

## THE ICELANDIC FISHERIES DISPUTE: A DECISION IS FINALLY RENDERED

On July 25, 1974, the International Court of Justice handed down its opinion on the merits of the Fisheries Jurisdiction disputes between the United Kingdom and Iceland<sup>1</sup> and between the Federal Republic of Germany and Iceland.<sup>2</sup> The Court, in delivering its opinion, avoided the issue to which both Applicants sought resolution: whether Iceland's claim entitling it to extend its exclusive fisheries jurisdiction to 50 nautical miles from the baselines had any basis in international law?<sup>3</sup> Since both cases are essentially the same in facts, claims, preliminary decisions, and opinions,<sup>4</sup> this discussion will be limited to the case between the United Kingdom and Iceland.

The controversy began in 1948 when the Icelandic Parliament (the Althing) passed a law (hereinafter referred to as the Althing Resolution of 1948) permitting the Ministry of Fisheries to subject to Icelandic control all fishing areas lying above the country's continental shelf.<sup>5</sup> The United Kingdom and other interested parties (including the Federal Republic of Germany) protested this extension of jurisdiction and began negotiations to resolve the conflict. These negotiations culminated in the 1958 Geneva Law of the Sea Conference which adopted four major conventions including the Convention on Fishing and Conservation of the Living Resources of the High Seas.<sup>6</sup> Nevertheless, the Conference was unable to reach agreement on the extent of the territorial sea or limits on fisheries jurisdiction.<sup>7</sup> The Conference did adopt a Resolution on Special Situations Relating to Coastal Fisheries<sup>8</sup> which recognized the concept of preferential rights for countries which are overwhelmingly dependent upon their coastal fisheries for their livelihood or economic development.

Since no fisheries jurisdiction limits had been defined at the 1958 Geneva

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<sup>1</sup> Fisheries Jurisdiction Case (United Kingdom v. Iceland) [1974] I.C.J. 3, reprinted in 13 INT'L LEGAL MAT'LS 1049 (1974) [hereinafter cited as U.K. Case].

<sup>2</sup> Fisheries Jurisdiction Case (Federal Republic of Germany v. Iceland) [1974] I.C.J. —, reprinted in 13 INT'L LEGAL MAT'LS 1090 (1974) [hereinafter cited as German Case].

<sup>3</sup> See U.K. Case, at 6, INT'L LEGAL MAT'LS at 1051, *supra* note 1.

<sup>4</sup> The only difference between the two cases, besides minor factual variations, consists of a fourth contention asserted by the Federal Republic of Germany that the harassment by Icelandic coastal patrol boats of fishing vessels registered in the Federal Republic of Germany was illegal under international law, and that Iceland is under an obligation to make compensation therefore to the Federal Republic of Germany. The Court rejected this contention. See German Case, INT'L LEGAL MAT'LS at 1106, *supra* note 2. A similar contention was withdrawn by the United Kingdom on its case. See U.K. Case at 7, INT'L LEGAL MAT'LS at 1051, *supra* note 1.

<sup>5</sup> Law Concerning the Scientific Conservation of the Continental Shelf Fisheries, dated April 5, 1948, translated in M. DAVIS, ICELAND EXTENDS ITS FISHERIES LIMITS 106 (1963) [hereinafter cited as Althing Resolution of 1948].

<sup>6</sup> *Open for signature* April 29, 1958, [1966] 1 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285, *in force* March 20, 1966. This generally provided procedures for dealing with disputes over conservation.

<sup>7</sup> See Katz, *Issues Arising in the Icelandic Fisheries Case*, 22 INT'L & COMP. L.Q. 455 (1973).

<sup>8</sup> U.N. Doc. A/CONF. 13/L 56, Res. VI, adopted at Geneva on April 26, 1958.

