MEMORIAL ON THE MERITS SUBMITTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

INTRODUCTION

1. This Memorial on the merits of the dispute is submitted to the Court in pursuance of the Order made by the Court on 15 February 1973, in the Fisheries Jurisdiction case *(Federal Republic of Germany* v. *Iceland)*.

2. The subject-matter of the dispute as defined in the Application of 5 June 1972 instituting proceedings on behalf of the Federal Republic of Germany against the Republic of Iceland, is the legality or otherwise of the extension by Iceland of its exclusive fisheries jurisdiction to 50 nautical miles from the present baselines. This extension had been put into effect on 1 September 1972 by the Icelandic Regulations No. 189/1972 issued by the Icelandic Minister for Fisheries on 14 July 1972.

The Regulations No. 189/1972 together with an English translation notified by the Government of Iceland have been reproduced in Annex A to this Memorial.

In the Application of 5 June 1972 the Government of the Federal Republic of Germany has asked 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 Judgment delivered by the Court on 2 February 1973 the Court found that it has jurisdiction to entertain the Application filed by the Government of the Federal Republic of Germany on 5 June 1972 and to deal with the merits of the dispute.

3. By Order made on 15 February 1973 the Court fixed 1 August 1973 as the time-limit for the filing of the Memorial of the Government of the Federal Republic of Germany on the merits. Accordingly and in compliance with Article 42 of the Rules of Court this Memorial places before the Court a statement of the facts relevant to the merits of the dispute, a statement of the law to be considered in relation thereto, and the submissions of the Government of the Federal Republic of Germany arising out of those facts and those principles of law. This Memorial is divided into the following parts:

Part I contains the history of the dispute up to the date of the Application and also an account of subsequent events which is intended to bring the story as near as possible up to the date on which this Memorial will be filed.

Part II deals with the aspect of conservation and presents the facts concerning the need for conservation of the fishery resources in the area in dispute and records and evaluates the measures taken in this respect.

Part III deals with the utilization made by both parties of the fishery resources in the area in dispute and their dependence thereon.

Part IV contains a statement of the history and development of the rules of law relevant to the dispute and a statement of what in the view of the Government of the Federal Republic of Germany represents the law governing the dispute.

Part V deals with the responsibility of the Republic of Iceland for the damage which has already been inflicted by Icelandic coastal patrol boats on the ships of the Federal Republic, their personnel and their equipment or which may in future be inflicted on them.

Part VI sets out the formal submissions to the Court.

PART I

HISTORY OF THE DISPUTE

4. In order to put the interests which are at stake in this dispute, into the right perspective, it may be helpful to start with the history of German and Icelandic fishing in the waters around Iceland.

A. Traditional German Fishing in the Waters Around Iceland

5. The rich fishing grounds in the area of the high sea around Iceland the richness of which is due to the Gulf Stream, the shallowness of the waters above Iceland's continental shelf and other not yet fully known hydrological and biological factors, has attracted fishermen since the Middle Ages. Mainly British and Dutch fishermen, but also Norwegian, Danish and German fishermen sailed for fishing in these waters. Permanent support and trading stations were founded by the nationals of these nations in Iceland; the Hanseatic towns Bremen, Hamburg, and Lübeck also entertained such permanent stations in Iceland at that time. Fishing by Icelanders was undertaken only on a very small scale and was mainly confined to fishing by small boats for home consumption. Icelandic fisheries remained insignificant in the following time, especially since the Danish Crown to which Iceland belonged, established a monopoly for the trade with foreign nations in 1612 and closed the foreign trading stations. It was not before 1787 when the foreign trade monopoly was abolished, that fishing by Icelanders was undertaken on a larger scale, but never reached the proportions of other nations' fishing efforts in these waters.

6. Fishing vessels of the North Sea States have been continuously fishing in the waters of the high sea around Iceland during the following centuries: Icelanders were content with small-boat fishing in the vicinity of the coast. This situation prevailed until the end of the 19th century although steamboat and trawling had already changed the fishing techniques and allowed more efficient and long-distance fishing. It was not before 1900 that the first Icelandic trawler went into service; the number of Icelandic trawlers remained small until the First World War (1911: 10; 1914: 20 trawlers). German trawlers started fishing in the Icelandic Area already at the end of the last century. Since then, parallel to the general development of modern fisheries, catches by German trawlers in the Iceland Area gradually increased and transgressed already the 100,000 tons level in 1936. Since that time catches by German trawlers in the Icelandic Area remained relatively stable at a level between 100,000 and 120,000 tons, with the exception of the years 1952, 1953 and 1954, when catches from the Iceland Area went up to 200,000 tons in the average. Table No. 1 (see p. 144) lists the catches by German trawlers from 1893-1971. The figures of this table show that German fishing vessels have been constantly fishing in the waters around Iceland since the beginning of the 20th century. During the war years 1915-1918 and 1940-1945 German trawlers could not fish in these waters; the low catches between 1946 and 1949 are due to the fact that it took some time for the German fishing industry to recover from the heavy losses during the war. The relative stability of the total

TABLE NO. 1. CATCHES BY GERMAN TRAWLERS OF ALL SPECIES (FOR HUMAN CONSUMPTION) IN THE FISHING GROUNDS AROUND ICELAND
(in metric tons) [1]

1893 = 41	1920 = 43087	1947 = 34642
1894 = —	1921 = 35338	1948 = 39163
1895 = 151	1922 = 44779	1949 = 80144
1896 = 359	1923 = 30578	1950 = 126872
1897 = 838	1924 = 53776	1951 = 151826
1898 = 1041	1925 = 56896	1952 = 181573
1899 = 2171	1926 = 66825	1953 = 216675
1900 = 3493	1927 = 73593	1954 = 192572
1901 = 4760	1928 = 68979	1955 = 150825
1902 = 5049	1929 = 74600	1956 = 124075
1903 = 7811	1930 = 82709	1957 = 107816
1904 = 7898	1931 = 88901	1958 = 129263
1905 = 13200	1932 = 90412	1959 = 114889
1906 = 20318	1933 = 82155	1960 = 118655
1907 = 20073	1934 = 67656	1961 = 90228
1908 = 20443	1935 = 87103	1962 = 107688
1909 = 26763	1936 = 107343	1963 = 107818
1910 = 29016	1937 = 101082	1964 = 109832
1911 = 30803	1938 = 136099	1965 = 118724
1912 = 30601	1939 = 113590	1966 = 130139
1913 = 31487	1940 = —	1967 = 116016
1914 = 23505	1941 = —	1968 = 119890
1915 = —	1942 = —	1969 = 117485
1916 = —	1943 = —	1970 = 108266
1917 = —	1944 = —	1971 = 123596
1918 = —	1945 = —	
1919 = 3888	1946 = 29564	

quantity caught per annum by German fishing vessels in the Icelandic Area is evidence of the fact that the quantity of fresh fish taken from these fishing grounds is needed to supplement the fresh fish landings from other fishing-grounds which can be reached by fresh-fish trawlers or smaller boats (primarily from the North Sea), in order to satisfy the demand for fresh fish in the German market. On the average about nearly two-thirds of the demand in fresh fish and about one-third of the total demand in fish for human consumption (fresh and frozen fish) is met by landings from the Iceland Area.

7. The following nations participate in the fishing in the "Icelandic Area", i.e., the statistical area Va as defined by the International Council for the Exploration of the Sea (ICES): in the first place Iceland which had gradually

[1] From 1893 to 1967 the catch figures represent the "landed weight of iced fish" because the fish was generally transported in ice; all other landings such as salted fish or frozen fish were converted to "landed weight of iced fish". Since 1968 the figures represent the "round fresh weight" which is the weight of the whole fish at the very moment when it is caught. The "round fresh weight" is of course higher than the "*landed weight of iced fish*" for mostly the iced fish is gutted and has lost on the average 5 per cent. of its weight due to pressure in ice during the transport.

increased its share in the total catch of all species (shellfish not included) by all countries in the "Iceland Area" (1960: 55%; 1971: 61%), and in the second place, listed in the order of the percentage of their respective shares: United Kingdom (1971: 21%), Federal Republic of Germany (1971: 13%), Faröe Islands (1971: 1.5%), Belgium (1971: 1.4%), the Soviet Union (1971: 0.7%), France (1971: 0.7%), Norway (1971: 0.3%) and Poland (1971: 0.1%).

Source: ICES *Bulletin statistique des pêches maritimes.*

Thus the lions-share of the total catch from the Icelandic Area is taken by Iceland itself, nearly all the remaining part is taken by the United Kingdom and the Federal Republic of Germany while the catch by vessels of other nations is relatively small (ca. 4%).

8. The bulk of the fish caught in the Iceland Area consists of demersal species (cod, haddock, redfish, saithe, etc.). The fishing vessels of the United Kingdom and the Federal Republic of Germany take only demersal fish from the Iceland Area; the vessels of the United Kingdom take mainly cod, while the vessels of the Federal Republic of Germany take mainly redfish and saithe, but also cod and haddock in smaller quantities. Table No. 2 (p. 146) shows the respective shares of the three nations in the catch of the principal demersal species from 1960 to 1971. Pelagic fish (herring, capelin) is caught only by Icelandic fishing vessels, generally in the coastal area, and mainly used for the production of fishmeal which is exported. The catch of the demersal species in the Iceland Area has remained relatively stable throughout the years; the catch of herring by Icelandic fishing vessels which had reached its peak in 1965 with 590,000 tons, dropped down to 12,000 tons in 1971. The factors which have brought about the breakdown of the herring-fishery are not yet fully known; but if it was caused by overfishing, Iceland will certainly have to blame itself for the result and cannot, under this pretext, justify the exclusion of foreign fishing vessels from the waters around Iceland. Iceland partly compensated the losses in the herring-fishery by intensifying the catch of capelin (which may likewise be used for production of fishmeal as was formerly the herring) up to 192,000 tons in 1970 (1971: 182,900 tons; 1972: 277,700 tons). As neither the United Kingdom nor the Federal Republic take herring and capelin from the "Iceland Area", it is only with respect to the demersal species that an equitable distribution of the fishery resources between the nations which habitually have fished for these species in the waters around Iceland will have to be made should catch limitations become necessary in the future for conservation reasons. The figures of the German, United Kingdom, Icelandic and total catches of demersal and pelagic species in the Iceland Area in the years from 1960 till 1971 are listed in table No. 3 (see p. 147). This table demonstrates that the absolute figures as well as the relative shares of Iceland, the United Kingdom, and the Federal Republic of Germany in the catches of demersal fish remained generally stable throughout the years until 1967. Since then, Iceland has been able to increase its catch of demersal species from 310,000 metric tons in 1967 to 417,000 in 1971 (1968: 362,000; 1969: 444,000 and 1970: 471,000 metric tons). The increase of Iceland's catch was mainly due to an intensification of the fishing of cod by Icelandic trawlers. In order to illustrate the development of the catches by Iceland, the United Kingdom, and the Federal Republic of Germany in the ICES "Iceland Area" in the years from 1960 to 1971, a diagram has been prepared (see Diagram No. 1 at p. 148) which shows the development of the figures of total catches in the "Iceland Area" as well as of the catches by the fishing vessels of each of the three nations specified according to the species caught.

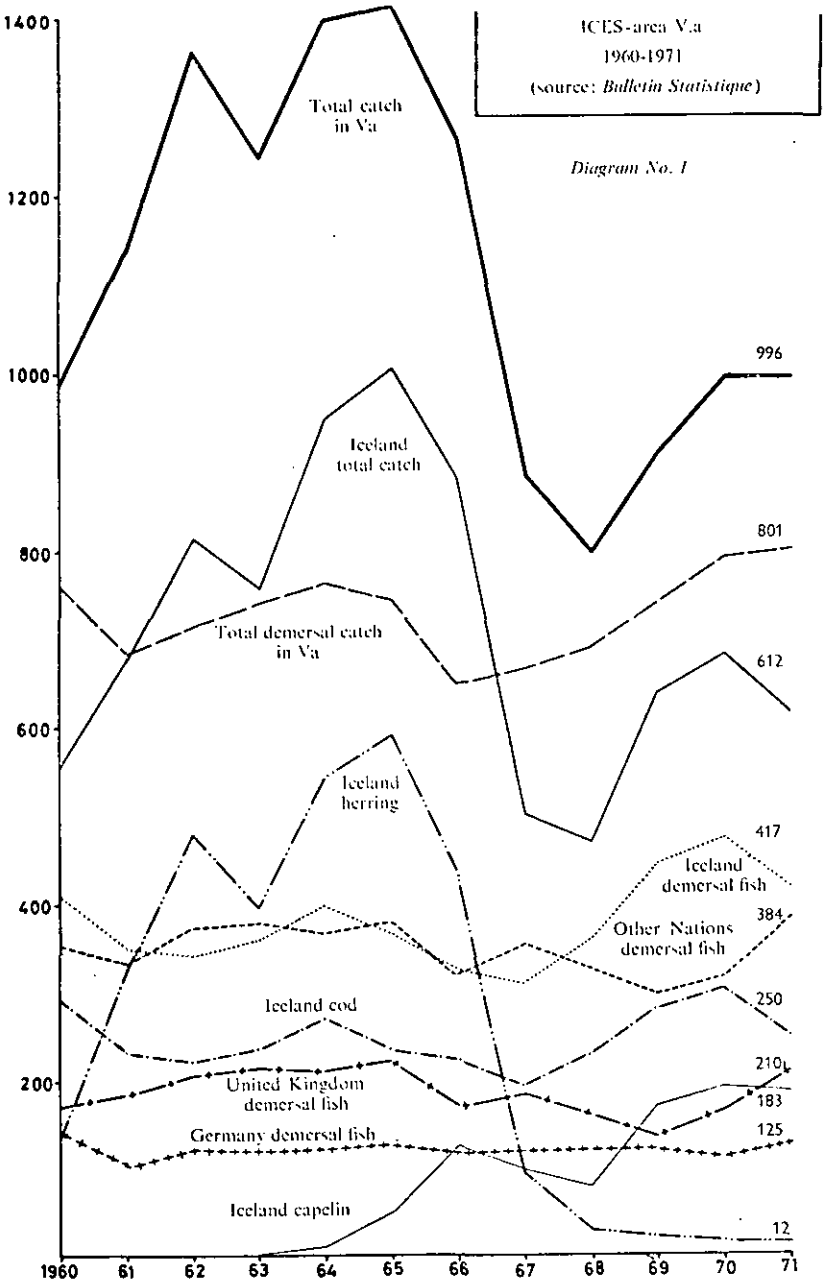
TABLE NO. 2. ICELANDIC, UNITED KINGDOM, FEDERAL REPUBLIC AND TOTAL CATCHES OF PRINCIPAL DEMERSAL SPECIES IN THE ICELAND AREA, 1960-1969 *(Average)*

(1,000 metric tons)		Cod	Haddock	Flatfish	Redfish	Saithe	Halibut	Others	Total catch of all demersal species
Total catch by all countries	(1,000 t)	395.1	83.4	10.08	91.0	64.0	4.0	65.0	714.0
Iceland	(1,000 t)	241.8	45.3	5.8	19.7	24.3	1.2	27.7	365.8
	%	61.3	54.3	53.6	21.6	38.0	30.2	42.1	51.2
United Kingdom	(1,000 t)	115.7	32.1	4.9	7.3	12.4	1.0	12.2	185.5
	%	29.4	38.5	45.3	8.0	19.4	25.1	18.5	26.0
Federal Republic of Germany	(1,000 t)	23.4	2.1	...	59.3	21.8	0.9	12.4	120.6
	%	5.9	3.3	...	65.1	34.1	21.6	18.9	16.9
					1970-1971 *(Average)*				
Total catch by all countries	(1,000 t)	461.9	45.3	12.3	80.1	123.6	3.2	83.6	809.9
Iceland	(1,000 t)	276.6	32.1	8.2	26.5	62.0	1.2	37.6	444.1
	%	59.9	70.9	66.7	33.1	50.2	37.5	45.0	54.8
United Kingdom	(1,000 t)	146.2	8.8	2.9	1.8	18.3	0.7	8.6	187.3
	%	31.6	19.4	23.6	2.2	14.8	21.9	10.3	23.1
Federal Republic of Germany	(1,000 t)	26.7	1.8	0.2	47.7	34.2	0.4	7.7	118.7
	%	5.8	4.0	0.2	59.6	27.7	12.5	9.2	14.7

TABLE NO. 3. CATCHES OF DEMERSAL AND PELAGIC SPECIES BY ICELAND, THE UNITED KINGDOM AND THE FEDERAL REPUBLIC OF GERMANY, 1960-1971 IN ICES AREA VA

(1,000 metric-tons)

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
Total catch (Va)	985	1142	1365	1245	1399	1418	1257	883	798	936	1028	996
Demersal catch—total	759	680	714	736	765	744	648	666	687	741	819	801
Iceland—total catch	542	676	818	758	951	1005	880	502	468	638	680	612
Iceland—herring	136	326	478	396	544	590	430	94	28	24	16	12
Iceland—dem. catch	405	350	340	360	398	364	325	310	362	444	471	417
Others—dem. catch	354	330	374	376	367	380	323	356	325	297	317	384
Iceland—cod	296	234	222	234	274	233	224	193	228	282	303	250
UK—dem. catch	173	184	203	213	210	224	169	186	157	135	165	210
Germany—dem. catch	135	103	123	122	123	125	107	119	120	119	113	125
Iceland—capelin	—	—	—	1	9	50	125	97	78	171	192	183


ICES-area V.a
1960-1971
(source: Bulletin Statistique)
Diagram No. 1
1400
1200
1000
800
600
400
200
Total catch in Va
Iceland total catch
Total demersal catch in Va
Iceland herring
Iceland demersal fish
Other Nations demersal fish
Iceland cod
United Kingdom demersal fish
Germany demersal fish
Iceland capelin
996
801
612
417
384
250
210
183
125
12
1960
61
62
63
64
65
66
67
68
69
70
71

This graph illustrates very well the stability of the catches of demersal fish by German fishing vessels in the ICES Iceland Area during the years 1960 till 1971. On the other hand the violent fluctuations of the figures of the total catches by all nations in the "Iceland Area" as well as of the catches by Iceland were mainly caused by the fluctuations in the herring and capelin fisheries which had been a purely Icelandic affair.

9. The data contained in the preceding paragraphs 4 to 8 provide ample evidence of the fact that German fishing vessels have habitually been fishing in the waters of the high seas around Iceland since the beginning of modern fishing in the later part of the last century, and that at least since the First World War German fishery in these waters represented an important and essential part of German fisheries as a whole. It should be noted in this connection that German fisheries in the waters of the high seas around Iceland have not been developed or maintained at the expense of Icelandic fisheries which had been able to pursue their own course of development and to reach a share of nearly 68 per cent. (1970) of the total catch of demersal and pelagic fish in the waters around Iceland.

B. The Icelandic Fishery Limits Until 1972

10. When modern fishing with steamship trawlers began in the last decade of the 19th century, the three-mile limit for the territorial sea of Iceland was firmly established. The Danish King, to whose dominions Iceland belonged at that time, did not claim exclusive fishery rights for his subjects beyond this limit. It is true that in former times, during the 16th, 17th and 18th centuries, the Danish Kings had claimed a zone of 16 nautical miles from which they sought to exclude foreign fishermen; they were, however, not able to maintain and enforce such an exclusive fisheries zone against the resistance of the other North Sea States in view of the general trend towards the three-mile limit.

A thorough and detailed description of the history of Icelandic fishery limits from the Middle Ages up to the First World War has been given by Viktor Böhmert, *Die Fischereigrenzen des Nordens* (Nordic Fishery Limits), Berlin 1940, pp. 3-52.

In the course of the 19th century, after some differences with other European Powers, the Danish Crown reduced its claim for an exclusive fishery zone around Iceland to three nautical miles in harmony with the general international practice prevailing in this century. This attitude found expression in the following acts:

(a) The Regulations on Foreign Fishing off Iceland, proclaimed by the Danish King on 12 February 1872, prohibited fishing by nationals of foreign nations "within the boundaries of the territorial sea as determined by the rules of the general international law or by special international agreements".

(b) On 24 June 1901, Denmark and the United Kingdom concluded the Convention for Regulating the Fisheries Outside Territorial Waters in the Ocean Surrounding the Faröe Islands and Iceland (Martens *Nouveau Recueil général de Traités*, 2e série, vol. 33, p. 268) which from then on continued to govern the legal situation until after the Second World War. This Convention was closely modelled upon the Convention for Regu-

lating the Police of the North Seas Fisheries of 1882 (see Part IV, para. 6, of this Memorial below); its Article II read as follows:

> "The subjects of His Majesty the King of Denmark shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of the said islands, as well as of the dependent islets, rocks and banks.
>
> As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles.
>
> The present Article shall not prejudice the freedom of navigation or anchorage in territorial waters accorded to fishing boats, provided they conform to the Danish Police Regulations ruling this matter, amongst others the one stipulating that trawling vessels, while sojourning in territorial waters, shall have their trawling gear stowed away in-board."

By the concluding article of this Convention, third States, the nationals of which were also fishing in the waters around Iceland, were invited to adhere to the Convention.

This Article, named "Additional Article", was worded as follows: "Any other Government, the subjects of which carry on fishery in the ocean surrounding the Faröe Islands and Iceland, may adhere to the present Convention. The adhesion shall be notified to one of the Governments at Copenhagen or at London respectively. Such notification shall be communicated to the other Signatory Power."

This accession clause evidenced the willingness of the Danish Government to practise the three-mile fishery limit also vis-à-vis other States.

11. Since 1901, the Danish Government and, also after Iceland had become a "free and sovereign State" under the Danish Crown by virtue of the Danish-Icelandic Union Law of 13 November 1918, the Government of Iceland have strictly adhered to the three-mile fishery limit until after the Second World War. Although seemingly the Government of Iceland never had abandoned its earlier claims to a four-mile limit for other purposes (the Icelandic Law of 7 May 1925, prohibiting the import of alcoholic liquor into the territorial sea, still defined the territorial sea as measuring four nautical miles from the low-water mark) and, at the Hague Codification Conference 1930, advocated a four-mile limit of the territorial sea for all purposes, the Government of Iceland faithfully observed the three-mile limit for fishery purposes. The legal position of the Government of Iceland between the two World Wars may best be illustrated by citing the intervention of the Icelandic delegate (Mr. Björnsson) in the Second (Territorial Waters) Committee of the Hague Conference on 5 April 1930, where he said:

> "I should like to explain in a few words the reasons why I voted for the four-mile rule. In my country, four miles has been the limit since the middle of the 17th century for all purposes, including fisheries. In 1901, a Convention was concluded with Great Britain fixing a limit of three miles for fisheries, and, therefore, we maintain that limit for fisheries and shall maintain it as long as the Convention is in force, though for all other purposes we maintain the limit of four-miles, which has been the accepted limit for the last three hundred years.
>
> In regard to fisheries, there are certain people in my country who are of the opinion that the three-mile limit is too narrow; some desire a six-

mile limit, but I think four miles (which is the historical basis) would be a fair limit, provided it were possible to have some rules for protecting the fisheries in certain areas outside the territorial waters.

I regret that I am unable to agree entirely with Sir Maurice Gwyer (the British delegate) that fisheries are primarily of special interest to one or several nations in each particular case. Around Iceland, there is rather an international fishery; I think I may say that more than ten different nations fish in the waters round the coast of Iceland, and the number of nations which go to the rich banks there for fishing is constantly increasing. Furthermore, there are many nations which, though they do not fish in the waters round the coast of Iceland, are interested in obtaining the produce of such fishing. Therefore, in my opinion, it is an international question how we deal with the waters round the coast of my country and certain other countries so far as concerns fisheries.

I will not deal further with the question at the moment; it may be possible for me to return to it when the proposals which the delegation for Iceland has submitted to the Committee are discussed. I should, however, like to express an innocent hope. We have seen that about half of the members of the Committee are in favour of the three-mile limit with or without reservation, and that about half are against it. We cannot reach a conclusion as to the general rule which would be desirable; but I would express the hope that, in the future, it may be possible for the two parties to approach each other a little, and perhaps they may end by adopting our historic four-mile rule." (Acts of the Conference for the Codification of International Law, held at The Hague from March 13th to April 12th 1930. Vol. III, *Meetings of the Committees, Minutes of the Second Committee, Territorial Waters*, p. 142.)

12. Except for the dissatisfaction expressed on such occasions as for example at the Codification Conference of 1930, the Government of Iceland did not claim until the end of the Second World War to be entitled, as a matter of law, to a wider fisheries jurisdiction. The campaign of the Republic of Iceland (which had severed the relations with the Danish Crown in 1944 and then become an independent Republic) for extending its exclusive fishery zone beyond the three-mile limit started in the year 1948. On 5 April 1948, the Parliament (Althing) of Iceland enacted a Law entitled "Law concerning the Scientific Conservation of the Continental Shelf Fisheries".

An English translation of this Law (together with the Reasons attached thereto) which had been supplied by the Government of Iceland is annexed to this Memorial as Annex B.

Under this Law the Minister for Fisheries of Iceland has been authorized to 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", and to issue "the necessary regulations for the protection of the fishing grounds within the said zones" (Art. 1). According to the declared purpose of the Law, the extended jurisdiction was ostensibly sought for the enactment of conservation measures; it could not be anticipated at that time that this law was to provide the basis for the later campaign of the Government of Iceland to monopolize fisheries in the waters around Iceland for Icelandic fishermen. No immediate action, however, was taken by the Government of Iceland after the enactment of this Law.

13. On 3 October 1949, the Government of Iceland gave notice to the Government of the United Kingdom of the denunciation of the Convention of 1901 which stood in the way of a further extension of the Icelandic fishery jurisdiction, and, in accordance with its terms, the Convention ceased to be in force after 3 October 1951. On 18 December 1951, the International Court had rendered its judgment in the Norwegian Fisheries case which recognized the lawfulness of the straight baselines system practised by Norway for its territorial sea and fishery limits. On 19 March 1952, the Minister for Fisheries of Iceland issued the Regulations No. 21/1952 by which the fisheries limits of Iceland were extended to four miles measured from specified straight baselines, and all fishing activities by foreign vessels were prohibited within the four-mile zone. The Regulations went into effect on 15 May 1952. The Government of the Federal Republic of Germany did not protest against this action of the Government of Iceland.

14. On 1 June 1958, after the failure of the First Conference on the Law of the Sea to reach agreement on the breadth of the territorial sea, the Government of Iceland announced its intention to extend Iceland's fisheries limits to a distance of 12 nautical miles from the existing baselines around the coast of Iceland. In a Verbal Note dated 9 June 1958 and delivered to the Minister for Foreign Affairs of Iceland on 16 June 1958, the Government of the Federal Republic of Germany declared that the intended measure could not affect the right of other nations to fish in the areas of the high seas in the respective zone, and that international law does not entitle any nation to bring parts of the high seas wholly or partially by unilateral action under its jurisdiction and thus impair the rights of other nations which have fished there unrestrained since many decades.

The Verbal Note of the Embassy of the Federal Republic of Germany in Reykjavik dated 9 June 1958 has already been reproduced in Annex A to the Memorial of the Government of the Federal Republic of Germany on the question of the jurisdiction of the Court filed on 13 October 1972.

15. On 30 June 1958, the Minister for Fisheries of Iceland issued the Regulations No. 70/1958 whereby the fisheries limits of Iceland were extended to 12 nautical miles from newly defined baselines and all fishing activities by foreign vessels were prohibited within these limits.

The Regulations No. 70/1958 concerning the Fisheries Limits off Iceland, *Stjórnartidindi* 1958, B.5, are reproduced in Annex B of the Memorial of the Government of the Federal Republic of Germany on the question of the jurisdiction of the Court.

16. The Regulations No. 70/1958 took effect on 1 September 1958. In order to avoid incidents and to prevent an aggravation of the dispute, the Government of the Federal Republic of Germany issued, on 30 August 1958, a recommendation to the German Trawler Owners' Association to abstain from fishing within the 12-mile zone proclaimed by the Government of Iceland. The German trawlers followed the recommendation until the settlement by the Exchange of Notes of 19 July 1961 had been reached. No incident had been reported during that time.

17. The efforts of the Federal Republic of Germany to initiate negotiations for the settlement of the dispute on a multilateral basis between the States concerned did not meet with success. The dialogue between the Government of the Federal Republic of Germany and Iceland was resumed by a Note of the Ministry for Foreign Affairs of Iceland, dated 26 February 1959 and

delivered to the Embassy of the Federal Republic of Germany in Reykjavik.

The text of the Note of 26 February 1959 is reproduced in Annex D of the *Memorial of the Government* of the Federal Republic of Germany on the question of the jurisdiction of the Court.

This Note did not respond to the proposal contained in the Note of 16 July 1958 of the Government of the Federal Republic of Germany for multilateral negotiations. Instead, it referred to the discussions held in the General Assembly of the United Nations which were interpreted by the Government of Iceland as showing an increasing trend in favour of a 12-mile limit, and to the decision of the Assembly to call a second Conference on the Law of the Sea in 1960.

18. The dialogue was continued by a further Note of the Government of Iceland, dated 5 August and delivered by the Embassy of Iceland in Bonn to the Foreign Ministry of the Federal Republic of Germany on 5 August 1959.

The text of the Note of 5 August 1959 is reproduced in Annex E of the Memorial of the Government of the Federal Republic of Germany on the question of the jurisdiction of the Court.

In this Note, the Government of Iceland explained in some detail the position it had taken at the Conference on the Law of the Sea in 1958 and the reasons for its policy with respect to the extension of Iceland's fisheries jurisdiction to 12 nautical miles. The Government of Iceland emphasized that its claim for an exclusive 12-mile fisheries zone was "a problem of its existence"; referring to the growing number of States claiming or supporting a 12-mile fisheries limit, the Government of Iceland expressed the conviction "that it is only a question of time before the 12-mile limit will be accepted as a general rule", and added that it would greatly appreciate "if the Government of the Federal Republic of Germany would consider the special situation and wishes of Iceland". It is not necessary here to go into the details of the Government of Iceland's Note, but it should be recorded what the Government of Iceland had to say in this Note with respect to a further extension of its fisheries limits beyond 12 miles, which it considered to be justified in view of the particular situation of Iceland as a coastal State specially dependent on its fisheries:

> "The Icelandic Government thinks that where a nation is overwhelmingly dependent upon fisheries, it should be lawful to take special measures, and to decide a further extension of the fishing zone for meeting the needs of such a nation.
>
> This idea was sympathetically considered by the third committee of the Geneva Conference, even though some representatives feared that such departure from the general rule might open the door for abuse. The Icelandic Delegation, therefore, proposed that a possible disagreement should be settled by arbitration. With this addition it was carried by the committee but rejected at the plenary meeting.
>
> A similar thought was, however, expressed in a resolution proposed by South Africa and carried with 67 votes with none against.
>
> The Icelandic Delegation however, pointed out that this resolution could only apply to areas of the high seas outside the generally accepted fishery limits, as they might be at any given period.
>
> It was necessary that the coastal State can unilaterally include an adjacent area in its fishing zone, subject to arbitration in case of disagreement."

It is interesting to note that the idea to provide for arbitration in case of a dispute arising out of a further extension by Iceland of its fisheries zone originated from Iceland. The Government of Iceland concluded its Note by urging friendly States "to consider its special situation and accept measures they would otherwise think unnecessary and unacceptable as a general rule of International Law".

19. The Government of the Federal Republic of Germany replied to this Note by a Verbal Note delivered to the Embassy of Iceland in Bonn on 7 October 1959.

> The text of the Note of 7 October 1959 is reproduced in Annex F of the Memorial of the Government of the Federal Republic of Germany on the question of the jurisdiction of the Court.

Replying specifically to the part of the Note of the Government of Iceland cited above, 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 of the Government of Iceland 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 added that even on the basis of the resolution of the Geneva Conference which the Government of Iceland had mentioned in its Note and which is identical with the Resolution on Special Situations relating to Coastal Fisheries of 26 April 1958 (reproduced in Annex K to the Application of the Federal Republic of Germany), preferential rights of the coastal State in areas of the high seas adjacent to its coast could not be established unilaterally, but only by agreement between the coastal State and the other States which have fishing interests in this area.

20. The expectations that the second Conference on the Law of the Sea, which ended on 28 April 1960, would reach agreement on the breadth of the territorial sea and on the fishery limits were not fulfilled. In particular, the question how far a coastal State should be entitled to extend its fisheries jurisdiction and to what extent traditional fishing rights of other States in this zone would have to be respected, remained unsettled, although a trend towards recognition of a 12-mile zone could be observed. After the failure of the Conference, the Government of the United Kingdom approached the Government of Iceland to take up bilateral negotiations for a settlement of the fisheries question. This offer was accepted by the Government of Iceland after some hesitation and negotiations started on 1 October 1960. The negotiations which lasted a considerable time resulted ultimately in the Exchange of Notes of 11 March 1961. The text of these Notes has already been reproduced in Annex B to the Application of the Federal Republic of Germany in this case. The main features of the agreement contained in the Exchange of Notes of 11 March 1961 were:

(a) a de facto acceptance of the 12-mile fisheries zone by the United Kingdom;

(b) a phasing-out period of three years during which Iceland would not object to fishing by British trawlers in certain areas in the outer six miles of this zone;

(c) an assurance that a dispute about the legality of any further extension of the Icelandic fisheries zone could be submitted to the International Court of Justice by either party.

21. On 13 March 1961, the Minister for Foreign Affairs of Iceland notified

to the Embassy of the Federal Republic of Germany in Reykjavik copies of the Exchange of Notes between the Government of Iceland and the Government of the United Kingdom and, at the same time, informed the Embassy of the Federal Republic of Germany about new Regulations issued by the Minister for Fisheries of Iceland on 11 March 1961 which proclaimed some modifications of the baselines agreed upon in the British-Icelandic Exchange of Notes. Thereupon, the Government of the Federal Republic of Germany approached the Government of Iceland through its Ambassador in Reykjavik to take up negotiations in order to reach a similar settlement of the fisheries question. In the Aide-Mémoire, dated 12 April 1961 and handed by the Ambassador of the Federal Republic of Germany to the Foreign Minister of Iceland, the Government of the Federal Republic of Germany made it clear that it could not regard the 12-mile fisheries zone as well as the enlarged baselines as valid in law before such an agreement has been reached. The Government of the Federal Republic of Germany added, however, that it was still prepared, in the hope of an early agreement, to recommend to its fishing vessels to observe the fishery limits claimed by Iceland, including the new baselines, for the purpose of avoiding any incidents.

The text of the Aide-Mémoire of 12 April is reproduced in Annex G of the Memorial of the Government of the Federal Republic of Germany on the question of the jurisdiction of the Court.

The offer to negotiate an agreement was after some hesitation accepted by the Government of Iceland which was rather reluctant to enter into negotiations.

22. Negotiations took place in Bonn between 19 June and 6 July 1961. At their beginning, on 20 June 1961, the Icelandic Delegation handed an Aide-Mémoire to the Delegation of the Federal Republic of Germany which outlined and specified the concept with which the Government of Iceland approached these negotiations.

The text of the Aide-Mémoire dated 20 June 1961 is reproduced in Annex H of the Memorial of the Government of the Federal Republic of Germany on the question of the jurisdiction of the Court.

23. The negotiations centred more on economic questions than on fisheries questions. After agreement had been reached on the economic questions, the German Delegation tabled a draft which was modelled after the British-Icelandic Exchange of Notes of 11 March 1960 (the text of this Exchange of Notes had already been reproduced in Annex B to the Application of the Government of the Federal Republic of Germany in this case) and followed the wording of these Notes very closely. It is reported that the German Delegation requested the same three-years phasing-out period which Iceland had granted British fishing vessels, from the date the arrangement would take effect. Later, however, the Delegations agreed on the same date for the end of the phasing-out period which had been fixed in the British-Icelandic Exchange of Notes, namely 10 March 1964. This resulted for the German fishing vessels in a shorter phasing-out period of approximately two years and eight months only. The Notes on which these two Delegations had agreed on 6 July 1961, were exchanged on 19 July 1961. In the concluding paragraphs of these Notes it had been stipulated that the Notes exchanged should constitute an agreement between the two Governments and should enter into force immediately.

The text of the Notes exchanged on 19 July 1961 has already been repro-

duced in Annex C to the Application of the Government of the Federal Republic of Germany filed on 5 June 1972 in this case.

24. That the two Agreements with the United Kingdom and with the Federal Republic of Germany by which Iceland had succeeded in consolidating its position and had even secured a de facto recognition of its 12-mile fisheries zone, were regarded in Iceland rather a success than an onerous burden was evidenced by subsequent statements of members of the Icelandic Government. When, in 1963, the Minister for Foreign Affairs of Iceland, in the Icelandic Parliament, defended the Agreement against criticism by the opposition, he emphasized that the 12-mile limit, the recognition of which had been achieved by the Agreement, was not the final goal and that the Agreement did not prevent Iceland from further implementing the Althing Resolution of 5 May 1959 whereby the Government of the Republic of Iceland had been committed to obtain the recognition 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.

25. On 10 March 1964, the transitional period, during which British and German vessels were still allowed to fish within the outer 6 miles of the 12-mile fisheries zone, came to an end. This day was hailed in Iceland as a day of victory; members of the Government of Iceland took the opportunity to emphasize this fact in public addresses to the Icelandic people. On 11 March 1964 in the Icelandic papers a statement of the Prime Minister of Iceland was published which contained the following sentences on the 1961 Agreement:

> "This day must be regarded as a day of rejoicing. We have not yet attained our final goal, but the 1961 Agreement has opened to us the only practical way to attain that goal.
>
> It has sometimes been asserted that we had given away rights without compensation. The provisions of the Agreement, however, are in full harmony with the Resolution of the Althing of 5 May 1959. We cannot extend our fishery zone over the whole continental shelf unless international law allows us to do so. In the 1961 Agreement, we have declared that we shall continue to work for the recognition of the Resolution of the Althing by the international community. Eventually the International Court of Justice will have to decide on the validity of our claim. The agreement on the jurisdiction of the International Court of Justice is a safeguard which secures that no party goes further than international law permits and which prevents that a party resorts to the use of force ... Later it will turn out what an advantage it will be for the Icelanders that the International Court of Justice will decide on possible disputes about our rights over the continental shelf." (Translation from the 11 March 1964 edition of the *Morgunbladid*.)

26. It should be noted at this point of the presentation of the history of the dispute that the Court, in its Judgment of 2 February 1973, has recognized that the Agreement contained in the Exchange of Notes of 19 July 1961 has not ceased to operate with respect to those of its provisions which do not have a transitory character, namely paragraphs 1, 2 and 5. These provisions of the Exchange of Notes of 19 July 1961 still govern the relations between the Parties and contain in their essence the following obligations:

(a) the Federal Republic of Germany will not object to the claim of Iceland for an exclusive fisheries zone of 12 miles and recognizes the baselines

defined in the Icelandic Regulations No. 70 of 30 June 1958, as modified by paragraph 2 of the Exchange of Notes of 19 July 1961;

(b) the Republic of Iceland, while reserving its position to seek recognition for a further extension of its fisheries jurisdiction, remains under the obligation to accept the jurisdiction of the Court on the legality or otherwise of such an extension if the Federal Republic of Germany should contest such extension.

C. The Claim of the Government of Iceland for a 50-Mile Exclusive Fisheries Zone

27. There were no significant developments in the history of the dispute during the period after the conclusion of the Exchange of Notes of 1961 but before the general election which took place in Iceland in July 1971. Both Governments gave effect to the terms of the agreement embodied in that Exchange of Notes and they co-operated with each other in furthering the activities of international bodies concerned with conservation and the rational exploitation of fisheries, such as the North-East Atlantic Fisheries Commission. Nevertheless, the Government of Iceland continued to maintain that they were under an obligation, by virtue of the Resolution of the Althing of 5 May 1959 (for the text see para 5. of the Memorial of the Federal Republic on the question of the jurisdiction of the Court), to work for a further extension of Iceland's fisheries jurisdiction and they therefore declined to become a party to the European Fisheries Convention of 1964 although they had participated in the Conference at which it was adopted and had voted for the Resolution on Conservation which was also adopted at that Conference (see para. 50 of Part IV of this Memorial below).

28. However, after the general election of July 1971 and the formation of a new Government in Iceland, the dispute was revived in an acute form. A policy statement was issued by the new Government which included the following passage (in an unofficial translation):

> "Territorial Waters: The Fisheries Agreements with the United Kingdom and the Federal Republic of Germany shall be terminated and a resolution be made about an extension of the fishery limit up to fifty nautical miles from the baselines, effective not later than 1 September 1972. At the same time a zone of jurisdiction of one hundred nautical miles shall be enacted for protection against pollution. The Government will in this matter consult the Opposition and give it an opportunity to follow its entire development."

29. This policy statement naturally caused considerable concern to the Government of the Federal Republic of Germany because of the proposed extension of fisheries limits and of the "termination" of the agreement contained in the Exchange of Notes in 1961. However, in view of talks being arranged between the Government of the Federal Republic of Germany and of the Government of Iceland which were to be held in Bonn in August 1971, the Government of the Federal Republic of Germany refrained from taking immediate formal steps with respect to the policy statement. The talks took place in Bonn on 20 August 1971. In these talks, the representatives of the Federal Republic of Germany expressed their view that the Icelandic fisheries zone could not be extended unilaterally and that the Exchange of Notes of 1961 was not open to unilateral denunciation or termination and that the

Government of the Federal Republic of Germany would have to reserve their rights thereunder. No conciliation of the respective views was achieved in the talks and, on 31 August 1971, an Aide-Mémoire was handed to the Ambassador of the Federal Republic of Germany in Reykjavik by the Secretary-General of the Ministry for Foreign Affairs of the Government of Iceland. After referring to some of the relevant provisions of the Exchange of Notes of 1961 and in particular to the provision therein for the reference of disputes to the International Court of Justice, and after asserting that "the object and purpose (of that provision) have been fully achieved", the Aide-Mémoire went on to say that, in view of certain alleged considerations which it described, "the Government of Iceland now finds it essential to extend further the zone of exclusive fisheries jurisdiction around its coast to include the area of sea covering the continental shelf. It is contemplated that the new limits, the precise boundaries of which will be furnished at a later date, will enter into force not later than 1 September 1972." The Aide-Mémoire concluded by indicating that the Government of Iceland were prepared to hold further meetings between representatives of the two Governments "for the purpose of achieving a practical solution of the problems involved".

A copy of the full text of the Aide-Mémoire of 31 August 1971 is annexed to the Application filed by the Government of the Federal Republic of Germany in this case on 5 June 1972 as Annex D.

30. On 27 September 1971, the Ambassador of the Federal Republic of Germany in Reykjavik delivered to the Secretary-General of the Ministry for Foreign Affairs of the Government of Iceland an Aide-Mémoire in reply to the latter's Aide-Mémoire of 31 August 1971. In this Aide-Mémoire, the Government of the Federal Republic of Germany, expressing its deep concern about the notification, by the Government of Iceland, of its intention to extend the Icelandic fishery zone, reaffirmed its view already known to the Icelandic Government, that the unilateral assumption of sovereign power by a coastal State over zones of the high seas is inadmissible under international law and that the Federal Republic of Germany would have to reserve all rights in the event of such a measure. The Aide-Mémoire went on to say that the Exchange of Notes of 1961, having no time-limit nor containing a denunciation clause, could not be unilaterally denounced by either party. It was emphasized that the provision in its paragraph 5 concerning judicial settlement of any dispute was made precisely for a situation such as would arise in the event of a unilateral extension of the Icelandic fishery zone beyond 12 nautical miles. The Government of the Federal Republic of Germany therefore reserved all rights deriving from the Exchange of Notes of 19 July 1961, especially the right to refer disputes to the International Court of Justice. The Aide-Mémoire went on to note the proposal of the Government of Iceland that there should be further discussions and indicated that, without prejudice to its legal position as outlined above, the Federal Government was prepared to enter into further discussions.

