BEFORE THE
INTERNATIONAL COURT OF
JUSTICE
March, 1973

ADJUDICATION
BETWEEN

NEPTUNIUS, Applicant

and

ATLANTICA, Respondent

MEMORIAL FOR RESPONDENT

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JURISDICTION

Jurisdiction of the International Court of Justice "comprises all cases which the parties refer to it." Stat. Int'l Ct. Just., art. 36, para. 1. Both Atlantica and Neptunius have specially agreed to the jurisdiction of the Court, and it is thereby established. Compromiis, p. 5.

STATEMENT OF FACTS

Atlantica accepts the facts as stated in the Compromiis.

QUESTIONS PRESENTED

I. Does Atlantica's enforcement of her Fisheries Act of 1971 violate customary or conventional international law?

II. Does Atlantica's enforcement of her Fisheries Research Act of 1971 violate customary or conventional international law?

RELIEF REQUESTED

Respondent Atlantica asks this Court to declare that her enforcement of the Acts in question is not prohibited by international law and to deny the application of Neptunius.

SUMMARY OF ARGUMENT

The application of Neptunius calls into question the right of a developing state to take reasonable, measured steps designed to protect her own continued existence as an economically and politically independent state, and to conserve a valuable natural resource both for the benefit of the world and the developing state. Atlantica respectfully insists that international law recognizes and validates the measures taken here.

The first duty of a state is to protect the welfare of her people by insuring, inter alia, their basic subsistence. The fishery stocks at issue here are the indispensable foundation of Atlantica's developing economy and a sine quo non of her people's continued subsistence. These stocks of fish were in imminent danger of total extinction at the time Atlantica took the limited steps of which Neptunius complains. Moreover, there was, and is, no multinational machinery capable of protecting these threatened stocks of fish.

Under these circumstances no tenet of international jurisprudence, whether of customary or conventional international law, denies Atlantica the right to take steps reasonably calculated to protect herself from potential destruction. That is precisely what Atlantica has done in enacting the Fisheries Act of 1971 and the Fisheries Research Act of 1971. Both Acts are limited in scope and are reasonably calculated to prevent irreparable injury to Atlantica's economy by regulating these fishery resources. The enforcement of these Acts for this purpose is not prohibited by international law.

ARGUMENT

I. ATLANTICA'S ENFORCEMENT OF HER FISHERIES ACT OF 1971 IS NOT PROHIBITED BY CUSTOMARY INTERNATIONAL LAW.

A. All sovereign acts are valid unless specifically prohibited by international law.

The most basic tenet of international jurisprudence is that rules of international law are consensual in nature. In Case of the S.S. "Lotus",[1] this Court stated this basic principle as follows:

> International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will . . . . Restrictions upon independence of States cannot therefore be presumed. 2

Brierly concluded that the Lotus decision "teaches that international law is the sum of rules by which states have consented to be bound, and that nothing can be law to which they have not consented."[3]

Atlantica's actions are therefore presumed to be in accordance with international law, unless some specific rule of international law prohibits them.

B. There is no international consent to a rule limiting the width of the territorial sea or fishery zones.

There is no consent among nations to a single standard for measuring the appropriate width of the territorial sea or fishery zones. Different nations assert different measures as the appropriate width. As a result, there is no one measure that can accurately be termed "the" standard. Even more significant is the nonacquiesence of a large number of states to the rule that is urged by Neptunius.

Most of the developed nations of the world endorse the "12 mile limit" for the maximum area over which the coastal state may assert jurisdiction. This position is in sharp contrast to the position of many, if not most, of the developing coastal nations of the world. The developing coastal states of South America almost universally accept a 200 mile limit for the territorial sea and fishery zones, often asserting sovereignty over the entire region. These nations include Colombia, Costa Rica, Guatemala, Haiti, Honduras, Mexico, Nicaragua

Dominican Republic, Trinidad and Tobago, Venezuela,[4] Ecuador,[5] Panama,[6] Brazil,[7] Argentina,[8] Chile,[9] El Salvador,[10] Peru,[11] and Uraguay.[12] In Europe, Iceland has recently extended its exclusive fishery zone to 50 miles.[13] In Africa, the Organization of African Unity, which is a counterpart to the Organization of American States, has formally adopted a claim of exclusive coastal state jurisdiction to the limits of the continental shelf.[14]

It is clear, therefore, that there is no single standard that is acceptable to the nations of the world. Moreover, it is particularly clear that the 12 mile limit no longer has the consent of nations. Only by ignoring the clearly expressed views of the developing coastal states of the Third World can that specific standard be presented as the rule of international law to which nations generally have consented. The consent of the Third World is as essential to the creation of a rule of international law as the consent of any other group of states. At the present time there is no such rule as a part of customary international law.

