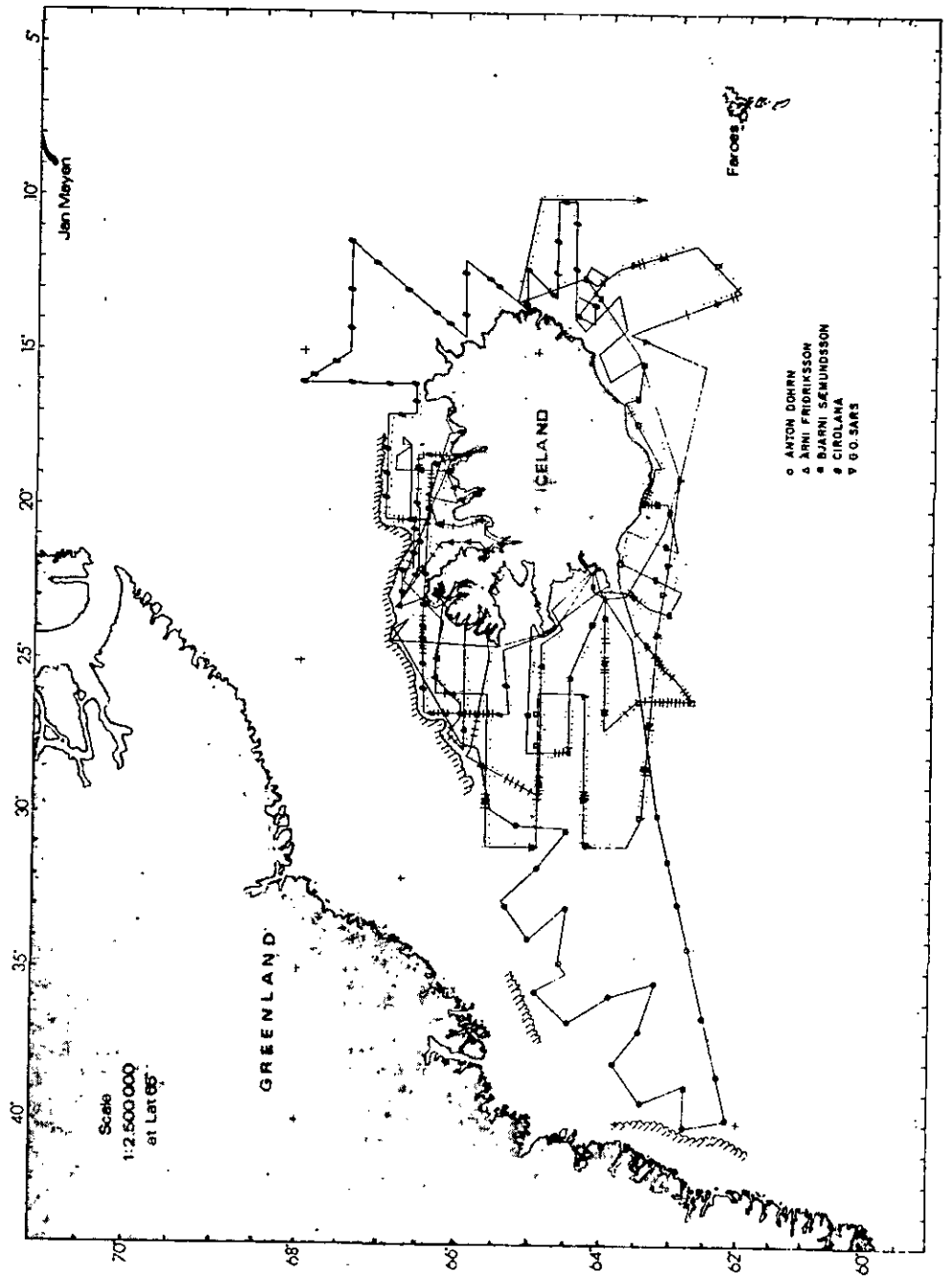

FIGURE 6. SURVEY ROUTES; GRID OF TRAWL STATIONS; ECHO ABUNDANCE

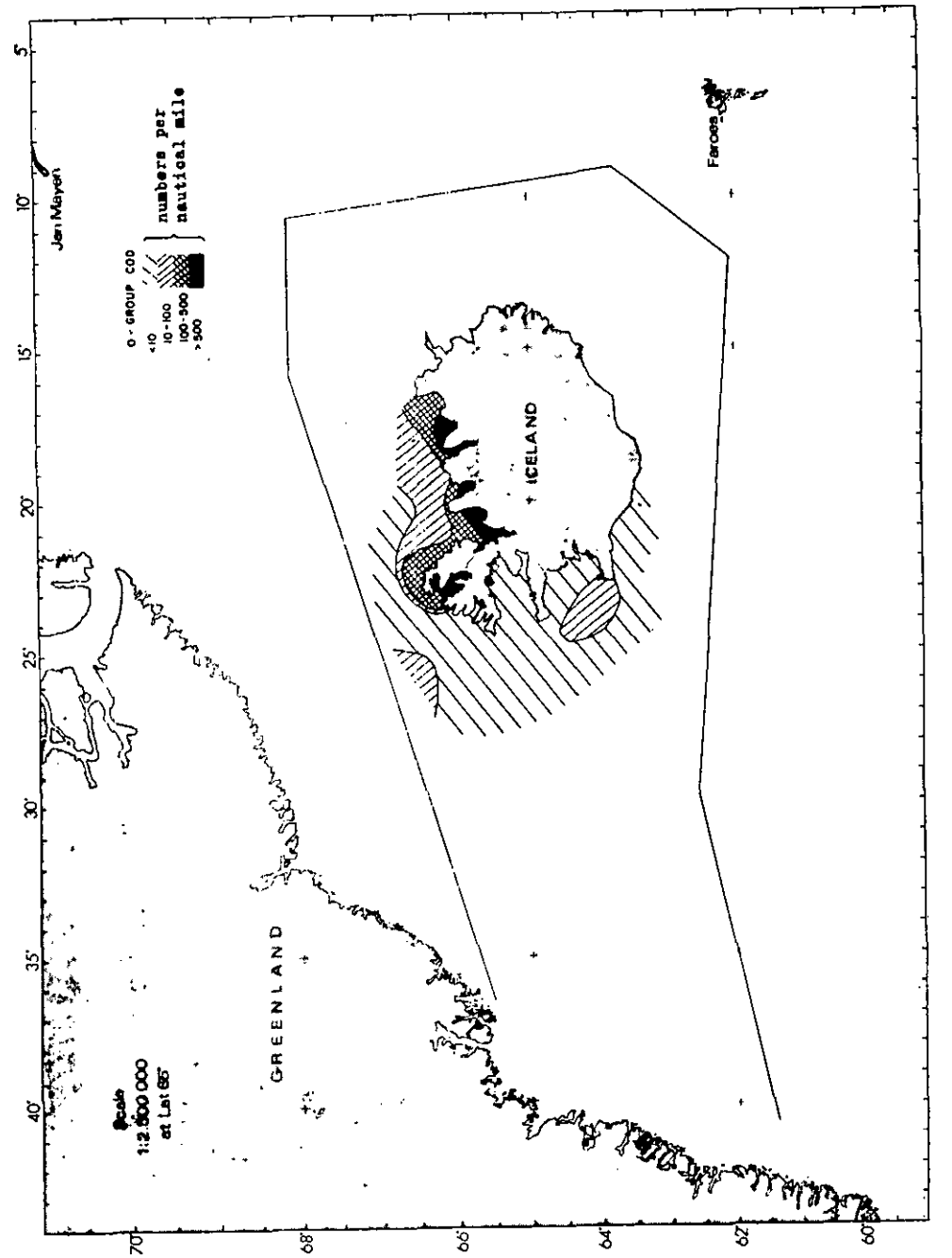

FIGURE 7. O-GROUP COD

catch statistics, a regulation of a fishery can be undertaken with the aim of keeping the spawning stock on the right level, to prevent overfishing and to get the highest long-term protein yield from a fishstock.

Figure 8 represents the spawning migration of the cod off Iceland. As long as they are immature, the cod remain in the shelf areas in the east, north and west of Iceland—this is shown by the cross-hatched area. Those cod that have not died due to natural mortality and those that have not been caught by the fishermen during their immature life, start in the fall and early winter with an age of 6, 7 or 8 years for their first spawning migration. They swim against the current and move in an anti-clockwise direction around Iceland to reach the warmer waters suitable for spawning off the south-west coast. Thus they return to the area where they were born.

But not only cod of Icelandic origin approach the Icelandic spawning grounds in the late winter months. Also cod—and that is important—that were born off east Greenland and stayed during their immature stage off south and south-west Greenland—they drifted as fry to these areas by the Irminger current. These mature cod now also join the Icelandic cod in the spawning area off south-west Iceland. This is shown by the second arrow coming from "East Greenland".

After spawning, which requires a lot of physical strength, the exhausted spawners are carried by the current back to the northern areas. After heavy feeding during summer and fall, they start for their second spawning migration. Cod that have come over from East Greenland do not return to Greenland but join the Icelandic post-spawners and remain for their further life in Icelandic waters.

The next figure, figure 9, gives an impression of this long-distance migration from south-west and south Greenland to Iceland according to German tagging experiments. The circles show where the cod were tagged and the arrows where they were recaptured. The figure at the arrow gives the number of days the cod stayed in the sea. These taggings were made during fall and early winter. The quickest cod—a 7-year old female of 86 cm. length, which was caught off west Iceland 147 days after tagging—covered this long distance from west Greenland, of at least 1,175 nautical miles, to Iceland with an average daily speed of 8 miles or 14.8 km., and this against the current. This is a distance of 2,180 km. which is the distance from Den Haag to Istanbul. The cod is a very strong and vigorous fish.

In figure 10 some localities of recapture are mapped out. The crosses are recaptures during the time from 14 March to 20 May—that is round about spawning time. You will see several crosses just on the spawning places, some near the spawning places. There is also some spawning even on the west-coast. Some cod were recaught on their way to the spawning places shortly after spawning. The dots you see in this figure are recaptures in summer and in fall. All dots come from the northern and eastern feeding areas. Of special interest are two recaptures off east Iceland in September and November. The otoliths revealed that these two Greenland cod had spawned in spring for the first time, probably off the south-west coast of Iceland, and then had started their feeding migration, which took them to east Iceland. I just mentioned otoliths. These are ear stones, and on these ear stones we can read the age of the fish. The otoliths, we can say, are the passport of the fish. They show us where the cod comes from and from the otoliths we can also read whether a fish is immature, or how often it has spawned.

These tagging experiments, combined with studies of otolith structure, growth, blood composition and parasites, prove that the fishery for spawners

