COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DES PÊCHERIES

(ROYAUME-UNI c. NORVÈGE)

ARRÊT DU 18 DÉCEMBRE 1951

1951

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

FISHERIES CASE

(UNITED KINGDOM *v.* NORWAY)

JUDGMENT OF DECEMBER 18th, 1951

LEYDE
SOCIÉTÉ D'ÉDITIONS
A. W. SIJTHOFF

LEYDEN
A. W. SIJTHOFF'S
PUBLISHING COMPANY

Le présent arrêt doit être cité comme suit :

« *Affaire des pêcheries, Arrêt du 18 décembre 1951 : C.I.J. Recueil 1951, p. 116.* »

This Judgment should be cited as follows :

"*Fisheries case, Judgment of December 18th, 1951 : I.C.J. Reports 1951, p. 116.*"

N° de vente : Sales number 74

INTERNATIONAL COURT OF JUSTICE

YEAR 1951

1951
December 18th
General List:
No. 5

December 18th, 1951

FISHERIES CASE

(UNITED KINGDOM *v.* NORWAY)

Validity in international law of Royal Norwegian Decree of 1935 delimiting Norwegian fisheries zone.—Fisheries zone; territorial sea.—Special characteristics of Norwegian coast; "skjærgaard".—Base-line for measuring breadth of territorial sea; low-water mark.—Outer coast line of "skjærgaard".—Internal waters; territorial waters.—Tracé parallèle method; envelopes of arcs of circles method; straight base-lines method.—Length of straight base-lines; 10-mile rule for bays; historic waters.—Straits; Indreleia.—International interest in delimitation of maritime areas.—General criteria for such delimitation; general direction of the coast; relationship between sea areas and land formations.—Norwegian system of delimitation regarded as adaptation of general international law.—Consistency in application of this system.—Absence of opposition or reservations by foreign States.—Notoriety.—Conformity of base-lines adopted by 1935 Decree with principles of international law applicable to delimitation of the territorial sea.

JUDGMENT

Present: *President* BASDEVANT; *Vice-President* GUERRERO; *Judges* ALVAREZ, HACKWORTH, WINIARSKI, ZORIČIĆ, DE VISSCHER, Sir Arnold MCNAIR, KLAESTAD, BADAWI PASHA, READ, HSU MO; *Registrar* HAMBRO.

In the Fisheries case,

between

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

Sir Eric Beckett, K.C.M.G., K.C., Legal Adviser to the Foreign Office,

as Agent,
assisted by :

The Right Honourable Sir Frank Soskice, K.C., M.P., Attorney-General,

Professor C. H. M. Waldock, C.M.G., O.B.E., K.C., Chichele Professor of Public International Law in the University of Oxford,

Mr. R. O. Wilberforce, Member of the English Bar,

Mr. D. H. N. Johnson, Assistant Legal Adviser, Foreign Office,

as Counsel,
and by :

Commander R. H. Kennedy, O.B.E., R.N. (retired), Hydrographic Department, Admiralty,

Mr. W. H. Evans, Hydrographic Department, Admiralty,

M. Annaeus Schjødt, Jr., of the Norwegian Bar, Legal Adviser to the British Embassy in Oslo,

Mr. W. N. Hanna, Military Branch, Admiralty,

Mr. A. S. Armstrong, Fisheries Department, Ministry of Agriculture and Fisheries,

as expert advisers ;

and

the Kingdom of Norway,
represented by :

M. Sven Arntzen, Advocate at the Supreme Court of Norway,

as Agent and Counsel,
assisted by :

M. Maurice Bourquin, Professor at the University of Geneva and at the Graduate Institute of International Studies,

as Counsel,

and by :

M. Paal Berg, former President of the Supreme Court of Norway,
M. C. J. Hambro, President of the Odelsting,
M. Frede Castberg, Professor at the University of Oslo,
M. Lars J. Jorstad, Minister Plenipotentiary,
Captain Chr. Meyer, of the Norwegian Royal Navy,

M. Gunnar Rollefsen, Director of the Research Bureau of the Norwegian Department of Fisheries,
M. Reidar Skau, Judge of the Supreme Court of Norway,
M. E. A. Colban, Chief of Division in the Norwegian Royal Ministry for Foreign Affairs,
Captain W. Coucheron-Aamot, of the Norwegian Royal Navy,

M. Jens Evensen, of the Bar of the Norwegian Courts of Appeal,
M. André Salomon, Doctor of Law,

as experts,
and by :

M. Sigurd Ekeland, Secretary to the Norwegian Royal Ministry for Foreign Affairs,

as secretary,

THE COURT,

composed as above,

delivers the following Judgment :

On September 28th, 1949, the Government of the United Kingdom of Great Britain and Northern Ireland filed in the Registry an Application instituting proceedings before the Court against the Kingdom of Norway, the subject of the proceedings being the validity or otherwise, under international law, of the lines of delimitation of the Norwegian fisheries zone laid down by the Royal Decree of July 12th, 1935, as amended by a Decree of December 10th, 1937, for that part of Norway which is situated northward of 66° 28.8′ (or 66° 28′ 48″) N. latitude. The Application refers to the Declarations by which the United Kingdom and Norway have accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute.

This Application asked the Court

> "*(a)* to declare the principles of international law to be applied in defining the base-lines, by reference to which the Norwegian Government is entitled to delimit a fisheries zone, extending to

seaward 4 sea miles from those lines and exclusively reserved for its own nationals, and to define the said base-lines in so far as it appears necessary, in the light of the arguments of the Parties, in order to avoid further legal differences between them ;

(b) to award damages to the Government of the United Kingdom in respect of all interferences by the Norwegian authorities with British fishing vessels outside the zone which, in accordance with the Court's decision under *(a)*, the Norwegian Government is entitled to reserve for its nationals."

Pursuant to Article 40, paragraph 3, of the Statute, the Application was notified to the States entitled to appear before the Court. It was also transmitted to the Secretary-General of the United Nations.

The Pleadings were filed within the time-limits prescribed by Order of November 9th, 1949, and later extended by Orders of March 29th and October 4th, 1950, and January 10th, 1951. By application of Article 44, paragraph 2, of the Rules of Court, they were communicated to the Governments of Belgium, Canada, Cuba, Iceland, Sweden, the United States of America and Venezuela, at their request and with the authorization of the Court. On September 24th, 1951, the Court, by application of Article 44, paragraph 3, of the Rules, at the instance of the Government of Norway, and with the agreement of the United Kingdom Government, authorized the Pleadings to be made accessible to the public.

