

INTERNATIONAL COURT OF JUSTICE

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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# FISHERIES JURISDICTION CASES

VOLUME II

(FEDERAL REPUBLIC OF GERMANY v. ICELAND)

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COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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# AFFAIRES DE LA COMPÉTENCE EN MATIÈRE DE PÊCHERIES

VOLUME II

(RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE c. ISLANDE)



**APPLICATION INSTITUTING  
PROCEEDINGS SUBMITTED BY THE  
GOVERNMENT OF THE FEDERAL  
REPUBLIC OF GERMANY**

1. I have the honour to refer to Article 40 (1) of the Statute of the International Court of Justice and Article 32 (2) of the Rules of Court and, by direction of the Minister for Foreign Affairs of the Federal Republic of Germany, to submit an Application instituting proceedings in the name of the Federal Republic of Germany against the Republic of Iceland in the case set forth below. In doing so, I rely on the jurisdiction vested in the Court by Article 36 (1) of the Statute, by an Exchange of Notes between the Government of the Federal Republic of Germany and the Government of Iceland dated 19 July 1961 (which provides for reference to the Court of any dispute in relation to the extension of fisheries jurisdiction round Iceland) and by the declaration made by the Federal Republic of Germany in connection with the Exchange of Notes mentioned above on 29 October 1971 and transmitted to the Registrar of the International Court of Justice on 22 November 1971. By that declaration, the Federal Republic of Germany, not being a party to the Statute of the International Court of Justice, accepted in accordance with Article 35 (2) of the Statute of the International Court of Justice and with paragraph 3 of the resolution of the Security Council of the United Nations dated 15 October 1946 (which lays down the conditions under which the International Court of Justice shall be open for States not parties to the Statute of the Court) the Jurisdiction of the International Court of Justice in respect of all disputes which may arise between the Federal Republic of Germany and the Republic of Iceland relative to an extension of the sovereignty of Iceland in the domain of fisheries. In pursuance of Article 36 of the Rules of Court, the text of the declaration of 29 October 1971 is annexed to this application as Annex A.

2. The waters around Iceland have been and still are traditional and important fishing grounds for German fishermen. The Convention of 24 June 1901, between the Kingdom of Denmark which at that time was responsible for the conduct of the international relations of Iceland, and the United Kingdom of Great Britain and Ireland, regulating the fisheries in the waters surrounding the Faroe Islands and Iceland, is evidence of the fact that the exclusive right of fishery enjoyed by the fishermen of Iceland at that time and thereafter, was limited to a distance of three nautical miles from low water mark. This was in harmony with the régime under the North Sea Fisheries Convention of 6 May 1882, to which the Kingdom of Denmark had also been a party and which had declared that the fishermen of each participating country should enjoy the exclusive right of fishery within the distance of three nautical miles from low water mark. On 5 April 1948, the Althing, that is to say, the Parliament of Iceland, enacted a law entitled "A Law concerning the Scientific Conservation of the Continental Shelf Fisheries". Under this law, the Ministry of Fisheries of the Government of Iceland was authorized to issue "regulations establishing explicitly bounded conservation zones within the limits of the continental shelf of Iceland; wherein all fisheries shall be subject to Icelandic rules and control". (In an accompanying commentary—see p. 26 of the second enclosure<sup>1</sup> to Annex H to this Application—the Government of Iceland said: "The continental shelf of Iceland is very clearly distinguishable, and it is therefore natural to take it as a basis" and subsequently: "At present, the

<sup>1</sup> I, p. 46.

limit of the continental shelf may be considered as being established precisely at a depth of 100 fathoms. It will, however, be necessary to carry out the most careful investigations in order to establish whether this limit should be determined at a different depth.”)

3. By regulations issued on 19 March 1952, and coming into effect on 15 May 1952, the Government of Iceland extended the Icelandic Fisheries limits to four miles measured from straight baselines. In 1958, the first United Nations Conference on the Law of the Sea had unsuccessfully tried to reach agreement on the maximum breadth of the territorial sea or on fisheries limits. After the conclusion of the Conference, the Government of Iceland declared that they regarded themselves as having complete freedom of action both as regards the extent of their fisheries limits and as regards the drawing of the relevant baselines.

4. On 1 June 1958, the Government of Iceland announced its intention to extend Iceland's fisheries limits to a distance of 12 miles from the baselines round the coast of Iceland. In a Verbal Note delivered to the Icelandic Ministry for Foreign Affairs on 16 June 1958, the Government of the Federal Republic of Germany declared that the rights to fish of other States in the respective zones of the high seas would not be affected by the measures announced by the Government of Iceland and which were in contradiction with established rules of international law. On 30 June 1958, Decree No. 70 extending the Icelandic fisheries limits to 12 miles, which became effective on 1 September 1958, was issued. In a Verbal Note dated 16 July 1958, the Government of the Federal Republic of Germany protested against the unilateral steps the Icelandic Government had taken and expressed the urgent hope that the Government of Iceland would be ready to enter into negotiations with all interested nations in order to negotiate an agreement which would take into account the principles of international law as well as the historic interests of all nations concerned.