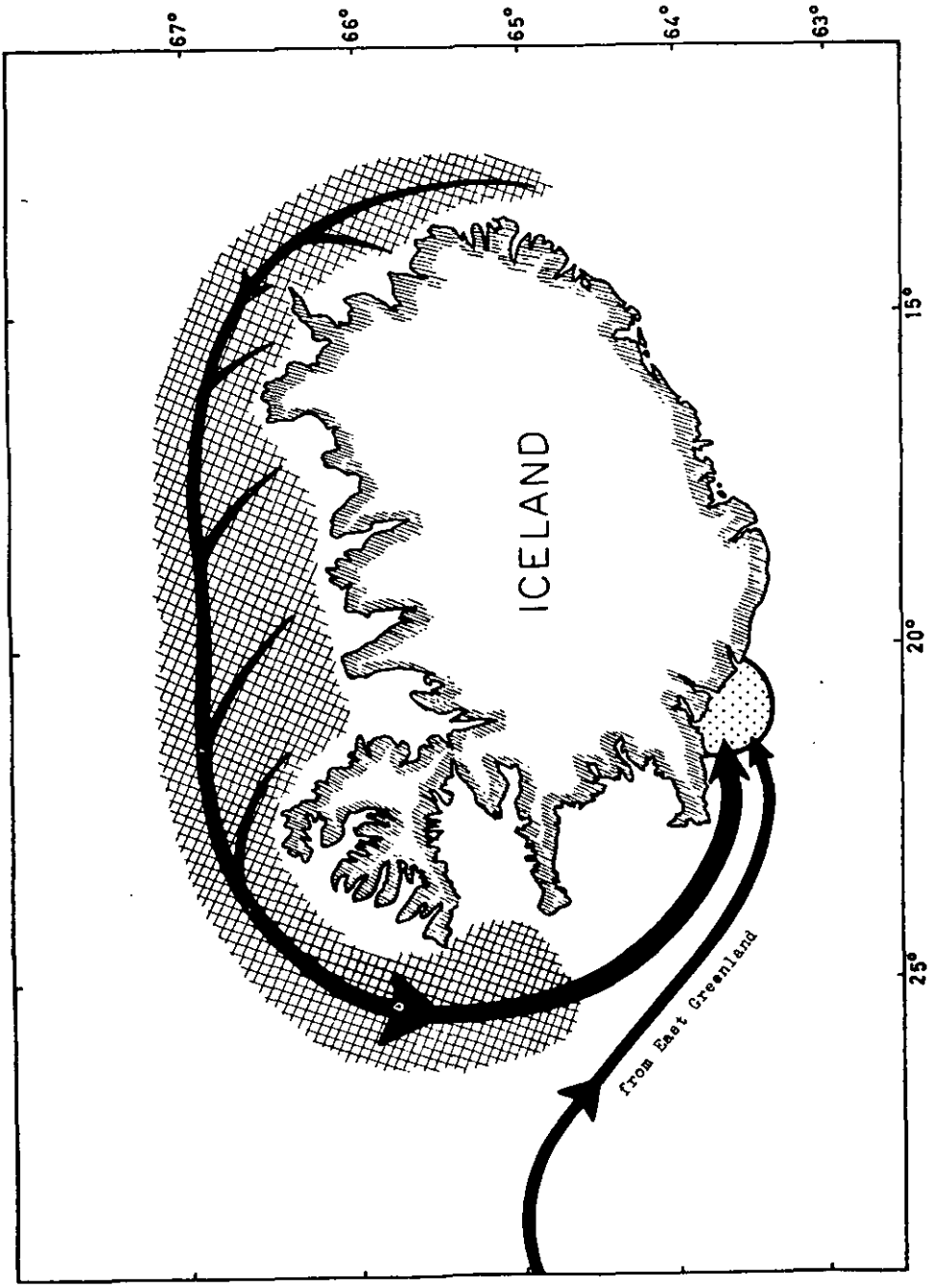

FIGURE 8. SPAWNING MIGRATION OF COD; CROSS-HATCHED: AREA WHERE THE IMMATURE COD ARE GROWING UP

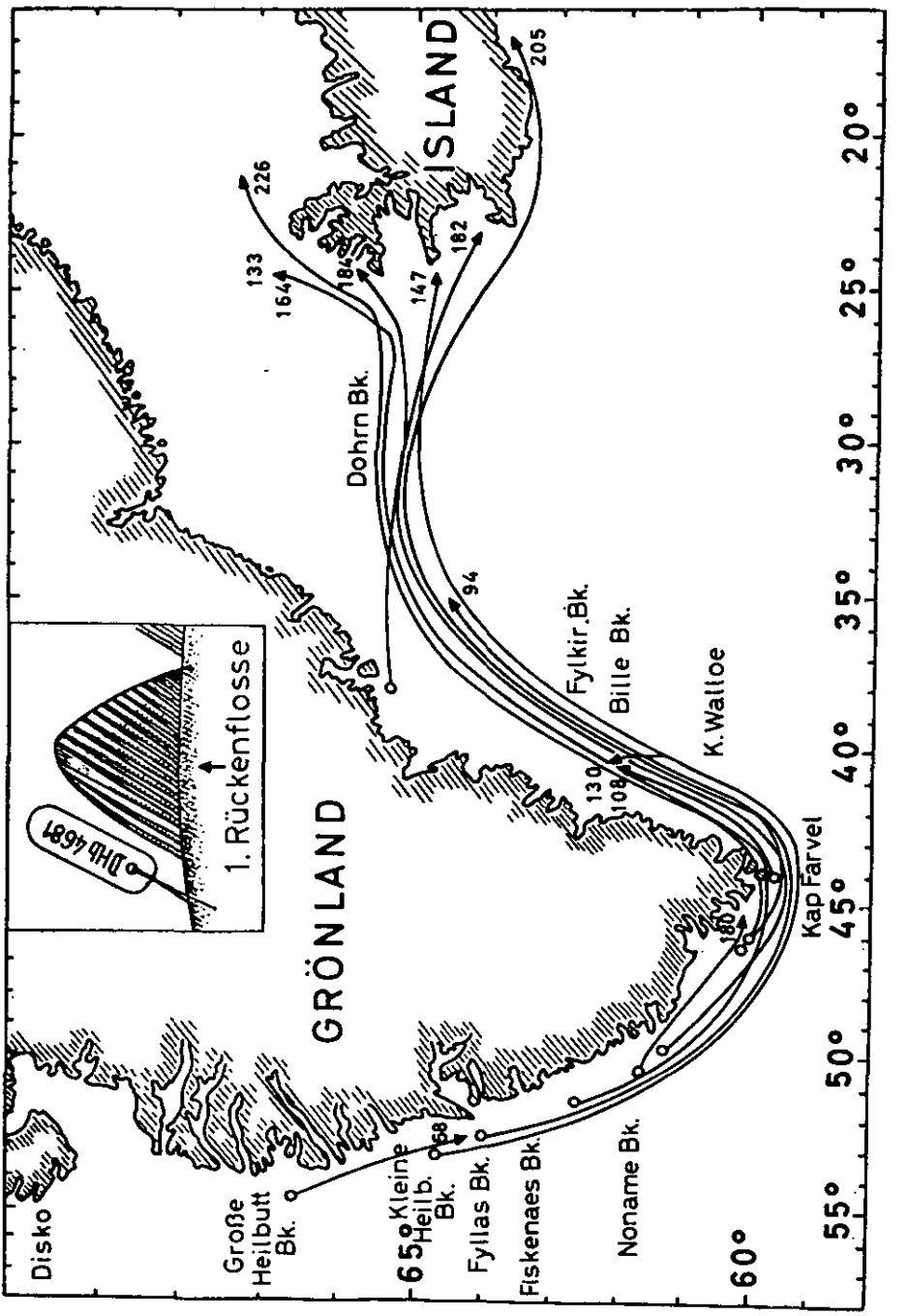

FIGURE 9. COD MIGRATION (GERMAN TAGGING EXPERIMENTS); CIRCLES: TAGGING LOCALITIES; ARROWS: LOCALITY OF RECAPTURE; FIGURES: DAYS IN THE SEA

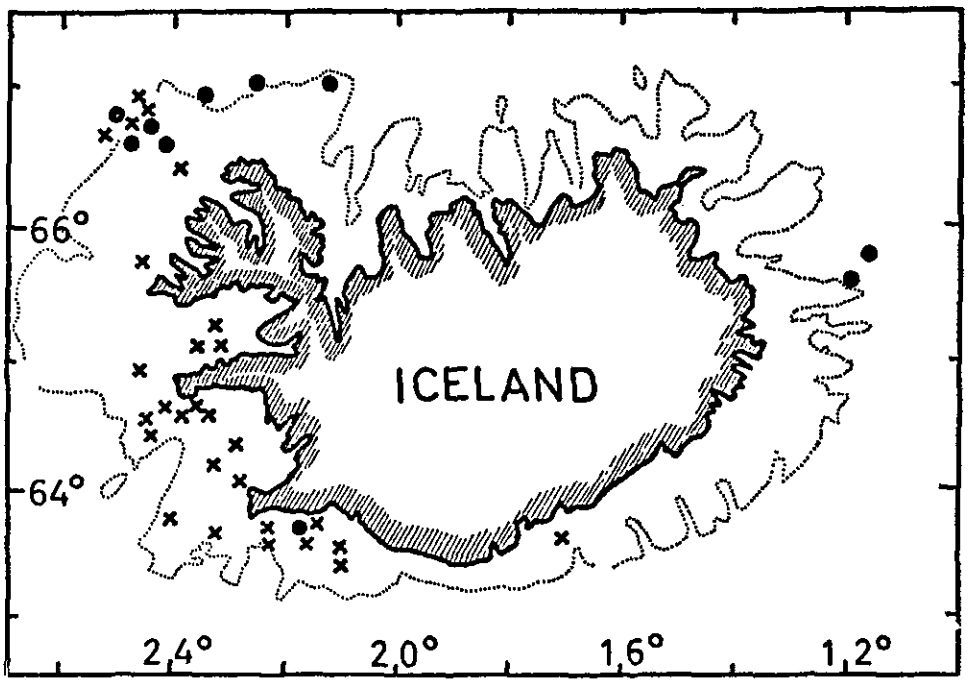

FIGURE 10. RECAPTURES OF COD TAGGED OFF GREENLAND; CROSSES: RECAPTURES FROM 14 MARCH TO 20 MAY; POINTS: RECAPTURES IN SUMMER AND FALL

off the south-west coast of Iceland deals with two different stocks. Scientists from Denmark, Germany, Iceland and the United Kingdom working in the "ICES Western Working Group" and in the "Joint ICES-ICNAF Working Group on Atlantic Cod" calculated that about 25 per cent. of the stock of east Greenlandic spawners migrate regularly to Iceland. The rich east Greenlandic year classes therefore may have a considerable positive effect on the results of the fishery on the spawning grounds off Iceland, expecially in such years when the Icelandic spawning stock is weak. Such important east Greenland year classes were those from 1945, 1956, 1961, 1962 and 1963. In particular, the last increase in cod catches in Icelandic waters in the years 1969 to 1971 was to a considerable extent the consequence of a strong immigration of the Greenlandic year classes 1961, 1962 and 1963. And these Greenlandic year classes which strengthened the Icelandic spawning stock were marked in figures 3 and 4 in green colour. The red colours in figures 3 and 4 represent the year classes of more or less Icelandic origin. The green coloured year classes are those year classes with a more or less big proportion of cod coming from Greenland waters.

These biological facts show clearly that a regulation for these two stocks that mix at Iceland can only be accomplished by an international body and never by a single country. Because of the fact that these two cod stocks inhabit the areas of both North Atlantic regulatory bodies—of NEAFC, the North-

east Atlantic Fisheries Commission, with its scientific body ICES, the International Council for the Exploration of the Sea, and on the western side of the Atlantic, ICNAF, the International Commission for the North-west Atlantic Fisheries—the borderline between these two Commissions lies at 45°W, that is round about Cape Farewell—a reasonable and successful regulation can only be achieved in this special case by a co-operation of both North Atlantic Commissions. And it should be added here that this close co-operation between ICES and ICNAF has been practised on the scientific level since years. It should further be mentioned that the regulation with national allocations of the catches is already in force for the cod in the ICNAF sub-area 1, that is the waters off south, southwest, and west Greenland, the waters where those Greenland cod grow up, which are caught later on as mature cod off Iceland.

Assessments for the two cod stocks at Iceland made by the Western Working Group of ICES and the Joint ICES/ICNAF Working Group on all cod stocks of the North Atlantic have proved that the mortality due to fishing is rather high, especially in the intensive fishery for spawners, which is nearly exclusively carried out by Icelandic fishermen. Owing to fishing mortality and due to losses by natural mortality, nowadays from 1,000 cod going for the first time for spawning to south-west Iceland, only 350 cod survive and reach in the next year the spawning ground for their second spawning. This does not, however, mean an overfishing. With the present fishing effort the cod stocks at Iceland produce the maximum sustainable yield. To keep the two stocks in future in good condition and to ensure also that in the coming years both stocks are exploited to an optimum, to ensure constantly the highest possible protein production, a quota regulation is necessary. Such a regulation, however, can only be achieved by a joint action of the two international bodies and not by a unilateral extension of fishery limits. It is in the interest of all nations, Iceland included, that this international regulation comes into force as soon as possible.

This was what I had to say on cod.

Now the next important demersal fish—the saithe, or also called coal-fish, as it is very black. The saithe is the second most important fish of the fishery around Iceland. Up to 1968 the saithe catches were rather stable with an average of 59,000 tons for the time from 1953 to 1968. This you see on the next table, table 4. However, after 1968 the catches all at once doubled—you will see they are all about 100,000 tons. The average for the last four years, 1969 to 1972, was 118,000 tons, just the double of the average of the 16 years before. This sudden increase was not the consequence of incoming good year classes but only due to the fact that the fishing industry had succeeded in introducing the deep-frozen saithe fillet on the world market, and this increase in saithe catches we find everywhere where saithe is caught today.

The biological life cycle of the saithe in Icelandic waters is nearly the same as that of the cod. The saithe spawn on the same grounds in the south-west and the juvenile saithe grow up off the northern coasts. Mature saithe are very migratory, especially older saithe, which, having spawned several times at Iceland, suddenly leave Icelandic waters and migrate eastwards to the Faroes waters. However, this loss to the Icelandic stock is more than compensated by a considerable immigration of big mature saithe coming from eastern areas, coming from Norway, from the Shetlands and Faroes waters. Thus there is at Iceland, differing yet from year to year, an intensive mixing of several saithe stocks. It looks as if for the North-Atlantic saithe the waters around Iceland are especially attractive.

TABLE 4. THE CATCH OF SAITHE IN ICELANDIC WATERS FROM 1953 TO 1972 (in 1000 t)

Year	Total	Iceland	UK	FRG
1953	73	30	13	27
1954	70	16	13	36
1955	48	12	8	23
1956	68	25	8	31
1957	62	19	9	29
1958	53	15	9	25
1959	48	15	8	23
1960	48	13	9	23
1961	50	14	9	22
1962	50	13	9	24
1963	48	15	12	18
1964	60	22	15	21
1965	60	25	16	17
1966	52	21	11	17
1967	76	29	15	24
1968	78	38	13	17
1969	116	54	15	34
1970	113	64	13	28
1971	134	60	24	41
1972	108	60	14	31
Average of 1969-72		51%	14%	28%

The next figures, figures 11 and 12, show the results of several international saithe tagging experiments, carried out off northern and north-western Norway—this is shown in figure 11—and at Shetland and at the Faroes—in figure 12. It is remarkable, if we look at figure 11, that there are two ways from northern Norway to reach the popular Icelandic grounds, the route via the northern North Sea, Shetland and Faroes or the route via Bear Island, Spitzbergen, Jan Mayen, to Iceland.

The ICES Coalfish Working Group stated: these saithe immigrations and emigrations "can significantly alter the abundance of fish in the various fishing areas". A regulation of such a very migratory species as the saithe, therefore, can never be achieved by a regulation of a single stock. For a regulation, all North-East Atlantic stocks must be treated as a single stock, and no country can claim a saithe only because it is just swimming over its shelf area. This holds especially true just for saithe in Icelandic waters because of the substantial immigration from foreign areas. A successful regulation of saithe and a justified allocation of the catches to the interested countries, therefore, can only be accomplished by an international body, in this case only by NEAFC, not by a single country. Only this can be the logical conclusion from the special biological behaviour of this so very migratory species.

Now I come to the redfish, a very interesting fish. There are three redfish species, but only two, *Sebastes marinus* and *Sebastes mentella*, are of commer-

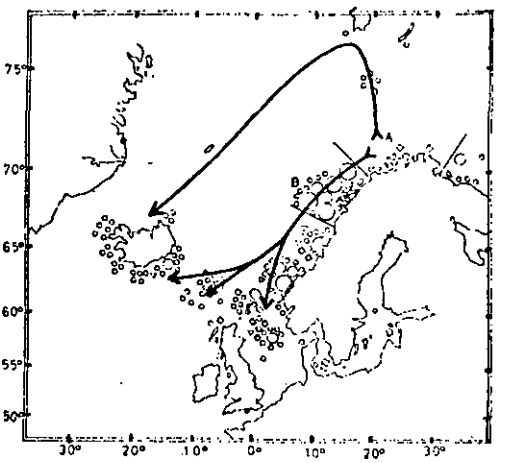

FIGURE 11. RECAPTURES OF COALFISH TAGGED IN NORTHERN NORWAY

Circles : from Norwegian experiments in area marked A
Squares : from Norwegian experiments in area marked B
Triangles : from English experiments in area marked B

Recaptures within tagging area not shown. Large symbols 100 recaptures, medium sized symbols 10 recaptures.

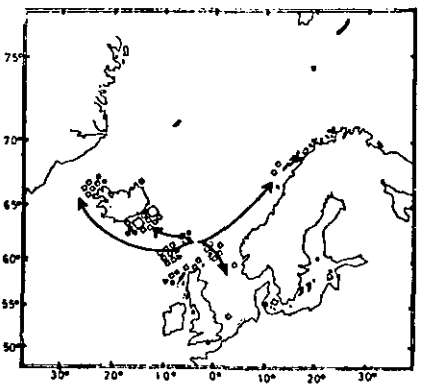

FIGURE 12. RECAPTURES OF COALFISH TAGGED AT THE FAROES, ON FAROE BANK AND AT SHETLAND

Circles : from English experiments on the Faroe Bank
Squares : from Faroese experiments at the Faroes
Triangles : from English experiments at the Faroes
Crosses : from English experiments at Shetland

Recaptures within tagging area not shown. (Large symbols 10 recaptures.)