The full text of the Aide-Mémoire of 27 September 1971 is annexed to the Application of the Government of the Federal Republic of Germany in this case as Annex E.

31. Both Governments having thus expressed their readiness to hold further discussions, such discussions took place at official level in Bonn on 8 and 9 November 1971, and in Reykjavik on 1 February 1972. In these discussions the Icelandic delegation reiterated that Iceland was entitled to,

and intended to, extend its exclusive fisheries limits with effect from a date not later than 1 September 1972. The delegation of the Federal Republic of Germany, after having reaffirmed the Federal Government's legal position, expressed their 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 fisheries around Iceland would limit their catches. The delegation of the Federal Republic pointed out that such an arrangement could be agreed upon as soon as the proposal which had been adopted by the Commission under Article 7 (2) of the North-East Atlantic Fisheries Convention already in May 1970 and which will add catch limitations to the list of conservation measures under the Convention, had come into effect (this proposal had since been accepted by all Contracting States, except by Iceland (see below Part II, para. 32 of this Memorial)).

The full text of the North-East Atlantic Fisheries Convention of 24 January 1959 has already been reproduced in Annex F to the Application instituting proceedings in this case.

The delegation of the Federal Republic of Germany 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 could be limited to the average taken by such vessels during the years 1960 to 1969. The Icelandic delegation, on the other hand, did not share the confidence in the effectiveness of multilateral conservation measures, and maintained their position that Iceland's fisheries jurisdiction must be extended to 50 miles. The Icelandic delegation offered nothing more than a phasing-out arrangement whereby fishing vessels of the Federal Republic of Germany might be permitted, subject to certain conditions, to continue to fish in parts of the 50-mile zone up to a certain amount of tons for a limited period.

32. In view of the different approaches of the two delegations to the practical solution of the problem these discussions did not lead to an agreement. Meanwhile, on 15 February 1972, the Althing had adopted a further Resolution. This Resolution reiterated that "the continental shelf of Iceland and the superjacent waters are within the jurisdiction of Iceland" and resolved that "the fishery limits will be extended to 50 miles from baselines around the country, to become effective not later than 1 September 1972", that "the Governments of the United Kingdom and the Federal Republic of Germany be again informed that because of the vital interests of the nation and owing to changed circumstances the Notes concerning fishery limits exchanged in 1961 are no longer applicable and that their provisions do not constitute an obligation for Iceland" and that "efforts to reach a solution of the problems connected with the extension be continued through discussions with the Governments of the United Kingdom and the Federal Republic of Germany".

The full text of an English translation of the Resolution has already been annexed to the Application of the Federal Republic of Germany in this case as Annex G.

33. Following this Resolution, on 24 February 1972, the Minister for Foreign Affairs of the Government of Iceland delivered an Aide-Mémoire to the Ambassador of the Federal Republic of Germany in Reykjavik. The Aide-Mémoire contained a reference to a statement made by the Icelandic Minister for Foreign Affairs in the General Assembly of the United Nations on 29 September 1971 (first Enclosure to the Aide-Mémoire), and a reference to a memorandum entitled *Fisheries Jurisdiction in Iceland* and dated February 1972 (second Enclosure to the Aide-Mémoire).

A copy of the full text of the Aide-Mémoire together with the second Enclosure thereto had already been annexed to the Application instituting proceedings in this case as Annex H (pp. 17-18, *supra*). The first Enclosure had not been annexed since it is reproduced, so far as it is relevant to the question of fisheries jurisdiction in the second Enclosure (I, pp. 51-53).

The Aide-Mémoire stated that, for the reasons indicated in their earlier communications on the matter, the Government of Iceland "considers the provisions of the Notes exchanged (in 1961) no longer to be applicable and consequently terminated" and announced that "the Government of Iceland has accordingly decided to issue new regulations providing for fishery limits of fifty nautical miles from the present baselines, to become effective on 1 September 1972, as set forth in the Resolution of the Althing unanimously adopted on 15 February 1972". In the formal statement which the Minister for Foreign Affairs of the Government of Iceland had read to the Ambassador of the Federal Republic of Germany when he delivered the Aide-Mémoire of 24 February 1972, he stated that the effective date of the new regulations to be issued on the basis of the 1948 Law concerning the Scientific Conservation of the Continental Shelf Fisheries would be 1 September 1972.

The full text of the statement of 24 February 1972 is annexed to the Application instituting proceedings in this case as Annex I.

Neither the Policy Statement of the Government of Iceland, nor the Resolution of the Althing of 15 February 1972, nor the Aide-Mémoire of 24 February 1972, explained the choice of the 50-mile limit for the extension of the Icelandic fisheries jurisdiction instead of the outer limit of Iceland's continental shelf as envisaged by the Law of 1948. Some light has been shed on the matter by a remark in the above-mentioned Memorandum *Fisheries Jurisdiction in Iceland* issued by the Icelandic Ministry for Foreign Affairs in February 1972, where it was stated at page 8:

> "The coastal State should itself determine the extent of its coastal jurisdiction over fisheries on the basis of all relevant local considerations. In Iceland these considerations would coincide with the continental shelf area, which, e.g., at the depth of 400 metres would be approximately 50-70 miles from the coast."

34. In the light of the Government of Iceland's Aide-Mémoire of 24 February 1972, and the accompanying Statement of the Icelandic Minister for Foreign Affairs, the decision of the Government of Iceland to extend the exclusive fishery zone of Iceland to 50 nautical miles with effect from 1 September 1972 had to be regarded as definitive. Under these circumstances, the Government of the Federal Republic of Germany concluded that it had no course open but to refer the dispute to the International Court of Justice as provided for by the Exchange of Notes of 1961. In the previous exploratory talks with the Icelandic Government, the Government of the Federal Repub-

lic of Germany had made it clear that if Iceland should definitely decide to extend its fisheries limits to 50 nautical miles, the Federal Republic of Germany would have no choice but to have recourse to that means of peacefully settling disputes that was provided for expressly in the Exchange of Notes. On 4 March 1972 the Ambassador of the Federal Republic of Germany informed the Prime Minister of Iceland of the decision of the Government of the Federal Republic of Germany to bring the question before the International Court of Justice. On 14 March 1972 an Aide-Mémoire from the Government of the Federal Republic of Germany was delivered to the Minister for Foreign Affairs of the Government of Iceland by the Ambassador of the Federal Republic of Germany in Reykjavik. The Aide-Mémoire formally restated the legal position of the Federal Republic of Germany in reply to the Government of Iceland's Aide-Mémoire of 24 February 1972, that is that "a unilateral extension of the fishery zone of Iceland 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", and gave formal notice of the intention of the Federal Republic of Germany to invoke the agreed procedure for obtaining the adjudication of the International Court of Justice thereon. In view of the definitive decision on and the imminence of the action announced by the Government of Iceland, the Aide-Mémoire further stated that the Government of the Federal Republic of Germany, for the reasons explained in detail to the Icelandic Government during the exploratory talks and in exercise of the right laid down in paragraph 5 of the Exchange of Notes of 1961, would submit the dispute to the International Court of Justice. The Government of the Federal Republic of Germany expressed its firm hope that "by this means of peacefully settling disputes which is provided for under the United Nations Charter and is consistent with good relations between friendly States, this legal dispute between the two countries will be settled". It finally pointed out that "the Government of the Federal Republic of Germany is willing to continue discussions with the Government of Iceland in order to agree upon satisfactory practical arrangements at least for the period while the case is before the International Court of Justice".

A copy of the full text of the Aide-Mémoire of 14 March 1972 had already been annexed to the Application of the Federal Republic instituting proceedings in this case as Annex J.

35. The Application instituting proceedings in this case on behalf of the Government of the Federal Republic of Germany was filed with the Registrar of the Court on 5 June 1972. Reference is made here to all the facts and considerations contained in the text of this Application as far as they are not repeated in this Memorial.

D. Negotiations for an Interim Arrangement during the Pendency of the Proceedings

36. Even after the commencement of the proceedings in this case the Government of the Federal Republic of Germany continued to seek an arrangement with the Government of Iceland for the time after 1 September 1972, the date on which the Government of Iceland intended to put the extension of its fisheries jurisdiction into effect. These negotiations were now directed not so much at a settlement of the substantive dispute as at the

establishment of an interim régime which would last until the Court had given its decision on the legality of the action contemplated by the Government of Iceland or until that question had been disposed of in some other way. Such negotiations have taken place between representatives of both Governments on 15 May 1972 at Reykjavik; and 2 June, and again on 7 July 1972, at Bonn. The reasons why these negotiations have remained unsuccessful has been primarily due to the totally different approach of both Governments to the matter: while the Government of the Federal Republic of Germany was anxious to preserve its fundamental fishing rights but to allay the fears of the Government of Iceland with respect to an over-exploitation of the fish stocks by offering a reasonable catch limitation, the Government of Iceland, on the other hand, from the outset aimed at a partial realization of their claim for an extended fishery zone by trying to extract concessions from the Federal Republic which in effect would have resulted in the exclusion of German trawlers from most parts of the 50-mile zone.

37. On 15 May 1972, a delegation of the Government of the Federal Republic of Germany visited Reykjavik for talks with the Minister for Foreign Affairs of Iceland and proposed an interim agreement on the following lines:

> *(a)* Fishing vessels registered in the Federal Republic of Germany would continue to fish without hindrance in the waters around Iceland beyond the 12-mile limit;
>
> *(b)* the total annual catch of demersal fish taken by vessels of the Federal Republic in that area would be limited to the annual average taken by such vessels during the ten years 1960 to 1969, that is to say to 120,000 tons;
>
> *(c)* this arrangement would be entirely without prejudice to the respective positions of the two Governments, and in particular to their respective legal positions in relation to the proceedings before the Court;
>
> *(d)* this arrangement would remain in force pending a more permanent settlement of the dispute by negotiations or otherwise, but should be reviewed at the latest and not after 1 September 1975.

The Minister for Foreign Affairs of Iceland took note of these proposals but declared that the position of the Government of Iceland with respect to an interim agreement had not yet been defined and approved by the Icelandic Cabinet. The Minister intimated that the proposed catch limitation alone would not be an acceptable basis but should at least be accompanied by the retreat of German fishing vessels from certain parts of the 50-mile zone and by a reduction of the type and number of vessels employed. The question of control was also discussed and the German side made it clear that it would not be acceptable for the Federal Republic of Germany that German fishing vessels would be subject to enforcement measures outside the 12-mile limit. The Minister promised that, after the position of the Icelandic Government would have been defined, a concrete proposal for an interim arrangement would be tabled by the Icelandic side at the next round of talks which were scheduled to take place in Bonn on 2 June 1972.

38. On 2 June 1972, the Minister for Foreign Affairs of Iceland visited Bonn for a meeting with the Minister for Foreign Affairs of the Federal Republic of Germany. During these talks the Minister for Foreign Affairs of Iceland said that British and German proposals for a catch limitation and for a closure of certain areas for all trawling (Icelandic and foreign) for conservation purposes did not take the basic principle of preferential treatment for Iceland sufficiently into account, but would rather mean the freezing of the

status quo. The Government of Iceland insisted on a visible reduction of German and British fishing in Icelandic waters. He, therefore, proposed:

(a) that limitations should be imposed on the number, size and type of vessels allowed to fish; and that in particular freezer trawlers, factory vessels and other large fishing vessels should not be allowed;

(b) that all waters from the 12-mile limit out to 25 miles should be reserved to Icelandic vessels;

(c) that the waters between the 25-mile and 50-mile line should be divided into 6 areas of which only 2 would be opened at the same time for some months during the year;

(d) that certain additional areas should be closed for conservation purposes for Icelandic and foreign vessels;

(e) that certain areas should be reserved for line and net fishing where all trawling, Icelandic and foreign, would be prohibited;

(f) that the Government of Iceland would have the right to enforce Icelandic rules and regulations in the whole area up to the 50-mile limit;

(g) that the arrangement should operate until the end of 1973.

The Federal Minister for Foreign Affairs took note of the Icelandic proposals, but there was no time to discuss them in detail. Therefore a new round of talks was scheduled for 7 July 1972.

39. In the talks which took place at Bonn on 7 July 1972, the members of the Delegation of the Federal Republic of Germany made it clear that the Icelandic proposals of 2 June 1972 were unacceptable for the Federal Republic of Germany, in particular those proposals which envisaged the complete ban of freezer trawlers, the complete exclusion of German trawlers from the 25-mile zone, the discriminating régime in the outer zone, and Icelandic enforcement jurisdiction over German fishing vessels. An interim arrangement on this basis was not acceptable for the Government of the Federal Republic, for the following reasons: it would have prejudiced the fishery rights of the Federal Republic in the waters of the high seas around Iceland, it would have involved recognition of rights of jurisdiction and control over German ships on the high seas, and it would have reduced the German catch in these waters, because of the limited number of ships and the limited area and time opened for fishing, to only a fraction of the normal catch in these waters. The German side expressed the hope that the Icelandic side would show a more flexible attitude in reaching a compromise solution for an interim arrangement, but the Icelandic delegation was not in a position to modify their proposals. Both sides declared their willingness to continue with the negotiations but no date for further talks was fixed.

40. The Government of the Federal Republic of Germany had hoped that during the pendency of the proceedings before the Court the Government of Iceland would not take any unilateral action to enforce Iceland's claim for an extended exclusive fishery zone. However, on 14 July 1972, the Minister for Fisheries of Iceland issued the Regulations No. 189 concerning the Fishery Limits off Iceland which purport to enforce the claim of the Government of Iceland for an exclusive 50-mile fisheries zone.

The text of Regulations No. 189 of 14 July 1972, together with an English translation, has been attached to this Memorial as Annex A.

These Regulations prohibit all fishing by foreign fishing vessels in the extended zone up to 50 nautical miles from new established baselines. According to the Icelandic laws which the Regulations have declared applicable to fishing acti-

vities in the extended zone, foreigners who engage in fishing activities in contravention to these Regulations, may then be punished by fines up to 100,000 Icelandic Crowns. Foreign ships which enter Icelandic ports or territorial waters will be subject to inspection of their papers and to enquiries in order to ascertain that they have not violated or evaded the Icelandic Laws concerning fisheries, and will probably be exposed to seizure if they were found to have contravened the new Regulations.

41. In view of this situation the Government of the Federal Republic of Germany saw no other alternative than to ask the Court for interim measures of protection for their fishing rights pending the final decision of the Court. On the Request filed by the Government of the Federal Republic of Germany with the Court on 21 July 1972, the Court, by Order of 17 August 1972, indicated several provisional measures. The Court indicated in particular that both parties should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute, that the Republic of Iceland should refrain from taking any measures to enforce the Regulations of 14 July 1972 against the vessels registered in the Federal Republic and engaged in fishing activities in the waters around Iceland outside the 12-mile fishery zone, and from applying administrative, judicial or other sanctions or any other measures against such ships, and that the Federal Republic of Germany, on their part, should ensure that its fishing vessels do not take an annual catch of more than 119,000 metric tons of fish from the "Sea Area" of Iceland as defined by the International Council for the Exploration of the Sea as the statistical area Va. Reference is made here to all the facts and considerations contained in the Request of the Government of the Federal Republic of Germany of 21 July 1972, and in the oral argument before the Court on 2 August 1972 as far as they are not repeated in this Memorial.

42. On 28 August 1972, in a Verbal Note handed by the Ambassador of the Federal Republic of Germany in Reykjavik to the Minister for Foreign Affairs of Iceland, the Government of the Federal Republic of Germany informed the Government of Iceland that the Federal Republic will respect the Order made by the Court on 17 August 1972, and fully carry out the obligations contained therein; that in particular, the Government of the Federal Republic will ensure that vessels registered in the Federal Republic do not take an annual catch of more than 119,000 metric tons of fish from the "Sea Area of Iceland" as defined by the International Council for the Exploration of the Sea as the statistical area Va. The Government of the Federal Republic added that it was ready to discuss the position with the Icelandic Government at any convenient date.

The text of the Verbal Note of 28 August 1972 is reproduced in Annex C to this Memorial.

The Government of Iceland, however, openly declared that it would not comply with the Court's Order of 17 August 1972 and would take the necessary measures to enforce the Icelandic Regulations of 14 July 1972 against the ships of other nations which would engage in fishing activities in the 50-mile zone.

43. As it became apparent that the Government of Iceland had no intention of complying with the Court's Order of 17 August 1972 and began, by actions of its coastal patrol boats, to interfere with the fishing operations of German vessels within the 50-mile zone, the Government of the Federal Republic of Germany continued its efforts to bring about an interim agreement with the Government of Iceland in order to prevent further incidents. In September

1972 the Government of the Federal Republic proposed trilateral talks between Iceland, the United Kingdom and the Federal Republic of Germany for negotiating such an interim agreement. On 19 September 1972, however, the Minister for Foreign Affairs of Iceland informed the Ambassador of the Federal Republic of Germany in Reykjavik that the Government of Iceland, while appreciating this initiative of the Government of the Federal Republic was not willing "to participate in multilateral discussions concerning special rights of foreign fishermen within the 50-mile limit, but would be prepared to have discussions with each nation concerned"; the Icelandic Minister added that his Government would be prepared to continue with discussions with the Federal Republic of Germany for making particular arrangements concerning German fishing inside the 50-mile limit.

44. During the following months the Government of the Federal Republic of Germany, through its Ambassador in Reykjavik, repeatedly invited the Government of Iceland to take up bilateral negotiations for the conclusion of an interim agreement with respect to the exercise of the fishing rights of the Federal Republic in the waters around Iceland during the pendency of the proceedings before the Court. The Government of Iceland, however, made it clear that it was not willing to accept such an invitation unless the Government of the Federal Republic would inform the Government of Iceland of its conception of an interim settlement in more detail in order to enable the Government of Iceland to consider beforehand whether it might be a suitable basis for beginning the discussions. Although this demand for tabling concrete proposals prior to the decision of both parties to take up negotiations was somewhat unusual, the Federal Republic being anxious to bring about an interim agreement as soon as possible, eventually agreed to this procedure.

45. On 12 February 1973 the Government of the Federal Republic of Germany transmitted, through its Ambassador in Reykjavik, a paper to the Government of Iceland which contained detailed proposals for an interim agreement.

A copy of the paper transmitted to the Government of Iceland on 12 February 1972, is attached to this Memorial as Annex D.

The main points contained in this paper were the following:

(a) an agreed catch limitation the amount of which would be negotiable and might possibly involve a reduction from the amount allowed by the Court's Order of 17 August 1972;

(b) fishing vessels of the Federal Republic of Germany would voluntarily abstain from exercising their fishing rights in certain areas of the 50-mile zone involving the abstention from fishing at any one time in a fixed number of areas out of six into which the zone between the 12-mile and 50-mile limits around the coast of Iceland would be divided (rotation areas);

(c) agreement on certain specific areas which are known as spawning and nursery grounds which would be closed to both German and Icelandic fishing vessels during a fixed time in the year (conservation areas);

(d) fishing vessels of the Federal Republic of Germany would not fish in certain specific areas which are frequented by Icelandic small boat fishermen (long line and gill net areas);

(e) Icelandic coastal patrol boats would have the right to inspect the fishing log-books and the catches of German trawlers engaged in fishing in the 50-mile zone and to request any relevant information;

(f) the foregoing arrangements would constitute an interim agreement not affecting the basic question of the rights of the Federal Republic of Germany and its fishing vessels in the waters around Iceland nor its position before the Court.

46. The Government of Iceland accepted this paper as a basis for further discussions, and a delegation of the Federal Republic went to Reykjavik for discussions on 4 and 5 April 1973. These discussions again revealed the fundamental differences in the approach of both sides. The delegation of the Federal Republic of Germany emphasized the need to conceive a scheme which would be consistent with the Court's Order of 17 August 1973 and which, therefore, should have an agreed catch-limit for German fishing vessels in the "Sea Area of Iceland" as its basis. The representatives of the Government of Iceland, however, emphasized the need, in view of Icelandic public opinion, for spectacular concessions from the German side which should include, in addition to a sizeable reduction of the catch of German trawlers in the waters before the Icelandic coast, foremost a conspicuous limitation of the number and size of German trawlers as well as of the areas where they would be allowed to fish. Therefore, the representatives of the Government of Iceland declared that the proposals transmitted by the Government of the Federal Republic on 12 February 1973 were not acceptable.

47. The representatives of the Government of Iceland without discussing further the German proposals, instead confronted the Delegation of the Federal Republic with a new counter-proposal for an arrangement which contained the following elements:

(a) The trawlers of the Federal Republic would be permitted to fish only in the outer part of the 50-mile zone beyond a line which would run on the average 25 to 30 miles from the coast. Under such a scheme, the complicated system of rotating closed areas could be abandoned. This was praised by the Icelandic Delegation as a special advantage of such a scheme.

(b) The amount of fish which ships of the Federal Republic would be allowed to take would have to be limited.

(c) The Icelandic Government would have the right to "implement" the provisions of the arrangement.

(d) The duration of the arrangement would be about two years.

(e) Freezer trawlers or factory ships would not be allowed within the outer part of the 50-mile zone where German trawlers would be allowed to fish.

The Delegation of the Federal Republic immediately raised some objections of principle to these counter-proposals:

(a) A 25 or 30-mile limit would not be acceptable as a basis for an interim agreement as it would prejudice the legal position of the Federal Republic with respect to its fishing rights on the high seas in the proceedings before the Court and elsewhere; it would furthermore create a dangerous precedent taking into account the tendency of other coastal States to extend their national fisheries' limits.

(b) A total exclusion of freezer trawlers and factory ships could not be accepted in view of the modernization of the German fishing fleet; there was no logic in excluding any type of ship as long as an agreed catch limitation existed. The German delegation again emphasized that

a catch-limitation should be the basic and most important element of any interim agreement.

(c) The Icelandic conditions would in their combination result in a drastic reduction of catches from the fishing grounds around Iceland.

The Delegation of the Federal Republic requested the representatives of the Government of Iceland to formulate an integrated counter-proposal in the light of the discussion and to have it transmitted at an early as possible date to the Government of the Federal Republic of Germany for consideration.

48. On 14 April 1973 the Government of Iceland transmitted, through its Embassy in Bonn, so-called "basic points" for an arrangement regarding fishing by vessels of the Federal Republic in the Iceland Area. These "basic points" were, however, nothing more than a repetition of the earlier conditions for an arrangement and in some respects even more stringent; their essence may be summarized as follows:

(a) trawlers of the Federal Republic would be permitted to fish in an area outside a line which runs on the average in a distance of 30 nautical miles from the baselines;

(b) the number of trawlers permitted to fish would be negotiated, but in any case be reduced as compared with previous years;

(c) freezer trawlers and factory vessels would not be permitted within the 50-mile zone;

(d) the amount of the total annual catch by trawlers of the Federal Republic would be negotiated, but in any case be reduced as compared with previous years;

(e) conservation, long-line and net areas as determined by the Icelandic authorities would have to be respected;

(f) rights of control and enforcement within the 50-mile zone against German trawlers.

The full text of the paper containing these "basic points" which had been transmitted by the Government of Iceland through its Embassy in Bonn to the Ministry for Foreign Affairs of the Federal Republic on 14 April 1973, is reproduced in Annex E to this Memorial.

49. On 29 June 1973 further discussions took place at Reykjavik on the basis of the proposals of both sides of 12 February and 14 April 1973 respectively. In these discussions the Delegation of the Federal Republic of Germany made a new compromise proposal which went great lengths to meet the apprehensions of the Icelandic side. The main feature of this proposal consisted in the following:

The fishing vessels of the Federal Republic would, pending a settlement of the fisheries dispute, voluntarily abstain from fishing in the ICES "Sea Area of Iceland" within a line which would run around Iceland at a varying distance from the Icelandic coast (or its baselines), on some points touching the 12-mile limit, on the average keeping 20 to 40 miles from the coast, and embracing some areas up to the geographical boundaries of the ICES "Sea Area of Iceland"—up to 130 miles from the coast—for reasons of conservation.

The map which shows the proposed "line of abstention" as well as the 12 and 50 mile lines measured from the baselines of the Icelandic coast, is reproduced in Annex F to this Memorial.

The main reasons which had led the Government of the Federal Republic to conceive such a proposal, were fourfold:

(1) To make an ostensible concession which, in view of Icelandic public opinion, would make it politically possible for the Government of Iceland to agree on a compromise solution for an interim arrangement;

(2) in particular, to contribute effectively to the conservation of the fish stocks in the waters around Iceland by—

(a) staying voluntarily away from the main young fish grounds in the north-eastern parts of the ICES Zone Va;

(b) staying completely out of the important spawning grounds of the cod in the south of the ICES Zone Va;

(c) giving particular consideration to Icelandic small-boat coastal fisheries off the west coast of Iceland;

(3) at the same time, to make it clear that the Federal Republic of Germany maintains its right to fish in the waters around Iceland up to the 12-mile limit (two sections of the line proposed by the Federal Republic running round Iceland at a varying distance reach the 12-mile zone before the south-west and south-east coast);

(4) to make complicated measures of control in the execution of the arrangement superfluous and diminish thereby the risk of incidents between Icelandic coastal patrol boats and German trawlers to the widest possible degree.

50. This new proposal of the Government of the Federal Republic of Germany seemed to have found some sympathy with the Government of Iceland; at least it was not as flatly rejected by the Icelandic Delegation as previous proposals made by the Government of the Federal Republic. However, the Icelandic Delegation found that even this far-reaching compromise proposal did still not go far enough to fulfil all the conditions which the Government of Iceland regarded as indispensable even for such a short-term interim arrangement. In particular, the representatives of the Government of Iceland still insisted on a drastic catch-limitation (the amount of 60,000 metric tons was mentioned here for the first time which would have halved the previous share of the Federal Republic); they insisted further on a considerable limitation of the number of German fishing vessels which would be allowed to fish around Iceland, and on the complete exclusion of freezer trawlers from the 50-mile zone. Foremost, however, the representatives of the Government of Iceland insisted again on full Icelandic enforcement jurisdiction over German vessels which should not be limited to a right of inspection (which the Federal Republic would be willing to concede in analogy to the joint enforcement scheme practised under the North-East Atlantic Fisheries Convention), but should include also the right of seizure and application of penal sanctions under Icelandic law. Thus again no agreement was reached. A new round of discussions has been planned for the end of August 1973.

51. The account of the negotiations up to the date when this Memorial had been compiled, is plain evidence of the fact that the diametrically opposed legal positions of both Governments have up till now made it impossible to agree even on an interim agreement for the time during the pendency of the proceedings before the Court. The Government of the Federal Republic of Germany stands ready to negotiate an acceptable and equitable interim agreement, but is also prepared to negotiate a permanent settlement with

respect to the fishery rights of the Federal Republic of Germany in the waters of the high seas around Iceland. The inflexible attitude so far shown by the Government of Iceland in the present negotiations, has made it abundantly clear that the Government of Iceland is prepared to grant the Federal Republic of Germany only a short phasing-out period, but no permanent settlement of the fishery rights of the Federal Republic in the waters of the high seas around Iceland. Therefore, the dispute on which a decision is requested from the Court still subsists and requires an adjudication by the Court.

PART II

MACHINERY AND MEASURES FOR THE CONSERVATION OF FISH STOCKS IN THE ICELAND AREA

A. Introduction

1. The first ground on which the Government of Iceland claims that it is necessary for them to extend the Icelandic fisheries jurisdiction up to 50 miles from the coast and to reserve all the fish in this area for Icelandic fishermen, is the contention that fish stocks are in danger to be over-exploited. For illustration of this point of view the following sentences may be cited from the Government of Iceland's Memorandum on *Fisheries Jurisdiction in Iceland* (issued by the Icelandic Ministry for Foreign Affairs in February 1972 and reproduced as Enclosure 2 to Annex H attached to the Application of the Government of the Federal Republic (see p. 18, *supra*)):

> "Further implementation of the 1948 Law is becoming ever more urgent. Fishing techniques and catch capacity are rapidly being developed and about half of the catch of demersal fish in the Icelandic area has been taken by foreign trawlers. The danger of intensified foreign fishing in Icelandic waters is now imminent. The catch capacity of the distant water fleet of nations fishing in Icelandic waters has reached ominous proportions and it is well known that their activities are increasingly being directed towards the waters around Iceland. The vital interests of the Icelandic people are therefore at stake. They must be protected. Such remedial action would also enhance the role of Iceland in a system of an equitable division of labour whereby Iceland would be a prime supplier of fish from her own waters ..." (I, p. 28).

> "It is quite clear that it is in the interest of all concerned that necessary conservation measures be adopted. In the areas adjacent to its coast the coastal State is in the best position to evaluate and enforce the necessary measures, since its vital interests are at stake. Agreements between various nations to solve the problems involved have proved to be slow and ineffectual because even if scientists may agree on what measures are desirable and necessary, other considerations can prevent the enforcement of the recommended action" (I, p. 37).

2. There is no doubt whatever that the conservation of the fish stocks in the Iceland area is a matter of very great importance. Fish are an extremely valuable source of food and the number of fish in the sea is limited. The conservation and efficient exploitation of the fish stocks in the Iceland area is of importance not only to Iceland but also to the other nations who over a long period of years have fished there and in particular to the Federal Republic of Germany. Furthermore, since a large proportion of the fish caught by Icelandic vessels is exported, the conservation and exploitation of the stocks is of importance to the populations who in the present or in the future may depend on the area as a source of food though they play no part in its direct exploitation. The Federal Republic of Germany has a particular interest in the conservation and utilization of the fish stocks in this area. German vessels have been fishing in these seas in a manner and on a scale comparable with

their present activities since 1936 as has been demonstrated earlier in this Memorial (see Part I, para. 6).

3. The Government of the Federal Republic of Germany contends, however, that there is no justification, neither in fact nor in law, for unilateral measures as those taken by the Government of Iceland for the conservation of fish stocks in the waters around Iceland, and in particular:

(a) that there is no imminent danger for the fish stocks for which German fishing vessels fish at present in the ICES "Iceland Area";

(b) that where there is reasonable ground to assume that conservation measures will be necessary, or, at least, advisable with respect to the fisheries of certain species (e.g., cod), the taking of such measures including catch limitations is under review by the North-East Atlantic Fisheries Commission; and

(c) that, if a need for conservation measures will arise with respect to certain other fish stocks in future, the North-East Atlantic Fisheries Commission will be capable to deal adequately and efficiently with such a contingency.

In the following paragraphs the situation of the fish stocks in the ICES Iceland Area and the international machinery instituted for the purpose of their conservation will be examined; the legal question whether and to what extent the Government of Iceland might take unilateral measures for the purpose of conservation if such need would be proved scientifically, will be discussed later (see Part IV, paras. 100 to 115 of this Memorial).

B. The Situation of the Fisheries in ICES Iceland Area

1. Principles for a Policy of Conservation with Respect to the Iceland Area

4. Both demersal and pelagic fish are caught in the waters around Iceland. The classification of fish into these two groups rests on the following criteria:

(a) *Demersal* fish, like cod, haddock, redfish, saithe, halibut, sole, flounder, turbot, plaice and others, are species which feed near the sea bottom in relatively shallow waters where there is still enough light to permit photosynthesis so that plancton, the basic element of the food chain in the sea, can grow. Therefore, demersal species are found mainly on continental shelf areas and along their slopes down into the ocean depths. They are caught predominantly by fishing gear operating at or near the seabed, such as long lines or trawl nets. Fisheries for demersal species tend to be more stationary and constant and they can be conducted on a more or less year-round schedule.

(b) *Pelagic* fish, like herring, capelin, mackerel, tuna, pilchard, sardine and others live mainly near the surface or in middle layers of the ocean where they find their particular food. Thus, these species are found in both shallow and deep water. They are generally more mobile than demersal species and undertake lengthy and seasonal migrations. They are caught predominantly by fishing gear operating near the surface or at various depths such as drift nets, purse-seines and midwater trawls. Although these species will be found also in deeper waters, commercial fishing for them is mainly confined to the shallow grounds where fish shoals are most dense.

This classification, however, is not without exceptions and somehow fluid. Some demersal species which are caught in the Iceland Area are partly pelagic in their way of life, such as the redfish, or partly migratory, such as the cod where migrations between Greenland and Iceland have been observed.

5. In view of the high intensity of the international fisheries in the North Atlantic which has been caused by an increasing number of fishing vessels, greater mobility of modern deep-sea fishing vessels with processing and deep-freezing equipment, and the development of more efficient fishing gear and refined means of fish-detection, it is generally agreed that conservation measures are necessary to prevent over-fishing. The first measures introduced for this purpose, such as prescriptions for the mesh-size of the nets and limits for the size of fish to be taken, useful as they may be, do not necessarily guarantee the conservation of the stocks; effective conservation presupposes that enough mature fish will be left for spawning in order to assure the necessary recruitment of the stocks by young fish. Therefore it has become necessary to regulate the catch of those species to which the most intensive fishing effort has been directed. Limits for the total catch of the principal species and quota allocations to the nations which are fishing for them have already been introduced for the fishing grounds of the north-west Atlantic by the International Commission for the North-West Atlantic Fisheries. Similar measures are under consideration by the North-East Atlantic Fisheries Commission for that part of the Atlantic to which the fishing grounds around Iceland belong (see below paras. 32 to 34 of this Part of the Memorial).

6. It is a basic principle of conservation policy that kind and extent of the measures to be taken must conform to the situation of the particular fish stock which on scientific evidence is found to be in danger of being over-fished. Therefore, it will be necessary to examine the situation of each particular fish stock separately whether such a danger is imminent and what measures are called for to meet this danger sufficiently and effectively. To this end, special attention should be paid to the range of migration and recruitment of a certain fish stock; thus, piecemeal measures which are confined to a limited area only and cover only a part of the fish stock, are of no use and may even by its secondary effects result in a disruption of the precarious equilibrium. This is particularly true with respect to pelagic species such as herring with their wide range of migration, but it is also true with some demersal species (e.g., redfish, cod and saithe) which migrate beyond the limits of the ICES Iceland Area. The conservation of fish stocks of such an international character can be effectively and adequately regulated only by the international management of such stocks under the collective responsibility of all States whose nationals fish for them. The claim of a coastal State to be qualified to regulate fishing for such fish stocks before its coast unilaterally, is at variance with the principle of collective responsibility of the States for the high seas fisheries and may put the concept of international fishery management in jeopardy.

7. While it is sound policy to direct conservation measures to the particular fish stock and not to all the fish within a certain sea area generally (the confinement of conservation measures to particular "fish stocks" had already been made a condition for such measures by Articles 3 to 8 of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas of 29 April 1958), it should, however, not be overlooked that conservation measures directed to one particular fish stock may have indirect effects on the situation of other fish stocks. Catch limitations and quota allocations which reduce the fishing effort directed to a particular fish stock

in a certain sea area, may induce the highly mobile fishing fleets to divert their fishing effort, if that is technically and economically possible, either to other species in the same area or to other fishing grounds so that the danger of over-exploitation of those other fish stocks or of those other fishing grounds which is not yet present, may then arise. Thus, there can be no doubt that the catch limitations introduced by the International Commission for the North-West Atlantic Fisheries for the fishing grounds of this region will make it inevitable to protect corresponding fish stocks of the Eastern Atlantic, including the Iceland Area, from a shift of the fishing effort from the West Atlantic to the eastern areas. It should, however, be emphasized that such a situation justifies only "closing-door" measures by stabilizing the fishing effort in the eastern regions of the Atlantic on the present level (either by catch limitations or other appropriate measures), but not measures which purport to reduce or exclude fishing by nations which have habitually fished there. It may be noted in this context that the danger of the diversion of the fishing effort from the West Atlantic to the Iceland Area has, at present, disappeared since the Court has, by its Order of 17 August 1972 as affirmed and continued by the Order of 12 July 1973, limited the catch by United Kingdom and German fishing vessels in the ICES Iceland Area to the previous level.

8. Turning now to the situation of the fisheries in the ICES Iceland Area, the Government of the Federal Republic of Germany would like to direct the attention of the Court to the fact that the fishing vessels of the Federal Republic fish only for demersal fish in the waters around Iceland, in particular redfish, saithe, and on a smaller scale for cod. On the average of the years 1964 to 1971 the catch figures of the three species were: redfish more than 60 per cent., saithe nearly 30 per cent., and cod about 5 per cent. of the respective total catches of these species in the ICES Iceland Area. As the Government of Iceland asserts concrete cases of over-fishing in the ICES Iceland Area only with respect to the herring, cod and haddock fisheries, the accusation of over-fishing against the Federal Republic has no sound basis in the facts. Nevertheless, some comments on the situation of the fisheries in the ICES Iceland Area will be made in order to place the situation in the right perspective.

2. The Atlanto-Scandian Herring Fishery

9. German fishing vesels do not fish for herring in the waters around Iceland and are not expected to do so in the foreseeable future. German fishing vessels have, in fact, fished for herring in the past only during the few years from 1965 to 1969 (attracted by the herring fisheries boom) in comparatively small quantities (1965: 6,440 tons; 1966: 26,640 tons; 1967: 10,614 tons; 1968: 908 tons; 1969: 335 tons) compared with the huge catch figures by Icelandic vessels (1965: 590,400 tons; 1966: 430,100 tons; 1967: 94,300 tons; 1968: 27,600 tons; 1969: 23,500 tons).

10. In view of this negligible German fishing effort which could not possible have contributed to the break-down of the herring fisheries in these years, it would not be necessary to deal here with the case of the Atlanto-Scandian herring were it not for the fact that the Government of Iceland refers in the first line to the collapse of the herring fisheries in order to prove the danger of over-fishing by the activities of fishing fleets of other nations in the waters around Iceland. In a pamphlet, entitled *Iceland and the Law of the Sea*, published by the Government of Iceland in 1972, it is stated under the heading "The Need for Conservation" (at p. 19):

> "As an indication of over-fishing in Icelandic waters it may be pointed out that the herring catch by Iceland dropped from 763,000 tons in 1965 to 50,700 tons in 1970 . . . The significance for the Icelandic economy of the harm already done to the herring . . . stocks in Icelandic waters can perhaps best be understood in the light of the fact that only five years ago the herring catch constituted more than 50 per cent. of the total catch of all species by Icelanders whereas now that half, the herring, has been almost done away with."

What, however, the Government of Iceland failed to draw to the attention of the readers of that pamphlet in this context, is the fact that this disastrous result of over-fishing was almost entirely carried out, as far as the Iceland Area is concerned, by Icelandic vessels.

11. The facts are the following: the Atlanto-Scandian herring stock had for centuries provided a valuable fishery for the drift-net and purse-seine fishermen of the Icelandic, Norwegian and Russian coast. German fishermen did not participate in this fishery. In about 1960 technological improvements in purse-seine fishing greatly increased the efficiency and the consequential increase in catches led to a rapid increase of the fishing effort by Icelandic and Norwegian fishermen in the herring fishery. In 1966 and 1967 the combination of more efficient techniques and larger Icelandic and Norwegian fishing fleets in the waters adjacent to the Icelandic and Norwegian coasts nearly caused the extermination of the stock; in 1971 only 11,800 metric tons were caught by the Icelandic vessels in the ICES Iceland Area. No other nations took part in this destructive fishing; the small quantities caught by German fishing vessels after the catch figures had already reached their peak (see above para. 9) and the even smaller quantities caught by Soviet Union vessels during that time (the sporadic Faröe and Finland catches were even more negligible) cannot be held responsible for this result to any extent. Regulations have now been imposed by Iceland, Norway and the USSR, which have been supported by a NEAFC recommendation of May 1973 for closed areas. However, the spawning stock has remained extremely small and there has been no significant recruitment of young herring which could restore the fishery in the foreseeable future.

12. It should be noted that the break-down of the herring fishery was not entirely an Icelandic affair. The herring which are caught in the Icelandic Area are a mixture consisting partly of fish spawning off the coast of Iceland and partly of fish spawning off the coast of Norway. Part of the decline of herring catches in the Iceland Area was, therefore, due to over-fishing of the Norwegian component in waters off the Norwegian coast over the same period. This example of over-fishing has particularly well demonstrated that migratory fish stocks which migrate from coast to coast cannot effectively be regulated by unilateral measures of one coastal State; such cases can only be dealt with adequately by international action which takes all biological and economical factors with respect to the utilization of this particular fish stock into account. If such measures would be left to the discretion of one coastal State alone, the interests of other States which can claim the same legitimate interest in exploiting such a migratory fish stock, could then be seriously prejudiced.

13. Whatever may be the lessons to be drawn from the case of the Atlanto-Scandian herring, it cannot provide a justification for Iceland to extend its jurisdiction over the fishing activities of German fishing vessels in the waters around Iceland on grounds of conservation.

3. The Cod Fishery

14. The Government of Iceland asserts that the cod stock is now also being over-fished. In the aforementioned pamphlet *Iceland and the Law of the Sea* (see above para. 10) the Government of Iceland said the following:

> "Today the cod is by far the most important species in Icelandic fisheries, and the Icelandic Government is most concerned with the evidence which indicates that the cod is now also being overfished. Scientists have clearly demonstrated that the total mortality in the spawning population of the cod is now over 70 per cent. annually, and fishing is responsible for four-fifths of this figure. The average age of the spawning stock has been sharply reduced. Fish over ten years of age are now very rare whereas 15-20 years ago fish up to 17 years old were not unusual. These facts clearly indicate that the increased fishing effort seems to have drastically reduced the spawning potential of the cod stock. The cod is now in a similar position to the salmon or capelin because the greater part of the stock has now only the possibility to spawn once in its life. The biological implications of this are bound to be very negative for the survival of the stock and can be disastrous for the Icelandic economy if nothing is done to halt this dangerous trend" (*loc. cit.*, pp. 19-20).

It is not the place here to examine the correctness of the figures mentioned in this statement, and of the conclusions drawn from them; it may suffice to mention that this pessimistic view of the situation of the cod stock is not shared by other experts (see below para. 16). In any case no concrete figures have been produced by the Government of Iceland which indicate clearly a downward trend in cod catches; after a gradual downward trend from 1955 to 1966, the trend has again turned upward from 1967 to 1971. If, however, newly built Icelandic trawlers will turn to the cod fisheries to an increasing extent as predicted by the Icelandic Minister for Fisheries, then the danger of over-fishing may, in fact, become imminent.

15. Here again the Government of the Federal Republic would like to direct the attention of the Court to the fact that German fishing vessels take only a small percentage of the cod catches in the ICES Iceland Area. The catch figures for 1971—according to the Advance Release of the ICES *Bulletin statistique des pêches maritimes 1971*—were as follows:

Iceland	250,324 metric tons
United Kingdom	161,855
Federal Republic	27,007
Others	13,816
Total	453,002

Thus, Iceland took 55.5 per cent., the United Kingdom 35.7 per cent. and the Federal Republic only 6 per cent. of the total cod catch in the ICES Iceland Area. The comparatively small share of the Federal Republic of Germany in the cod fishery around Iceland—important as it may be for the Federal Republic by representing still 22 per cent. of the total German catch in these waters (1971: 27,000 of 123,000 tons)—could not have influenced the mortality rate of the cod stock to any sizeable extent. The Federal Republic has supported the research undertaken on behalf of the North-East Atlantic Fisheries Commission (see later, paras. 38 to 44 of this Part of the Memorial) in order to ascertain whether a sufficient spawning stock of mature cod is left

for maintaining the population. The Federal Republic is ready to agree to any reasonable proposal for restrictions on the cod fisheries which will assure the maintenance of the cod stock, provided that such restrictions are applied indiscriminately.

