INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

FISHERIES JURISDICTION CASE

(FEDERAL REPUBLIC OF GERMANY *v.* ICELAND)

MERITS

JUDGMENT OF 25 JULY 1974

1974

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE LA COMPÉTENCE EN MATIÈRE DE PÊCHERIES

(RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE c. ISLANDE)

FOND

ARRÊT DU 25 JUILLET 1974

Official citation:

Fisheries Jurisdiction (Federal Republic of Germany v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 175.

Mode officiel de citation:

Compétence en matière de pêcheries (République fédérale d'Allemagne c. Islande), fond, arrêt, C.I.J. Recueil 1974, p. 175.

Sales number
N° de vente: 396

25 JULY 1974

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INTERNATIONAL COURT OF JUSTICE

YEAR 1974

1974
25 July
General List
No. 56

25 July 1974

FISHERIES JURISDICTION CASE

(FEDERAL REPUBLIC OF GERMANY *v.* ICELAND)

MERITS

Failure of Party to appear—Statute, Article 53.

History of the dispute—Jurisdiction of the Court—Effect of previous finding of jurisdiction—Interpretation of compromissory clause.

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

Claim for compensation for interference with fishing vessels—Jurisdiction of Court—Submission presented in abstract form—Need for concrete submission as to existence and amount of damage—Impossibility of all-embracing finding of liability in this case.

JUDGMENT

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

In the Fisheries Jurisdiction case,

between

the Federal Republic of Germany,

represented by

Dr. G. Jaenicke, Professor of International Law in the University of Frankfurt am Main,

as Agent and Counsel,

assisted by

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,
Dr. Kaufmann-Bühler, Ministry of Foreign Affairs,

as Counsel and Advisers,

and by

Dr. Arno Meyer, Federal Institute for Fisheries Research,

as Counsel and Expert,

and

the Republic of Iceland,

THE COURT,

composed as above,

delivers the following Judgment:

1. By a letter of 26 May 1972, received in the Registry of the Court on 5 June 1972, the State Secretary of the Foreign Office of the Federal Republic of Germany transmitted to the Registrar an Application instituting proceedings against the Republic of Iceland in respect of a dispute concerning the then proposed extension by the Government of Iceland of its fisheries jurisdiction.

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

3. By a letter dated 27 June 1972 from the Minister for Foreign Affairs of Iceland, received in the Registry on 4 July 1972, the Court was informed *(inter alia)* that the Government of Iceland was not willing to confer jurisdiction on the Court, and would not appoint an Agent.

4. On 21 July 1972, the Agent of the Federal Republic of Germany filed in the Registry of the Court a request for the indication of interim measures of protection under Article 41 of the Statute and Article 61 of the Rules of Court adopted on 6 May 1946. By an Order dated 17 August 1972, the Court indicated certain interim measures of protection in the case; and by a further

Order dated 12 July 1973, the Court confirmed that those measures should, subject as therein mentioned, remain operative until the Court has given final judgment in the case.

5. By an Order dated 18 August 1972, the Court, considering that it was necessary to resolve first of all the question of its jurisdiction in the case, decided that the first pleadings should be addressed to the question of the jurisdiction of the Court to entertain the dispute, and fixed time-limits for the filing of a Memorial by the Government of the Federal Republic of Germany and a Counter-Memorial by the Government of Iceland. The Memorial of the Government of the Federal Republic was filed within the time-limit prescribed, and was communicated to the Government of Iceland; no Counter-Memorial was filed by the Government of Iceland. On 8 January 1973, after due notice to the Parties, a public hearing was held in the course of which the Court heard the oral argument on the question of the Court's jurisdiction advanced on behalf of the Government of the Federal Republic of Germany. The Government of Iceland was not represented at the hearing.

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

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

8. By a letter from the Registrar dated 17 August 1973 the Agent of the Federal Republic of Germany was invited to submit to the Court any observations which the Government of the Federal Republic might wish to present on the question of the possible joinder of this case with the case instituted on 14 April 1972 by the United Kingdom against the Republic of Iceland (General List No. 55) and the Agent was informed that the Court had fixed 30 September 1973 as the time-limit within which any such observations should be filed. By a letter dated 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 was informed 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 the Court decided by nine votes to five not to join the present proceedings to those instituted by the United Kingdom against the Republic of Iceland. In reaching this decision the Court took into account the fact that while the basic legal issues in each case appeared to be identical, there were differences between the positions of the two Applicants, and between their respective submissions, and that joinder would be contrary to the wishes of the two Applicants. The Court decided to hold the public hearings in the two cases immediately following each other.

9. On 28 March and 2 April 1974, after due notice to the Parties, public hearings were held in the course of which the Court was addressed by the Agent and counsel and by a counsel and expert on behalf of the Federal Republic of Germany on the merits of the case; the Government of Iceland

was not represented at the hearings. Various Members of the Court addressed questions to the Agent of the Federal Republic during the course of the hearings, and replies were given either orally at the hearings or in writing. Copies of the verbatim record of the hearings and of the written replies to questions were transmitted to the Government of Iceland.

10. The Court does not include upon the bench any judge of the nationality of either of the Parties. However, the Government of Iceland did not indicate any intention to avail itself of the right conferred upon it by Article 31, paragraph 3, of the Statute of the Court; and in the present phase of the proceedings the Agent for the Federal Republic of Germany informed the Court in the above-mentioned letter dated 25 September 1973 that, taking account of the fact that the Government of Iceland was declining 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 that situation persisted, did not feel it necessary to insist on the appointment of a judge *ad hoc*.

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

12. In the course of the written proceedings, the following submissions were presented on behalf of the Government of the Federal Republic of Germany:

in the Application:

> "The Federal Republic of Germany asks the Court to adjudge and declare:
>
> *(a)* That the unilateral extension by Iceland of its zone of exclusive fisheries jurisdiction to 50 nautical miles from the present baselines, to be effective from 1 September 1972, which has been decided upon by the Parliament (Althing) and the Government of Iceland and communicated by the Minister for Foreign Affairs of Iceland to the Federal Republic of Germany by aide-mémoire handed to its Ambassador in Reykjavik on 24 February 1972, would have no basis in international law and could therefore not be opposed to the Federal Republic of Germany and to its fishing vessels.
>
> *(b)* That if Iceland, as a coastal State specially dependent on coastal fisheries, establishes a need for special fisheries conservation measures in the waters adjacent to its coast but beyond the exclusive fisheries zone provided for by the Exchange of Notes of 1961, such conservation measures, as far as they would affect fisheries of the Federal Republic of Germany, 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 of Germany and Iceland concluded either bilaterally or within a multilateral framework."

in the Memorial on the merits:

"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."

13. At the public hearing of 28 March 1974 the Agent of the Federal Republic of Germany read the final submissions of his Government in this case; these submissions were identical to those contained in the Memorial, and set out above.