Conference on the Law of the Sea, the Althing passed a resolution declaring a 12 mile fishery zone from baselines specified therein.<sup>9</sup> The United Kingdom strongly objected to this and sought referral to the International Court of Justice. Following this extension, a number of "incidents," known as the "Cod War," occurred between Icelandic coastal patrol boats and British trawling vessels and the Royal Navy.<sup>10</sup> The United Nations General Assembly convened a second Conference on the Law of the Sea at Geneva in 1960 in order to attempt to conclude an agreement on the maximum breadth of the territorial sea and fisheries limits.<sup>11</sup> The Conference was unable to reach a consensus on these issues, but a large number of participants emerged with the view that a coastal state should be entitled to claim an exclusive fisheries zone of 12 miles under certain conditions.<sup>12</sup> Acknowledging this consensus, Iceland and the United Kingdom resumed discussions on the fisheries dispute and concluded an Exchange of Notes on March 11, 1961.<sup>13</sup> A similar exchange took place shortly thereafter between the Federal Republic of Germany and Iceland.<sup>14</sup>

Under the Exchange of Notes between Iceland and the United Kingdom, the latter undertook to refrain from objecting to Iceland's 12 mile fishery zone, in return for permission from Iceland to allow British vessels to fish in certain areas during certain times of the year, within the outer six miles of the zone during a phasing out period of three years. In order to protect British fishing interests, the parties agreed that Iceland would work toward further extension of her fisheries jurisdiction in accordance with the Althing Resolution of 1948 but that any extension would be preceded by a six months notice to the United Kingdom.<sup>15</sup> If dispute in regard to such extension resulted, the matter could be referred to the International Court of Justice by either party for resolution of such dispute.<sup>16</sup>

For a period of ten years, no substantial conflicts over fisheries jurisdiction developed between any of the parties to these Exchanges of Notes. This peace-

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<sup>9</sup> Regulations concerning the Fishery Limits of Iceland, dated June 30, 1958, translated in M. DAVIS, *ICELAND EXTENDS ITS FISHERIES LIMITS* 109 (1963). Supplementary Regulations were issued on August 29, 1958, translated in DAVIS, at 111.

<sup>10</sup> For further information on the Cod War, see Green, *The Territorial Sea and the Anglo-Icelandic Dispute*, 9 J. PUB. L. 53 (1960).

<sup>11</sup> See generally, Dean, *The Second Geneva Conference on the Law of the Sea*, 54 AM. J. INT'L L. 751 (1960).

<sup>12</sup> See Gutteridge, *Beyond the Three Mile Limit: Recent Developments Affecting the Law of the Sea*, 14 VA. J. INT'L L. 195 (1974).

<sup>13</sup> Exchange of Notes Constituting an Agreement Between Iceland and the United Kingdom Settling the Fisheries Dispute, March 11, 1961, 397 U.N.T.S. 275, reprinted in 11 INT'L LEGAL MAT'LS 490 (1972) [hereinafter cited as United Kingdom-Iceland Exchange of Notes].

<sup>14</sup> Exchange of Notes Constituting an Agreement Between Iceland the Federal Republic of Germany concerning the Fishery Zone Around Iceland, July 19, 1961, 409 U.N.T.S. 47.

<sup>15</sup> Althing Resolution of 1948, *supra* note 5.

<sup>16</sup> It was on the basis of this clause, in part, that the Court assumed jurisdiction in the present case. See Fisheries Jurisdiction Case (Judgment on the Jurisdiction of the Court) §§ 8, 9 [1973] I.C.J. 1 reprinted in 12 INT'L LEGAL MAT'LS 290 (1973).

ful coexistence ended on July 14, 1971 when Iceland issued a policy statement declaring the Fisheries Agreements terminated and indicating an intention to extend its exclusive fisheries jurisdiction to 50 nautical miles.<sup>17</sup> This extension was to be effective not later than September 1, 1972. The United Kingdom objected to this statement and responded in an aide-mémoire of July 17, 1971 instructing Iceland to regard the terms of the 1961 Exchange of Notes.<sup>18</sup> It also pointed out that this agreement was not open to unilateral denunciation or termination. The government of Iceland responded in an aide-mémoire of August 31, 1971 stating that it considered the object and purpose of the provision for judicial settlement to have been fully achieved and that in light of new developments both economically and scientifically, it was necessary to extend its fisheries jurisdiction to 50 nautical miles.<sup>19</sup> (This extension covers the sea lying over Iceland's continental shelf, thus achieving the aim set forth in the Althing Resolution of 1948).<sup>20</sup>