The case was ready for hearing on April 30th, 1951, and the opening of the oral proceedings was fixed for September 25th, 1951. Public hearings were held on September 25th, 26th, 27th, 28th and 29th, October 1st, 5th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, 15th, 17th, 18th, 19th, 20th, 24th, 25th, 26th, 27th and 29th. In the course of the hearings, the Court heard Sir Eric Beckett, Agent, Sir Frank Soskice, Mr. Wilberforce and Professor Waldock, Counsel, on behalf of the United Kingdom Government ; and M. Arntzen, Agent and Counsel, and Professor Bourquin, Counsel, on behalf of the Government of Norway. In addition, technical explanations were given on behalf of the United Kingdom Government by Commander Kennedy.

At the end of his argument, the Agent of the United Kingdom Government presented the following submissions :

"The United Kingdom submits that the Court should decide that the maritime limits which Norway is entitled to enforce as against the United Kingdom should be drawn in accordance with the following principles :

(1) That Norway is entitled to a belt of territorial waters of fixed breadth—the breadth cannot, as a maximum, exceed 4 sea miles.

(2) That, in consequence, the outer limit of Norway's territorial waters must never be more than 4 sea miles from *some* point on the base-line.

(3) That, subject to (4) (9) and (10) below, the base-line must be low-water mark on permanently dry land (which is part of Norwegian territory) or the proper closing line (see (7) below) of Norwegian internal waters.

(4) That, where there is a low-tide elevation situated within 4 sea miles of permanently dry land, or of the proper closing line of Norwegian internal waters, the outer limit of territorial waters may be 4 sea miles from the outer edge (at low tide) of this low-tide elevation. In no other case may a low-tide elevation be taken into account.

(5) That Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in international law, whether the proper entrance to the indentation is more or less than 10 sea miles wide.

(6) That the definition of a bay in international law is a well-marked indentation, whose penetration inland is in such proportion to the width of its mouth as to constitute the indentation more than a mere curvature of the coast.

(7) That, where an area of water is a bay, the principle which determines where the closing line should be drawn, is that the closing line should be drawn between the natural geographical entrance points where the indentation ceases to have the configuration of a bay.

(8) That a legal strait is any geographical strait which connects two portions of the high seas.

(9) That Norway is entitled to claim as Norwegian territorial waters, on historic grounds, all the waters of the fjords and sunds which have the character of a legal strait. Where the maritime belts, drawn from each shore, overlap at each end of the strait, the limit of territorial waters is formed by the outer rims of these two maritime belts. Where, however, the maritime belts so drawn do not overlap, the limit follows the outer rims of each of these two maritime belts, until they intersect with the straight line, joining the natural entrance points of the strait, after which intersection the limit follows that straight line.

(10) That, in the case of the Vestfjord, the outer limit of Norwegian territorial waters, at the south-westerly end of the fjord, is the pecked green line shown on Charts Nos. 8 and 9 of Annex 35 of the Reply.

(11) That Norway, by reason of her historic title to fjords and sunds, is entitled to claim, either as territorial or as internal waters, the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the islands and the mainland, and whether these areas are territorial or internal waters, recourse must be had to Nos. (6) and (8) above, being the definitions of a bay and of a legal strait.

(12) That Norway is not entitled, as against the United Kingdom, to enforce any claim to waters not covered by the preceding principles. As between Norway and the United Kingdom, waters off the coast of Norway north of parallel 66° 28.8' N., which are not Norwegian by virtue of the above-mentioned principles, are high seas.

(13) That Norway is under an international obligation to pay to the United Kingdom compensation in respect of all the arrests since 16th September, 1948, of British fishing vessels in waters, which are high seas by virtue of the application of the preceding principles."

Later, the Agent of the United Kingdom Government presented the following Conclusions, at the end of his oral reply:

"The United Kingdom submits that the Court should decide that the maritime limits which Norway is entitled to enforce as against the United Kingdom should be drawn in accordance with the following principles:

(1) That Norway is entitled to a belt of territorial waters of fixed breadth—the breadth cannot, as a maximum, exceed 4 sea miles.

(2) That, in consequence, the outer limit of Norway's territorial waters must never be more than 4 sea miles from *some* point on the base-line.

(3) That, subject to Nos. (4), (9) and (10) below, the base-line must be low-water mark on permanently dry land (which is part of Norwegian territory) or the proper closing line (see No. (7) below) of Norwegian internal waters.

(4) That, where there is a low-tide elevation situated within 4 sea miles of permanently dry land, or of the proper closing line of Norwegian internal waters, the outer limit of Norwegian territorial waters may be 4 sea miles from the outer edge (at low tide) of this low-tide elevation. In no other case may a low-tide elevation be taken into account.

(5) That Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in international law (see No. (6) below), whether the proper closing line of the indendation is more or less than 10 sea miles long.

(6) That the definition of a bay in international law is a well-marked indentation, whose penetration inland is in such proportion to the width of its mouth as to constitute the indentation more than a mere curvature of the coast.

(7) That, where an area of water is a bay, the principle which determines where the closing line should be drawn, is that the closing line should be drawn between the natural geographical entrance points where the indentation ceases to have the configuration of a bay.

(8) That a legal strait is any geographical strait which connects two portions of the high seas.

(9) *(a)* That Norway is entitled to claim as Norwegian territorial waters, on historic grounds, all the waters of the fjords and sunds which have the character of legal straits.

(b) Where the maritime belts drawn from each shore overlap at each end of the strait, the limit of territorial waters is formed by the outer rims of these two maritime belts. Where, however, the maritime belts so drawn do not overlap, the limit follows the outer rims of each of these two maritime belts, until they intersect with the straight line, joining the natural entrance points of the strait, after which intersection the limit follows that straight line.

(10) That, in the case of the Vestfjord, the outer limit of Norwegian territorial waters, at the south-westerly end of the fjord, is the pecked green line shown on Charts Nos. 8 and 9 of Annex 35 of the Reply.

(11) That Norway, by reason of her historic title to fjords and sunds (see Nos. (5) and (9) *(a)* above), is entitled to claim, either as internal or as territorial waters, the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, and whether these areas are internal or territorial waters, the principles of Nos. (6), (7), (8) and (9) *(b)* must be applied to indentations in the island fringe and to indentations between the island fringe and the mainland—those areas which lie in indentations having the character of bays, and within the proper closing lines thereof, being deemed to be internal waters; and those areas which lie in indentations having the character of legal straits, and within the proper limits thereof, being deemed to be territorial waters.

(12) That Norway is not entitled, as against the United Kingdom, to enforce any claims to waters not covered by the preceding principles. As between Norway and the United Kingdom, waters off the coast of Norway north of parallel 66° 28.8′ N., which are not Norwegian by virtue of the above-mentioned principles, are high seas.