5. In the following months, unsuccessful attempts were made to settle the dispute by negotiations on a multilateral basis. On 5 May 1959, following incidents involving, on the one hand, Icelandic coastguard vessels and, on the other hand, British fishing vessels and fishery protection vessels of the Royal Navy of the United Kingdom, the Althing passed a resolution protesting against what it regarded as violations of Icelandic fisheries limits by British vessels. The resolution included the following passage:

“ . . . the Althing declares that it considers that Iceland has an undisputable right to a twelve-mile fishery limit, that a recognition of its rights to the whole continental shelf should be sought, as provided in the Law concerning the Scientific Conservation of the Continental Shelf Fisheries of 1948, and that a smaller fishing limit than twelve miles from baselines around the country is out of the question”.

6. In 1960 the second United Nations Conference on the Law of the Sea was held in Geneva. Its object was to make a further attempt to reach agreement on the maximum breadth of the territorial sea and fisheries limits. Once again, this attempt was not successful and the Conference terminated without any agreement being reached. Nevertheless, as a result of the discussions and negotiations at this Conference and at the preceding Conference, a considerable body of opinion emerged in support of the proposition that a coastal State should, subject to certain conditions, be able to claim an exclusive fisheries zone of not more than 12 miles. This subsequently became the basis of a num-

ber of multilateral and bilateral agreements, including the agreement between the Federal Republic of Germany and Iceland that is referred to in paragraphs 7, 8 and 9 of this Application.

7. On 13 March 1961, the Icelandic Foreign Ministry notified to the Embassy of the Federal Republic of Germany in Reykjavik copies of an Exchange of Notes dated 11 March 1961, between the Governments of Iceland and of the United Kingdom by which the fisheries dispute between those two countries was settled. The full text of the Exchange of Notes of 11 March 1961 is annexed to this Application as Annex B. The Federal Republic of Germany, thereafter, renewed its proposal already contained in its Verbal Note of 16 July 1958 to take up negotiations with the Icelandic Government in order to reach agreement in the fisheries question. The offer to negotiate was eventually accepted by the Government of Iceland and talks were held in Bonn between 19 June 1961 and 6 July 1961.

8. As a result of these negotiations, agreement was reached between the Government of the Federal Republic of Germany and the Government of Iceland on proposals for a settlement of the fisheries question. The agreement was embodied in an Exchange of Notes between the two Governments, consisting of a Note from the Government of Iceland making certain proposals and a Note from the Government of the Federal Republic of Germany accepting these proposals. On request of the Committee for Foreign Affairs of the Icelandic Althing it was agreed that the Exchange of Notes which would be effected on 19 July 1961, and which would come into effect immediately, would be submitted to the Althing for its approval in autumn 1961. The Exchange of Notes was effected on 19 July 1961. It was approved by the Icelandic Althing on 28 March 1962.

9. The full text of the Exchange of Notes of 19 July 1961 is annexed to this Application as Annex C. Its content is almost identical with the Icelandic-British Exchange of Notes which was effected on 11 March 1961. In view of the recognition by the Government of the Federal Republic of Germany of the exceptional dependence of the Icelandic nation upon coastal fisheries for their livelihood and economic development, and without prejudice to the rights of the Federal Republic of Germany under international law towards a third party, agreement was reached on the following terms:

- (a) that the Government of the Federal Republic of Germany would no longer object to a 12-mile fishery zone around Iceland measured from certain specified baselines which related solely to the delimitation of that zone;
- (b) that the baselines in question would be those set out in Decree No. 70 of 30 June 1958 (see para. 4 above), modified in four specified respects;
- (c) that for a transitional period of three years from the conclusion of the agreement, fishing vessels of the Federal Republic of Germany would continue to be entitled to fish in certain specified areas within the outer 6 miles of the 12-mile zone during certain seasons of the year respectively specified for those areas; and
- (d) that the Government of Iceland would continue to work for the implementation of the Althing resolution of 5 May 1959 regarding the extension of fisheries jurisdiction around Iceland (see para. 5 above) but would be obliged to give the Government of the Federal Republic of Germany six months' notice of such extension: if there were a dispute in relation to any such extension, the matter would, at the request of either party, have to be referred to the International Court of Justice.

The agreement expressly provided that it should be registered with the Secretary-General of the United Nations in accordance with Article 102 of the United Nations Charter. It was so registered by the Government of Iceland on 27 September 1961.

10. With the conclusion of the Exchange of Notes of 1961, and on the basis of the rights and obligations which the parties to it hereby acquired and accepted in relation to each other, the fisheries dispute between the two countries as it then existed, was settled on terms which have since been acted upon by both countries. On 14 July 1971, however, following a general election in Iceland and the formation of a new Government, a policy statement was issued by the Government of Iceland which included the following passage:

*“Territorial Waters*

The Fisheries Agreements with the United Kingdom and the Federal Republic of Germany shall be terminated and a resolution be made about an extension of the fishery limit up to 50 nautical miles from the baselines, effective not later than 1 September 1972. At the same time a zone of jurisdiction of 100 nautical miles shall be enacted for protection against pollution. The Government will in this matter consult the Opposition and give it an opportunity to follow its entire development.”