C. If international consent exists to a rule limiting territorial seas, and fishery zones, the rule recognized a special standard for developing coastal states.

If the Court determines that there is consent to a rule of international law establishing an appropriate width for the territorial sea and fishery zones, the rule must reflect the attitudes of developing coastal states like Atlantica. Judge Alvarez, in his famous opinion in the Fisheries Case,[15] stressed the need for the development of international rules that expressed norms of conduct; if no principle exists covering a given question, principles must be created to conform to those conditions.[16] Consequently, Atlantica submits that the Court may find international consent to a rule of international law that recognizes a different width for the territorial sea or fishery zones of developing coastal states from that of developed states. Such a rule would reflect the current divergence of view between developed and developing countries. Such a rule would recognize the law of the sea for what it is --

> a process of interaction, of continuous demand and response, in which

> the decision-makers . . . including both national and international officials, weigh and appraise the competing claims in terms of the interests of the world community . . . ."[17]

Professor McDougal suggests that the disparity of the claims is simply the result of "the present lack of sophistication and centralization of policy functions in international law generally."[18]

The adoption of a rule that recognized two standards, one for developing nations and one for developed nations, has substantial precedent in international law. The standard of compensation for expropriated foreign-owned property may well depend on whether the states involved are developed or developing.[19] The recent Stockholm U.N. Conference on the Human Environment, while establishing measures for pollution control to be implemented worldwide, expressly exempts developing countries from those pollution controls that might inhibit their efforts to achieve economic development.[20] The General Agreement on Tariffs and Trade also recognizes that "developed countries cannot expect to receive reciprocity from the less-developed countries" on tariff reductions.[21]

The recognition of a rule of international law that allows developing coastal states to extend their jurisdiction over vital offshore fisheries to the width necessary to provide adequate protection for them would comport with both the current views of the two groups of states and precedents in customary and conventional international law.

D. Atlantica's limited actions do not violate the principle of freedom of the seas.

Freedom of the seas does not imply unlimited freedom of fishing.[22] Early concepts of freedom of fishing were based upon the assumption that fishery resources were inexhaustible.[23] Yet Grotuis, who first expounded mare liberum, explicitly recognized the possibility of forbidding fishing if it were proved that fish stocks were exhaustible.[24] Freedom of fishing is at best a qualified right, and is separate and distinct from freedom of the seas. Thus, under appropriate circumstances, freedom of fishing may be curtailed.[25]

Atlantica's Acts are not an assertion of national sovereignty over the area adjacent to its territorial sea. The distinction between extension of sover-

eignty and claims of exclusive competence for regulatory purposes is important and is recognized in international law.[26] Effective fishery protection requires the exercise of jurisdiction over wide areas of the sea for that specific purpose, but not a general extension of territorial limits with its consequent restrictions on freedom of the seas.[27] By this Act Atlantica has not undertaken to extend its national sovereignty over the defined area, but rather has taken the most limited action possible consistent with the protection of these fisheries.

Freedom of the seas essentially means only freedom of navigation and freedom of trade.[28] Atlantica's enforcement of these fishing conservation measures does not violate the basic principle of freedom of the seas: the right of innocent passage stands unimpaired; freedom of trade is unquestioned.

II. ATLANTICA'S ENACTMENT OF A FISHERIES PROTECTION ZONE IS IN COMPLIANCE WITH HER POSITIVE LEGAL DUTY TO PROTECT THE SUBSISTENCE OF HER PEOPLE AND TO DISPOSE OF HER NATURAL RESOURCES IN THEIR INTERESTS.

A. The fishery stocks in question are vital to the welfare of Atlantica's people.

The people of Atlantica are heavily dependent on fish and fish products for the maintenance of their nutritional and living standards.[29] Atlantica depends on the stocks of fish along her coastline for almost 90% of her annual catch.[30] These resources are particularly vital because Atlantica, an underdeveloped nation, lacks the ability to extend her fishing efforts over great distances.[31] Atlantica has spent relatively large sums of money to protect and enhance the fishery resources, especially the salmon that spawn in her internal waters.[32] Atlantica's scientists have conducted research in an effort to discover the most effective way to insure the continued availability of these fish for the future.[33] The results of this research led the Government of Atlantica to attempt to conclude bilateral agreements with other nations to protect these fishery resources.[34]

