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of Justice
THE HAGUE

Cour internationale
de Justice
La HAYE

YEAR l993

Public sitting

held on Tuesday 12 January 1993, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

in the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen

(Denmark v. Norway)

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le mardi 12 janvier 1993, à 10 heures, au Palais de la Paix,

sous la présidence de sir Robert Jennings, Président

en l'affaire de la Délimitation maritime dans la région située entre le Groenland et Jan Mayen

(Danemark c. Norvège)

COMPTE RENDU

Present:

President Sir Robert Jennings
Vice-President Oda
Judges Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola

Judge *ad hoc* Fischer

Registrar Valencia-Ospina

Présents:

Sir Robert Jennings, Président
M. Oda, Vice-Président
MM. Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola, juges

M. Fischer, juge *ad hoc*

M. Valencia-Ospina, Greffier

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Mr. John Bernhard, Ambassador, Ministry of Foreign Affairs,

as Agents;

Mr. Per Magid, Attorney,

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Dr. Eduardo Jiménez de Aréchaga, Professor of International Law, Law School, Catholic University of Uruguay

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Mr. Milan Thamsborg, Hydrographic Expert,

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Mr. Jakob Høyrup, Head of Section, Ministry of Foreign Affairs,

Ms. Aase Adamsen, Head of Section, Ministry of Foreign Affairs,

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Mr. Olaf Koktvedgaard, Assistant Attorney,

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Mme Juliette Bernard, agent administratif au ministère des affaires étrangères,

Mme Alicia Herrera, La Haye,

comme personnel technique.

The PRESIDENT: Please be seated. This morning we continue the Danish presentation with Mr. Finn Lynge talking about Greenland, its people and society.

Greenland
Its people and society

I. Introduction

Mr. LYNGE: Mr. President, honourable members of the Court, my task today is to explain to you who are the people inhabiting the territory named Greenland. From the written pleadings, the Court already has formed a first impression of what constitutes the Inuit population of Greenland and their livelihood. The Greenland atlas has also been distributed to each member of the Court. Nevertheless the Court should know about the people who are seeking full control over their surrounding sea, including the area opposite the Norwegian island of Jan Mayen. The story is best told by someone like me, born and brought up in Greenland.

This intervention is necessary because Norway has depicted the situation regarding the status of Greenland within the Danish realm and the Danish policy towards the aboriginal population in a way which is not correct, to use a polite term. Reference is made in this respect to paragraph 443 of the Counter-Memorial and paragraph 15 of the Rejoinder. Thus it is not correct to say that Greenland is an island territory located at some distance from its administrative centre. Such a statement shows an appalling ignorance of Greenland's actual status as a self-governing society. Nor is it correct to state that there has been a deliberate Danish policy towards inhibiting the traditional Inuit lifestyle. On the contrary: the change of lifestyle that characterizes the post World War II decades came about at the express demand of the Greenland provincial council, which was fully representative of the people. Till that situation arose, it had been the avowed Danish policy to protect the traditional Inuit lifestyle from undue outside influence. Statements in the Norwegian written pleadings of the kind just cited require a correction.

In order to do so, let me start from the beginning.

The writing of history is always a matter of choosing a parameter. Any nation has a history of its rulers, or a history of its builders, who are not always the same; a history of its economic and

military exploits, or a history of its culture; a history of its religion, or wildlife, or even climate. In a given case, any one of these parameters may prove to be crucial.

Out of the seven population waves that have come into Greenland in historic and pre-historic times, and which have been described in the Danish Memorial, Volume I, pages 21 to 26, only one will be focused upon here, namely *kalaallit*. The perspective I use will be the measure of self-government enjoyed by the people of Greenland, *Kalaallit Nunaat*.

From the viewpoint of autonomy, the time the *kalaallit* have spent in Greenland can be divided into six periods:

1. The aboriginal period from approximately 850 AD until 1721, by far the longest period.

2. The main colonial period 1721-1940.

3. The five-year period of World War II 1940-1945, in which Greenland experienced a forced "independence" from Denmark.

4. The continuation of the colonial status 1945-52.

5. The attempted assimilation into Denmark 1953-79.

6. The so-called Home Rule status from 1979 to date.

II. Historical developments

1. Approximately 850-1721. The aboriginal period

The time when the Inuit of Greenland began calling themselves *kalaallit* is not known. It is, however, certain that this term, by which these Inuit identified themselves, dates back to the aboriginal period. In historic times, it was first encountered by the Lutheran missionary Poul Egede, who - in 1734 - wrote as follows in his diary:

> "During one of my voyages, after having talked to them about the cause of their soul, I was requested to tell them about our country and our people ... etc. ... 'Oh', said they, 'had we only something to give to your king! He surely must be a good man, loving us so, even though we live far removed from him.' But that their country (Kalalit Nunaet i.e., Land of the Kallals; so they name it themselves) also belongs to the king, they could not conceive, since he had not been there, and there was such an extensive sea in between."

The situation was clear: the Inuit welcomed the part of the message that dealt with the Christian faith, but did not understand the political part. After all, *Kalaallit Nunaat* was their land,

not somebody else's.

This dialogue took place between a European newcomer and a descendant of about eight centuries of Greenlandic Inuit, a people who had come in from Arctic Canada around 850 AD and which in the following centuries peopled all the inhabitable coastal stretches of West and East Greenland. [Pointing to the map.] The doorway from Canada is here.

The Greenlandic Inuit, or *kalaallit*, belong to a mongoloid people which migrated from north-eastern Siberia across the Bering Strait an estimated 4,000 years ago. During a couple of centuries in the first millenium A.D., this hunting people moved along the arctic coastlines of the North American continent, following the movements of their prey. At that time, the climate is presumed to have been a little milder than nowadays, and open water stretches were prevalent in the Arctic Canadian archipelago in areas which are now characterized by ice-bound shorelines. Indications are that it was the hunt for the bowhead whale which brought this people further and further east, and finally to the prehistoric gateway into Greenland: the present-day Thule district. From there, the people moved on, some to the north-east around the present-day Peary Land and down the east coast, and others south across the Melville Bay to the rich hunting grounds of West Greenland.

During this millenium-long era of constant migrations, the Inuit created what is universally acknowledged as one of the most highly developed and ingeniously adapted hunting cultures the world has ever seen. It was a marine culture, adapted to arctic waters and ice and snow. The 70 tonnes bowhead whale - called by the Europeans the Greenland right whale - was hunted from small skin boats by hand-held harpoons, the men jumping onto the awesome prey with their air-filled skin suits which enabled them to cling on to the back of the fighting whale. They developed a special breed of dogs supremely fitted for the Arctic and they created the sled techniques which, for the purpose of cold climate expeditions, have only recently been surpassed by modern technology.

For millenia, they were the only people to make the Polar region their homeland, reaping a harvest of wildlife in this part of the world where no edible plant can be cultivated. As the people moved southward along the east and west coasts of Greenland, the kayak - this small skin-boat - was

perfected as the supreme instrument of the sea mammal hunt, with an array of highly specialized weapons on the narrow deck of this slender one-man boat. The prey was mainly ringed seal, but also harbour, hooded, harp and bearded seals were commonly taken, as well as large animals like walrus, narwhal and the beluga white whale. This hunting technique is still in use, not the least in Eastern Greenland with its heavy flow of pack-ice.

In a matter of - presumably - some 300 or 400 years, this people, numbering probably a mere 4,000-5,000 individuals at most, settled virtually the entire coastline of this enormous territory, which is eight times the size of Great Britain. When they encountered the Europeans, they already had - nobody knows for how long - called this country *Kalaallit Nunaat.*

Once migrations reached their limit, and the entire coastline had been settled from Nares Strait all the way down to Cape Farewell - in the Inuit language called *Nunap Isua*: "Land's End" - the pattern of land occupation took the form which it has retained till this day. A long string of small, fixed settlements were founded along the outer coastline, at places where the marine mammals and sea-fowl were sufficiently abundant to secure the survival of a group of families through the severities of the long Arctic winter. These fixed settlements which here and there developed into regular little villages were abandoned every year for a summer period of four to five months. In the summer, people resumed the migratory way of life of their forefathers, moving into the extended fiords and up the mountain valley systems and highlands in search of Arctic char, caribou and musk ox, hunting out of traditional camp sites that were otherwise left vacant for the rest of the year. That way, virtually every corner of the vast country was explored and utilized through this changing lifestyle of the *kalaallit*: during the eight months winter-time, sea-fowl and marine mammals big and small formed the mainstay of people's livelihood: during the summer, it was the land mammals and the fish in the mountain streams.

Throughout the Middle Ages, *kalaallit* acquainted themselves with every accessible hunting ground in this country which was later to be universally known as Greenland. It must have seemed to them that this rugged country with its arctic wildlife was suited precisely to their needs and way of life, and that indeed no other kind of life was possible here - a perfectly reasonable assumption.

It is not difficult then to imagine the surprise and bewilderment of these aboriginal Inuit of the 11th or 12th century, when, in the southernmost fiords, they first encountered the white man with his grainfields and livestock. The fact of the matter is that about the same time their forefathers had crossed the High Arctic straits from Canada into Greenland, a small group of Norsemen had crossed the Denmark Strait and taken land at the other end of the country. That was Eric the Red who in AD 985, following his expulsion from Iceland for manslaughter, went to the west and organized an expedition to this country recently discovered. He and his people settled in the southwestern fiord system of Greenland in the year 985-986, in this vast virgin territory, and it was Eric the Red who decided to call this country Greenland so that the name might attract more settlers, as it is said in one Icelandic saga recorded in the so-called Islendingabók of approximately 1128. This use of the name *Greenland*, though, was not just a matter of public relations. The fact of the matter is that around 1000 AD, the climate was milder than now, and many green hills and lush valleys must have met Eric's eyes when, in his viking ship, he first sailed up the fiord which is now called the *Tunulliarfik*, in the district of *Qaqortoq*, southwestern Greenland.

The Norse period is by all accounts better documented than any other population wave into Greenland. The Icelandic and Norwegian farmers and cattle ranchers who sunk their roots in the sparse and treeless soil of Greenland during the five centuries following the expedition of Eric the Red were literate people with an acute sense of history. They made sure that posterity would know about them. They were a hardy people, who pushed Nordic agriculture to its absolute climatic limits. They also pushed the geographical knowledge of the time well beyond any medieval European limits: they set foot in North America when in the year 1000, Eric's son Leif Hepnir and his men crossed the Davis Strait and saw the forest-covered expanses of the northeastern part of the American continent. They saw wild grapes of a kind, and Leif called it Wineland the Good. [Pointing to the map.] They probably crossed this way to the present Cape Dyer and went down along the Canadian coast to the Newfoundland area, as far as we know.

When, in the latter part of the 15th century, the last Greenlandic Norsemen mysteriously vanished, it was not as the result of conflicts with the Inuit. It was rather because of a change of

climate which eliminated the last possiblities of a sustainable agriculture, coupled with failure of supplies from overseas where nation after nation had been hit by the plague in Europe.

Under those circumstances, no agricultural community could survive in the land of ice and snow.

But the Inuit were not peasants, and they survived, and thrived. At the inception of the 16th century, Greenland was, from north to south, from east to west, fully and uncontestedly *Kalaallit Nunaat*.

That situation, however, was not to last.

2. 1721-1940. The main colonial period

When, in 1721, Denmark officially entered the scene by sending a Lutheran missionary to Greenland, peace and calm had already been broken up there. For a century previously, a true armada of European whalers had been exploiting the Davis Strait resources, summer after summer: Dutch, Friesian, English and Scottish whalers had done their best to exploit the abundant stocks of the Greenland right whale which at that point of time had become virtually extinct in the Spitzberg waters. Strong outside influences had already affected hunting gear and methods among the Inuit of West Greenland, as well as their economy and their outlook on the world. But so far, nobody had attempted to take their land.