(The rest of the policy statement is not relevant to the question of fisheries jurisdiction. The above passage is taken from an unofficial English translation supplied by the Ministry of Foreign Affairs of the Government of Iceland.)

11. This policy statement naturally caused considerable concern to the Government of the Federal Republic of Germany because of the proposed extension of fisheries limits and of the “termination” of the agreement constituted by the Exchange of Notes in 1961. However, in view of talks being arranged between the Government of the Federal Republic of Germany and the Government of Iceland which were to be held in Bonn in August 1971, the Government of the Federal Republic of Germany refrained from taking immediate formal steps with respect to the policy statement.

12. The talks took place in Bonn on 20 August 1971. In these talks, the representatives of the Federal Republic of Germany expressed their view that the Icelandic fisheries zone could not be extended unilaterally and that the Exchange of Notes of 1961 was not open to unilateral denunciation or termination and that the Government of the Federal Republic of Germany would have to reserve their rights thereunder. No conciliation of the respective views was achieved in the talks and, on 31 August 1971, an aide-mémoire was handed to the Ambassador of the Federal Republic of Germany in Reykjavik by the Secretary-General of the Ministry for Foreign Affairs of the Government of Iceland. After referring to some of the relevant provisions of the Exchange of Notes of 1961 and in particular to the provision therein for the reference of disputes to the International Court of Justice, and after asserting that “the object and purpose of (that provision) have been fully achieved”, the aide-mémoire went on to say that, in view of certain alleged considerations which it described, “the Government of Iceland now finds it essential to extend further the zone of exclusive fisheries jurisdiction around its coast to include the area of sea covering the continental shelf. It is contemplated that the new limits, the precise boundaries of which will be furnished at a later date, will enter into force not later than 1 September 1972.” The aide-mémoire concluded by indicating that the Government of Iceland were prepared to hold further meet-

ings between representatives of the two Governments "for the purpose of achieving a practical solution of the problems involved". A copy of the full text of the aide-mémoire of 31 August 1971 is annexed to this Application as Annex D.

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

14. Further exploratory discussions took place at official level in Bonn on 8 and 9 November 1971 and in Reykjavik on 1 February 1972. In these discussions the Icelandic delegation reiterated that Iceland was entitled to, and intended to, extend its exclusive fisheries limits with effect from a date not later than 1 September 1972. The delegation of the Federal Republic of Germany, after having reaffirmed the Federal Government's legal position, expressed their understanding for the concern of the Government of Iceland about the possibility of injury to fish stocks in the area in question if fishing remained unregulated and therefore proposed practical measures to meet the Icelandic concern. In their proposal the delegation of the Federal Republic of Germany expressed the conviction that, taking into account the special situation of Iceland as far as fisheries are concerned, it should be possible, within the framework of the North-East Atlantic Fisheries Commission, to come to an arrangement where all nations engaged in fisheries around Iceland would be ready to deliberately limit their catches. [Such an arrangement could be agreed upon as soon as a proposal, unanimously adopted by the Commission in May 1970, in accordance with Article 7 (2) of the Convention and which provided for adding to the list of measures listed in Article 7 (1) measures for regulating the amount of total catch and the amount of fishing effort in any period, had come into effect. The proposal has since been accepted by all except four of the Contracting States and it is understood by the Government of the Federal Republic of Germany that these four States expect to accept it, in accordance with their respective constitutional procedures, in the near future.] Pending the elaboration of a multilateral arrangement within the North-East Atlantic Fisheries Commission, the total catch of demersal species by vessels of the

Federal Republic of Germany would be limited to the average taken by such vessels during the years 1960 to 1969. (A copy of the North-East Atlantic Fisheries Convention of 24 January 1959, which establishes the North-East Atlantic Fisheries Commission, is annexed to this Application as Annex F.) The Icelandic delegation offered to consider practical arrangements whereby the Icelandic fisheries limits would be extended to 50 miles, but fishing vessels of the Federal Republic of Germany might be permitted, subject to certain conditions, to continue to fish in parts of the area up to a certain amount of tons for a limited phasing-out period.

15. In view of the different approaches of the two delegations, as described in the preceding paragraph, to the appropriate basis for a "practical solution of the problems involved", these discussions did not lead to an agreement. Meanwhile, the Althing had before it a draft of a further Resolution on this matter and, on 15 February 1972, it adopted an amended form of that draft. This Resolution, as so adopted, reiterated that "the continental shelf of Iceland and the superjacent waters are within the jurisdiction of Iceland" and resolved that "the fishery limits will be extended to 50 miles from baselines round the country, to become effective not later than 1 September 1972", that "the Governments of the United Kingdom and the Federal Republic of Germany be again informed that because of the vital interests of the nation and owing to changed circumstances the Notes concerning fishery limits exchanged in 1961 are no longer applicable and that their provisions do not constitute an obligation for Iceland" and that "efforts to reach a solution of the problems connected with the extension be continued through discussions with the Governments of the United Kingdom and the Federal Republic of Germany". The full text of an English translation of the Resolution is annexed to this Application as Annex G.