14. No pleadings were filed by the Government of Iceland, which was also not represented at the oral proceedings, and no submissions were therefore presented on its behalf. The attitude of that Government was however defined in the above-mentioned letter of 27 June 1972 from the Minister for Foreign Affairs of Iceland, namely that there was on 5 June 1972 (the date on which the Application was filed) no basis under the Statute for the Court to exercise jurisdiction in the case, and that the Government of Iceland was not willing to confer jurisdiction on the Court. After the Court had decided, by its Judgment of 2 February 1973, that it had jurisdiction to deal with the merits of the dispute, the Minister for Foreign Affairs of Iceland, by letter dated 11 January 1974, informed the Court that:

"With reference to the time-limit fixed by the Court for the submission of Counter-Memorials by the Government of Iceland, I have the honour

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

*
* *

15. Iceland has not taken part in any phase of the present proceedings. By the above-mentioned letter of 27 June 1972, the Government of Iceland informed the Court that it regarded the Exchange of Notes between the Government of Iceland and the Government of the Federal Republic of Germany dated 19 July 1961 as terminated; that in its view there was no basis for the Court under its Statute to exercise jurisdiction in the case; that, as it considered the vital interests of the people of Iceland to be involved, it was not willing to confer jurisdiction on the Court in any case involving the extent of the fishery limits of Iceland; and that an agent would not be appointed to represent the Government of Iceland. Thereafter, the Government of Iceland did not appear before the Court at the public hearing held on 2 August 1972 concerning the request by the Federal Republic of Germany for the indication of interim measures of protection; nor did it file any pleadings or appear before the Court in the subsequent proceedings concerning the Court's jurisdiction to entertain the dispute. Notwithstanding the Court's Judgment of 2 February 1973, in which the Court decided that it has jurisdiction to entertain the Application of the Federal Republic of Germany and to deal with the merits of the dispute, the Government of Iceland maintained the same position with regard to the subsequent proceedings. By a letter dated 11 January 1974, it informed the Court that no Counter-Memorial would be submitted. Nor did it in fact file any pleading or appear before the Court at the public hearings on the merits of the dispute. The Agent of the Federal Republic stated in a letter dated 14 July 1972, with reference to the above-mentioned letter of 27 June 1972 from the Minister for Foreign Affairs of Iceland, that:

> "the Government of the Federal Republic of Germany for its part avails itself of the right under Article 53 of the Statute of the Court to request the Court to continue with the consideration of this case and in due course to decide in favour of its claim".

At the public hearings on the merits, the Agent of the Federal Republic drew attention to the non-appearance in Court of any representative of the Respondent; he concluded his argument by presenting the final submissions of the Federal Republic of Germany on the merits of the dispute for adjudication by the Court.

16. The Court is thus confronted with the situation contemplated by Article 53, paragraph 1, of the Statute, that "Whenever one of the parties does not appear before the Court, or fails to defend its case, the other

party may call upon the Court to decide in favour of its claim". Paragraph 2 of that Article, however, also provides: "The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law."

17. The present case turns essentially on questions of international law, and the facts requiring the Court's consideration in adjudicating upon the Applicant's claim are, except in respect of one particular issue, to be dealt with separately below (paragraphs 71 to 76), either not in dispute or attested by documentary evidence. Such evidence emanates in part from the Government of Iceland, and has not been specifically contested, and there does not appear to be any reason to doubt its accuracy. The Government of Iceland, it is true, declared in its above-mentioned letter of 11 January 1974 that "it did not accept or acquiesce in any of the *statements of fact* or allegations or contentions of law contained in the Memorials of the Parties concerned" (emphasis added). But such a general declaration of non-acceptance and non-acquiescence cannot suffice to bring into question facts which appear to be established by documentary evidence, nor can it change the position of the applicant Party, or of the Court, which remains bound to apply the provisions of Article 53 of the Statute.

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

19. Accordingly, for the purposes of Article 53 of the Statute, and subject to the matters mentioned in paragraphs 71 to 76 below, the Court considers that it has before it the elements necessary to enable it to

determine whether the Applicant's claim is, or is not, well founded in fact and law, and it is now called upon to do so. However, before proceeding further the Court considers it necessary to recapitulate briefly the history of the present dispute.

*
* *

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

> "*Article 1*
>
> The Ministry of Fisheries shall issue regulations establishing explicitly bounded conservation zones within the limits of the continental shelf of Iceland; wherein all fisheries shall be subject to Icelandic rules and control; Provided that the conservation measures now in effect shall in no way be reduced. The Ministry shall further issue the necessary regulations for the protection of the fishing grounds within the said zones . . .
>
> *Article 2*
>
> The regulations promulgated under Article 1 of the present law shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party."

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

> "It is well known that the economy of Iceland depends almost entirely on fishing in the vicinity of its coasts. For this reason, the population of Iceland has followed the progressive impoverishment of fishing grounds with anxiety. Formerly, when fishing equipment was far less efficient than it is today, the question appeared in a different light, and the right of providing for exclusive rights of fishing by Iceland itself in the vicinity of her coasts extended much further than is admitted by the practice generally adopted since 1900. It seems obvious, however, that measures to protect fisheries ought to be extended in proportion to the growing efficiency of fishing equipment.
>
> . . . . . .
>
> In so far as the jurisdiction of States over fishing grounds is concerned, two methods have been adopted. Certain States have proceeded to a determination of their territorial waters, especially for fishing purposes. Others, on the other hand, have left the question of

the territorial waters in abeyance and have contented themselves with asserting their exclusive right over fisheries, independently of territorial waters. Of these two methods, the second seems to be the more natural, having regard to the fact that certain considerations arising from the concept of 'territorial waters' have no bearing upon the question of an exclusive right to fishing, and that there are therefore serious drawbacks in considering the two questions together."

22. No action was taken by Iceland to implement the 1948 Law outside the existing 3-mile limit of her fisheries jurisdiction until after this Court had in 1951 handed down its Judgment in the *Fisheries* case between the United Kingdom and Norway, in which it endorsed the validity of the system of straight baselines applied by Norway off the Norwegian coast (*I.C.J. Reports 1951*, p. 116). On 19 March 1952, Iceland issued Regulations providing for a fishery zone whose outer limit was to be a line drawn 4 miles to seaward of straight baselines traced along the outermost points of the coasts, islands and rocks and across the opening of bays, and prohibiting all foreign fishing activities within that zone. No protest against these Regulations, which came into effect on 15 May 1952, was made by the Federal Republic of Germany.

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

24. The Federal Republic of Germany did not accept the validity of the new Regulations, and made its position known to the Government of Iceland by a note-verbale dated 9 June 1958. However, it issued a recommendation to the German Trawler Owners' Association that fishing vessels should abstain from fishing inside the 12-mile limit, in order to prevent incidents occurring on the fishing grounds, and this recom-

mendation was in fact followed by the vessels of the Federal Republic. Various attempts were made to settle the dispute by negotiation but the dispute remained unresolved. On 5 May 1959 the Althing passed a Resolution on the matter in which, *inter alia*, it said:

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

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

25. In the same year, the Federal Republic of Germany and Iceland embarked on a series of negotiations with a view to the settlement of their dispute regarding the 1958 Regulations. These negotiations were preceded by a Note from the Government of Iceland of 5 August 1959 in which, after explaining in some detail the position it had taken at the 1958 Conference on the Law of the Sea, it stated that it would greatly appreciate it "if the Government of the Federal Republic of Germany would consider the special situation and wishes of Iceland". The Icelandic Government added that "where a nation is overwhelmingly dependent upon fisheries it should be lawful to take special measures, and decide a further extension of the fishing zone for meeting the needs of such a nation". The Note referred to the Resolution adopted at the 1958 Conference on Special Situations relating to Coastal Fisheries. In its reply of 7 October 1959 the Government of the Federal Republic of Germany pointed out that it was prepared to recognize the special dependence of Iceland on its fisheries, but could not accept the view that the coastal State had a right to include an adjacent area in its fishing zone unilaterally. The Government of the Federal Republic of Germany pointed out that the 1958 Resolution would not justify unilateral Icelandic measures since it merely provided for the elaboration of agreed measures, and explicitly laid down that consideration must be given to the interests of other States. The negotiations came to a halt pending the Second United Nations Conference on the Law of the Sea in 1960, and did not re-open thereafter. On 13 March 1961, the Government of Iceland notified the Federal Republic of the conclusion of an Exchange of Notes with the United Kingdom settling the dispute with that country regarding the 12-mile fishery limits and baselines claimed by Iceland in its 1958 Regulations. Thereupon further negotiations were commenced, and on 19 July 1961 an agreement in the form of an Exchange of

Notes was concluded for the settlement of the dispute.

