

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS
ET ORDONNANCES

1973

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS
AND ORDERS



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FISHERIES JURISDICTION CASE

(UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND *v.* ICELAND)

JURISDICTION OF THE COURT

JUDGMENT OF 2 FEBRUARY 1973

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AFFAIRE DE LA COMPÉTENCE
EN MATIÈRE DE PÊCHERIES

(ROYAUME-UNI DE GRANDE-BRETAGNE ET
D'IRLANDE DU NORD *c.* ISLANDE)

COMPÉTENCE DE LA COUR

ARRÊT DU 2 FÉVRIER 1973

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FISHERIES JURISDICTION CASE

(UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND v. ICELAND)

JURISDICTION OF THE COURT

Jurisdiction of the Court—Applicability of a compromissory clause providing for reference to the Court on the occurrence of a specified event—Failure of one party to appear—Examination of question of jurisdiction by the Court proprio motu—Statute, Article 53—Compromissory clause in Exchange of Notes—Statute, Article 36, paragraph 1—Determination of scope and purpose of agreement—Relevance of preparatory work—Initial validity of clause—Question of duress—Duration of clause—Implementation of clause subject to condition—Changed circumstances of fact and law as ground of termination of agreement—Conditions for application of doctrine of fundamental change of circumstances—Effect of changed circumstances in relation to compromissory clause.

JUDGMENT

Present: President Sir Muhammad ZAFRULLA KHAN; Vice-President AMMOUN; Judges Sir Gerald FITZMAURICE, PADILLA NERVO, FORSTER, GROS, BENGZON, PETRÉN, LACHS, ONYEAMA, DILLARD, IGNACIO-PINTO, DE CASTRO, MOROZOV, JIMÉNEZ DE ARÉCHAGA; Registrar AQUARONE.

In the Fisheries Jurisdiction case,
between

the United Kingdom of Great Britain and Northern Ireland,
represented by

Mr. H. Steel, OBE, Legal Counsellor in the Foreign and Commonwealth Office,

as Agent,

assisted by

the Rt. Hon. Sir Peter Rawlinson, QC, MP, Attorney-General,

Dr. D. W. Bowett, President of Queens' College, Cambridge, Member of the English Bar,

Professor D. H. N. Johnson, Professor of International and Air Law in the University of London, Member of the English Bar,

Mr. J. L. Simpson, CMG, TD, Member of the English Bar,

Mr. G. Flynn, Member of the English Bar,

Mr. P. Langdon-Davies, Member of the English Bar,

as Counsel,

and by

Mr. M. G. de Winton, CBE, MC, Assistant Solicitor, Law Officers' Department,

Mr. P. Pooley, Assistant Secretary, Ministry of Agriculture, Fisheries and Food,

Mr. G. W. P. Hart, Second Secretary, Foreign and Commonwealth Office,

as Advisers,

and

the Republic of Iceland,

THE COURT,

composed as above,

delivers the following Judgment:

1. By a letter of 14 April 1972, received in the Registry of the Court the same day, the Chargé d'Affaires of the British Embassy in the Netherlands transmitted to the Registrar an Application instituting proceedings against the Republic of Iceland in respect of a dispute concerning the then proposed extension by the Government of Iceland of its fisheries jurisdiction. In order to found the jurisdiction of the Court, the Application relied on Article 36, paragraph 1, of the Statute of the Court and on an Exchange of Notes between the Government of the United Kingdom and the Government of Iceland dated 11 March 1961.

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

3. By a letter dated 29 May 1972 from the Minister for Foreign Affairs of Iceland, received in the Registry on 31 May 1972, the Court was informed (*inter alia*) that the Government of Iceland was not willing to confer jurisdiction on the Court and would not appoint an Agent.

4. On 19 July 1972, the Agent of the United Kingdom filed in the Registry of the Court a request for the indication of interim measures of protection under Article 41 of the Statute and Article 61 of the Rules of Court adopted on 6 May 1946. By an Order dated 17 August 1972, the Court indicated certain interim measures of protection in the case.

5. By an Order dated 18 August 1972, the Court, considering that it was necessary to resolve first of all the question of its jurisdiction in the case, decided that the first pleadings should be addressed to the question of the jurisdiction of the Court to entertain the dispute, and fixed time-limits for the filing of a Memorial by the Government of the United Kingdom and a Counter-Memorial by the Government of Iceland. The Memorial of the Government of the United Kingdom was filed within the time-limit prescribed, and was communicated to the Government of Iceland. No Counter-Memorial was filed by the Government of Iceland and, the written proceedings being thus closed, the case was ready for hearing on 9 December 1972, the day following the expiration of the time-limit fixed for the Counter-Memorial of the Government of Iceland.

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

7. On 5 January 1973, after due notice to the Parties, a public hearing was held in the course of which the Court heard the oral argument on the question of the Court's jurisdiction advanced by Sir Peter Rawlinson on behalf of the Government of the United Kingdom. The Government of Iceland was not represented at the hearing.