16. Following this Resolution, on 24 February 1972, the Minister for Foreign Affairs of the Government of Iceland delivered an aide-mémoire to the Ambassador of the Federal Republic of Germany in Reykjavik. The aide-mémoire contains a reference to a statement made by the Icelandic Minister for Foreign Affairs in the General Assembly of the United Nations on 29 September 1971 (first enclosure to the aide-mémoire), and a reference to a memorandum entitled "Fisheries Jurisdiction in Iceland" and dated February 1972 (second enclosure to the aide-mémoire). (A copy of the full text of the aide-mémoire together with the second enclosure<sup>1</sup> thereto, is annexed to this Application as Annex H. The first enclosure is not annexed since it is reproduced, so far as it is relevant to the question of fisheries jurisdiction, on pp. 31 to 33 of the second enclosure<sup>2</sup>.) The aide-mémoire stated that, for the reasons indicated in their earlier communications on the matter, the Government of Iceland "considers the provisions of the Notes exchanged (in 1961) no longer to be applicable and consequently terminated" and announced that "the Government of Iceland has accordingly decided to issue new regulations providing for fishery limits of 50 nautical miles from the present baselines, to become effective on 1 September 1972, as set forth in the Resolution of the Althing unanimously adopted on 15 February 1972". It will be seen from the penultimate paragraph on page 8 of the second enclosure<sup>3</sup> to Annex H that the figure of 50 nautical miles which was referred to in the aide-mémoire and in the Resolution adopted by the Althing on 15 February 1972, and which was also the figure referred to in the policy statement of 14 July 1971 (see para.

<sup>1</sup> *Ibid.*, pp. 27-66.

<sup>2</sup> *Ibid.*, pp. 51-53.

<sup>3</sup> *Ibid.*, p. 28.

10 above), was represented as corresponding generally to the outer limit of the Icelandic continental shelf. This outer limit, however, was taken as itself coinciding with the 400 metres isobath, as contrasted with the 100 fathoms isobath referred to in the commentary accompanying the Law of 1948 (see para. 2 above). No explanation is given of this choice of the 400 metres isobath for defining the extent of the continental shelf. It will also be seen from the map<sup>1</sup> on page 28 of the same document that even if the 400 metres isobath is taken as the appropriate index, that isobath lies at distances from the coast of Iceland which range between about 70 nautical miles and less than 12 nautical miles: in general, the distance is somewhat less than 50 nautical miles. In the formal statement that the Minister for Foreign Affairs of the Government of Iceland had read to the Ambassador of the Federal Republic of Germany when he delivered the aide-mémoire of 24 February 1972, it was stated that the aide-mémoire recapitulates the views of the Icelandic Government concerning the extension of the fishery limits and the question of the applicability of the 1961 Exchange of Notes and would be interpreted, as far as the Government of Iceland was concerned, "should the occasion arise as implying all arguments relative to the rules of international law in this field including all aspects of the termination of agreements in the light of the aide-mémoire of 31 August 1971, as well as the present aide-mémoire". It went on to say that the effective date of the new regulations to be issued on the basis of the 1948 law concerning the scientific conservation of the continental shelf fisheries, will be 1 September 1972. The full text of the statement of 24 February 1972 is annexed to this Application as Annex I.

17. As results from the aide-mémoire of 24 February 1972, together with the statement of the same day, the Government of Iceland regards its decision to extend the exclusive fisheries zone of Iceland to 50 nautical miles with effect from 1 September 1972, as being definitive. Under these circumstances, the Government of the Federal Republic of Germany concluded that it had no course open but to refer the dispute to the International Court of Justice as provided for by the Exchange of Notes of 1961. In the previous exploratory talks with the Icelandic Government, the Government of the Federal Republic of Germany had made it clear that if Iceland should definitely decide to extend its fisheries limits to 50 nautical miles, the Federal Republic of Germany would probably have no choice but to have recourse to that means of peacefully settling disputes that was provided for expressly in the Exchange of Notes. On 4 March 1972, the Ambassador of the Federal Republic of Germany informed the Prime Minister of Iceland of the decision of the Government of the Federal Republic of Germany to bring the question before the International Court of Justice. On 14 March 1972 an aide-mémoire from the Government of the Federal Republic of Germany was delivered to the Minister for Foreign Affairs of the Government of Iceland by the Ambassador of the Federal Republic of Germany in Reykjavik. The aide-mémoire formally restated the legal position of the Federal Republic of Germany in reply to the Government of Iceland's aide-mémoire of 24 February 1972, that is that "a unilateral extension of the fishery zone of Iceland is incompatible with the general rules of international law" and "that the Exchange of Notes of 1961 continues to be in force and cannot be denounced unilaterally", and gave formal notice of the intention of the Federal Republic of Germany to invoke the agreed procedure for obtaining the adjudication of the International Court of Justice thereon. In view of the definitive decision on and the imminence of

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<sup>1</sup> I, p. 48.

the action announced by the Government of Iceland, the aide-mémoire further stated that the Government of the Federal Republic of Germany, for the reasons explained in detail to the Icelandic Government during the exploratory talks and in exercise of the right laid down in paragraph 5 of the Exchange of Notes of 1961, would submit the dispute to the International Court of Justice. The Government of the Federal Republic of Germany expressed its firm hope that "by this means of peacefully settling disputes which is provided for under the United Nations Charter and is consistent with good relations between friendly States, this legal dispute between the two countries will be settled". It finally pointed out that "the Government of the Federal Republic of Germany is willing to continue discussions with the Government of Iceland in order to agree upon satisfactory practical arrangements at least for the period while the case is before the International Court of Justice". A copy of the full text of the aide-mémoire of 14 March 1972, is annexed to this Application as Annex J.