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

(1) The Federal Republic would no longer object to a 12-mile fishery zone around Iceland measured from the baselines accepted solely for the purpose of the delimitation of that zone.
(2) The Federal Republic accepted for that purpose the baselines set out in the 1958 Regulations subject to the modification of four specified points.
(3) For a period expiring on 10 March 1964, Iceland would not object to fishing by vessels of the Federal Republic within certain specified areas and during certain stated months of the year.
(4) During the same period, however, vessels of the Federal Republic would not fish within the outer 6 miles of the 12-mile zone in seven specified areas.
(5) Iceland would "continue to work for the implementation of the Althing Resolution of 5 May 1959, regarding the extension of the fishery jurisdiction of Iceland. However it shall give the Government of the Federal Republic of Germany six months' notice of any such extension; in case of a dispute relating to such an extension, the matter shall, at the request of either Party, be referred to the International Court of Justice".

In its Note in reply the Federal Republic of Germany emphasized that, being "mindful of the exceptional importance of coastal fisheries to the Icelandic economy", it "agrees to the arrangement set forth in your note, and that your note and this reply thereto constitute an agreement between our two Governments which shall enter into force immediately, subject to the stipulation by the Government of the Federal Republic of Germany that this agreement is without prejudice to its rights under international law towards third States".

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

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

This led the Government of the Federal Republic, during talks in Bonn in August 1971, to remind the Government of Iceland of the terms of the 1961 Exchange of Notes, and to express the view that the Icelandic

fisheries zone could not be extended unilaterally, that the Exchange of Notes was not open to unilateral denunciation or termination, and to state that the Government of the Federal Republic would have to reserve their rights thereunder. No agreement was reached during these talks, and in an aide-mémoire of 31 August 1971 Iceland stated that it considered the object and purpose of the provision for recourse to judicial settlement to have been fully achieved; and that it now found it essential to extend further the zone of exclusive fisheries jurisdiction around its coasts to include the areas of the sea covering the continental shelf. Iceland further added that the new limits, the precise boundaries of which would be furnished at a later date, would enter into force not later than 1 September 1972; and that it was prepared to hold further meetings "for the purpose of achieving a practical solution of the problems involved".

28. The Federal Republic replied on 27 September 1971 and reaffirmed its view that "the unilateral assumption of sovereign power by a coastal State over zones of the high seas is inadmissible under international law". It then controverted Iceland's proposition that the object and purpose of the provision for recourse to judicial settlement of disputes relating to an extension of fisheries jurisdiction had been fully achieved, and again reserved all its rights under that provision. At the same time, however, the Federal Republic expressed its willingness, without prejudice to its legal position, to enter into further exploratory discussions. In November 1971 the Federal Republic and Iceland held discussions in which the Federal Republic of Germany expressed its understanding for the concern of the Government of Iceland about the possibility of injury to fish stocks in the area in question if fishing remained unregulated, and therefore proposed practical measures to meet the Icelandic concern. In their proposal the delegation of the Federal Republic of Germany expressed the conviction that, taking into account the special situation of Iceland as far as fisheries are concerned, it should be possible, within the framework of the North-East Atlantic Fisheries Commission, to come to an arrangement whereby all nations engaged in fishing around Iceland would limit their catches. The Federal Republic of Germany further made the offer that pending the elaboration of a multilateral arrangement within the North-East Atlantic Fisheries Commission the total catch of demersal species by vessels of the Federal Republic of Germany would be limited to the average taken by such vessels during the years 1960 to 1969. These proposals did not lead to any result, and the negotiations which took place in February 1972 also failed to resolve the dispute.

29. On 15 February 1972 the Althing adopted a Resolution reiterating the fundamental policy of the Icelandic people that the continental shelf of Iceland and the superjacent waters were within the jurisdiction of Iceland. While reiterating that the Exchange of Notes of 1961 no

longer constituted an obligation for Iceland, it resolved, *inter alia*:

> "1. That the fishery limits will be extended to 50 miles from baselines around the country, to become effective not later than 1 September 1972.
>
> . . . . . .
>
> 3. That efforts to reach a solution of the problems connected with the extension be continued through discussions with the Government of the United Kingdom and the Federal Republic of Germany.
> 4. That effective supervision of the fish stocks in the Iceland area be continued in consultation with marine biologists and that the necessary measures be taken for the protection of the fish stocks and specified areas in order to prevent over-fishing . . ."

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

30. On 4 March 1972 the Ambassador of the Federal Republic informed the Prime Minister of Iceland of his Government's decision to bring the question before the Court. On 14 March 1972, the Federal Republic in an aide-mémoire formally took note of the decision of Iceland to issue new Regulations, and reaffirmed its position that "a unilateral extension of the fishery zone of Iceland to 50 miles is incompatible with the general rules of international law", and that "the Exchange of Notes of 1961 continues to be in force and cannot be denounced unilaterally". Moreover, formal notice was also given by the Federal Republic that it would submit the dispute to the Court in accordance with the Exchange of Notes; the Government of the Federal Republic was however willing to continue discussions with Iceland "in order to agree upon satisfactory practical arrangements at least for the period while the case is before the International Court of Justice". On 5 June 1972, the Federal Republic of Germany filed in the Registry its Application bringing the present case before the Court.

31. A series of negotiations between representatives of the two countries soon followed and continued throughout May, June and July 1972, at which various proposals for catch-limitation, fishing-effort limitation, area or seasonal restrictions for vessels of the Federal Republic were discussed, in the hope of arriving at practical arrangements for an interim régime pending the settlement of the dispute. At the meeting of 15 May, the representative of the Federal Republic of Germany explained his Government's concept of an interim arrangement on the basis of limiting the annual catches of fishing vessels from the Federal Republic of Germany to the average of the years 1960 to 1969. On 2 June 1972 the Icelandic Foreign Minister presented counter-proposals for an interim

agreement. In presenting these the Icelandic Foreign Minister, according to the Applicant, stated:

> "The British and German proposals for catch limitation and the closure of certain areas for all trawling (Icelandic and foreign) although they are helpful as far as they go, do not take the basic principle of preferential treatment sufficiently into account because if you continue to fish up to the 12-mile limit more or less as you have done, our preferential position is not recognized. It would rather mean the freezing of the status-quo . . . What we are really talking about is the reduction of your fishing in Icelandic waters in a tangible, visible manner."