8. In the course of the written proceedings, the following submissions were presented on behalf of the Government of the United Kingdom:
in the Application:

“The United Kingdom asks the Court to adjudge and declare:

- (a) That there is no foundation in international law for the claim by Iceland to be entitled to extend its fisheries jurisdiction by establishing a zone of exclusive fisheries jurisdiction extending to 50 nautical miles from the baselines hereinbefore referred to; and that its claim is therefore invalid; and
- (b) that questions concerning the conservation of fish stocks in the waters around Iceland are not susceptible in international law to regulation by the unilateral extension by Iceland of its exclusive fisheries jurisdiction to 50 nautical miles from the aforesaid baselines but are matters that may be regulated, as between Iceland and the United Kingdom, by arrangements agreed between those two countries, whether or not together with other interested countries and whether in the form of arrangements reached in accordance

with the North-East Atlantic Fisheries Convention of 24 January 1959, or in the form of arrangements for collaboration in accordance with the Resolution on Special Situations relating to Coastal Fisheries of 26 April 1958, or otherwise in the form of arrangements agreed between them that give effect to the continuing rights and interests of both of them in the fisheries of the waters in question.”

in the Memorial:

“The Government of the United Kingdom submit to the Court that they are entitled to a declaration and judgment that the Court has full jurisdiction to proceed to entertain the Application by the United Kingdom on the merits of the dispute.”

9. At the close of the oral proceedings, the following written submissions were filed in the Registry of the Court on behalf of the Government of the United Kingdom:

“The Government of the United Kingdom contend

- (a) that the Exchange of Notes of 11 March, 1961, always has been and remains now a valid agreement;
- (b) that, for the purposes of Article 36 (1) of the Statute of the Court, the Exchange of Notes of 11 March, 1961, constitutes a treaty or convention in force, and a submission by both parties to the jurisdiction of the Court in case of a dispute in relation to a claim by Iceland to extend its fisheries jurisdiction beyond the limits agreed in that Exchange of Notes;
- (c) that, given the refusal by the United Kingdom to accept the validity of unilateral action by Iceland purporting to extend its fisheries limits (as manifested in the Aides-Memoires of the Government of Iceland of 31 August, 1971, and 24 February, 1972, the Resolution of the Althing of 15 February, 1972, and the Regulations of 14 July, 1972, issued pursuant to that Resolution), a dispute exists between Iceland and the United Kingdom which constitutes a dispute within the terms of the compromissory clause of the Exchange of Notes of 11 March, 1961;
- (d) that the purported termination by Iceland of the Exchange of Notes of 11 March, 1961, so as to oust the jurisdiction of the Court is without legal effect; and
- (e) that, by virtue of the Application Instituting Proceedings that was filed with the Court on 14 April, 1972, the Court is now seised of jurisdiction in relation to the said dispute.

Accordingly, the Government of the United Kingdom submit to the Court that they are entitled to a declaration and judgment that the Court has full jurisdiction to proceed to entertain the Application by the United Kingdom on the merits of the dispute.”

10. No pleadings were filed by the Government of Iceland, which was also not represented at the oral proceedings, and no submissions were therefore presented on its behalf. The attitude of that Government with regard to the question of the Court’s jurisdiction was however defined in the above-mentioned letter of 29 May 1972 from the Minister for Foreign Affairs of Iceland. After calling attention to certain documents that letter stated:

"Those documents deal with the background and termination of the agreement recorded in the Exchange of Notes of 11 March 1961, and with the changed circumstances resulting from the ever-increasing exploitation of the fishery resources in the seas surrounding Iceland."

The letter concluded by saying:

"After the termination of the Agreement recorded in the Exchange of Notes of 1961, there was on 14 April 1972 no basis under the Statute for the Court to exercise jurisdiction in the case to which the United Kingdom refers.

The Government of Iceland, considering that the vital interests of the people of Iceland are involved, respectfully informs the Court that it is not willing to confer jurisdiction on the Court in any case involving the extent of the fishery limits of Iceland, and specifically in the case sought to be instituted by the Government of the United Kingdom of Great Britain and Northern Ireland on 14 April 1972.

Having regard to the foregoing, an Agent will not be appointed to represent the Government of Iceland."

In a telegram to the Court dated 4 December 1972, the Minister for Foreign Affairs of Iceland stated that the position of the Government of Iceland was unchanged.

* * * *

11. The present case concerns a dispute between the Government of the United Kingdom and the Government of Iceland occasioned by the claim of the latter to extend its exclusive fisheries jurisdiction to a zone of 50 nautical miles around Iceland. In the present phase it concerns the competence of the Court to hear and pronounce upon this dispute. The issue being thus limited, the Court will avoid not only all expressions of opinion on matters of substance, but also any pronouncement which might prejudge or appear to prejudge any eventual decision on the merits.

12. It is to be regretted that the Government of Iceland has failed to appear in order to plead the objections to the Court's jurisdiction which it is understood to entertain. Nevertheless the Court, in accordance with its Statute and its settled jurisprudence, must examine *proprio motu* the question of its own jurisdiction to consider the Application of the United Kingdom. Furthermore, in the present case the duty of the Court to make this examination on its own initiative is reinforced by the terms of Article 53 of the Statute of the Court. According to this provision, whenever one of the parties does not appear before the Court, or fails to defend its case, the Court, before finding upon the merits, must satisfy itself that it has jurisdiction. It follows from the failure of Iceland to appear in this phase of the case that it has not observed the terms of Article 62, paragraph 2, of the Rules of Court, which requires *inter alia*

that a State objecting to the jurisdiction should “set out the facts and the law on which the objection is based”, its submissions on the matter, and any evidence which it may wish to adduce. Nevertheless the Court, in examining its own jurisdiction, will consider those objections which might, in its view, be raised against its jurisdiction.