The missionary who changed that state of affairs arrived with a twofold royal mandate: first to establish contact with the Norsemen of Greenland in order to convert them from Catholicism to the Lutheran faith, nobody in Scandinavia suspecting that they could be extinct; second to re-assert the Danish-Norwegian claim on Greenland. However, the situation forced the mission to take up Christianization of the Inuit instead, and its personnel soon found themselves grappling with a completely foreign culture and a seemingly impossible language which refused to fit the latin grammar.

The whole project seemed hopeless, and the handful of military men who had come along to prevent the foreign whalers from trading with the native people found themselves idle and

demoralized, being unable to cope with the vastness of the country and the climatic conditions. After ten years, the crown ordered the whole venture closed down, and the soldiers were sent home. The mission, however, stayed on, hoping against hope.

In 1733, the King of Denmark changed his mind again and sent reinforcements to the mission. One trade post and mission after another were established along the coast, and people became increasingly dependant upon European supplies such as new types of weaponry, clothing and foodstuffs. Through the whalers, they had known the existence of these things for a long time, but now the white man's products became an integrated part of their way of life, and the physical presence in their country of Scandinavian settlers was slowly to become an accepted - and in times of hunger and hardship, an appreciated - fact.

It can well be maintained in this connection that it was trade, more than any missionary influence, that definitively changed the aboriginal societal structure, creating a breach in the subsistence lifestyle and slowly making the people dependent upon capital income. With that development, other cultural changes were bound to come in due time.

In 1782, the liberal Government of Denmark at the time issued an instruction to the Royal Greenland Trade Company, the principles of which were to form the basis for Danish involvement in Greenland for two centuries and more. The trade company's explicit aim in Greenland was not to be exploitation of the people, and profit, but, rather, a balance of trade and avoidance of deficit. At the same time, the company was to be responsible for an even and fair distribution of goods to all trading posts, regardless of how profitable they were, respectively. Tariffs were fixed, ensuring the same prices, regardless of geographical distance, and the trade managers were to see to it that settlements in their districts did not suffer undue shortage of food supplies during the severe parts of the winter.

The Danish State was now present at all major Inuit settlements on the Greenland west coast. Through the instruction of 1782, Greenland is commonly thought to have become, in principle, a full-fledged Danish colony.

Nowhere in the country did Danish authorities tolerate any other European nation's attempts to get into too close contact with the *kalaallit*, not to mention establishing trading posts on land. Danish authority had come to Greenland to stay.

East Greenland was still, at that time, thought to be an inaccessible and uninhabitable desert of rocks and ice, uninteresting for the colonizers. It was, therefore, in the year 1823, a great surprise when the English explorer Douglas Clavering, venturing through the ice pack to the coast of East Greenland at 74° northern latitude, encountered a group of Inuit that was here on what is called the Clavering Island now. He encountered a group of aboriginal Inuit there. They were frightened, and after a few days of contact with the white men, they withdrew. That was the last anyone from the outside world ever saw of that particular group of aboriginal inhabitants, 1823. Those were the last people of a group who had made this coastal stretch their home for close to 1,000 years.

On the west coast, the colonial régime was now a century old and well entrenched. When in the mid-19th century, the wave of democratization reached Denmark, no ripples reached the Arctic shores of Greenland, and nobody in the new Danish Parliament apparently gave Greenland a thought. Some ten years later, though, a liberal and forward-looking administrator in Greenland took the initiative of introducing a system of local councils, in which also the native people of Greenland were to have their representatives. In practice, the mandate of those councils turned out to be limited to matters of social welfare at a local level. Nevertheless, they were a step in the direction of democratization and were experienced by the people as such.

The last part of the 19th Century witnessed a surge in spiritual life. Illiteracy already had been eradicated. Now a catechists' college ensured the decisive native influence on the substance of the church's commitment to the advancement of the people; a native-language newspaper saw the light of the day in 1861, appearing still today; native pictorial art made great strides; and much high-quality, religious poetry was written, greatly treasured by the people.

In 1884-1885, yet another expedition ventured around Cape Farewell and up along the east coast, in quest of the people who were known to live on the shores of the Denmark Strait, across from Iceland. This attempt proved successful, and the last group of aboriginal east coast Inuit were

located. The expedition went by skin boats, this way, through the pack ice and found the people here, at a place called Ammassalik, and this is what this place has been named since then. Ammassalik means "the place where capelin abounds".

In the West Greenland society, the democratization process went on. In 1908, a law was passed according to which local matters should be dealt with by a series of municipally-elected councils, and matters of interest to the country as a whole in two provincial councils, one for the north and one for the south. The councils only had consultative powers and were presided over by Danish civil servants.

In 1924, Norwegian interest in East Greenland - dating back to the beginning of colonization - was manifested once more. Norway formally refused to acknowledge Danish sovereignty over the uninhabited parts of the country and made renewed claims on the east coast. The matter was temporarily settled at the time by granting hunting rights to the Norwegians, which happened against a protest from elected representatives of the Inuit population.

Meanwhile, preparations were made for the settlement of a native group of hunters and their families in Scoresbysund, at the entrance of the huge fiord system which is located between 70° 72' northern latitude, the Scoresbysund fiord, for the purpose of utilizing the abundant resources of that area. And, so, in 1925, the move was completed when 82 people from Ammassalik moved to Scoresbysund and the trading post there was formally established as a colony.

Meanwhile, in 1919, the so-called East Greenland Company was formed for the purpose of wild-life harvest in North East Greenland.

In 1929, a Danish company of Arctic hunters and trappers was formed and given the name Nanoq, the Inuit word for polar bear. The company competed with the Norwegians over the East Greenland hunting grounds. Disputes began escalating.

In 1930, over and against Danish protests, Norway gave their hunters and trappers police authority in the North East Greenland hunting area, which was named "Eirik Raudes Land" after the Norwegian, Eric the Red.

Then, in 1931, Norway formally occupied this area, [pointing to the map] which stretched

from 71° 30' northern latitude to 75° 40' up here, that is from Carlsberg Fjord to the northern part of the Hochstetter Forland just north of Shannon. Incidentally, Mr. President, this coastline corresponds roughly to the relevant coastline arrived at yesterday by Mr. Thamsborg.

In response, Denmark immediately brought in the matter before the Permanent Court of International Justice.

In 1932, even while the Court was dealing with this case, Norway occupied yet another coastal stretch of the Greenland east coast, this time the land between 60° 30' northern latitude to 63° 40' [pointing to the map] that is from Lindenows Fjord to the Bernstorff's Icefiord in this area. This is the so-called coast of King Frederik VI. In both cases over and against strong protests from the elected leaders of the people in Greenland infringement was made upon Inuit hunting grounds.

As we know, in 1933, the Court passed judgment in Denmark's favour, acknowledging Danish sovereignty over all Greenland.

During those proceedings, Denmark enjoyed unconditional support from the two Greenlandic provincial councils.

Now, with that verdict, the time of Greenland as partly a no-man's land was manifestly over.

By now the people, *kalaallit*, had been literate in their own language for the better part of a century. A democratization process was under way, and voices were being raised for an opening of society to the outside world and an end to colonial paternalism in the practices of Danish administrators. Nationalistic sentiments were being nurtured by a new generation of writers and poets, and the people of West Greenland began feeling a certain responsibility for their countrymen in Ammassalik, Scoresbysund and Thule, taking a direct part in the work of both trade and mission in those new parts of the country. The country was being knit together.

So, at the end of the 1930s we see that, where the germs of a nation had been latent since the Middle Ages, now a modern framework was in the making.

3. 1940-45. Autonomy of a sort. Partly testing the ground

During World War II Greenland happened to enjoy a period of autonomy of a sort and it

turned out that the Greenland people came to test the ground for their present-day situation. When World War II broke out, and Denmark was occupied by the Germans, all communication to Greenland was severed from one day to another. That posed unprecedented problems. There were a few short summer months in which to organize completely new trade contacts before it was winter again, and the country was put back into the deep freeze. Modern-day Greenland cannot function without contacts with the outside world. All and every modern amenity has to be imported, only a small fraction of society being able to survive in the old way.

The Danish top administrators in Greenland acted swiftly. A few weeks after the break-down of communications with Denmark, the two governors - one for the North, the other for South Greenland - convened both provincial councils and obtained a mandate for unconventional measures. Of course we know that, formally, the provincial councils were in no position to issue a mandate to the Danish governors, yet under the circumstances, such measure was deemed appropriate; in time of crisis, the Danish administration absolutely had to act in concert with the elected representatives of the Greenlanders.

This is not the place to describe the extraordinary activities and unusual accomplishments in Greenland during the war. Suffice it to say that World War II propelled Greenland into a role of strategic importance that has been retained till today. The Germans took an interest in North East Greenland for the purpose of meteorological forecasting affecting the battlefields in Northern Europe and the Atlantic, and attempted to build some land stations on the coastline north of Scoresby Sund. As a counter-measure, the governor of South Greenland vested the Danish hunters and trappers of the area with military authority and instituted the dog-sled unit *Sirius*, the purpose of which was to patrol the coast and report enemy activities. As a result, and with the help of the United States Airforce, the Germans were expelled.

It was not only Greenland's strategic potential which surfaced during these years. So did the Greenlanders' realization that the historical dependency on Denmark might not be the only option for the future, at least not in the form it had taken during the colonial rule. Contrary to what some might have expected, that did not give rise to any desire to seize the opportunity to secede. On the

contrary: a genuine pro-Danish sentiment grew out of the war years, and no secessionist ideas were ever raised in the debates of the provincial councils.

On the other hand, one thing seemed certain: things could not just continue the way they had prior to 1940. The provincial councils had now experienced how decisions could be put into practice swiftly and efficiently, without asking permission from Denmark at every turn of the road.

And as the war turned in favour of the Allied, expectations were raised. Strange to say, the war had made Greenlanders optimistic and forward-looking. When the war was over, everything was bound to get better, including the administration of domestic affairs in Greenland.

The people had acquired a taste for autonomy.

4. 1945-52. The colonial régime tapers off

The following period from 1945 to 1952 saw the colonial régime taper off. The Greenland administration in Denmark had been kept unaware of the nature of the impact which the war years had had in Greenland. They had no way to get acquainted with the details of this development, and their imagination was not geared to new ideas of that kind.

When the war was over in 1945, and the Danish administrators in Greenland reported back to their superiors in Copenhagen, they were filled with new ideas, energy and a will to change. Unanimously, these people reported their great disappointment over the reactions met in Denmark. Their superiors in the Royal Greenland Trade Department and in the Government offices, who had suffered five year isolation without much to do, were neither filled with new ideas nor with any great desire to listen to young *and* experienced protagonists of a new order in Greenland affairs. The best the Government in Copenhagen could think of was to resume business as usual, and allow colonial administration to pick up where it had left off.

Predictably, a new kind of unrest started spreading. Greenlandic hopes were being dashed. But modern communications having become a factor also in Greenland, people noticed that most news coming out of the newly created United Nations organization had to do with decolonization around the world. Voices clamoured for change, and the main newspapers in Denmark began to take

an interest in the matter.

Under the influence of political opinion in Denmark, the Danish Prime Minister himself went to Greenland in 1948 to see for himself. What he saw made him decide that something had to be done rapidly to accommodate the new aspirations, and a Greenland Commission was instituted. This very efficient joint Danish-Greenlandic body produced a comprehensive report covering virtually every activity in Greenland, singling out the need for change in the domains of, among others, housing, health, education, telecommunications, harbour engineering, traffic and law enforcement.