Thus, while Iceland invoked preferential rights and the Applicant was prepared to recognize them, basic differences remained as to the extent and scope of those rights and as to the methods for their implementation and their enforcement. There can be little doubt that these divergences of views were some of the "problems connected with the extension" in respect of which the Althing Resolution of 15 February 1972 had instructed the Icelandic Government to make "efforts to reach a solution". By 14 July there was still no agreement on an interim régime, and on that date new Regulations were issued extending Iceland's fishery limits to 50 miles as from 1 September 1972 and, by Article 2, prohibiting all fishing activities by foreign vessels inside those limits. Consequently, on 21 July 1972, the Federal Republic filed in the Registry of the Court its request for the indication of interim measures of protection.

32. On 17 August 1972 the Court made an Order for provisional measures in which, *inter alia*, it indicated that, pending the Court's final decision in the proceedings, Iceland should refrain from taking any measures to enforce the Regulations of 14 July 1972 against vessels registered in the Federal Republic and engaging in fishing outside the 12-mile fishery zone; and that the Federal Republic should limit the annual catch of its vessels in the "Sea Area of Iceland" to 119,000 tons. That the Federal Republic has complied with the terms of the catch-limitation measure indicated in the Court's Order has not been questioned or disputed. Iceland, on the other hand, notwithstanding the measures indicated by the Court, began to enforce the new Regulations against vessels of the Federal Republic soon after they came into effect on 1 September 1972. Negotiations for an interim arrangement were, however, resumed between the two countries, and were carried on intermittently during 1972 and 1973; but they have not led to any agreement.

33. By its Judgment of 2 February 1973, the Court found that it had jurisdiction to entertain the Application and to deal with the merits of the dispute. However, even after the handing down of that Judgment, Iceland

persisted in its efforts to enforce the 50-mile limit against vessels of the Federal Republic and, as appears from the letter of 11 January 1974 addressed to the Court by the Minister for Foreign Affairs of Iceland, mentioned above, it has continued to deny the Court's competence to entertain the dispute.

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34. The question has been raised whether the Court has jurisdiction to pronounce upon certain matters referred to the Court in paragraph 3 of the Applicant's final submissions (paragraphs 12-13 above) concerning the taking of conservation measures on the basis of 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.

35. In its Judgment of 2 February 1973, pronouncing on the jurisdiction of the Court in the present case, the Court found "that it has jurisdiction to entertain the Application filed by the Government of the Federal Republic of Germany on 5 June 1972 and to deal with the merits of the dispute" (*I.C.J. Reports 1973*, p. 66, para. 46). The Application which the Court found it had jurisdiction to entertain contained a submission under letter *(b)* (cf. paragraph 12 above) which raised the issue of conservation measures. These questions, among others, had previously been discussed in the negotiations between the Parties referred to in paragraphs 27 to 31 above and were also extensively examined in the pleadings and hearings on the merits.

36. The Order of the Court indicating interim measures of protection (*Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Interim Protection Order of 17 August 1972, I.C.J. Reports 1972*, p. 30) implied that the case before the Court involved questions of fishery conservation and of preferential fishing rights since, in indicating a catch-limitation figure for the Applicant's fishing, the Court stated that this measure was based on "the exceptional importance of coastal fisheries to the Icelandic economy" and on "the need for the conservation of fish stocks in the Iceland area" (*loc. cit.*, p. 34, paras. 24 and 25).

37. In its Judgment of 2 February 1973, pronouncing on its jurisdiction in the case, the Court, after taking into account the aforesaid contentions of the Applicant concerning fishery conservation and preferential rights, referred again to "the exceptional dependence of Iceland on its fisheries and the principle of conservation of fish stocks" (*I.C.J. Reports 1973*, p. 65, para. 42). The judicial notice taken therein of the recognition given by the Parties to the exceptional dependence of Iceland on its fisheries and to the need of conservation of fish stocks in the area clearly implies that such questions are before the Court.

38. The Order of the Court of 12 July 1973 on the continuance of interim measures of protection referred again to catch-limitation figures and also to the question of "related restrictions concerning areas closed to fishing, number and type of vessels allowed and forms of control of the agreed provisions" (*I.C.J. Reports 1973*, p. 314, para. 7). Thus the Court took the view that those questions were within its competence. As the Court stated in its Order of 17 August 1972, there must be a connection "under Article 61, paragraph 1, of the Rules between a request for interim measures of protection and the original Application filed with the Court" (*I.C.J. Reports 1972*, p. 33, para. 12).

39. As to the compromissory clause in the 1961 Exchange of Notes, this gives the Court jurisdiction with respect to "a dispute relating to such an extension", i.e., "the extension of the fishery jurisdiction of Iceland". The present dispute was occasioned by Iceland's unilateral extension of its fisheries jurisdiction. However, it would be too narrow an interpretation of the compromissory clause to conclude that the Court's jurisdiction is limited to giving an affirmative or negative answer to the question of whether the extension of fisheries jurisdiction, as enacted by Iceland on 14 July 1972, is in conformity with international law. In the light of the exchanges and negotiations between the Parties, both in 1959 and 1960 (paragraph 25 above) and in 1971-1972 (paragraphs 28 to 31 above), in which the questions of fishery conservation measures in the area and Iceland's preferential fishing rights were raised and discussed, and in the light of the proceedings before the Court, it seems evident that the dispute between the Parties includes disagreements as to the extent and scope of their respective rights in the fishery resources and the adequacy of measures to conserve them. It must therefore be concluded that those disagreements are an element of the "dispute relating to the extension of the fishery jurisdiction of Iceland".

40. Furthermore, the dispute before the Court must be considered in all its aspects. Even if the Court's competence were understood to be confined to the question of the conformity of Iceland's extension with the rules of international law, it would still be necessary for the Court to determine in that context the role and function which those rules reserve to the concept of preferential rights and that of conservation of fish stocks. Thus, whatever conclusion the Court may reach in regard to preferential rights and conservation measures, it is bound to examine these questions with respect to this case. Consequently, the suggested restriction on the Court's competence not only cannot be read into the terms of the compromissory clause, but would unduly encroach upon the power of the Court to take into consideration all relevant elements in administering justice between the Parties.

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

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

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

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

43. The breadth of the territorial sea was not defined by the 1958 Convention on the Territorial Sea and the Contiguous Zone. It is true that Article 24 of this Convention limits the contiguous zone to 12 miles "from the baseline from which the breadth of the territorial sea is measured". At the 1958 Conference, the main differences on the breadth of the territorial sea were limited at the time to disagreements as to what limit, not exceeding 12 miles, was the appropriate one. The question of the breadth of the territorial sea and that of the extent of the coastal State's fishery jurisdiction were left unsettled at the 1958 Conference. These questions were referred to the Second Conference on the Law of the Sea, held in 1960. Furthermore, the question of the extent of the fisheries jurisdiction of the coastal State, which had constituted a serious obstacle to the reaching of an agreement at the 1958 Conference, became gradually separated from the notion of the territorial sea. This was a development which reflected the increasing importance of fishery resources for all States.