* * *

13. To found the jurisdiction of the Court in the proceedings, the Applicant relies on Article 36, paragraph 1, of the Court’s Statute, which provides that: “The jurisdiction of the Court comprises . . . all matters specially provided for . . . in treaties and conventions in force”; and on the penultimate paragraph (the “compromissory clause”) of the Exchange of Notes between the Government of the United Kingdom and the Government of Iceland of 11 March 1961 (the “1961 Exchange of Notes”), which provides:

“The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland, but shall give to the United Kingdom Government six months’ notice of such extension, and, in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice.”

In its resolution of 5 May 1959 the Althing (the Parliament of Iceland) had declared:

“. . . that it considers *that* Iceland has an indisputable right to fishery limits of 12 miles, *that* recognition should be obtained of Iceland’s right to the entire continental shelf area in conformity with the policy adopted by the Law of 1948, concerning the Scientific Conservation of the Continental Shelf Fisheries and *that* fishery limits of less than 12 miles from base-lines around the country are out of the question”.

14. The meaning of the expression “extension of fisheries jurisdiction” in the compromissory clause must be sought in the context of this Althing resolution and of the complete text of the 1961 Exchange of Notes, in which the two contracting parties, referring to the discussions which had taken place concerning a fisheries dispute between them, stated that they were willing to settle that dispute on the following basis: The United Kingdom, for its part, agreed that it “will no longer object to a twelve-mile fishery zone around Iceland” (paragraph 1 of the Notes), measured from certain designated baselines relating to the delimitation of that zone (paragraph 2). It further agreed to a three-year transitional period during which vessels registered in the United Kingdom might fish within the outer six miles of the 12-mile zone, subject to certain specified times and exclusions with respect to designated areas (paragraphs 3 and 4). It also

recognized (in the compromissory clause) that the Icelandic Government "will continue to work for the implementation of the Althing Resolution of May 5, 1959" regarding its extension of fisheries jurisdiction. The Icelandic Government, for its part, agreed in that clause to give six months' notice of such extension and also agreed therein that "in case of a dispute in relation to such extension, the matter shall, at the request of either party, be referred to the International Court of Justice".

15. In an aide-mémoire of 31 August 1971 the Government of Iceland gave notice to the United Kingdom Government that it "now finds it essential to extend further the zone of exclusive fisheries jurisdiction around its coasts to include the areas of sea covering the continental shelf", adding that: "It is contemplated that the new limits, the precise boundaries of which will be furnished at a later date, will enter into force not later than 1 September, 1972." In answer to this notice, the United Kingdom Government advised the Government of Iceland on 27 September 1971 of its view "that such an extension of the fishery zone around Iceland would have no basis in international law". It also reserved its rights under the 1961 Exchange of Notes, "including the right to refer disputes to the International Court of Justice".

16. There is no doubt in the present case as to the fulfilment by the United Kingdom of its part of the agreement embodied in the 1961 Exchange of Notes concerning the recognition of a 12-mile fishery zone around Iceland, and the phasing-out during a period of three years of fishing by British vessels within that zone. There is no doubt either that a dispute has arisen between the parties and that it has persisted despite the negotiations which took place in 1971 and 1972. This dispute clearly relates to the extension by Iceland of its fisheries jurisdiction beyond the 12-mile limit in the waters above its continental shelf, as contemplated in the Althing resolution of 5 May 1959.

17. Equally, there is no question but that Iceland gave the United Kingdom the required notice of extension. In consequence, the United Kingdom having disputed the validity, not of the notice but of the extension, the only question now before the Court is whether the resulting dispute falls within the compromissory clause of the 1961 Exchange of Notes as being one for determination by the Court. Since, on the face of it, the dispute thus brought to the Court upon the Application of the United Kingdom falls exactly within the terms of this clause, the Court would normally apply the principle it reaffirmed in its 1950 Advisory Opinion concerning the *Competence of the General Assembly for the Admission of a State to the United Nations*, according to which there is no occasion to resort to preparatory work if the text of a convention is

sufficiently clear in itself. However, having regard to the peculiar circumstances of the present proceedings, as set forth in paragraph 12 above, and in order fully to ascertain the scope and purpose of the 1961 Exchange of Notes, the Court will undertake a brief review of the negotiations that led up to that exchange.

* * *

18. The records of these negotiations which were drawn up by and have been brought to the Court's attention by the Applicant, as well as certain documents exchanged between the two Governments, show that, as early as 5 October 1960, it had become apparent that the United Kingdom would accept in principle Iceland's right to exclusive fisheries jurisdiction within the 12-mile limit following the end of a transitional period. However, the Government of the United Kingdom sought an assurance that there would be no further extensions of Icelandic fisheries jurisdiction excluding British vessels, in implementation of the Althing resolution, except in conformity with international law. In the course of the discussions concerning this point both parties accepted the notion that disputes arising from such further extensions should be submitted to third-party decision. The Government of Iceland preferred recourse to arbitration, a position consistent with the proposals it had put forward and the attitude it had adopted at both Conferences on the Law of the Sea in 1958 and 1960. Its representatives are recorded in the documents brought to the Court's attention as having proposed in the bilateral negotiations on 28 October 1960 the following:

“The Icelandic Government reserves its right to extend fisheries jurisdiction in Icelandic waters in conformity with international law. Such extension would, however, be based either on an agreement (bilateral or multilateral) or decisions of the Icelandic Government which would be subject to arbitration at the request of appropriate parties.”