Already by 1950, these reports had been turned into legislative proposals and had passed the Parliament in Copenhagen. A hitherto unseen wave of change began to make itself felt in Greenland. Housing and health conditions were dramatically improved, infant mortality fell, life expectancy rose, and among the parents of the many healthy children, a new and massive craving for improved educational facilities was voiced. The two provincial councils were merged into one, and administration was made more efficient.

With this development, a recurrent paradox of the Greenland situation surfaced once more. There is no doubt that at this point, people generally wanted more self-determination. Yet, more autonomy meant better education, which in turn presupposed a better mastery of Danish, the Greenlandic Inuit language being unsuited to handling important modern-day subject-matters such as, for example, medicine or engineering. But with the education in Danish, the new generation was bound to become increasingly alienated from their ethnic background, the Inuit culture. As it turned out, the well-intentioned legislation of 1950 opened up a Pandora's Box of unexpected problems.

Another paradox of the situation which was to perpetuate itself for decades, was a general feeling that while the pace of development in a sense was too fast, it was also too slow. It was too fast in that a great number of Danish skilled workers, school teachers, doctors, nurses, engineers, administrators, etc., had to be sent to Greenland to help raise the living standard to what was considered an acceptable level; in other words, Greenlanders had to suffer an invasion of outsiders on an unprecedented scale, while at the same time being reduced to the role of spectators to the rapid development of their country. That was not popular.

Development was too slow in that there had been no constitutional change. Greenland was still a colony, and the Greenlanders did not have civil rights that were a matter of course in Denmark. All activities were still overwhelmingly State-monopolized, and Greenland was still a closed country where authorities kept a tight control of everything moving in and out.

There was another reason for unease that maybe was felt more - or that surely was felt more - in the government offices in Copenhagen than in Greenland itself. As long as the colonial status was maintained, Denmark had to submit an annual report to the Secretary-General of the United Nations, pursuant to Article 73 of the Charter. It was not that Denmark had anything to hide, on the contrary: compared with most other European colonies around the world, Denmark had in its Greenland venture been remarkably non-exploitative. That is why the Danish Government felt uneasy having the Greenland situation tabled in the context of general global colonialism, being held accountable side-by-side with European colonial ventures in Africa and Asia that were of a completely different nature. After all, to be precise, in Greenland there had never been fired one single shot at a native person in the name of a Danish king. In the history of European colonialism, that was probably a world record.

But Denmark had to report to the United Nations about its colony Greenland, and did. However, that was an annual obligation which Denmark felt it could do without.

Thus both parties, Greenland and Denmark, had their reasons to work for a termination of the colonial status.

Throughout the world, colonialism had become a derogatory term. In Greenland too, the colonial status was now obsolete. Its time had expired.

5. 1953-1979. Integration attempted

Thus we enter the fifth period of our history, which is the attempted integration into the Danish Kingdom.

In connection with changes in the Danish constitution in 1953 it was decided to integrate Greenland into the Kingdom of Denmark, giving all Greenlanders full equality under the constitution. The colonial status was abolished.

In the United Nations, this new development was thoroughly debated in the Committee on Decolonization and in the General Assembly, and was accepted by General Assembly resolution 849 (IX) in 1954.

The *kalaallit* were now full-fledged Danish citizens with all the constitutional rights such as religious liberty, freedom of speech and the right to travel with a Danish passport. Equality under the law between the two peoples was secured in Greenland, and when moving to Denmark, Greenlanders automatically enjoyed all social benefits accruing from Danish citizenship. Two Greenlanders were to be elected to the Parliament in Copenhagen.

From this point on, a solid infrastructure was needed to create and maintain modern internal communications and traffic, health and housing, purchasing power and education. That was secured through a massive programme of economic aid from Denmark which was to constitute the underpinning of Greenland's economy till today.

Toward the end of the 1960s, a new political phenomenon surfaced: that of the growing awareness among the Greenlandic students in Denmark. These bright young people who had learned to master both languages were the first to protest against the official integration policy and to effectively defend the role of their native language in the modernization process. The pendulum of history began swinging back, as was to be evidenced in the following decade.

In 1970, a conference on "Greenland's future" was arranged in Sisimiut, Greenland. For the first time, a comprehensive political debate was conducted exclusively in the Greenlandic Inuit language.

1971 saw elections both to the provincial council and to the Parliament in Copenhagen. At both elections, seats were won by the new wave of protesters.

In Denmark, the new social-democratic Government appointed a native Greenlander as Minister for Greenlandic affairs.

Meanwhile, the political debate in Denmark was centreing on Danish accession to the European Community. In Greenland, the sentiment was increasingly against membership of the EEC. A proposal to the effect that Greenland should be exempted from the referendum, like the

Faroe Islands, was turned down by the Danish Government on the grounds that unlike the Faroes - which had attained local autonomy in 1948 - Greenland was fully integrated into Denmark and therefore had to follow Danish rules. Greenland was a perfectly normal Danish island.

The 1972 referendum showed a 63.4 per cent majority in Denmark for EEC membership, but in Greenland, 70.3 per cent voted no. And so, Greenland became a member of the European Community against its own will.

As a result, the provincial council asked the Minister for Greenland to institute a special commission for the purpose of examining the prospects for a Home Rule arrangement in Greenland. The Minister responded in January 1973 by creating a special Greenlandic committee to examine the matter. From this point on, there was no doubt: time was running out for the constitutional integration of Greenland into the Danish Kingdom.

The rest of the decade was marked by much political activity and anticipation of the coming autonomous régime. Two attempts to create political parties had failed, but now, three parties were founded, following more or less a Nordic pattern: we saw a strong, left-leaning, social-democratic party (Siumut 1977), an almost equally strong, liberal-conservative party a year after (Atassut 1978), and a smaller but vigorous leftist party (Inuit Ataqatigiit 1978). Siumut turned out to be the important protagonist for Home Rule, Atassut being more hesitant. The leftist party, Inuit Ataqatigiit, opposed the very notion of Home Rule at the time, fearing that it would lead to yet another type of dependency on Denmark. Constituents of this party wanted full independence.

In 1975, the Special Committee on Home Rule reported on the first part of its work. The Committee's recommendation was for a Faroe Island-type of autonomy for Greenland. At this point, the Danish Government instituted the formal Home Rule Commission with seven Greenlandic and seven Danish politicians as members, under the chairmanship of a Danish law professor.

The Home Rule Commission's report of 1978, which detailed to what extent and at what pace Greenland could obtain local autonomy, was debated in the Danish Parliament in the fall of 1978, and the Home Rule Act was passed. In January 1979, the Act was submitted to a referendum in Greenland. 70 per cent voted in favour and, on 1 May 1979, Home Rule was introduced.

The period of attempted integration into Denmark had passed into history.

6. 1979. Home Rule

Paradoxically, it had been the EEC referendum which had opened the eyes of the Greenland public to the Faroese model of autonomy. And it was the appropriateness of the EEC membership which figured first on the agenda after the provincial council had gone through its metamorphosis into a legislative assembly: the so-called Landsting. A majority of the assembly felt bound by the outcome of the referendum seven years earlier, where a majority of the voters had wanted to stay outside the European Community.

The referendum took place in January 1982, after almost three years of autonomy and after a series of bitter political campaigns in both directions. There was a slim majority of 52 per cent against membership. Negotiations over the terms of the withdrawal began, and the Danish Foreign Ministry became involved, trying to obtain a reasonable arrangement for Greenland. After two and a half years, the terms were settled: Greenland was given the special status accorded to the so-called Overseas Countries and Territories [arrangement] and, in addition, free access for fisheries products, as long as the EEC maintained a satisfactory agreement with Greenland. A fisheries agreement was concluded for a ten-year period from 1985, with details still to be negotiated for two consecutive five-year periods. The EEC was to be treated as a most-favoured partner in the allotment of quotas from Greenland waters, and Greenland in turn was to receive financial compensation.

In retrospect, it is possible to distinguish two main areas of concern for the Greenlanders, concerns that were operative in the EEC debate and which explain the uncommon energy channelled into this political struggle by protagonists and opponents alike: it was a struggle over the control of the natural resources, and over the proper balance in the matter of national identity.

The natural resources in question were above all the fish. Since 1972, it was the EEC Commission that set the Total Allowed Catches, the so-called TAC's and quotas. In the eyes of the Greenlanders, that created a twofold problem: the TAC's were often set too high, not sufficiently following the recommendations of the biologists; and the quota allotments, likewise generally too high, were felt to be mainly geared to satisfying the needs dictated by the EEC fisheries policies. To

the newly-instituted Home Rule authorities, it was clearly a problem arising from the fact that they were not in political control of the resource which was at the base of the country's only industry. The Home Rule was acutely aware of the necessity of following the advice of marine biologists. The cod, redfish and shrimp in Greenland waters are all at the geographical limit of their biotopes, and stocks are extremely vulnerable. Overfishing is never advisable, but in Arctic waters it is likely to have dramatic effects. The Greenlanders felt that the resources were being abused and that, given the dynamic of European politics, this could hardly be otherwise as long as Greenland remained in the EEC.

The protagonists of EEC membership, on the other hand, felt more secure staying, so to speak, on the Danish side. They were, of course, aware of the overfishing by the EEC fishermen - everyone was - but they felt that the prospects in general of an unknown future outside the EEC carried more threats than promises.

The question of national identity, ever-present, as it had been since colonial days, took on new aspects and proportions. Ethnically, the Greenlanders are Inuit, partly or fully; the language is an Inuit dialect, partly intelligible all the way across the North American High Arctic, all the way to Alaska; the constitutional status is this special construction called the Home Rule, providing the framework for a growing autonomy. Was this small society on its way to independence now?

Nobody wanted to give an affirmative answer to that question, but many did want to take the situation at hand as an example of what they did not want: they did *not* want a brake on the autonomy process. Membership in the European Community did not point in the direction of autonomy. There was a contradiction in a devolution policy vis-à-vis Copenhagen while conducting an integration policy vis-à-vis Brussels.

This is why the EEC membership finished by fueling nationalist sentiments in parts of the electorate. Many young people took an interest in the building-up of a new network of contacts to the Inuit of Canada and Alaska, and it was no coincidence that the Inuit Circumpolar Conference, a recent Arctic United Nations-accredited NGO, got a Greenlandic chairperson. Greenland was honestly taking a dim view of the prospect of being partly governed from the continent of former

colonial powers.

Greenland left the European Community on 1 February 1985 and assumed, instead, a status as an associated trade partner with a special fisheries arrangement.

Later in the spring of that year, Greenland was welcomed into the Nordic Council and was accorded two seats in the Nordic Parliamentary Assembly. A new era of closer co-operation with the immediate neighbours was initiated. The ties to the Nordic nations were strengthened when a Nordic Institute for Cultural Collaboration was founded in Nuuk, the capital of Greenland, in 1986.

In the summer of 1985 Greenland celebrated its first National Day, and for the first time flew its own flag.

In l987, a small university was founded, likewise in Nuuk, creating an opportunity for academic formation in Greenland itself.

In the fall of 1988, the Greenland Assembly (the *Landsting*) revised its own rules and instituted a committee for security policies and foreign affairs. According to the Home Rule Act of 1978, these are matters for the Danish Government. As it turned out, however, the Government accepted the arrangement on the condition that it be understood to reflect the consultative role of the *Landsting* at this point.

In 1989, an agreement was concluded between Greenland and Canada about the scientific monitoring of the stocks of beluga white whale and narwhal, that are shared by the two countries in the Davis Strait and Melville Bay.