B. The fishery resources were in imminent danger of destruction if fishing were left unregulated.

In 1970 Atlantica's scientists reported that the coastal stocks had been severly depleted despite the efforts toward conservation. The scientists warned the Atlantican Government that the stocks were in danger of total economic extinction within two years, and that a cutback in the size of the total catch was the only action that could avert this disaster. In light of these new facts, Atlantica attempted to modify the existing agreement with Neptunius to insure that the total catch would be reduced. These efforts were unsuccessful.[35] As a result of this failure by Neptunius to agree to reduce the size of the annual catch, Atlantica was faced with the virtual certainty that its fishery resources would be destroyed. Thus, unilateral action to preserve these resources was justified.

C. Under customary international law a state is charged with the duty to protect the welfare of its people.

A basic premise of international law is that individuals must look to their sovereign to protect their health, safety and welfare from encroachment by other sovereigns.[36] This premise includes the duty of each government to prevent the use of its resources in such a way as to endanger the welfare of its citizens.[37]

Only sovereigns are able to deal with other sovereigns effectively;[38] therefore, this duty to protect individuals lasts at least until some bilateral or multilateral arrangement among sovereigns can provide the same protection. In the absence of such an arrangement, Atlantica's duty to protect the interests of her nationals is clearly recognized by customary international law.

D. There was no multinational machinery that could effectively protect these fishery resources.

Neither Atlantica nor Neptunius is a party to a convention that can effectively protect these fish. No commission or similar authority exists that can regulate fishing off the coast of Atlantica. There is, therefore, no multinational authority to which Atlantica could look for aid in protecting these vital resources. Until such time as one is created, Atlantica is not prohibited form taking this unilateral conservation measure.

E. There was no existing bilateral arrangement that could adequately protect these fishery resources.

Bilateral efforts to conserve the fisheries failed when Neptunius, in the face of evidence of the imminent exhaustion of the supply of fish, refused to agree with Atlantica to reduce the size of the annual catch. Atlantica remains willing to join in realistic bilateral agreements to protect these fish. It has demonstrated its willingness to participate in such agreements in the past. Atlantica could not be expected, however, to continue negotiations when Neptunius had demonstrated its total disregard of the need to conserve these fisheries even under an existing agreement.

F. The protective principle of international jurisdiction supports Atlantica's right to take these steps to protect her vital resources.

Self-preservation is recognized in customary international laws as a fundamental right of states.[39] Through this principle the right of a state to exercise protective control over a resource that is vital to its existence is recognized in international law, even when the control extends for these limited purposes over portions of the high seas contiguous to the territorial sea of the threatened state.[40] The right of sovereigns to extend jurisdiction over a "patrimonial sea" to protect the resources on which its economic development and the livelihood of its people depend is increasingly recognized.[41] Many developing countries claim an exclusive fisheries zone of 200 miles in order to preserve resources that are important to their economy.[42] Even such developed nations as the United States of America are recognizing the validity of actions like those taken by Atlantica. In the spring of 1972 Ambassador Donald L. McKernan summarized the new position of the United States in the following manner:

> Effective management and conservation of these coastal and anadromous species may be provided by granting coastal States . . . control over all species . . . . This concept includes inspection and arrest authority. The control exercised by the coastal State would follow such stocks as far offshore as the stock ranges. The coastal State could reserve to itself that portion of the allowable catch that it could utilize. The remaining portion of the

> allowable catch would be open to . . . fishermen of other nations . . . subject to the coastal State's nondiscriminatory conservation measures, and reasonable management fees 43
>
> The Coastal State would be empowered to set up its own regulatory system after it had laid the scheme before other states participating in the fishery and had failed to reach agreement with them. We favored the international regulation of fisheries, but if that failed, the coastal State would have that responsibility.44

McKernon explained the reason for the change in position:

> What we have learned about the concerns of other States has led us to reconsider our . . . position . . . in response, in particular, to the economic and social needs of coastal States . . . . and the need to take prompt and effective action to insure the management and conservation of such stocks.45

Neptunius has itself recognized the protective principle, using it to justify extension of her own control over a twenty-five nautical mile belt of the high seas adjacent to her territorial sea to protect her resources from pollution.[46] The United States of America has used this principle to extend protective jurisdiction to 100 nautical miles for the purpose of preventing smuggling.[47]

In this same fashion, Atlantica is exercising protective jurisdiction over a specified area to prevent irreparable injury to a resource that is vital to Atlantica's existence. Atlantica's actions are reasonably limited to the achievement of this valid purpose.