16. In 1971 a Joint ICES (on behalf of the North-East Atlantic Fisheries Commission)-ICNAF (International Commission for North-West Atlantic Fisheries) Working Group on Cod Stocks in the North Atlantic was established with the following terms of reference:

> ". . . to summarize existing assessments concerning cod stocks in the North-East Arctic, Icelandic and East Greenland Waters, as well as the West Greenland, Labrador and Newfoundland cod stocks, and to examine in general terms the effects of regulatory measures, with particular emphasis on the interaction between fisheries on different stocks . . ."

In this Report, presented in 1972 (ICES CM 1972/F: 4), the Working Group recommended a general reduction of the fishing effort directed to the cod fisheries in several areas where it considered the stocks as being over-exploited, but not for the ICES Iceland Area Va with respect to which the Working Group came to the following conclusion (*loc. cit.* at p. 12):

> "During the period 1964 to 1967 the catch of cod at Iceland declined to 345,000 tons, in 1967 due to lack of good year classes in the spawning fishery, but since 1968 a part of the strong year classes 1961, 1962 and 1963 which originated at Greenland migrated to Iceland and raised catches again to a high level (417,000 tons in 1970). Previous assessments indicate that an increase in fishing mortality would not result in a further increase in a yield per recruit so *this stock can be considered as being fully exploited.*"

Thus, the Working Group did find that the stocks in the ICES Iceland Area were "fully" but not "over"-exploited and a reduction of the fishing mortality (by reduction of the fishing effort) was not recommended specifically for the ICES Iceland Area. The Working Group found, however, that the reduction of the fishing effort recommended for the cod fisheries in certain other areas, including the Arctic and Norwegian regions, which it recommended, should not result in the fishing effort now being diverted to the Iceland Area, but rather re-deployed, if possible, on other lightly exploited species. The interaction between the regulations of fisheries on the same fish in different areas, and the consequential need for an ocean-wide management of such fish stocks has thereby been demonstrated very clearly.

17. The situation of the cod fisheries in the ICES Iceland Area may be summarized as follows: while it has not yet been proven that this stock is over-fished, it is, at least, fully exploited and any increase in the fishing effort directed to the cod fishery may cause a deterioration of the situation. This situation, however, provides no ground for the exclusion of German fishing vessels from fishing in the waters around Iceland; it justifies only reasonable restrictions on the cod fishery, e.g., the establishment of closed areas for the protection of the spawning grounds or, at most, the limitation of the total catch of cod in this area on the present level, provided that such measures are applied indiscriminately.

4. The Redfish and Saithe Fisheries

18. Redfish as well as saithe are found all round Iceland but, since these species are not wholly of Icelandic origin, it has not been possible to estimate

the effect of fishing at Iceland on the size of the stocks. All that can be concluded from past catch figures is the fact that catches have rather remained on a relatively steady level within the last years; the figures were—on the basis of the yearly ICES *Bulletins statistiques de pêches maritimes*—the following:

Redfish:	1964	62,000 metric tons
	1965	74,000
	1966	74,000
	1967	67,000
	1968	63,000
	1969	56,000
	1970	49,000
	1971	47,000
Saithe:	1964	21,000 metric tons
	1965	17,000
	1966	17,000
	1967	24,000
	1968	17,000
	1969	35,000
	1970	28,000
	1971	41,000

As both species are caught by German trawlers in the same areas and on the same voyage, the fluctuations in the catch of each of these two species are more due to accidential factors than to the degree of exploitation of the stocks. The total catch of both species has generally remained on the level of 80,000 to 90,000 metric tons on the average. Both stocks live not only in the Iceland Area; they represent highly migratory stocks which migrate as far as it is known within the whole region of the Atlantic and Arctic Ocean between Iceland, Norway and Greenland. It is, therefore, extremely difficult to assess the effects of the fishing effort in only one area on the size and recruitment of the stock. The regulation of the fisheries of these species cannot be left to the coastal State but must be left to the competent international bodies such as the North-East Atlantic Fisheries Commission.

19. The statistical figures mentioned in the preceding paragraph do not prove a case of over-fishing; there were no other indicators which might have pointed to the possibility that the redfish or saithe stocks are in danger of being over-exploited. The Government of Iceland, too, has not been able to produce any facts which would indicate that the redfish and saithe stocks are over-fished; the Government of Iceland has not even asserted that an over-fishing of these particular stocks had taken place. Thus, the redfish and saithe fisheries can provide no justification whatsoever for the extension of Iceland's jurisdiction over these fisheries up to the 50-mile limit.

5. The Haddock Fishery

20. The vessels of the Federal Republic of Germany fish also for haddock in the ICES Iceland Area, although on a very limited scale; on the average of the years 1960 to 1969 the catch of haddock constituted only 3.3 per cent. of the total haddock catch by all nations in this area. The bulk of the haddock catch is taken by Iceland (54.3 per cent.) and the United Kingdom (38.5

per cent.). Certainly, the fishing effort of the Federal Republic of Germany has had no significant influence on the state of the haddock stock.

21. The Government of Iceland has in its above-mentioned pamphlet *Iceland and the Law of the Sea* (see above para. 10) specifically referred to the haddock fishery, besides the herring and cod fisheries, as the third case of over-fishing in the waters around Iceland:

> "As an indication of overfishing in Icelandic waters it may be pointed out that the herring catch by Iceland dropped from 763,000 tons in 1965 to 50,700 tons in 1970, and the drop in the Icelandic haddock catch was from 53,500 tons in 1965 to 31,800 tons in 1970. The figures for the total catch of haddock in Icelandic waters by Iceland, Britain, the Soviet Union, France, Belgium and other nations fishing in Icelandic waters were *110,000 tons in 1961 and 44,500 tons in 1970*" (*loc. cit.*, p. 19).

22. While these figures shall not be disputed here, it should, however, be added that it is probably Iceland which has to blame itself for the decline of the haddock catches. The haddock is found all round Iceland but mainly off the west and north-west coasts. The haddock originates from spawning grounds within the 12-mile limit before the south-western coast of Iceland and the state of the stocks is, therefore, largely determined by Icelandic fishing within that zone. The haddock stock has dwindled since 1960 because of insufficient recruitment by young fish. Whether this result has been caused by adverse natural conditions, over-fishing of the spawning stock, or by detrimental effects of Icelandic fishing for other species on the nursery grounds of the haddock, may be left open here. In any case, the meagre percentage of German fishing for haddock cannot possibly have been responsible for this result.

6. Evaluation of the Situation of the Fish Stocks in the ICES Iceland Area

23. Summarizing the conclusions which had been drawn from the factual situation of the different fish stocks in the ICES Iceland Area, described in the preceding paragraphs 9 to 22, it can be safely maintained that if there have been cases of over-fishing in the past (e.g., in the herring and perhaps the haddock fisheries), the Government of Iceland cannot blame the Federal Republic of Germany for over-exploiting these fish stocks. As for the other fish stocks, no over-fishing had been scientifically proven. Therefore, the Government of Iceland cannot assert any valid ground for exclusive jurisdiction over the waters around Iceland for the purpose of the preservation of fish stocks. It may become necessary to introduce limits for the total catch of one or more species in order to prevent the diversion of fishing effort from other over-exploited regions to the ICES Iceland Area; this may require quota allocations in the nations fishing in that area by equitable criteria, but this does not justify the exclusion of the fishing vessels of the Federal Republic from that area altogether. The situation of the fish stocks does not yet require unilateral conservation measures by Iceland as long as there are reasonable prospects that the international machinery responsible for the conservation of fish stocks in the ICES Iceland Area will deal adequately with this problem. This international machinery, that is the North-East Atlantic Fisheries Commission, and the activities so far undertaken by this Commission will be described and evaluated in the following paragraphs.

C. The International Management of the Fishery Resources in the ICES Iceland Area: the North-East Atlantic Fisheries Commission (NEAFC)

1. Regulation of the Meshes of Fishing Nets and the Size Limits of Fish

24. Some credit for the remarkably stable amount of catches of demersal fish in the waters around Iceland since 1953 must be given to the regulation of the meshes of fishing nets and size limits of fish.

25. The first Convention on this matter which had been concluded by the North Sea States to apply also to the Iceland Area, was the International Convention for the Regulation of the Meshes of Fishing Nets and Size Limits of Fish of 1937. There were nine signatories, including Germany, Iceland and the United Kingdom. The Convention imposed a minimum mesh for the Iceland area of 70 mm. and also imposed minimum sizes for fish—that for cod being 24 cm.—and provided for the setting up of a Permanent Commission, but never became effective because of lack of ratification before the Second World War broke out. At the Overfishing Conference held in London in 1946, which was largely concerned with the problems of the North Sea, the Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1946 (231 *UNTS*, 199) was entered into for the North Atlantic, including Iceland. This Convention, which came into force on 15 April 1953, increased the mesh limit for the Iceland area to 110 mm. and the size limit in the case of cod to 30 cm.

2. The North-East Atlantic Fisheries Convention of 1959

26. Fishing in the ICES Iceland Area is now regulated under the North-East Atlantic Fisheries Convention signed in London on 24 July 1959.

486 *UNTS*, 157. The text of this Convention is reproduced in Annex F to the Application of the Federal Republic of Germany instituting proceedings in this case.

The purpose of the Convention, as stated in the preamble, is "the conservation of the fish stocks and the rational exploitation of the fisheries of the North Atlantic Ocean and adjacent waters, which are of common concern" to member States.

27. The area covered by the Convention (which is defined in Art. 1 of the Convention) comprises, *inter alia*, the waters off East Greenland, the Middle and Eastern Atlantic including the Azores grounds, the Iceland Area, the waters around the Faröe Islands, the Irish Sea, the North Sea, the waters off the Norwegian Sea, the Arctic Waters around Spitzbergen and Bear Island, the Barents Sea, and the Kattegat and Skagerrak. Fourteen States are parties to the Convention: Belgium, Denmark, France, the Federal Republic of Germany, Iceland, Ireland, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, the Soviet Union and the United Kingdom. These are practically all States whose vessels fish to any extent in the Iceland Area.

28. Article 3 of the Convention establishes a permanent North-East Atlantic Fisheries Commission (NEAFC), to which every member State may appoint as its Delegation two commissioners and as many experts and advisers as it likes. Each Delegation has one vote in the Commission. Decisions may be taken by simple majority, except where otherwise specifically

provided (see para. 31 below). The Commission has established Regional Committees for each of the three regions into which the Convention area is divided (Art. 5); the ICES Iceland Area forms part of the northern region (No. 1) together with the Faröe Islands, East Greenland, and the Arctic Waters. Adjacency to a region or participation in the fishery of a region confers membership on the particular Regional Committee responsible for that region; other member States which exploit elsewhere a stock which is also fished in the region for which the Regional Committee is responsible, may at their request be also represented on that Committee. *Ad hoc* working groups have been frequently formed over the years to deal with special problems.

29. According to Article 6 it is the duty of the North-East Atlantic Fisheries Commission and of its Regional Committees:

"*(a)* to keep under review the fisheries in the Convention area;

(b) to consider, in the light of the technical information available, what measures may be required for the conservation of the fish stocks and for the rational exploitation of the fisheries in the area;

(c) to consider, at the request of any Contracting State, representations made to it by a State which is not a party to this Convention for the opening of negotiations on the conservation of fish stocks in the Convention area or any part thereof; and

(d) to make to Contracting States recommendations, based as far as practicable on the results of scientific research and investigations, with regard to any of the measures set out in Article 7 of this Convention."

30. The Commission is advised on scientific questions of fish conservation by the International Council for the Exploration of the Sea (ICES). This organization, founded in 1903, has its headquarters at Charlottenlund in Denmark. It collates fishing statistics from fishing nations, including all the members of NEAFC, and publishes the annual *Bulletin statistique des pêches maritimes* which is regarded as the main authoritative source of such statistics. It carries out reviews of particular stocks for NEAFC and in particular has carried out reviews of the cod stocks in the North Atlantic (including of course the Iceland Area)—more recently in 1965, 1967, 1968, 1970 and 1972. These reviews, based upon statistics of the amount of fishing, the quantities landed and an age census of the fish caught, together with ancillary data, enable estimates to be made of the size of the resource and the rate of fishing (i.e. the percentage of the stock removed each year) and the evaluation of management strategies and particular conservation proposals.

31. Article 7 (1) of the Convention provides that the measures relating to the objectives and purposes of this Convention which the Commission and Regional Committees may consider, and on which the Commission may make recommendations to the Contracting States, are:

(a) any measures for the regulation of the size of mesh of fishing nets;

(b) any measures for the regulation of the size limits of fish that may be retained on board vessels, or landed, or exposed or offered for sale;

(c) any measures for the establishment of closed seasons;

(d) any measures for the establishment of closed areas;

(e) any measures for the regulation of fishing gear and appliances, other than regulation of the size of mesh of fishing nets;

(f) any measures for the improvement and the increase of marine resources, which may include artificial propagation, the transplantation of organisms and the transplantation of young.

According to Article 8 such recommendations become binding for the member States if they are adopted by a two-thirds majority of the Delegations present and voting; each member State may, however, within a certain time-limit object to the recommendation and in that event shall not be under obligation to give effect to the recommendation. The Government of the Federal Republic of Germany would certainly accept and implement any recommendation which the Commission might make on scientific evidence. Nor is there any reason to suppose that the other member States would not accept and enforce such a recommendation.

32. The procedure by which recommendations of the Commission may become binding on the member States does, however, not yet apply to recommendations for the institution of catch limitations or other restrictions which are not listed in paragraph (1) of Article 7. However, by Article 7 (2) of the Convention, power to recommend measures for regulating the amount of total catch, or the amount of fishing effort in any period, may be added to the Commission's existing powers under Article 7 (1) on a proposal adopted by not less than a two-thirds majority of the Delegations present and voting and subsequently accepted by all Contracting States in accordance with their respective constitutional procedures. Such a proposal empowering the Commission to recommend measures of both catch and effort limitation was unanimously adopted by the Commission (including, of course, the Icelandic delegation) at the 8th Meeting in 1970. This recommendation has now been accepted by all the Contracting States except Iceland.

33. Iceland's refusal to activate section 7 (2) was not announced until the NEAFC meeting in London in May 1973. At the previous NEAFC meeting in London on 9 May 1972, the Icelandic delegation had said that:

> "... as mentioned at the special meeting (of NEAFC) at the level of Ministers in Moscow (on 15 December 1971), Iceland was now prepared to accept the activation of Article 7 (2). Formal notification would be sent to the Secretariat" (NEAFC, *Summary Record for 3rd Session of 10th Meeting*—Doc. NC.10/175, 3rd Session, p. 7).

No such notification was, however, received by the Secretariat and, at the 11th NEAFC meeting in London on 9 May 1973, the Icelandic delegate without warning reported that:

> "... he was unable to say when his Government would ratify Article 7 (2) powers. The Icelandic Government believed that coastal States had prime responsibility to manage and prior rights to use marine resources off their coasts. Catch quotas appeared to conflict with these rights and the problem would be raised at next year's Law of the Sea Conference which was the only forum for discussion of it. It would be very difficult for Iceland to accept a catch quota system which did not harmonise with its policy in regard to fishery limits" (NEAFC, *Summary Record for 2nd Session of 11th Meeting*—Doc. NC.11/195, 2nd Session, p. 1).

The Icelandic delegate was asked whether Iceland would consider ratifying the Article with a reservation on its application to Icelandic waters but later stated (*ibid.*, p. 7) that he had telephoned his Government but had to report that the Government of Iceland remained opposed in principle to activation of Article 7 (2) of the Convention in any circumstances. This decision was not to be altered. He added, however, that his Government would continue to respect measures agreed outside the framework of the Commission.

34. The Commission later approved the following resolution by nine votes

to none, with four delegations abstaining and one delegation taking no part in the voting:

"The Commission

—Noting the decision of the Icelandic Government not to accept the proposal of the Commission that it should be empowered to recommend measures concerning limitation of catch and effort;

—Recalling that at the meeting of the Commission at Ministerial level in Moscow in December 1971, the Ministers of all Contracting States defined the speedy implementation of this proposal by all member States as the primary task of the Commission;

—Considers that this decision not to approve the proposal will have the regrettable and damaging result of depriving the Commission of powers which are indispensable to the effective performance of its responsibilities;

—Expresses the hope that the Icelandic Government will soon reconsider the decision, and

—Invites the other Contracting States to consider as a matter of urgency what steps may be taken in the meantime to remedy this deficiency in the Commission's power" (NEAFC, *11th Meeting, Conclusions and Recommendations*—Doc. NC.11/204, p. 4).

Accordingly, but for this sudden change in the position of the Government of Iceland, the Commission would now have power to recommend measures for regulating total catch or fishing effort in any part of the North-East Atlantic, including the Iceland Area, if it considered on scientific evidence that such measures were necessary. The result of the Government of Iceland's belated refusal has been to force the other Contracting States to start again and seek other methods of regulating catch or effort even in those NEAFC regions in which Iceland has no interest at all.

35. Notwithstanding the fact that limitations of catch or fishing effort recommended by the Commission cannot up till now be made obligatory under the procedure of Article 8 of the Convention, the Government of the Federal Republic of Germany would certainly accept any recommendation which the Commission might make on scientific evidence as to the limitation of catch or fishing effort in the Iceland Area. Nor is there any reason to suppose that the other Contracting States would not accept and enforce such a recommendation. Notwithstanding the refusal of Iceland to activate Article 7 (2), the Government of the Federal Republic of Germany remains ready and willing to negotiate measures of catch limitation.

36. Article 13 (3) of the Convention provides for measures of national control in the territories of the member States and national and international measures of control on the high seas for the purpose of ensuring the application of the Convention and the conservation measures enacted under the Convention. A scheme of so-called "joint enforcement" to which 13 member States, including Iceland and the Federal Republic of Germany, are parties has been made under Article 13 (3) and came into force as from 1 July 1971. Under this "joint enforcement scheme" which has likewise been instituted for the North-West Atlantic, member States designate specially authorized inspectors and the vessels from which they are to carry out their functions. These inspectors are supplied with standard certificates, and the vessels carrying them, must fly a special pennant; they may stop fishing vessels of other member States, board them and inspect their nets and catches. When an inspection has been carried out, a report must be written on a standard

form for transmittal to the Commission and to the Government of the country under whose flag the inspected vessels operate, as a basis for possible punishment of contraventions. This is, certainly, not a true "international" inspection in the name and under the responsibility of the Commission, but it is reciprocal inspection under which every member State aquiesces in the inspection of its fishing vessels by officials of another member State under specifically agreed rules. The prosecution and punishment of contraventions remains, however, within the province of the State where the vessel is registered. The powers of the inspectors and the inspection procedure are defined in detail in order to prevent misuse of the inspection authority and to forestall controversies about the procedure applied in a concrete case. By the institution of this "joint enforcement scheme" the North-East Atlantic Fisheries Commission and the International Commission for the North-West Atlantic Fisheries have been breaking new ground in international law. It cannot any longer be maintained that the implementation of conservation measures enacted under the Convention could not effectively be controlled.

3. Activities of the North-East Atlantic Fisheries Commission Relating to the ICES Iceland Areas

(a) *Meshes of Nets and Size of Fish*

37. The regulations as to meshes of nets and size of fish in the Iceland area which had been imposed under the Convention of 1946 have been made more stringent by NEAFC. At present the limits in respect of the Iceland area are:

Type of net	*Appropriate width*
Seine net	110 mm.
Such part of any trawl net as is made of cotton, hemp, polyamide fibres or polyester fibres	120 mm.
Such part of any trawl as is made of any other material	130 mm.

There are also further restrictions on devices obstructing nets and on size of fish, the minimum for cod now being 34 cm.

(b) *Iceland's Proposal for Closed Areas 1967-1971*

38. At the Fifth NEAFC meeting in 1967 the Icelandic Delegation proposed (NEAFC *Report of Fifth Meeting*, p. 10) that an area off the north-east coast of Iceland should be closed to all trawling in the months of July to December for an experimental period of 10 years and that ICES should be asked to study and evaluate the effect of the proposed measures and report to the Commission. In a memorandum, the Icelandic Delegation also drew attention to the need for consideration of the total problem of limiting fishing effort in Icelandic waters by, for example, a quota system where the priority of Iceland would be respected in accordance with internationally recognized principles regarding the preferential requirements of the coastal State where the people were overwhelmingly dependent upon the resources involved for their livelihood. In introducing their memorandum the Icelandic Delegation stressed the crucial importance of the cod fisheries to the Icelandic economy

and the serious concern felt by Iceland at the decline of cod stocks in her waters. They maintained that the Commission's mesh size provisions were insufficient to arrest this decline, that increased fishing effort was now producing reduced landings, that the mortality rate for immature cod was high and largely attributable to fishing and that the spawning potential of the stock had been seriously reduced, with consequent adverse effects on recruitment. The proposed closure would apply in an area where young cod were known to congregate and grow to maturity before migrating to spawn elsewhere and where they were extensively fished by foreign trawlers.

39. Most Delegations, including the Delegation of the Federal Republic of Germany, expressed sympathy for the Icelandic position but considered that further scientific investigation was necessary and suggested that this should be entrusted to ICES. The United Kingdom Delegation pointed out that administrative as well as scientific considerations were involved, particularly in view of the suggestion in the Icelandic memorandum that wider forms of fishery management might be necessary, and they suggested that the matter might be examined by a working group upon which both scientists and administrators would be represented. After further consultation, the Commission unanimously passed the following resolution:

> "The Commission, after considering the proposals put forward by the Icelandic Delegation for the closure to trawling of an area off the North-East coast of Iceland and the observations made by other Delegations recommends:
>
> (i) that a working group be set up consisting of representatives of the Federal Republic of Germany, Iceland, Norway, the USSR and the United Kindom to consider the Icelandic proposal and any modification of it that may appear desirable, and report to the Sixth Meeting of the Commission;
> (ii) that ICES should be invited to send a representative to meetings of the group;
> (iii) that members of the group should consist of both administrators and scientists;
> (iv) that the Icelandic Government should be invited to convene the first meeting of the group."

40. At the Sixth NEAFC meeting held in May 1968 the Commission considered the report of the working group set up in accordance with the resolution passed at the Fifth meeting (NEAFC *Report of Sixth Meeting*, p. 10). The working group reported that it had examined the proposal in the light of information made available by its scientific advisers who had considered the proposed ban in the light of the 1965 Report of the North-Western Working Group and other available information. It recommended that further research should be undertaken on the size and age composition of the stocks and their seasonal distribution within the proposed area of closure and on the origin of recruitment from different areas to the Icelandic spawning stock. It also recommended that the Commission should give further consideration to the Icelandic proposal although some members of the working group had felt that the evidence already available was sufficient to justify an experimental closure.

41. The Delegation of Iceland while recognizing that there were uncertainties in the scientific advice on the need for and effects of the proposed closure which should be removed by further research, nevertheless considered that the stocks in the area were endangered and that immediate action was

required. They stressed the great dependence of Iceland upon its fishing industry and put forward the modified proposal that there should be an experimental closure off the north-east coast of Iceland while further necessary research was undertaken. After further discussion, the Delegation of Iceland noted that their proposal did not meet with general approval. They agreed therefore not to press for an experimental closure, on the understanding that intensive research into the whole Icelandic fishery would be carried out so that the Commission might consider at a later meeting what, if any, conservation measures would be desirable. This suggestion was welcomed and the delegations of the countries principally concerned were requested to prepare an appropriate resolution. The Commission later resolved as follows:

> "With reference to the proposal for closure to trawling of an area off the North-East coast of Iceland and to the report of the Reykjavik Working Group held in January 1968, the Commission resolves to request the International Council for the Exploration of the Sea to make arrangements to initiate, as soon as practicable, and to co-ordinate the following additional research:
>
> (i) To study further by all means available the size and age composition of cod stocks and haddock stocks around Iceland and in adjacent waters;
> (ii) To identify the origin and proportion of recruitment from different areas, particularly Greenland, to the Icelandic spawning cod fishery;
> (iii) To study by co-ordinated tagging experiments the dispersal and survival of immature and spawning fish;
> (iv) To identify, if possible, discrete racial characteristics and to estimate by this means the proportions of the different races within the spawning stock of cod;
> (v) To determine by exploratory fishing, echo surveys, etc., the importance of the areas north of Iceland and any other areas not at present fished as a source of recruits to the spawning stock of cod or in other ways;
>
> with a view to preparing for consideration at the Ninth Meeting of the Commission new estimates of the effects of changes in fishing effort on the yields of the Icelandic cod and haddock stocks."

42. At the Ninth NEAFC meeting 1971, the ICES committee duly reported to the Commission on these matters (NEAFC *Report of the ICES Liaison Committee for 1971*—Doc. NC.9/141, pp. 5-10). In summarizing their findings, the Chairman of the ICES Liaison Committee said that, as far as cod was concerned, fishing effort at Iceland had continued to decline and in 1969 was at less than half the 1964 level. Catch rates had, however, increased. The Committee had made assessments, on the basis of various assumptions of variation in fishing effort, of changes in yield per recruit. Their conclusion had been that changes of effort would not make a significant change in the total yield. They had given consideration to the effect of closing an area off the north-east coast of Iceland to trawling, for the period which the Iceland Delegation had proposed. In their opinion, the effect of this closure would be negligible, and if it led to diversion of effort to other areas, e.g., around Greenland, its effect would be even smaller. As regards haddock, the situation was that catches had declined continuously from 1962-1969, because of poor

year classes and a decrease in British effort. The Icelanders had, however, increased their effort and more or less maintained the level of their catch. There was no cause to change their Committee's previous assessment.

43. In fact, despite the pessimistic outlook foreshadowed in the Icelandic proposal in 1967, the stock, catches and catch-per-unit effort had improved in the intervening years and continued to increase. But notwithstanding this and the report of the ICES Committee, the Icelandic Delegation again asked the Committee to close this area to all trawling in the period July to December, this time for an experimental period of five years. During further discussions the Icelandic Delegation made certain criticisms of the report of the ICES Committee. They later agreed, however, that it was true that Iceland was represented on the working group and that the group had all the available information before it. This merely illustrated, they said, that there was a division of opinion in Iceland. They asserted that the fact that the stocks were in a comparatively good state was due to temporary and external factors. They had no doubt that Iceland had a right to expand its fisheries more than others. Its dependence was illustrated by the fact that the 1967 and 1968 failure of the herring fisheries had led to a fall in its gross national product of about 17 per cent. They alleged that increased mobility of distant water fleets made the situation precarious and a remedy urgent (NEAFC, *Summary Record for 7th Session of 9th Meeting*—Doc. NC.9/150, 7th Session, pp. 2-3). After further discussion the Commission passed the following resolution (*ibid.*, pp. 5-6):

> "The Commission,
>
> Taking note of the discussion, during the Ninth Meeting, of the Icelandic proposal for the closure to fishing of an area off the North-East coast of Iceland;
>
> Appreciating Icelandic concern regarding the effects that might arise from an expansion of effort due to the redeployment of fishing from other areas or stocks;
>
> Noting, with interest, the intention of ICES to join with ICNAF in a study of the scientific aspects of the cod fisheries of the North Atlantic as a whole;
>
> Requests ICES, through the Liaison Committee, to provide such further scientific information as may become available from this study; and
>
> Resolves that, at the next meeting of the Commission, or as soon as the additional information becomes available, Regional Committee 1 should give further consideration to the need for additional measures to regulate the cod and haddock fisheries at Iceland, in the context of the position in the North Atlantic as a whole."

44. Accordingly, it is clear that at that stage (May 1971) not only was there no scientific evidence that the cod stock was in danger but Iceland was not itself alleging any such danger. It was merely expressing a fear that the increased mobility of fishing fleets might lead to danger in the future.

(c) *The Period After Iceland's Decision to Extend Its Fisheries Zone to 50 Miles*

45. Since the new Government of Iceland, which came into power after the general elections in 1971, had announced its intention to extend Iceland's exclusive fishery zone to 50 miles, it tried to find support for its policy in the

North-East Atlantic Fisheries Commission. Such an attempt was made during a special meeting of the Commission at Ministerial level, which was held at Moscow in December 1971. The meeting, however, declined to discuss Iceland's claim to a 50-mile fishery limit.

46. At the special meeting in Moscow, Ministers laid particular stress on the urgency of measures for limitation of catch and effort in the NEAFC area generally and of activating Article 7 (2) of the Convention. The United Kingdom suggested as an immediate action (NEAFC, *Summary Record for 3rd Session of Special Ministerial Meeting*—Doc. NC.M/7, 3rd Session, p. 6) that all countries fishing cod and haddock in the North-East Atlantic and in the area off Iceland (i.e., in ICES areas I, IIa, IIb and Va) should agree at the meeting that during 1972 their catches of these species be limited to a tonnage not exceeding that caught on average over the previous ten years. It was stressed that this would be an interim proposal and that the total catch and its divisions between countries would need to be considered subsequently in further detail for any permanent scheme. Although this proposal received some support it was opposed by the Icelandic delegate on the grounds that it would involve a relatively high sacrifice of demersal fishing by Iceland (*ibid.*, p. 16). Iceland had, in fact, achieved its highest ever demersal catch the previous year (1970: 471,000 metric tons).

47. At the 10th Meeting of the North-East Atlantic Fisheries Commission, held in May 1972, two reports were submitted for consideration. The first, from the ICES Liaison Committee, stated that the Icelandic scientists had submitted more data as to fishing effort in support of their case for a closure of the area off the north-east coast of Iceland. They concluded, however (NEAFC, *Report of ICES Liaison Committee for 1972*—Doc. NC.10/165, para. 34):

> "The new information from Iceland indicates that in recent years the Iceland catch figures for that area are larger than the figures presented by Iceland at the Working Group meeting. In the absence of concrete, detailed Icelandic data the Liaison Committee is not able to reassess the effect of a closure."

The other report was from the ICES/ICNAF Working Group on Cod Stocks in the North Atlantic. This report, which covered the whole of the North-West Atlantic (ICNAF) as well as the whole of the North-East Atlantic (ICES on behalf of NEAFC), came to the following general conclusions (see *loc. cit.* in para. 16 of this part of the Memorial, p. 42) as to the area as a whole:

(i) Increasing range and mobility of the fleets fishing for cod in the North Atlantic has increased their efficiency and their ability to concentrate on those stocks that happen to be most productive at a particular time.

(ii) For virtually all the stocks considered the current fishing mortality has reached the level where further increases in fishing will at best produce very small increases in yield per recruit, and in some stocks will actually decrease the yield per recruit.

(iii) There is a probability that spawning stocks as low, or lower, than the present could lead to a recruitment failure and consequently to a very large drop in total catch. Taking this into account, and to some extent the economic benefits implied by an improved catch per unit effort, a desirable level of fishing mortality (effort) would be approximately half the present level. This would not affect the average long-term yield.

(iv) If such a reduction were achieved in a single year, then, given average

recruitment, the cod catch would recover close to the current level after a transitional period of five years.

(v) The same benefit could be achieved by a phased reduction involving less immediate disturbance to the catch though it would take perhaps ten years to realise the full benefits.

(vi) If the displaced fishing effort remained fishing and could be redeployed on other lightly exploited species there would be an increase in the total catch of all species and a less severe immediate loss."

These considerations apply, however, less to the Iceland area than to other areas. In some areas (e.g., West Greenland and Labrador/Newfoundland) fishing mortality already exceeds what is regarded as the maximum permissible figure. This is not so in the Iceland area (*Report of the ICES/ICNAF Working Group*, p. 30, table 10). Furthermore, while for most stocks the catch in 1970 was 20-25 per cent. of the biomass (the total estimated weight of the stock), it was somewhat lower for the Iceland stock (16 per cent.) and much higher for the Arcto-Norwegian stock (41 per cent.) (*Report, loc. cit.*, p. 15).

48. At the 11th NEAFC Meeting, 1973, the Icelandic Delegation put forward no proposals for conservation in the Iceland area. Instead they announced their refusal to support measures for regulation of total catch or fishing effort in any part of the NEAFC area (NEAFC, *Summary Record for 2nd Session of 11th Meeting*—Doc. NC.11/195, 2nd Session).

4. Evaluation of the Regulatory Powers Under the North-East Atlantic Fisheries Convention

49. The failure to give effect to the extension of the Commission's power under Article 7 (2) of the North-East Atlantic Fisheries Convention which is entirely due to Iceland's refusal to ratify this proposal, is certainly a regrettable weakness of the Commission's regulatory powers which should be overcome as soon as possible. However, the lack of procedural power to make recommendations of the Commission for catch limitations or for restrictions of fishing effort obligatory by a two-thirds majority vote, should not be over-estimated:

First, the fact that limitations of catch or restrictions of fishing effort are not yet included in the list to which the special procedure of Article 8 (obligatory character of recommendations by virtue of a two-thirds majority vote) applies, does not, under the present régime, preclude member States, on the occasion of a Commission Meeting or elsewhere, to agree on catch-limitations or restrictions of fishing effort with respect to certain stocks of fish.

Second, even if the special procedure under Article 8 would already be available, recommendations of the Commission still require the willingness of each member State to accept the recommendation as binding because each member State retains the right to "contract out" within a certain time-limit.

Therefore, the procedural advantage to make use of the special procedure under Article 8 is not so decisive as it could seem, if member States are really determined to introduce catch limitations. It is true that for a member State which is unwilling to accept such obligations, it may be politically easier to delay an agreement on catch-limitation than to repudiate openly a decision which has already been taken by a two-thirds majority; but, in effect, no

recommendation which provides for a catch-limitation or other restriction could be forced on a member State against its will if such recommendation affects its interests substantially, irrespective whether the procedure under Article 8 has been used or not. On the other hand, there is every prospect that a recommendation of the Commission if based on sufficient scientific evidence and on equitable criteria, will find the support of member States. All depends, therefore, on the quality of the Commission's preparatory work and on the preparedness of member States to live up to their collective responsibility for the preservation of the common fishery resources. The Commission has already demonstrated its determination to pursue without delay its consideration of measures for catch-limitation. In the case of the North Sea and Celtic Sea Herring it agreed at the annual meeting in May 1973 to hold a special meeting in December 1973, in order to decide on measures for regulating the catch of herring and any other appropriate measures which may be recognized for the conservation of North Sea and Celtic Sea Herring.

50. The International Commission for the North-West Atlantic Fisheries (ICNAF) has been from the outset provided with the power to propose overall catch-limits for any species of fish under the Convention for the North-West Atlantic Fisheries of 8 February 1949; the competence of the Commission (and of its Committees or "Panels" from which proposals for regulatory measures originate) has been broadened by an amendment to the Convention which became effective on 15 December 1971, which allowed the Commission or its Committees to propose any appropriate measures to achieve the optimum utilization of the fish stocks. By another amendment which became effective already on 19 December 1969, the same procedural device for making proposals of the Commission binding on member States as under Article 8 of the North-East Atlantic Fisheries Convention has been introduced into the Convention, namely that proposals were to become automatically binding on each member State if not objected to within a certain period of time. Under these powers the International Commission for the North-West Atlantic Fisheries has already instituted catch-limitations in the form of overall catch quotas which were in several cases divided into national quotas for the principal species in most fishing grounds of the West Atlantic. This experience shows that the Commission's powers under the North-West and North-East Atlantic Fisheries Conventions are broad enough to establish an effective and equitable common management of the fishery resources. The North-East Atlantic Fisheries Commission which is responsible for the Iceland Area, has the additional advantage to be able to rely on an independent international research body, the International Council for the Exploration of the Sea (ICES), for the supply of the necessary scientific evidence for its proposals; the "separation of powers" between the two bodies, the one preparing independent scientific advice and the other taking the practical decision, may contribute to the authority of the proposals of the Commission, enhance the confidence in the soundness of the Commission's proposals and render such proposals more acceptable for member States. This, too, is an argument in favour of the effectiveness of the Commission in dealing with difficult conservation problems.

51. One of the most difficult problems that had to be faced by the International Commission for the Fisheries of the North-West Atlantic, was the allocation of national quotas either in terms of catch quantities or fishing effort units within a catch-limitation scheme. It may be difficult to draw lessons from the short time of experience in this field, but it may be useful to recall some considerations in this respect as an example of international co-opera-

tion in the management of international fishery resources. For the purpose of allocation of quotas there was wide agreement within the Commission, that the decisive criterion for such apportionment should be the relative sizes of the current catches of the States participating in the fishery of a certain species. There were, however, some States which were still in process to build up their high-seas fisheries and these States requested higher shares, and there were finally the coastal States which claimed preferential treatment in the form of a special share allocated beforehand from the total catch. Several formulas have been discussed to meet the different interests. As an example for an equitable solution the 40 : 40 : 10 : 10 formula might be mentioned on which a recent ICNAF quota regulation was based; this formula means that 40 per cent. of the overall catch will be allocated in proportion to catches over the last three years, 40 per cent. will be allocated in proportion to catches over the last ten years; 10 per cent. will be allocated as "preference" to the coastal State, and the remaining 10 per cent. will be reserved for special needs (e.g., for "new-comers"). In order to protect the special interests of coastal States in case a considerable reduction of the total catch becomes necessary, a "sliding scale" was proposed which provides that the shares of coastal States should be reduced by a lesser degree than those of non-coastal States. It is not intimated here that such a formula is the most equitable solution and that this formula should be guiding the allocation of quotas in other regions and under other circumstances. It has been mentioned here for the purpose of showing that international management of fishery resources is possible and that the powers under the Fisheries Conventions of the North-West and North-East Atlantic are broad enough to introduce and implement any appropriate conservation measure if member States are really determined enough to assure an effective and equitable result.

52. Having regard to the existing possibilities for an effective and equitable international management of the fishery resources of the ocean, the claim of a coastal State to be alone entitled to determine how the fishery resources in the high seas before its coast should be exploited, must be regarded as an anachronism which has no other purpose than to serve national interests of the coastal State.

D. Conclusion

53. On the basis of the facts and arguments advanced in the preceding paragraphs of Part II of this Memorial it is respectfully submitted that the argument of the Government of Iceland that it is necessary to extend Iceland's fisheries jurisdiction up to 50 miles from the coast for the purpose of the conservation of the fish stocks in the waters around its coasts, cannot be maintained.

PART III

UTILIZATION OF THE FISHERY RESOURCES BY ICELAND AND THE FEDERAL REPUBLIC OF GERMANY AND THEIR DEPENDENCE THEREON

A. Introduction

1. The second ground on which the Government of Iceland claims that it is necessary for Iceland to extend its fishery limits, is the contention that the exceptional dependence of the Icelandic population on the fishing industry entitled them to take all the fish in that area. For illustration of this position of the Government of Iceland the following sentences may be cited from the Government of Iceland's Memorandum on *Fisheries Jurisdiction in Iceland* (issued by the Icelandic Ministry for Foreign Affairs in February 1972 and reproduced as Enclosure 2 to Annex H attached to the Application of the Government of the Federal Republic of Germany instituting proceedings in this case, pp. 17-18):

> "But even if the conservation problems are solved, e.g., through reduced fishing effort, the maximum sustainable yield frequently is not sufficient to satisfy the demands and requirements involved. In such cases—and Iceland then provides the obvious example—the requirements of the coastal State have a priority position . . .
>
> Investigations in Iceland have quite clearly shown, that the country rests on a platform or continental shelf whose outlines follow those of the coast itself whereupon the depths of the real high seas follow. On this platform invaluable fishing banks and spawning grounds are found upon whose preservation the survival of the Icelandic people depends. The country itself is barren and almost all necessities have to be imported and financed through the export of fisheries products. It can truly be said, that the coastal fishing grounds are the *conditio sine qua non* of the Icelandic people for they make the country habitable."

In another pamphlet entitled *Iceland's 50 Miles and the Reasons Why*, published by the Government of Iceland in February 1973, it is said (p. 5):

> "Practically all the necessities of life, except fish and dairy products have to be imported. Furthermore, tools, machinery, fuel, textiles, household appliances, semi-durable goods, automobiles and practically all kinds of mechanical appliances as well as other necessities of life, are bought from abroad. Being literally a one-industry State, Iceland has to pay for all these imports by the revenue from the export of fish and fish products, which for the larger part of this century have amounted to over 80% of Iceland's total exports. Clearly, to deprive Iceland of the resources of the sea would mean the collapse of the Icelandic economy. But there are several other economic factors which make Iceland's case for conservation, preferential right to the marine resources, rational utilization of fish stocks, and extension of the fishery limit, a special

case. No States come anywhere near Iceland in their dependence on fish and fish products of the earnings of foreign exchange. This is clearly demonstrated by the fact that fish and fish products make up over 80% of Iceland's exports . . ."

2. At a Ministerial Meeting of the North-East Atlantic Fisheries Commission in Moscow on 15 December 1971, the Minister for Fisheries of Iceland stated quite bluntly that it was necessary for Iceland to secure for Iceland a larger part of the catches for economic reasons (cited in the aforementioned Icelandic Memorandum *Fisheries Jurisdiction in Iceland*, p. 35):

> "The population of our country is increasing. Therefore, we must increase our national income if we are to keep in step with other nations in the matter of standard of living and economic security. Only five years ago, fifty per cent. of the total of fish products exported by Iceland consisted of herring products. Now the Atlanto-Scandian herring stock, on which nearly all the herring fisheries were based, has totally disappeared. The consequences of overfishing this herring stock have weighed very heavily upon our economy. As herring fishing in our waters is now practically nonexistent, we have in an increasing measure turned our herring fishing vessels to other fisheries. And we are now in the process of enlarging our trawler fleet greatly. This is an inevitable economic necessity. For us there exist no other possibilities. For this reason the fishing effort directed by the Icelanders to the cod stock and other demersal fish stock is being intensified, while at the same time the number of foreign fishing vessels on our grounds continues to increase. Foreign vessels have been taking about fifty per cent. of the total catch of demersal species obtained annually on the Icelandic fishing grounds, or a share equal to our own. In the opinion of our marine biologists an increase of the fishing effort from what it is now will inevitably lead to overfishing. These are the reasons underlying the decision to enlarge our fishery jurisdiction to 50 miles, for we must secure for ourselves a larger part of the catches and safeguard at the same time the fish stocks around the country, on which our economic system rests, against extermination by overfishing."

3. While it cannot be denied that at present the economy of Iceland rests primarily on the fishing industry, and while it may be equitable that Iceland, as a coastal State particularly dependent on fishing, should be given some preferential treatment in the waters of the high seas before its coast, it does not necessarily follow from these considerations that it would also be just and equitable in present or any foreseeable circumstances that Iceland should be permitted to take all the fish for itself to the exclusion of other nations who over a very long period of years have shared the fishing in these waters with Iceland and are also economically dependent on the further utilization of these fishery resources. The legal issue whether and, if so, to what extent a coastal State may claim preferential treatment in the utilization of the fishery resources before its coast will be discussed in Part IV of this Memorial. In the following paragraphs it shall be examined to what extent the economy of Iceland depends on the fisheries industry at present and in the years to come and whether the Government of Iceland has established beyond doubt that Iceland will need all the fish in the sea area of Iceland for the upkeeping of its economy. The Government of the Federal Republic of Germany contends that this had not been established and that the case of Iceland does not rest on a solid ground in this respect.