For its part, the Government of the United Kingdom preferred that disputes be referred to the International Court of Justice. Equally, the representatives of Iceland, while having indicated their preference for arbitration, expressed in later meetings, and specifically on 4 November 1960, their willingness to accept the International Court of Justice as the appropriate forum. Subsequent exchanges of drafts consistently contained a specific reference to the Court, which was finally included in the 1961 Exchange of Notes. In placing the terms of the proposed Exchange of Notes before the Althing on 28 February 1961, the Government of Iceland presented a memorandum which included the following statement concerning this point:

"The Government declares that it will continue to work for the implementation of the Althing resolution of 5 May, 1959, regarding the extensions of the fisheries jurisdiction around Iceland. Such an extension would, however, be notified to the British Government six months in advance, and *if a dispute arises in connection with these measures, this shall be referred to the International Court of Justice*, should either one of the parties request it." (Emphasis added.)

19. The representatives of Iceland having accepted the proposal for reference to the International Court of Justice, discussion continued as to the precise formulation of the compromissory clause, including, in particular, the method whereby the agreement to have recourse to the Court would be effected. On 3 December 1960 the Icelandic delegation is recorded as having proposed the following text:

"The Icelandic Government will continue to work for the implementation of the Althing Resolution of May 5, 1959, regarding the extension of fisheries jurisdiction around Iceland. Six months notice will be given of the application of any such extension and in case of dispute *the measures will be referred to the International Court of Justice.*" (Emphasis added.)

The delegation of the United Kingdom proposed to insert in the last phrase of this text the words "at the request of either party" in order to make it clear that the jurisdiction of the Court could be invoked by means of a unilateral application and need not require a joint submission by both parties. This however was not immediately agreed to by the Icelandic delegation. In a draft exchange of Notes put forward by the Government of Iceland on 10 December 1960 it was proposed that the assurance sought by the Government of the United Kingdom should be couched in the following terms:

"Icelandic Government will continue to work for implementation of the Althing Resolution of May 5, 1959, regarding extension of fisheries jurisdiction around Iceland. Six months' notice will be given of application of any such extension and in case of dispute the measures will, *at the request of the several parties*, be referred to the International Court of Justice." (Emphasis added.)

This proposal was not accepted by the Government of the United Kingdom, which on 16 December 1960 submitted a new text of the assurance insisting on the words "at the request of either party". This text was finally agreed to by Iceland on 13 February 1961 and the words "at the request of either party" thus appear in the compromissory clause of the Exchange of Notes.

20. A further point of difference concerned the form to be given to the

assurance contained in that clause. The proposal for a draft exchange of Notes put forward by the Government of Iceland on 10 December 1960 was unacceptable to the Government of the United Kingdom for a number of reasons set out in a Message by the Secretary of State for Foreign Affairs delivered on 14 December 1960. Included among the objections was the failure to frame the exchange as an agreement binding on the parties. As stated in the Message:

“... the assurance should be set out in an Exchange of Notes expressly stated to constitute an Agreement which would, in Her Majesty’s Government’s view, be the only way of binding both parties to accept the jurisdiction of the International Court of Justice in the event of any dispute arising over extensions of fishery jurisdiction. We regard this as essential if we are going to achieve stability in our future fishery relations as we earnestly desire.”

In a letter addressed by the Secretary of State for Foreign Affairs of the United Kingdom to the Foreign Minister of Iceland on 21 December 1960 it was also considered—

“... essential that the terms of the Assurance that any dispute on future extensions of fishery jurisdiction beyond 12 miles would be referred to the International Court of Justice, should be embodied in a form which is an Agreement registered with the Secretariat of the United Nations in accordance with the provisions of the Charter. Article 102 of the Charter specifically provides that unless so registered the Agreement cannot be invoked before any organ of the United Nations.”

This proposal was finally accepted by the Icelandic Government, and the last sentence of the Note of 11 March 1961 addressed by the Foreign Minister of Iceland to the British Ambassador reads as follows:

“I have the honour to suggest that this Note and Your Excellency’s reply thereto, confirming that its contents are acceptable to the United Kingdom Government, shall be registered with the Secretary-General of the United Nations in accordance with Article 102 of the United Nations Charter ...”

This was agreed to in the Note sent on the same date by the British Ambassador in Reykjavik to the Foreign Minister of Iceland. In its memorandum to the Althing of 28 February 1961 the Government of Iceland stated:

“Finally it is provided in the Note that it, together with the reply of the British Government, where the British Government confirms its contents, be registered with the Secretary-General of the United

Nations. In Article 102 of the United Nations Charter it is stated that only agreements that are so registered can be handled by the International Court of Justice, should a dispute arise concerning their implementation. This provision is a direct consequence of what has been said about reference of the matter to the International Court of Justice.”

The Exchange of Notes was registered by the Government of Iceland with the Secretariat of the United Nations on 8 June 1961.