The United Kingdom responded on September 27, 1971 indicating that it viewed the extension of the fisheries zone around Iceland to be without basis in international law. However, it expressed a willingness to negotiate the matter, all the while reserving its rights under the 1961 Exchange.<sup>21</sup> The two governments conferred in November of 1971 and January of 1972, but failed to reach agreement. The United Kingdom suggested several alternative means of achieving the same result including mutually determined conservation measures, a recognition of the preferential requirements of the coastal state resulting from its dependence on fisheries, and ultimately a proposed catch limitation of 185,000 tons for British vessels.<sup>22</sup> The Icelandic government was not prepared to accept such proposals. It maintained that the 50 mile zone was not illegal since no existing rule of international law established a definitive width of fishery limits.<sup>23</sup>

On February 15, 1972, the Icelandic Althing adopted another resolution reiterating its fundamental policy that the continental shelf of Iceland and the superjacent waters were within the jurisdiction of Iceland. It resolved that the fisheries jurisdiction would be extended to 50 nautical miles from baselines around the country to be effective no later than September 1, 1972. It also emphasized the view that the provisions of the 1961 agreements were no longer

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<sup>17</sup> U.K. Case at 14, INT'L LEGAL MAT'LS at 1054, *supra* note 1.

<sup>18</sup> Reprinted in Application Instituting Proceedings filed on April 14, 1972, Fisheries Jurisdiction Case (United Kingdom v. Iceland), 1972 General List No. 55. *See also* I.C.J. communique no. 72/4, June 6, 1972.

<sup>19</sup> U.K. Case at 14, INT'L LEGAL MAT'LS at 1054, *supra* note 1.

<sup>20</sup> Althing Resolution of 1948, *supra* note 5.

<sup>21</sup> U.K. Case at 14, INT'L LEGAL MAT'LS at 1055, *supra* note 1.

<sup>22</sup> *Id.*

<sup>23</sup> Address by Prime Minister Johannesson on Nov. 9, 1971, in *Background Information No. 4. Icelandic Fisheries Jurisdiction*, the Secretary for Press and Information, Prime Minister's Office, Reykjavik, p. 8, discussed in Katz, *supra* note 7, at 85.

applicable due to the change in circumstances.<sup>24</sup> This was communicated to the United Kingdom in an aide-mémoire dated February 24, 1972.<sup>25</sup>

The United Kingdom responded in another aide-mémoire taking notice of the extension by Iceland and maintaining that no basis in international law existed for such an extension. It also provided formal notice of Britain's intention to file an application before the International Court of Justice in accordance with the provisions of the 1961 Agreement.<sup>26</sup> The aide-mémoire concluded by acknowledging a willingness to continue discussions to achieve some preliminary resolution while the case was pending. During May, June and July of 1972 proposals for catch limitation, fishing-effort limitation, and area of seasonal limitations were discussed in an attempt to reach a consensus for an interim regime pending the outcome of the case before the Court. In the meantime, the United Kingdom had filed its application with the Registry of the Court.<sup>27</sup> Iceland denied recognition of the jurisdiction of the Court and chose not to participate in any phase of the proceedings.<sup>28</sup>

These negotiations proved to be a failure and on July 14, 1972, Iceland issued regulations extending its fisheries jurisdiction to 50 nautical miles effective September 1, 1972.<sup>29</sup> The United Kingdom immediately responded by seeking interim measures of protection from the International Court of Justice on July 19, 1972.<sup>30</sup> These measures were granted on August 17, 1972 in the form of an order to Iceland not to enforce its regulations and an order imposing a 170,000 ton catch limitation on the United Kingdom.<sup>31</sup> Iceland, nevertheless, began enforcement of the regulations by harrassment techniques.

