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