18. In the circumstances which are described in the preceding paragraphs of this Application and which the Government of the Federal Republic of Germany will explain more in detail in the subsequent pleadings, a dispute exists between the Government of Iceland and the Government of the Federal Republic of Germany. In reliance on the jurisdiction vested in the Court by the Exchange of Notes of 1961 between the Government of the Federal Republic of Germany and the Government of Iceland and by the declaration of the Federal Republic of Germany dated 29 October 1971, by which the Federal Republic of Germany accepted, in accordance with paragraph 3 of the Resolution of the Security Council of the United Nations dated 15 October 1946 the jurisdiction of the International Court of Justice in respect of all disputes which may arise between the Federal Republic of Germany and the Republic of Iceland relative to an extension of the sovereignty of Iceland in the domain of fisheries, the Government of the Federal Republic of Germany hereby submit that dispute to the International Court of Justice.

19. The subject of the dispute is the compatibility or otherwise with international law of the measures decided upon by the Government of Iceland, that is to say the unilateral extension of the exclusive fisheries jurisdiction of Iceland to 50 nautical miles from the present baselines, to become effective from 1 September 1972. The Federal Republic of Germany contends that under international law Iceland cannot unilaterally extend its exclusive fisheries jurisdiction over zones belonging to the high seas and that therefore such an extension could not be opposed to the Federal Republic of Germany. The Federal Republic of Germany contends in particular that there is no rule in international law that gives Iceland exclusive fisheries jurisdiction over the waters covering the continental shelf. The Government of the Federal Republic of Germany therefore considers that Iceland is not entitled, under international law, unilaterally to exclude fishing vessels of other countries and especially those of the Federal Republic of Germany, from the aforesaid area between 12 and 50 nautical miles with effect from 1 September 1972, or from any other date.

20. The Federal Republic of Germany is further of the opinion that, if Iceland, as a coastal State specially dependent on coastal fisheries for its livelihood or economic development, asserts 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 Exchange of Notes of 1961, it can legitimately pursue that objective by collaboration and agreement with

the other countries concerned as contemplated by the Resolution on Special Situations relating to Coastal Fisheries of 26 April 1958, but not by unilateral assumption of exclusive rights within those waters; such collaboration might be either on a bilateral or a multilateral basis and might include collaboration and agreement achieved through the machinery of such bodies as the North-East Atlantic Fisheries Commission. (The full text of the Resolution on Special Situations relating to Coastal Fisheries of 26 April 1958 is annexed to this Application as Annex K.) The Federal Republic of Germany has at all times stood ready and continues to stand ready, to collaborate with Iceland to that end and to negotiate such an agreement with Iceland (either bilaterally or multilaterally as aforesaid) in good faith and with due regard to the rights and interests of all concerned.

21. ACCORDINGLY, THE FEDERAL REPUBLIC OF GERMANY ASKS THE COURT TO ADJUDGE AND DECLARE:

- (a) that the unilateral extension by Iceland of its zone of exclusive fisheries jurisdiction to 50 nautical miles from the present baselines, to be effective from 1 September 1972, which has been decided upon by the Parliament (Althing) and the Government of Iceland and communicated by the Minister for Foreign Affairs of Iceland to the Federal Republic of Germany by aide-mémoire handed to its Ambassador in Reykjavik on 24 February 1972, would have no basis in international law and could therefore not be opposed to the Federal Republic of Germany and to its fishing vessels;
- (b) that if Iceland, as a coastal State specially dependent on coastal fisheries, establishes a need for special fisheries conservation measures in the waters adjacent to its coast but beyond the exclusive fisheries zone provided for by the Exchange of Notes of 1961, such conservation measures, as far as they would affect fisheries of the Federal Republic of Germany, may not be taken, under international law, on the basis of a unilateral extension by Iceland of its fisheries jurisdiction, but only on the basis of an agreement between the Federal Republic of Germany and Iceland concluded either bilaterally or within a multilateral framework.

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

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## ANNEXES TO THE APPLICATION

## Annex A

DECLARATION OF THE FEDERAL REPUBLIC OF GERMANY OF  
29 OCTOBER 1971

DER STAATSSSEKRETÄR  
DES  
AUSWÄRTIGEN AMTS

Bonn, 29 October 1971.

[*Translation*]

On behalf of the Federal Republic of Germany and with reference to the resolution adopted by the Security Council on 15 October 1946, I have the honour to make the following declaration:

In respect of all disputes which may arise between it and the Republic of Iceland relative to an extension of the sovereignty of Iceland in the domain of fisheries, the Federal Republic of Germany, in accordance with point 5 of the Germano-Icelandic exchange of Notes of 19 July 1961 (*Treaty Series*, Vol. 409, 1961, p. 47, No. 5877, registered by Iceland on 27 September 1961), recognizes *ipso facto* and without special agreement the jurisdiction of the International Court of Justice.