(13) That the Norwegian Royal Decree of 12th July, 1935, is not enforceable against the United Kingdom to the extent that it claims as Norwegian waters (internal or territorial waters) areas of water not covered by Nos. (1)-(11).

(14) That Norway is under an international obligation to pay to the United Kingdom compensation is respect of all the arrests since 16th September, 1948, of British fishing vessels in waters which are high seas by virtue of the application of the preceding principles.

Alternatively to Nos. (1) to (13) (if the Court should decide to determine by its judgment the exact limits of the territorial waters which Norway is entitled to enforce against the United Kingdom), that Norway is not entitled as against the United Kingdom to claim as Norwegian waters any areas of water off the Norwegian coasts north of parallel 66° 28.8′ N. which are outside the pecked green line drawn on the charts which form Annex 35 of the Reply.

Alternatively to Nos. (8) to (11) (if the Court should hold that the waters of the Indreleia are Norwegian internal waters), the following are substituted for Nos. (8) to (11) :

I. That, in the case of the Vestfjord, the outer limit of Norwegian territorial waters at the south-westerly end of the fjord is a line drawn 4 sea miles seawards of a line joining the Skomvær light-house at Rost to Kalsholmen lighthouse in Tennholmerne until the intersection of the former line with the arcs of circles in the pecked green line shown on Charts 8 and 9 of Annex 35 of the Reply.

II. That Norway, by reason of her historic title to fjords and sunds, is entitled to claim as internal waters the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, the principles of Nos. (6) and (7) above must be applied to the indentations in the island fringe and to the indentations between the island fringe and the mainland—those areas which lie in indentations having the character of bays, and within the proper closing lines thereof, being deemed to lie between the island fringe and the mainland."

At the end of his argument, the Norwegian Agent presented, on behalf of his government, the following submissions, which he did not modify in his oral rejoinder :

"Having regard to the fact that the Norwegian Royal Decree of July 12th, 1935, is not inconsistent with the rules of international law binding upon Norway, and

having regard to the fact that Norway possesses, in any event, an historic title to all the waters included within the limits laid down by that decree,

May it please the Court,

in one single judgment,

rejecting all submissions to the contrary,

to adjudge and declare that the delimitation of the fisheries zone fixed by the Norwegian Royal Decree of July 12th, 1935, is not contrary to international law."

* * *

The facts which led the United Kingdom to bring the case before the Court are briefly as follows.

The historical facts laid before the Court establish that as the result of complaints from the King of Denmark and of Norway, at the beginning of the seventeenth century, British fishermen refrained from fishing in Norwegian coastal waters for a long period, from 1616-1618 until 1906.

In 1906 a few British fishing vessels appeared off the coasts of Eastern Finnmark. From 1908 onwards they returned in greater numbers. These were trawlers equipped with improved and powerful gear. The local population became perturbed, and measures were taken by the Norwegian Government with a view to specifying the limits within which fishing was prohibited to foreigners.

The first incident occurred in 1911 when a British trawler was seized and condemned for having violated these measures. Negotiations ensued between the two Governments. These were interrupted by the war in 1914. From 1922 onwards incidents recurred. Further conversations were initiated in 1924. In 1932, British trawlers, extending the range of their activities, appeared in the sectors off the Norwegian coast west of the North Cape, and the number of warnings and arrests increased. On July 27th, 1933, the United Kingdom Government sent a memorandum to the Norwegian Government complaining that in delimiting the territorial sea the Norwegian authorities had made use of unjustifiable base-lines. On July 12th, 1935, a Norwegian Royal Decree was enacted delimiting the Norwegian fisheries zone north of 66° 28.8′ North latitude.

The United Kingdom made urgent representations in Oslo in the course of which the question of referring the dispute to the Permanent Court of International Justice was raised. Pending the result of the negotiations, the Norwegian Government made it known that Norwegian fishery patrol vessels would deal leniently with foreign vessels fishing a certain distance within the fishing limits. In 1948, since no agreement had been reached, the Norwegian Government abandoned its lenient enforcement of the 1935 Decree ;

incidents then became more and more frequent. A considerable number of British trawlers were arrested and condemned. It was then that the United Kingdom Government instituted the present proceedings.

* * *

The Norwegian Royal Decree of July 12th, 1935, concerning the delimitation of the Norwegian fisheries zone sets out in the preamble the considerations on which its provisions are based. In this connection it refers to "well-established national titles of right", "the geographical conditions prevailing on the Norwegian coasts", "the safeguard of the vital interests of the inhabitants of the northernmost parts of the country" ; it further relies on the Royal Decrees of February 22nd, 1812, October 16th, 1869, January 5th, 1881, and September 9th, 1889.

The Decree provides that "lines of delimitation towards the high sea of the Norwegian fisheries zone as regards that part of Norway which is situated northward of 66° 28.8′ North latitude .... shall run parallel with straight base-lines drawn between fixed points on the mainland, on islands or rocks, starting from the final point of the boundary line of the Realm in the easternmost part of the Varangerfjord and going as far as Træna in the County of Nordland". An appended schedule indicates the fixed points between which the base-lines are drawn.

The subject of the dispute is clearly indicated under point 8 of the Application instituting proceedings : "The subject of the dispute is the validity or otherwise under international law of the lines of delimitation of the Norwegian fisheries zone laid down by the Royal Decree of 1935 for that part of Norway which is situated northward of 66° 28.8′ North latitude." And further on : " .... the question at issue between the two Governments is whether the lines prescribed by the Royal Decree of 1935 as the base-lines for the delimitation of the fisheries zone have or have not been drawn in accordance with the applicable rules of international law".

Although the Decree of July 12th, 1935, refers to the Norwegian fisheries zone and does not specifically mention the territorial sea, there can be no doubt that the zone delimited by this Decree is none other than the sea area which Norway considers to be her territorial sea. That is how the Parties argued the question and that is the way in which they submitted it to the Court for decision.

The Submissions presented by the Agent of the Norwegian Government correspond to the subject of the dispute as indicated in the Application.

The propositions formulated by the Agent of the United Kingdom Government at the end of his first speech and revised by him at the end of his oral reply under the heading of "Conclusions" are more complex in character and must be dealt with in detail.

Points 1 and 2 of these "Conclusions" refer to the extent of Norway's territorial sea. This question is not the subject of the present dispute. In fact, the 4-mile limit claimed by Norway was acknowledged by the United Kingdom in the course of the proceedings.

Points 12 and 13 appear to be real Submissions which accord with the United Kingdom's conception of international law as set out under points 3 to 11.