44. The 1960 Conference failed by one vote to adopt a text governing the two questions of the breadth of the territorial sea and the extent of fishery rights. However, after that Conference the law evolved through the practice of States on the basis of the debates and near-agreements at

the Conference. Two concepts have crystallized as customary law in recent years arising out of the general consensus revealed at that Conference. The first is the concept of the fishery zone, the area in which a State may claim exclusive fishery jurisdiction independently of its territorial sea; the extension of that fishery zone up to a 12-mile limit from the baselines appears now to be generally accepted. The second is the concept of preferential rights of fishing in adjacent waters in favour of the coastal State in a situation of special dependence on its coastal fisheries, this preference operating in regard to other States concerned in the exploitation of the same fisheries, and to be implemented in the way indicated in paragraph 49 below.

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

46. The concept of a 12-mile fishery zone, referred to in paragraph 44 above, as a *tertium genus* between the territorial sea and the high seas, has been accepted with regard to Iceland in the substantive provisions of the 1961 Exchange of Notes, and the Federal Republic of Germany has also applied the same fishery limit to its own coastal waters since 1964; therefore this matter is no longer in dispute between the Parties. At the same time, the concept of preferential rights, a notion that necessarily implies the existence of other legal rights in respect of which that preference operates, has been admitted by the Applicant to be relevant to the solution of the present dispute. Moreover, the Applicant has expressly recognized Iceland's preferential rights in the disputed waters and at the same time has invoked its own historic fishing rights in these

same waters, on the ground that reasonable regard must be had to such traditional rights by the coastal State, in accordance with the generally recognized principles embodied in Article 2 of the High Seas Convention. If, as the Court pointed out in its dictum in the *Fisheries* case, cited in paragraph 41 above, any national delimitation of sea areas, to be opposable to other States, requires evaluation in terms of the existing rules of international law, then it becomes necessary for the Court, in its examination of the Icelandic fisheries Regulations, to take those elements into consideration as well. Equally it has necessarily to take into account the provisions of the Exchange of Notes of 1961 which govern the relations between the Parties with respect to Iceland's fishery limits. The said Exchange of Notes, which was concluded within the framework of the existing provisions of the law of the sea, was held by the Court, in its Judgment of 2 February 1973, to be a treaty which is valid and in force.

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

48. An Icelandic proposal embodying these ideas failed to obtain the majority required, but a resolution was adopted at the 1958 Conference concerning the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development. This resolution, after "recognizing that such situations call for exceptional measures befitting particular needs" recommended that:

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

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

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

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

It also provided that:

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

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

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

51. There can be no doubt of the exceptional importance of coastal fisheries to the Icelandic economy. That exceptional importance was explicitly recognized by the Applicant in the Exchange of Notes of 19 July 1961, and the Court has also taken judicial notice of such recognition by declaring that it is "necessary to bear in mind the exceptional importance of coastal fisheries to the Icelandic economy" (*I.C.J. Reports 1972*, p. 34, para. 24).

52. The preferential rights of the coastal State come into play only at the moment when an intensification in the exploitation of fishery resources makes it imperative to introduce some system of catch-limitation and sharing of those resources to preserve the fish stocks in the interests of their rational and economic exploitation. This situation appears to have been reached in the present case. In regard to two demersal species—cod and haddock—the Applicant has shown itself aware of the need for a catch-limitation, which has become indispensable in view of the establishment of catch-limitations in other regions of the North Atlantic. With respect to other species fished by vessels of the Federal Republic of

Germany—redfish and saithe—it has been recognized by the Applicant that the setting up of a catch-limitation scheme for certain species also requires the establishment of overall quotas for other species, in order to prevent the fishing effort displaced from one stock being transferred to other stocks. For this reason it is for instance provided in the aforesaid Arrangement Relating to Fisheries in Waters Surrounding the Faroe Islands (Art. II) that the annual catches of demersal species other than cod and haddock shall not exceed by more than an agreed percentage the highest figure achieved in the years 1968 to 1972.

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

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

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

54. The concept of preferential rights is not compatible with the exclusion of all fishing activities of other States. A coastal State entitled to preferential rights is not free, unilaterally and according to its own uncontrolled discretion, to determine the extent of those rights. The characterization of the coastal State's rights as preferential implies a certain priority, but cannot imply the extinction of the concurrent rights of other States and particularly of a State which, like the Applicant, have for many years been engaged in fishing in the waters in question, such fishing activity being important to the economy of the country concerned. The coastal State has to take into account and pay regard to the position of such other States, particularly when they have established an economic dependence on the same fishing grounds. Accordingly, the fact that Iceland is entitled to claim preferential rights does not suffice to justify its claim unilaterally to exclude the Applicant's fishing vessels from all

fishing activity in the waters beyond the limits agreed to in the 1961 Exchange of Notes.

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55. In this case, the Applicant has pointed out that its vessels started fishing in the Icelandic area as long ago as the end of the last century. Published statistics indicate that for many years fishing of demersal species by German vessels in the disputed area has taken place on a continuous basis, and that since 1936, except for the period of the Second World War, the total catch of those vessels has been relatively stable. Similar statistics indicate that the waters in question constitute the most important of the Applicant's distant-water fishing grounds for demersal species.

56. The Applicant further states that the loss of the fishing grounds in the waters around Iceland would have an appreciable impact on the economy of the Federal Republic of Germany; the fishing fleet of the Federal Republic of Germany would not be able to make good the loss of the Icelandic fishing grounds by diverting their activities to other fishing grounds in the oceans, because the range of wet-fish trawlers is limited by technical and economic factors and the more distant grounds, which could be reached by freezer-trawlers, are already subject to quota limitations. It is pointed out that the loss of the fishing grounds around Iceland would require the immediate withdrawal from service of the major part of the wet-fish trawlers, which would probably have to be scrapped and the withdrawal of a considerable number of trawlers from service would have sizeable secondary effects, such as unemployment, in the fishing industry and in related and supporting industries, particularly in coastal towns such as Bremerhaven and Cuxhaven where the fishing industry plays a predominant part.

57. Iceland has for its part admitted the existence of the Applicant's historic and special interests in the fishing in the disputed waters. The Exchange of Notes as a whole, and particularly paragraph 5 thereof requiring Iceland to give the Federal Republic of Germany advance notice of any extension of its fishery limits, impliedly acknowledged the existence of fishery interests of the Federal Republic in the waters adjacent to the 12-mile limit. The discussions which have taken place between the two countries also imply an acknowledgement by Iceland of the existence of such interests. Furthermore, the Prime Minister of Iceland in a statement on 9 November 1971, after referring to the fact that "the well-being of specific British fishing towns may nevertheless to some extent be connected with the fisheries in Icelandic waters", went on to say "Therefore, it is obvious that we should discuss these issues with the British and the West Germans, both of whom have some interests in this connection".

58. Considerations similar to those which have prompted the recogni-

tion of the preferential rights of the coastal State in a special situation apply when coastal populations in other States are also dependent on certain fishing grounds. In both instances the economic dependence and the livelihood of whole communities are affected. Not only do the same considerations apply, but the same interest in conservation exists. In this respect the Applicant has recognized that the conservation and efficient exploitation of the fish stocks in the Iceland area is of importance not only to Iceland but also to the Federal Republic of Germany.