On February 2, 1973, the Court held that it had jurisdiction to deal with the merits of the dispute.<sup>32</sup> Iceland in no way participated in the proceedings before the Court and continued to maintain that the Court held no jurisdiction over the matter. Negotiations continued between the parties involved and on

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<sup>24</sup> Resolution of the Althing Concerning Fisheries Jurisdiction, February 15, 1972 (unanimously approved), reprinted in 11 INT'L LEGAL MAT'LS 643 (1972).

<sup>25</sup> U.K. Case at 14-15, INT'L LEGAL MAT'LS at 1055, *supra* note 1.

<sup>26</sup> *Id.* at 15.

<sup>27</sup> *Id.*

<sup>28</sup> For a good discussion of the rationale behind the Icelandic decision to refuse to recognize the jurisdiction of the Court, see Bilder, *The Anglo-Icelandic Fisheries Dispute*, WISC. L. REV. 37, 76 (1973). This article is also particularly good in its examination of the underlying issues presented by the two applications and in laying an extensive and detailed factual background for the case.

<sup>29</sup> Ministry of Fisheries of Iceland, Regulations of July 14, 1972, concerning the Fishery Limits Off Iceland, translated in 11 INT'L LEGAL MAT'LS 1112 (1972).

<sup>30</sup> U.K. Case at 15-16, INT'L LEGAL MAT'LS at 1055, *supra* note 1.

<sup>31</sup> Fisheries Jurisdiction Case (orders concerning the Request for Interim Measures of Protection), [1972] I.C.J. 12, reprinted in 11 INT'L LEGAL MAT'LS 1069 (1972). For a discussion of this phase of the case, see Note, International Court of Justice: Interim Measures of the Fisheries Jurisdiction Case, 7 VAND. J. TRANSNAT'L L. 512 (1974).

<sup>32</sup> Fisheries Jurisdiction Case (Judgment on the Jurisdiction of the Court) [1973] I.C.J. 1, reprinted in 12 INT'L LEGAL MAT'LS 290 (1973). A good explanation of Iceland's position in this aspect of the case and how the Court dealt with it is found in Tiewul, *The Fisheries Jurisdiction Case: (1973) and the Ghost of Rebus Sic Stantibus*, 6 N.Y.U. J. INT'L L. & POL. 455 (1973).

November 13, 1973, an Interim Agreement in the Fisheries Dispute in the form of an Exchange of Notes was concluded. It was to cover a two year period and restricted fishing by British vessels to 130,000 metric tons in the area between 12 and 50 miles from the baselines of Iceland.<sup>33</sup> In considering the effect of this agreement on the present proceedings, the Court held that it did not preclude its determination of the issues in that the agreement was necessarily temporary and that if the Court decided that it was prevented from rendering judgment, the result would be to discourage the making of interim arrangements in future disputes with the intention to reduce friction and insure peace and security.<sup>34</sup> The Court then turned to the merits of the case.

The United Kingdom sought resolution of the following issues:

(1) that the claim by Iceland of entitlement to a zone of exclusive fisheries jurisdiction extending 50 nautical miles is without foundation in international law and therefore invalid,

(2) that Iceland may not unilaterally assert exclusive fisheries jurisdiction against the United Kingdom beyond the limits agreed to in the Exchange of Notes of 1961,

(3) that Iceland may not unilaterally exclude British fishing vessels from an area of the high seas beyond the limits arrived at under such Notes, or to impose unilaterally restrictions on their activities,

(4) that Iceland and the United Kingdom are under a duty to examine together in good faith (bilaterally or multilaterally) the need for conservation and to negotiate for the establishment of a regime taking into account Iceland's need for a preferential position due to its dependence on such fisheries and also ensuring for the United Kingdom a position consistent with its traditional interest and acquired rights in the area and its current dependency on these fisheries.<sup>35</sup>

In responding to the issues placed before it by the United Kingdom, the Court set out what it deemed to be applicable rules of international law. It cited the Geneva Convention on the High Seas of 1958<sup>36</sup> which defined the high seas as all parts of the sea that are not included in the territorial sea or the internal waters of a state. It further held that the high seas were open to all nations and indicated that the "freedom of the seas" was composed of freedom of navigation and of fishing when exercised with regard for the interests of other states in their exercise of the freedom of the high seas.<sup>37</sup>

The Court noted that at the 1958 Geneva Conference on the Law of the Sea, the breadth of the territorial sea and the extent of a coastal state's fisheries jurisdiction was left unsettled, and yet acknowledged that through the concept

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<sup>33</sup> U.K. Case at 17, INT'L LEGAL MAT'LS at 1056, *supra* note 1.