Points 3 to 11 appear to be a set of propositions which, in the form of definitions, principles or rules, purport to justify certain contentions and do not constitute a precise and direct statement of a claim. The subject of the dispute being quite concrete, the Court cannot entertain the suggestion made by the Agent of the United Kingdom Government at the sitting of October 1st, 1951, that the Court should deliver a Judgment which for the moment would confine itself to adjudicating on the definitions, principles or rules stated, a suggestion which, moreover, was objected to by the Agent of the Norwegian Government at the sitting of October 5th, 1951. These are elements which might furnish reasons in support of the Judgment, but cannot constitute the decision. It further follows that even understood in this way, these elements may be taken into account only in so far as they would appear to be relevant for deciding the sole question in dispute, namely, the validity or otherwise under international law of the lines of delimitation laid down by the 1935 Decree.

Point 14, which seeks to secure a decision of principle concerning Norway's obligation to pay to the United Kingdom compensation in respect of all arrests since September 16th, 1948, of British fishing vessels in waters found to be high seas, need not be considered, since the Parties had agreed to leave this question to subsequent settlement if it should arise.

The claim of the United Kingdom Government is founded on what it regards as the general international law applicable to the delimitation of the Norwegian fisheries zone.

The Norwegian Government does not deny that there exist rules of international law to which this delimitation must conform. It contends that the propositions formulated by the United Kingdom Government in its "Conclusions" do not possess the character attributed to them by that Government. It further relies on its own system of delimitation which it asserts to be in every respect in conformity with the requirements of international law.

The Court will examine in turn these various aspects of the claim of the United Kingdom and of the defence of the Norwegian Government.

* * *

The coastal zone concerned in the dispute is of considerable length. It lies north of latitude 66° 28.8′ N., that is to say, north of the Arctic Circle, and it includes the coast of the mainland of Norway and all the islands, islets, rocks and reefs, known by the name of the "skjærgaard" (literally, rock rampart), together with all Norwegian internal and territorial waters. The coast of the mainland, which, without taking any account of fjords, bays and minor indentations, is over 1,500 kilometres in length, is of a very distinctive configuration. Very broken along its whole length, it constantly opens out into indentations often penetrating for great distances inland : the Porsangerfjord, for instance, penetrates 75 sea miles inland. To the west, the land configuration stretches out into the sea : the large and small islands, mountainous in character, the islets, rocks and reefs, some always above water, others emerging only at low tide, are in truth but an extension of the Norwegian mainland. The number of insular formations, large and small, which make up the "skjærgaard", is estimated by the Norwegian Government to be one hundred and twenty thousand. From the southern extremity of the disputed area to the North Cape, the "skjærgaard" lies along the whole of the coast of the mainland ; east of the North Cape, the "skjærgaard" ends, but the coast line continues to be broken by large and deeply indented fjords.

Within the "skjærgaard", almost every island has its large and its small bays ; countless arms of the sea, straits, channels and mere waterways serve as a means of communication for the local population which inhabits the islands as it does the mainland. The coast of the mainland does not constitute, as it does in practically all other countries, a clear dividing line between land and sea. What matters, what really constitutes the Norwegian coast line, is the outer line of the "skjærgaard".

The whole of this region is mountainous. The North Cape, a sheer rock little more than 300 metres high, can be seen from a considerable distance ; there are other summits rising to over a thousand metres, so that the Norwegian coast, mainland and "skjærgaard", is visible from far off.

Along the coast are situated comparatively shallow banks, veritable under-water terraces which constitute fishing grounds where fish are particularly abundant ; these grounds were known to Norwegian fishermen and exploited by them from time immemorial. Since these banks lay within the range of vision, the most desirable fishing grounds were always located and identified by means of the method of alignments (*"meds"*), at points where two lines drawn between points selected on the coast or on islands intersected.

In these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing.

Such are the realities which must be borne in mind in appraising the validity of the United Kingdom contention that the limits of the Norwegian fisheries zone laid down in the 1935 Decree are contrary to international law.

The Parties being in agreement on the figure of 4 miles for the breadth of the territorial sea, the problem which arises is from what base-line this breadth is to be reckoned. The Conclusions of the United Kingdom are explicit on this point : the base-line must be low-water mark on permanently dry land which is a part of Norwegian territory, or the proper closing line of Norwegian internal waters.

The Court has no difficulty in finding that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of States. This criterion is the most favourable to the coastal State and clearly shows the character of territorial waters as appurtenant to the land territory. The Court notes that the Parties agree as to this criterion, but that they differ as to its application.

The Parties also agree that in the case of a low-tide elevation (drying rock) the outer edge at low water of this low-tide elevation may be taken into account as a base-point for calculating the breadth of the territorial sea. The Conclusions of the United Kingdom Government add a condition which is not admitted by Norway, namely, that, in order to be taken into account, a drying rock must be situated within 4 miles of permanently dry land. However, the Court does not consider it necessary to deal with this question, inasmuch as Norway has succeeded in proving, after both Parties had given their interpretation of the charts, that in fact none of the drying rocks used by her as base points is more than 4 miles from permanently dry land.

The Court finds itself obliged to decide whether the relevant low-water mark is that of the mainland or of the "skjærgaard". Since the mainland is bordered in its western sector by the "skjærgaard", which constitutes a whole with the mainland, it is the outer line of the "skjærgaard" which must be taken into account in delimiting the belt of Norwegian territorial waters. This solution is dictated by geographic realities.

Three methods have been contemplated to effect the application of the low-water mark rule. The simplest would appear to be the method of the *tracé parallèle*, which consists of drawing the outer limit of the belt of territorial waters by following the coast in all its sinuosities. This method may be applied without difficulty to an ordinary coast, which is not too broken. Where a coast is deeply

indented and cut into, as is that of Eastern Finnmark, or where it is bordered by an archipelago such as the "skjærgaard" along the western sector of the coast here in question, the base-line becomes independent of the low-water mark, and can only be determined by means of a geometrical construction. In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coastline to be followed in all its sinuosities. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast: the rule would disappear under the exceptions. Such a coast, viewed as a whole, calls for the application of a different method; that is, the method of base-lines which, within reasonable limits, may depart from the physical line of the coast.