III. ATLANTICA IS ABLE TO PROVIDE EFFECTIVELY THE REGULATION NEEDED BY THE WORLD COMMUNITY AT THIS TIME.

A. As the neighboring coastal state, Atlantica is especially able to impose and control conservation measures.

The single most important factor in conserving coastal fisheries is the conduct of the neighboring coastal state. This is true even if the coastal state does no fishing at all. Unrestricted dumping of pollutants into the sea will destroy the fisheries. Unrestricted use of dangerous chemicals on soil areas that drain into the sea will destroy the fisheries. Unrestricted filling of the marshes and estuaries that border the sea will disrupt the food chain that supports the fish and thereby destroy the fisheries. All of these actions are under the sole control of the coastal state. The delicate balance between

the land and the adjacent waters, and therefore the fish in those waters, is finally coming to be understood.[48] Atlantica's cooperation in maintaining this balance is therefore essential to any effective program to protect the haddock feeding grounds that exist on Atlantica's continental shelf. Moreover, Atlantica's cooperation is especially required for the conservation and scientific management of the salmon that spawn in Atlantica's inland waters. Atlantica's expenditures for improvements in the Red River and the efforts to protect the salmon when they are present in the River during the spawning cycle are evidence that conservation motivates Atlantica.

B. International law recognizes the special interest of coastal states like Atlantica in their adjacent fisheries.

The world community recognizes the value of encouraging coastal states to take effective conservation measures to help preserve and increase coastal fisheries. International law specifically recognizes the special interest of coastal states in fish that spawn in their inland waters.[49] This recognition is given for two reasons. First, it is inherently equitable to give a special interest in the fish to the nation that has invested her funds to help increase the size of the stock. Secondly, recognizing this interest encourages states to make such expenditures, and thus increases the food supply.

In addition, international law recognizes generally the special interests of coastal states in adjacent fisheries.[50] The Convention on the High Seas, to which both Atlantica and Neptunius are parties, is only one of many multinational agreements that expressly recognize the special interest of the coastal state. For these states, the fisheries may provide the only potential for development of the local economy. Like Atlantica, they may have no other source of foreign currency with which to purchase the materials needed to develop an intrastructure capable of sustaining real economic growth. Some of the natives undoubtedly depend on the offshore fisheries for subsistence. Finally, an additional factor that has perhaps led to this wide acceptance of the special interest of the coastal state is the recognition by the international community of the wisdom of placing the conservation of these resources in the hands of

the state with the greatest interest in their preservation.

C. The need of the world community of nations for food resources supports recognition of the right of the coastal state to regulate fishery resources when no effective international machinery exists for that purpose.

The era in which uncontrolled international exploitation of the resources of the sea could be tolerated has ended. The resources of the sea, particularly fish, must be conserved in a rational manner in order to provide a continuing source of food. Conservationists and scientists know that the fish in the sea are not inexhaustible.[51] Uncontrolled exploitation of fisheries will lead to the destruction of this vital asset. The challenge of feeding the earth's growing population has been a source of concern to scientists around the globe. The interrelated efforts to achieve a "green revolution", to increase the efficiency of farming and animal husbandry, and to utilize effectively the resources of the sea are all therefore of utmost importance to the international community.

IV. THE ACTIONS TAKEN BY ATLANTICA PURSUANT TO HER FISHERIES ACT OF 1971 ARE NOT PROHIBITED BY CONVENTIONAL INTERNATIONAL LAW.

A. Atlantica's actions do not violate any existing multilateral treaty.

Neither of the two multilateral conventions to which Atlantica is a signatory would prohibit the actions Atlantica has taken. The Convention on the Territorial Sea and the Contiguous Zone does not prohibit the creation of an exclusive fisheries zone for conservation purposes. In fact, this convention expressly recognizes the right of coastal states to extend their jurisdiction to prevent infringement of its "customs, fiscal, immigration, or sanitary" regulations, although this extension is limited to twelve miles for these purposes. [52] The principle of the right to extend jurisdiction in order to regulate activities that are potentially harmful to the coastal state, however, is clearly established. [53]

Neptunius is not a signatory to the Convention on the Territorial Sea; it has extended its zone of jurisdiction to twenty-five miles for the purpose of

pollution control.[54] By this action Neptunius has demonstrated its recognition that a coastal state may extend her jurisdiction beyond the territorial sea in order to protect her own national interests. Neptunius, as Atlantica, must believe that particular needs may justify extension of jurisdiction beyond the normally established maximum.