21. The history of the negotiations not only shows the intentions of the parties but also explains the significance of the six months' notice required to be given by the Government of Iceland to the United Kingdom Government, for on 2 December 1960 the United Kingdom representatives stated that the assurance they were seeking should provide, *inter alia*, that, “pending the Court's decision, any measure taken to give effect to such a rule will not apply to British vessels”. The Foreign Minister of Iceland is recorded as having replied on the same date that the most difficult feature of the problem of the assurance was how to deal with the point that “if there was a dispute, no measure to apply an extension on fishery limits would be taken pending reference to the International Court”.

22. The idea of a six months' notice to be given by Iceland was first discussed on 3 December 1960 and was embodied in the formula advanced by the Icelandic delegation on that same date, which is transcribed in paragraph 19 above. This requirement of notice was agreed to by the parties. It may be assumed that they considered that such a period would allow sufficient time to settle the question through negotiations or, if no settlement were reached, to submit the whole issue to the Court, including, in accordance with the statutory powers possessed by the Court, the applicability of the measures of exclusion to British vessels *pendente lite*. Furthermore, the interpretation advanced in the letter of 29 May 1972 from the Minister for Foreign Affairs of Iceland to the Registrar of the Court, intimating that the requirement of notice limited the right of recourse to the Court to the eventuality that the Icelandic Government should “*without warning* further extend the limits” (emphasis added), does not correspond to the text of the compromissory clause, which clearly relates to the extension of the limits and not to the notice of extension. Such an interpretation is also to be discounted in the light of the history of the negotiations.

23. This history reinforces the view that the Court has jurisdiction in this case, and adds emphasis to the point that the real intention of the parties was to give the United Kingdom Government an effective assurance which constituted a *sine qua non* and not merely a severable condition of the whole agreement: namely, the right to challenge before the Court the validity of any further extension of Icelandic fisheries jurisdiction in the waters above its continental shelf beyond the 12-mile limit.

In consequence, the exercise of jurisdiction by the Court to entertain the present Application would fall within the terms of the compromissory clause and correspond exactly to the intentions and expectations of both Parties when they discussed and consented to that clause. It thus appears from the text of the compromissory clause, read in the context of the 1961 Exchange of Notes and in the light of the history of the negotiations, that the Court has jurisdiction. It has however been contended that the agreement either was initially void or has since ceased to operate. The Court will now consider these contentions.

* * *

24. The letter of 29 May 1972 addressed to the Registrar by the Minister for Foreign Affairs of Iceland contains the following statement:

“The 1961 Exchange of Notes took place under extremely difficult circumstances, when the British Royal Navy had been using force to oppose the 12-mile fishery limit established by the Icelandic Government in 1958.”

This statement could be interpreted as a veiled charge of duress purportedly rendering the Exchange of Notes void *ab initio*, and it was dealt with as such by the United Kingdom in its Memorial. There can be little doubt, as is implied in the Charter of the United Nations and recognized in Article 52 of the Vienna Convention on the Law of Treaties, that under contemporary international law an agreement concluded under the threat or use of force is void. It is equally clear that a court cannot consider an accusation of this serious nature on the basis of a vague general charge unfortified by evidence in its support. The history of the negotiations which led up to the 1961 Exchange of Notes reveals that these instruments were freely negotiated by the interested parties on the basis of perfect equality and freedom of decision on both sides. No fact has been brought to the attention of the Court from any quarter suggesting the slightest doubt on this matter.

* *

25. In his letter of 29 May 1972 to the Registrar of the Court, the Minister for Foreign Affairs of Iceland observed that the 1961 agreement “was not of a permanent nature” and added that:

“In particular, an undertaking for judicial settlement cannot be considered to be of a permanent nature. There is nothing in that situation, or in any general rule of contemporary international law, to justify any other view.”

This observation, directed against the Court’s jurisdiction, appears to

rest on the following chain of reasoning: (1) inasmuch as the compromissory clause contains no provision for termination, it could be deemed to be of a permanent nature; but (2) a compromissory clause cannot be of a permanent nature; therefore (3) it must be subject to termination by giving adequate notice. This reasoning appears to underlie the observation of the Government of Iceland in its aide-mémoire of 31 August 1971 to the effect that:

“In the opinion of the Icelandic Government . . . the object and purpose of the provision for recourse to judicial settlement of certain matters envisaged in the passage quoted above [i.e., the compromissory clause] have been fully achieved.”

26. It appears to the Court that, although the compromissory clause in the 1961 Exchange of Notes contains no express provision regarding duration, the obligation it embraces involves an inherent time-factor conditioning its potential application. It cannot, therefore, be described accurately as being of a permanent nature or as one binding the parties in perpetuity. This becomes evident from a consideration of the object of the clause when read in the context of the Exchange of Notes.

27. The 1961 Exchange of Notes did not set up a definite time-limit within which the Government of Iceland might make a claim in implementation of the Althing's resolution. It follows that there could be no specification of a time-limit for the corresponding right of the United Kingdom to challenge such an extension and, if no agreement were reached and the dispute persisted, to invoke the Court's jurisdiction. The right of the United Kingdom thus to act would last so long as Iceland might seek to implement the Althing's resolution. This was, of course, within the control of the Government of Iceland which in 1971, ten years after the Exchange of Notes, made a claim to exclusive fishery rights over the entire continental shelf area surrounding its territory and thus automatically brought into play the right of the United Kingdom to have recourse to the Court.