It is true that the experts of the Second Sub-Committee of the Second Committee of the 1930 Conference for the codification of international law formulated the low-water mark rule somewhat strictly ("following all the sinuosities of the coast"). But they were at the same time obliged to admit many exceptions relating to bays, islands near the coast, groups of islands. In the present case this method of the *tracé parallèle*, which was invoked against Norway in the Memorial, was abandoned in the written Reply, and later in the oral argument of the Agent of the United Kingdom Government. Consequently, it is no longer relevant to the case. "On the other hand", it is said in the Reply, the *courbe tangente*—or, in English, 'envelopes of arcs of circles'—method is the method which the United Kingdom considers to be the correct one"

The arcs of circles method, which is constantly used for determining the position of a point or object at sea, is a new technique in so far as it is a method for delimiting the territorial sea. This technique was proposed by the United States delegation at the 1930 Conference for the codification of international law. Its purpose is to secure the application of the principle that the belt of territorial waters must follow the line of the coast. It is not obligatory by law, as was admitted by Counsel for the United Kingdom Government in his oral reply. In these circumstances, and although certain of the Conclusions of the United Kingdom are founded on the application of the arcs of circles method, the Court considers that it need not deal with these Conclusions in so far as they are based upon this method.

The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight base-lines method and that they have not encountered objections of principle by other States. This method consists of selecting appropriate points on the

low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters.

It has been contended, on behalf of the United Kingdom, that Norway may draw straight lines only across bays. The Court is unable to share this view. If the belt of territorial waters must follow the outer line of the "skjærgaard", and if the method of straight baselines must be admitted in certain cases, there is no valid reason to draw them only across bays, as in Eastern Finnmark, and not also to draw them between islands, islets and rocks, across the sea areas separating them, even when such areas do not fall within the conception of a bay. It is sufficient that they should be situated between the island formations of the "skjærgaard", *inter fauces terrarum.*

The United Kingdom Government concedes that straight lines, regardless of their length, may be used only subject to the conditions set out in point 5 of its Conclusions, as follows :

> "Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in international law (see No. (6) below), whether the proper closing line of the indentation is more or less than 10 sea miles long."

A preliminary remark must be made in respect of this point.

In the opinion of the United Kingdom Government, Norway is entitled, on historic grounds, to claim as internal waters all fjords and sunds which have the character of a bay. She is also entitled on historic grounds to claim as Norwegian territorial waters all the waters of the fjords and sunds which have the character of legal straits (Conclusions, point 9), and, either as internal or as territorial waters, the areas of water lying between the island fringe and the mainland (point 11 and second alternative Conclusion II).

By "historic waters" are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title. The United Kingdom Government refers to the notion of historic titles both in respect of territorial waters and internal waters, considering such titles, in both cases, as derogations from general international law. In its opinion Norway can justify the claim that these waters are territorial or internal on the ground that she has exercised the necessary jurisdiction over them for a long period without opposition from other States, a kind of *possessio longi temporis*, with the result that her jurisdiction over these waters must now be recognized although it constitutes a derogation from the rules in force.

Norwegian sovereignty over these waters would constitute an exception, historic titles justifying situations which would otherwise be in conflict with international law.

As has been said, the United Kingdom Government concedes that Norway is entitled to claim as internal waters all the waters of fjords and sunds which fall within the conception of a bay as defined in international law whether the closing line of the indentation is more or less than ten sea miles long. But the United Kingdom Government concedes this only on the basis of historic title; it must therefore be taken that that Government has not abandoned its contention that the ten-mile rule is to be regarded as a rule of international law.

In these circumstances the Court deems it necessary to point out that although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law.

In any event the ten-mile rule would appear to be inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast.

The Court now comes to the question of the length of the base-lines drawn across the waters lying between the various formations of the "skjærgaard". Basing itself on the analogy with the alleged general rule of ten miles relating to bays, the United Kingdom Government still maintains on this point that the length of straight lines must not exceed ten miles.

In this connection, the practice of States does not justify the formulation of any general rule of law. The attempts that have been made to subject groups of islands or coastal archipelagoes to conditions analogous to the limitations concerning bays (distance between the islands not exceeding twice the breadth of the territorial waters, or ten or twelve sea miles), have not got beyond the stage of proposals.

Furthermore, apart from any question of limiting the lines to ten miles, it may be that several lines can be envisaged. In such cases the coastal State would seem to be in the best position to appraise the local conditions dictating the selection.

Consequently, the Court is unable to share the view of the United Kingdom Government, that "Norway, in the matter of base-lines, now claims recognition of an exceptional system". As will be shown later, all that the Court can see therein is the application of general international law to a specific case.

The Conclusions of the United Kingdom, points 5 and 9 to 11, refer to waters situated between the base-lines and the Norwegian mainland. The Court is asked to hold that on historic grounds these waters belong to Norway, but that they are divided into two categories: territorial and internal waters, in accordance with two criteria which the Conclusions regard as well founded in international law, the waters falling within the conception of a bay being deemed to be internal waters, and those having the character of legal straits being deemed to be territorial waters.

As has been conceded by the United Kingdom, the "skjærgaard" constitutes a whole with the Norwegian mainland; the waters between the base-lines of the belt of territorial waters and the mainland are internal waters. However, according to the argument of the United Kingdom a portion of these waters constitutes territorial waters. These are *inter alia* the waters followed by the navigational route known as the Indreleia. It is contended that since these waters have this character, certain consequences arise with regard to the determination of the territorial waters at the end of this water-way considered as a maritime strait.

The Court is bound to observe that the Indreleia is not a strait at all, but rather a navigational route prepared as such by means of artificial aids to navigation provided by Norway. In these circumstances the Court is unable to accept the view that the Indreleia, for the purposes of the present case, has a status different from that of the other waters included in the "skjærgaard".

Thus the Court, confining itself for the moment to the Conclusions of the United Kingdom, finds that the Norwegian Government in fixing the base-lines for the delimitation of the Norwegian fisheries zone by the 1935 Decree has not violated international law.

* * *

It does not at all follow that, in the absence of rules having the technically precise character alleged by the United Kingdom Government, the delimitation undertaken by the Norwegian Government in 1935 is not subject to certain principles which make it possible to judge as to its validity under international law. The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.

In this connection, certain basic considerations inherent in the nature of the territorial sea, bring to light certain criteria which, though not entirely precise, can provide courts with an adequate basis for their decisions, which can be adapted to the diverse facts in question.

Among these considerations, some reference must be made to the close dependence of the territorial sea upon the land domain. It is the land which confers upon the coastal State a right to the waters off its coasts. It follows that while such a State must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements, the drawing of base-lines must not depart to any appreciable extent from the general direction of the coast.

Another fundamental consideration, of particular importance in this case, is the more or less close relationship existing between certain sea areas and the land formations which divide or surround them. The real question raised in the choice of base-lines is in effect whether certain sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters. This idea, which is at the basis of the determination of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration of which is as unusual as that of Norway.

Finally, there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors : that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage.