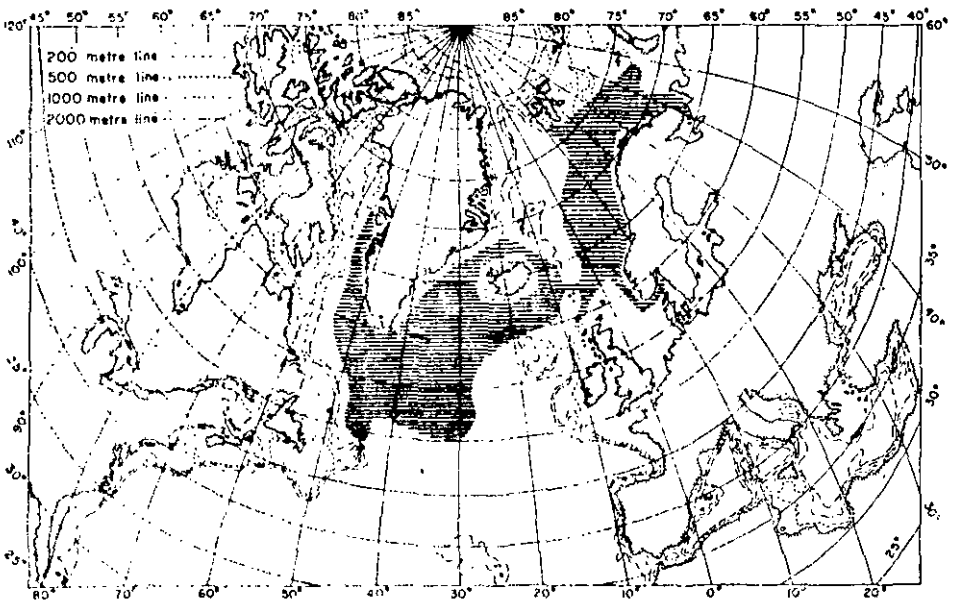

FIGURE 13. THE DISTRIBUTION OF REDFISH, SEBASTES MARINUS

cial importance. In the statistics, these two species are not separated, and for ismplification and better understanding I am treating both species as redfish.

The redfish—and this you will see in figure 13, the next figure—is an oceanic species, living at rather great depths. Figure 13 gives an impression of the wide oceanic distribution of the redfish in the northern Atlantic, in the Irminger Sea and in the Norwegian Sea. Only where this big redfish stock touches the slopes of the continental shelf in 200 to 800 metres can they be fished by bottom trawl. Such redfish grounds are found in the North Atlantic everywhere where water of the Gulf Stream or of the currents originating from the Gulf Stream touches the continental slopes with temperatures of 3 to 6°C. During the last 25 years all existing and possible redfish places along the slopes of the North Atlantic shelf areas have been found. In its very beginning such a newly detected redfish ground gives enormously high catches. However, in a very short time most redfish are removed from that place, and the daily catch rate decreases quickly and stabilizes very soon at a rather low but constant level, due to the very slow resettlement of redfish at the slopes coming from the oceanic stock.

On the next page, table 5 shows the redfish catches of the last 20 years. Only German and Icelandic captains master the very difficult redfish fishery on the steep and rough slopes of the continental shelves. Germany took 66 per cent. of the total catch from 1953 to 1972. That in 1953 and 1954 the German catches exceeded the 100,000 ton mark was due to the detection of such a new redfish place off south-west Iceland in very deep water. The small fluctuations in the catches since that time have more or less economic reasons. Although there are considerable fluctuations in the strength of the red-

TABLE 5. THE CATCH OF REDFISH IN ICELANDIC WATERS FROM 1953 TO 1972 (in 1000 t)

Year	Total	Iceland	UK	FRG
1953	157	33	5	118
1954	141	29	7	105
1955	110	33	4	73
1956	93	34	3	55
1957	84	28	5	50
1958	90	20	8	60
1959	82	20	5	55
1960	83	20	8	53
1961	69	15	8	43
1962	75	13	9	48
1963	90	23	10	53
1964	95	18	10	62
1965	114	24	10	74
1966	107	17	6	74
1967	95	18	6	67
1968	96	25	4	63
1969	87	24	2	56
1970	78	24	3	49
1971	82	29	4	47
1972	77	26	4	44
Average of 1969-72		32%	4%	60%

fish year classes, they have almost no effect on the total annual output, as could be shown for the cod fishery. This is due to the very very slow growth of the redfish. Redfish of commercial size—and there are fish of 35 to 55 cm.—are at least 15 to 30 years old. At this age they grow only 1 cm. per year, no more. A cod of this size needs only three to four years to grow to this size. The redfish, and this is interesting, is a very slow-growing fish.

That the redfish is an oceanic fish and that the redfish caught off Iceland is not a fish of Icelandic origin, shows the distribution of the very young redfish. This is presented to you in figure 14.

Figure 14, taken from the report on the 1972 international 0-group survey, illustrates the wide distribution of the 1972 year class in the Irminger Sea three months after the redfish were born. Redfish are born, for redfish are viviparous. In autumn the males fertilize the females. The female redfish keeps the sperms in a special organ and fertilizes her own eggs in spring. More than 100,000 larvae develop in the body of the mother and are extruded in April-May in the Irminger Sea. The 0-group redfish here in figure 14 is of course far more widely distributed in the south, but the survey was only carried out up to 61° north.

Fifteen to thirty years later, some of these redfish born in 1972 in the Irminger Sea will be caught in 1990 or in the year 2000 along the slopes of the Faroe Islands, on the Iceland-Faroe Ridge, off Iceland, or at the continental

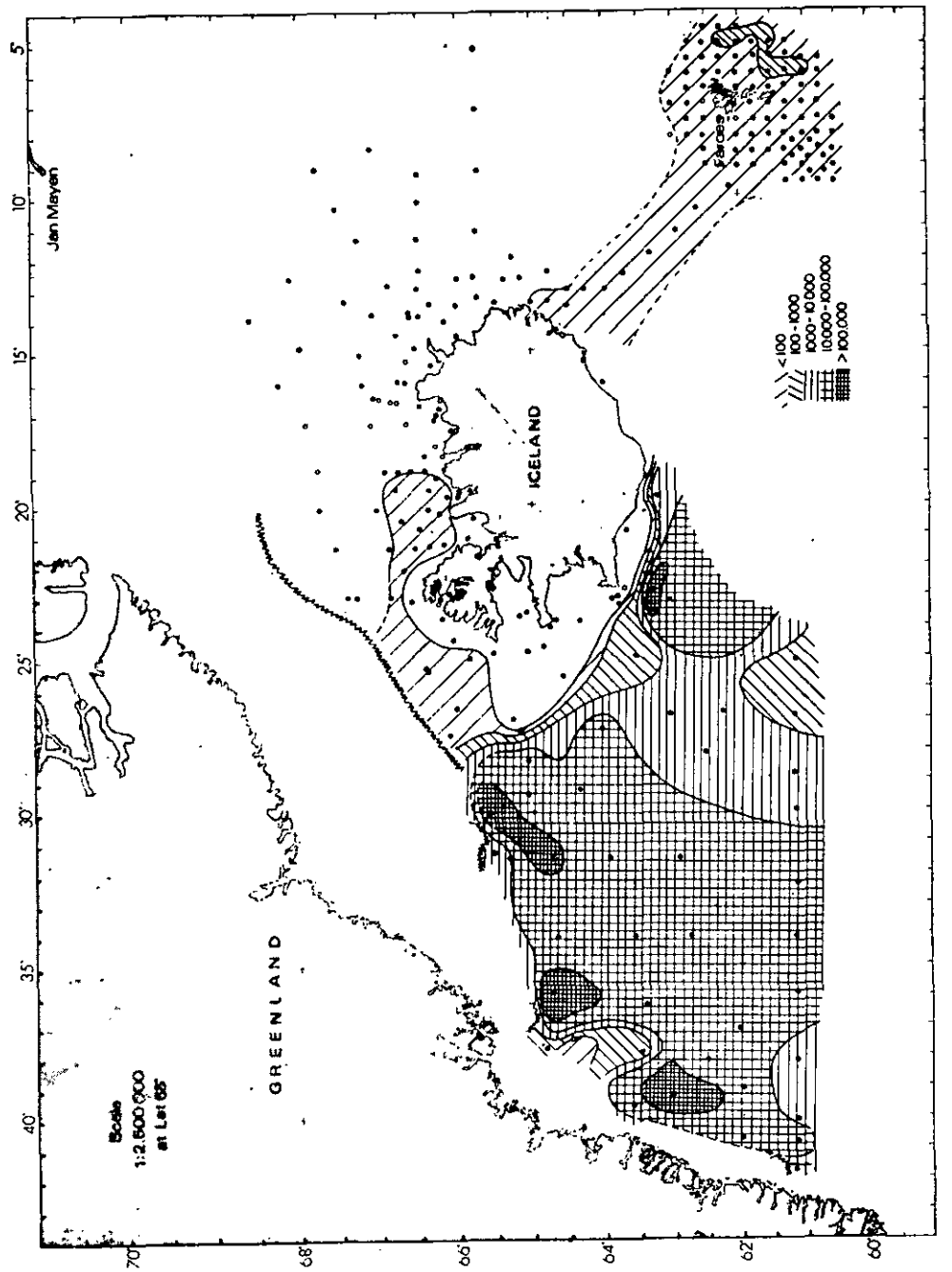

FIGURE 14. DISTRIBUTION OF 0-GROUP REDFISH (1/7-25/8 1972)

slopes of East and South-East Greenland and even off West Greenland. All these redfish belong to the same oceanic stock. No redfish, therefore, can be regarded as a national fish. All were born on the high seas over depths of more than 1,000 metres far away from the shelf areas.

It should also be mentioned that at the moment there is no demand for any regulation of the redfish, because there is no fishery on the redfish in the Irminger Sea. All redfish, even of smallest commercial size, are mature and have already spawned several times. Thus there is today no need for any protection of redfish.

And now the fourth demersal fish species, the haddock, with table 6.

TABLE 6. THE CATCH OF HADDOCK IN ICELANDIC WATERS FROM 1953 TO 1972 (in 1000 t)

Year	Total	Iceland	UK	FRG
1953	53	15	29	5
1954	62	21	29	6
1955	64	22	28	7
1956	61	22	24	9
1957	76	31	30	8
1958	70	29	27	6
1959	64	27	29	4
1960	86	42	31	6
1961	108	51	48	4
1962	120	54	56	3
1963	103	52	43	3
1964	99	57	38	2
1965	99	54	41	2
1966	60	36	21	1
1967	60	38	18	2
1968	51	34	13	3
1969	47	35	9	2
1970	44	31	9	2
1971	46	32	8	2
1972	39	29	8	1
Average of 1969-72		72%	19%	4%

In contrast to cod, saithe and redfish, all haddock caught off Iceland originate from Icelandic waters. Among the four main demersal species, the haddock is thus the only fish which could be designated as a national fish.

The life cycle of the haddock is similar to that of Icelandic cod and Icelandic saithe. The haddock spawn in the south and they grow up and feed in the west and the north. They prefer the warmer water. The haddock stock is, however, considerably smaller than the cod stock and even smaller than the stock of saithe. Table 6 shows the haddock catches during the last 20 years. For some years, the haddock stock, which is very heavily fished, has been in a poor state. The total catch in 1972 was only one-third of the maxi-

mum catch in 1962. The high catches at the beginning of the sixties were due to the good 1956 and the rich 1957 year class.

The German haddock catches in Icelandic waters have always been very small, especially in the last ten years. In the German fishery at Iceland, haddock is more or less only a by-catch. In the fifties and in the first half of the sixties, Iceland and the United Kingdom took round about the same annual amount. But with declining stock size, the engagement of English trawlers diminished considerably and the Icelandic share increased. During the last four years, from 1969 to 1972, Iceland took 72 per cent. of the total haddock stock.

Haddock is a high-priced fish and has always been heavily fished at Iceland, also before the war. This led to the first big international regulation experiment, the closure of the Faxa Bay for trawling. This experiment was successful and in view of the poor state of the haddock stock today, a second international regulation, which would especially favour the Icelandic fishermen because they take the greatest share, would be very advisable.

And now to finish, some words on capelin and herring.

To understand the fisheries situation in Icelandic waters, some final remarks must be made also on capelin and herring. Today the capelin—this is a very small pelagic and salmoid fish of 10 to 12 cm. in length which is a very important food-fish for other fish species also—took in 1972, with 277,000 tons, the second position in Icelandic waters in regard to quantity, but, as already stated, its value is but small because the capelin is turned into fishmeal and oil. Only a very small quantity is used for human consumption. After the sudden collapse of the herring fishery, the fishery for capelin, which is conducted by Iceland only, was considerably intensified.

During the first half of the sixties Iceland took part with increasing success in the fishery for the Atlanto-Scandian herring, the biggest herring stock in the North Atlantic. As figure 15 shows, these herring spawn off the Norwegian coast. They feed in May to September in the Norwegian Sea and off north-east Iceland, and before they start for their spawning migration they concentrate in the wintering-area—the dotted area in figure 15—east of Iceland. And then from this wintering area they very quickly cross the Gulf Stream and spawn off the Norwegian coast. Good year classes in this northern-most herring stock are rare. Since 1950 only three rich year classes grew up—those from the years 1950, 1959 and 1960. As figure 16—that is the last picture—indicates, always six years later these rich year classes gave rise to record catches in 1956, 1965 and 1966. Iceland, Norway and the USSR were engaged in this fishery. Due to considerable technical improvements in this fishery with purse seines and drift nets, the mortality of the herring caused by fishing rose to more than fivefold in the sixties. This resulted, indeed, in the biggest annual catch of more than 1.7 million tons of herring in 1966, of which Iceland took 590,000 tons, but also to a total overfishing and a total depletion of the mature stock of Atlanto-Scandian herring. The stock was so ruined that at the beginning of the seventies no single spawning school could be found off the Norwegian coast, and in 1971, during the international 0-group survey in the North-East Atlantic, one single herring larva was found by five research vessels. Seven years before this stock was estimated to consist of 14 million tons.

This drama of the biggest herring stock in the world demonstrated to all those people in the fishing industry that the sea is not inexhaustible, and that the heavily fished fish stocks must be regulated, and this must be done well in advance, at the very moment when the stock is still in a healthy condition.