In 1990, Greenland participated actively in the so-called Rovaniemi process leading to an international agreement about an Arctic environmental protection strategy. In 1991, the Home Rule Minister for Public Health and Environmental Affairs co-signed the agreement in Rovaniemi, Finland, together with the Danish Minister for Education.

At the inauguration of the International Year 1993 of the World's Indigenous Peoples in the United Nations General Assembly on the Human Rights Day, 10 December, 1992, the Premier of Greenland, Mr. Lars Emil Johansen, spoke on behalf of all of the Inuit, the indigenous people of the Arctic. In his speech, the Premier stated *inter alia*:

> "Allow me, Mr. President, to refer to the meeting that the United Nations held in

> September 1991 in my land, Greenland. Here a number of experts produced a document with conclusions and recommendations about which rights States and the international community should fulfill and guard for indigenous peoples - the so-called *Nuuk Conclusions and Recommendations*. This United Nations document includes, in my opinion, all the required elements needed to reach the goals of the United Nations Year. I would like to highlight some of the main points that were brought out.
>
> I would first and foremost like to point out the necessity that we - regardless that we are locked into other peoples' nation-States - now become accepted as peoples in our own right. We do not wish to break up existing nations. But we also do not wish to become assimilated into a culture, language or lifestyle, that is not ours. We are specific peoples, regardless that we do not have an independent State. This must be accepted.
>
> Secondly, the Year must emphasize our right to self-determination over our own lives with as wide a scope as at all possible within a united country. This requires respect for our language, our culture, our land areas and our working skills.
>
> Thirdly, the Year must focus on our right to take part in the world economy with the resources we have and the background of the culture that we represent. By far the majority of us have still a hunting culture as our basic identity, and we cannot continue to be passive to the world while our lifestyles are being exposed to emotional and alienating campaigns against our renewable harvest of the wild animals that nature gave us for life's sustenance."

Reviewing the success story of the Greenland Home Rule to date, Mr. President, one basic fact must not be lost from sight: Greenland is a developing country which is in the midst of a struggle to make the proceeds of its potentially copious resources match the actual cost of modern living in the Arctic. As matters stand, the Greenland Home Rule functions on a yearly block grant from the Danish State in the vicinity of 390 million US dollars. Clearly, this is an unsatisfactory situation in the long run, and probably unnecessary as well. After all, Greenland is a large country with great resources, although utilization of the natural potential of land and sea poses extraordinary problems. The challenge of the future is to reach an uncontested inter-national understanding of resource access and to find the means to utilize the potential which is there.

III. The role of culture in the society of Greenland

In order to close this talk, Mr. President, I would now briefly say some words about the role of culture in the society of Greenland.

The culture of a people is not only reflected in fine arts, music and theatre, but also in nutritional traditions, political systems, attitudes toward elders, toward religion, military, health care, child rearing and everything else. In this present context, culture will be taken as the ways and

preferences of a people alive, conscious of its heritage and living with a vision for the future.

The habitation pattern and logistics of communication by themselves are bound to influence cultural expressions. We are talking here of a mere 55,000 people spread out over an area four times the size of France or, if you wish, eight times the size of Great Britain, with no roads, no railways to connect the 18 administration centres and 70 outposts, with 52 helioports, 29,000 sled-dogs, 15 hospitals, 17 libraries, 94 public schools and only 4 cars for every 100 inhabitants. A small people in a big country, under conditions that favour tolerance and individuality.

The *political* culture of Greenland has always been person-centred. Over the last two decades, ideology has gained some ground, and mainly in the younger generation. Family ties often influence voting patterns, a seemingly unavoidable phenomenon in the many isolated settlements of only a few hundred people. The representative democracy which is operative in the Assembly as well as in the municipal councils is the only practicable system in Greenland, due to the geographical distances and recurring communications problems.

The *nutritional* culture has come to be a hybrid pattern of elements from both Danish and native Greenlandic traditions. In Arctic latitudes, people cannot subsist on the same kinds of food as in the milder regions. Meat and animal fats are important for health and well-being, and seal and whale are essential sources of food and vitamins. Aboriginal Greenlandic food preferences for wild fowl or sea mammals combine very well with a number of basic Nordic traditions such as ground barley, various types of dark bread, etc. We observe no social class distinctions operative in the people's leanings toward either a more Greenlandic or a more Danish type of daily menu.

The *religious* culture in Greenland is, on the one hand ,characterized by a deeply imbedded reverence for spiritual matters, as it is in most fishery-dependant coastal peoples around the world, and among Inuit across the Arctic. Religious faith comes naturally to people who live in direct daily contact with the life-and-death cycle of nature, and who are regularly exposed to physical danger themselves. On the other hand, Danish secularization has clearly set its imprint on the younger generation, and the upcoming generation can be expected to become increasingly alienated from the established Lutheran church which at present formally numbers 99 per cent of the population.

Money culture as a main vehicle for greed, hoarding and class divisions was unknown among the Inuit of old. The prevalent and respected attitude was one of magnanimity, hospitality and ability to give. Modern-day Greenland, though, is a class society where the gap between rich and poor is wide. This is the gap in the need for capital investments between, on the one hand, the owner of industrial trawlers, and, on the other hand, the aboriginal seal hunter in his little one-man skin boat.

Military culture is totally unknown in Greenland. This is one of the few countries in the world that has never been torn by a war. There has never been any conscription of Greenlandic youth in any kind of military service. Inuit culture of old - and until today - has always conditioned the individual hunter for a severe personal discipline, shaping him into an expert on Arctic survival and in stalking and killing the animal prey. But the idea of creating a corporate discipline for the purpose of stalking and killing other people is totally foreign to Greenlanders. Patriotism is not manifested in military parades. This is a soldierless people.

Patriotic culture is manifested in music, painting, poetry and theatre. The old Inuit drum dances have survived in pockets here and there and elicit a growing interest among the young people who are conscious of their heritage. Much modern music is being created, but unlike most Western song texts that generally are focused on romantic love, Greenlandic song texts most often deal with love for the land, or love between the generations.

It can well be maintained that patriotic culture is also manifested in the laws governing the ownership of land. No private ownership is allowed in Greenland. People may build a house of their own, but they cannot acquire any ownership of the land upon which that house is built. All and any land surface is publicly owned, a fact which is of obvious practical importance to the hunters and fishermen who need to move around freely anywhere along the coastlines, in the fiords and in the highlands.

With regard to the land, all are equal. Every single Greenlander owns all of Greenland.

*

Mr. President, distinguished Members of the Court, this concludes my presentation of Greenland, its people and society. With your permission, Mr. President, I shall now leave the floor to Mrs. Kirsten Trolle who will deal with Greenland's overwhelming dependency on fishing for its livelihood.

The PRESIDENT: Thank you very much Mr. Lynge. I think it is convenient to have the break now and to continue after ten minutes. Thank you very much.

The Court adjourned from 11.15 to 11.30 a.m.

The PRESIDENT: Mrs. Kirsten Trolle, please.

Greenland's Dependency on Fisheries

Mrs. TROLLE: Mr. President, distinguished Members of the Court.

When describing Greenland fisheries let me start out by recalling the Greenland Home Rule management of fisheries.

Denmark has delegated the legislative and administrative powers - and also the power of the purse - to Greenland Home Rule authorities with regard to most aspects of life in Greenland.

It was evident from the start of planning for Home Rule, that Greenland self-financing was not yet possible in all capital-intensive fields. To facilitate the transfer of powers to Home Rule in fields still requiring Danish subsidies, an instrument was created in the Home Rule Act by which Danish subsidies are not earmarked for specific purposes, but granted as a lump sum.

Thus, the Home Rule authorities have the freedom to determine the order of priority for expenditure of such allocated funds from Denmark. By way of this instrument the Home Rule powers are not governed by considerations of economic support.

This function of Home Rule as well as the institution of Home Rule in itself is rather unique in the world. The model of Home Rule is regarded as an ideal by other indigenous people around the world. This was noted at the United Nations Conference held in Greenland in 1991 on Internal Self-Government for Indigenous People.

The solution found for Home Rule in Greenland was favoured by a democratic climate in Denmark and further facilitated by the fact that the Greenland population live in a clearly-defined geographical area: Greenland.

Home Rule in Greenland, which has now existed for nearly 14 years, has shown the common will and courage to cope with Greenland affairs on Greenland conditions.

Gradually the public expenditures are being taken over by the Greenland taxpayers.

For the moment, income from fisheries is declining and income from the mining of mineral

resources belongs to the future, and remains speculative. This means that there is quite a way to go before economic independence is a reality.

Conditions in Greenland are tough. Not all parts of Greenland benefit from ice-free harbours and accordingly the basis of taxation varies considerably between the 18 municipalities. There is a system to equalize these differences between municipalities, and in addition subsidies are transferred by Greenland Home Rule to the least-favoured areas.

Thus, it is a policy of the Home Rule to support settlements where any resource basis exists, be it fisheries or hunting, in accordance with a principle of solidarity with everybody in all parts of Greenland.

In the same manner the large fishery activities generate the means of supplying public services to all of Greenland. That is the way the democratic society of Greenland functions.

The Norwegian description (Rejoinder, paragraphs 56-57) of the way of life in East Greenland calls for some comments. The population in East Greenland does not live in a friendly environment compared to that of an industrial country. The fact is that the ice covers the coast most of the year, and fisheries are confined to small-scale coastal fisheries supplemented by sealing and whaling in a subsistence economy.

We have heard how the Inuit in East Greenland first met with the Europeans only 100 years ago - so the change from nomadic hunters to present day "modern age" has taken only 100 years. Of course this has been a cultural shock, very well described for better and for worse by the former director of Musée de l'Homme in Paris, Robert Gessain, in his book *Ammassalik - ou la civilisation obligatoire* hereby describing a mandatory or forced development, which the indigenous population could not escape. While this development involved costs of disrupture of the original Inuit culture, it was never intended to undermine, nor did it in fact undermine, the Inuit self-esteem or the wish for self-determination.

Sometimes in international whaling negotiations we are met with suggestions that the hunters of sea mammals in Greenland, such as the East Greenlanders, should become vegetarian or be transferred to more fertile land. This will never be the Inuit way of thinking.

Even admitting that living conditions for the people in East Greenland are at a subsistence level as they are for people in other regions of Greenland, and that the people do not have access to large-scale fisheries, this could not have a bearing on the present case. Greenland is a democratic and unified society and any resource potential of Greenland is meant to benefit the whole population of Greenland.

It is fundamental that this point should be grasped. Norway has implied that, because most of the population is on the west coast, therefore they have no need of fisheries off the east coast. This is not the situation. The need for these fisheries is acute - for the benefit of the Greenland society as a whole.

Are there alternatives to fisheries in Greenland?

Efforts have been made over the years to find alternatives to fisheries, but without any obvious solutions being found.

Sheep-breeding is possible in southwest Greenland - in the area where Eric the Red settled, but it cannot expand above the existing level because of the scarce vegetation, and climatic conditions even there are too harsh to create sufficient winter fodder for the sheep.

This means that lamb meat production is extremely expensive and cannot compete on the world market - even if it meets every FAO or EEC food quality standard. The sheepskin products are exported and create some income, but this is very marginal.

Exploitation of mineral resources is no more than a future prospect. Explorations are being undertaken, but it is uncertain whether foreign investors can be attracted by the mineral resource potential of Greenland. The optimistic view expressed in this respect in the Norwegian Rejoinder (para. 86) is not, so far, substantiated.

Efforts are being made to develop tourism, but this requires an elaborate infrastructure, is costly and even an uncertain project given the vulnerable Arctic environment.

Fisheries

The fisheries sector, therefore, is the cornerstone of the Greenland economy and is expected to continue to be so.