Norway puts forward the 1935 Decree as the application of a traditional system of delimitation, a system which she claims to be in complete conformity with international law. The Norwegian Government has referred in this connection to an historic title, the meaning of which was made clear by Counsel for Norway at the sitting on October 12th, 1951 : "The Norwegian Government does not rely upon history to justify exceptional rights, to claim areas of sea which the general law would deny ; it invokes history, together with other factors, to justify the way in which it applies the general law." This conception of an historic title is in consonance with the Norwegian Government's understanding of the general rules of international law. In its view, these rules of international law take into account the diversity of facts and, therefore, concede that the drawing of base-lines must be adapted to the special conditions obtaining in different regions. In its view, the system of delimitation applied in 1935, a system characterized by the use of straight lines, does not therefore infringe the general law ; it is an adaptation rendered necessary by local conditions.

The Court must ascertain precisely what this alleged system of delimitation consists of, what is its effect in law as against the United Kingdom, and whether it was applied by the 1935 Decree in a manner which conformed to international law.

It is common ground between the Parties that on the question of the existence of a Norwegian system, the Royal Decree of February 22nd, 1812, is of cardinal importance. This Decree is in the following terms: "We wish to lay down as a rule that, in all cases when there is a question of determining the limit of our territorial sovereignty at sea, that limit shall be reckoned at the distance of one ordinary sea league from the island or islet farthest from the mainland, not covered by the sea; of which all proper authorities shall be informed by rescript."

This text does not clearly indicate how the base-lines between the islands or islets farthest from the mainland were to be drawn. In particular, it does not say in express terms that the lines must take the form of straight lines drawn between these points. But it may be noted that it was in this way that the 1812 Decree was invariably construed in Norway in the course of the 19th and 20th centuries.

The Decree of October 16th, 1869, relating to the delimitation of Sunnmöre, and the Statement of Reasons for this Decree, are particularly revealing as to the traditional Norwegian conception and the Norwegian construction of the Decree of 1812. It was by reference to the 1812 Decree, and specifically relying upon "the conception" adopted by that Decree, that the Ministry of the Interior justified the drawing of a straight line 26 miles in length between the two outermost points of the "skjærgaard". The Decree of September 9th, 1889, relating to the delimitation of Romsdal and Nordmöre, applied the same method, drawing four straight lines, respectively 14.7 miles, 7 miles, 23.6 miles and 11.6 miles in length.

The 1812 Decree was similarly construed by the Territorial Waters Boundary Commission (Report of February 29th, 1912, pp. 48-49), as it was in the Memorandum of January 3rd, 1929, sent by the Norwegian Government to the Secretary-General of the League of Nations, in which it was said: "The direction laid down by this Decree should be interpreted in the sense that the starting-point for calculating the breadth of the territorial waters should be a line drawn along the 'skjærgaard' between the furthest rocks and, where there is no 'skjærgaard', between the extreme points." The judgment delivered by the Norwegian Supreme Court in 1934, in the *St. Just* case, provided final authority for this interpretation. This conception accords with the geographical characteristics of the Norwegian coast and is not contrary to the principles of international law.

It should, however, be pointed out that whereas the 1812 Decree designated as base-points "the island or islet farthest from the mainland not covered by the sea", Norwegian governmental practice subsequently interpreted this provision as meaning that the limit was to be reckoned from the outermost islands and islets "not continuously covered by the sea".

The 1812 Decree, although quite general in its terms, had as its immediate object the fixing of the limit applicable for the purposes of maritime neutrality. However, as soon as the Norwegian Government found itself impelled by circumstances to delimit its fisheries zone, it regarded that Decree as laying down principles to be applied for purposes other than neutrality. The Statements of Reasons of October 1st, 1869, December 20th, 1880, and May 24th, 1889, are conclusive on this point. They also show that the delimitation effected in 1869 and in 1889 constituted a reasoned application of a definite system applicable to the whole of the Norwegian coast line, and was not merely legislation of local interest called for by any special requirements. The following passage from the Statement of Reasons of the 1869 Decree may in particular be referred to: "My Ministry assumes that the general rule mentioned above [namely, the four-mile rule], which is recognized by international law for the determination of the extent of a country's territorial waters, must be applied here in such a way that the sea area inside a line drawn parallel to a straight line between the two outermost islands or rocks not covered by the sea, Svinöy to the south and Storholmen to the north, and one geographical league north-west of that straight line, should be considered Norwegian maritime territory."

The 1869 Statement of Reasons brings out all the elements which go to make up what the Norwegian Government describes as its traditional system of delimitation : base-points provided by the islands or islets farthest from the mainland, the use of straight lines joining up these points, the lack of any maximum length for such lines. The judgment of the Norwegian Supreme Court in the *St. Just* case upheld this interpretation and added that the 1812 Decree had never been understood or applied "in such a way as to make the boundary follow the sinuosities of the coast or to cause its position to be determined by means of circles drawn round the points of the Skjærgaard or of the mainland furthest out to sea—a method which it would be very difficult to adopt or to enforce in practice, having regard to the special configuration of this coast". Finally, it is established that, according to the Norwegian system, the base-lines must follow the general direction of the coast, which is in conformity with international law.

Equally significant in this connection is the correspondence which passed between Norway and France between 1869-1870. On December 21st, 1869, only two months after the promulgation

of the Decree of October 16th relating to the delimitation of Sunnmöre, the French Government asked the Norwegian Government for an explanation of this enactment. It did so basing itself upon "the principles of international law". In a second Note dated December 30th of the same year, it pointed out that the distance between the base-points was greater than 10 sea miles, and that the line joining up these points should have been a broken line following the configuration of the coast. In a Note of February 8th, 1870, the Ministry for Foreign Affairs, also dealing with the question from the point of view of international law, replied as follows :

> "By the same Note of December 30th, Your Excellency drew my attention to the fixing of the fishery limit in the Sunnmöre Archipelago by a straight line instead of a broken line. According to the view held by your Government, as the distance between the islets of Svinöy and Storholmen is more than 10 sea miles, the fishery limit between these two points should have been a broken line following the configuration of the coast line and nearer to it than the present limit. In spite of the adoption in some treaties of the quite arbitrary distance of 10 sea miles, this distance would not appear to me to have acquired the force of an international law. Still less would it appear to have any foundation in reality : one bay, by reason of the varying formations of the coast and sea-bed, may have an entirely different character from that of another bay of the same width. It seems to me rather that local conditions and considerations of what is practicable and equitable should be decisive in specific cases. The configuration of our coasts in no way resembles that of the coasts of other European countries, and that fact alone makes the adoption of any absolute rule of universal application impossible in this case.
>
> I venture to claim that all these reasons militate in favour of the line laid down by the Decree of October 16th. A broken line, conforming closely to the indentations of the coast line between Svinöy and Storholmen, would have resulted in a boundary so involved and so indistinct that it would have been impossible to exercise any supervision over it...."