<sup>34</sup> *Id.* at 18-20, INT'L LEGAL MAT'LS at 1057-58.

<sup>35</sup> *Id.* at 6-7, INT'L LEGAL MAT'LS at 1051. An excellent explication of Iceland's views on these issues may be found in Katz, *supra* note 7.

<sup>36</sup> Open for signature April 29, 1958, [1962] 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82, *in force* September 30, 1962.

<sup>37</sup> U.K. Case at 22, INT'L LEGAL MAT'LS at 1059, *supra* note 1.

of customary rules of international law, a 12 mile exclusive fisheries jurisdiction was accepted generally. Another customary rule recognized the preferential rights to fishing in adjacent waters in favor of the coastal state with a special dependence on its coastal fisheries, nevertheless, keeping in mind, the interests of the other States concerned in the exploitation of the same fisheries.<sup>38</sup>

The Court also noted the assertion of extensions of fisheries limits by a number of states and of the attempts to codify and develop this area of the law at the Third Conference on the Law of the Sea at Caracas.<sup>39</sup> Because of these imminent changes in the law relating to this case, the Court felt that it could not render its judgment *sub specie legis ferendae* (anticipate the law before the legislator has laid it down).<sup>40</sup> The Court also recognized that the concept of a 12 mile exclusive fisheries zone and the notion of preferential rights had been recognized by the parties in their Exchange of Notes.<sup>41</sup> It perceived that what the United Kingdom was really seeking was a recognition of its own historical fishing rights to the area involved.<sup>42</sup>

The Court then examined the concept of preferential rights and the implementation of such rights. It concluded that these rights were to be implemented by means of bilateral or multilateral agreements between states concerned or through some other means for the peaceful settlement of disputes as provided in Article 33 of the United Nations Charter.<sup>43</sup> The Court recognized this as the accepted practice citing a number of other agreements dealing with preferential rights.<sup>44</sup> The special dependence of Iceland on its fisheries was recognized by both parties to this dispute in the agreements concluded under the interim measures of protection.<sup>45</sup>

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<sup>38</sup> *Id.* at 22-23, INT'L LEGAL MAT'LS at 1059.

<sup>39</sup> A committee has been established to draft a treaty regarding fisheries jurisdiction at the United Nations Conference on the Law of the Sea. See G.A. Res. 2750C, 28 U.N. GAOR Supp. 28, reprinted in 10 INT'L LEGAL MAT'LS 226 (1971). See also Gutteridge, *supra* note 12, for an examination of the issues to be dealt with by this conference in regard to fisheries proposals before the conference, there appear to be three which encompass the concept of a 200 mile economic zone: (1) complete exclusivity with no coastal state duties, (2) exclusive coastal state regulation with conservation and full utilization duties (U.S. approach), and (3) the use of regional organizations to regulate conservation and full utilization (E.E.C. approach). U.S. Delegation Report on the Third U.N. Conference on the Law of the Sea in Caracas, at 15. For an examination of the U.S. position on this problem, see Law of the Sea: Third United Nations Conference, Dept. of State Publication 8794, International Organization and Conference Series 116, Nov. 1974, reprinted in DEP'T STATE BULL. of April 15, August 5 & Sept. 23, 1974.

<sup>40</sup> U.K. Case at 23-24, INT'L LEGAL MAT'LS at 1059, *supra* note 1.

<sup>41</sup> United Kingdom - Iceland Exchange of Notes, *supra* note 13.