B. The Icelandic Economy

1. The Post-War Development of Iceland's Economy

4. Despite some inherent disadvantages Iceland's economy has expanded rather quickly in the post-war years. The fishing industry still plays the key role in the Icelandic economy and virtually its entire output is exported the proceeds of which account for the major part of the total value of merchandise exports (1970: 78 per cent.), but as a result of the development of other industries the heavy dependence on the fishing industry is lessening. Iceland's own forecast of the export share of other than fish products expects an increase of their share to 37 per cent. in 1974 and to 44 per cent. in 1980, thereby reducing the export share of the fishing industry to 67 and 56 per cent. respectively.

Source: Industrial Development Perspectives, Iceland 1971.

The dominant position of the fishing industry and its orientation has been in the past a primary source of economic instability (fluctuations in the rates of growth of the gross national product and inflationary pressure) because the performance and profitability of the fishing industry greatly depend on biological factors and on price developments abroad.

5. Setting aside the economic instability caused by the heavy dependence on the export-oriented fishing industry Iceland has by the post-war expansion of its economy attained a high standard of living and is now by any standards a moderately rich nation, as measured in terms of either the usual economic criteria (such as the gross national product per capita) or indicators of the standard of living of its people (such as housing, education and welfare, consumer durables, and so on). Iceland's gross national product per capita compared to those of other OECD countries keeps a mid-position and surpassed—on the basis of 1970 figures—those of such countries as Austria, Finland, Ireland, Italy and the United Kingdom and comes near to those of Belgium and the Netherlands.

Source: OECD Economic Surveys: Iceland, March 1972.

More important than the gross national product itself is the annual rate of growth of this economic indicator. It has been estimated by the Governor of the Central Bank of Iceland that the gross national product has increased by an average of 3.7 per cent. per annum since the end of 1945, a rate of growth above that of the average for OECD countries. Indeed, if the years of adjustment following the Second World War are excluded, the overall rate is much higher and is close to 5 per cent. per annum for the period 1953-1971. In 1970, Iceland's annual rate of growth of gross national product was 7.9 per cent., compared to the Federal Republic's rate of 4.9 per cent. and the OECD's average rate of 5.1 per cent. Iceland's 1971 growth rate of gross national product is reported to have been 9 per cent., the highest rate recorded in the OECD area during that year.

Source: OECD Economic Surveys: Iceland, March 1972.

6. Income per capita in Iceland is estimated in 1970 at US$2,200. This places Iceland among the dozen or so nations in the world's highest income bracket. Equally, the rate of growth of the national income per head has far surpassed the rates of other European States. National income per capita has risen by about 56 per cent. overall in EEC countries during the period

TABLE NO. 4. NATIONAL INCOME (NI) AND GROSS NATIONAL PRODUCT (GNP) PER CAPITA

At factor cost (US$)

		1963	1966	1967	1968	1969	Percentage increase 1963—latest date
United States	NI	2,562	3,175	3,305	3,569	3,814	20.1
	GNP	2,855	3,521	3,682	3,955	[1]	(38.5)
EEC	NI	1,131	1,412	1,476	1,614	1,767	56.2
	GNP	1,265	1,598	1,667	1,818	[1]	43.7)
EFTA	GNP	1,334	1,646	1,719	1,669	—	(25.0)
United Kingdom	NI	1,300	1,534	1,586	1,457	1,513	16.4
	GNP	1,396	1,669	1,719	1,583	1,647	18.0
Norway	NI	1,205	1,559	1,699	1,808	1,933	60.4
	GNP	1,426	1,847	2,014	2,147	2,277	59.7
Denmark	NI	1,335	1,805	1,943	1,936	2,183	63.5
	GNP	1,475	1,995	2,149	2,146	2,417	63.8
Sweden	NI	[1]	[1]	[1]	[1]	—	—
	GNP	1,983	2,571	2,751	2,905	[1]	(45.4)
Iceland	NI	1,269	2,080	1,972	1,487	(2,200)[2]	73.4
	GNP	1,469	2,401	2,308	1,739	[1]	—

[1] Not available.
[2] Estimated by the Governor of the Central Bank of Iceland.

Source: National Accounts; *United Nations Statistical Yearbook 1970.*

GROSS NATIONAL PRODUCT PER CAPITA OF OECD COUNTRIES (IN US$)
1970

Austria	1,940	Japan	1,910
Belgium	2,670	Luxemburg	2,940
Canada	3,550	Netherlands	2,400
Denmark	3,200	Norway	2,900
Finland	2,180	Portugal	660
France	2,920	Spain	970
Federal Republic of Germany	3,020	Sweden	3,820
		Switzerland	3,260
Greece	950	Turkey	350
Iceland	2,290	United Kingdom	2,150
Ireland	1,320	United States	4,850
Italy	1,700		

Source: OECD Surveys: Iceland, March 1972.

1963 to 1969; the overall increase for Iceland has been about 73 per cent. despite intermittent downturns in 1967 and 1968 (see table No. 4, p. 194).

7. To quote an impartial judgment on Iceland's economic standard, the following conclusions in the OECD's *Economic Survey on Iceland 1972* may be cited (from p. 45):

> "Iceland is faced with a number of inherent disadvantages. The range of natural resources is relatively limited, climatic conditions are unfavourable and the country is located at a point remote from major world markets and suppliers. In addition, the size of the population, which barely exceeds 200,000, sets strict limits to the range of industries which can be economically developed on the basis of an assured domestic market. Despite these apparent handicaps a comparatively high standard of living has been attained. Even after the severe setbacks of 1967 and 1968 when real income levels actually fell in absolute terms, average per capita GNP has remained above the European OECD average. The distribution of income appears to be relatively even and high levels of employment have been maintained during virtually the entire post-war period. Iceland would also appear to rank highly in terms of other social indicators of well-being in a broader sense. Certainly, housing standards must rank among the highest in the world."

2. Iceland's Dependence on Fisheries and the Need for Diversification

8. It is a fact that Iceland's prosperity is at present closely linked to the yearly successes (and failures) of its fishing industry. Fish and fish products even now account for about 80 per cent. of the total value of her (visible) exports and almost 20 per cent. of the gross national product is directly related to the earnings from fishing. Iceland is undoubtedly heavily dependent upon fisheries as her principal source of foreign exchange earnings, and this very dependence continues to create serious difficulties for the economy of the country. But, no doubt, with the dangers of this situation in mind, successive Governments in Iceland have pursued a policy of economic diversification. As long ago as 1966, even before the major economic blow brought about by the collapse of the herring fishery, Iceland adopted definite policies and made specific arrangements for industrial diversification which were considered major steps forward toward lessening her dependence upon the fishing industry. These policies have been attended with considerable success.

9. Iceland's geographical location at a point where a branch of the Gulf Stream converges with cold Polar currents has endowed the country with not only rich fish breeding grounds but also heavy precipitation which has formed the basis of abundant hydro-electric power resources. The country is also situated in an active volcanic belt providing reserves of geothermal power. Although at present Iceland is dependent upon the importation of 84 per cent. of her total energy requirements (of which petroleum products account for by far the largest share), short and long-term prospects are excellent, for her principal natural energy reserves remain virtually untouched. In broadening the base of her economy, Iceland is making most effective use of these two vast reserves. With a rather limited domestic market (both with respect to demand and availability of funds), she has rightly concentrated on attracting those export-orientated industries which flourish on cheap and abundant power.

(a) *Hydro-Electric Power*

10. Iceland's water resources provided her in 1972 with 94 per cent. of her electricity requirements, together with practically universal central heating, and an increasing income from tourism. It has been estimated that, even at present levels of technological knowledge, a mere 8 per cent. of the economically exploitable hydroelectric power resources have been tapped. There is sufficient reserve potential to allow the generation of hydro-electric power at costs well below the economic minima in other countries. With the completion of the Burfell project this year, total hydro-electric power potential will have increased by over 170 per cent. Two plants under construction, on the Thjorsa-Tungnaa and Hrauneyjorfoss rivers, are expected to yield a further 1,700-1,800 million KW, and further plans under consideration involve the building of a new installation of equivalent capacity to the Assuan dam project and producing the cheapest electricity in the world.

11. In 1966 agreements were made with the Alusuisse (Swiss Aluminium Company) for the construction of a smelter at Straumsvik, involving a total investment of about $35 million. Exports of smelted aluminium now make a substantial contribution to foreign exchange earnings. In 1970 the value of exports of aluminium represented over one-eighth of total exports, manufactured goods in general accounting for one-sixth of the value of all exports. (The capacity of the Straumsvik plant was recently increased, and output should be doubled by the end of this year.) The feasibility of opening a new plant in the north of the island is under consideration.

(b) *Geothermal Power*

12. Geothermal energy could provide, it has been estimated, a power equivalent to 7 million tons of oil per year but at only one-sixth of the cost of oil; the 1969 total fuel-oil consumption was about 0.43 million tons. Experimental plants are already producing electricity at prices competitive with those of existing hydro-electric power installations. Besides providing limitless energy for central heating and glass-houses (Iceland grows a large amount of hot-house fruits, despite being close to the Arctic circle!), geothermal power has now been harnessed for the diatomite industry at Lake Myvatn. Amongst the projects now under discussion in Iceland is that for a sea-chemicals industry based on the use of geothermal steam in the Reykjanes area. A proposed complete project would eventually produce a range of chemical products including salt, magnesium chloride and magnesium metal. Most of this project is still at the planning stage, but initial studies on economic feasibility have been favourable. The National Research Council, in its assessment of the possibilities for new industries, is considering development of a heavy water plant, also based on geothermal power, a seaweed-based industry and an oil refinery. Further expansion is anticipated in the production of diatomite and fertilisers.

(c) *Small-Scale Industries*

13. Apart from attracting foreign capital to develop power-hungry industries, Iceland stands to gain considerably through the contribution made by her smaller-scale traditional industries, in particular skins, wool products, ceramics and mink farming. Relying totally on local raw materials, their net contribution to exports is relatively high. The Industrial Development Fund,

set up when Iceland joined EFTA, is providing loans to finance the expansion and rationalization of existing industries. Iceland's light industries now make a variety of products including biscuits, building components, carpets, clothing, confectionery, furniture, leather goods, margarine, plastics, paint, shoes, ships, cured skins, soft drinks and textiles.

(d) *Invisibles*

14. Invisible earnings, led by tourism, are also making an appreciable contribution. Invisible earnings, as a whole, approximately doubled over corresponding periods in the years 1969 and 1970, and in 1971 transportation and travel represented over 23 per cent. of total exports of goods and services. As OECD comments, "the expected expansion of tourism might lead to particularly good opportunities for Iceland in the next decade".

Source (for paras. 8 to 14): OECD *Economic Surveys: Iceland*, March 1972.

3. THE CHOICE OF POLICIES

15. It has been and still is a sound economic policy for Iceland to continue the policy of economic diversification and to lessen the dependence upon the fishing industry. The OECD *Economic Survey on Iceland 1972* recommends that "irrespective of the outcome of the dispute over the fishing limits the diversification of resources into manufacturing remains of the greatest importance for a satisfactory development of the Icelandic economy". With a population of slightly more than 200,000 inhabitants the national financial resources available for such a policy are naturally limited and greater efforts should be made to attract foreign capital in order to accelerate the diversification into export-oriented industries on the basis of the still unexploited and somehow neglected power resources of the country.

16. It may be recalled here that as early as at the occasion of the settlement of the dispute relating to the establishment by Iceland of a 12-mile exclusive fisheries zone by the Exchange of Notes of 19 July 1961, the Government of the Federal Republic of Germany had offered technical and economic assistance for "plans for the development and diversification of the basis of the Icelandic economy".

> See paragraph 20 of the Memorial of the Government of the Federal Republic of Germany on the question of the jurisdiction of the Court in this case and the text of the Memorandum handed to the Ambassador of the Republic of Iceland on 21 July 1961 which has been reproduced in Annex I to that Memorial.

For the implementation of this offer technical experts of the Federal Republic of Germany were sent to Iceland in order to examine the feasibility of further exploiting the geothermal and hydro-power reserves of the country. The experts recommended financial assistance for the building of two additional power stations; the Government of Iceland, however, showed little interest in such development projects and preferred financial help for the completion of the existing electric power distribution network (electrification of distant rural communities). Thereupon the Kreditanstalt für Wiederaufbau (Bank for Reconstruction and Development) of the Federal Republic of Germany provided for an investment loan of 4 million DM to the State Electricity Authority in Iceland for this purpose. No further requests of the Government of Iceland for financial and technical help for diversification purposes

have been reported. It should, however, be mentioned in this context that the Federal Republic had always pursued a liberal trade policy with respect to the import of Icelandic fish products into the Federal Republic of Germany in order to help Iceland in securing sufficient export earnings for its economic development; the Federal Republic has always advocated the same liberal trade policy towards Iceland in the European Economic Community. In 1970, the Federal Republic granted a loan of 3 million DM for the building of the Icelandic fishery research vessel *Bjarni Saemundsson*.

17. With the notable exception of the Alusuisse Aluminium project at Straumsvik mentioned above (see para. 11 of this Part of the Memorial) the Government of Iceland, unfortunately, has shown a growing reluctance to attract foreign capital. The OECD *Economic Survey on Iceland 1972* (at p. 35) points to the fact that "the policy statement of the new Icelandic Government lays stress on the development of diversification with Icelandic ownership. The Government's stress on national control could imply difficulties in attracting foreign capital".

18. It seems that the economic policy of the present Icelandic Government concentrates more on the enlargement of the fishing industry than on other industries. The Minister for Fisheries is reported to have stated at the Ministerial Meeting of the North-East Atlantic Fisheries Commission in Moscow on 15 December 1971 that Iceland is now in the process of enlarging its trawler fleet greatly.

> The text of the statement of the Icelandic Minister for Fisheries made on 15 December 1971 is reproduced in the Icelandic Memorandum *Fisheries Jurisdiction in Iceland*, attached to Annex H of the Application of 5 June 1972 instituting proceedings in this case.

There are reports that Iceland intends to build up a new fleet of large wet-fish stern trawlers in the range of 440 to 500 GRT; the number on order has been reported as about 30. This would more than treble the existing fleet of Icelandic distant-water wet-fish trawlers. In view of the fact that the present fishing effort in the waters around Iceland by Iceland and other nations is already going to reach the upper limit, if the maximum sustainable yield is to be preserved, these new Icelandic trawlers if not merely destined to replace older types, could enlarge Icelandic catches in this area only at the expense of other nations, in particular at the expense of the United Kingdom and the Federal Republic of Germany who have until now relied on these fishing grounds to a considerable extent.

19. It is understandable that a country does its best to increase the standard of living of its population by developing its economic resources where the highest possible output may be expected, and it is certainly within the competence of the Republic of Iceland to define the goals of its economic development policy, and in particular to determine the economic sectors into which the limited financial resources of a small country like Iceland with 206,000 inhabitants (1971) should be directed. But a country should for this purpose look to those resources which are within the national domain; it cannot claim resources which belong to the common domain of all nations and the utilization of which it had shared up till now with other nations. Iceland is not entitled to claim such resources simply because it needs economic development and chooses to build its economic development on such resources as long as there are enough national resources in the country itself which may suitably be exploited and would, probably, yield a higher, safer and more constant rate of economic growth.

C. The Dependence of the Federal Republic of Germany on the Fishing Grounds in the Waters around Iceland

20. The Federal Republic of Germany may be regarded as a "big" State compared with Iceland, if measured in terms of the number of its inhabitants or its economic capacity (though there is not much difference between the two States with respect to their standard of living or their national income per capita as had been demonstrated earlier). This, however, should not create the wrong impression that the loss of the fishing grounds in the waters around Iceland would have no sensible impact on the economy of the Federal Republic. The economic loss in absolute figures that would result from the exclusion of German fishing vessels from the fishing grounds within the 50-mile zone around Iceland would at least be equivalent to, if not even higher than the net profit which might probably accrue to the Icelandic economy if these fishing grounds would be exploited by the Icelandic fishing industry alone. The economic consequences for the Federal Republic of Germany resulting from the loss of the fishing grounds around Iceland will be explained in more detail in the following paragraphs. In this respect the attention should be directed (1) to the effects on the fishing industry, and (2) to the effects on the supply of fish in the Federal Republic of Germany.

1. The Effect on the Fishing Industry of the Federal Republic of Germany

21. Distant-water fishing is the most important branch of the fishing industry of the Federal Republic of Germany. In the year 1971 the distant-water fishing fleet of the Federal Republic accounted for 70 per cent. (345,000 t catch weight) of the total landings (493,000 t catch weight), representing 269 million DM in value. The distant-water fishing fleet of the Federal Republic of Germany comprises 94 trawlers (status of 30 June 1972); 67 of them are so-called wet (fresh) fish trawlers (443-1084 GRT) and 27 of them are so-called freezer trawlers (719-2684 GRT). Wet-fish trawlers store the catch on ice; their range is, therefore, limited because they cannot keep their catch fresh longer than 12 to 14 days. Freezer trawlers, on the other hand, are equipped with deep freezing equipment; their catches are immediately processed and deep frozen on board; therefore, their range is not limited by the time factor and they operate mostly in the more distant fishing grounds of the North-West Atlantic. The wet-fish trawlers will gradually be replaced by freezer trawlers; 15 new freezer trawlers are already on order to be ready in 1974. Twenty wet-fish trawlers of an older type have already been tied up because it has been found unprofitable to keep them in service. All wet-fish trawlers with sporadic exceptions regularly fish in the waters around Iceland. The freezer trawlers, too, fish from time to time in these waters either on their voyage to and from the more distant fishing grounds in the North-West Atlantic or when weather conditions or seasonal fluctuations of fish stocks do not allow fishing in the waters of the North-West Atlantic. The distant-water fishing fleet of the Federal Republic of Germany employs about 4,000 persons; about 3,200 of them serve on board, the remaining 800 on land (technical and administrative services).

22. By establishing a 50-mile exclusive fishery zone Iceland would exclude the fishing vessels of the Federal Republic of Germany from about 90 per cent. of their traditional fishing grounds in this area. The remaining 10 per cent. of these fishing grounds, which lie beyond the 50-mile limit, would be too

small to allow distant-water fishing on them, because such fishing depends on the availability of a chain of interconnecting fishing grounds between which vessels can move according to the ever-changing weather conditions and concentration of fish. In the practical result, the exclusion of the fishing vessels of the Federal Republic from a 50-mile zone around Iceland would, therefore, mean the total loss of these fishing grounds. The fishing fleet of the Federal Republic of Germany would not be able to compensate the loss of the Icelandic fishing grounds by diverting their activities to other fishing grounds in the oceans.

23. The range of wet-fish trawlers is limited by technical and economic factors. A shift to more distant grounds would mean longer voyages to and from home ports and thereby leave conventional wet-fish trawlers with an unprofitable short period of fishing because they cannot keep their catch fresh longer than 12 to 14 days. The fishing grounds off East Greenland which lie within the reach of wet-fish trawlers, allow only seasonal fishing for a limited variety of species; an intensification of the fishing effort in this area would create the danger of over-fishing. The nearer fishing grounds (North Sea, Faröe Islands, Norwegian Coast) are already exploited by German wet-fish trawlers. International fishing in these grounds has reached levels at which an intensification of the fishing effort would result in a reduction of already low catch rates and would depress the earnings of traditional coastal fisheries in these areas.

24. Only freezer trawlers could reach the more distant fishing grounds in the North-West Atlantic, e.g., West Greenland, Labrador, Newfoundland, Nova Scotia, New England. However, freezer trawlers could hardly intensify their operations in the North-West Atlantic because these fishing grounds are already subject to quota limitations. The International Commission for North-West Atlantic Fisheries (ICNAF) has decided on quota regulations for all important species in the North-West Atlantic by which in most areas the total catch will be limited to the present level or even be reduced. Since the allocations to member countries are mainly based on their past performance, there will be no prospects for an increased fishing effort in these waters. In the fishing grounds of the North-East Arctic (Norwegian Sea, Bear Island, Spitzbergen) where difficult weather conditions prevail, catch rates have continuously fallen in the last years and will continue to fall (following the *Report of the Liaison Committee of ICES to the 10th Meeting of the North-East Atlantic Fisheries Commission*). For this reason only a few German vessels have fished there in recent years; any intensification of fishing effort in these areas would, therefore, not only be ineffective but also result in a further depression of catch rates below economic levels.

25. The loss of the fishing grounds around Iceland would require the immediate withdrawal of the major part of the wet-fish trawlers of the Federal Republic of Germany from service. These vessels would probably have to be scrapped with considerable losses to their owners before they were due for replacement by the more modern freezer trawlers in the normal course of development under the modernization programme which is under way. The loss of the fishing grounds around Iceland would also affect the existing possibilities for the economical operation of the freezer trawlers which are equipped with expensive technical gear and operate at high costs, in so far as they have partly been fishing in the waters around Iceland in order to be fully utilized. Since the trawler owners are already in a very tight position and operate at marginal profits, they cannot afford to continue operating their vessels if they are not fully utilized throughout the year. The premature

scrapping of the wet-fish trawlers and the reduced possibilities for a profitable utilization of the freezer trawlers may well create a critical financial burden to the trawler owners and endanger the implementation of the modernization programme.

26. The withdrawal of a considerable number of trawlers from service would have sizeable secondary effects. It is estimated that about 30 per cent. of the persons employed on board wet-fish trawlers and a major part of those employed in the processing industry based on fresh (wet) fish landings would lose their jobs. A drastic reduction in the number of trawlers would also involve losses for the supporting and other related industries which, however, cannot be assessed in accountable figures. All this would particularly affect the economic situation in those coastal towns such as Bremerhaven and Cuxhaven where the fishing industry plays a predominant part.

2. The Effect on the Supply of the German Market

27. The catches from the fishing grounds around Iceland accounted for about 60 to 70 per cent. (estimates for 1971: 62 per cent.; for 1972: 70 per cent.) of the fresh (wet) fish and for about one-third of the total landings (wet and frozen fish) by distant-water fishing vessels of the Federal Republic. This pattern corresponds to that of former years and may be illustrated by table No. 5 (at pp. 202-203) which shows the catches of the German distant water fishing fleet from the different fishing grounds since 1885. The main species caught by the fishing vessels of the Federal Republic in the waters around Iceland are redfish, saithe, cod and haddock; redfish and saithe play a predominant role. Table No. 6 (at pp. 204-205) shows the total landings of the different species in harbours of the Federal Republic in 1968 and the fishing grounds from where they have been taken. Table No. 7 (at p. 205) shows the catches of demersal fish by German fishing vessels in 1971 by fishing grounds; 34.9 per cent. of all demersal catches came from the ICES "Iceland Area" in this year.

28. The market for fish in the Federal Republic of Germany is characterized by a high demand for fresh fish, particularly redfish and saithe which are mainly caught in the fishing grounds around Iceland. In 1971 the demand for fresh fish was met to 50 per cent. by the trawler fleet of the Federal Republic; landings by foreign vessels and other imports of fresh fish accounted only for 20 per cent. The remaining 30 per cent. were supplied by the small boat and coastal fisheries mainly from the North Sea. The deficit in the supply of fresh (wet) fish which would be caused by the loss of the fishing grounds around Iceland, especially the deficit in the supply of high quality fish cannot easily, if at all, be compensated by imports from other sources, neither in quantity nor in quality. The Icelandic trawler fleet has neither the capacity to meet this demand nor the orientation to this type of demand because the Icelandic fishing industry concentrates mainly on frozen products, especially for the export to the United States and the Soviet Union. In the past the landings of fresh fish by Icelandic trawlers in German ports were very low (1970: 25,000 t, 1971: 10,700 t, 1972: 11,400 t) in comparison with the fresh fish landings by German trawlers (1971: 125,700 t).

This situation would result in a sensible shortage of fresh fish and consequently in a rise of fresh fish prices in the German market. Moreover, the heavy dependence on imports resulting therefrom would place an additional burden on the economy of the Federal Republic and would deprive the poorer classes of the population of a cheap food supply.

TABLE NO. 5. TOTAL CATCHES OF THE GERMAN HIGH SEAS FISHING FLEET BY FISHING GROUNDS FROM 1885 TO 1971

1. Demersal Fish (in metric tons on 5-year averages)

Fishing grounds	1885 to 1888	1889 to 1893	1894 to 1898	1899 to 1903	1904 to 1908	1909 to 1913	1919 to 1923	1924 to 1928	1929 to 1933	1934 to 1938	1950 to 1954	1955 to 1959	1960 to 1964	1965 to 1968	1969[1] to 1971
Southern/Central North Sea	1,200	8,300	14,700	6,500	9,500	10,400	15,300	4,200	800	100	—	—	—	—	—
Skagerrak	—	2,600	10,500	18,000	25,800	20,200	18,900	10,300	3,900	800	—	—	—	—	—
Northern North Sea	—	—	100	100	1,000	10,500	22,400	16,800	14,900	23,500	12,200	7,000	—	—	—
Iceland	—	—	1,000	9,500	17,800	29,700	31,700	64,100	83,800	99,900	66,800	125,400	106,500	108,900	115,938
Barents Sea	—	—	—	—	300	3,600	100	18,900	38,700	40,700	19,900	8,800	1,000	200	2,753
Bear Islands/ Spitzbergen	—	—	—	—	—	—	—	—	11,800	27,800	3,500	18,300	0	—	4,094
Norwegian Sea	—	—	—	—	—	—	—	—	—	68,100	54,800	61,500	26,400	16,600	18,694
Faroë Islands	—	—	—	—	—	—	—	—	—	—	700	14,700	6,700	11,500	5,523
Greenland	—	—	—	—	—	—	—	—	—	—	900	61,100	168,600	146,400	89,021
Labrador	—	—	—	—	—	—	—	—	—	—	—	11,200	14,100	44,000	45,941
Newfoundland	—	—	—	—	—	—	—	—	—	—	—	2,200	6,200	4,400	7,335
Nova Scotia	—	—	—	—	—	—	—	—	—	—	—	—	900	100	233
South Africa West coast	—	—	—	—	—	—	—	—	—	—	—	—	—	5,800	276
South Africa East coast	—	—	—	—	—	—	—	—	—	—	—	—	—	400	592
Total	1,200	10,900	26,300	34,100	54,400	74,400	88,400	114,300	153,900	260,900	258,800	310,200	330,400	338,300	290,400

[1] 1969-1971: 3-year averages.

TABLE NO. 5 (*cont.*) TOTAL CATCHES OF THE GERMAN HIGH SEAS FISHING FLEET BY FISHING GROUNDS FROM 1885 TO 1971

2. Herring (in metric tons on 5-year averages)

Fishing grounds	1885 to 1888	1889 to 1893	1894 to 1898	1899 to 1903	1904 to 1908	1909 to 1913	1919 to 1923	1924 to 1928	1929 to 1933	1934 to 1938	1950 to 1954	1955 to 1959	1960 to 1964	1965 to 1968	1969[1] to 1971
North Sea	—	—	—	—	—	—	13,400	38,600	82,700	148,100	159,300	140,200	37,700	13,000	882
English Channel	—	—	—	—	—	—	—	—	—	—	41,700	19,900	500	—	426
West British Waters	—	—	—	—	—	—	—	—	—	—	—	6,900	6,200	12,700	12,906
Faröe Islands	—	—	—	—	—	—	—	—	—	—	—	—	—	100	—
Iceland	—	—	—	—	—	—	—	—	—	—	—	—	—	10,100	—
Norwegian Sea	—	—	—	—	—	—	—	—	—	—	—	—	—	1,800	—
Nova Scotia	—	—	—	—	—	—	—	—	—	—	—	—	—	2,600	8,703
New England	—	—	—	—	—	—	—	—	—	—	—	—	—	21,200	69,434
New Jersey	—	—	—	—	—	—	—	—	—	—	—	—	—	100	74
Total	—	—	—	—	—	—	13,400	38,600	82,700	148,100	201,000	166,100	44,400	61,600	92,425

[1] 1969-1971: 3-year average.

TABLE NO. 6. TOTAL LANDINGS IN HARBOURS OF THE FEDERAL REPUBLIC OF GERMANY BY IMPORTANT SPECIES AND BY FISHING GROUNDS 1968

Fishing Grounds	Herring	Cod	Haddock	Saithe	Redfish	Shellfish	Others	Total
	(Catch weight in metric tons)							
North Sea	27,100	33,977	2,226	6,100	22	33,798	52,012	155,245
West British Waters	16,627	117	97	503	—	—	708	18,052
Skagerrak	—	107	9	5	—	65	104	290
Baltic Sea	16,362	14,132	0	5	—	35	4,609	35,143
Faröe Islands	279	1,180	31	7,532	6,613	—	2,914	18,549
Iceland	862	29,612	2,616	17,187	60,828	—	8,810	119,915
Norwegian Sea	721	1,112	1,933	4,597	3,245	—	160	11,768
Greenland	—	135,320	25	239	26,761	—	2,165	164,510
Labrador	—	52,370	1	2	315	—	571	53,259
Nova Scotia	10,555	—	—	0	—	—	2	10,557
New England	68,148	—	—	4	—	—	138	68,290
New Jersey	413	—	—	—	—	—	2	415
South Africa West coast	—	—	—	—	—	—	3,334	3,334
Total	141,077	267,927	6,938	36,174	97,784	33,898	75,529	659,327
	(Percentage of Catches by Fishing Grounds)							
North Sea	19.2	12.7	3.2	16.9	0	99.7	68.9	23.5
West British Waters	11.8	0	0.1	1.4	—	—	0.9	2.7
Skagerrak	—	0	0	0	—	0.2	0.1	0
Baltic Sea	11.6	5.3	0	0	—	0.1	6.1	5.3
Faröe Islands	0.2	0.4	0.1	20.8	6.8	—	3.8	2.8
Iceland	0.6	11.1	3.8	47.5	62.2	—	11.7	18.2
Norwegian Sea	0.5	0.4	2.8	12.7	3.3	—	0.2	1.8
Greenland	—	50.5	0	0.7	27.4	—	2.9	25.0
Labrador	—	19.6	0	0	0.3	—	0.8	8.1
Nova Scotia	7.5	—	—	0	—	—	0	1.6
New England	48.3	—	—	0	—	—	0.2	10.4
New Jersey	0.3	—	—	—	—	—	0	0.1
South Africa West coast	—	—	—	—	—	—	4.4	0.5
Total	100	100	100	100	100	100	100	100

TABLE NO. 6 *(concl.)*

Fishing Grounds	Herring	Cod	Haddock	Saithe	Redfish	Shellfish	Others	Total
	(Percentage of Catches by Species)							
North Sea	17.5	21.9	1.4	3.9	0	21.8	33.5	100
West British Waters	9.2	0.1	0	0.3	—	—	0.4	100
Skagerrak	—	36.9	3.1	1.7	—	22.4	35.9	100
Baltic Sea	46.6	40.2	0	0	—	0.1	13.1	100
Faröe Islands	1.5	6.4	0.2	40.6	35.6	—	15.7	100
Iceland	0.7	24.7	2.2	14.3	50.7	—	7.4	100
Norwegian Sea	6.1	9.4	16.4	39.1	27.6	—	1.4	100
Greenland	—	82.3	0	0.1	16.3	—	1.3	100
Labrador	—	98.3	0	0	0.6	—	1.1	100
Nova Scotia	100.0	—	—	0	—	—	0	100
New England	99.8	—	—	0	—	—	0.2	100
New Jersey	99.5	—	—	—	—	—	0.5	100
South Africa West coast	—	—	—	—	—	—	100.0	100
Total	21.4	40.6	1.1	5.5	14.8	5.1	11.5	100

TABLE NO. 7. CATCHES OF DEMERSAL FISH BY FISHING VESSELS OF THE FEDERAL REPUBLIC OF GERMANY BY FISHING GROUNDS 1971

	Quantity in 100 metric tons	*Percentage of total demersal catches*
Barents Sea	2.5	0.7
Bear Island/Spitzbergen	5.7	1.6
Norwegian Coast	17.5	4.9
Faröe Islands	6.7	1.9
Iceland	123.6	34.9
East Greenland	43.0	12.2
West Greenland	41.5	11.7
Labrador	19.2	5.4
Newfoundland	11.5	3.2
New England	0.6	0.2
North Sea + Baltic Sea	82.1	23.3
	353.9	100.0

D. Evaluation of the Conflicting Economic Interests of Both Parties

29. The Government of Iceland contends that the earnings of the fishing industry of the Federal Republic of Germany constitute only a very small fraction of the gross national product of the Federal Republic, while for Iceland the fishing industry accounts for about 16 per cent. of its gross national product and for about 80 per cent. of its export earnings (this figure has, however, to be adjusted to 49.5 per cent. (1971) if invisible exports such as earnings from international transport, primarily trans-atlantic passenger air traffic, are included). Such a presentation of the facts, however, is misleading and calculated to obscure the real issue. Nobody will deny the extraordinary dependence of Iceland's trade balance on exports of fish and fish products. However, the different degree of dependence of both countries' economy on the fishing industry is not an appropriate yardstick for measuring the value or importance of the interests of the Federal Republic of Germany which are affected by the Icelandic action. The real picture of the conflicting interests in the present case is rather the following:

30. The economic interests of both Parties which are at stake in this case, present themselves to a neutral observer in the following way:

(a) Iceland is a prosperous, not an under-developed State. Iceland is in its economy, particularly with respect to its exports, still heavily dependent on the fishing industry, but makes progress in diversifying its economy. Iceland takes a predominant share of the catch in the waters around Iceland; it takes on the average more than 50 per cent. of the total catch of demersal species in the ICES Iceland Area (1971: 52%); Iceland takes nearly all the catch of pelagic fish (herring, capelin) in the ICES Iceland Area (1970 and 1971: 100 per cent. of the herring and capelin catch); Iceland takes about two-thirds (1970: 66%; 1971: 61%) of the total catch of all species in the ICES Iceland Area. Iceland's shares in the total catches and in the catches of dermersal species during the years 1960 to 1971 are listed in tables Nos. 8 and 9 at p. 202). Iceland's present share is not disputed, but the Government of Iceland wants to increase its catch from the ICES Iceland Area and to expand its fishing industry for export purposes.

(b) The Federal Republic of Germany has built up a distant-water fishing fleet mainly for securing the necessary supply of fresh fish for national consumption because the fishing grounds before German coasts do not yield enough to satisfy the demand of its large population. Exports of fish products for which mainly imported herring is used, are of secondary importance. Within the last decade the deep-sea fishing fleet of the Federal Republic which is dependent on distant fishing grounds, has taken more than 60-70 per cent. of its fresh fish landings and about one-third of all its catches (fresh and frozen) from the fishing grounds around Iceland, but this represents only a share of about 16-17 per cent. of the total catch of demersal species and about 12 per cent. of the total catch of all species in the ICES Iceland Area compared with Iceland's share of 52 and 60 per cent. respectively. The Federal Republic of Germany merely wants to preserve its right to take the same amount of fish as hitherto from the ICES Iceland Area (120,000 t in the average during the years 1960-1971) or at least the same percentage of the total catch of demersal species from that area if agreed catch limitations would reduce the total allowable catch from this area.

TABLE NO. 8. ICELAND'S SHARE IN THE TOTAL CATCHES (DEMERSAL + PELAGIC) IN THE ICES AREA VA 1960 TO 1971

(in 1,000 tons)

	Total	*Iceland*	%
1960	985	542	55
1961	1,142	676	59
1962	1,365	818	60
1963	1,245	758	61
1964	1,399	951	68
1965	1,418	1,005	71
1966	1,257	880	70
1967	883	502	57
1968	798	468	59
1969	936	638	68
1970	1,028	680	66
1971	996	612	61
Average 1960-1971	1,121	711	63

TABLE NO. 9. ICELAND'S SHARE IN THE CATCH OF DEMERSAL FISH IN THE ICES AREA VA 1960 TO 1971

(in 1,000 tons)

	Total	*Iceland*	%
1960	759	405	53
1961	680	350	51
1962	714	340	48
1963	736	360	49
1964	765	398	52
1965	744	364	49
1966	648	325	50
1967	666	310	47
1968	687	362	53
1969	741	444	60
1970	819	471	58
1971	801	417	52
Average 1960-1971	730	379	52

31. The interests of both Parties as analysed in the preceding paragraph, i.e., the interest of Iceland to increase its catches from the fishing grounds around its coast and the interest of the Federal Republic to take the same amount of fish as hitherto from these fishing grounds, had not been irreconcilable in the past as long as the abundance of fish in this area allowed Iceland an ever-increasing share in these fisheries. However, since under the aspects of the preservation of fish stocks the amount of allowable catch has reached its limit, at least with respect to one of the most important species caught in this area (cod), but probably also with respect to others, the problem of the equitable distribution of the available resources has appeared. Whatever may be said in support of taking more effective and more drastic conservation measures (see Part II of this Memorial) is not relevant here because such measures have to be applied indiscriminately and do not *per se* justify a redistribution of the available resources. Thus the real issue in the present case is the claim by Iceland to be entitled to take over the present shares of the United Kingdom and of the Federal Republic of Germany in the fisheries around Iceland for its own economic benefit, because, in view of the limits set by the needs for the preservation of fish stocks, the catch can only be increased at the expense of the other nations which have fished in the same waters.

32. Thus, the case before the Court is in reality a case for the equitable distribution of fishery resources. The Federal Republic of Germany contends that, in law, Iceland is not entitled to claim all the fish in the waters of the high seas around Iceland. Whatever may be the law with respect to a preferential right of the coastal State in the exploitation of the fishing grounds before its coast which will be discussed in Part IV of this Memorial, it should be noted here that Iceland has already, by taking nearly two-thirds of the total catch in ICES Iceland Area, secured for itself a preferential position of considerable weight in view of the yield of about 1 million metric tons (1971) in this area. Before making claims for a higher preferential rate at the expense of the other nations which depend on the same resources, Iceland should first establish that such claim is not only advantageous for the Icelandic economy, but also really indispensable and the only way for Iceland's further economic development. As it is the Government of Iceland which wants a redistribution of the fishery resources among the nations which have up till now shared these resources, it is for the Government of Iceland to prove that such a situation exists. But the Government of Iceland has not been able to prove the existence of such a situation.

PART IV

THE LAW RELATING TO FISHERIES JURISDICTION

A. The General Perspectives of the Law Relating to the Fishery Resources of the Oceans

1. This part of the Memorial concerns itself with the rules of law that are relevant to claims by coastal States to exercise fisheries jurisdiction in waters adjacent to their coasts.

2. It is a long-established and universally recognized principle of international law that the waters of the high seas are open to the common use by all nations, in particular for the purpose of navigation and fishing. Article 2 of the Convention on the High Seas which, according to its preamble, had been adopted by the Geneva Conference on the Law of the Sea as being declaratory of established principles of international law, states that

> "Freedom of the high seas . . . comprises, *inter alia*, both for coastal and non-coastal States—
>
> (1) Freedom of navigation;
> (2) Freedom of fishing;
> (3) . . ."

Article 1 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, done at Geneva on 29 April 1958, states in its Article 1, the substance of which had not been controversial at the Geneva Conference on the Law of the Sea:

> "1. All States have the right for their nationals to engage in fishing on the high seas, subject *(a)* to their treaty obligations, *(b)* to the interests and rights of coastal States as provided for in this Convention, and *(c)* to the provisions contained in the following articles concerning conservation of the living resources of the high seas.
> 2. . . ."

Whether the fishery resources in the waters of the high seas should juridically be qualified as *res communis* (common property or common patrimony) in the utilization of which each member of the international community is entitled to partake, or whether—from a more traditional point of view—the fishery resources should merely be regarded as the "renewable" fruits of the wealth of the high seas which may be taken by all members of the international community exercising the recognized freedom of fishing on the high seas, can be left to academic discussion. Whichever of these lines of thought one would like to follow, there exists unquestionably under international law a right of each State and its nationals to fish in the waters of the high seas. This right, however, is today neither absolute nor unlimited; the right to the common use of the fishery resources of the oceans entails the common responsibility of all members of the international community taking part in such use, to exercise their fishing rights in such a way that the fishery resources are preserved and guarded against any form of over-exploitation which might lead to their exhaustion. There is today a growing consciousness of this common responsibility and an increasing recognition by all members of the

international community of the need to take the necessary conservation measures for the preservation of the fish stocks. As it is a common responsibility of all members of the international community taking part in the exploitation of a certain fish stock, and as all these members are interested in and at the same time affected by the enactment of any conservation measure, the discharge of this responsibility is primarily a matter of international concern. Consequently the enactment of the necessary measures falls within the competence of the international community as a whole, or, as long as the international community has not acted by general treaty or otherwise, of the States directly interested in the fishing of a certain species in a certain area. This common responsibility had already been reflected in Article 1, paragraph (2), of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas:

> "All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas."

3. The coastal State's claim for a zone of national jurisdiction over the waters adjacent to its coast, including the right to the fishery resources within that zone, has in principle been recognized by the international community, although the outer limit of such a zone has remained controversial. The controversies with respect to the borderline between national and international jurisdiction reflect not only conflicts between national interests, e.g., between States which are engaged in distant water fishing and States which are concentrating on coastal fishing, but also, if not primarily, the conflict between the interests of the international community as a whole and those of the national State. State practice has shown a tendency, which has been accentuated in recent time, to extend the zone of national jurisdiction of the coastal State farther out into the sea, but this practice developed for two distinct purposes:

(a) for enacting and enforcing conservation measures for the preservation of the fishery resources on which the coastal State's fishing industry relies (conservation aspect);

(b) for reserving the fishery resources near the coast to the exclusive or preferential exploitation by the nationals of the coastal State, in particular for the benefit of the coastal fishery (utilization aspect).

These two aspects of the claims for extended zones of maritime jurisdiction should be clearly distinguished when the legitimacy of such claims is to be examined. Different considerations apply whether a claim for extended jurisdiction is asserted for the purpose of conservation or for the purpose of national utilization of the resources; considerations which may justify a claim for extended jurisdiction on grounds of conservation do not necessarily support a claim for extended rights of exclusive national exploitation of the fishery resources and vice versa. While it may under certain conditions be conceded that the coastal State should have the right to enact and enforce conservation measures for the preservation of the fish stocks before its coast if the necessary international action for this purpose is not forthcoming, such a situation does not *ipso facto* provide a justification for a claim of the coastal State for a preferential or exclusive right to such fishing resources. As all nations have, in principle, equal rights with respect to the utilization of the fishery resources of the oceans, a claim by the coastal State for a wider fisheries zone (whether preferential or exclusive) is in reality a claim for a

re-apportionment of the available resources of the oceans which would require special justification, e.g., the special dependence of the coastal population on the coastal fisheries for their livelihood. Such a re-allocation of international resources must be based on an international *consensus* having regard to all interests involved; unilateral action by the coastal State is a one-sided, not an equitable solution of the re-allocation problem.

B. Historical Analysis

1. The North Sea Fisheries Convention of 1882

4. For the purpose of the present case it does not seem necessary to review in detail the historical development of the recognition of the coastal State's jurisdiction over the sea adjacent to its coast. It is common knowledge that claims for exclusive fishery rights in the coastal zone played a considerable part in the maritime disputes of the 17th and 18th century and have, together with the claim by neutral States that their coastal waters be protected against captures in prize, contributed to the formation of the concept of the territorial sea over which the coastal State has exclusive jurisdiction in all respects. Although claims for exclusive fishery rights and for neutrality limits generated from different interests and the width of such zones claimed were by no means always identical, eventually a merger of both neutrality limits and fishery limits into a common limit based on distance was achieved during the 18th century. About 1800 the three-mile limit had become the limit generally accepted among the major European Powers for the coastal State's jurisdiction over the waters before its coast. Nevertheless, claims for more than three miles were maintained on historical grounds, at least for fishery purposes.