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

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

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61. It follows from the reasoning of the Court in this case that in order to reach an equitable solution of the present dispute it is necessary that the preferential fishing rights of Iceland, as a State specially dependent on coastal fisheries, be reconciled with the traditional fishing rights

of the Applicant. Such a reconciliation cannot be based, however, on a phasing out of the Applicant's fishing, as was the case in the 1961 Exchange of Notes in respect of the 12-mile fishery zone. In that zone, Iceland was to exercise exclusive fishery rights while not objecting to continued fishing by the Applicant's vessels during a phasing-out period. In adjacent waters outside that zone, however, a similar extinction of rights of other fishing States, particularly when such rights result from a situation of economic dependence and long-term reliance on certain fishing grounds, would not be compatible with the notion of preferential rights as it was recognized at the Geneva Conferences of 1958 and 1960, nor would it be equitable. At the 1960 Conference, the concept of preferential rights of coastal States in a special situation was recognized in the joint amendment referred to in paragraph 49 above, under such limitations and to such extent as is found "necessary by reason of the dependence of the coastal State on the stock or stocks of fish, while having regard to the interests of any other State or States in the exploitation of such stock or stocks of fish". The reference to the interests of other States in the exploitation of the same stocks clearly indicates that the preferential rights of the coastal State and the established rights of other States were considered as, in principle, continuing to co-exist.

62. This is not to say that the preferential rights of a coastal State in a special situation are a static concept, in the sense that the degree of the coastal State's preference is to be considered as fixed for ever at some given moment. On the contrary, the preferential rights are a function of the exceptional dependence of such a coastal State on the fisheries in adjacent waters and may, therefore, vary as the extent of that dependence changes. Furthermore, in the 1961 Exchange of Notes the "exceptional importance of coastal fisheries to the Icelandic economy" was recognized. This expression must be interpreted as signifying dependence for the purposes both of livelihood and economic development, as in the formulas discussed at the 1958 and 1960 Geneva Conferences concerning preferential rights, and in the Exchange of Notes of 11 March 1961 between Iceland and the United Kingdom. The latter instrument was the model for the Exchange of Notes between Iceland and the Federal Republic of Germany, and the Agent of the Federal Republic has informed the Court that the difference in wording on this point between the United Kingdom Note and the Federal Republic's Note had no "legal significance" or had not been meant to have such significance. It has been suggested by the Applicant that a situation of exceptional dependence on fisheries for purposes of economic development could only exist in respect of States which are still in a stage of development and have only a minor share in the fisheries off their coasts. Such States undoubtedly afford clear examples of special dependence; however, in the present case the recognition of the exceptional importance of coastal fisheries to the Icelandic economy was made at a time when Iceland was already a State with a comparatively developed economy and possessed a substantial share in the exploitation

of the fisheries off its coasts. It is therefore not possible to accept the limited interpretation of the expression employed in the 1961 Exchange of Notes suggested by the Applicant. With regard both to livelihood and to economic development, it is essentially a matter of appraising the dependence of the coastal State on the fisheries in question in relation to that of the other State concerned and of reconciling them in as equitable a manner as is possible.

63. In view of the Court's finding (paragraph 59 above) that the Icelandic Regulations of 14 July 1972 are not opposable to the Federal Republic of Germany for the reasons which have been stated, it follows that the Government of Iceland is not in law entitled unilaterally to exclude fishing vessels of the Federal Republic from sea areas to seaward of the limits agreed to in the 1961 Exchange of Notes or unilaterally to impose restrictions on their activities in such areas. But the matter does not end there; as the Court has indicated, Iceland is, in view of its special situation, entitled to preferential rights in respect of the fish stocks of the waters adjacent to its coasts. Due recognition must be given to the rights of both Parties, namely the rights of the Federal Republic to fish in the waters in dispute, and the preferential rights of Iceland. Neither right is an absolute one: the preferential rights of a coastal State are limited according to the extent of its special dependence on the fisheries and by its obligation to take account of the rights of other States and the needs of conservation; the established rights of other fishing States are in turn limited by reason of the coastal State's special dependence on the fisheries and its own obligation to take account of the rights of other States, including the coastal State, and of the needs of conservation.

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

1959 as well as such other agreements as may be reached in the matter in the course of further negotiation.

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65. The most appropriate method for the solution of the dispute is clearly that of negotiation. Its objective should be the delimitation of the rights and interests of the Parties, the preferential rights of the coastal State on the one hand and the rights of the Applicant on the other, to balance and regulate equitably questions such as those of catch-limitation, share allocations and "related restrictions concerning areas closed to fishing, number and type of vessels allowed and forms of control of the agreed provisions" (*Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Interim Measures, Order of 12 July 1973, I.C.J. Reports 1973*, p. 314, para. 7). This necessitates detailed scientific knowledge of the fishing grounds. It is obvious that the relevant information and expertise would be mainly in the possession of the Parties. The Court would, for this reason, meet with difficulties if it were itself to attempt to lay down a precise scheme for an equitable adjustment of the rights involved.

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

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

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

68. In this case negotiations were initiated by the Parties from the date when Iceland gave notice of its intention to extend its fisheries jurisdiction, but these negotiations reached an early deadlock and could not come to any conclusion. In its Memorial, the Applicant has asked the Court to give the Parties some guidance as to the principles which they

should take into account in their negotiations for the most equitable management of the fishery resources, and has declared its readiness to enter into meaningful discussions with the Government of Iceland for the purpose of a permanent settlement of the fisheries problem. As to Iceland, its policy was clearly stated in paragraph 3 of the Althing Resolution of 15 February 1972, namely to continue efforts to reach a solution of the problems connected with the extension through discussions with the Applicant.

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

> ". . . it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles" (*I.C.J. Reports 1969*, p. 47, para. 85).

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* *

70. The Court must take into account the situation which will result from the delivery of its Judgment, with respect to the interim measures indicated on 17 August 1972 and which, *inter alia*, fixed a catch-limitation figure of 119,000 tons for vessels registered in the Federal Republic of Germany. These interim measures will cease to have effect as from the date of the present Judgment, since the power of the Court to indicate interim measures under Article 41 of the Statute of the Court is only exercisable *pendente lite*. Notwithstanding the fact that the Parties have not entered into any provisional arrangement, they are not at liberty to conduct their fishing activities in the disputed waters without limitation. Negotiations in good faith, which are ordered by the Court in the present Judgment, involve in the circumstances of the case an obligation upon the Parties to pay reasonable regard to each other's rights and to conservation requirements pending the conclusion of the negotiations. While this statement is of course a re-affirmation of a self-evident principle, it refers to the rights of the Parties as indicated in the present Judgment. It is obvious that both in regard to merits and to jurisdiction,

the Court only pronounces on the case which is before it and not on any hypothetical situation which might arise in the future. At the same time, the Court must add that its Judgment cannot preclude the Parties from benefiting from any subsequent developments in the pertinent rules of international law.

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* *

71. By the fourth submission in its Memorial, maintained in the oral proceedings, the Federal Republic of Germany raised the question of compensation for alleged acts of harassment of its fishing vessels by Icelandic coastal patrol boats; the submission reads as follows:

> "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."

72. The Court cannot accept the view that it would lack jurisdiction to deal with this submission. The matter raised therein is part of the controversy between the Parties, and constitutes a dispute relating to Iceland's extension of its fisheries jurisdiction. The submission is one based on facts subsequent to the filing of the Application, but arising directly out of the question which is the subject-matter of that Application. As such it falls within the scope of the Court's jurisdiction defined in the compromissory clause of the Exchange of Notes of 19 July 1961.