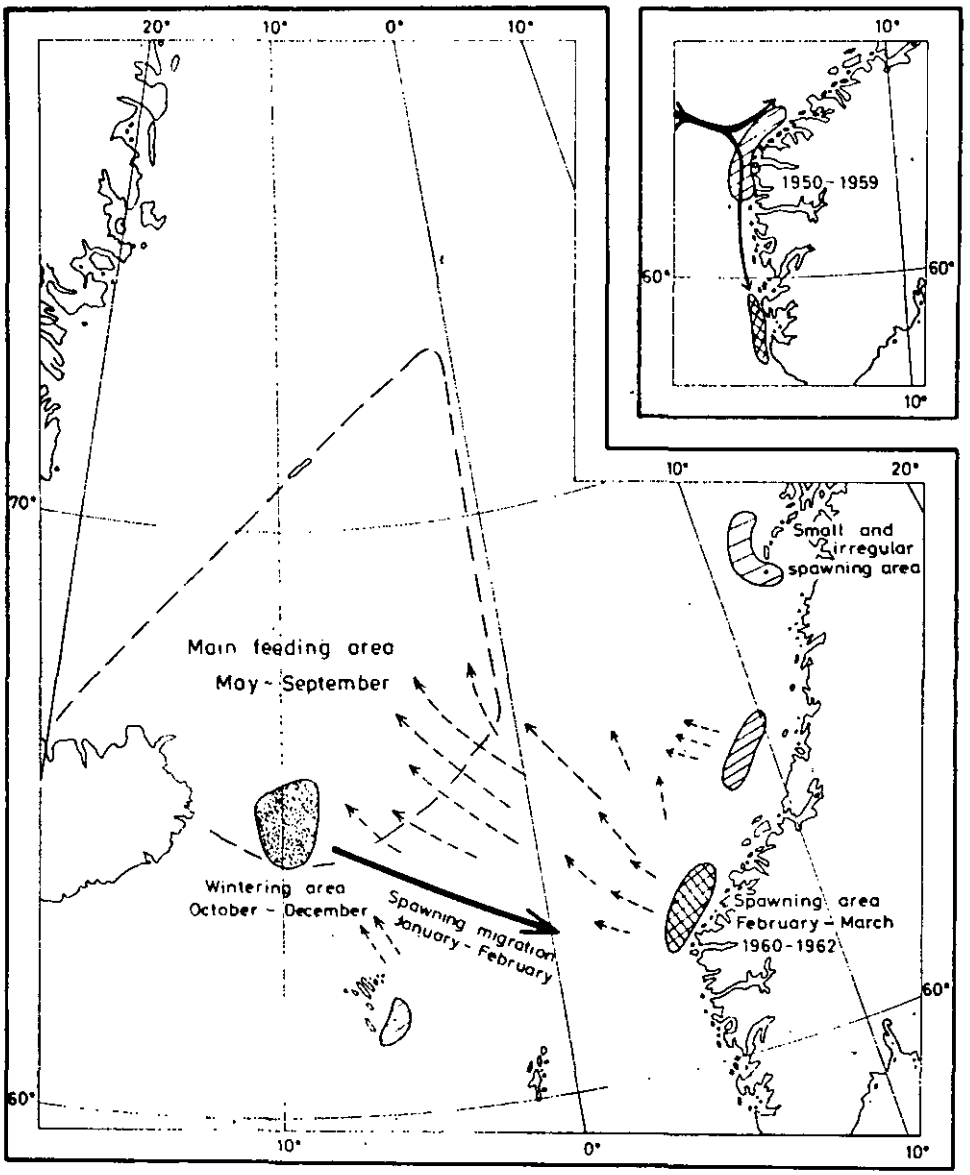

FIGURE 15. THE MIGRATION PATTERN OF THE ATLANTO-SCANDIAN HERRING

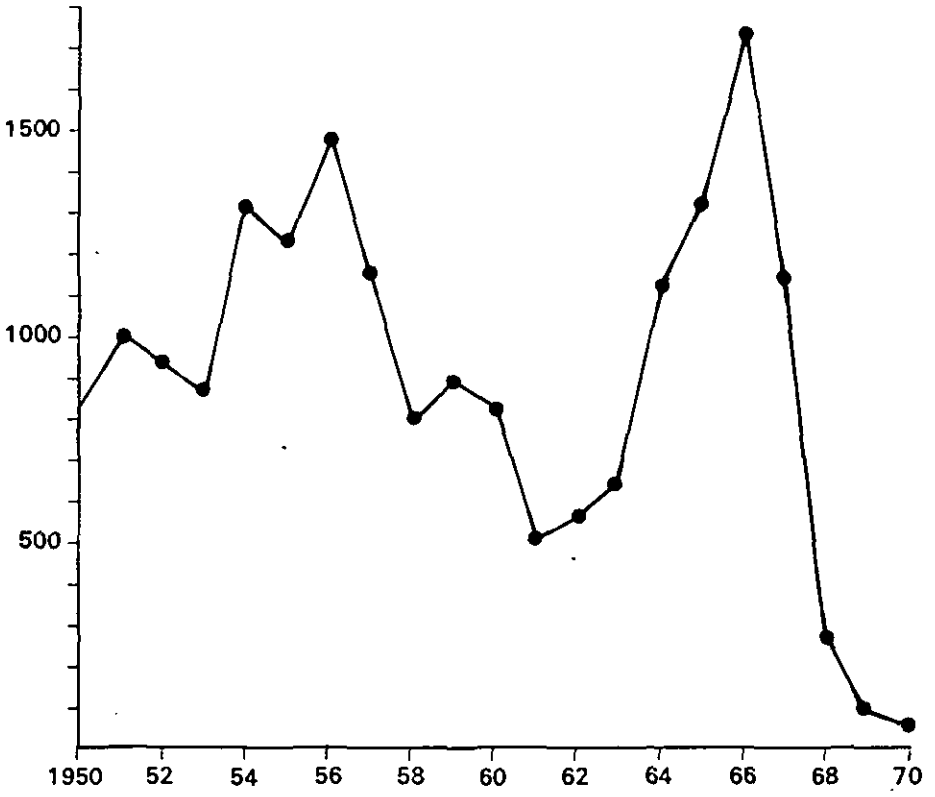

FIGURE 16. THE TOTAL CATCH OF ATLANTO-SCANDIAN HERRING FROM 1950 TO 1970 IN 1000 T

And such a regulation—and this must be stressed again—can only be achieved on an international level and by no means by a unilateral extension of fishery limits.

Looking now at the many fishmeal factories built on the coast of north-east Iceland for herring reduction—they were built in the sixties there—and looking further at the great problems which were caused the big new-built herring fleet of purse-seiners and their crews after the herring catastrophe, I am sure that the Icelandic Government would be very, very happy today if at the beginning of the sixties an international regulation had been introduced as recommended by fishery biologists and other people who felt responsibility. There is no better example of the need for international co-operation in the fisheries than that demonstrated by this serious and regrettable break-down of the fishery of the Atlanto-Scandian herring.

What I just said about the Atlanto-Scandian herring, and what I pointed out earlier when I dealt with the main demersal species of cod, saithe and redfish, this is what I can, and this is what I must say as a fishery biologist. And I am sure this is also the opinion of the international fishery research in

the dispute on the fisheries in Icelandic waters. To gain more insight into the very complicated life in the sea, to assure that in future the fish stocks with their growing importance for the nutrition of mankind are kept at such a level that they are always in the state to give the highest yields, can be achieved only by international research, by international co-operation and by international regulation of the fish stocks, combined with international inspection of the fishing fleets.

The PRESIDENT: I think one of the judges would like to put a question to you.

Judge JIMÉNEZ DE ARÉCHAGA: I refer to the statistics in tables 2, 3, 4 and 6. Is it possible to have a distinction made in the statistical figures concerning Iceland's catch of cod and of other demersal species? The distinction I have in mind is between what is caught by Icelandic vessels within its 12-mile zone and what is caught by Icelandic vessels in the area between 12 and 50 miles. If that is possible, I would appreciate a written indication of the separate figures and percentages.

Dr. MEYER: First I can tell you the catch of cod by Iceland is shown in figure 2. The cod caught by Iceland is the line with one dot in it. The total catch of cod is shown in figure 4. I also have with me the figures split up, but I forgot to bring them in here. I did not because I had presented the figures here. I have it with me, and if you wish I can present the cod figures.

The other question, as far as I understood you, was, is there a possibility of distinguishing between fish within the 12-mile limit and outside the 12-mile limit. This is not possible. There is no statistic available that says how much fish is caught within the 12-mile limit and how much is caught outside the 12-mile limit. But all the cod catch made by the United Kingdom—that is on the average of the last 30 years about 130,000 tons—is caught outside the 12-mile limit. The Icelandic catch, I guess, 90 to 95 per cent. is caught within the 12-mile limit. Most of the catch the Icelanders take, as I told you, during the very short spawning time, and the spawning places are round about within the 12-mile limit. Most of those cod caught by Germany during that time are those coming from East Greenland on their way to the spawning places, and we can see this by comparing the age determination by our Icelandic colleagues with our own. We have many more Greenlanders in our catches than the Icelanders have. We get more of the Greenlanders, for we catch them just on their way to the spawning places. It is very interesting that you can see from the otolith structure whether a fish has grown up in Icelandic waters or whether it has come from East Greenland waters.

ARGUMENT OF MR. JAENICKE (cont.)

AGENT FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

Mr. JAENICKE: On the basis of what you have just heard in the statement given by Dr. Meyer, and on the basis of the facts which have already been brought forward in the Memorial of the Federal Republic of Germany, the following points deserve special attention for the legal evaluation of the situation of the fisheries in the waters around Iceland.

First, German fishing in the waters of the high seas around Iceland is of very long standing and accounts for an important part of the fresh fish supply for human consumption in the Federal Republic. No other fishing grounds are available from which such quantities of fresh fish supply could be taken.

Second, the fishing effort of the vessels of the Federal Republic of Germany in the waters around Iceland is predominantly directed to the catch of redfish and saithe, while Icelandic fishing so far concentrated first on herring, and now on cod and capelin, and only in minor proportions lately also on redfish and saithe. Redfish and saithe although categorized as demersal species, do not inhabit the waters around Iceland only, and cannot therefore be considered as truly coastal species. Both fish stocks are highly migratory. They migrate, as far as is known, and as we have just heard, within the whole region of the Atlantic and Arctic Ocean between Iceland, Norway and Greenland. The yearly catches of these stocks by German fishing vessels have remained on a relatively steady level within the last years. There is no indication that redfish and saithe are in danger of being over-exploited. The Government of Iceland also has not been able to produce any facts which indicate that the redfish and saithe stocks are over-fished. Iceland has not even asserted such over-fishing. However, catch limitations with respect to these species might be envisaged if it were to become necessary to prevent the diversion of fishing effort from other fully exploited regions or fish stocks to the redfish and saithe.

Third, as we have just heard on the basis of the demonstration by Dr. Meyer, the regulation of the fish stocks around Iceland is and should be an international matter, and could be accomplished only on an international scale. The North-East Atlantic Fisheries Commission is the appropriate body to deal with the conservation problems and, if necessary, to proceed to the allocation of national quotas in these waters among the States which have been habitually fishing there. Had it not been for Iceland's refusal to ratify the already resolved extension of the powers of the Commission, it would now have been possible for the Commission to impose, by majority vote, catch or effort limitations, if considered necessary on the basis of scientific evidence. In the meantime, such conservation measures can, however, be introduced by agreement between the governments members of the Commission. No evidence has as yet been forthcoming which would indicate that the fish stocks for which German fishing vessels mainly fish, are already fully or even over-exploited. If there has been any over-fishing in the past of certain species, mainly herring, and also haddock, German fishing activities cannot be blamed for that.

Thus the present situation of the fish stocks for which German fishing vessels are fishing, offers not the slightest ground to take measures which

would restrain the fishing activities of German vessels in the waters around Iceland or exclude them from these waters. The Government of the Federal Republic understands Iceland's concern about a possible future deterioration of the situation if the fishing effort in the waters around Iceland would be increased by Iceland itself or by other States, or if fishing effort would be diverted from other over-exploited regions to the waters around Iceland. But this concern is equally no justification to restrain now the fishing activities of German vessels in these waters as long as their catch does not exceed the previous levels.

The Government of the Federal Republic of Germany has always been ready to pay regard to Iceland's concern for the preservation of the fish stocks in the waters around Iceland and to discuss and agree on all suitable conservation measures which both Governments will regard as being necessary for protecting the fish stocks against over-exploitation. Such measures might include agreed catch and effort limitations and the establishment of fish protection zones, if such measures will be applied in a non-discriminatory manner. It is the firm position of the Federal Republic that in areas of the high seas outside the 12-mile limit where not only the coastal State but also other States have habitually been fishing for years for the food supply of their peoples, measures of conservation cannot validly be taken by the coastal State alone but only by agreement between the States concerned, either multilaterally under the auspices of the North-East Atlantic Fisheries Commission or, if that were not feasible, directly between the States concerned on an equitable and non-discriminatory basis.

It is no argument for not following this procedure that concerted action between the States concerned would be too slow in cases where conservation measures would be urgently needed. The coastal States' special interest in the preservation of the living resources of the sea before its coast and the special competence of the coastal State to introduce unilaterally conservation measures in cases where there is sufficient evidence for the urgency of such measures but no agreement on the measures to be taken could be reached, has already been recognized by the international community. I refer again to the Convention on Fishing and Conservation of the Living Resources of the High Seas, which was adopted by the Geneva Conference on the Law of the Sea on 26 April 1958 and which sets forth the conditions under which such an exceptional competence of the coastal State over the fisheries on the high seas could be recognized. These conditions are:

First, that there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery.

Second, that the measures adopted are based on appropriate scientific findings.

Third, that such measures do not discriminate in form or in fact against foreign fishermen.

Fourth, a very important point, that the measures, if adopted, must be submitted, at the instance of another State affected thereby, to an impartial body for review.

Although neither the Federal Republic of Germany nor Iceland have ratified this Convention, the rules contained in the Convention seem to provide an equitable and effective procedure as to how the interests of the coastal State and the other States fishing the same area could be accommodated.

Thus, appropriate and effective procedures have been available to Iceland to satisfy its interest in the preservation of the fish stocks in the waters

around Iceland, and the Government of Iceland cannot well argue that the establishment of an exclusive fishery zone of 50 miles wherein all foreign fishing is prohibited is the only effective way of guarding the fishing resources in these waters against future over-fishing. If the Government of Iceland had really intended to establish only a fishery conservation zone where non-discriminatory measures might be introduced if the danger of over-fishing of a certain species should become apparent, it should have approached the Government of the Federal Republic in order to reach an agreement on such a zone and this approach would probably have had the chance of being considered favourably by the Government of the Federal Republic and, eventually, of being accepted by the Federal Republic under appropriate safeguards, including the possibility of a recourse to the Court or to another impartial body in case unilateral measures taken by Iceland in such a fishery conservation zone should be contested by the Federal Republic. This procedure, if followed by Iceland, would have been in harmony with the letter and spirit of the agreement contained in the Exchange of Notes between the two Governments of 19 July 1961. However, the Government of Iceland was apparently not so much interested in non-discriminatory conservation measures as in the immediate and total exclusion of all foreign fishing vessels from the waters around Iceland.