It is in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and Rules of the Court that the jurisdiction of the Court is hereby recognized.

The Federal Republic of Germany undertakes to comply in good faith with the decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter.

(*Signed*) FRANK.

## Annex B

EXCHANGE OF NOTES OF 1961 BETWEEN ICELAND AND  
THE UNITED KINGDOM

[*See Annex A to the United Kingdom Application, I, p. 11*]

## Annex C

EXCHANGE OF NOTES OF 1961  
BETWEEN ICELAND AND THE FEDERAL REPUBLIC OF GERMANY*[Translation]*

## I

*Ministry of Foreign Affairs*

Reykjavik, 19 July 1961.

I have the honour to refer to the discussions which recently took place at Bonn. In view of these discussions, the Government of the Republic of Iceland is prepared to conclude the following arrangement with the Government of the Federal Republic of Germany:

1. The Government of the Federal Republic of Germany shall not object in future to a twelve-mile fishery zone around Iceland, measured from the base lines specified in paragraph (2) below which relate solely to the delimitation of that zone.
2. The base lines which shall be used for the purpose referred to in paragraph (1) shall be those set out in Icelandic Regulations No. 70 of 30 June 1958, as modified by the use of the base lines drawn between the following points:
  - A. Point 1 (Horn) to Point 5 (Asbúdarriif).
  - B. Point 12 (Langanes) to Point 16 (Glettinganes).
  - C. Point 51 (Geirfugladrangur) to Point 42 (Skálasnagi).
  - D. Point 35 (Geirfuglasker) to Point 39 (Eldeyajrdrangur).These modifications shall enter into force immediately.
3. Until 10 March 1964 the Republic of Iceland shall not object to fishing by vessels registered in the Federal Republic of Germany within the outer six miles of the fishery zone referred to in paragraphs (1) and (2) within the following areas during the periods specified:
  - (a) Horn (Point 1)-Langanes (Point 12) (June to September).
  - (b) Langanes (Point 12)-Glettinganes (Point 16) (May to December).
  - (c) Glettinganes (Point 16)-Setusker (Point 20) (January to April and July to August).
  - (d) Setusker (Point 20)-Medallandssandur I (Point 30) (March to July).
  - (e) Medallandssandur I (Point 30)-20° West longitude (April to August).
  - (f) 20° west longitude-Geirfugladrangur (Point 51) (March to May).
  - (g) Geirfugladrangur (Point 51)-Bjartangar (Point 43) (March to May).
4. Until the date referred to in paragraph (3) there shall, however, be no fishing by vessels registered in the Federal Republic of Germany within the outer six miles of the fishery zone referred to in paragraphs (1) and (2) in the following areas:
  - (a) Between 63° 37' north latitude and 64° 13' north latitude (Faxaflói).
  - (b) Between 64° 40' north latitude and 64° 52' north latitude (Snaefellsnes).
  - (c) Between 65° north latitude and 65° 20' north latitude (Breidafjörður).
  - (d) Between Bjartangar (Point 43) and Horn (Point 1).

- (e) Off the mainland in the area delimited by lines drawn from the southernmost point of Grímsey to base points 6 and 8.
- (f) Between 14° 58' west longitude and 15° 32' west longitude (Mýrabugt).
- (g) Between 16° 12' west longitude and 16° 46' west longitude (Ingólfshöfði).
5. The Government of the Republic of Iceland shall continue to work for the implementation of the Althing Resolution of 5 May 1959 regarding the extension of the fishery jurisdiction of Iceland. However, it shall give the Government of the Federal Republic of Germany six months' notice of any such extension; in case of a dispute relating to such an extension, the matter shall, at the request of either party, be referred to the International Court of Justice.
6. This agreement shall also apply to the *Land* of Berlin unless the Government of the Federal Republic of Germany notifies the Government of the Republic of Iceland to the contrary within three months after the entry into force of this agreement.
7. The Government of the Republic of Iceland shall register this arrangement with the Secretary-General of the United Nations in accordance with Article 102 of the Charter of the United Nations.

If the Government of the Federal Republic of Germany expresses its agreement to the above proposals, I have the honour to suggest that this note and your reply should constitute an agreement between our two Governments and should enter into force immediately.

(Signed) Gudm. I GUDMUNDSSON.

[Translation]

## II

*The Ambassador of the Federal Republic of Germany  
Reykjavik*

Reykjavik, 19 July 1961.

I have the honour to acknowledge receipt of your note of 19 July 1961, which, in the German language, reads as follows:

[See Note I]

I have the honour to inform you that the Government of the Federal Republic of Germany, mindful of the exceptional importance of coastal fisheries to the Icelandic economy, agrees to the arrangement set forth in your note, and that your note and this reply thereto constitute an agreement between our two Governments, which shall enter into force immediately, subject to the stipulation by the Government of the Federal Republic of Germany that this agreement is without prejudice to its rights under international law towards third States.

(Signed) Hans R. HIRSCHFELD.