5. The most significant action by the European States in applying the established three-mile limit of the territorial sea to fisheries was the conclusion of the Convention for Regulating the Police of the North Sea Fisheries on 6 May 1882 (Martens *Nouveau Recueil Général de Traités*, 2e série, vol. 9, p. 556). The reason for concluding this Convention was not so much the three-mile limit which was uncontroversial between the signatory States. The purpose of the Convention was rather to prevent disputes that had arisen between the North Sea States partly from the uncertainty concerning the rules which should be applied to bays, islands, islets, and sand banks in delimiting the territorial sea; partly from the difficulty of policing fishery operations; and partly, particularly towards the end of the century, from the difficulties that occurred in carrying on trawling and drift-net fishing in the same localities at the same time.

6. In order to avoid or reduce these disputes and at the instance of the Government of the Netherlands, a Conference of the North Sea Powers was convened at The Hague in 1881. It drew up the Convention for Regulating the Police of the North Sea Fisheries which was signed by representatives of the United Kingdom, Belgium, Denmark, France, Germany and the Netherlands on 6 May 1882. Its object was to regulate the fisheries in the North Sea *outside* territorial waters. It was therefore necesssary to define the sea areas outside which it should apply in precise terms and this was done in Article II. That Article reads (in an English translation of the authoritative French text) as follows:

> "The fishermen of each country shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the

dependent islands and banks. As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles. The present Article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the Powers to whom the shore belongs."

The area to which the Convention applied was, under Article IV, bounded on the North by the parallel of the 61st degree of latitude and thus excluded the ocean surrounding the Faröe Islands and Iceland. The régime of the 1882 Convention was, however, extended to the waters around Iceland and the Faröe Islands by the Convention between Denmark and the United Kingdom of 24 June 1901 which has already been cited above (Part I of this Memorial, para. 10). The Government of the United Kingdom of Sweden and Norway decided not to adhere to the Convention although a special article of the Convention provided that it might do so for both countries or for either country. One of the principal reasons appeared to have been the opposition of Sweden and Norway, which both claimed a four-mile limit on historic grounds, to the three-mile limit provided for in the convention.

2. The Development up to 1945

7. Since the beginning of the present century, therefore, it seemed to be a very wide—though not universal—acceptance that the extent of a coastal State's fisheries jurisdiction was limited, broadly speaking, to a distance of three miles from its coast. For the most part, this was not conceived as a separate fisheries jurisdiction limit but rather as an incident of the coastal State's total jurisdiction over its territorial sea.

8. At this time there were four main practical purposes for which States claimed jurisdiction over the waters before their coasts. These were:

(a) the need to regulate navigation, including the exercise of criminal jurisdiction in collision cases;
(b) the need to regulate and protect coastal fisheries;
(c) the need to preserve neutrality in time of war; and
(d) the need to prevent smuggling.

Other needs have since arisen, such as pollution control and the exploitation of the continental shelf, but they were not yet present in the maritime practice at that time. The practical considerations affecting these four purposes were not the same in every case, and very early the view had been put forward that a more satisfactory régime would authorize jurisdiction to be exercised over different distances from the coast for different jurisdictional purposes.

Reference may be made in this respect to proposals put forward in the Geneva session (1892) and Paris session (1894) of the Institut de Droit International (*Annuaire*, vol. 12, pp. 104-105; vol. 13, pp. 125-161, 281-331) and the Conference of the International Law Association in Brussels 1895 (*Report of the 17th Conference*, pp. 102-109).

8. Although the idea of a wider and separate system of fisheries jurisdiction was thus present in the minds of some jurists in this period, it advanced very little in the course of the first three decades of the 20th century and no sub-

stantial reflection of it can be found in State practice. The claims for a wider jurisdictional limit, as distinguished from the territorial sea as such, concentrated rather on neutrality limits and, to an increasing extent, on customs, fiscal, and similar matters (including the enforcement of national alcoholic liquor prohibition legislation as practised by the United States of America).

9. The only international conference of importance convened in this period that was concerned with general questions of maritime jurisdiction, was the Conference for the Codification of International Law which met at The Hague between 13 March 1930 and 12 April 1930. The Assembly of the League of Nations had decided that the topic of "Territorial Waters" was "ripe" for discussion and should be included in the Agenda of the Conference. Accordingly, there was much discussion of the topic of the territorial sea, but no direct discussion of fisheries jurisdiction as a separate topic. Fisheries jurisdiction received attention only as an aspect of the coastal State's jurisdiction over the territorial sea. At the Conference the proposal was made of establishing a three-mile limit as a maximum for all purposes, but there were some States which objected and were in favour of not fixing a uniform distance for all purposes and for all countries. Twenty States, comprising Germany and the United Kingdom favoured three miles; four of the Scandinavian States, Norway, Sweden, Finland and Iceland claimed four miles on historic grounds at least for themselves, but without proposing them for all other countries; twelve States favoured six miles. Opinions were divided whether a contiguous zone beyond the three-mile limit should be established for special purposes. In the result no agreement could be reached on the question of jurisdiction limits. The Second (Territorial Waters) Committee of the Conference prepared a set of draft articles on the legal status of the territorial sea but no..e on the breadth of the territorial sea, and proposed not to adopt a Convention without this question being solved. The Conference embodied the draft articles prepared by the Commission in the Final Act of the Conference but did not take any further action on them. For the purpose of the present case it should only be recalled that Article 6 of the draft articles provided that the jurisdiction on the rights of fishing within the territorial sea belongs to the coastal State.

10. Although the Hague Conference on the Codification of International Law did not specifically deal with fisheries, it should not be omitted that the Delegation of Iceland tabled a draft resolution together with a commentary which called attention to the desirability of research and conservatory regulations beyond the three-mile limit. The draft resolution was worded as follows:

> "The Conference calls attention to the desirability of the States interested giving sympathetic consideration to a request from a coastal State to assist or participate in scientific researches regarding the supply of fish in the sea and the means of protecting fry in certain local areas of the sea, and, further, to the desirability of their effectively carrying out any proposals resulting from such researches and designed to ensure the international regulation of fishing or restrictions on the use of certain fishing appliances in the areas concerned." (Acts of the Conference for the Codification of International Law, held at The Hague from March 13th to April 12th 1930. Vol. III, *Meetings of the Committees.* Minutes of the Second Committee, Territorial Waters, at p. 142.)

The reasons given by the Icelandic Delegation for this move were the following:

"In the last thirty years, the use of dredging fishing tackle—especially the trawl—has increased very much in some places; for example, on fishing grounds in the sea around the coasts of Iceland. In the opinions of many persons, the use of such appliances has a peculiarly injurious effect, not only within the limits of the territory where its use is forbidden by several or most States, but also in certain areas outside these limits, especially where the fry lives. The view is taken that the fry is destroyed in enormous quantities, and also that the conditions of existence of the fry are adversely affected or ruined in those areas by the continual dredging. Without giving a yield worth mentioning to the fishing vessels, the stock of fish in the sea is liable to be much reduced on other neighbouring fishing grounds owing to the same cause.

It is of increasing importance to examine, on an entirely scientific basis, the general questions of the effects of fishing with dredging tackle in the said areas on the reduction in the supply of fish and on the future possibilities of improving fishing. Those researches have already been started, *inter alia*, on some grounds in the sea around Iceland, where the fishing is more international than in many other places, and they might give results within a period of some years.

As this question is of international interest and as it might be a subject for consideration whether the rules for controlling fisheries in territorial waters could not be extended to certain areas outside these limits, the Icelandic Government thinks it reasonable that the Conference should make a recommendation as proposed above, in connection with the international legal rules for territorial waters" (*ibid.*, at pp. 188-189).

11. In the period between the Hague Codification Conference of 1930 and the end of the Second World War there were no major attempts, comparable to the Conference itself, to effect fundamental changes in the law, either in relation to the territorial sea in general or in relation to the establishment of separate zones of jurisdiction for particular purposes, and specifically for the regulation of fisheries. State practice during this period reflects the uncertainty on both these matters.

12. There were no multilateral instruments in this period which throw any light on the attitude of States except perhaps the Declaration of Panama of 1939 (34 *AJIL* (1940), Supplement, p. 17) in which a number of American States purported to establish what were in effect neutrality limits extending to 300 miles from the coasts of the continent. This was effectively ignored by all States who were actually engaged in the hostilities. There were, however, two bilateral treaties in the field of fisheries itself which deserve mention. An agreement between Denmark and Sweden, which was concluded on 31 December 1932, regarding fishing in the waters bordering those two countries provided for a general limit of "three minutes of latitude" (i.e., three nautical miles) from the coast of each country (*United Nations Legislative Series* ST/LEG/SER. B/6, p. 794). A treaty between Iran and the USSR which was concluded on 27 August 1935 (*ibid.*, p. 794), provided in Article 15 for an exclusive fisheries zone of ten nautical miles.

13. So far as concerns national legislation, there were a few examples during this period of countries which purported to exercise fisheries jurisdiction, of one sort or another, as far out as 12 nautical miles (e.g., Brazil, by a Decree Law No. 794 of 19 October 1938; Ecuador, by Regulations of 2 February 1938; and the USSR, by Regulations of 25 September 1935) or 20 kilometres (e.g., France, by a Decree in 1936). But most countries appeared

to assert no more than the traditional three miles or, in some cases where there were special historic claims (e.g., Spain), six miles.

14. In general, therefore, there were no spectacular moves in the development of maritime law in the period immediately preceding and during the Second World War. Nevertheless, the idea of a separate fisheries jurisdiction, going somewhat wider than the territorial sea (though rarely, if at all, more than about 12 nautical miles from the coast), was gaining some ground.

3. The Developments between 1945 and the Geneva Conference of 1958

15. Immediately after the War the question of the coastal State's jurisdiction over the seabed and subsoil adjacent to its coast came into prominence, primarily because of the technological developments which were making the exploitation of the resources of the seabed and subsoil a practical operation of ever-increasing importance. In the legal field the process received a considerable impetus from the so-called "Truman Proclamation" of 28 September 1945, which declared, *inter alia*, that "the Government of the United States of America regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control", but added that "the character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected".

Bulletin of the US Department of State, Vol. XIII, Nr. 327, 30 September 1945, p. 485. Proclamation No. 2667, 10 U.S. Federal Register 12303.

The history of the development of the law relating to the continental shelf is not, of course, directly relevant to the present case. But it does illustrate the fact that, so far as resources of the waters superjacent to the continental shelf are concerned, a clear distinction emerged between, on the one hand, those resources which could be regarded as part of the continental shelf (i.e., the so-called sedentary species) and which, therefore, are governed by the same legal régime as the shelf in such matters as rights of jurisdiction and exclusive exploitation and, on the other hand those resources which were not thus intimately linked with the continental shelf, in particular demersal and pelagic fish. It may be pointed out that the Truman Proclamation itself referred only to "natural resources" and it seems reasonably clear from the circumstances under which it was issued that it was meant to apply primarily to mineral resources.

16. This was put beyond doubt by the fact that on the same 28 September 1945, President Truman issued another Proclamation entitled "Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas". After referring to the inadequacy of present arrangements for the protection and preservation of the fishery resources contiguous to the coasts of the United States and the urgent need to protect coastal fishery resources from destructive exploitation, the operative passage of the Proclamation went on as follows:

> "In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas

> contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed and maintained jointly by nationals of the United States and nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any State to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected." (Proclamation No. 2668, 10 U.S. Federal Register 12304.)

It followed clearly from those texts that the United States regarded the fishery rights of other nations in the waters above the United States continental shelf beyond the limits of the territorial sea as being unaffected by the Proclamation relating to the exclusive rights of the United States to the resources of the continental shelf. The United States did not claim jurisdictional rights over the fishing activities of nationals of other States which had been legitimately developed and maintained by these nationals within the United States conservation zone, except on the basis of respective agreements with the States concerned.

17. The view that the concept of the coastal State's jurisdiction over the continental shelf did not affect the international character of the fishery resources in the waters above the continental shelf, was clearly expressed by the International Law Commission in its Draft Articles on the Law of the Sea and in its commentary thereto. It will be sufficient here to refer to the commentary of the Commission to Article 49 which later, with some amendments, became Article 1 of the Convention on Fishing and Conservation of the Living Resources of the High Seas (cited above in para. 2 of this Part of the Memorial). Here the Commission stated:

> "*This article confirms the principle of the right to fish on the high* seas. The Commission admitted no exceptions to that principle in the parts of the high seas covering the continental shelf, save as regards sedentary fisheries and fisheries carried on by means of equipment embedded in the sea floor... Nor did it recognize the right to establish a zone contiguous to the coasts where fishing could be exclusively reserved to the nationals of the coastal State." (*Yearbook of the International Law Commission*, 1956, Vol. II, p. 286.)

18. The Conference on the Law of the Sea later endorsed the view of the International Law Commission and Article 2, paragraph (4), of the Convention on the Continental Shelf adopted at Geneva on 26 April 1958, expressly provided that the "natural resources" referred to in the Convention over which the coastal State has exclusive rights of exploitation, consist of the "mineral and other non-living resources of the seabed and subsoil together

with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil", and Article 3 of the Convention provided that "the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas".

19. There were, of course, a number of claims pointing in the contrary direction, notably in the State practice of certain States of Central and Southern America. Though it is necessary to note this practice as evidence of a dissentient trend of opinion, it can nevertheless be safely maintained that the dominant trend of international opinion in this period was decisively in favour of the view that the extension of the coastal State's jurisdiction over the continental shelf adjacent to its coast in no way implied any extension of the traditional limits within which a coastal State could claim to exercise fisheries jurisdiction in the superjacent waters, except—explicitly and therefore significantly—in respect of the so-called sedentary species.

4. THE GENEVA CONFERENCE ON THE LAW OF THE SEA 1958

20. The history and the results of the Geneva Conference of the Law of the Sea from 24 February 1958 to 27 April 1958 need no detailed analysis in this Memorial. The account given here will concentrate on those parts of the Conference's achievements and failures which bear directly on the present dispute.

21. The Conference failed to reach agreement on the maximum breadth of the territorial sea or of the fisheries jurisdiction of the coastal State. The Convention on the Territorial Sea and Contiguous Zone, signed on 29 April 1958, contained provisions on the status of the territorial sea and rules which govern the delimitation of the baselines from which the breadth of the territorial sea should be measured, but left the question of the maximum breadth of the territorial sea unsolved. As neither the Federal Republic of Germany nor Iceland have become parties to this Convention the question may be raised to what extent the provisions and rules contained in the Convention are representing general international law and govern the delimitation and the determination of the new baselines the Government of Iceland had proclaimed in the Regulations of 14 July 1972. Since the Government of the Federal Republic of Germany challenges the legality of the establishment of the 50-mile zone by the Regulations of 14 July 1972 as a whole, the question of the legality of the baselines chosen by the Government of Iceland may be left aside here.

22. The Convention on the High Seas signed on 29 April 1958 has only an indirect bearing on the issues in this case. The Convention states in its Article 2 that the high seas are open to all nations, and that freedom of the high seas comprises, *inter alia*, both for coastal and non-coastal States the freedom of fishing. According to Article 1 of the Convention the term "high seas" means "all parts of the sea that are not included in the territorial sea or in the internal waters of a State". Thus, a coastal State may not unilaterally exclude fishing vessels of other States from fishing in the waters before its coasts beyond the outer limit of its territorial sea as internationally recognized at the present time. As Iceland has not become a party to this Convention (the Federal Republic of Germany deposited its instrument of ratification on 26 July 1973) here again the question arises whether the rules contained in the Convention are representing general international law. Accor-

ding to the preamble of the Convention the States parties to the Convention have recognized that the Conference on the Law of the Sea had adopted the provisions of this Convention as generally declaratory of established principles of international law. This being so, no State may claim an exclusive fisheries zone before its coast beyond the limits to which a coastal State, under current international law, is entitled to extend its territorial sea. The latter question will be discussed in the later paragraphs of this Part of the Memorial (see paras. 56 to 126).

23. The Convention on Fishing and Conservation of the Living Resources of the High Seas adopted by the Conference and signed on 29 April 1958 applies to the living resources of the high seas and states in its preamble that there is a "clear necessity" that the "problems involved in the conservation of the living resources of the high seas be solved, whenever possible, on the basis of international co-operation through the concerted action of all the States concerned". Article 1 of the Convention reaffirms that all States have a right for their nationals to engage in fishing on the high seas, subject only *(a)* to their treaty obligations, *(b)* to the interests and rights of coastal States as provided for in the Convention, and *(c)* to the provisions concerning conservation of the living resources of the high seas contained in the Convention. The Article goes on to provide that all States have the duty to adopt or to co-operate with other States adopting such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas. The Convention does not authorize States to exercise unilateral rights of jurisdiction over foreign nationals. If nationals of only one State are engaged in fishing a certain stock in a certain area (e.g., if nationals of the coastal State are alone engaged in fishing before its coast), any necessary conservation measures may then be taken by that State unilaterally (Art. 3). If, however, nationals of two or more States are engaged in fishing the same stock in the same area, those States shall then at the request of any of them enter into negotiations with a view to prescribing by agreement for their respective nationals the necessary conservation measures (Art. 4). It is only under the special conditions of the Articles 6 and 7 that unilateral measures may be taken by the coastal State, without the right, however, to enforce them directly on foreign nationals. These provisions will be discussed later in more detail (see para. 25 below).

24. The procedures to be followed in initiating and conducting negotiations for the conclusion of agreements between the States concerned in execution of Article 4 of the Convention have been left open by the Convention. However, on 25 April 1958, the Conference adopted a Resolution on International Fishery Conservation Conventions. It read as follows:

> "The United Nations Conference on the Law of the Sea,
>
> Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as expressed in paragraph 43 of its report, as to the efficacy of international conservation organisations in furthering the conservation of the living resources of the sea,
>
> Believing that such organisations are valuable instruments for the co-ordination of scientific effort upon the problem of fisheries and for the making of agreements upon conservation measures,
>
> Recommends:
>
> 1. That States concerned should co-operate in establishing the necessary conservation régime through the medium of such organisations

covering particular areas of the high seas or species of living marine resources and conforming in other respects with the recommendations contained in the report of the Rome Conference;

2. That these organisations should be used so far as practicable for the conduct of the negotiations between States envisaged under Articles 4, 5, 6 and 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, for the resolution of any disagreements and for the implementation of agreed measures of conservation."

25. The Convention recognizes in Article 6 that a coastal State has a special interest in the maintenance of the productivity of living resources in any area of the high seas adjacent to its territorial sea. Article 7 authorizes a coastal State to adopt unilateral measures of conservation in any area of the high seas adjacent to its territorial sea, provided that negotiations with the other States concerned have not led to an agreement within six months. Such unilateral measures cannot, however, be adopted arbitrarily. They are valid in relation to other States only if the following requirements are fulfilled: *(a)* there is a need for urgent application of conservation in the light of the existing knowledge of the fishery; *(b)* the measures adopted are based on appropriate scientific findings; and *(c)* such measures do not discriminate in form or in fact against foreign fishermen. Any disagreement as to the validity of the measures may be referred to the Special Commission provided for by Article 9 of the Convention. Under Article 11 the decisions of the Special Commission are binding upon the States concerned.

26. At the Conference Iceland proposed an additional article to the Convention, reading as follows:

"Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement any interested State may initiate the procedure provided for in Article 57."

On 21 April 1958, this Article was adopted in Committee. But when it was put to the vote in plenary on 26 April 1958, the result was 30 in favour and 21 against, with 18 abstentions. The Article thus failed to obtain the required two-thirds majority. However, on 26 April 1958, the Conference adopted a resolution, originally proposed by South Africa, which, with amendments proposed by Ecuador and Ireland, read as follows:

"*Special Situations relating to Coastal Fisheries*

The United Nations Conference on the Law of the Sea,

Having considered the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development,

Having considered also the situation of countries whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to local fishing from small boats,

Recognizing that such situations call for exceptional measures befitting particular needs,

Considering that, because of the limited scope and exceptional nature of those situations, any measures adopted to meet them would be complementary to provisions incorporated in a universal system of international law,

Believing that States should collaborate to secure just treatment of such situations by regional agreements or by other means of international co-operation,

Recommends:

1. That where, for the purpose of conservation it becomes necessary to limit the total catch of a stock or stocks of fish in an area of the high seas adjacent to the territorial sea of a coastal State, any other States fishing in that area should collaborate with the coastal State to secure just treatment of such situation, by establishing agreed measures which shall recognize any preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of other States;
2. That appropriate conciliation and arbitral procedures shall be established for the settlement of any disagreement." (United Nations Conference on the Law of the Sea, *Official Records*, Vol. II, p. 48.)

27. Neither the Republic of Iceland nor the Federal Republic of Germany has until now ratified the Convention on Fishing and Conservation of the Living Resources of the High Seas. How far the principles and rules contained in this Convention represent principles and rules of general international law, will be discussed at a later stage in this Memorial (see below paras. 102 to 115).

28. So much for the positive achievements of the Conference on the Law of the Sea 1958. On the negative side, the Conference tried but failed to secure agreement on the maximum breadth of the territorial sea, and consequently also on the admissibility and maximum breadth of an exclusive or preferential fisheries zone. It was, however, at the Conference that the concept of distinct limits for the territorial sea and for fisheries jurisdiction gained ground. Already the International Law Commission itself had been unable to agree on rules determining the maximum breadth of the territorial sea when it prepared its Draft Articles for the Conference. In its Draft Articles it had included the following:

"1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.
2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.
3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.
4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference." (Article 3 of the Draft Articles; *Yearbook of the International Law Commission* 1956, Vol. II, p. 256.)

29. At the Conference there was conflict between those States, on the one hand, which expressed firm adherence to the three-mile rule as the only limit recognized by international law and those States, on the other hand, which

proposed that every State should be free to determine the breadth of its territorial sea up to a limit of 12 miles from the coastline or other applicable baseline. On 31 March 1958 the Canadian Delegation introduced in the First Committee an amendment to the International Law Commission's draft to the effect that, while the territorial sea should extend to three miles, the coastal State should have the same rights in respect of fishing and the exploitation of the living resources of the sea in the contiguous zone, not extending beyond 12 miles from the baseline from which the breadth of the territorial sea is measured, as in its territorial sea.

United Nations Conference on the Law of the Seas, *Official Records*, Vol. III: First Committee (Territorial Sea and Contiguous Zone), pp. 89, 232.

On 2 April 1958 the United Kingdom Delegation introduced in the First Committee a proposal that the limit of the breadth of the territorial sea should not extend beyond six miles and that an extension to this limit should not affect existing rights of passage for aircraft and vessels, including warships, outside three miles (*ibid.*, pp. 103, 247-248). On 16 April 1958 the United States Delegation proposed that the maximum breadth of the territorial sea should be six miles but that the coastal State should have the same right to regulate fishing in a zone having a maximum breadth of 12 miles from the applicable baseline as in its territorial sea, subject to the rights of nationals of other States, who had fished regularly in that zone for a period of ten years, to continue fishing there. In an amended proposal introduced by the United States Delegation on 18 April 1958, the period of ten years was reduced to five (*ibid.*, pp. 153, 163 and 253).

30. On 19 April 1958 the First Committee rejected the United States proposal by 38 votes to 36, with 9 abstentions. Earlier the first part of the amended Canadian proposal (six-mile territorial sea) had been rejected and its second part (12-mile fishing zone) adopted (*ibid.*, Vol. III, pp. 176-177, 180); but in the plenary session also this part of the Canadian proposal was not approved (*ibid.*, Vol. II: Plenary Meetings, pp. 39, 116). The United States proposal which had failed in Committee was reintroduced in plenary but also did not obtain the required two-thirds majority. Voting was 45 in favour with 33 against and 7 abstentions (*ibid.*, Vol. II, pp. 39, 116).

31. Thus, the Conference failed to reach agreement either on the maximum breadth of the territorial sea or on the permissible extent of any separate fisheries jurisdiction, although the concept of such a separate jurisdiction had attracted respectable support.

5. The Geneva Conference on the Law of the Sea 1960

32. The second Conference on the Law of the Sea which met in Geneva between 17 March 1960 and 26 April 1960 had its agenda limited to the two questions of the breadth of the territorial sea and fisheries limits.

33. The discussions in Committee were developments of the discussions that had taken place in the 1958 Conference and showed increasing acceptance of the idea that a coastal State might possess an exclusive fisheries jurisdiction outside its territorial sea, provided that this did not have the effect of conferring such a jurisdiction beyond a distance which was generally—though not universally—fixed 12 miles from the coast. In addition to the different views which were expressed about the actual breadth of the territorial sea and of any additional fisheries jurisdiction zone, there were also different views about

what provision should be made for continued fishing by any other than the coastal State who had traditionally fished in the waters of such a zone.

34. One of the first proposals was one put forward by the Delegation of the USSR on 22 March 1960. It read as follows:

> "Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve miles. If the breadth of its territorial sea is less than this limit a State may establish a fishing zone contiguous to its territorial sea provided, however, that the total breadth of the territorial sea and the fishing zone does not exceed twelve nautical miles. In this zone a State shall have the same rights of fishing and of exploitation of the living resources of the sea as it has in its territorial sea." (Second United Nations Conference on the Law of the Sea, *Official Records*, Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, pp. 38, 164.)

There was also a Mexican proposal to much the same effect except that it envisaged that the fisheries jurisdiction zone beyond the territorial sea might, in certain circumstances, extend further than 12 miles from the baselines, the new distance varying (more or less inversely) according to the breadth of the territorial sea claimed.

35. On 24 March 1960 the United States Delegation, recognizing that the proposal which the United States had put forward at the 1958 Conference had been criticized for not placing any limitation on the future expansion of foreign fishing in the proposed outer 6-mile zone, re-submitted it with the following proviso added:

> "Any State whose vessels have made a practice of fishing in the outer zone of another State during the period of five years immediately preceding 1 January 1958 (hereinafter referred to as 'the base period'), may continue to fish within the outer six miles of that zone for the same groups of species as were taken therein during the base period to an extent not exceeding in any year the annual average level of fishing carried on in the outer zone during the said period."

The new United States proposal also included an annex providing for negotiations between the coastal State and States fishing in the outer six-mile zone and a procedure for the settlement of disputes. The leader of the United States Delegation said that while the proposal which he had just put forward did not provide for the preferential treatment, in the outer zone, of countries overwhelmingly dependent on their coastal fisheries, his Delegation was prepared to discuss appropriate proposals with other delegations (*ibid.*, pp. 45, 166). On 25 March 1960 the Canadian Delegation introduced a proposal which was substantially the same as the one which Canada had put forward at the 1958 Conference (see paras. 29-30 above). They argued that the "six plus six" formula (i.e., a six-mile territorial sea and a six-mile zone contiguous to it in which fishing would be reserved exclusively to the coastal State) was the only effective alternative to extension of the territorial sea for purposes of fisheries protection (*ibid.*, pp. 49, 167).

36. On 8 April 1960 the United States and Canadian Delegations announced that they had decided, in deference to the wishes of other delegations expressed in the course of the Conference, to withdraw their proposals of 24 and 25 March, and to submit a joint proposal. Their joint proposal abandoned the United States formula for limiting foreign fishing rights in the outer six-mile zone by quantity and species and at the same time modified

the Canadian proposal for a six-mile fishing zone exclusive to the coastal State. The text was as follows:

"1. A State is entitled to fix the breadth of its territorial sea up to a maximum of six nautical miles measured from the applicable baseline.

2. A State is entitled to establish a fishing zone in the high seas contiguous to its territorial sea extending to a maximum limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured, in which it shall have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

3. Any State whose vessels have made a practice of fishing in the outer six miles of the fishing zone established by the coastal State in accordance with paragraph 2 above, for the period of five years immediately preceding January 1, 1958, may continue to do so for a period of ten years from October 31, 1960.

4. The provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas adopted at Geneva, on April 27, 1958, shall apply *mutatis mutandis* to the settlement of any dispute arising out of the application of the foregoing paragraph.

5. The provisions of the present Convention shall not affect conventions or other international agreements already in force, as between States parties to them, or preclude the conclusion of bilateral or multilateral agreements." (*Ibid.*, pp. 121, 173.)

37. The Icelandic Delegation had again introduced the same proposal as the one that Iceland had put before the 1958 Conference and that had there been rejected, namely to adopt an article which would confer preferential rights on a coastal State whose people is "overwhelmingly dependent on its coastal fisheries for its livelihood and economic development" (*loc. cit.*, p. 126).

38. On 13 April 1960 the United States-Canadian compromise proposal supported by the United Kingdom Delegation, was approved in the Committee of the Whole by 43 votes to 33, with 12 abstentions. Under the Conference's Rules of Procedure, only a simple majority was required. The proposal by Iceland for preferential rights for a people "overwhelmingly dependent upon its coastal fisheries for its livelihood and economic development" was also adopted by the Committee by 31 votes to 11, with 46 abstentions. The 12-mile proposal of 22 March 1960 was withdrawn by the Soviet Delegation which voted for a proposal sponsored by the Mexican and Venezuelan and 16 Asian and African delegations. This latter proposal similarly entitled a State to fix the breadth of its territorial sea up to a maximum of 12 nautical miles but it was rejected in Committee by 36 votes to 39, with 13 abstentions (*loc. cit.*, pp. 151-152).

39. On 19 April 1960 the Conference reassembled in plenary session. In addition to the Icelandic proposal concerning preferential fishing rights and the United States-Canadian proposal which had been approved in Committee, certain other proposals were tabled. Only two of these require mention in this Memorial. The first was put forward on 25 April 1960 by Brazil, Cuba and Uruguay. It was an amendment to the United States-Canadian proposal which read as follows:

"1. Insert the following new paragraph after paragraph 3:

'4. The provisions of paragraph 3 shall not apply or may be varied

as between States which enter into bilateral, multilateral or regional agreements to that effect.'

2. Renumber paragraph 4, which becomes paragraph 5, and add the following paragraphs:

'6. Notwithstanding the provisions of the preceding paragraphs, but subject to the paragraphs below, the coastal State has 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.

7. Any other State concerned may request that any such claim be determined by the special commission provided for in article 9 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on 26 April 1958.

8. 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, in accordance with the provisions of the Convention referred to in paragraph 2 above.

9. The commission will determine on the basis of scientific criteria whether special conditions exist, after a hearing at which both the coastal State and fishing States concerned shall have the right to present all relevant evidence, technical, geographical, biological and economic.

10. The coastal State, to the extent and for the period of time determined by the commission, shall have preferential fishing rights in the area in question, under such limitations and to such extent as the commission finds necessary by reason of the dependence of the coastal State on the 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.' " (*Loc. cit.*, pp. 13, 14, 15, 173.)

40. The other additional proposal which deserves mention here was a proposal put forward by the Icelandic Delegation to amend paragraph 3 of the joint United States-Canadian proposal by adding the following words: "The provisions of this paragraph shall not apply to the situation where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development" (*loc. cit.*, pp. 26, 174).

41. Voting on the various proposals took place in plenary on 26 April 1960. Both the Icelandic proposal adopted in Committee and the Icelandic amendment to the United States-Canadian proposal were rejected. The sponsors of the amendment proposed by Brazil, Cuba and Uruguay agreed orally that its new paragraph 4 should be replaced by paragraph 5 of the United States-Canadian proposal, and the amendment as so modified was adopted. The voting on the joint United States-Canadian proposal, as so amended, was 54 in favour and 28 against, with 5 abstentions. Since a two-thirds majority was

required for the adoption of a proposal in plenary, the proposal thus failed, by one vote, to be adopted (*loc. cit.*, pp. 21, 30).

6. The Period after the Geneva Conference of 1960

42. But though the 1960 Conference had thus failed to produce any formal agreement on the breadth of the territorial sea and fisheries jurisdiction, the proposals that had been tabled and that had nearly secured a two-thirds majority, influenced the evolution of new rules of customary international law. The general *consensus* which the Conference revealed on the permissible extent of a coastal State's fisheries jurisdiction was, in the years which succeeded the Conference, expressed in such an unmistakable pattern of State practice, acquiesced in by other States, that, by the middle or late 1960s, there could be little room for doubt that the law had changed in this respect.

43. Already between the two Conferences the United Kingdom and Denmark by an exchange of Notes on 27 April 1959 (*United Nations Treaty Series*, Vol. 337, p. 416), amended the Anglo-Danish Convention of 1901 which was still in force in relation to the Faröe Islands. Without prejudice to the views held by either Government as to the delimitation and limits in international law of territorial waters or of exclusive jurisdiction in fishery matters, the United Kingdom accepted an exclusive fishery limit around the Faröe Islands of six miles. Further, it was provided that "in view of the exceptional dependence of the Faröese economy on fisheries", in three areas between 6 and 12 miles from the coast fishing by vessels registered in the Faröe Islands or Denmark and by vessels registered in the United Kingdom should, between certain dates, be limited to fishing with a long line and hand line. Finally, it was provided that having regard to the fisheries traditionally exercised in waters around the Faröe Islands by vessels registered in the United Kingdom, the Government of Denmark shall raise no objection to such vessels continuing to fish in the area between the 6-mile and 12-mile line.

44. After the 1960 Geneva Conference, the United Kingdom and Norway concluded the Fisheries Agreement of 17 November 1960 (*United Nations Treaty Series*, Vol. 398, p. 189) in which they provided for a two-stage extension of the Norwegian exclusive fisheries zone. Article II of this Agreement provided that the United Kingdom accepted the exclusion of British vessels from fishing in an area contiguous to the territorial sea of Norway extending to a limit of six miles from the baseline from which the territorial sea is measured. The Agreement further provided, in Article III, that for a period of approximately ten years vessels registered in the United Kingdom would be allowed to continue to fish in the zone between the 6-mile and 12-mile limit, but that after the expiration of this time the United Kingdom would not object to the exclusion of British vessels from fishing within the 12-mile limit. In the preamble of that Agreement, both parties expressly referred to the joint proposal of the United States and Canada made at the Second Conference on the Law of the Sea with respect to the breadth of the territorial sea and fishery limits.

45. The Anglo-Norwegian Fisheries Agreement was followed by the Exchange of Notes of 11 March 1961, between the United Kingdom and Iceland and by the Exchange of Notes of 19 July 1961, between the Federal Republic of Germany and Iceland, by virtue of which the Governments of the United Kingdom and the Federal Republic accepted de facto a 12-mile exclusive fisheries limit for Iceland, subject to certain phase-out rights for British and German fishing vessels in the outer six miles.

46. On 1 June 1963 Denmark extended the fisheries zone for Greenland to 12 miles and also made a similar extension in regard to the Faröe Islands effective as from 12 March 1964. However, certain countries were granted exception from the application of the Greenland limits until 31 May 1973.

Reported in *International Legal Materials*, Vol. II, p. 1122.

47. The next country to follow suit was Canada, whose Government announced on 4 June 1963 their intention "to establish a 12-mile exclusive fisheries zone along the whole of Canada's coastline as of mid-May 1964". This intention was in due course put into effect by the Territorial Sea and Fishing Zones Act 1964 which provided for a territorial sea of three miles and for an exclusive fisheries zone extending nine miles beyond that. However, in the implementation of this legislation, provision was in due course made for the continuation of fishing by vessels of the United States, France, the United Kingdom, Portugal, Spain, Italy, Norway and Denmark (all of whom had traditionally fished in certain areas within the exclusive zone) pending the conclusion of negotiations with those countries.

International Legal Materials, Vol. II, p. 664; Vol. III, pp. 922-925.

48. The trend thus being set by these instances of bilateral agreements or legislation by individual States, acquiesced in by the other countries concerned, was considerably advanced at the end of 1963 and the beginning of 1964 by an important event on the multilateral plane. This was the holding of the European Fisheries Conference in London between 3 December 1963, and 2 March 1964, and the resultant adoption, on 2 March 1964, of the European Fisheries Convention (*United Nations Treaty Series*, Vol. 581, p. 57). The original signatories of this Convention were Belgium, Denmark, France, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. It was, in due course, ratified or approved by all the signatories except Luxembourg. By arrangements concluded with the United Kingdom on 26 September 1964, 28 September 1964 and 30 September 1964, respectively, Poland, Norway and the USSR in effect accepted the validity of the Convention. On 7 June 1966 Poland formally acceded to the Convention. Iceland participated in the Conference but refused to become a party to the Convention.

49. Under Article I of the European Fisheries Convention of 1964, each Contracting Party recognized "the right of any other Contracting Party to establish the fishery régime described in Articles 2 to 6 of the present Convention". The "fishery régime" referred to was one under which:

(a) "The coastal State has the exclusive right to fish and exclusive jurisdiction in matters of fisheries within the belt of six miles measured from the baseline of its territorial sea" (Article 2).

(b) "Within the belt between six and twelve miles measured from the baseline of the territorial sea, the right to fish shall be exercised only by the coastal State and by such other Contracting Parties, the vessels of which have habitually fished in that belt between 1 January 1953 and 31 December 1962" (Article 3).

(c) "Fishing vessels of the Contracting Parties, other than the coastal State, permitted to fish under Article 3, shall not direct their fishing effort towards stocks of fish or fishing grounds substantially different from those which they have habitually exploited. The coastal State may enforce this rule" (Article 4).

(d) "(1) Within the belt referred to in Article 3 the coastal State has the power to regulate the fisheries and to enforce such regulations, including regulations to give effect to internationally agreed measures of conservation, provided that there shall be no discrimination in form or in fact against fishing vessels of other Contracting Parties fishing in conformity with Articles 3 and 4.

(2) Before issuing regulations, the coastal State shall inform the other Contracting Parties concerned and consult those Contracting Parties if they so wish" (Article 5).

(e) "Any straight baseline or bay closing line which a Contracting Party may draw shall be in accordance with the rules of international law and in particular with the provisions of the Convention on the Territorial Sea and the Contiguous Zone opened for signature at Geneva on 29 April 1958" (Article 6).

50. In addition, the London Conference also adopted, on 17 January 1964, a Resolution on Conservation, which read as follows:

"Recognising that all efforts to promote the stability and prosperity of the fishing industry ultimately depend on effective conservation measures to ensure the rational exploitation of the resources of the sea, and that the Commission recently established under the North-East Atlantic Fisheries Convention is the body internationally responsible for these matters,

The Conference urges the Governments represented on the Commission to intensify their efforts

To secure the introduction of such measures as may be necessary, not only to prevent overfishing, but to ensure the profitable exploitation of the fisheries for the benefit of all the countries concerned;

And for this purpose to ensure that the Commission is enabled to employ the full range of measures envisaged in the Convention, including measures of national and international control to ensure the effective observance of the regulations."

The Icelandic Delegation voted in favour of this Resolution, which indeed was adopted unanimously.

51. In the years which followed the adoption of the European Fisheries Convention of 1964, numerous instances occurred of reliance on, and acquiescence in, the proposition that the limits set by international law for the exercise of fisheries jurisdiction by a coastal State had moved to 12 miles from that State's coastline. Thus, on 10 September 1965, New Zealand enacted the Territorial Sea and Fishing Zone Act 1965 which was closely modelled on the Canadian legislation referred to in paragraph 47 above. In effect, it claimed an exclusive fisheries zone of nine miles beyond a territorial sea of three miles. This legislation was at first the subject of a vigorous protest by the Government of Japan but that Government eventually accepted it (subject to certain temporary provisions) by an agreement signed on 12 July 1967 (6 *International Legal Materials*, 736). Another example is the legislation enacted by Portugal on 22 August 1966, which apparently established a fisheries jurisdiction zone of 12 miles of which the inner six miles were for the exclusive enjoyment of Portuguese vessels and the outer six miles zone in which Portugal exercised regulatory, but non-discriminatory, control (5 *International Legal Materials*, 1094).

52. Further examples could be adduced. But one which is particularly illustrative of the position which was being created during these years is the

enactment by the Congress of the United States of America, on 14 October 1966, of an Act "to establish a contiguous fishery zone beyond the territorial sea of the United States" (5 *International Legal Materials*, 1103). This Act provided that "the United States will exercise the same exclusive rights in respect of fisheries in the zone as it has in the territorial sea, subject to the continuation of traditional fishing by foreign States within this zone as may be recognised by the United States" (Section 1). The term "the zone" was defined as a zone having "as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point on the inner boundary". Before the enactment of this legislation (which was a development of earlier legislation, enacted in May 1964 and relating primarily to fishing for sedentary species on the United States continental shelf), the Chairman of the Committee on Commerce of the United States Senate asked for the advice of the State Department. This advice was supplied in a letter dated 18 May 1966, from which the following relevant parts may be cited:

> ". . . The purpose of the proposed legislation is to establish for the United States a 12-mile exclusive fisheries zone measured from the baseline from which the breadth of the territorial sea is measured but subject to the continuation of such traditional fishing by foreign States and their nationals as may be recognized by the US Government . . .
>
> Since the 1960 Law of the Sea Conference there has been a trend toward the establishment of a 12-mile fisheries rule in international practice. Many States acting individually or in concert with other States have extended or are in the process of extending their fisheries limits to 12 miles. Such actions have no doubt been accelerated by the support for the proposals made at the Geneva Law of the Sea Conferences in 1958 and 1960, of a fisheries zone totalling 12 miles as part of a package designed to achieve international agreement on the territorial sea.
>
> In view of the recent developments in international practice, action by the United States at this time to establish an exclusive fisheries zone extending 9 miles beyond the territorial sea would not be contrary to international law. It should be emphasized that such action would not extend the territorial sea beyond our traditional 3-mile limit and would not affect such traditional freedoms of the sea as freedom of navigation or of overflight. With one or two possible exceptions, it is not likely that such action would be unfavourably received by other governments in view of the provision for recognition of traditional fishing, which the Department regards as a desirable provision.
>
> In the above circumstances, the Department has no objection from the standpoint of US foreign relations to establishing a 12-mile exclusive fisheries zone subject to the continuation of such traditional fishing by foreign States as may be recognized by the US Government . . ." (This letter has been reprinted in *International Legal Materials*, Vol. V, p. 616.)

53. One of the most significant features of the history of this American legislation is the reception which it received abroad. The Government of Japan which was mainly affected thereby now made no attempt to dispute the legality of this legislation. Instead, on 9 May 1967, Japan concluded a series of agreements with the Government of the United States, under which it agreed, subject to the continuation of certain traditional fishing rights in certain areas on the previous level, to "take necessary measures to ensure that vessels and nationals of Japan would not engage in fishing, except such

fishing as listed below, in the waters which are contiguous to the territorial sea of the United States of America and extend to a limit of 12 nautical miles from the baseline from which the United States territorial sea is measured".

The various agreements between Japan and the United States, concluded on 9 May 1967, are reprinted in *International Legal Materials*, Vol. VI, pp. 745-759.

54. In view of the State practice described above, it can be argued with good ground that a new rule had emerged which entitled a coastal State to extend its fisheries jurisdiction to 12 miles from the coast or, more accurately, from the baselines from which its territorial sea is measured. This State practice was founded upon the *consensus* which had emerged at the 1958 and the 1960 Conferences and which indeed had failed by only one vote to be incorporated in a Convention to be adopted by the 1960 Conference. The new rule had found expression in numerous international agreements and acts of national legislations. It was acquiesced in by the vast majority of States, even those who had hitherto been most conservative in their approach. It is true that claims have been made by certain States to even wider limits of fisheries jurisdiction, sometimes as a separate jurisdiction and sometimes as a part of the territorial sea. But none of these wider claims had behind it the authority of the Geneva Conferences or any comparable expression of international opinion, nor the support of such a wide range of State practice, and every one of them had been the subject of formal and explicit protests by other States.