There can be no doubt that the Regulations [1] issued by the Icelandic Minister of Fisheries on 14 July 1972 were intended and are still intended to establish a truly exclusive fishery zone in the sense that all foreign fishing is excluded from this zone. The Regulations prohibit all foreign fishing in the 50-mile zone; they contain no provision or procedure which would envisage a continuation of foreign fishing in this zone. In its aide-mémoire of 31 August 1971 by which the Government of Iceland gave notice to the Government of the Federal Republic of its intention to extend the fisheries jurisdiction as from 1 September 1972, the Government of Iceland expressly referred to this zone as a "zone of exclusive fisheries jurisdiction". This aide-mémoire has been reproduced as Annex D to the Application of the Federal Republic instituting the proceedings in this case. The Government of Iceland reiterated this characterization of the 50-mile zone as a "zone of exclusive fisheries jurisdiction" in its aide-mémoire of 24 February 1972. This aide-mémoire is reproduced as Annex H to the Application of the Federal Republic instituting the proceedings in this case.

It is true that under the Icelandic law on fisheries the Government of Iceland may conclude international agreements with other States with respect to the continuation of foreign fisheries in the 50-mile zone, and has in fact done so. But it is wholly within the discretion of the Government whether and to what extent it will allow the continuation of foreign fishing in this zone. In the negotiations which took place between the Governments of the Federal Republic of Germany and Iceland since the promulgation of the Regulations of 14 July 1972 the Government of Iceland has made it clear that they were only prepared to agree to a restricted continuation of German fishing in the 50-mile zone for a limited phasing-out period. The agreements concluded by Iceland with Belgium, the Faroe Islands, Norway and the United Kingdom have only a limited duration and are regarded by the Government of Iceland merely as accommodation of foreign interests for a limited period of time without any guarantee that they will be continued after they have lapsed. I would like to quote the statement of the Icelandic Representative in the United Nations

[1] I, pp. 384-386.

Sea-bed Committee on 6 August 1971, which is rather illuminating as to the intentions of the Government of Iceland:

> "The essential thing is to recognize the basic principle that, to the extent that the coastal State is willing and able to utilize its coastal fishery resources, it should be allowed to do so. As far as Iceland is concerned, although one half of the maximum sustainable yield had been taken by foreign nationals, the Icelandic people are quite capable of fully utilizing the maximum yields themselves. That is why the Icelandic Government announced that before September 1, 1972, the Icelandic fishery limits would be extended so as to cover the waters of the continental shelf area."

This speech has been reproduced in the second enclosure to Annex H to the Application of the Federal Republic in this case, in a brochure entitled *Fisheries Jurisdiction in Iceland* (I, pp. 60-64).

The Court adjourned from 4.25 p.m. to 4.45 p.m.

When I finished some minutes ago I had concluded that the Government of Iceland intends to exclude immediately and totally foreign fishing from the 50-mile zone around Iceland. Now this conclusion leads us to the central issue of the dispute between the Federal Republic and Iceland. What are the interests of both sides which are in conflict here and how far can these interests claim recognition under international law?

The interests of Iceland to establish an exclusive fishery zone which comprises practically all exploitable fishing ground in the waters of the high seas around Iceland has its basis in Iceland's economic policy. It seems that the economic policy of the present Icelandic Government concentrates on the enlargement of the fishing industry rather than on the development of the other national resources within the country. The Minister for Fisheries is reported to have stated at the Ministerial Meeting of the North-East Atlantic Fisheries Commission in Moscow on 15 December 1971 that the fishing effort by Iceland directed to the cod stocks and other demersal fish stocks has been intensified and that Icelanders must secure for themselves a larger part of the catches.

There are reports that Iceland intends to build up a new fleet of large wet-fish stern trawlers; the number on order has been reported as about 30. This would more than treble the existing fleet of Icelandic deep-sea wet-fish trawlers. This enlargement of Iceland's fishing fleet will require, in order to be economic, larger catches and, consequently, a heavier exploitation of the fishing grounds around Iceland and elsewhere.

The interest of the Federal Republic of Germany consists in maintaining its fish supply from the fishing grounds around Iceland on the same scale as hitherto. The Federal Republic has built up a distant-water fishing fleet mainly for securing the necessary supply of fish for home consumption because the fishing grounds before the German coasts do not yield enough to satisfy the demand of its large population. Export of fish products for which mainly imported herring is used, is of secondary importance.

Within the last decade the deep-sea fishing fleet of the Federal Republic, which is dependent on distant fishing grounds, has taken more than 60 per cent. of its fresh fish landings and about one-third of all its catches, fresh and frozen, from the fishing grounds around Iceland. The Government of the Federal Republic of Germany has repeatedly assured the Icelandic Govern-

ment that the Federal Republic does not intend to increase its fishing efforts in these waters, or to enlarge its share, which represents at present—from the figures of 1972—barely 10 per cent. of the total catch of all species in the waters around Iceland, compared with Iceland's share of more than 60, nearly 70, per cent.

The interests of both Parties which I have just analysed, namely the interest of Iceland to increase its catches from the fishing grounds around its coast and the interest of the Federal Republic to take the same amount of fish as hitherto from these fishing grounds, have not been irreconcilable in the past as long as the abundance of fish in this area allowed Iceland an ever-increasing share in these fisheries. However, since under the aspects of preservation of fish stocks the amount of allowable catch is gradually reaching its limit, at least with respect to certain species, the Government of Iceland is faced with the situation that the fisheries around Iceland will reach now, or at least in the near future, a level which will not allow larger totals of catch with respect to most fish stocks which are exploited in the waters around Iceland.

The Government of Iceland realizes that it could then enlarge its catches in these waters only at the expense of the shares of other nations, in particular at the expense of the United Kingdom and the Federal Republic of Germany which both now rely heavily on these fishing grounds. That is why Iceland attempts to reserve the fishery resources in these waters for the exclusive exploitation by its own fisheries, and that is the real motive behind Iceland's move to establish an exclusive fishery zone around its coast—which comprises nearly all important fishing grounds in these waters.

The Court will have to consider whether there is any legal basis for such a claim by Iceland. The Government of the Federal Republic contends that there is no such basis, neither in law nor in equity.

The Federal Republic of Germany does not deny the special dependence of Iceland's economy on the exploitation of the fishery resources in the high seas around its coast. The Federal Republic recognizes also that Iceland's interests in preserving the biological and economic basis of its fisheries industry is legitimate and that Iceland's share of about 60 or some more per cent. of the total catches of all species in the waters of the high seas around Iceland should not be considered an unreasonable preferential position. The Federal Republic of Germany, however, maintains that no less consideration should be given to the interest of the Federal Republic in preserving its share in the fisheries in the waters of the high seas around Iceland—fisheries which have been built up by a long and steady exercise of the legitimate right of fishing on the high seas for the purpose of securing the necessary food supply for its population.

While the existing dependence of Iceland on the fisheries before its coast is thus recognized, it does not seem to be equally legitimate for a coastal State to intensify or enlarge the existing dependence of its economy on these fisheries at the expense of other nations which are already also dependent on the same fisheries. There is particularly no such legitimacy in a case where, as in the case with Iceland, the coastal State has alternative possibilities to develop its national economy on the basis of resources which are clearly within its national domain, instead of claiming a larger share in the resources which belong to the domain of all nations and the utilization of which Iceland has, up till now, shared with other nations. Iceland is not entitled in equity to claim a larger share simply because it chooses to develop its fisheries industry and not the other sectors of its economy which, based on the country's

inland resources, would probably yield a higher, safer and more constant rate of economic growth.

The special situation of a State like Iceland, which is heavily dependent on fisheries before its coasts, has already been noticed by the international community.

In 1958, the Geneva Convention adopted a resolution on special situations relating to coastal fisheries with situations such as that of Iceland specifically in mind. In fact, it was at the instance of Iceland that this problem was debated at the Conference and disposed of by this resolution which was adopted by 67 votes to none with 10 abstentions on 26 April 1958. The relevant operative part of this resolution which satisfied largely, although not fully, Iceland's claim for the recognition of preferential rights as originally proposed by Iceland, reads as follows:

> "*The United Nations Conference on the Law of the Sea,*
> *Having* considered the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development, . . .
> *Recommends:*
>
> 1. 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."

Secondly, and that is a very important point also:

> "2. That appropriate conciliation and arbitral procedures shall be established for the settlement of any disagreement." (Application, Annex E, I, p. 16.)

The concept which underlies this recommendation for dealing with a situation as in the case of Iceland, commanded, as the recorded vote has shown, the support of the overwhelming majority of the States which took part in the Geneva Conference; this concept can, therefore, be considered as reflecting the conviction of the international community that this procedure is the most equitable way to accommodate the conflicting interests.

The main features of this concept are:

First, that if catch limitations become necessary, preferential treatment, but no exclusive rights, is recognized, on the basis of the existing, not the future dependence on the fisheries.

Second, the coastal State and the other States which have been fishing in the same fishing grounds should settle the problem of what limitations should be imposed on the fisheries and how the available resources should be allocated between them, by agreement.

Third, if no agreement is reached to the satisfaction of the coastal State, the matter will have to be settled by conciliation or arbitration; no unilateral action of the coastal State in determining the size of its preferential share is permitted.

The Federal Republic of Germany is of the opinion that this will be the right way to deal equitably with Iceland's special situation.

If the principles of the 1958 resolution were applied in the present case, it

might certainly be argued that there is room for negotiation between the Parties about the future respective shares of each of the Parties in the fisheries around Iceland. It is submitted, however, that Iceland, by taking more than 50 per cent. of the demersal and practically all pelagic fish from the sea area of Iceland, has already secured a *very* preferential position, within the meaning of the 1958 resolution, and that consequently Iceland could not claim more than to have its preferential position settled by negotiation and agreement. It is submitted further that, in determining the degree of preference which would be accorded to Iceland in the allocation of fishery rights with respect to each species in the waters of the high seas around Iceland, the following considerations should be taken in mind:

First, the satisfaction of present requirements of fish supply of both Parties should take priority over claims for an enlarged share for future needs. It is, therefore, submitted that the claim by Iceland for an enlarged share of the total catch in order to find employment for an enlarged fishing fleet does not carry the same weight as the interests of the Federal Republic of Germany in maintaining that part of its fishing fleet in employment for which no other fishing grounds would be available.

Second, fishing for the supply of fish for human consumption merits a higher priority than fishing for the production of fish-meal and other feedstuffs. The German fishing vessels in the waters around Iceland fish only for those species which are destined for human consumption, and supplies the home market with fresh fish which could not be obtained in such quantities from other fishing grounds. It is, therefore, submitted that the interest of Iceland to raise the level of its exports of fish-meal and frozen fish does not carry the same weight as the interest of the Federal Republic in maintaining its fresh-fish supply to the home market.

Third, the preferential position accorded to the coastal State serves primarily the purpose of protecting the earnings of those parts of its population which are heavily dependent for their livelihood on coastal fisheries. However, the fishing operations of German fishing vessels concentrate on the outer parts of the waters around Iceland and do not affect those areas which are frequented by the Icelandic small-boat fishery. It is, therefore, submitted that the maintenance of the German fisheries on the present scale within the waters around Iceland has no impact whatsoever on the living standard of those parts of the Icelandic people which are dependent upon coastal fisheries for their livelihood.

Fourth, the German fishing vessels fish for species which are migratory and do not inhabit the waters around Iceland only. It is, therefore, submitted that Iceland cannot validly claim any specific preferential right to those fish stocks on the grounds that it had made special efforts or sacrifices for the protection of such fish stocks.

Fifth, the long standing of the German fisheries in the waters around Iceland, which has clothed the exercise of these fishing rights with the quality of legitimately acquired rights, should be taken into account.

The Federal Republic of Germany would welcome any directives which the Court would consider appropriate for the guidance of the Parties to come to an agreement on the allocation of the fishery resources in the waters around Iceland on the basis of the just-mentioned or other equitable principles. The Federal Republic would very much appreciate it if the Court would make it clear that the degree of preference that should be accorded, with respect to the fisheries in the waters around Iceland, will have to be settled by agreement between the Parties and that any such agreement must pay due regard to the

fishing rights of the Federal Republic of Germany which have been exercised by its fishing vessels for more than 50 years.

It is upon all these considerations that the Government of the Federal Republic of Germany requests the Court to adjudge and declare that the unilateral establishment by Iceland of an exclusive fishery zone ranging to 50 miles from the coast, or from the baselines from which the territorial sea is measured, has no basis in international law, and that, if catch or effort limitations may become necessary, on adequate and objective scientific findings, such limitations and the respective shares of both Parties in the regulated resources must be determined by agreement between the Parties concerned, either within the existing framework of the North-East Atlantic Fisheries Organization, or, if that were not feasible, directly between the Parties concerned.

The third topic on which I would like to comment today is the method by which Iceland has so far pursued its claim for an extension of its fisheries jurisdiction. It is true that there are doctrinal theories which point to the role of unilateral action of States in the development of international law. I do not think it necessary to discuss these theories here and to examine the conditions which must be present before unilateral action could exceptionally be defended if undertaken for the protection of generally recognized interests. The legal situation in the present case certainly did *not* call for such unilateral action.

In the Exchange of Notes of 19 July 1961, both Parties had agreed on the procedure which the Government of Iceland would have to follow in case it would wish to pursue its claim for an extended fisheries zone. In its Judgment of 2 February 1973 the Court has recognized that this agreement has not ceased to operate with respect to these procedural provisions and that it still governs the relations between the Parties in this respect. In paragraph 5 of the Exchange of Notes the Government of the Republic of Iceland reserved its position to seek recognition for a further extension of its fisheries jurisdiction but accepted the obligation to give the Government of the Federal Republic of Germany six months' notice of such an extension and, in case the Federal Republic would contest such extension, to submit the matter, at the request of either Party to the International Court of Justice. While it is true that the Government of Iceland was not precluded by this agreement from taking the initiative to ask for recognition of a wider zone of fisheries jurisdiction, the compromissory clause can only be interpreted to the effect that, if the Federal Republic of Germany would object and ask for a decision of the Court, the Government of Iceland is precluded from taking any unilateral action in attempting to enforce its jurisdiction beyond the 12-mile limit against the fishing vessels of the Federal Republic, their crews and other persons engaged in fishing operations beyond the 12-mile limit. The history of the negotiations which led to the Exchange of Notes of 19 July 1961 has been described in paragraphs 9 to 21 of the Memorial of the Federal Republic on the question of jurisdiction. The history of the negotiations reveals that the compromissory clause contained in paragraph 5 of this Agreement was to protect the Federal Republic of Germany against any future unilateral action of Iceland in extending its fishery jurisdiction beyond the 12-mile limit and thereby to avoid conflicts of the kind which were settled by the Agreement of 19 July 1961. Therefore, the compromissory clause contained in this Agreement must be understood to the effect that the Government of Iceland would not enforce any extension of its jurisdiction beyond the 12-mile limit as long as the matter is before the Court.