Today (1991 figures) fisheries exports account for 95 per cent of total exports from Greenland.

Mr. President, I shall now describe how the Greenland fisheries developed in this century, before the extension of 200 nm zones - and before the introduction of Home Rule.

It has been described to the Court how the Inuit population through thousands of years has been able to adapt to and to survive the hardships of the Arctic and any climatic changes by moving along with the land and sea resources, which were also responding to climatic changes, in their search for food.

The gradual development from the hunting from kayaks - small, hand-made skin boats - to the large-scale modern trawler fishery has taken place in this century.

1920s

One event of great significance for Greenland took place about 1920, when an increase of sea temperature was followed by a large invasion of cod to the West Greenland waters. This formed the start of an inshore cod fishery soon to become the main trade in Greenland, and later to be supplemented by an inshore shrimp fishery in the Disco Bay.

Also in the 1920s, a Norwegian and British fishery for halibut developed. About the intensity of this fishery, it is said that, in one year, the length of all longlines could have reached three times around the earth following the Equator. The result was, at any rate, that the stock of halibut became extinct and, consequently, also the Greenland utilization of this stock had to stop and the factory for producing preserved halibut for export had to close in 1935.

1950-1972

During the 1950s and 1960s, the cod stock off West Greenland alone frequently yielded catches in excess of 300,000 (metric) tonnes, with peak yields of around 450,000 tonnes in some years. However, catches declined rapidly in the early 1970s.

A large fleet of foreign fishing vessels was attracted to the Davis Strait mainly for this cod fishery: it included British, German, Portuguese, Spanish, Faroese, Norwegian and others. The

ratio of foreign and Greenlandic catches during this period before the extension of fishery zones is illustrated in the Danish Reply: Greenland did not benefit much from all these foreign activities and, during the 1950s and 1960s, Greenland catches accounted for only about 5 per cent of the total catches.

In Greenland, after the constitutional change in 1953, Danish investments had financed a land-based fishing industry, with a capacity for freezing that made it possible to exploit and produce also other fish species.

To supply the new factories the small-scale inshore fishery was insufficient, and a large project to acquire seagoing trawlers was launched in the 1970s.

Unfortunately, the launching of this trawler project coincided with a decrease in sea temperature, which meant a decline of the cod stock. Greenland fishermen had to look for other resources, and the newly-found offshore shrimp stocks became of the greatest importance.

The variations of mean temperatures that occurred were in the range from plus 1.5 to minus 0.5 degrees Celsius.

Seen in perspective, it seems from recent climatic research that a long, mild period like the one occurring from 1920 to 1970 would probably only take place once every 1,000 years. If this holds true, the perspectives for abundant cod stocks in Greenland waters are dark.

Over the last 100 years it can be clearly demonstrated that the yearly recruitment to the cod stock is positively correlated with temperature. But from these facts there is a long way to go to be able to predict the size of future cod stocks. Many other factors than temperature (sea current velocity for one) must be taken into account. A full insight into the processes which generate year-class variability of cod still has to be obtained.

At present, cod stocks in Greenland are in a serious decline. Greenland knows the lesson of the vulnerability of fish stocks in the Arctic waters and has been planning accordingly, in order not to rely upon one single species but on a diversity of species.

A multi-species exploitation conforms to the old Greenlandic hunting culture but, transformed into large-scale commercial fishery, this requires a similar diversity in technology and equipment. A

cod trawler cannot immediately be turned into a shrimp trawler.

The shrimp stocks in Greenland have until recently shown a great stability. They are not vulnerable to the climatic changes which affected the cod, and this valuable resource has, for some years, been the great saviour of the Greenland economy.

But an expansion of the shrimp fishery above the current level is not possible without endangering the stock.

Other species have to be relied upon, and a diversity of species exist in the Greenland waters.

1972-1985

Mr. President, I shall now turn to the period after the extension of zones.

In 1972, Greenland became a part of the EEC, together with Denmark. When Denmark and the other EEC countries, in 1977, extended their fishery zones to 200 nm, the implication was that the Greenland fishery zone became part of the total EEC fishery zone.

This further implied that the exclusive authority to establish total allowable catches (TACs) for the fishery resources in Greenland waters was vested in the EEC. The same applied with regard to the authority to distribute fishing rights to the EEC countries and to third countries, such as Norway, with whom the EEC had fishery agreements.

Other countries, fishing before in international waters around Greenland, had no longer access, unless special agreement to this effect was concluded with the EEC.

All through the EEC period, Norway obtained fishing rights in the Greenland zone of 2,500 tonnes of shrimp per year, 200 tonnes of halibut and 400 tonnes of Greenland halibut, and Norway is still today enjoying exactly those access rights. And they are still obtained today via the EEC.

The total fishery dependency of Greenland was recognized by the EEC and quotas were allocated to Greenland to meet the capacity of the existing fleet.

But as cod stocks were still at a low level during the EEC period, Greenland's expansion of this fishery was curtailed because of competition from the EEC cod fleet.

1985

As it has been described to the Court by my colleague, Mr. Finn Lynge, Greenland opted out of the EEC as from 1985 and, from then on, the Home Rule authorities assumed full legislative and administrative powers and responsibility for fisheries in Greenland waters.

At the same time Greenland/Denmark entered into a 10-year fishery agreement with the EEC, establishing the principles for EEC access to Greenland waters.

It turned out once more, in the first year of the agreement, that cod stocks had declined further: Greenland was not able to obtain its minimum quota and the EEC cod quota had to be annulled. Greenland then compensated the EEC with other species, such as redfish, capelin and shrimp, in accordance with the agreement.

Norwegian access

So, what is left over from the EEC period are the following facts, that Greenland accords fishing rights to the EEC and priority to surplus of specific fish stocks in Greenland waters; and Norway obtains its access for shrimp and the other quotas mentioned via the EEC.

The EEC pays a yearly sum, approximately US$36 million, to Greenland for the fishing rights offered in Greenland waters, including the rights reallocated to Norway (Reply, para. 127). In the world of today, governed as it is by economics, nothing is for free, especially as fish is highly in demand as a food resource. The sum is paid by the EEC, whether EEC quotas are utilized or not.

Norway has argued (paragraphs 92, 109, 111 of the Rejoinder) that the EEC/Greenland agreement contains "paperfish", and that the EEC do not utilize its quotas.

The argument shows a misconception of the Greenland/EEC agreement: the fishing rights to the EEC in the Greenland zone are fixed quotas for particular species over a 5-year period. In the first period from 1985-1989 they amounted to approximately 129,000 tonnes per year (including transfers to Norway), and they were based on the previous EEC catch performance.

For the next period 1990-1994, EEC quotas were adjusted up to approximately

156,000 tonnes per year, adding 30,000 tonnes of capelin to the EEC quotas. This does not imply as argued by Norway in the Rejoinder (para. 92) a drastic change in availability of fish in Greenland and it certainly does not imply, as suggested by Norway *(ibid.)*, that this adjustment to 156,000 tonnes is out of line with scientific recommendations. That is not the case: 30,000 tonnes of capelin were added to the fixed EEC 5-year quotas.

The EEC could not foresee that the cod would disappear, and if the EEC proves to have lost interest in for instance redfish, caught together with cod, in Greenland waters, this will all come to light when the EEC/Greenland agreement has to be renegotiated in 1994.

Anyway, the paperfish discussion is irrelevant in this context.
What is relevant and what should be satisfactory to Norway is the fact that the Norwegian quotas are not paperfish: the valuable Norwegian shrimp quota in Greenland waters is fished by 19 Norwegian vessels and fully utilized.

Mr. President, I shall comment briefly on the ratio between Greenland and foreign fishery in the Greenland zone.

The Greenland share of total catches in Greenland waters has grown rapidly since the extension of the zone in 1977 and 1980. Greenland vessels are now taking 78 per cent of the total catches measured in tonnes of fish in the Greenland fishery zone as opposed to only 46 per cent in 1978.

So, while the resources of the Greenland fishery zone are to a very large extent utilized by Greenland vessels, the modern Greenland fishing fleet is not yet sufficiently large nor sufficiently specialized to allow Greenland to exploit itself the full potential of the resources of Greenland waters.

In this situation it is a common practice - and stipulated as a requirement in the Law of the Sea Convention - to allocate to third States the surplus resource that the coastal State is not currently exploiting itself. Greenland is utilizing such surplus for the benefit of the whole of the Greenland community by issuing fishing licenses to third States, primarily under the EEC agreement.

Statistics

At this point it is essential to clarify the different approaches taken by Denmark and Norway when presenting fishery statistics for the period after the extension of 200 nm zones.

1. First, it has been the Danish approach to illustrate the fisheries activities solely within the Greenland [fishery zone, including the disputed area].

2. Secondly, for these zone activities to show the ratio between Greenland and foreign activities, thereby demonstrating the efforts of Greenland to utilize the potential of its zone as far as possible and to an increasing degree, by Greenland vessels.

3. Thirdly, and maybe most importantly, to show which countries have an access against payment to the Greenland zone:

These countries are:

First: the EEC countries. (By the EEC normally distributed to: France, the United Kingdom, Germany and Denmark), and second: via the EEC agreement: to Norway and the Faroe Islands.

These are the facts which are important to clarify.

The statistics submitted in the Norwegian Counter Memorial (Appendix 5) which had later to be corrected by Norway, are taken from statistical areas used by the scientists for the assessment of stocks, for instance ICES areas off East Greenland. These areas are illustrated in the Norwegian Rejoinder, page 31.

These areas have as little regard for boundaries as the fish stocks. This is illustrated here by adding delimitation lines to the ICES map presented by Norway. Norway is referring to ICES XIV, *(a)* and *(b)*. These areas reach beyond the Greenland zone.

In this way for instance the volume of Norwegian catches of redfish appears in the Norwegian statistics, but they are not caught in the Greenland zone: Norway has no access to redfish in the Greenland zone (Rejoinder, table 8, page 33).

Use of ICES XIV (*(a) + (b)*) further means that activities taking place outside the Greenland zone by for instance the former USSR and other nations mentioned in the Norwegian Rejoinder (paragraph 100 and table 7, page 32) are included in the presentation of statistics by Norway.

But, Norwegian and other activities outside the Greenland zone can continue unhampered by the present case. And the volume of activities in the Greenland zone should not be counted against total catches in an area set for scientific purposes before the 200 nm zones existed.
(Norwegian Rejoinder, para. 99).

So the ICES statistics are really irrelevant to the present case.

The disputed area

The Norwegian use of ICES statistical areas in the written pleadings as opposed to activities in national fishery zones leads to strange results when activities in the disputed area are described. The ICES area XIVa comprises partly the disputed area, plus part of the Greenland zone, plus part of the Icelandic zone, and a small corner of the undisputed Jan Mayen zone, all north of 68° N.

It is then spelled out in great detail by Norway (Rejoinder, paragraph 103) that no Greenland shrimp catches have been recorded in ICES XIVa. That is true. Greenland fishermen have not taken shrimp in the Greenland zone north of 68° nor in the disputed area. Shrimp have not been found in any fishable density here. And Greenland fishermen do not have access to the Icelandic zone or to the Jan Mayen zone for shrimp fishery. Norway itself has not taken its shrimp quota in Greenland waters in this area.

Norway then explains (Rejoinder, para. 138) that in the undisputed part of the Jan Mayen zone a shrimp fishery has been developed. And by further adding ICES area II to the statistics, Norway present shrimp catches north of 68° (Counter-Memorial, Annex 5, corrected reprint, table 5.5). But again, this shrimp fishery has nothing to do with the present case.

What then was the purpose of mentioning the lack of Greenland shrimp fishery in the Greeland zone north of 68°? It would seem solely to serve the purpose of generally belittling Greenland activities, and this in a misleading and confusing presentation.