<sup>42</sup> U.K. Case at 24, INT'L LEGAL MAT'LS at 1060, *supra* note 1.

<sup>43</sup> Article 33 states:

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

<sup>44</sup> U.K. Case at 26, INT'L LEGAL MAT'LS at 1061, *supra* note 1.

<sup>45</sup> *Id.* at 17, INT'L LEGAL MAT'LS at 1056.

The Icelandic Regulations as issued and applied by the Icelandic authorities constitute a claim to exclusive rights, according to the Court, and therefore, are incompatible with the notion of preferential rights.

A coastal state entitled to preferential rights is not free, unilaterally and according to its own uncontrolled discretion, to determine the extent of those rights. The characterization of the coastal states rights as preferential implies a certain priority, but cannot imply the extinction of the concurrent rights of other states, and particularly of a state which, like the Applicant, has for many years been engaged in fishing in the waters in question, such fishing activity being important to the economy of the country concerned.<sup>46</sup>

The Court then cited statistics which showed the dependence of certain communities within the United Kingdom on this fisheries area and the disastrous effects which would result if this extension were to be upheld. It also noted that Iceland had, in fact, recognized Britain's historical practice of fishing in these waters.<sup>47</sup> The consideration for a coastal state's dependence on its fisheries couched in the form of preferential rights was held to be equally applicable to the Applicant, in light of its dependence upon these fisheries.<sup>48</sup>

Since the Regulations completely disregard the fishing rights of the United Kingdom, they are in violation of the principles in Article 2 of the 1958 Geneva Convention on the High Seas which requires that all states in exercising their freedom to fish pay reasonable regard to the interests of other states.<sup>49</sup> Therefore, the Court held that the Regulations extending Iceland's fisheries jurisdiction to 50 nautical miles were not opposable to the United Kingdom and the United Kingdom was under no obligation to accept the unilateral termination by Iceland of the United Kingdom's fisheries rights in the area.<sup>50</sup> The Court went on to say that a "phasing out" of British fishing in the area would not be in compliance with the findings of the Court and that any settlement must take into account both the preferential rights of Iceland and the historic rights of the United Kingdom. The Court imposed a balancing of interests test to reconcile the countervailing claims of the two parties. It also recognized that these rights might vary as the extent of dependence on these fisheries changes.<sup>51</sup>

The Court proposed that the most appropriate means of resolving the dispute was through negotiation. It recognized that it could not lay down a detailed regime on the limited knowledge which it possessed regarding the underlying facts and therefore, charged each party with the obligation to negotiate in good faith and with reasonable regard for the legal rights of the other in the waters around Iceland outside the 12 mile limit. It found a continuing obligation in

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<sup>46</sup> *Id.* at 27-28, INT'L LEGAL MAT'LS at 1061.

<sup>47</sup> *Id.* at 28, INT'L LEGAL MAT'LS at 1062. *See also* note 23, *supra*.

<sup>48</sup> *Id.* at 29, INT'L LEGAL MAT'LS at 1062.

<sup>49</sup> Geneva Convention on the High Seas of 1958, *supra* note 36.

<sup>50</sup> U.K. Case at 29, INT'L LEGAL MAT'LS at 1062.

<sup>51</sup> *Id.* at 30-31, INT'L LEGAL MAT'LS at 1063.

both parties to keep under review the fisheries resources involved and to examine together, in the light of scientific and other available information, the measures required for the conservation and development, as well as equitable exploitation, of these resources.<sup>52</sup>

Thus, to summarize the Court's holdings, it found (ten votes to four): (1) that the Icelandic Regulations extending its fisheries jurisdiction to 50 miles were not opposable to the United Kingdom, (2) that Iceland may not exclude other states' vessels from areas between the limits agreed in the 1961 Exchange of Notes and the adopted 1972 Regulations, (3) that the parties are under a mutual obligation to undertake negotiations in good faith taking into account: (a) Iceland's right to a preferential share to the extent of its dependence on the area, (b) the United Kingdom's historic right to these areas, (c) the interests of other states in regard to these fisheries, (d) the need for conservation and yet development of the fishery resources involved, and (e) any changes which might occur over time.<sup>53</sup>