But, irrespective of the procedural obligations contained in the Exchange of Notes of 19 July 1961, the unilateral action by Iceland in proclaiming and enforcing exclusive fishery rights beyond the 12-mile limit was unlawful in so far as it encroached upon the fishing rights of the Federal Republic in these waters of the high seas. Even if Iceland could establish—what has not yet been done—that conservation measures were urgently necessary with respect to certain fish stocks in the waters around Iceland, and even if Iceland could claim preferential fishing rights under such a scheme of conservation measures, it is in any event unlawful to exercise enforcement jurisdiction against the fishing vessels of the Federal Republic of Germany on the high seas before agreement has been reached between the Parties on the nature and scope of such conservation measures and on the methods of their implementation. This is no case where unilateral action might possibly be defended on the legal vacuum theory; this is rather a case where Iceland purports to take away established fishing rights of the Federal Republic under the present legal régime of the high seas which have been exercised by German fishing vessels rightfully and undisputed for a long time in these waters of the high seas. Rights of enforcement against foreign ships on the high seas could be created only on the basis of an agreement between the States concerned, either by a general convention or by a specific treaty to this effect. No such basis exists for the unilateral enforcement measures which the Government of Iceland has thought fit to take against the fishing vessels of the Federal Republic of Germany.

Therefore, Iceland cannot escape responsibility for the actions of its Government in the purported enforcement of its claim for an extended fishery zone. Any encroachment upon the fishing rights of the Federal Republic in the waters of the high seas beyond the 12-mile limit, if found unlawful by the Court, will entail the full responsibility for the consequences of such action and for the damage inflicted upon the fishing vessels of the Federal Republic thereby.

The actions of the Icelandic coastal patrol boats, acting on the direct authority of the Government of Iceland in the purported enforcement of its claim to an extended exclusive fishery zone, have been described in paragraphs 1 to 14 of Part V of the Memorial of the Federal Republic filed on 1 August 1973. These actions have continued since the filing of the Memorial. I refer in this respect to the Report I have submitted to the Court on behalf of the Government of the Federal Republic on 6 March 1974. These acts are illegal on several grounds:

First, these acts purport to exercise jurisdiction on the high seas without authority under international law.

Second, these acts purport to prevent the fishing vessels of the Federal Republic of Germany from exercising their right to fish in the waters of the high seas.

Third, these acts are deliberately calculated to inflict damage and material loss on the nationals of another State, without any justification in law.

Fourth, these acts are in open conflict with the principle embodied in the United Nations Charter that disputes between States shall be settled peacefully and without use of force.

Fifth, these acts intentionally disregard the Court's Order of 17 August 1972, confirmed by Order of 12 July 1973, according to which the Republic of Iceland should refrain from taking any measures against German fishing vessels engaged in fishing activities in the waters around Iceland outside the 12-mile fishery limit during the pendency of the proceedings before the Court.

As the Permanent Court of International Justice stated in its Judgment in the *Chorzów Factory* case (reported in *P.C.I.J., Series A, No. 17*, at p. 47):

> "The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."

Consequently, the acts of the Icelandic coastal patrol boats, undertaken on the order of the Government of Iceland, constitute an international delinquency for which Iceland is obliged to make reparation to the Federal Republic of Germany. The Government of the Federal Republic reserves all its rights to claim full compensation from the Government of Iceland for all unlawful acts that have been committed, or may yet be committed, in the purported enforcement of Iceland's claim for an extended exclusive fisheries zone beyond the 12-mile limit against German fishing vessels in these waters.

The Federal Republic of Germany does not, at present, submit a claim against the Republic of Iceland for the payment of a certain amount of money as compensation for the damage already inflicted upon the fishing vessels of the Federal Republic. The Government of the Federal Republic does, however, request the Court to adjudge and declare that the Republic of Iceland is, in principle, responsible for the damage inflicted upon German fishing vessels by the illegal acts of the Icelandic coastal patrol boats as described in Part V, pages 260 to 264, *supra*, of the Memorial of the Federal Republic, filed on 1 August 1973, and that the Republic of Iceland is under an obligation to pay full compensation for all the damage which the Federal Republic of Germany and its nationals have actually suffered thereby.

Mr. President, Members of the Court, before concluding my statement it is incumbent upon me to present to the Court the final submissions of the Federal Republic of Germany in this case. They are identical to those already presented in the Memorial filed on 1 August 1973. They read as follows:

May it please the Court to adjudge and declare:

1. That the unilateral extension by Iceland of its zone of exclusive fisheries jurisdiction to 50 nautical miles from the present baselines, put into effect by the Regulations No. 189/1972 issued by the Icelandic Minister for Fisheries on 14 July 1972, has, as against the Federal Republic of Germany, no basis in international law and can therefore not be opposed to the Federal Republic of Germany and the fishing vessels registered in the Federal Republic of Germany.
2. That the Icelandic Regulations No. 189/1972 issued by the Icelandic Minister for Fisheries on 14 July 1972, and any other regulations which might be issued by Iceland for the purpose of implementing Iceland's claim to a 50-mile exclusive fisheries zone, shall not be enforced against the Federal Republic of Germany, vessels registered in the Federal Republic of Germany, their crews and other persons connected with fishing activities of such vessels.
3. That if Iceland, as a coastal State specially dependent on its fisheries, establishes a need for conservation measures in respect to fish stocks in the waters adjacent to its coast beyond the limits of Icelandic jurisdiction agreed to by the Exchange of Notes of 19 July 1961, such conservation measures, as far as they would affect fishing activities by vessels registered

in the Federal Republic of Germany, may not be taken on the basis of a unilateral extension by Iceland of its fisheries jurisdiction but only on the basis of an agreement between the Parties, concluded either bilaterally or within a multilateral framework, with due regard to the special dependence of Iceland on its fisheries and to the traditional fisheries of the Federal Republic of Germany in the waters concerned.

4. That the acts of interference by Icelandic coastal patrol boats with fishing vessels registered in the Federal Republic of Germany or with their fishing operations by the threat or use of force are unlawful under international law, and that Iceland is under an obligation to make compensation therefor to the Federal Republic of Germany.

These are the submissions as submitted to the Court.

Mr. President and Members of the Court, allow me to express my profound gratitude for the patience and attention with which you have listened to my arguments.

QUESTIONS BY JUDGES JIMÉNEZ DE ARÉCHAGA AND SIR HUMPHREY WALDOCK

The PRESIDENT: I shall now ask my colleagues if there are some questions they would like him to answer on the issues involved.

Judge GROS: Monsieur le Président, j'ai une question à poser à Monsieur l'agent: Quelles conséquences le Gouvernement de la République fédérale déduit-il de l'accord entre la Communauté économique européenne et l'Islande du 22 juillet 1972, y compris le protocole nº 6, en ce qui concerne la position de l'Islande et celle des Etats membres de la Communauté économique européenne?

The PRESIDENT: Are you ready to answer immediately?

Mr. JAENICKE: No, I would rather like to have the questions answered later.

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

Mr. JAENICKE: Mr. President, I would like also to have the answer deferred.

Sir Humphrey WALDOCK: I noted the presence in Court of the Agent of the Federal Republic during the public sitting held on 25 March in the case *brought by the United Kingdom against Iceland*. At the end of that sitting, I addressed five questions to counsel for the United Kingdom, and the texts of the questions are set out at I, pages 477 and 478. To the extent that the Agent of the Federal Republic may consider that the views of the Federal Republic concerning those questions have not already been sufficiently presented to the Court, I would be glad if he would kindly regard the questions as addressed also to the Federal Republic.

The PRESIDENT: There are no other Members of the Court who wish to put questions to the Agent for the Federal Republic. We shall request him to reflect on the answers, and if he could be ready to reply to the Court on Monday, the Court will have a sitting for this purpose.

Mr. JAENICKE: In consideration of the fact that our English colleagues have had a much longer time, and weekdays, for preparing the answers, although we have not so many questions as they had, which I appreciate, I would ask if it would be possible and convenient for the Court to have the sitting on Tuesday morning, because my colleagues could not come on Monday.

The PRESIDENT: We shall expect your replies on Tuesday morning. Now, with this proviso, and with the usual proviso that you will remain at the disposal of the Court for any further information and explication the Court would require, I will now declare the sitting closed.

The Court rose at 5.25 p.m.

SIXTH PUBLIC SITTING (2 IV 74, 10 a.m.)

Present: [See sitting of 28 III 74.]

STATEMENT BY MR. JAENICKE (cont.)

AGENT FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

The PRESIDENT: The Court meets this morning in the case instituted by the Federal Republic of Germany against the Republic of Iceland in order to give the Agent of the Federal Republic of Germany an opportunity to reply to questions put to him by Members of the Court.

Mr. JAENICKE: Mr. President, Members of the Court, on 28 March a number of questions were asked of the Federal Republic of Germany in this case. These questions have been carefully considered and I am grateful to the Court for having granted us the necessary time to prepare our answers.

I shall deal with the questions that were put to the Federal Republic in the same order as they were asked by the Members of the Court.

I begin, therefore, with the question posed by Judge Gros. This question was as follows:

> "Quelles conséquences le Gouvernement de la République fédérale d'Allemagne déduit-il de l'accord entre la Communauté économique européenne et l'Islande du 22 juillet 1972, y compris le protocole n° 6, en ce qui concerne la position de l'Islande et celle des Etats membres de la Communauté économique européenne?"

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

The Protocol No. 6 to the Agreement contains the special provisions applicable to imports of certain fish products into the Community from Iceland. Those provisions are in Article 1. That Article concerns tariff and customs facilities for the importation of Icelandic fish and Icelandic fish products into the Community. Paragraphs 1 and 2 of Article 2 read as follows:

> First paragraph of this Article:
>
> "The Community reserves the right not to apply the provisions of this Protocol if a solution satisfactory to the member States of the Community and to Iceland has not been found for the economic problems arising from the measures adopted by Iceland concerning fishing rights. The Community shall inform Iceland of its decision on this matter as soon as circumstances permit, and not later than 1 April 1973."

Second paragraph of this Article:

"If it appears that a satisfactory solution cannot be found until after this date, the Community may postpone the decision on the application of this Protocol providing it informs Iceland accordingly."

At the present time, the provisions of Article 1 of the Protocol are not being applied because the Community has postponed its decision in accordance with Article 2. Therefore, no specific conclusion can be drawn from the Agreement of 22 July 1972 between the European Economic Community and Iceland and the Protocol No. 6 thereto, neither as to what the European Economic Community would regard as a satisfactory solution for the problems arising from the measures adopted by Iceland concerning fishing rights, nor as to what the position of the other member States of the Community would be with respect to this question or any issue in dispute before the Court.

That is the answer to the question of Judge Gros.

The PRESIDENT: I shall ask Judge Gros whether he wants to pursue some of the issues raised in this question.

Judge GROS: Monsieur le Président, je remercie M. l'agent du Gouvernement de la République fédérale d'Allemagne d'avoir eu l'obligeance de m'indiquer la position de son gouvernement sur l'accord entre la Communauté économique européenne et l'Islande.

Mr. JAENICKE: I shall now turn to the question asked by Judge Jiménez de Aréchaga. The question was as follows:

"I would like to ask the Agent of the Federal Republic of Germany this question. With respect to the concept of preferential fishing rights of States in a special situation, you have examined the subject from the viewpoint of the resolution adopted at the 1958 Conference on the Law of the Sea. I would appreciate it if you would examine the applicability to the present case of a concept of preferential rights, together with the procedure for implementing them, as they were defined in the amendment by Brazil, Cuba and Uruguay which was incorporated by a separate vote in the final proposal which nearly secured a two-thirds majority at the 1960 Conference and which reveals the general consensus on the permissible extent of a coastal State's fisheries jurisdiction."

That was the question. My answer is the following: the history of this amendment, as well as the background of the various proposals which culminated in the joint Canadian-United States proposal, so amended, have already been aptly and extensively explained by the learned counsel for the Government of the United Kingdom in his answer of 29 March to the same question.

It would probably not assist the Court further if I were to repeat those matters again. I might say that the explanations given so far by the learned counsel for the Government of the United Kingdom were, in my opinion, correct and exhaustive. The Court will allow me, and Judge Jiménez de Aréchaga will allow me, to refer to them for the purpose of my answer. I would like, however, to add some remarks on the effect which these events—that is at the 1958 and 1960 Conferences—had on the development of the law with respect to the preferential position of the coastal State in the matter of fisheries.

At first I wish to make a general observation in regard to *all* the proposals that have been voted upon in both conferences but have not been incorporated in the conventions. All such proposals must be regarded as an expression of the views of the particular governments which tabled or supported them, as to what they would eventually accept as treaty law in view of the circumstances prevailing at the Conference and in view of the other provisions which would form part of the Convention. These proposals might have contained concessions which were made in view of the advantages which might accrue from the adoption of other parts of the Convention.

What I want to demonstrate by that is that, at a conference, proposals, counter-proposals and amendments thereto cannot be isolated, neither from the situation in which they were made nor from the purpose which they were meant to serve. They have, rather, to be evaluated with proper regard to the context in which they were made.

The second general observation I would like to make concerns the relevance of proposals such as were made at the 1958 and 1960 Conferences, for the formation of new rules of law. Even if it could be ascertained how far a conference proposal, in the light of the circumstances at that time, reflected a conviction of those governments which supported it as to what would be equitable and what the law ought to be, such a proposal will contribute to the formation of a new rule of law only if the rule contained in the proposal is subsequently practised in the behaviour of States and eventually accepted as law by virtually all the States whose interests are affected thereby.

What I want to emphasize is this: new rules of law emerge from the concordant practice of States, not from individual expressions of legal policy.

After these general observations I revert to the specific proposal made by Brazil, Cuba and Uruguay with respect to the recognition of preferential rights of the coastal State in the matter of fisheries. At the 1958 and 1960 Conferences the first initiatives were taken which led to the formation of two new concepts in the law of the sea which went beyond the rules of law as they had been formulated by the International Law Commission.

First, the concept of a separate fisheries zone with limits distinct from those of the territorial sea, a separate fisheries zone within which the coastal State would have full jurisdiction over the fisheries.

Second, the concept of the preferential position of the coastal State in the fisheries before its coast, should partitioning of these fisheries resources among the fishing States become necessary. This concept made its first appearance in the resolution of the 1958 Conference on Special Situations relating to Coastal Fisheries. I have already referred to this resolution in my statement on 25 March at page 344, *supra*.

As it became apparent at the 1958 Conference that an agreement on the breadth of the territorial sea could not be attained, the concept of a separate fishery zone of 12 miles was propagated. These attempts culminated at the 1960 Conference in the joint United States-Canadian proposal of a 6-mile territorial sea plus a contiguous 6-mile fishery zone, combined with a phasing-out time of 10 years for foreign fisheries in the outer 6-mile zone. This proposal was adopted in committee by a comfortable majority but it did not yet command sufficient votes for the required two-thirds majority in the plenary. It was in this situation that the three-power amendment was brought forward in order to win the support of those States, as for example, Ecuador and Iceland, who were not satisfied with the 12-mile fishery limit, but asked for the recognition of a general preferential position in the fisheries before their coasts, even beyond the 12-mile limit.

