

DISSENTING OPINION OF JUDGE PETRÉN

[*Translation*]

Having voted against the Order, I append thereto this dissenting opinion.

There is an evident possibility that the circumstances in which the Court, on 17 August 1972, indicated interim measures of protection might have undergone such changes as could justify some modification of those measures. One of the factors which ought to be taken into account in that respect is the evolution of fish-stocks. In its telegram protesting against the continuation of interim measures, the Government of Iceland maintained that British and Icelandic catches continue to decrease per unit effort and that small immature fish of the 1970 year-class, which is the only known sizeable year-class and should constitute the main source of supply in 1976-1978 and the necessary "recruitment", are now increasingly being landed in United Kingdom ports. To my mind, these indications gave rise to questions which were serious enough to warrant inviting the Parties, before the Court took up any position on the continuance of interim measures, to furnish it with the relevant information, available from specialized organizations and institutions, as to the evolution and exploitation of fish-stocks in the fishing-waters concerned.

The many incidents that have occurred at the fishing-grounds have shown that the interim measures of protection indicated on 17 August 1972 have not been fulfilling their purpose, and there I see another reason for re-appraisal of those measures.

Another element which, as I see it, would have merited being taken into consideration is the way the Court recently founded the indication of interim measures on the possible existence of a new rule of international law. By the Orders made on 22 June 1973 in the cases concerning *Nuclear Tests (Australia v. France; New Zealand v. France)* the Court indicated in particular that the French Government should avoid nuclear tests causing the deposit of radio-active fall-out on Australian and New Zealand territory. This indication of interim measures was apparently founded on the possible existence of a new general rule of international law prohibiting States from carrying out atmospheric nuclear tests causing the deposit of radio-active fall-out, however slight, on the territory of other States. Nevertheless this general rule of international law, if it exists, has not yet been given codified expression. Its existence, therefore, could only be proved with the aid of other sources of law representing an evolution which is still in progress.

Now, in claiming the fishing-rights contested by the British Government in the present case, the Government of Iceland has sought to draw authority from an evolution of international law which is upheld by an ever-increasing number of declared attitudes and is less hypothetical in character than the putative right on the basis of which the Court indicated interim measures in favour of Australia and New Zealand.

I therefore feel that the question of interim measures of protection in the present case ought also to be re-examined in the light of this recent precedent.

In view of the foregoing, and as the Court, in accordance with Article 53 of its Statute, is under a duty also to take into consideration such indications as it may have which militate in favour of a party that fails to appear, I am of the opinion that the interim measures should have been subjected to re-appraisal. That, in accordance with Article 61, paragraph 8, of the 1946 Rules, would have required the Court to invite the Parties to present their observations on the subject. The majority having opposed this course, I was obliged to vote against the Order.

(Signed) Sture PETRÉN.