Judges Forster, Bengzon, Jimenez de Arechaga, Nagendra Singh and Rugda appended a joint separate opinion in which they justified the Court's failure to face the ultimate question posed by the United Kingdom: whether the extension by Iceland to 50 nautical miles of its fisheries jurisdiction is without basis in international law. They maintained that while a 12 mile fisheries zone has generally been recognized, this fact does not exclude the possibility that a greater zone of jurisdiction may in fact have some basis in international law. Thus their position was that while the 12 mile limit was recognized by most states, it did not preclude the possibility that a wider zone might be permissible under international law. On that basis, they concurred in the Court's decision and regarded the direction to negotiate as the most appropriate means of resolving the dispute.<sup>54</sup>

The thrust of the dissenting opinions of Judges Gros, Petren and Onyeama in which Judge Ignacio-Pinto concurred, went to the fact that the Court failed to address itself to the issue before it concerning the legality under international law of the extension by Iceland of its fisheries jurisdiction. Judge Gros indicated that the Court, in rendering its judgment, had injected issues by interpreting an agreement between the parties and enlarging its contents rather than simply recognizing what it said. He felt that the Court injected these issues by examining the concept of conservation rather than facing the ultimate question involved.<sup>55</sup> The additional objection voiced by Judge Petren consisted of the fact that the Court failed to distinguish between the different periods of the dispute. He maintained that the submissions put forth by the United Kingdom should have been rejected in regard to all periods except the period between the adoption of the 1972 Regulations and the Exchange of Notes between

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<sup>52</sup> *Id.* at 31-33, INT'L LEGAL MAT'LS at 1063-64.

<sup>53</sup> *Id.* at 34-35, INT'L LEGAL MAT'LS at 1065.

<sup>54</sup> *Id.* at 46-52, INT'L LEGAL MAT'LS at 1069-1072.

<sup>55</sup> *Id.* at 127-149, INT'L LEGAL MAT'LS at 1077-1084.

the parties in November 1973, because this was the only period during which Iceland was in violation of the 1961 agreement.<sup>56</sup> Judge Onyeama's dissent was based on the failure of the Court to categorically decide the issue before it, the legality of the extension by Iceland. He cited as the parameter of the Court's jurisdiction the language of the 1961 Exchange of Notes regarding the referral of any dispute "in relation to such extension."<sup>57</sup> On this basis he objected to the Court's straying into considerations of conservation, catch-limitations, and preferential rights.

Taken in its entirety, the opinion of the Court has indeed, failed to deal with the most important issue before it. The opinion seems to do little more than provide some moral persuasion for the parties to continue negotiations. The guidelines for negotiation laid down by the Court merely emphasize a need for recognition of the total situation, that many different parties are involved with very diverse interests. Of course, the situation confronted by the Court was a difficult one in light of the impending changes in the law relating to this matter. However, Judge Ignacio-Pinto makes a valid point that the Court would have strengthened its judicial authority if it had rendered an opinion reflecting its view of the existing law regarding the Icelandic extension of its fisheries jurisdiction.<sup>58</sup> Many have said that perhaps, a definitive statement would jeopardize the outcome of the Third Conference on the Law of the Sea in that it might confuse the issues and affect the determination of the participants to come to some conclusions in regard to these problems. However, the experience of the past in regard to deferring to an upcoming conference on the issues involved has proved that such an approach constitutes a mere reprieve and results in delaying even further any resolution of the dispute.<sup>59</sup> The Court should have faced the issues before it and resolved the dispute without regard for pending changes in the appropriate law.

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<sup>56</sup> *Id.* at 151-163, INT'L LEGAL MAT'LS at 1085-1087.

<sup>57</sup> *Id.* at 165-174, INT'L LEGAL MAT'LS at 1088-1089.

<sup>58</sup> *Id.* at 37, INT'L LEGAL MAT'LS at 1066.

<sup>59</sup> *See Bilder, supra* note 26, at 50.