This purpose of the amendment submitted by Brazil, Cuba and Uruguay, was unequivocally spelled out by the delegate of Cuba, Mr. García Amador, in the tenth plenary meeting of the 1960 Conference on 25 April 1960. There he said:

> "The purpose of the amendments was to make it easier for those who believed that the proposal did not go far enough towards meeting the needs and special interests of all coastal States in the conservation and exploitation of the resources of the sea to accept that proposal, without disregarding the legitimate interests of other States and the international community in general in areas of the high seas. In order to harmonize those two sets of needs and interests, the amendments established a system of preferential fishing rights for the coastal State in an area of the high seas adjacent to the area in which that State enjoyed exclusive fishing rights . . ."

I quote this from the *Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole of the Second United Nations Conference on the Law of the Sea*, page 13.

This amendment, which improved and specified the concepts of preferential rights contained in the 1958 resolution, was adopted by a big majority of 58 votes against 19 with 10 abstentions, because it was thought that its incorporation might facilitate a positive vote on the Canada-United States proposal and would thereby secure a final determination of the limits of maritime jurisdiction. Only those States which insisted on a 12-mile territorial sea voted against the amendment.

In spite of some more votes, which were due to the incorporation of the amendment, the Canada-United States proposal, as is well known, did not get the necessary two-thirds majority. Thus the three-Power amendment concerning preferential fishing rights of the coastal State failed to serve its purpose. It is interesting to note the statement of the United States delegate in the fourteenth plenary meeting with respect to his vote for the three-Power amendment. I quote from the same source, the *Summary Records of Plenary Meetings and of Meetings of the Second United Nations Conference on the Law of the Sea*, from page 35:

> "Mr. Dean (United States of America) said that the United States delegation had been glad to see the great support commanded by the amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L. 12). He wished to make it clear, however, that his delegation had supported those amendments only within the context of the joint proposal (A/CONF.19/L.11) and in an effort to reach agreement. The United States delegation had not supported the terms of the amendments as an independent proposition."

What then can be deduced from the favourable vote on the three-Power amendment on 26 April 1960? It is certainly not permissible to draw the conclusion therefrom that all the States which had voted for the amendment would at that time have supported it as an independent proposal, or would, moreover, have adopted it or its contents as a new rule of law as long as agreement on the outer limits of national jurisdiction had not been reached. The vote for the amendment was one of the concessions made by those States which adhered at that time to the traditional limits of the territorial sea and voted for the amendment in order to secure formal agreement on reasonable

limits of maritime jurisdiction. It is also not permissible to regard the favourable vote on the three-Power amendment as an indication for a recognition of its contents as an inseparable part of the concept of an exclusive fisheries zone of 12 miles, which later became a rule of law by subsequent and concordant State practice.

Nevertheless, it would be too formalistic a view if one were to refuse to recognize the intrinsic legal value of the carefully balanced concept of the coastal State's preferential rights as it was formulated in the Brazil, Cuba and Uruguay amendment. The three-Power amendment, if it had become law, would have improved the concept contained in the 1958 resolution on Special Situations relating to Coastal Fisheries to a considerable extent:

First, it required to establish scientifically that it is necessary to limit the total catch of a stock or stocks of fish before preferential fishing rights may be claimed by the coastal State—this made it clear that, in the absence of such circumstances, the coastal State could not claim preferential rights.

Second, the criteria for the determination of the degree of economic dependence of the coastal State on the fisheries concerned, which could provide the basis for a claim for preferential rights, were more broadly, but at the same time more explicitly defined. The presence of these criteria had also to be established by scientific evidence.

Third, any unilateral enforcement of preferential fishing rights by the coastal State was unequivocally excluded. A special procedure was provided for, which the coastal State would have to follow if it wished to avail itself of the right to claim preferential treatment in a catch limitation scheme. If the coastal State wished to claim such preferential treatment it would have either to come to an agreement with the other fishing States or, if any other State should not recognize the claim, the extent and the periods of time of the preferential rights of the coastal State would have to be determined by the special international commission provided for in Article 9 of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958. This determination should be made by having regard to the degree of dependence of the coastal State on and the interests of other States in the exploitation of the fish stocks concerned.

According to this procedural provision, preferential rights of the coastal State would originate either from an agreement between the States concerned or from the determination of an impartial international commission, but never from unilateral action of the coastal State.

The fact that the three-Power amendment which contains these rules found favourable acceptance and did not meet with any criticisms in respect to its equitableness and procedure, is evidence of its great value as a well-conceived method how the crucial problem of the conciliation of the interests of the coastal States and those of the other fishing States in a situation where catch limitations become necessary, can be solved equitably.

The concept of preferential rights of the coastal State and its implementation contained in the three-Power amendment presupposes, however, that the States concerned recognize or submit to the competence of an international commission provided for in the Geneva Fisheries Convention or agree on the jurisdiction of another impartial body, including the International Court of Justice, for establishing objectively the necessity of a catch limitation and for determining the extent of the coastal State's preferential right in such a catch limitation scheme.

This procedure is an indispensable element of the concept contained in the three-Power amendment. That is why this concept, despite its equitableness,

could not, without the existence of these procedural prerequisites, become a generally applicable concept of law.

In the negotiations with Iceland the Government of the Federal Republic of Germany has repeatedly declared its readiness to agree on reasonable measures of conservation and to submit the matter, if Iceland so wished, to arbitration.

The Federal Republic had certainly been prepared to agree with Iceland on the terms and procedures contained in the Brazil, Cuba and Uruguay amendment if Iceland had wished to accept these terms also.

Number 3 of the submissions of the Federal Republic in this case is very much in line with the concept contained in the Brazil, Cuba and Uruguay amendment.

This is my answer to the question posed by Judge Jiménez de Aréchaga.

QUESTION BY JUDGE JIMÉNEZ DE ARÉCHAGA

The PRESIDENT: Does Judge Jiménez de Aréchaga wish to continue or enlarge on the question?

Judge JIMÉNEZ DE ARÉCHAGA: Mr. President, I thank the Agent for the Federal Republic of Germany very much for the answer he has given and I would like to ask a supplementary question concerning the scope and purpose of that preferential right which, of course, could be answered in writing.

Now my question is, the Agent for the Federal Republic of Germany was present in Court when the Attorney-General for the United Kingdom stated, at I, page 457, "to enable Iceland to maintain a reasonable rate of expansion she should be permitted to take a larger share of the demersal fishery than in the past". Now, as I read the references in the statement of the Agent for the Federal Republic of Germany, particularly on pages 343, 344, 345 and 346, *supra*, I find statements to the effect that it "does not seem . . . legitimate for a coastal State to intensify or enlarge the existing dependence of its economy on these fisheries at the expense of other nations . . ." (p. 343).

Page 344 refers to "the existing, not the future dependence on the fisheries". Page 345 again, "the satisfaction of present requirements of fish supply of both Parties should take priority over claims for an enlarged share for future needs". Again, on page 345, *supra*, reference is made to the dependence upon coastal fisheries for their livelihood.

It seems to me that I can detect some difference in this position as stated in the other case by the Attorney-General for the United Kingdom. My first question would be: is my interpretation of the different position a correct one? The second question, I notice that in the 1961 Exchange of Notes, the Note from the Federal Republic of Germany instead of referring, like the United Kingdom Note, to the livelihood and economic development—those were the words in the United Kingdom Exchange of Notes—refers to the dependence for the economy of Iceland. My question will be: is some significance, some legal significance, attributed to this different terminology?

Mr. JAENICKE: We will give the answer [1] in due time when we have considered this question.

---

[1] See p. 476, *infra*.

STATEMENT BY MR. JAENICKE (cont.)

AGENT FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

Mr. JAENICKE: Now I turn to the questions put to the Federal Republic by Judge Sir Humphrey Waldock.

The first question related to the specific contents of the consensus which was reached at the 1960 Conference on the fishery limits. The question was as follows:

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

My answer to this question is the following: I am grateful to Judge Sir Humphrey Waldock for having put this question because it gives me the opportunity to supplement my observations with respect to the emergence of a new general rule of law with respect to fisheries. In my statement of 28 April 1973, I have already touched upon some problems of the complex process of the formation and change of customary international law. Such rules of law emerge from State practice, accepted as law. State practice, and the conviction that this practice is an implementation or application of a rule of law must both be present.

While it is mostly possible, though not always easy, to ascertain the relevant State practice, it is much more difficult to prove the existence of the legal conviction upon which the State practice is founded. Sometimes practice comes first and its general acceptance as law follows later; sometimes, a general conviction emerges first and will then materialize in subsequent practice.

Turning to the specific question which elements formed the rule that a coastal State may now claim a fisheries jurisdiction up to 12 miles from its coast or from the baselines of its territorial sea, I should first point out that the Government of the Federal Republic of Germany recognizes the right of coastal States to extend their fisheries jurisdiction up to 12 miles, but not the right to extinguish therein the fishing rights of those States which have habitually fished there, without the agreement or acquiescence by those States.

I should refer in this respect to paragraph 55 of Part IV of the Memorial of the Federal Republic of Germany where it was stated:

> "While it can now be safely maintained that under international law a State is entitled to extend its fisheries jurisdiction up to 12 miles from the coast, the question is still unsolved whether such State may then lawfully exclude all foreign fishing vessels from this zone or whether and to what extent fishing vessels of nations which have habitually fished in this zone, must be accorded special treatment."

The latter question, namely to what extent the nations which have habitually fished in this zone must be accorded special treatment, has been discussed in more detail in Part IV, paragraphs 126 to 144 of the Memorial.

Turning now to the question posed by Judge Sir Humphrey Waldock, I do not venture to determine the date on which the State practice with respect to the establishment of a 12-mile fishery jurisdiction zone became accepted as legally valid under international law. It was probably so accepted when the North Sea States concluded the European Fisheries Convention on 2 March 1964 and when Japan gave up its opposition by the agreements concluded with the United States on 9 May 1967 and with New Zealand on 12 July 1967. The opinions expressed and the proposals submitted at the 1958 and 1960 Conferences on the Law of the Sea contributed to the development of a legal conviction to the effect that a State should be entitled to exercise full, though not necessarily exclusive, jurisdiction over the fisheries up to the 12-mile limit. It is in this context that the different proposals which were voted on the 1960 Conference must be evaluated.

It is in my view not possible to attribute the origin of the emerging consensus to a particular proposal which had been tabled at the Conference or to a particular amendment to such a proposal. If I speak of an emerging consensus on fishery limits I use the term "consensus" not in the sense of international agreement but rather in the sense of concordant legal convictions. It is true that the Memorial of the Federal Republic of Germany had in its Part IV, paragraph 54, referred to the joint Canadian-United States proposal which was voted upon on 26 April 1960 as expressing the consensus or the concordant legal convictions on the question of fishery limits. The Memorial had referred to that proposal primarily because it stood for the common denominator of how far most of the participating States were prepared to go in according jurisdictional rights to the coastal State up to the 12-mile limit. Most of the participating States, whether they rallied behind the Canadian-United States proposal for a 6-mile territorial sea plus a 6-mile fishery zone or behind the ten-Power proposal for a 12-mile fishery zone, seemed to be prepared to regard the 12-mile fishery zone as an acceptable development of the law.

As to the Brazil, Cuba and Uruguay amendment which had been incorporated into the joint Canada-United States proposal, Judge Sir Humphrey Waldock will allow me to refer to what I have just said in the answer to Judge Jiménez de Aréchaga. This is my answer to the first question of Judge Sir Humphrey Waldock. Shall I continue?

The PRESIDENT: Sir Humphrey, you wish to have a further explanation on this point?

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

Mr. JAENICKE: I turn now to the second question put by Judge Sir Humphrey Waldock. This question is as follows:

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

My answer to this question is as follows. In my statement to the Court on

28 March 1974, at page 344, *supra*, I characterized the resolution adopted by the 1958 Conference as follows: the concept contained therein could be considered as reflecting at that time the common conviction of the States which participated in the conference, that this procedure, as recommended by the resolution, would be the most equitable way to accommodate the conflicting interests of the coastal State and of the other States fishing on the same fishing grounds in case catch limitations would become necessary for reasons of conservation. This resolution recognized that countries whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development may have preferential requirements. The resolution recommended that if, for purposes of conservation, it becomes necessary to limit the total catch of the stock or stocks of fish, the States fishing for the same stock should either come to an agreement with the coastal State about a catch limitation scheme, which should take account of the preferential requirements, if any, of the coastal State and of the interests of other States or establish appropriate conciliation and arbitral procedures for the settlement of the matter.

As far as this resolution recommends the accommodation of conflicting interests by agreement, conciliation and arbitration, the resolution does, in effect, refer to the general obligation of all States to settle their differences by peaceful means in accordance with Article 33 of the Charter of the United Nations.

It is only with respect to the preferential position of the coastal State which is, under certain conditions, implicitly recognized by the terms of the resolution, that this resolution covers new ground. It may indeed be asked whether the preferential position of the coastal State so far as it had been recognized by the resolution has, in the meantime, obtained so much legal recognition by the international community that it is now incumbent on all States to consider favourably preferential requirements of the coastal State in connection with the introduction of catch-limitation schemes and according to the degree of the dependence of the coastal State on the fisheries in question.

I agree with learned counsel of the United Kingdom in its answer given to the same question put to the United Kingdom that the 1958 resolution could not as a recommendation be in itself the source of preferential rights but that the legal basis of an obligation to recognize the preferential position of the coastal State may be found in Article 2 of the High Seas Convention of 1958. According to that Article, which is declaratory of general international law, the exercise of the freedoms of the high seas, in this case the exercise of fishing rights, has to be undertaken with reasonable regard to the exercise of the freedom of fishing by other States.

If catch limitations or other limitations of fishing activities become necessary by reason of conservation, the interests of the coastal State may reasonably be regarded under certain circumstances as such as to require special consideration in the process of the reconciliation of the different interests of States which take part in the regulated fisheries. The reasonable-regard test, however, protects also the fishing rights of those States which are not coastal States but depend in some way or the other on the fisheries which are due to be regulated.

Thus, it is a position of the Federal Republic of Germany that Article 2 of the High Seas Convention does require the consideration of the interests of both the coastal State and the other States fishing for the same stock or stocks of fish. To what extent the interests of each of them will have to be taken account of remains a matter to be decided on the basis of all relevant

factors in the concrete case. Among those factors the degree of dependence of the coastal State on the fisheries before its coast is certainly an important but not the only factor which requires consideration.