73. In its Memorial, and in the oral proceedings, when presenting its submission on compensation, the Federal Republic of Germany stated that:

> ". . . [it] 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 . . . [it] 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. [It 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 . . . and under an obligation to pay full compensation for all the damage which the Federal Republic of Germany and its nationals have actually suffered thereby."

74. The manner of presentation of this claim raises the question whether the Court is in a position to pronounce on a submission main-

tained in such an abstract form. The submission does not ask for an assessment of compensation for certain specified acts but for a declaration of principle that Iceland is under an obligation to make compensation to the Federal Republic in respect of all unlawful acts of interference with fishing vessels of the Federal Republic. The Applicant is thus asking for a declaration adjudicating, with definitive effect, that Iceland is under an obligation to pay full compensation for all the damage suffered by the Applicant as a consequence of the acts of interference specified in the proceedings. In its Memorial the Federal Republic has listed a large number of incidents involving its vessels and Icelandic coastal patrol boats, and continues:

> "The Government of the Federal Republic does . . . 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 *described in the preceding paragraphs*, and under an obligation to pay full compensation for *all the damage* which the Federal Republic of Germany and its nationals have actually suffered *thereby*." (Emphasis added.)

The final submission, which refers to "the acts of interference" and the "obligation to make compensation therefor", confirms the above interpretation.

75. Part V of the Memorial on the merits contains a general account of what the Federal Republic describes as harassment of its fishing vessels by Iceland, while Annexes G, H, I and K give some further details in diplomatic Notes and Annex L lists the incidents, with a statement of the kind of each incident. Some information concerning incidents is also to be found in the Federal Republic's reports regarding the implementing of the Court's Order for provisional measures.

76. The documents before the Court do not however contain in every case an indication in a concrete form of the damages for which compensation is required or an estimation of the amount of those damages. Nor do they furnish evidence concerning such amounts. In order to award compensation the Court can only act with reference to a concrete submission as to the existence and the amount of each head of damage. Such an award must be based on precise grounds and detailed evidence concerning those acts which have been committed, taking into account all relevant facts of each incident and their consequences in the circumstances of the case. It is only after receiving evidence on these matters that the Court can satisfy itself that each concrete claim is well founded in fact and in law. It is possible to request a general declaration establishing the principle that compensation is due, provided the claimant asks the Court to receive evidence and to determine, in a subsequent phase of the same proceedings, the amount of damage to be assessed. Moreover, while the Applicant has reserved all its rights "to claim compensation", it has not

requested that these damages be proved and assessed in a subsequent phase of the present proceedings. It would not be appropriate for the Court, when acting under Article 53 of the Statute, and after the Applicant has stated that it is not submitting a claim for the payment of a certain amount of money as compensation, to take the initiative of requesting specific information and evidence concerning the indemnity which, in the view of the Applicant, would correspond to each incident and each head of damage. In these circumstances, the Court is prevented from making an all-embracing finding of liability which would cover matters as to which it has only limited information and slender evidence. Accordingly, the fourth submission of the Federal Republic of Germany as presented to the Court cannot be acceded to.

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77. For these reasons,

THE COURT,

by ten votes to four,

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

(2) finds that, in consequence, the Government of Iceland is not entitled unilaterally to exclude fishing vessels of the Federal Republic of Germany from areas between the fishery limits agreed to in the Exchange of Notes of 19 July 1961 and the limits specified in the Icelandic Regulations of 14 July 1972, or unilaterally to impose restrictions on the activities of those vessels in such areas;

by ten votes to four,

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

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

(a) that in the distribution of the fishing resources in the areas specified in subparagraph 2 Iceland is entitled to a preferential share to the extent of the special dependence of her people upon

the fisheries in the seas around her coasts for their livelihood and economic development;

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

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

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

(e) their obligation to keep under review those resources and to examine together, in the light of scientific and other available information, such measures as may be required for the conservation and development, and equitable exploitation of those resources, making use of the machinery established by the North-East Atlantic Fisheries Convention or such other means as may be agreed upon as a result of international negotiations,

by ten votes to four,

(5) finds that it is unable to accede to the fourth submission of the Federal Republic of Germany.

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

(Signed) Manfred LACHS,
President.

(Signed) S. AQUARONE,
Registrar.

President LACHS makes the following declaration:

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

Judge DILLARD makes the following declaration:

I concur in the findings of the Court indicated in the first four subparagraphs of the *dispositif*. My reasons for concurrence are set out in my separate opinion in the companion case of the *United Kingdom of Great Britain and Northern Ireland* v. *Iceland*. I consider these reasons applicable *mutatis mutandis* to the present case.

While I concurred in the finding in the fifth subparagraph that the Court "is unable to accede to the fourth submission of the Federal Republic of Germany", I am impelled to add the following reservation [1].

The Court has held, in paragraph 72, that it is competent to entertain this particular submission. Although, for obvious reasons, the submission was not included in the Application filed on 5 June 1972 since the acts of harassment and interference occurred thereafter, it was included in the Memorial on the merits and in the final submissions. The delay therefore should not be a bar. The Court's construction of the nature and scope of the Exchange of Notes of 1961, revealed in its analysis of the other submissions, is clearly consistent with its finding that the compromissory clause is broad enough to cover this submission as well. In my view the conclusion that the Court is competent to entertain it, is thus amply justified.

The Court, however, has interpreted this submission as one asking the Court to adjudicate with definitive effect that Iceland is under an obligation *to pay full compensation* for *all* the damages suffered by the Applicant as a consequence of the acts of interference specified in the proceedings (para. 74). In keeping with this interpretation it considers the submission to fall outside its province under Article 53 of its Statute since it considers there is insufficient evidence to satisfy itself that *each concrete claim* is well founded in fact and law (para. 76). If the Court's interpretation of the submission were the only permissible one, I would concur without reservation in its conclusion.

But, in my view, it is not the only permissible one and it may not be the most desirable one. The Applicant both in its Memorial on the merits and in the oral proceedings has stressed the point that it is not at present submitting any claim for the payment of a certain amount of money. The submission itself only requests that the Court should declare that the acts of harassment and interference were unlawful and in consequence Iceland, as a matter of principle, is under a duty to make compensation. True the submission is couched in a form that is abstract but the question is whether this should deter the Court from passing upon it. I am not altogether persuaded that it is.

That Iceland's acts of harassment and interference (indicated in considerable detail in the proceedings) were unlawful hardly admits of doubt.

[1] All of the Applicant's submissions are set out in para. 12 of the Judgment and the fourth submission is also set out in para. 71.

They were committed *pendente lite* despite the obligations assumed by Iceland in the Exchange of Notes of 1961 which the Court had declared to be a treaty in force. That their unlawful character engaged the international responsibility of Iceland is also clear. In the *Phosphates in Morocco* case (*P.C.I.J., Series A/B, No. 74*, p. 28) the Court linked the creation of international responsibility with the existence of an "act being attributable to the State and described as contrary to the treaty right of another State". It is hardly necessary to marshal authority for so elementary a proposition. It follows that, in effect, the Court was merely asked to indicate the unlawful character of the acts and to take note of the consequential liability of Iceland to make reparation. It was not asked to assess damages.