Capelin fisheries

I would like to dwell for a moment specifically on the capelin fishery, which has been one of the root causes of the present dispute. The capelin is migrating between the zones of Jan Mayen,

Iceland and Greenland.

The volume of the capelin stock varies from year to year whether due to climatic changes, sea-current velocity or many such factors combined.

The capelin is mainly used for industrial purposes, such as processing into fish-meal and oil, and while quotas in metric tonnes might seem large, the value of one ton of capelin generally equals one-tenth of a ton of cod.

While Greenland would like to see all resources within its waters utilized by Greenland vessels, enough lessons were taught by experience so as not to engage in the fishery of a resource seen to be vulnerable to climatic changes and unstable in its occurrence, and to be taken within a very short season.

Greenland was not in a position to invest in specialized fishing vessels, when there was no guarantee of a reasonable return on that investment. It was natural, therefore, for Greenland to take a cautious approach and it was natural to enter into negotiations with Faroese vessels to take the Greenland share as a supplement to the fishery of other industrial fish by Faroese purse seiners.

The tripartite agreement between Iceland, Norway and Greenland/Denmark, which was agreed after the initiating of the present proceedings before the Court, provides for a Greenland share of the capelin stock of 11 per cent. It further offers the possibility of mutual fishing and landing rights inside the other parties' zone. The agreement constitutes the first example of Greenland's access to a foreign zone. On the basis of these increased catch opportunities for capelin, Greenland now ventures to invest in one small purse seiner this year. It will have its home port in Ammassalik, meaning the place where capelin abound, in East Greenland.

The tripartite agreement has been prolonged until April 1994. It constitutes a modus between these parties to handle the migratory joint stock of capelin, for the purpose of day-to-day fisheries management, thereby necessarily setting aside the unsolved question of delimitation now before the Court.

In accordance with the agreement, Greenland has sold part of its capelin share to the other parties, Norway and Iceland, after having given the EEC the first option under the EEC agreement.

Other obligations rest with the Greenland 11 per cent share of the capelin: from 1990 the EEC agreement was adjusted, as I have already mentioned, so that on top of the 10,000 tonnes of capelin to be transferred to the Faroe Islands, further 30,000 tonnes per year were allocated to the EEC out of the Greenland share.

This is a small quota for industrial fish and it has not been utilized by the EEC. But it is still an asset for the EEC and is considered as such. This is demonstrated by the fact that this quota entered the free-trade agreement between EEC and EFTA countries, whereby the EEC capelin quota of 30,000 tonnes in Greenland waters is traded away by the EEC to Iceland against 3,000 tonnes of redfish to the EEC in Iceland waters.

Norway is trying to belittle the Greenland interest in or the value of capelin fisheries (Rejoinder, paras. 133-134). Once again it must be stated that a Greenland share of the capelin stock is to be regarded as a Greenland potential - to be fished by Greenland fishermen or to be licensed away to other parties and all income derived from this is for the benefit of the Greenland population as a whole. The actual income to be obtained depends on the talent of negotiators and market conditions. One example of a price stems from the fixed yearly EEC payment for EEC quotas in Greenland, another example is constituted by the price agreed between Norwegian and Greenland companies.

East Greenland

It has been argued by Norway (Rejoinder, para. 96) that most of the non-Greenland fishery in the Greenland zone is taking place off the western coast. But Greenland looks on its waters and fishing grounds as a whole, and this is accepted by other States. For example, it has been possible for Greenland in the second fishery protocol with the EEC starting in 1990 to transfer some EEC (and Norwegian) quotas from the West to the East Greenland part of the zone. And further, during the serious decline in cod stocks, the EEC fishermen have been allowed by Greenland to pool their cod quotas of West and East Greenland, if the cod were to be found at all.

As the host country for these fisheries Greenland has the prerogative of managing the fisheries

and the option of administering its own and the foreign fishery. Wherever the fish are caught, they are part of the Greenland zone potential.

It is also argued by Norway (Rejoinder, para. 104) that Greenland's own quotas in East Greenland (apart from shrimp) "appear unrelated to past catch performance".

Again, Greenland as the host country has the right to reserve quotas for its own use without having to establish past catch performance. All developing countries seek to expand their domestic fish catches. They do not usually regard their right to a fish catch as being limited by past performance. Nor does international law.

Marine mammals

Mr. President, I shall need to go into some detail about marine mammals which are still a resource of undoubted value within the disputed area. I shall deal especially with the utilization of seals off the East Greenland coast. I shall do so, not because the resource breeding on the Eastern ice-edge has been utilized by or is accessible for Greenland (which it has not), but more because Norway has relied on its long-established practices of hunting for these mammals off Greenland's coast. Apparently Norway sees in this practice a reason to support its claim for full effect for Jan Mayen.

That is not our opinion. The Norwegian practices show us three things:

1. The incidence of sealing and whaling in these areas increases the need for a boundary.

2. The Norwegian sealing practice has continued in defiance of Greenland's regulations.

3. The Norwegian practice is, in any event, an example of a distant-water fishery, conducted from Norway. Its existence does not in any way reduce or weaken Greenland's claim under contemporary international law to a full 200-mile zone.

After the extension of the Greenland fishery zone, Greenland has for a long period given free access to Norway in the Greenland zone, for catches of whales and seals.

Norwegian whaling in Greenland waters was stopped by Greenland from 1986 in order to comply with International Whaling Commission regulations.

Norwegian sealing in Greenland zone was stopped by Greenland from 1989 in order to protect

the traditional Greenland sealing from further damage, caused by continued campaigns against commercial sealing.

There has been no wish on Greenland's part to expose the Norwegian sealing practices in the present case. This issue, however, has been given prominence by Norway, not by Denmark. So it seems that a comment on the Norwegian sealing in the present case cannot be avoided.

In the Norwegian written pleadings great emphasis is put on Norway's interests in the area between Greenland and Jan Mayen, described as "a region which Norwegians have habitually regarded as a familiar area of operations for their maritime industry" (Rejoinder, para. 78). Such interests, however, do not create legal rights. Norway stresses, that Norway has been "utilizing" the waters in Denmark Strait for nearly one and a half centuries etc. (Rejoinder, para. 77). The so-called West Ice is the Norwegian term for the edge of the polar drift ice as situated off East Greenland in a given year. In the Norwegian Counter-Memorial (Appendix 3, pp. 222-223) it is shown how the Norwegian sealing has taken place in the disputed area as well as in the undisputed Greenland zone up to 1986. This happened, but with the consent of the Greenland/Danish authorities and on special conditions.

Recently it has been discovered that Norwegian sealing has taken place in 1989, 1990 and 1991 in undisputed Greenland areas as well as in the disputed area, without any notification to, or permission from, the Greenland authorities (see Danish Annexes 92 and 93).

Thus Norway apparently refuses to accept that times have changed. New internationally recognized maritime zones of 200 nautical miles have been established elsewhere in the North Atlantic region, but Norway blithely continues to harvest the resources, as in the good old days before the new 200-mile zones existed, as if no restrictions existed on the Norwegian search for distant-water resource potential (paragraph 112 of the Counter-Memorial).

It has been saddening to experience this disregard for Greenland decisions with regard to the hunting of seals, which from 1989 led Greenland to put a stop to the Norwegian activities in that respect - a decision which has simply not been respected by Norway.

For the present case these events once more underline the need for a delimitation in order to

monitor in full the Greenland zone and to have Greenland management measures respected in all parts of the Greenland zone.

The discussions between the parties in the North Atlantic have now led to an Agreement on Co-operation in Research, Conservation and Management of Marine Mammals in the North Atlantic (NAMMCO). This co-operation does not, however, diminish the need for exact boundaries as has already been explained by Mr. Lehmann in his first intervention yesterday.

Latest developments and conclusion

I have described here the principal aspects of the Greenland fisheries' development, while at the same time addressing the Greenland/Norway relations. As should now be clear, these relations have mostly dealt with Norwegian access to Greenland waters.

For obvious reasons Greenland has not had a tradition for obtaining fishing rights in the zones of other States. Because of the present decline of cod stocks in Greenland a need for a Greenland cod fishery outside the Greenland zone has arisen. Negotiations with Norway have now led to a reciprocal fisheries agreement with Norway.

The reciprocal exchange of quotas, tonnes for tonnes, in the first protocol for 1992 and 1993 is relatively small in absolute figures. Greenland is still obliged to give the EEC the first option. But the trend has been set for a fruitful co-operation in the future.

A final delimitation of the maritime boundary which renders justice to Greenland will, we believe, have a stabilizing effect in the region and will help to facilitate further constructive co-operation and joint management of fisheries and marine mammals as between the parties to the present dispute, as well as with the other interested countries in the region.

On this positive note, Mr. President, I wish to conclude my presentation on Greenland's dependency on fisheries, which are of vital importance to the Greenland population and society. Thus, the relationship between the land, the population and the livelihood of the people becomes an important factor in reaching an equitable solution in the present delimitation dispute.

I thank you, Mr. President, distinguished Members of the Court, for your patience in listening to my intervention.

The PRESIDENT: Thank you very much. I gather Dr. Jiménez de Aréchaga would be prepared to make a start on his presentation in the remaining time.

Dr. JIMENEZ DE ARECHAGA: Mr. President, distinguished Members of the Court.

I have the great honour of addressing you, in order to examine the rules of international law, which, in Denmark's submission, are applicable to the present dispute.

I shall begin, Mr. President, by referring to the Norwegian contention to the effect that a treaty concluded in 1965 between Denmark and Norway, establishing the median line as the maritime boundary in the North Sea, also decided the present dispute which concerns the limits between Greenland and Jan Mayen.

1. The 1965 Treaty of Delimitation concerning the North Sea

This argument, which Norway has described as the "primary basis" of its legal position (Counter-Memorial, para. 280) has been referred by Denmark as "indeed astonishing". And it is so, because it ignores basic principles and rules of treaty interpretation.

Norway tries to isolate Article 1 of this Agreement and divorce it from its context, particularly from Articles 2 and 3, which define the object and purpose which was contemplated by the Parties, namely, to establish the boundary of their respective continental shelves in the North Sea.

The object of this Treaty is defined by its Article 2, which provides that, "the boundary shall consist of straight lines", passing through eight points in the North Sea, these geographical co-ordinates to be drawn on a Norwegian hydrographic chart constituting "an integral part of this Agreement".

There was no meeting of minds to establish a general rule for future delimitations beyond the North Sea. Norway has not furnished any evidence suggesting that the Parties contemplated that Article 1 could be isolated and might apply to future delimitations, such as the one before the Court.

On the contrary, Denmark has furnished to the Court a new document, a Press Release from the Ministry of Foreign Affairs of Norway. In this Press Release is defined, in clear and precise

terms, the object and purpose of the 1965 instrument, declaring that the 1965 Treaty, was a treaty for *"the delimitation of the continental shelf in the North Sea"*.

Three things must be emphasized in examining this Norwegian press release. *First*, it defines clearly the object of the 1965 Treaty. It states in so many words that this treaty is an "agreement entered into by Norway concerning the delimitation of the continental shelf in the North Sea". *Second*, the Norwegian press release says that this is "the second agreement entered into by Norway concerning the delimitation of the continental shelf in the North Sea". In this way, the press release refers to another treaty, one which was concluded between Norway and the United Kingdom, which is very similar to the 1965 instrument, and obviously, was its model and source. Now this UK-Norway Treaty, which also mentioned a Danish tripoint in the North Sea, could only find application, for obvious geographical reasons, in the North Sea. *Third*, the Norwegian press release states that the 1965 treaty effected a delimitation in the North Sea. I repeat, effected a delimitation in the North Sea.