55. While it can now be safely maintained that under international law a State is entitled to extend its fisheries jurisdiction up to 12 miles from the coast, the question is still unsolved whether such State may then lawfully exclude all foreign fishing vessels from this zone or whether and to what extent fishing vessels of nations which have habitually fished in this zone, must be accorded special treatment. The latter question will be discussed in more detail later in this Part of the Memorial (see below paras. 126 to 144).

C. Claims by Coastal States for Fisheries Jurisdiction beyond the 12-Mile Limit

56. Since the 12-mile limit for the coastal State's fisheries jurisdiction has been generally accepted, claims for wider zones of fisheries jurisdiction have been made. However, these claims vary as to the grounds on which they have been argued. None of them has until now found general recognition.

57. The arguments put forward by Iceland and some other States in support of their claim for a wider zone of fisheries jurisdiction beyond the 12-mile limit may be classified into the following categories:

(1) It is asserted that it is within the sole competence of each coastal State to determine the limits of its maritime jurisdiction up to a reasonable distance from the coast;
(2) it is asserted that the fishery resources in the waters adjacent to the coast form an integral part of the national resources of the coastal State;
(3) it is asserted that it is a responsibility, and consequently within the competence of the coastal State to ensure the protection of the fishing grounds before its coast against overfishing;
(4) it is asserted that recent State practice has changed the law; and
(5) it is asserted that a State may claim preferential rights in the exploitation of the fishery resources in the waters adjacent to its coast.

The claims made by Iceland and some other coastal States for a wider fisheries zone will be examined in this order in the following paragraphs.

1. The Assertion of the Coastal State's Competence to Determine the Limits of Its Jurisdiction

58. On 9 November 1971, the Icelandic Prime Minister made the following remarks on the legality of Iceland's case in a speech before the Icelandic Parliament:

> "I cannot see that our proposed extension of fisheries jurisdiction is contrary to any accepted international law. It is a fact that there are no generally accepted rules in international law on the territorial limit. Several efforts had been made in order to try to negotiate an arrangement on such rules, first under the auspices of the old League of Nations at the Hague Conference in 1930 and later under the auspices of the United Nations at the Geneva Conferences in 1958 and 1960 . . .
>
> But all these efforts have been in vain. An agreement on the width of the territorial sea has not been reached. And at present the Conference on the Law of the Sea is scheduled for 1973. It is expected to deal with this problem as well as with several others concerning the Law of the Sea . . .
>
> Since there are no generally agreed rules on the width of the territorial limit in terms of international law, it must be in the power of every State to decide its territorial limit within a reasonable distance." (Cited from a pamphlet entitled *Iceland and the Law of Sea*, issued by the Government of Iceland 1972, pp. 31-32.)

This reasoning seems to rest on the same concept as the statement contained in the Lima Declaration of the Latin American States on the Law of Sea of 8 August 1970, where it was said that it was the "right of the coastal State to establish the limits of its maritime sovereignty or jurisdiction in accordance with reasonable criteria having regard to its geographical, geological and biological characteristics, and the need to make rational use of its resources" (*International Legal Materials*, Vol. X, p. 207).

59. In order to show that this concept is contrary to the generally recognized principles of maritime law, it should be sufficient to recall the following *dictum* of the Court in the *Norwegian Fisheries* case (*I.C.J. Reports 1951*, at p. 132):

> "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."

Therefore, if a coastal State claims jurisdiction over fisheries beyond the 12-mile limit which is now the widest limit generally accepted in State practice, the coastal State cannot rely on its own judgment but must show that such claim keeps within the limits permitted by international law.

60. As the delimitation of the coastal State's jurisdiction over sea areas, as the Court has said, has always an international aspect because it affects the rights of other States in the use of the high seas, a coastal State may extend its jurisdiction over areas of the high seas beyond the 12-mile limit only if either

the law has changed by giving the coastal State a wider margin of jurisdiction or the States affected consent to or acquiesce in the action of the coastal State. It is Iceland, not the Federal Republic of Germany which is challenging the established law, and it is for this reason that the Government of the Federal Republic maintains that the burden of proof that international law now recognizes the right of a coastal State to extend its jurisdiction beyond the 12-mile limit, rests upon Iceland. Although it should be for the Government of Iceland to plead its case before the Court and to adduce the necessary arguments for its claim for an exclusive fishery zone up to 50 miles, the Government of the Federal Republic will nevertheless comment on the grounds by which Iceland might argue for an exception to the established law, or a change in that law. In the absence of pleadings by the Government of Iceland, the Government of the Federal Republic finds itself in the embarrassing position of being forced to proceed on the basis of speculation about the arguments on which Iceland might wish to rely.

61. The Government of the Federal Republic of Germany hopes that the Government of Iceland in due course files a Counter-Memorial in accordance with the Order made by the Court on 15 February 1973, so that the Government of the Federal Republic will then be able to deal by way of Reply with any argument advanced by the Government of Iceland which they have not adequately anticipated in this Memorial.

2. The Assertion that the Fishery Resources in the Waters before the Coast Are Part of the Coastal State's National Resources

(a) *The Continental Shelf Concept*

62. The Government of Iceland seems to believe that it could draw some support for its claim for an exclusive fisheries zone from the concept of the continental shelf by which sovereign rights over the resources of the shelf are accorded to the coastal State. The Government of Iceland seems to maintain that the continental shelf concept could be applied, if not directly, at least *per analogiam* to the fishery resources as well. Reference to such a line of thought had already been made in the Resolution adopted by the Icelandic Parliament (Althing) on 15 February 1972 (see Annex G to the Application instituting proceedings in this case), in the Icelandic Memorandum on *Fisheries Jurisdiction in Iceland* of February 1972 (see Enclosure 2 to Annex H to the Application instituting proceedings in this case, p. 27), in the statement of the Minister for Foreign Affairs of Iceland during the debate in the General Assembly of the United Nations on 29 September 1971 (*ibid.*, p. 52), and in the statement of the Minister for Fisheries of Iceland at the Ministerial Meeting of the North-East Atlantic Fisheries Commission on 15 December 1971 (*ibid.*, p. 55).

63. It is evident that the Geneva Convention on the Continental Shelf of 29 April 1958 does not support that proposition since, by the very terms of its Article 2, paragraph (4), the "natural resources" to which the Convention applies, do not extend to free-swimming fish (see above paras. 15 to 18 of this Part of the Memorial). Thus, the accepted doctrine of the continental shelf, as embodied in the 1958 Convention and as reflecting customary international law, is quite contrary to the Icelandic proposition. It is, in a very real sense, inadmissible to question the distinction made in the established law between sedentary species, which pertain to the coastal State, and free-swimming

species, which do not; or even the distinction between the mineral resources of the shelf and the fishery resources of the high seas above the shelf. That distinction is one which has emerged in State practice, which has been endorsed and accepted by the 1958 Convention and which is now the law. As the Court itself stated in the *North Sea Continental Shelf* cases,

> "... the sovereign jurisdiction which the coastal State is entitled to exercise ... not only over the seabed underneath the territorial waters, but over the waters themselves, ... does not exist in respect of *continental shelf areas where there is no jurisdiction over the superjacent waters* ..." (*I.C.J. Reports 1969*, p. 37 (italics added)).

Moreover, the distinction is not only the established law; it rests upon sound and compelling reasons. It cannot be supposed that the 1958 Conference made a distinction which was nonsensical and unmerited. On the contrary, that distinction was based upon practical and persuasive reasons which exclude application of the continental shelf doctrine on the fishery resources above the shelf, even *per analogiam*.

64. There is, first, the reason that unlike free-swimming fish, the mineral resources (and also the sedentary species to some extent) are fixed and immobile so that their attachment to the shelf as a natural prolongation of the landmass of the coastal State is a physical fact. A further, and most compelling, reason is that the exploitation of the mineral resources of the shelf cannot be accomplished without the development of a highly elaborate system of cooperation and co-ordination with the coastal State. Anyone familar with the techniques of off-shore drilling will know of the extent to which shore-based facilities are, in practical terms, essential to the conduct of these operations. It was, therefore, generally accepted that coastal States should have exclusive rights over these resources. For non-coastal States to have begun such operations off the shores of the coastal State would have been to initiate situations with far-reaching effects upon the coastal State. The same considerations simply do not apply to the free-swimming species of the high seas. Their "renewable" character called for a quite different treatment, principally in the sense that the conservation of such resources was regarded as a matter of obligation for *all* States, just as the benefit of the resources pertained to all States. The allocation of exclusive rights of exploitation of a high seas resource to coastal States would have deprived many States of their existing rights. It would have produced discrimination against land-locked States. It would have afforded no real guarantee of the conservation of those resources for the common benefit. Indeed, given the mobility of free-swimming fish, there existed no basis for a conceptual attachment to the coast of one State.

65. In a meeting of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction, held on 10 August 1972, the Icelandic delegate had maintained that the fishery resources before the coast belong to the coastal State by the same token as the resources of its continental shelf because the coastal area formed an ecological whole, and it was unrealistic that foreigners could be prevented from extracting oil from the continental shelf while being allowed to destroy other resources based on the same seabed.

UN doc. A/AC.138/SR.77-89, p. 66.

This reasoning is a typical example of a widespread tendency to confuse the utilization and conservation aspects of the claims for a wider zone of fisheries jurisdiction. Ecological arguments, in particular the protection of the marine environment and the preservation of fish stocks are in no way relevant to the

question whether a coastal State is entitled to appropriate all the fishery resources before its coast. The need for conservation measures for the protection of the fish stocks and for the prevention of over-fishing if proved by scientific evidence, may possibly, if at all, constitute a valid argument for extending the regulatory jurisdiction of the coastal State farther out into the sea for the sole purpose of controlling the application of appropriate conservation measures, but that can never constitute a valid argument for an exclusive right to the utilization of the fish stocks concerned.

66. To maintain that the fishery resources in the waters above the continental shelf should be allocated to the coastal State by the same reasoning as the mineral resources of the continental shelf have been allocated to the coastal State, is an unwarranted identification of two different cases:

(a) When the concept of the continental shelf emerged, there were no legal rules in existence which governed the exploitation and appropriation of the mineral resources in the continental shelf for the simple reason that it had until then been beyond the technical and economic capabilities of men to extract minerals from the subsoil of the sea. When, however, it became technically possible to exploit the resources of the continental shelf, the coastal State as the State which was most directly interested in these new activities, extended its national jurisdiction into the sea in order to regulate these new activities because there was a *vacuum* in the law with respect to them. Now we have reached a phase of development in which the international community has taken up the matter and we are watching now the efforts of the international community to restrain and to set definite limits to the jurisdiction of the coastal State over the seabed and subsoil before its coast in order to safeguard the interest of the international community in maintaining and exploiting the resources of the oceans.

(b) Fishing, on the other hand, is not a new form of exploitation of the resources of the sea, but a long-established common use which is open to all nations on all parts of the high sea. Exclusive rights of the coastal States which reserve fishing before their coasts to their nationals, have been recognized only to a certain limit, which has now gradually moved up to 12 miles. Any claim of a coastal State for exclusive fishery outside the 12-mile limit would, therefore, require a change of established law, either by the enactment of new treaty law or by the emergence of some new customary rule which changes the established law by transferring such fishery resources from the common patrimony of all nations to the national domain of the coastal State. In the absence of such a change in the law the claim by the Government of Iceland that the fishery resources above the continental shelf should exclusively appertain to the coastal State, is at the moment nothing more than one of the numerous claims *de lege ferenda* which take into account the interests of the coastal State, but completely neglect the legitimately acquired rights of the other States.

(b) *The "Patrimonial Sea" Concept*

67. The concept of the "patrimonial sea" resembles in its substance very largely Iceland's concept of the coastal State's exclusive right to fishery resources above the continental shelf although those who advocate the concept of the patrimonial sea do not necessarily identify the outer limits of such a patrimonial sea with those of the continental shelf. Though foreshadowed in

earlier statements, this concept achieved a more precise formulation in the Montevideo Declaration of 8 May 1970:

> The text of the Montevideo Declaration is reprinted in *International Legal Materials*, Vol. IX, p. 1081. The Declaration was signed by the Governments of Argentina, Brazil, Chile, Ecuador, El Salvador, Panama, Peru, Nicaragua and Uruguay.

and, more recently, in the Declaration of Santo Domingo of 9 June 1972, the relevant passage of which reads as follows:

> "1. The coastal State has sovereign rights over the renewable and non-renewable natural resources, which are found in the waters, in the seabed and in the subsoil of an area adjacent to the territorial sea called the patrimonial sea.
>
> 2. The coastal State has the duty to promote and the right to regulate the conduct of scientific research within the patrimonial sea, as well as the right to adopt the necessary measures to prevent marine pollution and to ensure its sovereignty over the resources of the area.
>
> 3. The breadth of this zone should be the subject of an international agreement, preferably of a world-wide scope. The whole of the area of the territorial sea and the patrimonial sea, taking into account geographic circumstances, should not exceed a maximum of 200 nautical miles.
>
> 4. The delimitation of this zone between two or more States should be carried out in accordance with the peaceful procedures stipulated in the Charter of the United Nations.
>
> 5. In this zone ships and aircraft of all States, whether coastal or not, should enjoy the right of freedom of navigation and overflight with no restrictions other than those resulting from the exercise by the coastal State of its rights within the area. Subject only to these limitations, there will also be freedom for the laying of submarine cables and pipelines." (The text of the Santo Domingo Declaration is reprinted in *International Legal Materials*, Vol. XI, p. 892. The Declaration was signed by the Governments of Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Trinidad and Tobago, Venezuela; the Governments of the following States participating in the Conference did not sign: Barbados, El Salvador, Guyana, Jamaica, Panama.)

68. The concept of the "patrimonial sea" by virtue of which a coastal State should be entitled to claim sovereignty over all the economic resources of a marginal belt of 200 miles before its coast, is still inconsistent with the practice of the majority of States today; claims by Latin American States in this respect have not been recognized by other States affected thereby, as will be shown later in this Part of the Memorial. Accordingly, this concept of a "patrimonial sea" must also be viewed as a proposal *de lege ferenda* which the States concerned will propose for consideration at the forthcoming United Nations Conference on the Law of the Sea.

69. Whether the proposals based on the "patrimonial sea" concept or other similar concepts, will commend themselves to a sufficient majority of States to become law must be a matter of conjecture. It is clear that there will be opposition to them—and, indeed, already has been opposition to them—not only from the traditional distant-water fishing States but also from developing States who foresee that they may themselves become distant-water fishing States in the not too remote future, and from land-locked States or

other States for whom, by reason of their geographical situation, the concepts hold no attraction. Whatever might be the merits of these proposals, they do have a real relevance for the case before the Court in emphasizing that the issues are still far too open for these new concepts to be treated as anything other than possible indications of the way in which the law may, one day, perhaps, and no doubt with many qualifications which cannot as yet be envisaged, tend. They do not represent the law now.

70. It is, in any event, not clear whether Iceland relies on this concept of the "patrimonial sea". Indeed, claims based on that concept would differ in several respects from the claim actually formulated by Iceland. Apart from possible differences in the breadth of the zone claimed, the "patrimonial sea" concept has no necessary connection with the continental shelf, whereas the Icelandic claim appears to rest upon a continental shelf concept. Nor does the "patrimonial sea" concept necessarily envisage the degree of exclusivity of fishing which the Icelandic claim does.

(c) *The Doctrine of "Permanent Sovereignty over Natural Resources"*

71. Closely linked with such concepts as that of the "patrimonial sea" is the doctrine which has become known as the doctrine of "Permanent Sovereignty over Natural Resources". It should be made clear that, except to the extent that the doctrine is alleged to have some bearing on the limits of a coastal State's jurisdiction in fishery matters in the waters outside its territorial sea, this Memorial is not concerned with questions relating to the true scope of the doctrine or with arguments tending to establish or negate the moral or practical justification for it or that otherwise go to its merits, or with its legal status and validity, or with any other matters of that sort.

72. The advocacy of the doctrine has a history which goes back some years but it is only within recent months—long after these proceedings had been instituted—that any attempt has been made to extend it to deal with issues of the kind now before the Court. The first occasion was during the 27th General Assembly of the United Nations in 1972 when a draft resolution on this topic, co-sponsored by Iceland contained an operative paragraph in the following terms:

> "The General Assembly . . . Reaffirms the right of States to permanent sovereignty over their natural resources, on land within their international boundaries, as well as those found within the sea-bed and subsoil thereof within their national jurisdiction and in the superjacent waters."

73. Despite the strong reservations and indeed opposition that were expressed to the obviously question-begging nature of the phrase "and in the superjacent waters", and despite an amendment moved by Afghanistan (with the support of a number of other States including many of the land-locked States), to record that decisions concerning States national jurisdiction over the territorial sea, contiguous zone, seabed and subsoil and the superjacent waters belonged to the forthcoming Law of the Sea Conference (an amendment which was rejected in the Plenary Meeting by 54 votes to 45, with 28 abstentions), the draft resolution was adopted by the Second Committee and eventually by the General Assembly, becoming General Assembly resolution No. 3016 (XXVII). The voting in the General Assembly was 102 in favour, none against and 22 abstentions. In due course a resolution in similar terms was adopted by the Committee on Natural Resources of the Economic and

Social Council at its session in New Delhi in February 1973 and again by ECOSOC itself at its session in New York in April/May 1973.

74. If the Government of Iceland would wish to argue that these various resolutions constitute legal authority for the present claim of the Government of Iceland to be entitled to extend their exclusive fisheries jurisdiction over the waters embraced by a line 50 miles from the coast of Iceland, the following observations are called for: Whatever weight it may be desirable to attach to views expressed by the delegations of States in their discussion of resolutions of this kind in the forums in fact concerned, resolutions of the General Assembly passed in circumstances such as those of the instant case—and, even more so, resolutions of ECOSOC and resolutions of the Natural Resources Committee of ECOSOC—are not themselves capable of amending international law as expressed in the current practice of States and as embodied in a number of international treaties. Such resolutions represent a composite political package dealing with a number of topics and covering a number of highly controversial political issues, most of which had no bearing on the question of maritime jurisdiction. The fact that some States found it expedient on this particular occasion to combine with other States to support the resolution is not a reliable indication of what their legal opinions were on the issue of maritime jurisdiction and how they will vote on that issue at the forthcoming conference on the Law of the Sea Conference. The actual voting figures on the draft resolution and the various amendments that were proposed, did not—proabably for reasons of political expediency—accurately reflect the state of opinion on this matter. The study of the various speeches and explanations of vote delivered in the course of the debates shows that it was well understood that, whatever the resolution itself might be taken to mean if literally construed, it was not capable of prejudicing (and most States did not intend it to prejudice) the decisions to be taken by the Law of the Sea Conference on what changes, if any, should be made in the law relating to the limits of maritime jurisdiction. Statements to that effect were made not only by those delegations which opposed or abstained on the vote on the offending words in the resolution (including the delegations of the United Kingdom and of many of the land-locked countries). They were also made in very clear terms by a number of delegations who actually voted in favour of the resolution. It should be noted here that the voting in the plenary session of the General Assembly proceeded in the following way (UN doc. A/PV. 2113, 18 December 1972, pp. 71-80): When the draft Resolution as proposed by the Second Committee came up for adoption by the plenary session, the delegate of Afghanistan, together with other land-locked States, tabled an amendment to the preamble of the draft resolution which should read:

> "Bearing in mind that the question of the limits of States' national jurisdiction will be dealt with by the forthcoming Conference on the Law of the Sea."

When this amendment was put to the vote, it was rejected by 50 votes to 45, with 28 abstentions. Then a separate vote was requested on the offending words "and in the superjacent waters"; the vote was 74 votes to 26, with 25 abstentions, for retaining these words in the resolution. After this vote had been taken the draft resolution as a whole was put to the vote and adopted by 102 votes to none with 22 abstentions. It would, therefore, be misleading to take the last vote as an indication of the views of Governments; the preceding votes rather showed that quite a number of States, probably also those abstaining, openly expressed their unwillingness to prejudice the decisions to be

taken by the Law of the Sea Conference on what changes, if any, should be made in the law relating to the limits of the coastal State's maritime jurisdiction. The Icelandic delegate himself had made clear his awareness of the limitations within which the resolution necessarily operated. In the preceding debate in the Second Committee of the General Assembly on 29 November 1972, the Icelandic delegate answered to criticisms raised against the insertion of the words "and in the superjacent waters" with the following remarks:

> "The co-sponsors had, however, carefully refrained from touching upon the legal issue of the delimitation of the area of national jurisdiction; that question could only properly be solved by the forthcoming Conference on the Law of the Sea." (UN doc. A/C.2/SR.1502, p. 12.)

75. Accordingly, the Government of the Federal Republic of Germany submits that, whatever might be the true nature and true legal effect of the doctrine of "Permanent Sovereignty over National Resources", it does not constitute any legal authority for the claim of Iceland to be entitled to the exclusive exploitation of all the fishery resources in the waters adjacent to its coast.

3. The Assertion that Recent State Practice Had Changed the Law

76. The Government of Iceland has argued that, since a number of States has in recent times extended the limits of its territorial sea or the limits of its fisheries jurisdiction beyond the 12-mile limit, there was no international law in existence which would require a coastal State to keep within that limit and that, consequently, Iceland could not be accused of breaking any rule of international law by the extension of its exclusive fisheries zone up to 50 miles. On 9 November 1971 the Icelandic Prime Minister speaking before the Icelandic Parliament relied particularly on this point; he said:

> "I cannot see that our proposed extension of the fisheries jurisdiction is contrary to any accepted international law. It is a fact that there are no generally accepted rules in international law on the territorial limit . . ."

After referring to the failure of former conferences to reach agreement on the breadth of maritime jurisdictional limits, he went on:

> "The evolution since then has been that several States have extended their territorial limit, some to 12 miles and others much further. This also holds true for those States which at one time supported the 3-mile rule. Therefore, I think that no one seriously considers today to claim that the 3-mile rule is a customary international law. And it is just as wrong to insist that a 12-mile limit is a customary international law. This is impossible when the fact is, that at least 20 States have a wider limit than 12 miles, some of them even 200 nautical miles. It is not known that special action has been taken against those States. Under these circumstances it is, of course, impossible to insist that international customary law is in existence concerning the extent of the territorial limits." (Cited in the pamphlet *Iceland and the Law of the Sea*, issued by the Government of Iceland 1972, pp. 31-32.)

The contention of the Government of Iceland that, because of the uncertainty of the law in this respect, it rested within the sole competence of the coastal State to decide on the outward limit of its jurisdiction over the waters before its coasts, has already been refuted earlier in this Part of the Memorial (see

above paras. 58 to 60). The argument that a number of States had already extended their maritime jurisdictional limits beyond the 12-mile limit, could have a legal relevance only in so far as it might imply that the 12-mile rule which is based on accepted State practice, had been replaced by a new rule based on a new State practice which allows States to extend their maritime jurisdiction, and in particular their fisheries jurisdiction farther out into the high sea. Before passing a judgment on the weight of this argument, it will be necessary to examine the State practice on which the Government of Iceland relies.

77. While the practice of States to claim a jurisdictional limit of 12 miles either for fisheries jurisdiction or for all purposes, had been gradually accorded general acceptance, the practice which Iceland wishes to invoke to support its extensive exclusive fishery claims is, in contrast, contrary to the present law and has been the subject of repeated protest by those States whose legitimate interests on the high seas have been adversely affected by that practice. It is inconceivable that a new customary law could develop upon the basis of such a minority practice, contrary to the established law and to the practice of the great majority of States and in the face of repeated protest by those States adversely affected.

78. The extent of this minority practice must now be examined. Not all the legislation of the various States concerned is available and, particularly in relation to recent claims, reliance has to be placed on secondary sources; what follows is therefore a summary of the position which the Government of the Federal Republic of Germany believe to be as accurate as reasonably possible, based upon the best evidence available to them. In broad terms, it appears that in addition to Iceland some 20 States claim exclusive fisheries jurisdiction beyond 12 miles: these States are Argentina, Brazil, Chile, Ecuador, El Salvador, Gabon, the Gambia, Ghana, Guinea, Haiti, the Maldives, Morocco, Nicaragua, Nigeria, Oman, Pakistan, Panama, Peru, Senegal and Uruguay. That is, in total, in addition to Iceland 20 States out of *the 114 known coastal States. Then there is Cameroon which in 1967* legislated for a territorial sea of 18 miles but is not known to have yet fixed by decree any limit for exclusive fishing. Costa Rica, by decree in 1972, claimed a 200-mile zone, but expressed as a zone for conservation powers and not exclusive fishing. Mauritania claimed a 30-mile territorial sea in 1972, although it is not clear whether this claim has superseded the 1963 Code which established a 12-mile fisheries zone, with the preservation of certain foreign fishing in the outer 6 miles. Sierra Leone has claimed a 200-mile territorial sea by the Interpretation Act of 1971, although, again, it is not certain whether this involves a claim to exclusive fisheries within the same limit. The Republic of Viet-Nam by decree in 1972 established a 50-mile exclusive fisheries zone, but licenses fishing by foreign vessels. However, even if one adds this second category of claims which are not so clearly exclusive, that still produces a total of only 26 States out of 114.

This is based upon the information contained in *Limits and Status of the Territorial Sea, Exclusive Fishing Zones, Fishery Conservation Zones and the Continental Shelf.* FAO Fisheries Circular No. 127, FID/C/127, Rome 1971; also on *International Boundary Study*, Ser. A, Limits in the Seas, "National Claims to Maritime Jurisdictions", No. 36, March 1973, issued by the Geographer to the Department of State, plus such additional information as the Government of the Federal Republic have been able to gather. The Republic of Korea has been excluded because, although the

Presidential Proclamation of 18 January 1952 purports to establish an exclusive zone beyond 12 miles, in practice, and by virtue of the Japan/Korea Fisheries Agreement of 22 June 1965, the right to an exclusive zone is restricted to 12 miles. A number of States have made jurisdictional claims to "conservation zones" in the waters of the epi-continental sea but, on examination, it appears that these claims are not claims to exclusive fisheries and have not been treated as such by the FAO publication cited above. In this category are India, Sri Lanka, United States.

Simply on those figures it is apparent that this minority is nothing like sufficient to constitute the "very widespread and representative participation" or the "general practice accepted as law" which the Court and Article 38 of this Statute have required to constitute a customary rule. Even apart from the total inadequacy of the number of States making these minority claims, there are two further features of the practice which destroy any argument that such practice might have created a new customary rule of law.

79. The first feature is the existence of emphatic protest by States adversely affected. The protest of the Government of the Federal Republic of Germany against the present Icelandic claims is sufficiently evidenced by the proceedings now before the Court. The position of the Government of the United Kingdom is similarly attested. The Government of the Federal Republic of Germany for its part, has consistently protested against formal claims by other governments to exercise fisheries jurisdiction beyond 12 miles from their coasts whenever such claims have come to their attention. How far other States, affected by these various claims, have protested is not easily ascertainable since States are under no obligation to publish protests received. Yet it seems clear that such claims to exclusive fisheries jurisdiction beyond 12 miles have not met with the general acquiescence necessary to give them the status of customary international law.

80. The second feature is the lack of uniformity in these various claims to exclusive fisheries. For example, the Argentinian Fishing Law of 25 October 1967 (Law 17.500) provides in Article 2 that:

> "Resources within 12 nautical miles from the coasts may only be exploited by Argentine vessels. The Executive Branch shall also establish annually an area of the Argentine territorial sea reserved for exploitation by Argentine vessels."

Thus the absolute prohibition of foreign vessels is confined to the 12-mile zone and Decree 8.802 of 22 November 1967 (*Boletín Oficial*, 24 November 1967) in fact promulgates Provisional Regulations for Granting Permits to Foreign Ships to Exploit the Living Resources of the Argentine Territorial Sea. A newly issued Decree No. 20.136 of 6 February 1973 seems, however, to be more stringent and aims at a total exclusion of all foreign fishing within the 200-mile zone.

81. The Brazilian legislation is different. Article 4 of Decree-Law 1.098 provides—

> "The Brazilian Government shall regulate fishing, bearing in mind national exploitation and conservation of the living resources of the territorial sea and also research and exploration activities.
>
> (1) Regulations may determine the zones in which fishing should be reserved exclusively to Brazilian vessels.
> (2) In the zones of the territorial sea that remain open to fishing for foreign vessels, such vessels may carry out their activities only when

they are duly registered and authorised and they are obliged to respect Brazilian regulations.

(3) Special regulations for fishing, research, and exploration of the territorial sea may be defined by international agreement, in principle on the basis of reciprocity."

This Decree-Law, of itself, is not inconsistent with the general customary rule; it would leave open the possibility of regulating fisheries beyond 12 miles by agreement. It is only by Decree 68.459 of 1 April 1971 (*Diário Oficial*, 2 April 1971), made pursuant to Article 4, that the exclusive fisheries zone is determined to be 100 miles, and even here it is not clear how far this is based on a scientifically proven need for conservation rather than representing an exclusive claim *simpliciter*.

82. The Chilean legislation is different again. The Presidential Declaration of 23 June 1947, contains the proviso that "the present Declaration of sovereignty does not disregard the similar legitimate rights of other States on a basis of reciprocity . . ." and subsequent Decree 130 of 11 February 1959, Decree 1078 of 14 December 1961 (*Diário Oficial*, 16 January 1962), and Decree 332 of 4 June 1963, envisage the grant of permits to foreign vessels to fish "in Chilean jurisdictional waters" and "within the 200-mile zone established in the Declaration of Santiago . . .".

83. The municipal law of Ecuador is more akin to that of Brazil. Article 628 of the Civil Code (*Suplemento al Registro Oficial*, 20 November 1970) establishes a zone described as "the adjacent sea, to a distance of 200 nautical miles measured from the low-water mark . . . Different zones of the territorial sea shall be established by executive decree . . .". The possibility of fishing by foreign vessels under licence is not, however, excluded: it is envisaged specifically by the Law on Fishing and Fishery Development No. 110-CL of 6 March 1969 (*Registro Oficial*, 10 March 1969), and Decree 7733 of 15 October 1969 (*ibid.*, 27 November 1969).

84. The law of El Salvador (1955 Fishing Act) distinguishes between coastal fishing (up to 12 miles), sea fishing (between 12 and 200 miles) and deep-sea fishing (beyond 200 miles) and confines coastal fishing to nationals or residents of El Salvador. However, Article 2 of the Law for Development of Sea and Deep Sea Fishing, issued by Legislative Decree 97 of 22 September 1970, defines "sea-fishing" as fishing between 60 and 200 miles rather than 12 and 200 miles. And Article 4 of the 1970 Law goes on to envisage the registration of even foreign enterprises ("any natural or juridical person, whether or not a resident of the Republic") for either "sea" or "deep-sea" fishing. Thus the law of El Salvador seems to envisage registration of foreign enterprises whether fishing in the 60-200-mile zone or even beyond the 200-mile limit.

85. The Nicaraguan Executive Decree 1-L of 5 April 1965 (*La Gaceta*, 8 April 1965), establishes a "national fishing zone" up to 200 miles from the coast. Within this zone a licensing system operates under the Special Law on Fishing (Legislative Decree 557, 20 January 1961).

86. Haiti has an exclusive fishing zone of 15 miles (12 plus 3) by Decree of 6 April 1972. Panamanian law appears to make distinctions between different species of fish. The provisions of Decree Law 17 of 1959 and Law 33 of 1961, as revised by Decree 42 of 24 January 1965 (*Gaceta Oficial*, 3 May 1965), refer mainly to shrimp fishing; those of Decree 168 of 20 July 1966 (*Gaceta Oficial*, 26 July 1966), to anchovy and herring; whilst Decree 202 of 14 October 1964 (*Gaceta Oficial*, 22 October 1965), appears to be of more general application in prohibiting "the taking of all marine species within the territorial sea or

within an area 12 miles from the coast, by fishing vessels of 10 gross tons or over . . .". However, by Law 31 of 20 February 1967 (*Gaceta Oficial*, 4 February 1967) Haiti has proclaimed sovereignty over a zone of territorial sea of 200 miles.

87. The Peruvian assertion of national sovereignty over the sea superjacent to the continental shelf dates back to Supreme Decree 781 of 1 August 1947, and specified a limit of 200 miles. Subsequent decrees, however, namely, the General Fishing Law (Decree Law 18810 of 25 March 1971 (*El Peruano*, 26 March 1971), and Supreme Decree 011-71-PE, of 25 June 1971 (*El Peruano*, 30 June 1971), do contemplate fishing activities by foreign vessels "in Peruvian jurisdictional waters" (Art. 29) under licence.

88. Uruguay has asserted a claim to a territorial sea of 200 miles under Law 13.833 of 23 December 1969 (*Diário Oficial*, 5 January 1970), but under Article 4 reserves commercial fishing to Uruguayan vessels in a 120-mile zone though "without prejudice to international treaties which Uruguay signs on a basis of reciprocity". And under Article 5 fishing by foreign vessels between 12 and 200 miles is permissible under licence.

89. Outside Latin America, there is further evidence of variation. Gabon claims a territorial sea of 25 miles, Gambia of 18 miles, Nigeria of 30 miles, Guinea of 130 miles, Morocco a fishing zone of 70 miles, Oman of 50 miles, Senegal of 122 miles, the Maldive Islands of 100 miles. The most recent case is Pakistan which claims an "exclusive fishery zone" of 50 miles.

90. It therefore appears that—quite apart from the relatively low number of States—there is no body of uniform State practice which could support the assertion of a new customary rule of international law. There is no uniformity as to the distance of fishery zones; some are truely exclusive while others envisage foreign fishing either under licence or pursuant to agreement; some are based upon the continental shelf concept and some are not; some are based upon the claim to conserve resources and others are not. This body of State practice which is mainly confined to the Latin American and African continent, is not more than evidence of dissatisfaction of these States with the existing law; it lacks the necessary uniformity and general acquiescence by those other non-coastal States whose fishing rights are affected thereby. At best it could be maintained that there is a tendency among part of the States to extend the limits of their maritime jurisdiction farther out into the sea beyond the 12-mile limit. But it is still completely unsettled for what purposes such an extended jurisdiction could be claimed and how such an extension could be reconciled with legitimately acquired fishing rights of other nations who have habitually been fishing in this zone.

91. It is submitted therefore that the State practice described above in paragraphs 76 to 90, does not provide a sufficient basis for the emergence of a new rule of customary international law on which Iceland could assert a right to extend its exclusive fishery zone unilaterally beyond the 12-mile limit.

4. Claims by Coastal States for Extended Zones of Maritime Jurisdiction on Grounds of Conservation

(a) *Iceland's Case*

92. The Government of Iceland tries to justify its claim to extend the Icelandic jurisdiction over the high seas fisheries before its coast by asserting an urgent need for taking conservation measures with respect to the fish stocks in this zone. In fact, this was the only ground invoked by the Govern-

ment of Iceland when it started its campaign for an extended zone of fisheries jurisdiction as early as in 1948. The Icelandic Law concerning the Scientific Conservation of the Continental Shelf Fisheries, dated 5 April 1948, which was and still is the statutory basis for all the regulations relating to the extension of Iceland's fisheries jurisdiction after that date, including the Regulations No. 189/1972 of 14 July (see Annex A to this Memorial), did only refer to the aspect of conservation; it authorized the Minister for Fisheries to establish conservation zones up to the limits of Iceland's continental shelf and to issue regulations for the protection of the fishing grounds within such zones; but it said nothing about the establishment of exclusive national fisheries zones.

The text of the Law of 5 April 1948, together with the reasons which accompanied that law when it was submitted by the Government of Iceland to the Icelandic Parliament, is reproduced in Annex B to this Memorial.

Article 1 of the Law of 5 April 1948, which is the only relevant provision here, was worded as follows:

> "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. The Fiskifélag Islands (Fisheries Society) and the Atvinnudeild Háskóla (University of Iceland Industrial Research Laboratories) shall be consulted prior to the promulgation of the said regulations.
>
> This regulation shall be revised in the light of scientific research."

93. The reasons which accompanied that Law did not mention the establishment of exclusive fishery zones either; nor did it appear from the circumstances under which that Law had been enacted that the establishment of such zones was contemplated. The reasons given by the Government of Iceland merely stated that the economy of Iceland depended almost entirely on the fisheries in the vicinity of its coast and that for this reason the people of Iceland had followed the progressive impoverishment of these fishing grounds with anxiety; after having referred to the efforts to prevent overfishing by international agreement between the nations concerned, the reasons continued as follows:

> "On the other hand, there are the countries which engage in fishing mainly in the vicinity of their own coasts. The latter have recognized to a growing extent that the responsibility of ensuring the protection of fishing grounds in accordance with the findings of scientific research is, above all, that of the littoral State. For this reason, several countries belonging to the latter category have, each for its own purpose, made legislative provision to this end the more so as international negotiations undertaken with a view to settling these matters have not been crowned with success, except in the rather rare cases where neighbouring nations were concerned with the defence of common interests. There is no doubt that measures of protection and prohibition can be taken better and more naturally by means of international agreements in relation to the open sea, i.e., in relation to the great oceans. But different considerations apply to waters in the vicinity of coasts."

Here again, emphasis was placed on the conservation aspect, and no claim was asserted, at that time, to reserve the fishery resources in the waters above Iceland's continental shelf exclusively to Icelandic nationals.

94. Later, in particular since the Icelandic Parliament had adopted the resolution on Iceland's fishery policy on 5 May 1959 (the relevant part of this Resolution has been reproduced in para. 5 of the Federal Republic's Memorial on the question of jurisdiction), the claim for extended jurisdiction for the purposes of conservation gradually changed into a claim for an exclusive fisheries zone. Nevertheless, the conservation aspect remained one of the principal grounds on which the Government of Iceland's claim for such an exclusive fisheries zone rested. Successive statements by representatives of the Icelandic Government reiterated that, in addition to the economic needs of the Icelandic people, it was the need for taking conservation measures which had prompted the Government of Iceland to seek an extension of its jurisdiction over the high seas fisheries around its coast.

95. Therefore it will be examined in the following paragraphs of this Memorial whether the asserted need for conservation justifies the extension by Iceland of its fisheries jurisdiction up to 50 miles, or, as it has been formulated earlier, to the limits of Iceland's continental shelf. Here again, care should be taken not to confuse the conservation and the utilization aspect of such a measure; it should be distinguished how far the purported extension of the jurisdictional limits relates only to the exercise of regulatory powers with respect to the enactment of restrictions on fishing for reasons of conservation and how far the extended jurisdiction shall also include the power to restrict or exclude foreign fishing to the benefit of Icelandic fishermen. While the urgent need for conservation measures might provide a ground to argue that the coastal State should have some jurisdictional powers beyond the present limits for the purpose of enacting and ensuring the observance of necessary conservation measures, such need provides no valid ground for the prohibition of foreign fishing in that zone. Therefore the following questions will have to be answered in Iceland's case:

(1) Is there a scientifically proven need for conservation with respect to fish stocks in the waters around Iceland?
(2) If this need is proved, would this fact entitle the Government of Iceland to assume jurisdictional control over the waters of the high seas before its coast for enacting and controlling the observance of conservation measures?
(3) If Iceland would be entitled to assume a jurisdictional control over the waters of the high seas before its coasts for the purpose of enacting and controlling the observance of conservation measures, would this be a sufficient legal basis to discriminate in the exercise of these powers against the fishing activities of other nations, and in particular to exclude fishing vessels of other nations from fishing in these waters?

(b) *The Need for Conservation Measures*

96. This is a question of fact, but nonetheless it is a precondition of any claim to adopt conservation measures. It will be recalled that the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas defined "conservation" as "the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products" (Art. 2). Moreover, the

right of the coastal State to take measures for conservation was, under Article 7 (2), made subject, *inter alia*, to the following conditions:

"*(a)* that there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) that the measures adopted are based on appropriate scientific findings;

(c) ..."

97. The Icelandic propositions in this respect and the available evidence thereto has been fully reviewed in Part II of this Memorial, and it is not necessary to repeat here in detail the conclusions set out there with respect to the situation of fisheries in the ICES Iceland Area in general and of individual fish stocks in particular. These conclusions may be summarized as follows:

(1) No over-fishing has been asserted with respect to those species which are mainly caught by fishing vessels of the Federal Republic of Germany (i.e., redfish and saithe).

(2) The situation of the cod stocks is under constant and thorough review by the competent international bodies, but there is yet no proof of over-exploitation in the ICES Iceland Area though the stocks are fully exploited. A danger of over-fishing might, however, materialize if the fishing effort directed to the cod stocks would be increased. It is only the Government of Iceland which has recently expressed the intention to turn its effort more to the cod fishery.

(3) The situation of the haddock stock has deteriorated according to catch figures during the last years, but scientific evidence with respect to the causes of this situation and with respect to the appropriate measures for conservation is still lacking. The protection of the spawning grounds of the haddock which lie within the 12-mile limit, is an Icelandic affair.

(4) There is general agreement that, in view of the catch limitations introduced in the West Atlantic, equivalent measures must be taken to prevent the fishing effort from being diverted to the Iceland Area. There is no indication that such a diversion is at present imminent, but the appropriate measures for this purpose are under review by the North-East Atlantic Fisheries Commission; catch limitations had probably already been decided upon by the Commission were it not for the fact that Iceland had refused to ratify the extension of the Commission's power with respect to catch limitations and restrictions of fishing effort.

98. In the desire to allay the fear of the Government of Iceland that the fishing effort in the waters around Iceland might increase, the Government of the Federal Republic has repeatedly expressed its willingness to agree with the Government of Iceland on reasonable catch limitations, without waiting for the findings and decisions of the competent international bodies.

99. It is therefore submitted that there is no scientifically attested urgent need to take conservation measures to the effect that the present fishing effort in the waters of the high seas around Iceland has to be reduced either generally or with respect to certain species.

(c) *The Unilateral Extension of Jurisdictional Limits by the Coastal State for the Purpose of Enacting Conservation Measures*

100. Even supposing that Iceland would adduce evidence showing a need for conservation measures, international law does not permit *ipso facto* unilateral action by the coastal State in so far as fishing activities of other

nations are affected thereby. The underlying reason is that in such a case more interests are involved than those of the coastal State alone, and those other interests must be safeguarded against being affected by unilateral actions of the coastal State which is mainly concerned with the preservation of its own interests.

101. The authors of the Convention on Fishing and Conservation of the Living Resources of the High Seas had been aware of that conflict of interests, and so had been the States which adopted this Convention at the Conference on the Law of the Sea 1958. The Convention places the duty of acting to conserve resources on all States not just the coastal State. In the terms of Article 1 (2):

> "All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas",

and in the terms of Article 4 (1):

> "If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected."

The whole emphasis is upon action by agreement. It is only when "agreement with respect to conservation measures" has not been reached that, under Article 7, the coastal State may proceed to take unilateral action. And even such unilateral action is not final, but subject to the right of the other States affected to have recourse to the special Commission to be established pursuant to Articles 9, 10 and 11 of the Convention.

102. It is, of course, true that Iceland is not a party to this Convention. As remarked earlier, the question why a State like Iceland, which professes to be concerned about conservation, fails to accept and invoke existing machinery which was designed specifically to deal with conservation is one which requires to be answered by Iceland. However, it is clear that the obligation to proceed to deal with a problem of conservation by agreement rather than by unilateral action is founded not upon this Convention, but upon principles and the practice of States. The resolution on Special Situations relating to Coastal Fisheries (text, see para. 26 of this Part of the Memorial) which had been adopted by the Geneva Conference on 26 April 1958, with the special situation of Iceland in mind, recommended "agreed measures", but not unilateral action. The practice of States abounds with examples of measures for regulating fisheries which have been taken by agreement between the interested States. The following is an illustrative rather than an exhaustive list.