Language of this kind can only be construed as the considered expression of a legal conception regarded by the Norwegian Government as compatible with international law. And indeed, the French Government did not pursue the matter. In a Note of July 27th, 1870, it is said that, while maintaining its standpoint with regard to principle, it was prepared to accept the delimitation laid down by the Decree of October 16th, 1869, as resting upon "a practical study of the configuration of the coast line and of the conditions of the inhabitants".

The Court, having thus established the existence and the constituent elements of the Norwegian system of delimitation, further finds that this system was consistently applied by Norwegian

authorities and that it encountered no opposition on the part of other States.

The United Kingdom Government has however sought to show that the Norwegian Government has not consistently followed the principles of delimitation which, it claims, form its system, and that it has admitted by implication that some other method would be necessary to comply with international law. The documents to which the Agent of the Government of the United Kingdom principally referred at the hearing on October 20th, 1951, relate to the period between 1906 and 1908, the period in which British trawlers made their first appearance off the Norwegian coast, and which, therefore, merits particular attention.

The United Kingdom Government pointed out that the law of June 2nd, 1906, which prohibited fishing by foreigners, merely forbade fishing in "Norwegian territorial waters", and it deduced from the very general character of this reference that no definite system existed. The Court is unable to accept this interpretation, as the object of the law was to renew the prohibition against fishing and not to undertake a precise delimitation of the territorial sea.

The second document relied upon by the United Kingdom Government is a letter dated March 24th, 1908, from the Minister for Foreign Affairs to the Minister of National Defence. The United Kingdom Government thought that this letter indicated an adherence by Norway to the low-water mark rule contrary to the present Norwegian position. This interpretation cannot be accepted ; it rests upon a confusion between the low-water mark rule as understood by the United Kingdom, which requires that all the sinuosities of the coast line at low tide should be followed, and the general practice of selecting the low-tide mark rather than that of the high tide for measuring the extent of the territorial sea.

The third document referred to is a Note, dated November 11th, 1908, from the Norwegian Minister for Foreign Affairs to the French Chargé d'Affaires at Christiania, in reply to a request for information as to whether Norway had modified the limits of her territorial waters. In it the Minister said : "Interpreting Norwegian regulations in this matter, whilst at the same time conforming to the general rule of the Law of Nations, this Ministry gave its opinion that the distance from the coast should be measured from the low-water mark and that every islet not continuously covered by the sea should be reckoned as a starting-point." The United Kingdom Government argued that by the reference to "the general rule of the Law of Nations", instead of to its own system of delimitation entailing the use of straight lines, and, furthermore, by its statement that "every islet not continuously covered by the sea should be reckoned as a starting-point", the Norwegian Government had completely departed from what it to-day describes as its system.

It must be remembered that the request for information to which the Norwegian Government was replying related not to the use of straight lines, but to the breadth of Norwegian territorial waters. The point of the Norwegian Government's reply was that there had been no modification in the Norwegian legislation. Moreover, it is impossible to rely upon a few words taken from a single note to draw the conclusion that the Norwegian Government had abandoned a position which its earlier official documents had clearly indicated.

The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in Norwegian practice. They may be easily understood in the light of the variety of the facts and conditions prevailing in the long period which has elapsed since 1812, and are not such as to modify the conclusions reached by the Court.

In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose.

From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States.

Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States.

The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact. For a period of more than sixty years the United Kingdom Government itself in no way contested it. One cannot indeed consider as raising objections the discussions to which the *Lord Roberts* incident gave rise in 1911, for the controversy which arose in this connection related to two questions, that of the four-mile limit, and that of Norwegian sovereignty over the Varangerfjord, both of which were unconnected with the position of base-lines. It would appear that it was only in its Memorandum of July 27th, 1933, that the United Kingdom made a formal and definite protest on this point.

The United Kingdom Government has argued that the Norwegian system of delimitation was not known to it and that the

system therefore lacked the notoriety essential to provide the basis of an historic title enforceable against it. The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government. Nor, knowing of it, could it have been under any misapprehension as to the significance of its terms, which clearly described it as constituting the application of a system. The same observation applies *a fortiori* to the Decree of 1889 relating to the delimitation of Romsdal and Nordmöre which must have appeared to the United Kingdom as a reiterated manifestation of the Norwegian practice.

Norway's attitude with regard to the North Sea Fisheries (Police) Convention of 1882 is a further fact which must at once have attracted the attention of Great Britain. There is scarcely any fisheries convention of greater importance to the coastal States of the North Sea or of greater interest to Great Britain. Norway's refusal to adhere to this Convention clearly raised the question of the delimitation of her maritime domain, especially with regard to bays, the question of their delimitation by means of straight lines of which Norway challenged the maximum length adopted in the Convention. Having regard to the fact that a few years before, the delimitation of Sunnmöre by the 1869 Decree had been presented as an application of the Norwegian system, one cannot avoid the conclusion that, from that time on, all the elements of the problem of Norwegian coastal waters had been clearly stated. The steps subsequently taken by Great Britain to secure Norway's adherence to the Convention clearly show that she was aware of and interested in the question.

The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.

The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom.

The Court is thus led to conclude that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast ; that even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law.

* * *

The question now arises whether the Decree of July 12th, 1935, which in its preamble is expressed to be an application of this method, conforms to it in its drawing of the base-lines, or whether, at certain points, it departs from this method to any considerable extent.

The schedule appended to the Decree of July 12th, 1935, indicates the fixed points between which the straight base-lines are drawn. The Court notes that these lines were the result of a careful study initiated by the Norwegian authorities as far back as 1911. The base-lines recommended by the Foreign Affairs Committee of the Storting for the delimitation of the fisheries zone and adopted and made public for the first time by the Decree of July 12th, 1935, are the same as those which the so-called Territorial Waters Boundary Commissions, successively appointed on June 29th, 1911, and July 12th, 1912, had drawn in 1912 for Finnmark and in 1913 for Nordland and Troms. The Court further notes that the 1911 and 1912 Commissions advocated these lines and in so doing constantly referred, as the 1935 Decree itself did, to the traditional system of delimitation adopted by earlier acts and more particularly by the Decrees of 1812, 1869 and 1889.