The Court recognized this point in paragraph 74 of the Judgment but instead of stressing the limited nature of the submission it preferred to attribute to it a more extensive character. As indicated above, its interpretation led naturally to the conclusion that it could not accede to the submission in the absence of detailed evidence bearing on each concrete claim. While conceding the force of the Court's reasoning, I would have preferred the more restrictive interpretation.

I wish to add that on this matter I associate myself with the views expressed by Judge Sir Humphrey Waldock in his separate opinion.

Judge IGNACIO-PINTO makes the following declaration:

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

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

It should be observed that the Applicant has nowhere sought a decision from the Court on a dispute between itself and Iceland on the subject of the preferential rights of the coastal State, the conservation of fish species, or historic rights—this is apparent throughout the elaborate reasoning of the Judgment. It is obvious that considerations relating to these various needs, dealt with at length in the Judgment, are not subject to any dispute between the Parties. There is no doubt that, after setting

out the facts and the grounds relied on in support of its case, the Applicant has asked the Court only for a decision on the dispute between itself and Iceland, and to adjudge and declare:

> "That the unilateral extension by Iceland of its zone of exclusive fisheries jurisdiction to 50 nautical miles from the present baselines, . . . has, as against the Federal Republic of Germany, no basis in international law . . ." (Judgment, para. 12 (1)).

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

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

In my view, the whole problem turns on this, since this claim is based upon facts which, at least under present-day law and in the practice of the majority of States, are flagrant violations of existing international conventions. It should be noted that Iceland does not deny them. Now the facts complained of are evident, they undoubtedly relate to the treaty which binds the States which are Parties, for the Exchange of Notes of 19 July 1961 amounts to such an instrument. For the Court to consider after having dealt with the Applicant's fundamental claim in relation to international law, that account should be taken of Iceland's exceptional situation and the vital interests of its population, with a view to drawing inspiration from equity and to devising a solution for the dispute, would have been the normal course to be followed, the more so since the Applicant supports it in its final submissions. But it cannot be admitted that because of its special situation Iceland can *ipso facto* be exempted from the obligation to respect the international commitments into which it has entered. By not giving an unequivocal answer on that principal claim, the Court has failed to perform the act of justice requested of it.

For what is one to say of the actions and behaviour of Iceland which have resulted in its being called upon to appear before the Court? Its refusal to respect the commitment it accepted in the Exchange of Notes of 19 July 1961, to refer to the International Court of Justice any dispute which might arise on an extension of its exclusive fisheries zone, which

was in fact foreseen by the Parties, beyond 12 nautical miles, is not this unjustified refusal a breach of international law?

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

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

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

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

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

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

need for the Court to confine itself to its obligation to state the law as it is at present in relation to the facts of the case brought before it.

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

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

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

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

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

Judge NAGENDRA SINGH makes the following declaration:

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

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

I

While basing its findings on the bilateral law, namely the Exchange of Notes of 1961 which has primacy in this case, the Court has pronounced upon the first and second submissions of the Applicant's Memorial on the merits, in terms of non-opposability to the Federal Republic of Germany as requested by the Applicant. This suffices for the purpose of that part of the Judgment. It was, therefore, not necessary for the Court to adjudicate on that aspect of the first submission which relates to the general law.

In the special circumstances of this case the Court has, therefore, not proceeded to pronounce upon that particular request of the Applicant which asks the Court to declare that Iceland's extension of its exclusive fishery limit to 50 nautical miles has no basis in international law which amounts to asking the Court to find that such extension is *ipso jure* illegal and invalid *erga omnes.* Having refrained from pronouncing on that aspect it was, consequently, unnecessary for the Court to pronounce on the Applicant's legal contention in support of its first submission, namely, that a customary rule of international law exists today imposing a general prohibition on extension by States of their fisheries jurisdiction beyond 12 miles.

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

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

II

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

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

III

The Court, as the principal judicial organ of the United Nations, taking into consideration the special field in which it operates, has a distinct role to play in the administration of justice. In that context the resolving of a dispute brought before it by sovereign States constitutes an element which the Court ought not to ignore in its adjudicatory function. This aspect relating to the settlement of a dispute has been emphasized in more than one article of the Charter of the United Nations. There is Article 2, paragraph 3, as well as Article 1, which both use words like "*adjustment* or *settlement* of international disputes or situations", whereas Article 33 directs Members to "*seek a solution*" of their disputes by peaceful means.

Furthermore, this approach is very much in accordance with the jurisprudence of the Court. On 19 August 1929 the Permanent Court of

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

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

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

in the larger interest and ceasing to be narrow and restrictive in its approach.

Thus, when confronted with the problem of its own competence in dealing with that aspect of the dispute which relates to the need for conservation and the exercise of preferential rights with due respect for historic rights, the Court has rightly regarded those aspects to be an integral part of the dispute. Surely, the dispute before the Court has to be considered in all its aspects if it is to be properly resolved and effectively adjudicated upon. This must be so if it is not part justice but the whole justice which a tribunal ought always to have in view. It could, therefore, be said that it was in the overall interests of settlement of the dispute that certain parts of it which were inseparably linked to the core of the conflict were not separated in this case to be left unpronounced upon. The Court has, of course, to be mindful of the limitations that result from the principle of consent as the basis of international obligations, which also governs its own competence to entertain a dispute. However, this could hardly be taken to mean that a tribunal constituted as a regular court of law when entrusted with the determination of a dispute by the willing consent of the parties should in any way fall short of fully and effectively discharging its obligations. It would be somewhat disquieting if the Court were itself to adopt either too narrow an approach or too restricted an interpretation of those very words which confer jurisdiction on the Court such as in the case "the extension of the fishery jurisdiction of Iceland" occurring in the compromissory clause of the Exchange of Notes of 1961. Those words could not be held to confine the competence conferred on the Court to the sole question of the conformity or otherwise of Iceland's extension of its fishery limits with existing legal rules. Similarly, the Court could not hold that it was without competence to deal with the fourth submission of the Applicant pertaining to a claim for compensation against Iceland since that submission arises out of and relates to the dispute. The Court, therefore, need not lose sight of the consideration relating to the settlement of the dispute while remaining strictly within the framework of the law which it administers and adhering always to the procedures which it must follow.

IV

For purposes of administering the law of the sea and for proper understanding of matters pertaining to fisheries as well as to appreciate the facts of this case, it is of some importance to know the precise content of the expression "fisheries jurisdiction" and for what it stands and means. The concept of fisheries jurisdiction does cover aspects such as enforcement of conservation measures, exercise of preferential rights and

respect for historic rights since each one may involve an element of jurisdiction to implement them. Even the reference to "extension" in relation to fisheries jurisdiction which occurs in the compromissory clause of the 1961 treaty could not be confined to mean merely the extension of a geographical boundary line or limit since such an extension would be meaningless without a jurisdictional aspect which constitutes, as it were, its juridical content. It is significant, therefore, that the preamble of the Truman Proclamation of 1945 respecting United States coastal fisheries refers to a "jurisdictional" basis for implementing conservation measures in the adjacent sea since such measures have to be enforced like any other regulations in relation to a particular area. This further supports the Court's conclusion that it had jurisdiction to deal with aspects relating to conservation and preferential rights since the 1961 treaty by the use of the words "extension of fisheries jurisdiction" must be deemed to have covered those aspects.

V

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

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

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

(Initialled) M.L.

(Initialled) S.A.