103. *The North Sea and the Atlantic:* the Convention for Regulating the Police of the North Sea Fisheries of 1882 (see para. 5 above) initiated a pattern of international co-operation which was continued in the Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1946 (231 *UNTS*, 199) and this, in turn, was replaced by the North-East Atlantic Fisheries Convention of 1959 (486 *UNTS*, 157; parties are Belgium, Denmark, France, Federal Republic of Germany, Ireland, Iceland, Netherlands, Norway, Portugal, Poland, Spain, Sweden, United Kingdom, USSR). Comparable co-operation was provided for by the North-West Atlantic

Fisheries Convention of 1949 (157 *UNTS*, 157; parties are Belgium, Bulgaria, Canada, Denmark, France, Federal Republic of Germany, Iceland, Italy, Japan, Norway, Poland, Portugal, Spain, United Kingdom, United States and USSR), dealing with an area including the Newfoundland Grand Banks, which had produced fishing controversies for some 400 years. There may be cited, in addition, the Atlantic Tuna Convention of 1966 (6 *International Legal Materials* (1967), 293; signed by United States, Spain, Korea, Japan) concluded under the auspices of FAO; the USA/USSR Agreement on Fishery Problems in the Western Areas of the Middle Atlantic Ocean of 1967 (7 *International Legal Materials* (1968), 144; renewed in 1968, 8 *International Legal Materials* (1969), 502); the USA/USSR King Crab Fisheries Agreement of 1969 (8 *International Legal Materials* (1969), 507); the US/Cuba Shrimp Convention of 1958 (358 *UNTS*, 63); the Brazil/USA Shrimp Conservation Agreement of 1972 (11 *International Legal Materials* (1972), 453); the Convention on the Conservation of the Living Resources of the South-East Atlantic of 1969 (*Revue générale de Droit international public*, vol. 74 (1970), p. 1012); the Canada/Norway Agreement on Sealing and the Conservation of Seal Stocks of 1971 (Lay, Churchill and Nordquist, *New Directions on the Law of the Seas*, p. 414); and the Iceland/Norway/USSR Agreement of 1972 on the Atlanto-Scandian Herring (*ibid.*, p. 449).

104. *The Baltic:* A Convention of 1929 (115 *LNTS*, 93; parties were Denmark, Germany, Poland, Danzig, Sweden) provided for closed seasons and in 1932 a Convention for Plaice Fisheries in the Skagerrak, Kattegat and Sound (89 *LNTS*, 199; parties were Sweden, Denmark, Norway) was concluded. Denmark, Sweden and the Federal Republic of Germany concluded an Agreement for the Protection of the Salmon Population in the Baltic in 1962 (Lay, Churchill, and Nordquist, *op. cit.*, p. 446). More recently there have been the Seal Fishing Agreements between the USSR and Finland, the latest in 1969 (9 *International Legal Materials* (1970), 507).

105. *The Black Sea:* A Convention regulating fisheries in this area was concluded in 1959 between Bulgaria, Romania and the USSR (377 *UNTS*, 203).

106. *The Pacific:* This area has seen a considerable number of conservation agreements: the North Pacific Ocean Convention of 1952 (205 *UNTS*, 65; parties were United States, Japan, Canada); the Alaska Crab Agreement of 1964 (533 *UNTS*, 31; parties are Japan, United States); the Agreement on Fishing off Alaska of 1964 (4 *International Legal Materials* (1956), 1976; parties are United States, USSR); the North-West Pacific Ocean Convention of 1956 (53 *AJIL* (1959), 763; parties are Japan, USSR); the North Pacific Fur Seals Convention of 1957 (314 *UNTS*, 105; parties are United States, Canada, Japan, USSR); the Halibut Preservation Convention of 1952 (222 *UNTS*, 77; parties are United States, Canada); the Sockeye Salmon Agreement of 1930 (184 *LNTS*, 305; parties are United States and Canada); the Japan/Korean Agreement concerning Fisheries of 1965 (4 *International Legal Materials* (1965), 1128); the South Pacific Convention of 1952 (*United Nations Legislative Series*, Laws and Regulations on the Régime of the Territorial Seas, ST/LEG/SER.B/6, 723; parties are Chile, Peru and Ecuador); the Japan/New Zealand Fisheries Agreement of 1967 (6 *International Legal Materials* (1967), 736); the Agreement on North-East Pacific Fisheries of 1973 (12 *International Legal Materials* (1973), 550; parties are United States, USSR and this extended earlier agreements in 1967, 1969 and 1971); and the Tropical Tuna Commission Convention of 1949 (80 *UNTS*, 3; parties are United States, Ecuador, Mexico, Japan, Panama, Costa Rica, Colombia).

107. *The Antarctic:* In relation to pelagic whaling, the post-war era has seen the International Convention for the Regulation of Whaling of 1946 (161 *UNTS*, 73; parties are now Argentina, Australia, Canada, Denmark, France, Norway, Iceland, Japan, Mexico, Panama, South Africa, USSR, United Kingdom, United States) and, more recently, the Arrangements for the Regulation of Antarctic Pelagic Whaling of 1962 (486 *UNTS*, 263; parties were Japan, Netherlands, Norway, United Kingdom, USSR); the Agreement concerning an International Observer Scheme for Factory Ships engaged in pelagic whaling in the Antarctic of 1963 (3 *International Legal Materials* (1964), 107; signatories were Japan, Netherlands, Norway, USSR, United Kingdom); the Agreement of 1970 regulating whaling for the campaign 1970-1971 and the subsequent Agreement of 28 September 1971 (76 *Revue générale de Droit international public* (1972), 184).

108. *Latin America:* It is apparent that, among Latin American States, the interests in international regulation by agreement manifest in their participation in the Whaling Convention of 1946, the Tropical Tuna Convention of 1949 and the South Pacific Fisheries Convention of 1952 has not been maintained. This coincided with the policy of Latin American States to extend unilaterally their maritime jurisdiction up to 200 miles.

109. The picture which emerges from this brief survey is that, for many years and in some six oceans and seas, 30 or more States have participated in international agreements and conserving high seas fisheries. This is not a universal pattern, and oceans such as the Indian Ocean, parts of the Mediterranean and the seas off Africa are not yet the subject of such agreements. Yet this is explicable in that the fisheries in these areas have not been subject to the intense exploitation and competition between different fishing States which would call for international regulations and control. But where a need for conservation, regulation and control has arisen, then the means sought to achieve it has been that of international agreement and not unilateral State action.

110. Iceland's own record is worthy of comment. Iceland is a party to the Whaling Convention of 1946, to the North-West Atlantic Fisheries Convention of 1949, to the North-East Atlantic Fisheries Convention of 1959 and to the Iceland/Norway/USSR Agreement on the Atlanto-Scandian Herring of 1972. It is apparent, therefore, that Iceland has been prepared to adopt an international approach to conservation problems, proceeding by multilateral agreement, in relation to other high seas fishery resources. As indicated earlier, the North-West Atlantic Fisheries Convention regulates an area, controversial for 400 years, which includes the Grand Banks off Newfoundland. The question which must be posed is why, in relation to the fisheries off the Newfoundland coasts, Iceland considers that international regulation—and the preservation of fishing rights for Iceland—is the proper means of resolving the problems of conservation and yet, in relation to the fisheries off the Icelandic coast, considers that the proper means is unilateral action to the exclusion of foreign vessels. Iceland, as a non-coastal fishing State in relation to the fisheries off Newfoundland, enjoys a quota of 8,083 metric tons of cod, 100 metric tons of American plaice and 100 metric tons of yellow-tail flounder under the North-West Atlantic Fisheries Convention. If Iceland is prepared to accept conservation by an agreed quota system, preserving quotas for non-coastal States, under that Convention, the question which must be asked again is why a similar system is not acceptable for fisheries off Iceland.

111. These questions are the more pertinent because the problems of conservation with respect to the fish stocks in the waters of the high seas around

Iceland, can be fully met under the North-East Atlantic Fisheries Convention. This has already been demonstrated earlier in this Memorial (see Part II, paras. 24 to 53). The North-East Atlantic Fisheries Commission's power and the procedures available under the Convention provide the necessary guarantee for an impartial consideration of the relevant evidence, and, if the evidence is held to justify it, for the taking of the appropriate conservation measures. The record of the measures already taken under the Convention include such measures as regulation of nets, return of undersized fish, prohibition of landings of undersized fish, closed seasons, and allocations of quotas. Were it not for Iceland's refusal to ratify the extension of the Commission's power, the Commission could already by a two-thirds majority decide on obligatory catch limitations; but even this lack of procedural power does not preclude member States to agree in the Commission on the concerted imposition of catch limitations. As this machinery is available for the consideration of conservation problems, and as long as it has not been convincingly shown that this machinery is unable to deal with such problems impartially and effectively, there is no justification for unilateral action by any one member State.

(d) *The Rule of Non-Discrimination*

112. Even if it could be convincingly argued that concerted action by the interested States within the framework of the North-East Atlantic Fisheries Commission made too slow progress or was not adequate to the pressing needs of conservation—which had not been proven—and that Iceland might then feel entitled, under the special circumstances of such a situation, to assume jurisdictional control over the waters of the high seas before its coast beyond the 12-mile limit for the enactment of conservation measures, such a jurisdictional power, if recognized by the other interested States, would not confer the right on Iceland to exclude the fishing vessels of other States to the benefit of the Icelandic fishing industry. Irrespective of whether conservation measures are taken by decision of the competent Fisheries Commission or by special agreement between the States concerned or unilaterally by the coastal State, they must in any case be applied without discrimination.

113. The Convention on Fishing and Conservation of the Living Resources of the High Seas of 1958 made the principle of non-discrimination a basic and express condition of unilateral action by the coastal State. Article 7, paragraph (2), of the Convention provides that unilateral measures of the coastal State, if admissible under the conditions of Article 7, paragraph 1 (that is after negotiations to that effect have not led to an agreement within six months), shall be valid as to other States only if the following three requirements are fulfilled:

(a) that there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;
(b) that the measures adopted are based on appropriate scientific findings;
(c) that such measures do not discriminate in form or in fact against foreign fishermen.

114. It is true that Iceland is not a party to this Convention. But the principle of non-discrimination is a principle of general application and a basic principle of the international legal order. It is particularly applicable in those cases where the international community authorizes a single State to take measures which may affect adversely the rights of other States. If the coastal State, under special circumstances, may validly assume regulatory power

within a limited zone of the high seas before its coast for the purpose of conservation, this provides *per se* no justification to discriminate in law or in fact against any nation's fishermen who have lawfully fished previously in this conservation zone. Here again care must be taken not to confuse the conservation aspect with the claim of the coastal State for preferential treatment in the utilization of the fishery resources before its coast; the need for conservation measures even if scientifically proven, could not *per se* authorize Iceland to exclude fishing vessels of other nations from the waters of the high seas before its coast. In the present case, Iceland has not shown the faintest regard for the interests of other States, let alone the principle of non-discrimination. Moreover, the real purpose behind the measures taken by Iceland is not to reduce the overall fishing effort in the interest of the preservation of the fish stocks, but rather, camouflaged behind the plea for conservation, the claim of Iceland to appropriate for itself the shares of other nations in these fisheries.

115. It is therefore submitted that the need for conservation measures can never be a valid ground for adopting and enforcing measures which discriminate in law or in fact against the fishing vessels of other States in the conservation area, either by exclusion or otherwise. If limitations of catch or fishing effort require an allocation of quotas among the States which have fished in the conservation area, coastal States usually claim special treatment. It is only in this context that the question of a preferential right of the coastal State will arise. Thus, it will be necessary to examine in the following paragraphs whether and to what extent present international law recognizes a right of the coastal State to be accorded preferential treatment in the allocation of fishery resources.

5. The Assertion of "Preferential Rights"

116. The claim of some coastal States to be accorded "preferential" treatment if an allocation of quotas within a catch-limitation scheme becomes necessary, must be viewed within the wider context of the concept of "preferential rights" propagated by those States which have a coastal population specially dependent on local coastal fisheries. It should be emphasized before examining the State practice and the claims asserted by States in this respect, that the insistence on preferential rights for the coastal State in the fisheries before its coast is not a necessary attribute of a State's maritime interests. It depends very much on the development of its fisheries industry whether a State has developed a distant-water fishing fleet which is not dependent on fishing in the coastal zone, or whether its fisheries has been confined to coastal fishing. The Faröe Islands are an example of a country which has at the same time local and distant-water fishing interests, and the fishing vessels of Iceland, too, are fishing before foreign coasts.

(a) *The Protection of Local Coastal Fishing*

117. The concept that the coastal State may claim preferential treatment rests on a certain evalution of conflicting interests between those of the coastal State whose coastal population relies to a varying extent on coastal fishery and those of other States whose nationals have put skill and capital into the development of highly efficient high seas fisheries. The reservation of fishing within the three-mile limit of the territorial seas to the local small-range fisheries is a typical example of the recognition of such special interests. To protect these interests effectively exclusive fishing rights were claimed and

recognized for the local coastal fisheries. The range of protection was widened by the recognition of 12-mile exclusive fishery zones which took account of the technical and economic development of the coastal fisheries. There have been isolated cases where even beyond that limit considerations of the special dependence of the local coastal fisheries on the preservation of the fish stock on particular fishing grounds led to claims for protection of local fisheries which were either specially dependent on a particular fishing ground or had developed this particular fishery by special effort (e.g., the cases of the salmon, fur seal and pearl fisheries).

118. Although this practice is a case of "preferential treatment" it does not support the Icelandic claim for an exclusive fisheries zone of 50 miles around the coast. It may provide some support for the closing of some areas to trawling in the interest of Icelandic small-range fisheries with nets and lines, to which the Federal Republic of Germany has already declared its readiness to agree with the Government of Iceland on the protection of such areas. The Icelandic claim for a 50-mile exclusive fisheries zone, however, has nothing to do with the protection of the local coastal small-boat fishery; this claim is rather asserted in the interest of an expansion of the Icelandic high seas fishery.

(b) *The Concept of "Preferential Rights" at the Conference on the Law of the Sea 1958*

119. The conflict between the interests of Iceland on the one hand and the Federal Republic of Germany and the United Kingdom on the other hand is in fact not a conflict between the interests of local coastal fisheries and high seas fisheries, but rather between the interests of two competing high seas fisheries. It is not the Icelandic small-boat fishermen, but the highly developed Icelandic trawling fishery for which the Government claims priority because of the heavy dependence of the Icelandic economy on the earnings of that industry.

120. The 1958 Geneva Conference adopted a resolution on Special Situations relating to Coastal Fisheries (see above para. 26 of this Part of the Memorial) with situations such as that of Iceland specifically in mind. It may be useful to recall certain clauses of that resolution:

> "The United Nations Conference on the Law of the Sea,
>
> Having considered the situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development . . .
>
> Recommends:
>
> 1. That where, for the purpose of conservation, it becomes necessary to limit the total catch of a stock or stocks of fish in an area of the high seas adjacent to the territorial seas 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; . . ."

This was the resolution adopted overwhelmingly, with Iceland concurring, by 67 votes to none, with 10 abstentions on 26 April 1958.

121. In 1960 Iceland made the following proposal to the Conference:

"Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement any interested State may initiate the procedure provided for in the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the United Nations Conference on the Law of the Sea of 1958."

This proposal, having originally been accepted in Committee was rejected by the Plenary Meeting, receiving 24 votes in favour, 48 against, with 15 abstentions (see above paras. 26, 37-38, 41, of this Part of the Memorial).

122. Clearly, there are differences of substance between the resolution adopted in 1958 and the Icelandic proposal rejected in 1960. The Icelandic proposal had in mind a new article imposing binding, legal commitments whereas the resolution did not import legal commitments *stricto sensu*. It may be assumed that the majority of States felt that the concept of preferential rights, whilst deserving of recognition, could not usefully be expressed in terms of legal obligation. Indeed, requirements of "collaboration" and "just treatment" are of a character not easily susceptible to precise legal regulation in general terms and divorced from the facts of particular situations. In addition, the Icelandic proposal conceded an initiative to the coastal State whereas the resolution places the emphasis upon agreement and collaboration between all the States concerned. Nevertheless, certain propositions may be extracted from these developments. First, the concept of "preferential rights" was accorded formal recognition and was designed specifically to deal with situations such as the Icelandic situation; second, the concept was broadly accepted by Iceland; third, the concept depended upon proof of a need for conservation; fourth, it called for collaboration between all the States concerned and envisaged objective conciliation or arbitration of any differences; fifth, and most emphatically, the concept of preferential rights had nothing to do with exclusive rights.

123. It seems apparent from the Althing Resolution of 15 February 1972 (see Annex G to the Application instituting proceedings in this case) from the Aide-Mémoires of the Government of Iceland of 31 August 1971, and 24 February 1972 (see Annexes D and H to the Application instituting proceedings in this case), and from the various statements and documents issued by the Government of Iceland that the present Icelandic claim to exclusive fisheries over a 50-mile zone is not based upon this concept of preferential rights. Although the premisses of Icelandic economic independence and the need for conservation are frequently reiterated, and although these are the identical premisses upon which the concept of preferential rights was established, nothing is now said of this concept.

124. It is not the concern of the Federal Republic of Germany to speculate about the reasons that may have induced the Government of Iceland not to rely specifically upon the principles contained in this resolution. Be it as it may, the resolution does, in any case, not provide authority for Iceland's claim for exclusive fishery rights within a 50-mile zone around Iceland. The resolution makes it an express condition that the "agreed measures" should not only pay regard to the preferential requirements of the coastal State, i.e., the degree of dependence of its people upon "coastal" fisheries, but should at

the same time have "regard to the interests of the other States", i.e., the interests of those States which have habitually fished in these waters. Whatever may be the legal force of such resolutions, they may at least be regarded as expressing a *consensus* of States on what should be considered just and equitable in such cases. If a conclusion may be drawn from the contents of the resolution viewed in this manner, it provides at least evidence of the general legal opinion of States that the interests of both the coastal State and the other States which have participated in the fisheries to be balanced against each other and that neither of them should claim absolute priority over the other.

125. If the principle of the 1958 resolution would be applied to the present case, it might certainly be argued that there is room for negotiations between the Parties about the future respective shares of each of the Parties in the fisheries around Iceland. It is submitted, however, that Iceland by taking more than 50 per cent. of the demersal and practically all pelagic fish from the ICES Iceland Area, has already secured a "preferential" position within the meaning of the 1958 resolution, and that consequently Iceland could not claim more than to have its preferential position settled by negotiation and agreement.

6. Conclusion

126. In view of the considerations set forth in paragraphs 56 to 125 it is submitted that there is no foundation in international law for the claim of Iceland to extend its exclusive fisheries zone to 50 miles from the coast, and that, consequently, the purported extension of Iceland's exclusive fisheries zone, effected by Icelandic Regulations No. 189/1972 of 14 July 1972, cannot be opposed to the Federal Republic of Germany and to its fishing vessels.

D. The Recognition of Foreign Fishing Rights in Extended Zones of Maritime Jurisdiction

1. General Observations

127. In those cases where by the development of maritime law or by special agreement the coastal State has been accorded the right to extend its jurisdiction over waters of the high seas adjacent to its coast, either for conservation purposes or for exclusive exploitation by its nationals, inevitably the question has arisen whether and to what extent the fishing rights of the nationals of other than the coastal State which have previously fished in this zone, in the lawful exercise of their fishing rights in the waters of the high seas, must be allowed to continue with such fishing. This problem has been mostly referred to as a case of recognition of "historic" rights; such styling, however, has rather confused the issue, because the recognition of continued foreign fishing in extended zones of jurisdiction is not so much founded on a special legal position acquired by previous uninterrupted use in deviation from an existing rule of law, but rather on the recognition of the special interests of other States in the zone which is now brought under the coastal State's jurisdiction. Such interests may merit the same consideration as those of the coastal State which have led to the establishment of a new legal régime with respect to such zones of special maritime jurisdiction.

128. Before examining the impressive State practice in this respect, the following observations may be pertinent to the issue:

First: It must be distinguished whether the extension of jurisdiction has been sought for conservation or for utilization purposes. While in the first case the continuance of foreign fishing cannot be questioned, subject only to the requirements of the conservation régime, in the second case conflicting utilization interests must be settled. Only in those cases where the conservation régime requires a limitation or even a reduction of the catch or the fishing effort, conflicting utilization interests will also have to be settled.

Second: In the settlement of conflicting utilization interests much depends on the evaluation of the different interests involved. If the coastal State claims a wider zone of exclusive or preferential exploitation for the special benefit of the local coastal population specially dependent on coastal fisheries, such interests may be accorded a higher priority and may justify even the exclusion of foreign fishing from this zone after a reasonable phasing-out period; if, however, the coastal State claims a wider zone of exclusive or preferential exploitation for the general benefit of its economy, such interests cannot claim a priority over the economic interests of other States in the fisheries within this zone.

Third: As far as the fishing interests of the non-coastal States in a zone of extended maritime jurisdiction are concerned, the dependence of these States on the use of the fishing grounds in such a zone is a decisive factor in the evaluation of the conflicting interests. Thus the claim for a 50-mile zone is a quite different case compared with the previous claims for a 12-mile zone, which left the greater part of the fishing grounds before the coast open to the continued use of other nations.

The preceding considerations explain the variations in the State practice with respect to the continuance of foreign fishing in extended zones of maritime jurisdiction; they explain in particular, why in some cases phasing-out periods have been considered sufficient and in other cases provision for unlimited continuance of foreign fishing has been made. It is not possible here to review the State practice in detail; the following list is more illustrative than exhaustive.

2. The Recognition of "Traditional" Foreign Fishing Rights within the 12-Mile Fisheries Zone

129. Most State practice was a result of the establishment of 12-mile fisheries zones since the Geneva Conference of 1960. The pertinent legislation of those States and the agreements concluded after the enactment of such legislation with other States which had habitually fished within this zone, partly provided for phasing-out-periods, partly for the continuance of foreign fishing in this zone.

130. Among the first agreements of this kind were the Exchanges of Notes of 11 March and 19 July 1961 between *Iceland* and the *United Kingdom* and the *Federal Republic of Germany* respectively which provided for continued fishing by vessels of the United Kingdom and the Federal Republic of Germany in the outer six-mile belt for a phasing-out period of approximately three years (the text of these Notes is reproduced in Annexes B and C of the Application instituting proceedings in this case). An earlier arrangement of a similar kind but providing for a ten-year phasing-out period had been concluded by the *United Kingdom* with *Norway* on 17 November 1960.

131. Another settlement of foreign fishing in the 12-mile zone which is of considerable importance because of the number of States involved is the *European Fisheries Convention of 2 March 1964* (581 *UNTS*, 57). The Convention accorded the permanent right to fish within the 6 and 12-mile limit to those contracting States the vessels of which had habitually fished in that belt during the previous ten years. Article 3 of the Convention was worded as follows:

> "Within the belt between six and twelve miles measured from the baselines of the territorial sea, the right to fish shall be exercised only by the coastal State and by such other Contracting Parties, the fishing vessels of which have habitually fished in that belt between 1st January, 1953 and 31st December, 1962.
>
> Fishing vessels of the Contracting Parties, other than the coastal State, permitted to fish under Article 3, shall not direct their fishing efforts towards stocks of fish or fishing grounds substantially different from those which they have habitually exploited."

The Convention provided further for a phasing-out period, the period of which was to be determined by agreement between the States concerned, to the benefit of those fishermen of the Contracting States who had "habitually" fished within the six-mile limit (Art. 9, para. 1); the Convention further allowed the continuance of "voisinage arrangements" between the Parties with respect to fishing within the six-mile limit (Art. 9, para. 2). Two multilateral phasing-out agreements relating to the United Kingdom and Ireland were already annexed to the Convention.

132. In 1967, *Spain* extended its fisheries jurisdiction to 12 miles by Law No. 20/1967 of 8 April 1967. The law generally followed the pattern of the European Fisheries Convention: within the three-mile belt fishing is completely reserved to Spanish nationals; within the three to six-mile belt fishing will be permitted temporarily to foreign nations who habitually have fished in this belt during the preceding ten years in accordance with special agreements to be concluded for this purpose; within the 6 to 12-mile belt fishing is permanently permitted to foreign nationals who habitually have fished there, provided reciprocity is granted and provided further that foreign fishermen do not exceed their habitual catch nor fish in areas where they had not previously fished.

133. In 1966 the *United States* established a fisheries zone of 12 miles by Law 89-658 of 14 October 1966 (80 U.S. Statute 908; 61 *AJIL* (1967), 658). The Law established a so-called "contiguous zone" of nine miles beyond the three-mile belt of the territorial sea, where the United States "will exercise the same exclusive rights in respect to fisheries as it has in the territorial sea, subject to the continuation of traditional fishing by foreign States within this zone as may be recognized by the United States". This law left it to the discretion of the Government of the United States where and to what extent it would recognize traditional fishing rights of other States. In fact, however, the United States concluded agreements with Japan, Mexico and the Soviet Union which provided for the continuation of fishing by nationals of these States in defined areas within the 3 to 12-mile belt; these agreements were initially concluded for two or five years, but have been since prolonged or replaced by similar agreements taking into account new developments in the fisheries concerned. Reference may be made here to the agreement concluded with *Japan* on 9 May 1967 (text, see *International Legal Materials*, Vol. VI, p. 745), with *Mexico* on 27 October 1967 (text, see *International Legal Materials*,

Vol. VII, p. 312) and with the *Soviet Union* on 21 February 1973 (valid for two years; replacing earlier agreements of 1967, 1969 and 1971; text, see *International Legal Materials*, Vol. XI, p. 553).

134. *Australia* established a 12-mile exclusive fisheries zone by the Fisheries Act No. 116 of 17 November 1967. Following the entry into force of this Law, Australia and *Japan* concluded an agreement on 27 November 1968 whereby Japanese tuna fishing may continue in specified areas within the 12-mile belt, in some areas for three and in others for seven years at a level not to be increased beyond the average annual catch during the preceding five years.

135. The different features of these agreements reflect the different interests involved in each case. It cannot be concluded from this practice that phasing-out periods have generally been regarded as sufficient to protect the interest of other nations who have fished in the extended zone, except in those cases where only a part of the traditional fishing grounds were closed to foreign fishing and an adaptation of the fishing activities of foreign nations to the new fishing limit had been possible without much difficulty and economic loss. This, however, is the more so if an extension of exclusive fishery zones up to 50 and 200 miles would be contemplated, whereby practically all fishing grounds would be closed to other States except the coastal State. In such a case phasing-out arrangements are insufficient to protect the legitimate rights of these States in the exploitation of the common fishery resources of the oceans.

3. The Proposals for the Recognition of "Traditional" Fishing Rights in the United Nations Seabed Committee

136. It may be useful for the purpose of defining the conflicting interests clearly to give a brief account of the proposals made in the United Nations Seabed Committee when it considered the topics of the forthcoming Conference on the Law of the Sea, as far as they relate to the problem of the continuation of "traditional" fishing in extended zones of maritime jurisdiction.

137. A satisfactory solution of this problem will probably be of crucial importance for the success of the Conference. In view of claims by many States for wider zones of exclusive exploitation, under the cover of such concepts as "patrimonial sea" or "economic zone", the protection of the rights of other States which have hitherto legitimately fished in these waters is a necessary element of any new world-wide regulation of the exploitation of the fishery resources of the oceans. The following proposals have been made in this respect.

138. The draft Articles on Fishing proposed by the *Soviet Union* on 18 July 1972 (UN doc. A/AC.138/SC.II/L.6) adhere strictly to a 12-mile fishery limit for all States, in opposition to concepts which would generally entitle a State to claim wider zones of exclusive exploitation. They would, however, allow developing States to reserve for themselves, in the areas of the high seas adjacent to the 12-mile zone, such part of the allowable catch of fish as can be taken by the vessels navigating under that State's flag. Under such a régime which is calculated to assist developing States in the course of their development, the problem of the protection of traditional fishing rights will practically not arise until fishing by the developing State has reached the capacity of the fishing industries of developed States in which case the provision will cease to apply to that State.

139. The Proposals for a Régime of Fisheries on the High Seas submitted by *Japan* on 14 August 1972 (UN doc. A/AC.138/SC.II/L.12) would accord the coastal State "preferential rights" to a certain extent, thereby distinguishing between developed and developing States:

(a) A *developing* State would be entitled to reserve for its flag that portion of the allowable catch it can harvest by its fishing capacity until it has developed its capacity to the extent of being able to fish for a major portion (approximately 50 per cent.) of the allowable catch of the stock of fish;

(b) A *developed* State would be entitled to reserve for its flag that portion of the allowable catch of a stock of fish "which is necessary to maintain its locally conducted small-scale coastal fisheries". In determining that portion the interests of traditionally established fisheries of other States shall be duly taken into account.

140. The *United States* revised draft Fisheries Article submitted on 4 August 1972 (UN doc. A/AC.138/SC.II/L.9) goes farther than the aforementioned proposals in according "preferential rights" to each coastal State. It would allow the coastal State to reserve to its flag that portion of "coastal and anadromous resources" it can harvest. It must, however, be added for explanation, that the so-called "coastal resources" include only such species of fish which are not "highly migratory" (listed in an Annex to the Proposal); for the latter category of species international management of the resources is advocated. With respect to the "coastal and anadromous resources" the coastal State should provide access by other States to that portion of the resources not fully utilized by its vessels with priority for those States which have traditionally fished for such resources.

141. The Draft Articles on the Concept of an Exclusive Economic Zone submitted by *Kenya* on 7 August 1972 (UN doc. A/AC.138/SC.II/L.10) would entitle each coastal State to establish an Economic Zone beyond the 12-mile territorial sea up to a limit of 200 nautical miles where that State would have exclusive jurisdiction for the purposes of control, regulation and exploitation of both living and non-living resources. No recognition of traditional fishing rights is mentioned; it is proposed, however, that the coastal State could allow other States to exploit the resources of the Zone and should do so in the case of neighbouring developing landlocked, near-landlocked or small-shelf States. It seems that this proposal does not principally exclude the exercise of fishing rights of other nations in the Economic Zone, but is rather calculated to enable the coastal State to exercise control over such activities and to derive some revenue from the issuance of licences.

142. The draft Articles submitted by *Colombia, Mexico* and *Venezuela* on 2 April 1973 (UN doc. A/AC.138/SC.II/L.21; 12 *International Legal Materials* (1973), 570) contain the concept of the "Patrimonial Sea" (up to 200 miles) to which reference has been made already earlier in this Memorial (see para. 67 of this part of the Memorial). No provision is made for the continuation of fishing rights hitherto exercised in that zone, but the concept of the "Patrimonial Sea" apparently does not exclude the continuation of the practice of some Latin American States to allow foreign fishing under licence within this zone.

143. All these proposals are, of course, not law but proposals *de lege ferenda*. They cannot be considered as balanced propositions for the formulation of new rules of law, but rather as bargaining positions for the forthcoming Conference on the Law of the Sea. Whatever they may be worth in this respect, they reflect at least the different basic interests which have to be

reconciled before a new rule of law with respect to the exploitation of the living resources of the oceans may be formed that will find general acceptance by the international community. There is no doubt that the fishing rights that have hitherto been legitimately exercised in the waters of the high seas, belong to those basic interests of the States concerned which have to be safeguarded in any concept of a new Law of the Sea.

4. Conclusion

144. It is therefore submitted that any unilateral extension of the limits of an exclusive fisheries zone beyond the 12-mile limit without paying regard to the established fishing interests of other nations in the extended zone, is contrary to international law and that, consequently, the unilateral extension by Iceland of its zone of exclusive fisheries jurisdiction, in so far as it affects the fishing rights of the Federal Republic of Germany in this zone, is unlawful also on this ground.

E. Settlement of the Conflicting Interests in the Present Case

145. The Government of Iceland has contended that there were no rules of international law on which the Court could found its decision in the present dispute between the Parties. The Government of the Federal Republic of Germany hopes to have shown in the preceding paragraphs of this Part of the Memorial that there are rules of international law which govern the subject-matter of the dispute, and that these rules are not as uncertain and indefinite as the Government of Iceland would like to make believe. Dissatisfaction with the present state of the law is no justification for non-observance of the law; the only lawful and appropriate way to change such law or to claim exceptions from the rules of such law, is not unilateral action but negotiation and agreement between the Parties.

146. It is true that there are quite a number of States which claim wider jurisdictional limits before their coasts for various reasons, but there is, at present, no *consensus* among the international community of States that a State might be entitled, as by right, to claim an exclusive fishery exploitation zone beyond the 12-mile limit. Such claims should not be confounded with claims of coastal States for wider jurisdictional control over harmful activities on the waters of the high seas before their coasts (e.g., conservation or pollution control zones) which have met with less opposition. Although claims for wider zones of exclusive exploitation beyond the 12-mile limit cannot command the support of present international law, they should not be regarded as being arbitrary claims without any rational reason behind. Such claims have been and still are a result of the apprehensions of some States, even if unjustified on thorough and impartial investigation into the true facts of the actual situation, to be deprived of or excluded from the benefits accruing from the exploitation of the fishery resources of the oceans. These apprehensions should be taken seriously, when new rules for the exploitation of the fishery resources of the oceans will be formed, and the forthcoming Conference on the Law of the Sea provides an opportunity to take these apprehensions into consideration. However, an equitable management of the fishery resources of the oceans must take into consideration the interests of *all* States and of man-

kind in general, not just only the national interests of the coastal State which tries to grab the fruits before its door.

147. An effective management of the fishery resources of the oceans needs the co-operation of all States concerned. The unilateral claims by some coastal States, including Iceland, to establish wide zones of exclusive exploitation are most unfortunate in this respect because such zones would leave the management of important parts of the fishery resources within the national discretion and make it more and more difficult to establish an effective international control over the fish stocks, in particular over those of a migratory character. The development of the continental shelf doctrine provides an illustrative lesson in this respect: there, too, claims for extensive zones of national jurisdiction have more and more reduced the range of the resources of the seabed and subsoil which would be left for international control and exploitation for the benefit of all mankind.

148. A rational and equitable régime for the exploitation of the common fishery resources of the oceans cannot be founded on abstract principles without taking into account the special circumstances prevailing in the different regions, such as: the location and extension of the fishing grounds, the exploitation capacity and the migratory range of the particular fish stocks, the conservation measures already taken in this respect, the technical modes of fishing, the various interests present in the fisheries of the region, the object of their fishing effort and the degree of their dependence on the particular fishing grounds (small coastal fisheries, needs of developing States, access for landlocked and other States which cannot satisfy their demand locally, special interests of the high seas fishery industries, utilization of unexploited resources, etc.). If a legal régime should bring about an equitable allocation of the fishery resources of a certain region to the different interests involved, such a régime could not be founded on the discretionary and unilateral decision of the coastal State, nor could it be founded on a laissez-faire policy leaving the allocation of resources to the play of free competition. The special legal régime, to be appropriate for a certain region, must be founded on agreement between the States representing the various fishing interests in this region. Thus, the allocation of the fishery resources in the ICES Iceland Area between the Parties to the present dispute and the other States concerned cannot be made dependent on the unilateral fixation by Iceland of geographical limits of exploitation, such as the establishment of 25, 30 or 50-mile limits but only by agreement between the Parties taking into account the special interest of both Parties, e.g., the special dependence of Iceland on the earnings from the fisheries industry and the long-established traditional German fishing interests in the waters of the high seas around Iceland. Such an agreement, concluded either bilaterally or, what would be more appropriate, multilaterally under the auspices of the North-East Atlantic Fisheries Commission, could employ the most practical and efficient methods of allocation of resources among the nations concerned, such as the delimitation of areas of exclusive, preferential or concurrent exploitation, definition of areas closed for trawling or for fishing generally, catch limitations for particular species, reduction of the fishing effort, etc.

149. Turning to the role of the Court in the present case, it is certainly not the function of the Court to assume the role of a legislator for the better management of the fishery resources of the oceans. But the Court may be disposed, and this would certainly be within its judicial functions in deciding the dispute between the Parties, to give the Parties some guidance as to the principles which the Parties should take into account in their negotiations for

the most equitable management of the fishery resources in the waters of the high seas around Iceland to the benefit of all States which have a substantial interest in these fisheries. While, under present international law, the 12-mile limit is still the widest limit of a coastal State's exclusive exploitation rights so far generally recognized by the international community, the special interest of Iceland in the conservation and utilization of the fishery resources beyond that limit is not denied by the Federal Republic of Germany and should be taken into account at the same time as the long-established traditional fishing rights of the Federal Republic and its dependence of its fishery industry on the fishing of certain species in the waters around Iceland. The Government of the Federal Republic of Germany does not expect the Court to petrify the 12-mile limit for all purposes; that is not the real issue in this case. The Government of the Federal Republic does, however, request the Court to declare the unilateral action of the Icelandic Government as being unlawful under international law and to advise Iceland to pursue the furtherance of its special interests by negotiation and agreement with the Federal Republic. The Government of the Federal Republic has continuously declared its readiness to enter into meaningful discussion with the Government of Iceland for the purpose of a permanent settlement of the fisheries problem. Unilateral action may set the process in motion which leads to the formation of new law, but cannot by itself create new law. It is particularly for this reason that the Parties by their Exchange of Notes of 19 July 1961 had left it to the initiative of Iceland to claim a wider zone for the protection of its special interests, but made a change of the legal régime before the Icelandic coasts dependent on agreement or arbitration.

150. It is therefore submitted that a just and equitable settlement of the conflicting interests between the Parties in the present dispute cannot be brought about by the unilateral extension by Iceland of its zone of exclusive exploitation beyond the 12-mile limit, but rather by negotiation and agreement between the Parties, whereby the special interests of both Parties in the fisheries in the waters around Iceland should be taken into account. Accordingly, the Government of the Federal Republic of Germany respectfully requests the Court to adjudge and declare that Iceland's unilateral action which had been undertaken without the faintest regard to the long-established traditional fishery rights of the Federal Republic and other States in these waters, is without foundation in international law and cannot be enforced against the Federal Republic, the fishing vessels registered in the Federal Republic, their crews and other persons connected with their fishing activities in these waters.

PART V

INTERNATIONAL RESPONSIBILITY OF THE REPUBLIC OF ICELAND FOR DAMAGE CAUSED BY INTERFERENCE WITH GERMAN VESSELS

A. The Actions by Icelandic Coastal Patrol Boats against German Fishing Vessels

1. By Order of 17 August 1972 indicating interim measures of protection the Court required the Parties to ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court; in particular it required the Government of Iceland to refrain from taking any measures to enforce the Regulations of 14 July 1972 against vessels registered in the Federal Republic of Germany and engaged in fishing activities in the waters around Iceland outside the 12-mile zone, and to refrain from applying administrative, judicial or other measures against such ships. At the same time the Order of 17 August 1972 required the Government of the Federal Republic of Germany to ensure that vessels registered in the Federal Republic do not take an annual catch of more than 119,000 metric tons of fish from the "Sea Area of Iceland" as defined by the International Council for the Exploration of the Sea as Area Va.

2. The Government of the Federal Republic of Germany, for its part, has faithfully observed its obligations under the Court's Order of 17 August 1972, and has taken no action of any kind which might have been capable of aggravating or extending the dispute between the Parties. The Government of the Federal Republic refers for this purpose to the letter of its Agent of 21 May 1973, whereby the Registry of the Court was furnished with all relevant information on the measures taken by the Government of the Federal Republic concerning the control of fish catches in the Iceland Area, and where it was stated that according to the provisional statistical figures available to the Government of the Federal Republic the catch taken by German fishing vessels from the sea area of Iceland in 1972 had been 93,672 metric tons.

3. The fishing vessels of the Federal Republic of Germany have been carrying on their fishing operations in the waters around Iceland to which they were entitled under international law and under the Court's Order of 17 August 1972 in the normal way without taking any provocative attitude which might have been capable of aggravating the situation. No incident has occurred that has been due to any action of a vessel of the Federal Republic of Germany. All incidents that occurred since the Court's Order of 17 August 1972 have been caused by illegal actions of the coastal patrol boats of the Republic of Iceland in defiance of the express stipulations contained in paragraph 1 *(c)* and *(d)* of the operative passage of the Court's Order.

4. The Government of Iceland, on the other hand, has openly and repeatedly declared that it would not comply with the Court's Order and was determined to enforce the Regulations of 14 July 1972 against foreign vessels fishing in the 50-mile zone.

5. Interference with the fishing operations of German trawlers started immediately after the coming into force of the Regulations of 14 July 1972,

and has since continued until this Memorial had been compiled. In the beginning there were periods during which the actions of Icelandic coastal patrol boats were less vigorously conducted than later; recently, however, these actions have been undertaken with increasing intensity and violence. The harassment conducted by the Icelandic coastal patrol boats has taken a number of different forms.

6. In some cases the Icelandic coastal patrol have merely ordered the German fishing vessels to haul in their nets and to leave the area, accompanied by the threat that later a prosecution might follow for illegal fishing. Although in most cases such illegal orders have been disregarded, in some cases German trawlers have understandably felt reluctant to expose themselves to the threat of punitive or other action and, therefore, complied under duress with the orders addressed to them by the coastal patrol boats, thereby suffering material loss.

7. In other cases, starting with 14 September 1972, the Icelandic coastal patrol boats backed their orders to leave the area with the threat that, if the fishing vessels did not immediately haul in their nets and depart from the area, the coastal patrol boat would possibly cut their warps (that is, their trawl-wires) by sailing across them with a cutting device. This tactic, if successfully carried out, resulted in the loss by the fishing vessel of the gear involved and perhaps a valuable part of its catch; it further produced a situation of great danger to the life of those on deck of the fishing vessels, because warps hauled through the water are under great tension and, if cut, may whip back on to the deck of the trawler and cause death or serious injury among the crew. Even if the attempt to cut the warps is unsuccessful, it cannot be made without the coastal patrol boat indulging in dangerous manoeuvres which are contrary to all accepted rules of good seamanship and which cannot fail to imperil the fishing vessel itself and those on board. Even where these attacks have been unsuccessful, German trawlers have been forced under this threat of violence to curtail their fishing in the area, and have thereby suffered material loss.

8. Strong protests have been made against these attacks, either already by the commander of the German fishery protection vessels which happened to be on the spot, or later by the Ambassador of the Federal Republic of Germany in Reykjavik. A Verbal Note handed by the Ambassador of the Government of the Federal Republic in Reykjavik to the Minister for Foreign Affairs of Iceland on 1 December 1972 referring to a serious incident which had occurred on 25 November 1972, in the course of which a member of the crew of the German trawler *Erlangen* had been injured, is reproduced in Annex G to this Memorial.

9. German trawlers operating in the Eastern and Western Atlantic are temporarily assisted by so-called "fishery protection vessels". These vessels are unarmed public vessels operating under order of the Government of the Federal Republic of Germany; their normal task is to accompany the German fishing vessels and to provide them with any help of a medical, meteorological, mechanical or similar nature which the German fishing vessels might require to ensure their safety. They have not been specifically put into service for the events in the waters around Iceland. They have been in continuous service since many years and have accompanied German fishing vessels to the various fishing grounds. The demands made on their service by German fishing vessels naturally increased when it became apparent that, because of the threatening attitude of the Icelandic authorities, vessels which were in distress or otherwise in need of such assistance would no longer put into

Icelandic ports or move closer to the shore in order to avoid the risk of arrest. Therefore, the service of the German fishery protection vessels is now mainly directed to the Iceland Area.