28. That being so, the compromissory clause in the 1961 Exchange of Notes may be described as an agreement to submit to the Court, at the unilateral request of either party, a particular type of dispute which was envisaged and anticipated by the parties. The right to invoke the Court's jurisdiction was thus deferred until the occurrence of well-defined future events and was therefore subject to a suspensive condition. In other words, it was subject to a condition which could, at any time, materialize if Iceland made a claim to extend her fishery limits, and the right of recourse to the Court could be invoked only in that event.

29. The above observations suffice to dispose of a possible objection based on views expressed by certain authorities to the effect that treaties of judicial settlement or declarations of acceptance of the compulsory

jurisdiction of the Court are among those treaty provisions which, by their very nature, may be subject to unilateral denunciation in the absence of express provisions regarding their duration or termination. Since those views cannot apply to a case such as the present one, the Court does not need to examine or pronounce upon the point of principle involved. It is sufficient to remark that such views have reference only to instruments in which the parties had assumed a general obligation to submit to judicial settlement all or certain categories of disputes which might arise between them in the unpredictable future. The 1961 Exchange of Notes does not embody an agreement of this type. It contains a definite compromissory clause establishing the jurisdiction of the Court to deal with a concrete kind of dispute which was foreseen and specifically anticipated by the parties. In consequence, when a dispute arises of precisely the sort contemplated, and is referred to the Court, the contention that the compromissory clause has lapsed, or is terminable, cannot be accepted.

* * *

30. In his statement to the Althing on 9 November 1971, the Prime Minister of Iceland alluded not only to an alleged change of circumstances with respect to fisheries and fishing techniques (which will be considered later in this Judgment), but also to changes regarding "legal opinion on fisheries jurisdiction". However, the relevance to the compromissory clause of this allusion is not apparent, since if there is a dispute as to such changes it would be embraced in the compromissory clause and might be considered as an issue going to the merits. On the other hand, it could be considered as relevant to the compromissory clause on an hypothesis familiar in the law of certain States under the guise of "failure of consideration". As such, it is linked with the assertion that, the object and purpose of the agreement having been fulfilled, it no longer has a binding effect for Iceland.

31. It should be observed at the outset that the compromissory clause has a bilateral character, each of the parties being entitled to invoke the Court's jurisdiction; it is clear that in certain circumstances it could be to Iceland's advantage to apply to the Court. The argument of Iceland appears, however, to be that, because of the general trend of development of international law on the subject of fishery limits during the last ten years, the right of exclusive fisheries jurisdiction to a distance of 12 miles from the baselines of the territorial sea has been increasingly recognized and claimed by States, including the applicant State itself. It would then appear to be contended that the compromissory clause was the price paid by Iceland for the recognition at that time of the 12-mile fishery limit by the other party. It is consequently asserted that if today the 12-mile fishery limit is generally recognized, there would be a failure of consideration relieving Iceland of its commitment because of the changed legal circumstances. It is on this basis that it is possible to interpret the

Prime Minister's statement to the Althing on 9 November 1971, to the effect that it was unlikely that the agreement would have been made if the Government of Iceland had known how these matters would evolve.

32. While changes in the law may under certain conditions constitute valid grounds for invoking a change of circumstances affecting the duration of a treaty, the Icelandic contention is not relevant to the present case. The motive which induced Iceland to enter into the 1961 Exchange of Notes may well have been the interest of obtaining an immediate recognition of an exclusive fisheries jurisdiction to a distance of 12 miles in the waters around its territory. It may also be that this interest has in the meantime disappeared, since a 12-mile fishery zone is now asserted by the other contracting party in respect of its own fisheries jurisdiction. But in the present case, the object and purpose of the 1961 Exchange of Notes, and therefore the circumstances which constituted an essential basis of the consent of both parties to be bound by the agreement embodied therein, had a much wider scope. That object and purpose was not merely to decide upon the Icelandic claim to fisheries jurisdiction up to 12 miles, but also to provide a means whereby the parties might resolve the question of the validity of any further claims. This follows not only from the text of the agreement but also from the history of the negotiations, that is to say, from the whole set of circumstances which must be taken into account in determining what induced both parties to agree to the 1961 Exchange of Notes.

33. According to the memorandum submitted by the Government of Iceland to the Althing on 28 February 1961, together with the proposed Exchange of Notes, the agreement comprised:

“... four main points:

- (1) Britain recognises immediately the 12 mile fishery zone of Iceland.
- (2) Britain recognises important changes in the baselines in four places around the country, which extends the fishery zone by 5065 square kilometres.
- (3) British ships will be permitted to fish within specified areas between the 6 and 12 mile limits for a limited period each year during the next three years.
- (4) The Government of Iceland declares that it will continue to work for the implementation of the parliamentary resolution of 5 May, 1959, regarding the extension of the fisheries jurisdiction around Iceland and that any dispute on actions that may be taken, will be referred to the International Court of Justice.”

Undoubtedly certain of these provisions, such as those concerning fishing in designated areas during a period of three years, had a transitory

character and may be considered to have become executed. But in contrast there are other provisions which do not possess that same transitory character. The compromissory clause is an instance.