In the absence of convincing evidence to the contrary, the Court cannot readily find that the lines adopted in these circumstances by the 1935 Decree are not in accordance with the traditional Norwegian system. However, a purely factual difference arose between the Parties concerning the three following base-points: No. 21 (Vesterfallet i Gaasan), No. 27 (Tokkebaaen) and No. 39 (Nordböen). This difference is now devoid of object. A telegram dated October 19th, 1951, from the Hydrographic Service of Norway to the Agent of the Norwegian Government, which was communicated to the Agent of the United Kingdom Government, has confirmed that these three points are rocks which are not continuously submerged. Since this assertion has not been further disputed by the United Kingdom Government, it may be considered that the use of these rocks as base-points is in conformity with the traditional Norwegian system.

Finally, it has been contended by the United Kingdom Government that certain, at least, of the base-lines adopted by the Decree are, irrespective of whether or not they conform to the Norwegian system, contrary to the principles stated above by the Court as governing any delimitation of the territorial sea. The Court will consider whether, from the point of view of these principles, certain of the base-lines which have been criticized in some detail really are without justification.

The Norwegian Government admits that the base-lines must be drawn in such a way as to respect the general direction of the

coast and that they must be drawn in a reasonable manner. The United Kingdom Government contends that certain lines do not follow the general direction of the coast, or do not follow it sufficiently closely, or that they do not respect the natural connection existing between certain sea areas and the land formations separating or surrounding them. For these reasons, it is alleged that the line drawn is contrary to the principles which govern the delimitation of the maritime domain.

The Court observes that these complaints, which assumed a very general scope in the written proceedings, have subsequently been reduced.

The United Kingdom Government has directed its criticism more particularly against two sectors, the delimitation of which they represented as extreme cases of deviation from the general direction of the coast: the sector of Sværholthavet (between base-points 11 and 12) and that of Lopphavet (between base-points 20 and 21). The Court will deal with the delimitation of these two sectors from this point of view.

The base-line between points 11 and 12, which is 38.6 sea miles in length, delimits the waters of the Sværholt lying between Cape Nordkyn and the North Cape. The United Kingdom Government denies that the basin so delimited has the character of a bay. Its argument is founded on a geographical consideration. In its opinion, the calculation of the basin's penetration inland must stop at the tip of the Sværholt peninsula (Sværholtklubben). The penetration inland thus obtained being only 11.5 sea miles, as against 38.6 miles of breadth at the entrance, it is alleged that the basin in question does not have the character of a bay. The Court is unable to share this view. It considers that the basin in question must be contemplated in the light of all the geographical factors involved. The fact that a peninsula juts out and forms two wide fjords, the Laksefjord and the Porsangerfjord, cannot deprive the basin of the character of a bay. It is the distances between the disputed base-line and the most inland point of these fjords, 50 and 75 sea miles respectively, which must be taken into account in appreciating the proportion between the penetration inland and the width at the mouth. The Court concludes that Sværholthavet has the character of a bay.

The delimitation of the Lopphavet basin has also been criticized by the United Kingdom. As has been pointed out above, its criticism of the selection of base point No. 21 may be regarded as abandoned. The Lopphavet basin constitutes an ill-defined geographic whole. It cannot be regarded as having the character of a bay. It is made up of an extensive area of water dotted with large islands which are separated by inlets that terminate in the various fjords. The base-line has been challenged on the ground that it does not respect the general direction of the coast. It should be observed that, however justified the rule in question may be,

it is devoid of any mathematical precision. In order properly to apply the rule, regard must be had for the relation between the deviation complained of and what, according to the terms of the rule, must be regarded as the *general* direction of the coast. Therefore, one cannot confine oneself to examining one sector of the coast alone, except in a case of manifest abuse ; nor can one rely on the impression that may be gathered from a large scale chart of this sector alone. In the case in point, the divergence between the base-line and the land formations is not such that it is a distortion of the general direction of the Norwegian coast.

Even if it were considered that in the sector under review the deviation was too pronounced, it must be pointed out that the Norwegian Government has relied upon an historic title clearly referable to the waters of Lopphavet, namely, the exclusive privilege to fish and hunt whales granted at the end of the 17th century to Lt.-Commander Erich Lorch under a number of licences which show, *inter alia*, that the water situated in the vicinity of the sunken rock of Gjesbaaen or Gjesboene and the fishing grounds pertaining thereto were regarded as falling exclusively within Norwegian sovereignty. But it may be observed that the fishing grounds here referred to are made up of two banks, one of which, the Indre Gjesboene, is situated between the base-line and the limit reserved for fishing, whereas the other, the Ytre Gjesboene, is situated further to seaward and beyond the fishing limit laid down in the 1935 Decree.

These ancient concessions tend to confirm the Norwegian Government's contention that the fisheries zone reserved before 1812 was in fact much more extensive than the one delimited in 1935. It is suggested that it included all fishing banks from which land was visible, the range of vision being, as is recognized by the United Kingdom Government, the principle of delimitation in force at that time. The Court considers that, although it is not always clear to what specific areas they apply, the historical data produced in support of this contention by the Norwegian Government lend some weight to the idea of the survival of traditional rights reserved to the inhabitants of the Kingdom over fishing grounds included in the 1935 delimitation, particularly in the case of Lopphavet. Such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within the bounds of what is moderate and reasonable.

As to the Vestfjord, after the oral argument, its delimitation no longer presents the importance it had in the early stages of the proceedings. Since the Court has found that the waters of the Indreleia are internal waters, the waters of the Vestfjord, as indeed the waters of all other Norwegian fjords, can only be regarded as internal waters. In these circumstances, what-

ever difference may still exist between the views of the United Kingdom Government and those of the Norwegian Government on this point, is negligible. It is reduced to the question whether the base-line should be drawn between points 45 and 46 as fixed by the 1935 Decree, or whether the line should terminate at the Kalsholmen lighthouse on Tenholmerne. The Court considers that this question is purely local in character and of secondary importance, and that its settlement should be left to the coastal State.

For these reasons,

THE COURT,

rejecting all submissions to the contrary,

Finds

by ten votes to two,

that the method employed for the delimitation of the fisheries zone by the Royal Norwegian Decree of July 12th, 1935, is not contrary to international law; and

by eight votes to four,

that the base-lines fixed by the said Decree in application of this method are not contrary to international law.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this eighteenth day of December, one thousand nine hundred and fifty-one, in three copies, one of which 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 Kingdom of Norway, respectively.

(Signed) BASDEVANT,
President.

(Signed) E. HAMBRO,
Registrar.

Judge HACKWORTH declares that he concurs in the operative part of the Judgment but desires to emphasize that he does so for the reason that he considers that the Norwegian Government has proved the existence of an historic title to the disputed areas of water.

Judges ALVAREZ and HSU MO, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment of the Court statements of their separate opinions.

Judges Sir Arnold MCNAIR and READ, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment statements of their dissenting opinions.

(Initialled) J. B.

(Initialled) E. H.