## Annex D

GOVERNMENT OF ICELAND'S AIDE-MÉMOIRE  
OF 31 AUGUST 1971

With reference to discussions in Bonn on 20 August 1971 between Mr. Einar Agustsson, Minister for Foreign Affairs, and Staatssekretär Sigismund von Braun, the Government of Iceland wishes to communicate the following:

On 19 July 1961, the Governments of Iceland and the Federal Republic of Germany exchanged notes concerning the fisheries jurisdiction of Iceland in view of the extension of Iceland's fishery limits effected in 1958. In that exchange of notes it was stated:

Die Regierung der Republik Island wird auch künftig auf die Durchführung der Entschließung des Althings vom 5. Mai 1959 betreffend Erweiterung der Fischereihoheit Islands hinarbeiten. Sie wird aber der Regierung der Bundesrepublik Deutschland eine derartige Erweiterung sechs Monate im voraus mitteilen, im Falle eines Streites im Zusammenhang mit einer derartigen Erweiterung wird die Angelegenheit auf Antrag einer der beiden Parteien dem Internationalen Gerichtshof vorgelegt werden.

In the opinion of the Icelandic Government, which is continuing to work for the implementation of the Althing Resolution in the light of increased knowledge and other developments that have occurred since that Exchange of Notes, the object and purpose of the provision for recourse to judicial settlement of certain matters envisaged in the passage quoted above have been fully achieved. In the period of ten years which has elapsed, the Government of the Federal Republic enjoyed the benefit of the Icelandic Government's policy to the effect that further extension of the limits of exclusive fisheries jurisdiction would be placed in abeyance for a reasonable and equitable period. Continuation of that policy by the Icelandic Government, in the light of intervening scientific and economic evolution (including the ever greater threat of increased diversion of highly developed fishing effort to the Icelandic area) has become excessively onerous and unacceptable, and is harmful to the maintenance of the resources of the sea on which the livelihood of the Icelandic people depends.

In order to strengthen the measures of protection essential to safeguard the vital interests of the Icelandic people in the seas surrounding its coasts, the Government of Iceland 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. 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.

Having regard to the foregoing the Government of Iceland is prepared, on the basis of the discussions which have already taken place in Bonn, that representatives of the Governments of the Federal Republic and Iceland should meet for the purpose of achieving a practical solution of the problems involved.

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## Annex E

GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY'S  
AIDE-MÉMOIRE OF 27 SEPTEMBER 1971

In reply to the aide-mémoire from the Icelandic Ministry of Foreign Affairs, dated 31 August 1971, which was handed over to the German Chargé d'Affaires in Reykjavik on 31 August, the Federal Foreign Office wishes to communicate to the Icelandic Government the following comment of the Government of the Federal Republic of Germany.

1. In the talks on 20 August 1971, between the Icelandic Minister for Foreign Affairs, Mr. Einar Agustsson, of one part, and the State Secretary in the Federal Foreign Office, Freiherr von Braun and the State Secretary in the Federal Ministry of Food, Agriculture and Forestry, Mr. Griesau, of the other, the German party expressed the Federal Republic's deep concern over the notification by the Icelandic Government of its intention to extend the Icelandic fishery zone. In view of the Icelandic Government's declared intention "to extend further the zone of exclusive fisheries to include the areas of sea covering the Continental Shelf", the Federal Government reaffirms its view, which is known to the Icelandic Government, that the unilateral assumption of sovereign power by a coastal State over zones of the high seas is inadmissible under international law. The Federal Republic of Germany would have to reserve all rights in the event of such a measure.
  2. The Federal Government cannot share the opinion expressed in the Icelandic aide-mémoire that, as regards the German-Icelandic Exchange of Notes of 19 July 1961, "the object and purpose of the provision for recourse to judicial settlement of certain matters have been fully achieved". The 1961 Exchange of Notes has no time-limit, nor does it contain a denunciation clause. It cannot be unilaterally denounced by either party. The provision in its paragraph 5 concerning judicial settlement of any dispute was made precisely for a situation such as would arise in the event of a unilateral extension of the Icelandic fishery zone beyond 12 sea miles. The Federal Government therefore reserves all rights deriving from the Exchange of Notes of 19 July 1961, especially the right to refer disputes to the International Court of Justice.
  3. The Federal Government notes the Government of Iceland's proposal of further discussions. Without prejudice to its legal position outlined above the Federal Government is prepared to enter into further exploratory discussions with the Government of Iceland.
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**Annex F****NORTH-EAST ATLANTIC FISHERIES CONVENTION OF 24 JANUARY 1959**

*[See Annex F to the United Kingdom Application, I, p. 17]*

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**Annex G****RESOLUTION ADOPTED BY THE ALTHING ON 15 FEBRUARY 1972**

*[See Annex G to the United Kingdom Application, I, p. 25]*

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**Annex H****GOVERNMENT OF ICELAND'S AIDE-MÉMOIRE  
OF 24 FEBRUARY 1972**

Negotiations have been proceeding between the Governments of Iceland and the Federal Republic of Germany for the purpose of achieving a practical solution of the problems of the German trawler industry, while safeguarding the vital interests of the Icelandic People. The position of the Icelandic Government has been expressed on a number of occasions, notably in an aide-mémoire of 31 August 1971, and in the statement made by the Minister for Foreign Affairs during the Twenty-sixth Session of the United Nations General Assembly on 29 September 1971, of which a copy is enclosed<sup>1</sup>. The considerations which lead the Government of Iceland to issue new regulations relating to exclusive fisheries jurisdiction in the continental shelf area are set forth in the enclosed Memorandum<sup>2</sup>, entitled "Fisheries Jurisdiction in Iceland" and dated February 1972.