34. It is possible that today Iceland may find that some of the motives which induced it to enter into the 1961 Exchange of Notes have become less compelling or have disappeared altogether. But this is not a ground justifying the repudiation of those parts of the agreement the object and purpose of which have remained unchanged. Iceland has derived benefits from the executed provisions of the agreement, such as the recognition by the United Kingdom since 1961 of a 12-mile exclusive fisheries jurisdiction, the acceptance by the United Kingdom of the baselines established by Iceland and the relinquishment in a period of three years of the pre-existing traditional fishing by vessels registered in the United Kingdom. Clearly it then becomes incumbent on Iceland to comply with its side of the bargain, which is to accept the testing before the Court of the validity of its further claims to extended jurisdiction. Moreover, in the case of a treaty which is in part executed and in part executory, in which one of the parties has already benefited from the executed provisions of the treaty, it would be particularly inadmissible to allow that party to put an end to obligations which were accepted under the treaty by way of *quid pro quo* for the provisions which the other party has already executed.

* * *

35. In his letter of 29 May 1972 to the Registrar, the Minister for Foreign Affairs of Iceland refers to "the changed circumstances resulting from the ever-increasing exploitation of the fishery resources in the seas surrounding Iceland". Judicial notice should also be taken of other statements made on the subject in documents which Iceland has brought to the Court's attention. Thus, the resolution adopted by the Althing on 15 February 1972 contains the statement that "owing to changed circumstances the Notes concerning fishery limits exchanged in 1961 are no longer applicable".

36. In these statements the Government of Iceland is basing itself on the principle of termination of a treaty by reason of change of circumstances. International law admits that a fundamental change in the circumstances which determined the parties to accept a treaty, if it has resulted in a radical transformation of the extent of the obligations imposed by it, may, under certain conditions, afford the party affected a ground for invoking the termination or suspension of the treaty. This principle, and the conditions and exceptions to which it is subject, have been embodied in Article 62 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances.

37. One of the basic requirements embodied in that Article is that the

change of circumstances must have been a fundamental one. In this respect the Government of Iceland has, with regard to developments in fishing techniques, referred in an official publication on *Fisheries Jurisdiction in Iceland*, enclosed with the Foreign Minister's letter of 29 May 1972 to the Registrar, to the increased exploitation of the fishery resources in the seas surrounding Iceland and to the danger of still further exploitation because of an increase in the catching capacity of fishing fleets. The Icelandic statements recall the exceptional dependence of that country on its fishing for its existence and economic development. In his letter of 29 May 1972 the Minister stated:

“The Government of Iceland, considering that the vital interests of the people of Iceland are involved, respectfully informs the Court that it is not willing to confer jurisdiction on the Court in any case involving the extent of the fishery limits of Iceland . . .”

In this same connection, the resolution adopted by the Althing on 15 February 1972 had contained a paragraph in these terms:

“That the Governments of the United Kingdom and the Federal Republic of Germany be again informed that because of the vital interests of the nation and owing to changed circumstances the Notes concerning fishery limits exchanged in 1961 are no longer applicable and that their provisions do not constitute an obligation for Iceland.”

38. The invocation by Iceland of its “vital interests”, which were not made the subject of an express reservation to the acceptance of the jurisdictional obligation under the 1961 Exchange of Notes, must be interpreted, in the context of the assertion of changed circumstances, as an indication by Iceland of the reason why it regards as fundamental the changes which in its view have taken place in previously existing fishing techniques. This interpretation would correspond to the traditional view that the changes of circumstances which must be regarded as fundamental or vital are those which imperil the existence or vital development of one of the parties.

39. The Applicant, for its part, contends that the alterations and progress in fishing techniques have not produced in the waters around Iceland the consequences apprehended by Iceland and therefore that the changes are not of a fundamental or vital character. In its Memorial, it points out that, as regards the capacity of fishing fleets, increases in the efficiency of individual trawlers have been counter-balanced by the reduction in total numbers of vessels in national fleets fishing in the waters around Iceland, and that the statistics show that the total annual catch of demersal species has varied to no great extent since 1960.

40. The Court, at the present stage of the proceedings, does not need

to pronounce on this question of fact, as to which there appears to be a serious divergence of views between the two Governments. If, as contended by Iceland, there have been any fundamental changes in fishing techniques in the waters around Iceland, those changes might be relevant for the decision on the merits of the dispute, and the Court might need to examine the contention at that stage, together with any other arguments that Iceland might advance in support of the validity of the extension of its fisheries jurisdiction beyond what was agreed to in the 1961 Exchange of Notes. But the alleged changes could not affect in the least the obligation to submit to the Court's jurisdiction, which is the only issue at the present stage of the proceedings. It follows that the apprehended dangers for the vital interests of Iceland, resulting from changes in fishing techniques, cannot constitute a fundamental change with respect to the lapse or subsistence of the compromissory clause establishing the Court's jurisdiction.

41. It should be observed in this connection that the exceptional dependence of Iceland on its fisheries for its subsistence and economic development is expressly recognized in the 1961 Exchange of Notes, and the Court, in its Order of 17 August 1972, stated that "it is also necessary to bear in mind the exceptional dependence of the Icelandic nation upon coastal fisheries for its livelihood and economic development as expressly recognized by the United Kingdom in its Note addressed to the Foreign Minister of Iceland dated 11 March 1961". The Court further stated that "from this point of view account must be taken of the need for the conservation of fish stocks in the Iceland area" (*I.C.J. Reports* 1972, pp. 16 and 17). This point is not disputed.