It seems to me that the practice of States, inside and outside the fishery organizations in the introduction and implementation of catch-limitation schemes which have been inspired by considerations of equitable apportionment, has been an additional source for the emergence of a legal rule which requires the consideration of the coastal State's preferential position. This practice, particularly the practice of the international fishery commissions, is a valuable guide to the kind of interests that have been recognized as factors which should determine the respective share of each State in the catch-limitation scheme. I shall refer to this practice of international fishery commissions in connection with the fourth question put by Judge Sir Humphrey Waldock.

If conservation measures require the limitation of fishing activities, this entails necessarily the duty of the participating States to accept an allocation of shares in the exploitation of such resources, to be determined by equitable principles.

Although it may then be assumed that under Article 2 of the High Seas Convention a legal obligation exists to give the interests of the coastal State special consideration if limitations of fishing activities are envisaged, the degree of preference, if any, that will have to be accorded to the coastal State in relation to the other fishing States, is a matter of applying equitable principles.

These equitable principles cannot be defined in the abstract, but must await their application to the concrete case, either by agreement between the States concerned or by decision of a tribunal or other impartial body.

That is the answer to the second question posed by Judge Sir Humphrey Waldock.

The PRESIDENT: Judge Sir Humphrey Waldock.

Judge Sir Humphrey WALDOCK: Mr. President, I think it would be better if I wait until the conclusion of the replies of the Federal Republic.

Mr. JAENICKE: I shall now turn to the third question, posed by Judge Sir Humphrey Waldock. This question is as follows:

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

My answer is the following: I think, in answering the previous question, I have already indicated the relationship between the general right to freedom of fishing, or to put it otherwise, the right of access of each State to the fishery resources of the oceans and the preferential position of the coastal State. It remains to define the place of the historic or traditional fishing rights in this context.

I had already stated that it is only within a catch-limitation scheme, or any other scheme which puts restrictions on the fishing activities with respect to a certain stock of fish, that preferential fishing rights of the coastal State might have to be taken into consideration. Therefore the question as to the

relationship between such preferential rights and so-called historic or traditional fishing rights narrows down to the question as to the place of the latter in a catch-limitation or other equivalent scheme.

The obligation under Article 2 of the High Seas Convention to pay reasonable regard to the interests of other States protects also, as I have already said, the interests of those non-coastal States which are habitually fishing for the same fish stock as the coastal State. I have said before that the degree of preference, if any, to be accorded to the coastal State is a matter of applying equitable principles, with due regard to all the interests involved in a particular fishing situation. The same considerations must apply to those States which have habitually fished for the same fish stock or fish stocks.

Here again, the reasonable-regard test requires examination as to what extent the long-established, continuously exercised fishing interests of non-coastal States in the same stock or stocks of fish deserve special consideration under equitable principles.

In the practice of States, notably in the regulatory practice of the international fisheries commissions, the so-called past or historic performance, that is, the average catch of certain species in previous years within a certain period of reference, has frequently been taken as a legitimate basis for the determination of the relative shares which should be allotted to each State under a catch-limitation scheme.

That shows how much the fact that a State has habitually fished for a certain stock or stocks of fish in a certain area is considered a vested interest that must be respected under the reasonable-regard test within a catch-limitation scheme or other similar restrictive regulation.

Thus both the interests of the coastal State and the interests of all other States which have habitually fished on the same fishing grounds have gradually qualified for recognition in the recent regulatory practice in fisheries.

The determination of the relative proportions of catch to be accorded to the coastal State, as well as to each non-coastal State which has habitually fished for a certain fish stock, depends on the relative weight that has to be attributed to each of those interests present in the concrete case under equitable principles. This determination, involving mainly the application of equitable principles, can only be effected properly either by agreement between the States concerned or by an impartial body, be it an international commission or an international tribunal; but it could not be effected properly by a unilateral decision of one of the interested parties.

That is my answer to the third question, posed by Judge Sir Humphrey Waldock, and I now turn, with the permission of Judge Sir Humphrey Waldock, to the fourth question. This question is as follows:

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

> Conventions, or in connection with any other Atlantic Fisheries agreements such as that between Norway, the Soviet Union and the United Kingdom concerning Arctic Cod."

That is the question. My answer is the following.

The arrangement relating to fisheries in the waters surrounding the Faroe Islands was signed on 18 December 1973 and entered into force on 1 January 1974. The main features of the catch-limitation scheme contained in this agreement have already been explained by the learned counsel for the United Kingdom in his answer to the same question on 29 March.

I would, however, like to add the following. The arrangement takes cognizance of both the preferential requirements of the coastal States and of traditional fishing. It does so in the following way:

Article 1 with Annex 1 allocates the lion's share of cod and haddock to the Faroes, a reduced share to the United Kingdom and a small remainder to others, covering the unavoidable by-catches. The figure for the Faroes exceeds their actual catches in 1972, as well as their previous record, whereas the catches of the United Kingdom and others were reduced, compared with their previous catches. This marked coastal State preference is justified in the view of the Federal Republic by the relatively heavy fishing pressure on those two species, cod and haddock, and the special Faroese dependence on the fisheries directed to these species.

In the context of the agreement, this coastal State preference is balanced by Article 2, which pays special regard to the traditional fishing of other States in the waters around the Faroe Islands. Article 2 allows contracting parties, which direct their fisheries in the area around the Faroe Islands solely towards demersal species other than cod and haddock, to take 10 to 25 per cent. more than their biggest catch in one of the years from 1968 to 1972. Thus, this Article is based on the principle of traditional fishing.

Articles 3 and 4 again reflect some coastal State preference. These Articles provide for seasonal closures of some small areas extending from 8 to 18 nautical miles beyond the outer limits of the Faroese exclusive fisheries zone. These areas are closed to all trawl fishing for all contracting parties with some small exemptions for the Faroese. This scheme privileges the local coastal fisheries which use gear other than trawls.

The whole arrangement shows, in our submission, how coastal States' preferential requirements and traditional fisheries can be reconciled by agreement in a fair and equitable manner.

The development of criteria for the allocation of national quotas in catch limitation schemes and, in particular, the appearance of the coastal State preference in such schemes in relation to traditional fishing has already been described in Part II, paragraph 51, of the Memorial of the Federal Republic filed on 1 August 1973. Learned counsel for the United Kingdom has also explained this development in its answer given on 29 March at I, pages 500 to 504, *supra*.

I would like to add the following observations. The first multilateral arrangement which introduced national quotas in the North Atlantic related to the herring fishery in 1972 in the southern area of the North-West Atlantic. It was, however, based only on the so-called "historic" performance of the participating States, with reference to the catches in the preceding year, 1971. No coastal State preference was provided for. Even in the herring quota regulations for 1974, which accorded the coastal States a small preference only, this preference did not reach the 10 per cent. provided for in the famous

40 : 40 : 10 : 10 formula to which the Memorial of the Federal Republic has already referred in Part II, paragraph 51.

The 1973 meetings of the International Commission for the Fisheries of the North-West Atlantic had to deal with a Canadian proposition that instead of the 10 per cent. preference, the coastal State should have the right to take as much of the total allowable catch as it needs, with the remainder being divided among the other countries. However, this claim was not recognized by the International Commission for the Fisheries of the North-West Atlantic. Only in a few cases, where a stock of fish was not of great importance for the far-distant fishing States, did the coastal State receive a bigger share than under the 40 : 40 : 10 : 10 formula because it could specify that its coastal fishery was especially dependent on that stock.

Similar to Articles 3 and 4 of the Faroese arrangement, the regulations under the auspices of the North-East Atlantic Fisheries Commission contain some provisions for a coastal State preference, apart from quota regulations. This preference is expressed by exempting certain small coastal fisheries from the observance of some restrictions imposed for conservation purposes. Those exemptions are to be found in the recommendations of the North-East Atlantic Fisheries Commission, which have in the meantime been accepted by member States and are implemented by them. They are reproduced in Annex E to the Report of the Eleventh Meeting of the North-East Atlantic Fisheries Commission.

In this respect I would like to refer to the following recommendations of the North-East Atlantic Fisheries Commission. First, I refer to Recommendation (2) (A) which allows vessels based on and landing their catches in the ports of the Irish Sea to use for the catch of whiting—that is a species of fish—nets with meshes of at least 60 mm., whereas for other vessels the minimum size is 75 mm. Second, Recommendation (9), paragraph 3, excludes the fishing for herring "in coastal Faroese waters" from restrictions contained in the regulations for the Atlanto-Scandian herring.

I submit that these examples of exemptions for the coastal fisheries from regulatory restrictions are also good examples of how special interests of the coastal States could be effectively accommodated.

With respect to the agreement concluded between the United Kingdom, the Soviet Union and Norway on Arctic cod, I would, if Judge Sir Humphrey Waldock would allow me, refer to what the learned counsel for the United Kingdom has said in this respect, because the Federal Republic is not a party to this arrangement.

I would like to conclude my answer to the fourth question of Judge Sir Humphrey Waldock with the following general observations. The principles which govern the allotment of national quotas in a catch-limitation scheme are still in the stage of development. No generally applicable rules have been formed in this respect. Each arrangement must be regarded rather as a compromise to accommodate the different interests involved under the particular circumstances of each case.

Nevertheless, there are some specific interests, namely the interests of non-coastal States founded on historic performance and, at a later stage, to some extent, the coastal States' preferential requirements, that have been accorded recognition in most current catch limitation schemes.

That is the answer to the fourth question of Judge Sir Humphrey Waldock.

I turn now to the fifth and last question posed by Judge Sir Humphrey Waldock. This question reads:

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

That is the question. My answer is the following: I think I can be rather brief here: the concept of historic or traditional fishing rights which has been applied in connection with the continuation of foreign fishing rights in the 12-mile fisheries zone, either permanently or for certain phase-out periods, must be considered separate from the concept with regard to the historic or past performances of States in a catch-limitation scheme.

The concept of the continuation of foreign fishing rights in an extended zone of exclusive jurisdiction emerged in another legal context than that of the historic or past performance in catch-limitation schemes.

Although both concepts are designed to protect the fishing rights of *non*-coastal States in those areas where they have fished previously, their legal basis is different.

The continuation of fishing rights of *non*-coastal States in an area of extended exclusive jurisdiction of the coastal State is a necessary legal consequence of the principle that rights of other States cannot be distinguished except by agreement with, or the acquiescence of, those States.

That is why the United States and Canadian proposals at the 1958 and 1960 Conferences and the subsequent unilateral action by States which purported to establish a 12-mile fisheries jurisdiction, offered a more or less limited continuation of foreign fishing rights in that zone in order to obtain recognition of the extension from those States whose fisheries were primarily affected thereby. This practice has been referred to in some detail in Part IV, paragraphs 127 to 135, of the Memorial of the Federal Republic of Germany on the merits in this case.

It should be recalled here again that this practice differed as to the terms of the continuation of foreign fishing rights in an extended zone of national jurisdiction. The States concerned partly agreed on a phase-out arrangement, but there were also agreements which provided for the permanent continuation of fishing rights although there were provisions prohibiting an increase of the future fishing effort. A notable example for both alternatives is the European Fisheries Convention of 1964 which provided for a phase-out arrangement in the 3 to 6-mile zone and for permanent continuation of habitual fishing in the outer 6 to 12-mile zone. Whether a State will be prepared to agree on a phase-out arrangement or will insist on a continuation of its habitual fishing rights depends of course on the consequences of the loss of the fishing grounds in question. Phasing-out agreements in connection with the establishment of the 12-mile fisheries zone might have been regarded as sufficient in those cases where only a part of the traditional fishing grounds had been closed to foreign fishing and a diversion of the fishing effort to other fishing grounds could be accomplished without much difficulty.

If, however, an extension of the coastal State's jurisdiction to 50 or 200 miles is sought, which would practically include all important fishing grounds, phase-out agreements are obviously no acceptable solution for the protection of the interests of those States which have habitually fished in those fishing grounds.

That, Mr. President, is my answer to the last question posed by Judge Sir Humphrey Waldock. I thank you for the attention.

QUESTIONS BY JUDGES SIR HUMPHREY WALDOCK AND DILLARD

The PRESIDENT: Does Judge Waldock wish to have some further clarification or are you satisfied with the reply given?

Judge Sir Humphrey WALDOCK: Mr. President, I have one question. I should be grateful if the Agent of the Federal Republic would kindly indicate to the Court the meaning which the Federal Republic attaches to the word *preferential* in the concept of the preferential rights, or preferential position of the coastal State. Does this word connote some absolute or independent element of priority in the allocation of resources or does it involve some element of bias in favour of the coastal State when the rights or equities of the parties are otherwise more or less equal?

This question, like that of Judge Jiménez de Aréchaga, arises from the position taken by the Agent of the Federal Republic of Germany on page 343, *supra*, and his reply could I suggest, Mr. President, conveniently be given in conjunction with his reply to Judge Jiménez de Aréchaga.

Mr. JAENICKE: Mr. President, the Federal Republic of Germany will answer this question [1], together with the question of Judge Jiménez de Aréchaga, in writing, in due time.

The PRESIDENT: I think there is another question to be put to you by Judge Dillard.

Judge DILLARD: Mr. President, my question is really in the form of a limited request. My reference is to the second question which I put to counsel for the United Kingdom and which will be found at I, page 451. The request is this—To the extent, if at all, that counsel feels the question has not already been adequately covered by the counsel for the United Kingdom, would he be good enough to indicate any qualification or elaboration which he feels desirable?

That of course may be in writing [2], Mr. President.

The PRESIDENT: I think there are no other questions by Members of the Court. I think we shall request the Agent of the Federal Republic to reply to those questions put by Judge Dillard, Judge Jiménez de Aréchaga and Judge Waldock in writing before the end of this week.

Mr. JAENICKE: Yes, I think it will be possible to answer the questions.

The PRESIDENT: I wish to thank the Agent of the Federal Republic for the assistance he has given to the Court and he will realize of course that he has to remain at the disposal of the Court should it require some further clarification or information.

The Court rose at 11.35 a.m.

---

[1] See p. 480, *infra*.
[2] See p. 481, *infra*.

SEVENTH PUBLIC SITTING (25 VII 74,)

Present: [See sitting of 28 III 74, 3.30 p.m. Vice-President Ammoun and Judges de Castro and Jiménez de Aréchaga absent.]

READING OF THE JUDGMENT

The PRESIDENT: The sitting is open.

The Court meets today for the reading in open Court, pursuant to Article 58 of the Statute, of its Judgment on the merits in the *Fisheries Jurisdiction* case brought by the Federal Republic of Germany against the Republic of Iceland.

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

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

I shall now read the Judgment.

[The President reads paragraphs 15 to 77 of the Judgment [1].]

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

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

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

(Signed) Manfred LACHS,
President.

(Signed) S. AQUARONE,
Registrar.

---

[1] *I.C.J. Reports 1974*, pp. 180-205.
[2] *Ibid.*, pp. 205-206.