This admission by Norway, that the treaty effected a delimitation, destroys the artificial argument made in the Rejoinder that Article 2 of the 1965 Treaty had a different object than that of Article 1 and that its real object was to effect, not a delimitation, but a demarcation in the North Sea. Not only is this alleged distinction between delimitation and demarcation contradicted by the press release; it is also unfounded.

The Court, and arbitration tribunals, when authorized by the Parties to draw a line of delimitation, have often recurred to geographical co-ordinates. As a matter of fact, Articles 75 and 84 of the Law of the Sea Convention authorize the use of geographical co-ordinates to effect a delimitation.

It never occurred to any one that the judicial or arbitral tribunals, when using geographical co-ordinates, were demarcating and not delimitating, and were, therefore, going beyond their terms of reference.

2. The 1979 Bilateral Treaty concerning the Faroes Islands

Another serious difficulty of the Norwegian "primary legal argument" based on the 1965

Treaty results from the conduct of Norway when it concluded in 1979 another delimitation treaty with Denmark, this time concerning the boundary with the Faroe Islands.

Then, the Norwegian Government submitted this treaty to its Parliament and, in that submission, it expressly recognized that a new agreement was required, because (and I quote from the Norwegian official communication to its Parliament): the 1965 "agreement did not, however, cover the delimitation of the Continental Shelf area between Norway and the Faroe Islands" (Annex 84 to the Danish Reply).

This assertion demonstrates that the Norwegian authorities did not regard the 1965 instrument, 14 years after its conclusion, as applying to every one of the shelf delimitations which were pending between the two countries.

The first phrase in the Preamble of the 1979 Agreement states that the Parties concluded the treaty, after "having decided to delimit the continental shelf in the area between Norway and the Faroe Islands".

Thus, a decision was reached in 1979 to proceed, at that date, to a delimitation of the maritime areas between Norway and the Faroese Islands. No reference was made to the fact, alleged by Norway, that such a decision had already been made 14 years before and was merely being implemented.

The phrase in the Preamble we have just quoted refers to a delimitation "in the area between Norway and the Faroes Islands". Obviously the two parties were proceeding area by area, each case being unique. It was only when they realized that, in a given area, the median line was applicable, that they agreed on this method of delimitation. The opposite coasts between Greenland and Jan Mayen were never considered; this particular geographical situation was not in the minds of the Parties either in 1965 or in 1979. The fact that a new treaty, and not just an additional protocol to the 1965 instrument was adopted, confirms the Danish submission on this point.

All these observations lead to the conclusion that the argument that Norway tries to infer from the 1965 treaty is an after-thought, put forward for the purposes of this case, as shown by the fact that it was never invoked during the eight years of negotiations which preceded the submission of the

case to the Court.

I will deal now, Mr. President, with a different question, which is, to define what is, in Denmark's submission, the task of the Court in this case.

In our submission the task of the Court is to establish a single line of maritime delimitation; an all-purpose boundary line.

3. The task of the Court: a single line of delimitation

In the present case there is no special agreement defining the task of the Court. However, it has been established by the Court's jurisprudence that in such a situation the judicial task is defined by the Court on the basis of the submissions of the Parties.

> In the Lotus case the Permanent Court stated that:
> "having obtained cognizance of the present case by notification of a special agreement concluded between the Parties in the case, it is rather to the terms of this agreement than to the submissions of the Parties that the Court must have recourse in establishing the precise points it has to decide" (*P.C.I.J., Series A, No. 10*, p. 12).

This statement of the Permanent Court has been interpreted as signifying, a contrario, that the opposite is equally true, namely that when there is no special agreement the Court has recourse to the submissions of the Parties in order to define the precise points it has to decide. In support I will quote from the well-known *Commentaire du Règlement de la Cour Internationale de Justice de Mme G. Guyomar*, who says that

> *"dans une instance introduite par requête, ce sont les conclusions déposées par les Parties qui permettent à la Cour de déterminer les points sur lesquels elle doit statuer"* (pp. 235 and 422).

> This assertion is confirmed by subsequent pronouncements of the present Court;
>
> In its Judgment in the Asylum case of 27 November 1950, the Court stated that:
> "it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions" (*I.C.J. Reports 1950*, p. 402).

And the Court added:

> "the limits of the Judgment, [are] fixed in advance by the Parties themselves in their submissions." (*Ibid.*, p. 403.)

From the submissions of the Parties in the present case it must be inferred that the task requested from the Court is to effect a delimitation of maritime areas by means of a single, all-purpose boundary line, applicable both to the continental shelf and to the fishery zones of the Parties.

Denmark clearly has asked the Court "to draw a single line of delimitation of the fishery zone and continental shelf of the Parties".

Norway's submissions are presented in two separately numbered paragraphs, asking the Court to adjudge and declare that:

> "(1) The *median* line constitutes the boundary for the purpose of delimitation of the relevant areas of the *continental shelf* ... Norway and Denmark in the region between Jan Mayen and Greenland;
>
> (2) The *median* line constitutes *the boundary* for the purpose of delimitation of the relevant areas of the adjoining *fisheries zones* ..." (Emphasis added.)

The fact that the Norwegian submissions are formulated in separate paragraphs does not alter the substantial fact that an identical boundary line is requested by Norway, the median line, both with respect to the continental shelf and the fishery zone. It follows that both Parties ask for a single or all-purpose boundary.

It would be an extreme of artificiality to accept what Norway states in its Rejoinder, where it says that the two lines it requests "would therefore coincide, but the two *boundaries* would remain conceptually distinct" (para. 657).

We fail to understand how it is possible to have two different conceptions of the same median line, which has been "calculated in the same manner in both cases". (Rejoinder, para. 657.)

In the Rejoinder (para. 653), Norway contends however that the Danish claim for a single maritime boundary "would not be admissible without a Special Agreement between the Parties".

However, we have seen that, in a case introduced by Application, the task of the Court is defined by it on the basis of the submissions of the Parties.

And in the present case the Parties coincide in requesting a single line of delimitation, applicable both to the continental shelf and the fishery zone, even if they disagree radically as to the method for establishing that line.

Even if the numbered paragraphs of Norway's submissions were to be considered as

independent one of the other, there would be, in any case, a Norwegian request for a single delimitation line.

This is so because, by its very nature, under Article 56 of the Law of the Sea Convention, the régime of the Exclusive Economic Zone includes the sea-bed and subsoil thereof. It follows that a request for the delimitation of the fishery zones, as filed by Norway in submission No. 2, will automatically and unavoidably include the underlying continental shelf.

With your permission, Mr. President, I will deal now with a different question, namely, the role in this case of Article 6 of the 1958 Convention on the Continental Shelf, and what is, in Denmark's submission, its proper interpretation.

4. Article 6 of the 1958 Convention on the Continental Shelf

The far-fetched and contrived argument advanced by Norway concerning "conceptually distinct boundaries" is designed to escape the established jurisprudence with respect to the role of Article 6 of the 1958 Geneva Convention on the Continental Shelf, in the case of a single or all-purpose delimitation.

On its part, Denmark relies and invokes that jurisprudence. In the *Gulf of Maine* case the Chamber rejected the Canadian attempt to see Article 6, intended for the delimitation of the continental shelf, to be transformed into a general rule applicable to all maritime delimitations.

Article 6, the Chamber said, constitutes "special international law", governing between the parties only continental shelf delimitation. This *dictum* is still valid. The Chamber added that the delimitation rule in Article 6 is not, however, "in the process of becoming a norm of general application", and there is no "argument to justify the attempt to turn the provisions of Article 6 of the 1958 Convention into a general rule applicable as such to every maritime delimitation" (*I.C.J. Reports 1984*, paras. 123-124).

> On these grounds, the Chamber of the Court reached the fundamental conclusion that:
> "the provisions of Article 6 of the 1958 Convention on the Continental Shelf, although in force between the Parties, do not entail either for them or for the Chamber any legal obligation to apply them to the single maritime delimitation which is the subject of the present case" (*I.C.J. Reports 1984*, para. 125).

In so deciding the Chamber paid due regard to the need for stability and continuity in the law of maritime delimitation, by applying to the single boundary it had been asked to draw, the same fundamental rule of customary international law which the Court had established in the continental shelf delimitation cases, and continued to follow subsequently, namely the application of equitable principles in the light of all the relevant circumstances, in order to reach an equitable result.

The Chamber found support for its conclusions on the symmetry of language employed in Articles 74 and 83 of the Law of the Sea Convention and on the parallelism of the Exclusive Economic Zone and Continental Shelf regimes (para. 96).

As the full Court subsequently stated in the Malta/Libya case in 1985 "the two institutions, Continental Shelf and the Exclusive Economic Zone - are linked together in modern law" (*I.C.J. Reports 1985*, para. 33).

It cannot be disputed that the practical convenience of a single maritime boundary has led States to its use in numerous delimitation agreements, to the point that the all-purpose boundary line has become today a settled general practice.

Going against the current of the Court's settled jurisprudence, Norway insists on the applicability of Article 6 with the intention of deriving from this provision a support for its claim to the median line.

But, as already mentioned in the initial presentation by the distinguished Agent for Denmark, Mr. Lehmann, it has been established by the Court of Arbitration between France and the United Kingdom in 1977 that the support for equidistance in Article 6 is not such an absolute one, since this Article also refers to "special circumstances". The Court of Arbitration held that Article 6 did not contain two separate rules, or even a rule and an exception, but a combined single rule, and that the purpose of the "unless" clause was to ensure that the delimitation is to be determined by the application of equitable principles.

This interpretation of the word "unless" confirms the wisdom of the observation made by an experienced Foreign Minister in my country who said that: diplomatic notes and treaty provisions

must be read carefully when one reaches the word "unless", in Spanish "a menos que". It is there when the text acquires its full meaning. In this way the 1977 Court of Arbitration incorporated into Article 6 the equitable considerations which had been proclaimed by the Court in 1969.

In any event, and whatever interpretation is given to Article 6, it has been demonstrated in previous interventions and will also be dealt with by my colleague, Professor Bowett, later during the Danish presentation, that even if Article 6 were to apply as the governing rule, there are in this case "special circumstances", prominent among them the total absence of normal human habitation in Jan Mayen and the marked difference in the length of the opposing coasts, a feature which has been described by the Chamber in the Gulf of Maine case as "a special circumstance of some weight" (*I.C.J. Reports 1984*, p. 322, para. 184).

But Norway makes another attempt to avoid the application of "special" or of "relevant" circumstances. It contends that Article 6 is applicable, but without the "unless" clause, without the proviso which refers to "special circumstances".

It is interesting to see how Norway performs this extraordinary surgical operation to remove the unless clause which is an indispensable part of the combined single rule of Article 6.

Norway contends that the 1965 bilateral treaty, which we have examined already, in its Article 1, had the effect of eliminating the reference to "special circumstances" in Article 6, by way of derogation. Thus, it contends that the bilateral treaty of 1965, containing no proviso eliminated the unless clause in Article 6. The whole argument is based on the derogation of Article 6 of the 1958 Convention by Article 1 of the 1965 treaty, this treaty of 1965 allegedly being "lex posterior".

But in making this argument an essential point is forgotten, namely, that Norway only acceded to the 1958 Convention in 1971, so the binding force between the Parties of the 1965 treaty preceded that of Article 6. Article 6 of the Convention, containing the unless clause of "special circumstances" is between the Parties, the "lex posterior" which "derogat priori". Consequently, it is impossible to accept that Article 1 of the 1965 Treaty, even if interpreted as Norway does, may have the effect of depriving Denmark, by a sort of renunciation given in advance, of its right to invoke vis-à-vis Norway the existence of special or relevant circumstances, which is a right Denmark

derives from the subsequent multilateral Geneva convention, which only entered into force between the Parties in 1971.