42. Account must also be taken of the fact that the Applicant has contended before the Court that to the extent that Iceland may, as a coastal State specially dependent on coastal fisheries for its livelihood or economic development, assert a need to procure the establishment of a special fisheries conservation régime (including such a régime under which it enjoys preferential rights) in the waters adjacent to its coast but beyond the exclusive fisheries zone provided for by the 1961 Exchange of Notes, it can legitimately pursue that objective by collaboration and agreement with the other countries concerned, but not by the unilateral arrogation of exclusive rights within those waters. The exceptional dependence of Iceland on its fisheries and the principle of conservation of fish stocks having been recognized, the question remains as to whether Iceland is or is not competent unilaterally to assert an exclusive fisheries jurisdiction extending beyond the 12-mile limit. The issue before the Court in the present phase of the proceedings concerns solely its jurisdiction to determine the latter point.

* * *

43. Moreover, in order that a change of circumstances may give rise to a ground for invoking the termination of a treaty it is also necessary that it should have resulted in a radical transformation of the extent of the obligations still to be performed. The change must have increased the burden of the obligations to be executed to the extent of rendering the performance something essentially different from that originally undertaken. In respect of the obligation with which the Court is here concerned, this condition is wholly unsatisfied; the change of circumstances alleged by Iceland cannot be said to have transformed radically the extent of the jurisdictional obligation which is imposed in the 1961 Exchange of Notes. The compromissory clause enabled either of the parties to submit to the Court any dispute between them relating to an extension of Icelandic fisheries jurisdiction in the waters above its continental shelf beyond the 12-mile limit. The present dispute is exactly of the character anticipated in the compromissory clause of the Exchange of Notes. Not only has the jurisdictional obligation not been radically transformed in its extent; it has remained precisely what it was in 1961.

* * *

44. In the United Kingdom Memorial it is asserted that there is a flaw in the Icelandic contention of change of circumstances: that the doctrine never operates so as to extinguish a treaty automatically or to allow an unchallengeable unilateral denunciation by one party; it only operates to confer a right to call for termination and, if that call is disputed, to submit the dispute to some organ or body with power to determine whether the conditions for the operation of the doctrine are present. In this connection the Applicant alludes to Articles 65 and 66 of the Vienna Convention on the Law of Treaties. Those Articles provide that where the parties to a treaty have failed within 12 months to achieve a settlement of a dispute by the means indicated in Article 33 of the United Nations Charter (which means include reference to judicial settlement) any one of the parties may submit the dispute to the procedure for conciliation provided in the Annex to the Convention.

45. In the present case, the procedural complement to the doctrine of changed circumstances is already provided for in the 1961 Exchange of Notes, which specifically calls upon the parties to have recourse to the Court in the event of a dispute relating to Iceland's extension of fisheries jurisdiction. Furthermore, any question as to the jurisdiction of the Court, deriving from an alleged lapse through changed circumstances, is resolvable through the accepted judicial principle enshrined in Article 36, paragraph 6, of the Court's Statute, which provides that "in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court". In this case such a dispute obviously exists, as can be seen from Iceland's communications to the Court, and

to the other Party, even if Iceland has chosen not to appoint an Agent, file a Counter-Memorial or submit preliminary objections to the Court's jurisdiction; and Article 53 of the Statute both entitles the Court and, in the present proceedings, requires it to pronounce upon the question of its jurisdiction. This it has now done with binding force.

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46. For these reasons,

THE COURT,

by fourteen votes to one,

finds that it has jurisdiction to entertain the Application filed by the Government of the United Kingdom of Great Britain and Northern Ireland on 14 April 1972 and to deal with the merits of the dispute.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this second day of February, one thousand nine hundred and seventy-three, in three copies, of which one will be placed in the archives of the Court and the others transmitted to the Government of the United Kingdom of Great Britain and Northern Ireland and to the Government of the Republic of Iceland, respectively.

(Signed) ZAFRULLA KHAN,
President.

(Signed) S. AQUARONE,
Registrar.

President Sir Muhammad ZAFRULLA KHAN makes the following declaration:

I am in entire agreement with the Judgment of the Court. I consider it needful, however, to append the following brief declaration.

The sole question before the Court in this phase of these proceedings is whether, in view of the compromissory clause in the Exchange of Notes of 11 March 1961 between the Government of the United Kingdom and the Government of Iceland, read with Article 36 (1) of its Statute, the

Court is competent to pronounce upon the validity of the unilateral extension by Iceland of its exclusive fisheries jurisdiction from 12 to 50 nautical miles from the baselines agreed to by the parties in 1961. All considerations tending to support or to discount the validity of Iceland's action are, at this stage, utterly irrelevant. To call any such consideration into aid for the purpose of determining the scope of the Court's jurisdiction, would not only beg the question but would put the proverbial cart before the horse with a vengeance and is to be strongly deprecated.

Judge Sir Gerald FITZMAURICE appends a separate opinion to the Judgment of the Court.

Judge PADILLA NERVO appends a dissenting opinion to the Judgment of the Court.

(Initialled) Z.K.

(Initialled) S.A.