10. In a Verbal Note handed to the Ambassador of the Federal Republic of Germany in Reykjavik on 10 January 1973, the Government of Iceland protested against the presence of the fishery protection vessels of the Federal Republic in the waters around Iceland. In the view of the Goverment of Iceland their presence constituted assistance in illegal fishing in Icelandic waters, and it was further asserted that on 8 January 1973 a fishery protection vessel of the Federal Republic had prevented an Icelandic coastal patrol boat from its "enforcement activities" against German fishing vessels.

The text of the Government of Iceland's Verbal Note of 10 January 1973 is reproduced in Annex H to this Memorial.

By Verbal Note, handed by the Ambassador of the Federal Republic of Germany to the Minister for Foreign Affairs of Iceland on 22 January 1973, the Government of the Federal Republic replied to these assertions of the Government of Iceland and pointed out that the so-called "enforcement activities" referred to in the Verbal Note of the Icelandic Ministry for Foreign Affairs constituted an illegal use of force in times of peace on the high seas against German trawlers in flagrant violation of the Order of the Court of 17 August 1972, and that the German fishery protection vessel which happened to be on the spot, had done nothing else than to protect the German trawler against such unlawful action by the Icelandic coastal patrol boat. The Government of the Federal Republic, in this Verbal Note, specifically emphasized that the German fishery protection vessels have been instructed, on their part, not to resort to the use of force.

The text of the Verbal Note of the Government of the Federal Republic of Germany of 22 January 1973 is reproduced in Annex I to this Memorial.

11. In view of the facts described above and particularly in view of the express instructions given by the Government of the Federal Republic of Germany to the German fishery protection vessels not to resort to any use or threat of force against the Icelandic coastal patrol boats, it is submitted that the presence and activities of the German fishery protection vessels are in harmony with the rules of international law and with the Court's Order of 17 August 1972.

12. More recently, starting with 28 June 1973, the Icelandic coastal patrol boats have resorted to even more violent interference. On four occasions, on 28 June, on 2 July, on 8 July and on 14 July 1973, shots were fired at German trawlers. By Verbal Note handed by the Ambassador of the Federal Republic to the Minister for Foreign Affairs of Iceland on 20 July 1973, the Government of the Federal Republic of Germany entered a strong protest against this escalation of violence undertaken by the Icelandic coastal patrol boats, and drew the Icelandic Government's attention to the serious situation caused by the use of armed force against unarmed German vessels.

The text of the Verbal Note of 20 July 1973 is reproduced in Annex K to this Memorial.

13. A list of the incidents that have been caused since 1 September 1972 by actions of the Icelandic coastal patrol boats against German fishing vessels in the waters of the high seas around Iceland, has been attached to this Memorial as Annex L. The list contains those incidents during the period from 1 Sep-

tember 1972 to the beginning of July 1973, which have been reported by the German Trawler Owners' Association to the Government of the Federal Republic of Germany. Three additional incidents have occurred since that list has been compiled: on 8 July an Icelandic coastal patrol boat tried to stop a German trawler and fired warning shots; on 8 July 1973 an Icelandic coastal patrol boat cut the trawl wires of a German trawler; on 14 July 1973 an Icelandic coastal patrol boat again fired shots at a German trawler. The incidents reported illustrate the continuous attempts by Icelandic coastal patrol boats to interfere with the fishing operations of German vessels and intentionally to destroy or damage their fishing equipment, thereby causing not only considerable material loss but even endangering the safety of the ship and the crew. In total, there have been 115 reported incidents: in 97 cases attempts had been made to cut the trawl-wires or warps of German fishing vessels; in 16 cases the attempts succeeded and the trawl-wires were cut, and in 11 cases the fishing gear had been lost thereby. In 38 cases the attacked trawler had to leave the fishing ground in order to avoid imminent attacks or further damage. In one case a member of the crew was injured having been struck by the broken end of a wire which whipped back on to the deck of the trawler.

14. The Government of Iceland has in general made no attempt to deny that the Icelandic coastal patrol boats have committed the acts in question, though they have occasionally contested the details of a particular incident. Nor has the Government of Iceland attempted to disclaim the responsibility for these acts. On the contrary, they have expressly and repeatedly affirmed that their vessels have been acting in accordance with orders given at the highest level of the Government of Iceland and in pursuance of the considered policy of that Government. They have asserted their intention to continue this deliberate use of force against unarmed fishing vessels of another State on the high seas in the enforcement of the purported extension of their exclusive fisheries jurisdiction.

B. The Legal Consequences of the Actions undertaken by the Icelandic Coastal Patrol Boats against German Fishing Vessels

15. The acts of harassment that have been described in the preceding paragraphs of this Part of the Memorial and that have been carried out by the coastal patrol boats of the Republic of Iceland on the direct authority of the Government of Iceland and in purported enforcement of the Icelandic Regulations of 14 July 1972, are acts for which no authority or justification can be found in international law. Moreover, these acts are illegal on various grounds:

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

second, these acts deliberately and illegally inflict material loss and damage on the nationals of another State without any justification in law;

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

16. Foremost, however, the acts undertaken by the Icelandic coastal patrol boats on the direct authority of the Government of Iceland inten-

tionally disregard the Court's Order of 17 August 1972 according to which the Republic of Iceland should refrain from taking any measures against German fishing vessels engaged in fishing activities in the waters around Iceland outside the 12-mile fishery limit during the pendency of the proceedings before the Court. Since the Court has, by its Judgment of 2 February 1973 decided with binding force between the Parties that it has jurisdiction in this case, and since under Article 94 of the United Nations Charter each Member of the United Nations has to comply with the decisions of the International Court of Justice in any case to which it is a party, the Government of Iceland cannot, in law, any longer deny its legal obligation to pay due regard to the Order of the Court of 17 August 1972.

17. The Republic of Iceland cannot escape responsibility for the acts of the Icelandic coastal patrol boats taken on the authority of the Icelandic Government by asserting that these acts constitute only "enforcement measures" in the exercise of Iceland's usurped jurisdictional rights over the waters of the high seas before its coast. Under international law, acts undertaken by the authorities of a State in the enforcement of its internal law have to be considered as mere facts and cannot, vis-à-vis other States, derive any legal validity from the provisions of the State's internal law. As long as Iceland's claim to extend its sovereignty over a 50-mile fishery zone is disputed, the Federal Republic of Germany and its nationals are under no legal obligation to recognize acts of the Icelandic authorities in this zone as acts done in the exercise of Iceland's sovereign competence. Thus, acts of the Icelandic coastal patrol boats remain, vis-à-vis the Federal Republic, an illegal and excessive arrogation of sovereign powers.

18. Consequently, the acts of the Icelandic coastal patrol boats undertaken on order of the Government of Iceland constitute an international delinquency for which Iceland is obliged to make reparation to the Federal Republic of Germany. The Government of the Federal Republic of Germany reserves all its rights to claim full compensation from the Government of Iceland for all unlawful acts that have been committed or may yet be committed in the enforcement of the Icelandic Regulations No. 189/1972 of 14 July 1972, against German fishing vessels in the waters of the high seas around Iceland. The Federal Republic of Germany does not, at present, submit a claim against the Republic of Iceland for the payment of a certain amount of money as compensation for the damage already inflicted upon the fishing vessels of the Federal Republic. The Government of the Federal Republic does, however, request the Court to adjudge and declare that the Republic of Iceland is, in principle, responsible for the damage inflicted upon German fishing vessels by the illegal acts of the Icelandic coastal patrol boats 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.

PART VI

SUBMISSIONS OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

In view of the facts and considerations presented in Parts I, II, III, IV and V of this Memorial,

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 therefore to the Federal Republic of Germany.

1 August 1973.

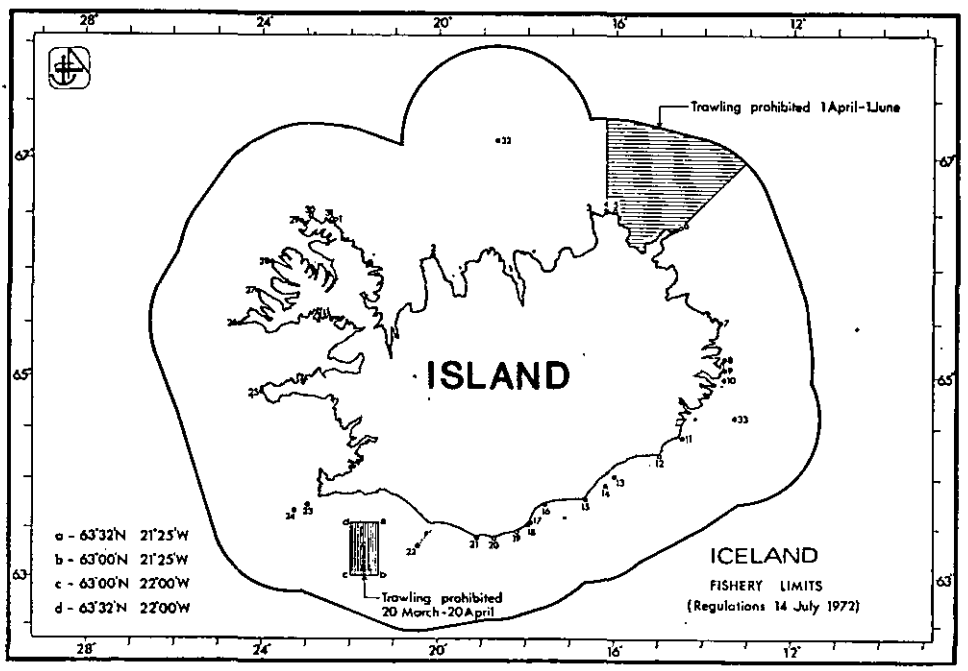
(Signed) Günther JAENICKE,
Professor Dr. jur.
Agent for the Government
of the Federal Republic of Germany.

ANNEXES TO THE MEMORIAL ON THE MERITS

Annex A

REGULATIONS
CONCERNING THE FISHERY LIMITS OFF ICELAND, 14 JULY 1972

[Original text not reproduced. For English translation see Annex 9 to the United Kingdom Memorial on the Merits of the Dispute, I, pp. 384-386. For attached map, see below]



Annex B

LAW CONCERNING THE SCIENTIFIC CONSERVATION OF THE CONTINENTAL SHELF FISHERIES DATED 5 APRIL 1948

[See Annex H to the United Kingdom Application, **I**, *pp. 45-47]*

Annex C

GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY'S VERBAL NOTE OF 28 AUGUST 1972

The Government of the Federal Republic of Germany has received the decision of the International Court of Justice dated 17 August 1972 concerning the provisional measures to be applied pending the final decision of the Court in the proceedings instituted by the Federal Republic of Germany on 5 June 1972. The Federal Republic of Germany will respect this decision, which was taken in conformity with the provisions of the Statute and the Rules of the Court, and will fully carry out the obligations imposed on her by the Court. In particular, the Government of the Federal Republic of Germany will ensure that vessels registered in the Federal Republic do not take an annual catch of more than 119,000 metric tons of fish from the sea area of Iceland as defined by the International Council for the Exploration of the Sea as area Va.

The Federal Government will furthermore furnish the Government of Iceland and the Registry of the Court with all relevant information, orders issued and arrangements made concerning the control and regulation of fish catches in the area.

The Government of the Federal Republic of Germany is ready to discuss the position with the Icelandic Government at any convenient date.

Annex D

PROPOSALS OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY OF 12 FEBRUARY 1973

On condition that

—it is established beyond doubt that the character of the agreement to be concluded will be that of an interim arrangement not affecting the basic question of the rights of the Federal Republic of Germany and its trawlers in the waters around Iceland nor its position before the International Court of Justice,

—the period of validity stipulated for the agreement will be consistent with that character of the agreement,

the Federal Republic of Germany would be prepared—

1. As of . . . to renounce of its own free will all fishing activities in the following areas at the following times:

April/May	NW
June/July	N
August/September	S
October/November	E
December/January	SW
February/March	SE

as indicated in the statistical zone Va of the ICES.

2. In consideration of Icelandic coastal fishery to abstain of its own free will from engaging in fishing activities in certain areas and at certain times. The following areas could for instance be envisaged for that purpose:

   (a) off West Iceland between 64°N and 65°30′N
   east of 25°20′W
   from March to August

   (b) off North-West Iceland between 65°30′N and 66°10′N
   east of 25°20′W
   from January to July.

   Whether it would in addition be possible for German trawlers to abstain from fishing activities in still further areas temporarily and under certain conditions in certain (small) areas also for comparatively long periods of time, could be a subject of negotiations and would depend on the entire contents and the period of validity of the interim agreement. This would moreover be influenced by the intensity of Icelandic coastal fishing in the various areas, on which information would have to be supplied by the Icelandic Government.

3. The Federal Republic of Germany would furthermore be prepared at certain times to forego fishing in young-fish and spawning areas provided that Icelandic trawlers would likewise abstain from fishing in those areas. The following areas might be considered:

   (a) the preferred young-fish growing area off the North and North-East of Iceland,

   (b) the main cod spawning area off South-West Iceland.

4 In so far as these measures do not lead to a restriction of the volume of catches regarded as appropriate and acceptable by both sides, the Federal Republic would in addition be prepared to reduce its annual fishing effort, expressed in fishing days, to a certain extent as against the average catches of the years 1962 to 1972 (1967 to 1971), which extent would have to be the subject of negotiations.

Annex E

DRAFT PROPOSALS FOR AN ARRANGEMENT REGARDING FISHING BY VESSELS OF THE FEDERAL REPUBLIC IN THE ICELAND AREA

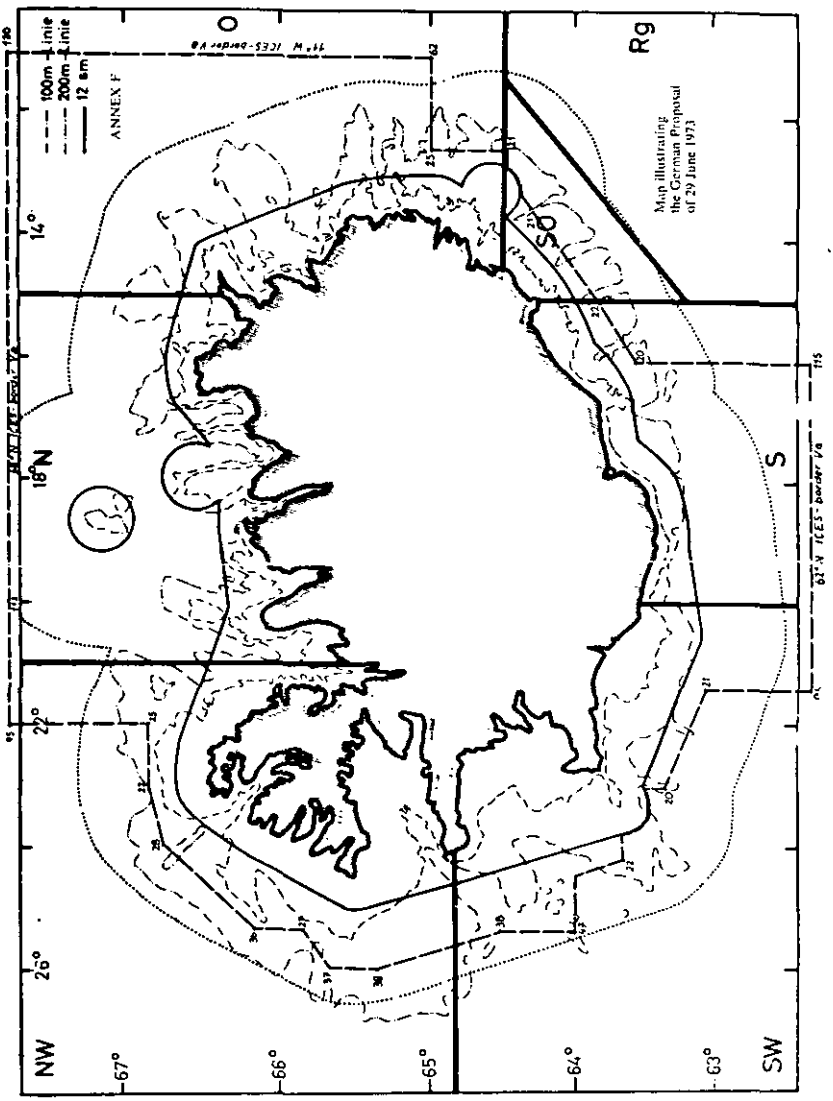
(Transmitted by the Government of Iceland through the Icelandic Embassy in Bonn to the Government of the Federal Republic on 14 April 1973)

Basic points

1. Nothing in the arrangement shall be deemed to prejudice in any way the position of the Federal Republic or Iceland in relation to their legal points of view regarding extension of fisheries limits.
2. Trawlers of the Federal Republic will be permitted to fish in an area outside a line which on the average is 30 nautical miles from baselines.
3. The number of trawlers of the Federal Republic fishing in the Iceland area to be negotiated. This number to be reduced as compared with previous years.
4. Fishing by freezer trawlers or factory vessels not permitted in the area.
5. Certain areas (conservation areas) to be closed to both Icelandic and German trawlers.
6. Long-line and net areas for fishing boats announced by Icelandic authorities to be respected by trawlers of the Federal Republic.
7. The total annual catch by trawlers of the Federal Republic permitted in the Iceland area to be negotiated. Reduction as compared with previous years.
8. Icelandic authorities have the right to implement agreed rules.
9. Icelandic Coastal Patrol shall have the right to examine fishing gear and equipment of trawlers of the Federal Republic fishing in the Iceland area in accordance with this arrangement.
10. This arrangement to be in force until 1 April 1975.

Annex F

MAP ILLUSTRATING THE FEDERAL REPUBLIC'S PROPOSAL OF 29 JUNE 1973



12 sm-limit ..... *50 sm-limit* · **36** distance in nautical miles from base-line — — — line proposed by the Federal Republic

Annex G

NOTE VERBALE OF THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY IN REYKJAVIK OF 1 DECEMBER 1972

The Embassy of the Federal Republic of Germany presents its compliments to the Icelandic Ministry of Foreign Affairs and has the honour on behalf of the Government of the Federal Republic of Germany to communicate to the Ministry the following:

On 25 November 1972 Icelandic coastal patrol boats used force against German fishing vessels in the waters of the high seas around Iceland and thereby caused not only material damage but also severe injury to one of the sailors. According to the findings so far made on the basis of the reports submitted by the captains of the German fishing vessels concerned, the details of the incidents were as follows:

On the morning of 25 November 1972 the German trawler *Erlangen* was fishing at position 63 degrees 52 minutes North, 13 degrees 48 minutes West, near Loenstief, about 40 miles off the Icelandic coast. Shortly before ten o'clock the Icelandic patrol boat *Aegir* appeared on the scene. At approx. 10.20 a.m., the *Aegir*, without previously contacting the *Erlangen* by radio as had been done in other cases, coming from starboard with her stern anchor laid off, crossed close to the stern of the *Erlangen*. The anchor thus caught hold of one of the *Erlangen*'s fishing lines which was drawn taut and broke in the guide on deck of the *Erlangen*. The heavy broken steel rope whirled through the air and struck the sailor Juergen Haense, who was working on deck, on the head. The sailor collapsed, bleeding at the mouth, nose and ears. At about 11.30 a.m. he was taken on board the German fishery research vessel *Walter Herwig* and brought ashore at Neskaupstadur in the North Fjord in order to be taken to hospital with a suspected fracture of the base of his skull.

After this incident, on the very same day, in the same area of the high seas, the German trawlers *Flensburg*, *Tiko I*, *Sirius*, *Sagitta Maris and Arcturus* were obstructed in their fishing activities by the Icelandic patrol boats *Aegir* and *Thor*. One of the fishing lines of the *Arcturus* was cut, so that parts of the fishing-gear were lost. The *Aegir* had previously warned the captain of the *Arcturus* by radio to take the sailors off the deck as the *Aegir* was about to cut the lines of the *Arcturus*.

It is with dismay and concern that the Federal Government has learnt of the action taken by Icelandic patrol boats against German fishing vessels. The use of force by Icelandic patrol boats against German fishing vessels on the high seas is an offence not only against the generally applicable international prohibition of force but also against the fundamental principle of the international law of the sea that no State has the right to proceed forcibly against foreign vessels on the high seas and to prevent them from engaging in peaceful fishing activities.

The action of the Icelandic patrol boats moreover offends against the interim measures of protection which were indicated by the International Court of Justice on 17 August 1972 in the proceedings pending between the

Federal Republic of Germany and the Republic of Iceland and which are known to the Icelandic Government.

The Court then ordered explictly that—

> "the Federal Republic of Germany and the Republic of Iceland should each of them ensure that no action is taken which might aggravate or extend the dispute submitted to the Court".

The Court furthermore ordered the Republic of Iceland—

> "to refrain from taking any measure purporting to enforce the regulations issued by the Government of Iceland on 14 July 1972 against or otherwise interfering with vessels registered in the Federal Republic of Germany and engaged in fishing activities in the waters of the high seas around Iceland outside the 12 miles limit of jurisdiction . . .".

The action taken by the Icelandic patrol boats on 25 November 1972, which is contrary to international law, has led to an unnecessary and deplorable aggravation of the situation in the dispute over the fisheries zone. The Icelandic measures weigh all the more heavily as they not only caused considerable material damage but moreover inflicted servere injury on a person.

Nor can the Federal Government overlook the fact that these unlawful measures were taken by Iceland at a time when the Federal Government had renewed its previous invitation to the Icelandic Government to enter into negotiations on an interim arrangement while the proceedings before the International Court of Justice are pending.

The Federal Government hereby protests strongly against the irresponsible actions of the Icelandic patrol boats, which are contrary to international law and detrimental to relations between the Federal Republic of Germany and the Republic of Iceland.

The Federal Government holds the Icelandic Government responsible for any damage that has arisen or may still arise as a result of the action taken and reserves the right to assert appropriate claims for damages against the Republic of Iceland after the damage sustained has been finally assessed.

Closing formula.

Annex H

VERBAL NOTE OF THE ICELANDIC FOREIGN MINISTRY OF 10 JANUARY 1973

At 11.30 hours on 8 January 1973, the Icelandic coastguard vessel *Aegir* approached the German trawler *Saxonia* NC 471. The German public vessel *Meerkatze 2* had taken up a position close to the trawler and prevented enforcement activities by the *Aegir*. When the *Aegir* warned the *Saxonia*, the *Meerkatze 2* replied and protested against interference with German trawlers in the area. At 11.45 hours the *Aegir* proceeded to the German trawler *Berlin* BKS 673 engaged in trawling in the vicinity. The *Meerkatze 2* followed and took up a position close to *Berlin* and prevented the *Aegir* from its enforcement activities. At approximately 14.00 hours when the *Berlin* was heaving its trawl the distance between the trawler and the *Aegir* had increased. When the *Meerkatze 2* observed that the *Aegir* was proceeding to the trawler the *Meerkatze 2* sailed forth at full speed and took up a position close to the stern of the trawler. While the *Berlin* was trawling the *Aegir* sailed around it and the *Meerkatze 2*. The latter made several efforts to cross the path of the *Aegir* for the purpose of preventing the *Aegir* from approaching the stern of the trawler. In the beginning the *Meerkatze 2* ignored international sound signals from the *Aegir* and did not make any signals.

When the *Aegir* approached the starboard side of the *Meerkatze 2* the *Aegir* gave sound signals indicating a turn to portside. The *Meerkatze 2* then turned to starboard and sailed towards the portside of the *Aegir*. The *Aegir* then had to turn to starboard to avoid a collision. The *Meerkatze 2* thus ignored international rules of navigation and sound signals. At 16.07 hours the *Aegir* took up a position between the *Meerkatze 2* and the trawler. When the officers of the *Meerkatze 2* observed the position of the *Aegir* it sailed at full speed towards the portside of the *Aegir* sounding its foghorn continuously without any navigational signals. The *Meerkatze* ignored the right of the coastguard vessel under international rules of navigation. The *Aegir* had previously made sound signals concerning each movement of the *Aegir*.

The Government of Iceland strongly protests against this interference by a public vessel of the Federal Republic of Germany with law enforcement within the Icelandic fishery limits. Under Icelandic law assistance in illegal fishing in Icelandic waters is subject to penalties. The Government of Iceland reserves its rights with regard to any such action taken, including compensation for any damage resulting therefrom.

Annex I

VERBAL NOTE OF THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY IN REYKJAVIK OF 22 JANUARY 1973

The Embassy of the Federal Republic of Germany presents its compliments to the Government of Iceland and has the honour, upon instructions from the Federal Government, to communicate to the Icelandic Government the following reply to the Icelandic Government's Note of 10 January 1973.

By an Interim Order of 17 August 1972 the International Court of Justice ordered Iceland "to refrain from any measure purporting to enforce the Regulations issued by the Government of Iceland on 14 July 1972 against or otherwise interfering with vessels registered in the Federal Republic of Germany and engaged in fishing activities in the waters of the high seas around Iceland outside the 12-mile limit . . .". This Interim Order is being violated by the action of Icelandic coastguard vessels which keep harassing German trawlers and even use force against them. What is called "enforcement activities" in the Note of the Icelandic Ministry for Foreign Affairs is therefore a flagrant violation of the Order of the International Court of Justice of 17 August 1972 and furthermore constitutes an illegal use of force in times of peace on the high seas against German trawlers. The German fishery protection vessels are trying to protect the German trawlers, within the framework of the pertinent instructions issued to them by the Federal Government, against such unlawful action by Icelandic coastguard vessels. In so doing German fishery protection vessels do not on their part resort to the use of force but solely endeavour to prevent the obstruction of the peaceful fishing activities of German trawlers by Icelandic coastguard boats. It is therefore not the conduct of German fishery protection boats that causes the occurrence of incidents; on the contrary, the German fishery protection boats endeavour to prevent the occurrence of incidents and damage through the use of force by Icelandic coastguard vessels. The incident which forms the subject of the Icelandic protest is a concrete example of this, although the Federal Government would not say that it agrees in all points with the Icelandic description of the actual course of events. The German fishery protection vessels will have to continue in their endeavours as long as Icelandic coastguard vessels do not refrain from illegally using force in times of peace on the high seas against German trawlers. Any action taken by Icelandic Authorities against these fishery protection vessels would be illegal under international law and particularly incompatible with the Interim Order of the International Court of Justice.

Annex K

VERBAL NOTE OF THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY IN REYKJAVIK OF 20 JULY 1973

The Embassy of the Federal Republic of Germany presents its compliments to the Icelandic Ministry of Foreign Affairs and has the honour, upon instructions from the Government of the Federal Republic of Germany, to communicate to the Ministry the following:

Since 28 June 1973 a number of incidents have occurred in the waters of the high seas around Iceland which were caused by Icelandic patrol boats using armed force against German trawlers.

On 28 June 1973 the Icelandic patrol boat *Albert* fired shots at the German trawler *Thunfisch*. On 2 July 1973 the Icelandic patrol boat *Aegir* fired a warning shot at the German trawler *Teutonia* after having tried in vain to cut off her fishing nets.

On 8 July 1973 the Icelandic patrol boat *Aegir* asked the German trawler *Hugo Homann* to stop because she wanted to send a boat over. As the *Hugo Homann* did not react, the *Aegir* began to fire. After several shots the *Aegir* radioed the *Hugo Homann* on VHF to send below the members of the crew who were processing fish on deck, as she was now about to use live ammunition. The *Aegir* then fired about 13 to 15 rounds, at least three of which, according to the captain of the *Hugo Homann*, were live.

On 14 July 1973 the *Aegir* again fired at the German trawler *Teutonia*. Furthermore, on 7 July 1973 the Icelandic patrol boat *Thor* cut the fishing net of the German trawler *Berlin*, though without using armed force. All these incidents occurred outside Iceland's twelve-mile zone.

The Federal Government strongly protests against the action of Icelandic patrol boats, which had evidently been ordered, and in any case approved, by the Icelandic Government. On numerous occasions previous to these Icelandic patrol boats had used force against German trawlers. The incidents of 28 June and of 2, 8 and 14 July 1973 constitute, however, a grave escalation of the action undertaken by Icelandic patrol boats since in these cases armed force was used against German fishermen. The Federal Government wishes to draw the Icelandic Government's attention to the serious situation caused by such action. The use of armed force against unarmed German vessels is not only an offence against the elementary principle of the law of the sea which gives no State the right to prevent foreign vessels from fishing peacefully on the high seas; it is also an offence against the prohibition of the use and of the threat of force which, as one of the peremptory rules of general international law, has been embodied in Article 2 (4) of the Charter of the United Nations, and which must be observed by all nations if they are to live peacefully together. The action of Icelandic patrol boats is furthermore a blatant breach of the Order of the International Court of Justice of 17 August 1972, which is known to the Icelandic Government and requires the Republic of Iceland to "refrain from taking any measure purporting to enforce the regulations issued by the Government of Iceland on 14 July 1972 against or otherwise interfering with vessels registered in the Federal Republic of Germany and engaged in fishing activities in the waters of the high seas around Iceland outside the 12-miles limit of jurisdiction".

The Federal Government expresses particular surprise and disappointment because the said incidents occurred immediately before and after the German-Icelandic negotiations of 29 June 1973 during which the Federal Government made a new proposition to the Icelandic Government, which gives far-reaching consideration to the Icelandic views and has been described as most useful by Icelandic Ministers themselves. The unlawful action of Icelandic patrol boats against German trawlers on the orders or with the approval of the Icelandic Government in spite of those negotiations cannot be conducive to a peaceful solution to the dispute over the fishery zones which the Federal Government has long been seeking.

In view of the unlawful and irresponsible action of Icelandic patrol boats, the Federal Government must reserve all its rights. It will in particular hold the Icelandic Government responsible for all damage to German trawlers and their crews resulting from such action.

Annex L

LIST OF INCIDENTS WITHIN THE 12-50 SEA MILE ZONE OFF ICELAND

Date	Trawler	Fishing Ground Position Destination	Demand to leave the 50-mile zone and cease fishing	by the	Obstructive Activity	Fishing location left	Attempt to cut fishing lines	Fishing lines cut	Special Remarks
(1) 3. 9.72	*C.Kämpf*	Berutief 64.30'N—12.00'W	x	*Aegir*					
(2) 8. 9.	*Schleswig*	Berutief	x	*Odin*					
(3) 13. 9.	*Schleswig*	Berutief	x	*Odin*					
(4) 14. 9.	*Katfisch*	Mehlsack 64.03'N—23.31'W	x	*Odin*	x		x		taken on board
(5) 14. 9.	*Kiel*	Mehlsack 63.10'N—23.35'W	x	*Odin*	x		x		
(6) 14. 9.	*Teutonia*	W.-Mehlsack	x	*Odin*					
(7) 14. 9.	*Würzburg*	S.-Mehlsack 63.10'N—23.30'W	x	*Odin*	x	x	x		taken on board
(8) 1.10.	*Hildesheim*	Gammelloch	x	*Aegir*					
(9) 1.10.	*Altona*	Gammelloch 66.40'W—24.00'W	x	*Aegir*	x		x		
(10) 1.10.	*Fehmarn*	Gammelloch	x	*Aegir*	x		x		
(11) 1.10.	*Othmarschen*	Gammelloch 66.40'W+24.00'N	x	*Aegir*	x		x		
(12) 1.10.	*Sag.-Maris*	Gammelloch 66.38'N+25.00'W	x	*Aegir*	x		x		taken on board
(13) 1.10.	*Schleswig*	Berutief	x	*Odin*					
(14) 17.10.	*Hildesheim*	Gammelloch	x	*Aegir*	x		x		taken on board
(15) 17.10.	*Freiburg*	Gammelloch	x	*Aegir*	x		x		taken on board
(16) 15.11.	*Vest-Recklingh*	Stockness	x	*Odin/Thor*	x	x	x		taken on board
(17) 15.11.	*Arcturus*	Stockness	x	*Odin/Thor*	x				

LIST OF INCIDENTS WITHIN THE 12-50 SEA MILE ZONE OFF ICELAND *(cont.)*

Date	Trawler	Fishing Ground Position Destination	Demand to leave the 50-mile zone and cease fishing	by the	Obstructive Activity	Fishing location left	Attempt to cut fishing lines	Fishing lines cut	Special Remarks
(18) 15.11.	*Glückstadt*	Loenstief	x	*Thor/Aegir* or *Odin* (not definitely identified)	x		x		
(19) 15.11.	*Schleswig*	Stockness	x	*Odin/Thor*					
(20) 25.11.	*Flensburg*	Loenstief	x	*Odin/Thor*	x	x	x		
(21) 25.11.	*Tiko I*	Loenstief	x	*Odin/Thor*	x	x	x		
(22) 25.11.	*Sirius*	Loenstief	x	*Odin/Thor*	x	x	x		
(23) 25.11.	*Sag.-Maris*	Loenstief	x	*Odin/Thor*	x	x	x		
(24) 25.11.	*Arcturus*	Loenstief	x	*Aegir*	x		x	*one line*	*lost*
(25) 25.11.	*Erlangen*	Loenstief 63.52'N+13.48'W	x	*Aegir*	x	x	x	one line	injury to person
(26) 29.12.	*H. Böckler*	Berutief	x	*Aegir*	x		x		taken on board
(27) 29.12.	*Hoheweg*	Berutief	x	*Aegir*	x		x		taken on board
(28) 29.12.	*C. Wiederkehr*	Berutief	x	*Aegir*	x		x		taken on board
(29) 29.12.	*Bremerhaven*	Berutief	x	*Aegir*	x		x		flank protection by 6 trawlers
(30) 29.12.	*Uranus*	Berutief	x	*Aegir*	x	x	x		taken on board
(31) 29.12.	*Sagitta*	Berutief	x	*Aegir*	x	x			
(32) 6. 1.73	*Berlin*	Loenstief 63.51'+13.52'	x	*Aegir*	x	x	x	one line	cod end, big net + other board completely destroyed
(33) 6. 1.	*Seydisfjord*	Loenstief	x	*Aegir/Thor*	x	x	x		
(34) 8. 1.	*Saar*	Berutief	x	*Aegir*	x	x	x		fishing gear lost
(35) 8. 1.	*Berlin*	Berutief 64.04'+16.00	x	*Aegir*	x				

LIST OF INCIDENTS WITHIN THE 12-50 SEA MILE ZONE OFF ICELAND *(cont.)*

Date	Trawler	Fishing Ground Position Destination	Demand to leave the 50-mile zone and cease fishing	by the	Obstructive Activity	Fishing location left	Attempt to cut fishing lines	Fishing lines cut	Special Remarks
(36) 9. 1.	*Berlin*	Berutief	x	not identified	x		x		
(37) 9. 1.	*C. Kämpf*	Berutief	x	*Aegir*	x		x		attempt to cut 8 lines
(38) 21. 1.	*Sirius*	Vikurall	x	*Odin*	x		x	two lines	all fishing gear lost
(39) 21. 1.	*Sagitta*	Vikurall	x	*Odin*	x				
(40) 17. 3.	*Würzburg*	Westermann		*Thor*	x		x	one line	100 strands of fishing lines
(41) 7. 4.	*Glückstadt*	Grindavik		*Odin*	x		x		
(42) 7. 4.	*Hanseat*	Grindavik		*Odin*	x		x		
(43) 7. 4.	*Teutonia*	Grindavik 63.12′—22.30′		*Odin*	x		x	two lines	loss of all fishing gear
(44) 7. 4.	*H. Böckler*	Grindavik 63.06′—22.29′		*Aegir*	x		x	two lines	loss of all fishing gear
(45) 8. 4.	*H. Böckler*	Grindavik		*Aegir*	x	x	x	two lines	loss of all fishing gear
(46) 8. 4.	*C. Kämpf*	Grindavik		*Aegir*	x	x	x	two lines	loss of all fishing gear
(47) 8. 4.	*Teutonia*	Grindavik		*Aegir*	x		x		near-collision
(48) 8. 4.	*Seydisfjord*	Grindavik		*Aegir*	x		x		
(49) 8. 4.	*Glückstadt*	Grindavik		*Aegir*	x	x	x		
(50) 8. 4.	*Flensburg*	Grindavik		*Aegir*	x		x		
(51) 8. 4.	*Hanseat*	Grindavik		*Aegir*	x		x		
(52) 8. 4.	*Kormoran*	Grindavik		*Aegir*	x		x		
(53) 10. 4.	*Sägefisch*	Grindavik		*Odin*	x	x	x		
(54) 10. 4.	*Seydisfjord*	Grindavik		*Odin*	x	x	x		
(55) 10. 4.	*Hanseat*	Grindavik		*Odin/Aegir*	x	x	x		

LIST OF INCIDENTS WITHIN THE 12-50 SEA MILE ZONE OFF ICELAND *(cont.)*

Date	Trawler	Fishing Ground Position Destination	Demand to leave the 50-mile zone and cease fishing	by the	Obstructive Activity	Fishing location left	Attempt to cut fishing lines	Fishing lines cut	Special Remarks
(56) 10. 4.	*Hoheweg*	Grindavik		*Odin/Aegir*	x	x	x		
(57) 10. 4.	*Sägefisch*	Westermann-Mehlsack		*Odin*	x		x		drifted for 6 hours
(58) 11. 4.	*Lübeck*	Mehlsack 63.06—24.11		*Odin*	x		x	one line	
(59) 11. 4.	*Seydisfjord*	Mehlsack		*Odin*	x	x	x		
(60) 11. 4.	*Hanseat*	Westermann-Mehlsack		*Odin*	x		x		
(61) 11. 4.	*Hoheweg*	Westermann-Mehlsack		*Odin*	x		x		
(62) 12. 4.	*Sag.-Maris*	SO-Küste		*Thor* or *Aegir*	x	x	x	two lines	loss of all fishing gear
(63) 12. 4.	*Friedrich Busse*	SO-Küste		*Odin*	x	x	x		
(64) 12. 4.	*Uranus*	SO-Küste		*Odin*	x	x	x		
(65) 13. 4.	*C. Kämpf*	S-Mehlsack		*Odin*	x	x	x		
(66) 13. 4.	*Schütting*	S-Mehlsack		*Odin*	x	x	x		
(67) 23. 4.	*Spitzbergen*	Berutief 63.12—22.15		*Arvakur*	x		x	two lines	loss of all fishing gear
(68) 24. 4.	*Schilksee I*	Berutief 63.59—13.27		*Aegir*	x		x	one line	loss of all fishing gear
(69) 29. 4.	*Flensburg*	Grindavik		*Aegir/Odin*	x		x		
(70) 30. 4.	*Flensburg*	Grindavik		*Aegir/Odin*	x		x		
(71) 1. 5.	*Flensburg*	Grindavik		*Aegir/Odin*	x		x		
(72) 2. 5.	*Flensburg*	Grindavik		*Aegir/Odin*	x	x	x		
(73) 12. 5.	*Hanseat*			*Tyr*	x			one line	1 fishing line damaged

LIST OF INCIDENTS WITHIN THE 12-50 SEA MILE ZONE OFF ICELAND *(cont.)*

Date	Trawler	Fishing Ground Position Destination	*Demand to* leave the 50-mile zone and cease fishing	by the	Obstructive Activity	Fishing location left	Attempt to cut fishing lines	Fishing lines cut	Special Remarks
(74) 16. 5.	*Schleswig*	Berutief 64.07—13.30		*Tyr*	x		x	one line	1 fishing line damaged
(75) 16. 5.	*Teutonia*	Stockness		*Tyr*	x				
(76) 16. 5.	*Seydisfjord*			*Tyr*	x				
(77) 28. 5.	*H. Kern*	Gammelloch		*Aegir*	x				
(78) 28. 5.	*Nordenham*	Gammelloch		*Aegir*	x	x	x		
(79) 28. 5.	*Glückstadt*	Gammelloch		*Aegir*	x	x	x		
(80) 2. 6.	*Teutonia*	N / W		*Odin*	x		x		
(81) 2. 6.	*Würzburg*	N / W		*Odin*	x	x	x		
(82) 2. 6.	*Düsseldorf*	N / W		*Odin*	x	x	x		
(83) 3. 6.	*Düsseldorf*	N / W		*Odin*	x		x		
(84) 2. 6.	*Schilksee I*	N / W		*Odin*	x	x	x		
(85) 2. 6.	*Teutonia*	N / W		*Odin*	x		x		
(86) 6. 6.	*Augsburg*	N / W		*Odin*	x		x		
(87) 10. 6.	*Augsburg*	Gammelloch		*Aegir*	x		x		
(88) 10. 6.	*Berlin*	Gammelloch		*Aegir*	x		x		
(89) 10. 6.	*Berlin*	Gammelloch		*Aegir*	x		x		
(90) 10. 6.	*Düsseldorf*	Gammelloch		*Aegir*	x		x		
(91) 11. 6.	*Berlin*	Gammelloch		*Aegir*	x		x		
(92) 11. 6.	*Augsburg*	Gammelloch		*Aegir*	x		x		
(93) 11. 6.	*Kormoran*	Gammelloch		*Aegir*	x	x	x		
(94) 11. 6.	*Katfisch*	Gammelloch		*Aegir*	x	x	x		
(95) 11. 6.	*Hanseat*	Gammelloch		*Aegir*	x	x	x		
(96) 17. 6.	*H. Homann*	Mehlsack		*Aegir*	x		x		
(97) 17. 6.	*Schütting*	Mehlsack		*Aegir*	x		x		
(98) 18. 6.	*Cuxhaven*	Stockness		*Thor*	x		x		

LIST OF INCIDENTS WITHIN THE 12-50 SEA MILE ZONE OFF ICELAND *(concl.)*

Date	Trawler	Fishing Ground Position Destination	Demand to leave the 50-mile zone and cease fishing	by the	Obstructive Activity	Fishing location left	Attempt to cut fishing lines	Fishing lines cut	Special Remarks
(99) 18. 6.	*Berlin*			*Thor*	x		x		
(100) 18. 6.	*Sagitta*	Loenstief		*Thor*	x		x		
(101) 18. 6.	*Sirius*	Loenstief		*Thor*	x		x		
(102) 18. 6.	*Sonne*	Stockness		*Thor*	x		x		
(103) 18. 6.	*München*			*Thor*	x		x		
(104) 18. 6.	*C. Kämpf*			*Thor*	x	x	x		
(105) 18. 6.	*Seydisfjord*			*Thor*	x	x	x		
(106) 22. 6.	*H. Homann*	südl. Mehlsack			x		x		
(107) 29. 6.	*Thunfisch*	Blinde Rocks		*Albert*	x	x	x		shots were fired by Icelandic Patrol Boat
(108) 2. 7.	*Augsburg*	Gammelloch		*Aegir*	x		x		
(109) 2. 7.	*Teutonia*	Gammelloch		*Aegir*	x		x		shots were fired by Icelandic Patrol Boat
(110) 2. 7.	*Schleswig*	S / O-Küste			x		x		
(111) 4. 7.	*Düsseldorf*	Gammelloch			x		x		
Other obstructions:									
(1) 14.11.	*H. Böckler*	injured person on board, unable to call at Icelandic port because of danger to vessel and crew, transport by helicopter							
(2) 20.11.	*Sagitta*	no fishing activity due to bad weather sought protection in 12-mile zone; demand for vessel to leave zone							
(3) 29.10	*Fehmarn*	no fishing activity due to bad weather—location within 3-mile zone; *Aegir/Odin* demand that vessel leave zone							