So, the Norwegian argument is not tenable legally. But even apart from that it is contrived and artificial. There is, in fact, a very simple explanation of why, in 1965, Norway and Denmark made no reference to "special circumstances". This is that they were dealing solely with the North Sea and in that area a median line would produce an equitable result.

I reach now, Mr. President, the fundamental submission of Denmark concerning the applicable law. This is, in our view, the customary law which has been elaborated by this Court.

4. The Customary Law elaborated by the Court

Having discarded both the 1965 bilateral Treaty, and the 1958 Geneva Convention, as not applicable to the single line delimitation requested in this case, what remains as applicable law is what has been described by a distinguished private lawyer when first taking part in an international case, as "the amorphous but formidable jelly-fish of customary international law".

However, the customary law concerning maritime delimitation cannot be described as an "amorphous but formidable jelly-fish". The reason is that this Court, faithfully followed by some *ad hoc* arbitration tribunals, has fleshed out and has defined in successive judgments the contents of the customary international law applicable to maritime delimitation. Denmark has come to the Court relying entirely on that established jurisprudence, which represents the result of a magnificent effort of this body in constructing, almost *ex nihilo*, a coherent law of maritime delimitation.

The main thrust of that jurisprudence is the rejection of equidistance as an obligatory rule of law; it is only a method and not even a preferred or privileged method.

It can be used as a method only when the circumstances are appropriate; that is to say, only when it produces an equitable result.

In this respect, it is worthwhile recalling that in the 1969 judgements in the *North Sea* cases, Denmark was on the losing side and the Court did not accept its submission advocating equidistance as a mandatory rule of customary international law. Consistent with that submission, Denmark had

previously concluded some treaties concerning the North Sea based on equidistance.

In the light of the Court's decision of 1969, it would be unjustified to claim, as Norway in effect does, that Denmark must remain bound to its original position, and is deprived of the right to adjust that position and take advantage of the law as it was declared by the Court.

Norway contends, against the settled jurisprudence, that the median line constitutes not only the point of departure but also the point of arrival of this delimitation; and that it must always be examined as a first step in the process.

This proposition, submitted by Malta in its Counter-Memorial in the *Malta/Libya* case, was expressly rejected by the Court, in its most recent Judgment on the subject, in 1985. There the Court stated, invoking its previous judgments, that it was:

> "unable to accept that, even as a preliminary and provisional step towards the drawing of a delimitation line, the equidistance method is one that must be used" (*I.C.J. Reports 1985*, p. 37, para. 43.)

And Malta's claim was properly rejected because it would make of equidistance a legal presumption.

The Court refused that claim saying:

> "the equidistance method ... does not even have the benefit of a presumption in its favour" (*I.C.J. Reports 1985*, p. 47, para. 63).

I do not need to tell the Court that in lieu of equidistance the Court has proclaimed as the fundamental customary rule on the subject that delimitation should be agreed or decided in accordance with equitable principles, in order to reach an equitable result, or as Articles 74 and 83 of the Law of the Sea Convention put it, "in order to achieve an equitable solution".

It is convenient to recall that while these developments in the Court's activities were taking place, the international community was in the parallel process of codifying and developing the new law of the sea.

As a result, the evolution of the jurisprudence was crystallized in the delimitation Articles of the Convention. These Articles may not say much, but what they do say, and most significantly, what they omit, is highly significant.

The equitable result or the equitable solution is the heart of the matter. And after many years of bitter negotiations, any direct reference to equidistance was deleted, since it was unable to attract

a consensus at the Conference. Not only would it contradict the settled jurisprudence to adopt now an approach giving priority to equidistance but also it would defy the clear signal from the international community in the delimitation Articles of the 1982 Convention.

The fact that these two delimitation provisions contain an express reference to the International Court of Justice may be seen as an endorsement by the Conference of the jurisprudence developed by the Court on the subject. As the Chamber in the Gulf of Maine case said, referring to Articles 74 and 83, these provisions "open the door to continuation of the development effected in this field by international case law" (*I.C.J. Reports 1984,* p. 294, para. 95).

And this development by international case law may be described as the search by the Court of equitable principles and of equitable considerations.

6. The search for equitable principles

In the most recent pronouncements of the Court, such as the 1985 Judgment in the *Malta/Libya* case, it is possible to notice a trend not only to rely on its own jurisprudence, but also to identify specific equitable principles, and equitable considerations so as to justify the decisions it reaches, not as emanating from the exercise of a discretionary power *ex aequo et bono*, which would change from case to case, but as based on certain principles and considerations susceptible of being formulated in general terms and being applicable to future cases. The objective is to introduce elements of stability and predictability in the decisions of the Court concerning maritime delimitation.

Thus, the Court stated in a very important passage of its 1985 Judgment in the *Malta/Libya* case, that

> "the justice of which equity is an emanation is not abstract justice but justice according to the rule of law; which is to say that its application should display consistency and a degree of predictability: even though it looks with particularity to the peculiar circumstances of an instant case, it also looks beyond it to principles of more general application. This is precisely why the courts have, from the beginning, elaborated equitable principles as being, at the same time, means to an equitable result in a particular case, yet also having a more general validity and hence expressible in general terms." (*I.C.J. Reports 1985*, p. 39, para. 45.)

In the same Judgment the Court added:

> "While every case of maritime delimitation is different in its circumstances from the next, only a clear body of equitable principles can permit such circumstances to be properly

> weighed, and the objective of an equitable result, as required by general international law, to be attained." (*I.C.J. Reports 1985*, p. 55, para. 76.)

In other words: if the law on maritime delimitation is to maintain the necessary degree of continuity and coherence, then equitable criteria must be founded primarily on the settled jurisprudence of this Court. That is where the concepts developed, and that is where they have been systematically applied.

> In a similar vein it has been said by high authority that:
> "a structured and predictable system of equitable procedures is an essential framework for the only kind of equity that a Court of law that has not been given competence to decide ex aequo et bono, may properly contemplate". I have here the exact reference which you will, Mr. President, easily recognize (President Jennings, Equity and Equitable Principles, 42 *Annuaire suisse de droit international*, 27, 38 (1986)).

7. Examples of equitable principles

And in the *Malta/Libya* case the Court did not confine itself to indicate the need for searching, within the body of its jurisprudence, for certain equitable principles "having a more general validity and hence expressible in general terms". It took a step further by giving concrete examples of some of these equitable principles which must be taken into account in effecting a delimitation.

Among these examples some which are relevant for the equitable solution of the present case may be recalled:

> "the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature, ..."
>
> "the principle of respect due to all such relevant circumstances;"
>
> "the principle that although all States are equal before the law and are entitled to equal treatment, 'equity does not necessarily imply equality', nor does it seek to make equal what nature has made unequal; and the principle that there can be no question of distributive justice" (*I.C.J. Reports 1985*, p. 40, para. 46.)

The preceding consideration, concerning the search and identification of equitable principles, also apply to another, very important equitable principle or factor, which has played a crucial role in the jurisprudence: the need to avoid disproportionate results.

8. The need to avoid disproportionate results

To compare, and take into consideration the length of the relevant coasts of the Parties, their breadth of contact with the sea, has invariably been a factor in the process of reaching equitable decisions concerning maritime delimitation: such a comparison has always influenced the final result. In the 1969 North Sea Judgments, the similar extent of the maritime fronts was the decisive factor behind the result of that case. Moreover, in the operative part of that Judgment the Court stated that a factor which had to be taken into account in a delimitation was what it called "the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles *ought to bring about* between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast" (*I.C.J. Reports 1969*, pp. 53-54, para. 101; emphasis added). The emphatic words used by the Court, "ought to bring about", are significant. An identical indication was given in 1982, in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case (*I.C.J. Reports 1982*, p. 93).

In the 1977 Arbitral Award, the Court of Arbitration made a comparison of the length of coast of the Parties and found no appreciable difference in their extent. This was the ground upon which the Court adopted a median line as the basis of the boundary, so as to grant broadly comparable areas to each Party, allowing only minimum deviations from that line to take account of the Channel and Scilly Islands. In the *Delimitation of the Maritime Boundary in the Gulf of Maine Area* case the Chamber stated that "a fair measure of weight should be given to a by no means negligible difference within the delimitation area between the lengths of the respective coastlines of the countries concerned" (*I.C.J. Reports 1984*, para. 196). As a consequence, when it came to draw the second segment of the boundary, the Chamber shifted the median line in favour of the United States, on the ground that its maritime facade in the Gulf of Maine was longer than that of Canada.

Norway invokes a *dictum* of the Court in paragraph 58 of the *Malta/Libya* Judgment, as if it signified a rejection of the principle of proportionality (Counter-Memorial, para. 509). That is a wrong interpretation of what the Court stated in that case.

In its *dictum* in paragraph 58, the Court distinguished two things: *first*, on the one hand, "to use the ratio of coastal lengths as of itself determinative of the seaward reach" and, second, on the

other hand, "the use of proportionality as a test of equity, and as a corrective of the unjustifiable difference of treatment resulting from some method of drawing the boundary line" (*I.C.J. Reports 1985*, p. 45, para. 58).

It was only the first use of proportionality as "an independent source of rights" which was justly disqualified by the Court. The Court hastened to explain in a final phrase, which Norway omits to quote, that the rejection of the first use "does not however mean that the 'significant difference in lengths of the respective coastlines' is not an element which may be taken into account at a certain stage in the delimitation process" (para. 58 *in fine*).

Later in that 1985 Judgment, the Court took into account the difference in length of the respective coasts in order to reach an equitable result. Realizing the difficulties arising in that case, and not in the present one, for a determination of the relevant areas (para. 74), the Court did not attempt "to employ proportionality calculations to check a result" (para. 66). However, in paragraph 66, the Court took note "in the course of the delimitation process, of the existence of a very marked difference in coastal lengths" and attributed "the appropriate significance to that coastal relationship". And the Court added that the "marked disparity" was taken into account as a relevant circumstance (para. 67).

As may be concluded from this summary view of the jurisprudence, the need to avoid disproportionate results is always at the heart of the exercise.

To contend, as Norway does, that the equidistance method should be rigidly applied in this case, even if it produces a delimitation which is grossly disproportionate, is an attempt to subordinate the equitable result to be achieved to the method adopted. This is precisely the opposite of the fundamental rule of delimitation, namely, that the method to be adopted should be justified by the equity of the result.

The unanimity of the jurisprudence on this question is easy to understand, for proportionality, as the Court said, is "intimately related both to the governing principle of equity and to the importance of coasts in the generation of continental shelf rights" (*Malta/Libya, I.C.J. Reports 1985*, para. 55).

The capacity to generate offshore rights depends upon physical factors which are not equally distributed. But the coasts of States are presumed to possess an equal capacity to generate an area of maritime jurisdiction. In this respect, we may recall a dictum of the Permanent Court, which said that the search for real equality "may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations" (*P.C.I.J., Series A/B, No. 64,* p. 19).

Proportionality is, in this case, the other side of the coin of those equitable principles which have been mentioned by the Court, such as the one expressed in the formula that there is to be no question of refashioning geography, or compensating for the inequalities of nature and that "equity does not necessarily imply equality nor does it seek to make equal what nature has made unequal".

Thank you, Mr. President. I thank you and the distinguished Members of the Court for your patience in listening to my intervention.

The PRESIDENT: Thank you very much Dr. Jiménez de Aréchaga. We will resume and hear Mr. Magid in the morning, at 10 o'clock.

The Court rose at 1.09 p.m.