Reiterating all those considerations, the Government of Iceland now wishes to state the following:

In the aide-mémoire of 31 August 1971 it was intimated that "in order to strengthen the measures of protection essential to safeguard the vital interests of the Icelandic People in the seas surrounding its coasts, the Government of Iceland 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". It was further stated that in the opinion of the Icelandic Government, the object and purpose of the provisions in the 1961 Exchange of

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<sup>1</sup> Not reproduced.

<sup>2</sup> I, pp. 27-66.

Notes for recourse to judicial settlement in certain eventualities have been fully achieved. The Government of Iceland, therefore, considers the provisions of the Notes exchanged no longer to be applicable and consequently terminated.

The Government of Iceland has accordingly decided to issue new regulations providing for fishery limits of 50 miles from the present base-lines, to become effective on 1 September 1972, as set forth in the Resolution of the Althing unanimously adopted on 15 February 1972.

The Government of Iceland hopes that the discussions now in progress will as soon as possible lead to a practical solution of the problems involved.

A copy of this aide-mémoire will be transmitted to the Secretary-General of the United Nations and the Registrar of the International Court of Justice.

ENCLOSURE 1

*Statement by Icelandic Minister for Foreign Affairs made in the General Assembly of the United Nations on 29 September 1971*

*[Not annexed: see para. 16 of the Application and I, pp. 51-53]*

ENCLOSURE 2

*Memorandum Entitled "Fisheries Jurisdiction in Iceland"  
Issued by the Icelandic Ministry of Foreign Affairs in  
February 1972*

*[See Annex H to the United Kingdom Application, I, pp. 27-66]*

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## Annex I

STATEMENT READ BY MINISTER FOR FOREIGN AFFAIRS  
OF ICELAND ON 24 FEBRUARY 1972

This aide-mémoire recapitulates the position of the Government of Iceland with regard to this matter. It states our views concerning the extension of the fishery limits and the question of the applicability of the 1961 Exchange of Notes. As far as the Government of Iceland is concerned it will be interpreted, should the occasion arise, as implying all arguments relative to the rules of international law in this field, including all aspects of the termination of agreements in the light of the aide-mémoire of 31 August 1971, as well as the present aide-mémoire. It should be noted in that connection that the effective date of the new regulations, to be issued on the basis of the 1948 Law concerning the Scientific Conservation of the Continental Shelf Fisheries, will be 1 September 1972, and that the hope has on various occasions been expressed that a practical solution of the problems involved will be achieved as soon as possible. The Government of Iceland has indicated a basis for a possible *modus vivendi* which is still under consideration by both Governments.

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### Annex J

#### GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY'S AIDE-MÉMOIRE OF 14 MARCH 1972

The Government of the Federal Republic of Germany has taken note of the contents of the aide-mémoire of the Government of Iceland dated 24 February 1972. In that aide-mémoire the Icelandic Government informed the Federal Government of its decision "to issue new regulations for fishery limits of 50 miles to become effective on 1 September 1972" and expresses its view that the German-Icelandic exchange of notes of 1961 is considered "no longer to be applicable and consequently terminated".

The Federal Government wishes to reaffirm its position as repeatedly explained to the Icelandic Government that

- a unilateral extension of the fishery zone of Iceland to 50 miles is incompatible with the general rules of international law;
- the exchange of notes of 1961 continues to be in force and cannot be denounced unilaterally.

Unfortunately the proposals put forward by the representatives of the Federal Government during the exploratory talks have not been accepted by the Icelandic Government.

As the aide-mémoire of the Icelandic Government of 24 February 1972 shows, the latter has now decided to issue new regulations extending Iceland's fishery zone to 50 miles with effect from 1 September 1972. Under these circumstances the Federal Government, for the reasons explained in detail to the Icelandic Government during the exploratory talks and in exercise of the right laid down in paragraph 5 of the exchange of notes of 1961, will submit the dispute to the International Court of Justice.

In doing so, the Federal Government firmly hopes that, by this means of peacefully settling disputes which is provided for under the UN Charter and is consistent with good relations between friendly States, this legal dispute between the two countries will be settled.

The Federal Government is willing to continue discussions with the Government of Iceland in order to agree upon satisfactory practical arrangements at least for the period while the case is before the International Court of Justice.

The contents of this aide-mémoire will be transmitted, as was the Government of Iceland's aide-mémoire of 24 February 1972, to the Secretary-General of the United Nations and the Registrar of the International Court of Justice.

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### Annex K

#### RESOLUTION ON SPECIAL SITUATIONS RELATING TO COASTAL FISHERIES ADOPTED AT GENEVA ON 26 APRIL 1958

*[See Annex E to the United Kingdom Application, I, p. 16]*

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