The High Seas Convention, to which both Atlantica and Neptunius are signatories, provides that the freedoms of the seas must be exercised "with reasonable regard to the interest of other States."[55] Freedom of fishing is therefore subject to this restraint. The Geneva Conference on the Law of the Sea, which drafted the High Seas Convention in 1958, resolved that whenever regulation of offshore fisheries was necessary to insure their ongoing availability, it was the duty of the coastal state to establish appropriate regulations and the duty of other states to recognize these regulations. The "preferential requirements of the coastal State resulting from its dependence upon the fishery concerned" was an appropriate factor for the coastal State to consider and incorporate into the regulations it established.[56]

B. Atlantica's actions do not violate the bilateral agreement between Neptunius and Atlantica.

1. Atlantica's actions conform with the purpose of the treaty and therefore there is no breach.

In determining whether there has been compliance with the terms of a bilateral agreement by a given state, the Court must look to the purpose underlying the adoption of that agreement.[57] The purpose of the 1970 agreement between Atlantica and Neptunius on haddock was to conserve and enhance the stocks of that species in the defined areas. In light of new data, [58] Atlantica's fishery scientists concluded that the stock of haddock was in danger of total economic extinction within two years unless the total catch was reduced. Atlantica made every effort to achieve a reduction by

negotiation with Neptunius. The effort failed.[59] Atlantica then acted to secure the identical goals that the agreement with Neptunius was designed to serve-- the conservation and preservation of the haddock fisheries.

When Atlantica's actions are evaluated in light of the underlying purpose of the agreement with Neptunius, it is clear that no breach of the agreement occurred.

2. If the treaty was breached, the breach was justified as a necessary act to preserve the existence of the state of Atlantica.

If Atlantica's enforcement of the Acts of 1971 was a technical breach of the 1970 agreement, it is insisted that such a technical breach is justified under international law.

It is a general principle of international law that a state, upon entering an agreement, cannot be presumed to have bargained away the essential conditions of its continued existence as as international person, unless it has done so in clear and explicit terms.[60] No state can be expected to sacrifice its very existence in order to fulfill treaty obligations. As a result, customary international law recognizes the principle of rebus sic stantibus, which holds that all treaty agreements may be cancelled if changes occur in the fundamental circumstances that gave rise to the treaty and because of this change the parties are unable to fulfill the objectives of the agreement.[61]

When it became clear that Neptunius would not agree to a reduction in the size of the catch, even in light of the new information on the maximum sustainable yield, the entire agreement became incompatible with Atlantica's continued economic independence. Atlantica's passage and enforcement of the Fisheries Act was her election to cancel the agreement in accordance with her rights under customary international law.[62]

V. ATLANTICA'S REGULATION OF SCIENTIFIC RESEARCH UNDER HER FISHERIES RESEARCH ACT OF 1971 IS A LEGITIMATE MEANS OF PREVENTING CLANDESTINE FISHING BY OTHER NATIONS AND OF ASSURING ATLANTICA'S PARTICIPATION IN THE RESULTS OF OCEANIC RESEARCH CONDUCTED OFF HER SHORES.

A. The licensing and inspection of scientific research vessels is essential to Atlantica's efforts to conserve her fishery resources.

Enforcement of the research regulations is necessary to prevent clandestine fishing by bogus research vessels. Atlantica's efforts to protect these fishery resources would have little chance of success if "research" vessels were allowed to enter these waters and carry on regular fishing operations. To avoid barring legitimate research vessels, the only rational solution is a system of continuing supervision of vessels engaged in "research". The Fisheries Research Act meets this need in two ways. First, keeping agents of the the Atlantican Government on each ship engaged in research will prevent ships from changing their conduct from research to fishing after an initial inspection. Secondly, the knowledge that such agents will be placed on each ship discourages attempts at fishing by camouflaged "research" vessels.

B. Atlantica is justified in charging fees for scientific research as a means of supporting the regulatory machinery.

1. Atlantica, an underdeveloped nation, cannot finance the necessary inspection solely from her own resources.

It is clear that a permanent regulatory force will be necessary to insure that "research" vessels do not carry on clandestine fishing operations. It is equally clear that Atlantica cannot afford to provide such a force from her own meager resources. There will be large initial set-up costs in establishing a monitoring system, and a highly skilled staff will have to be trained, maintained and kept available for dispatching to vessels desiring to carry on research. Atlantica has demonstrated her willingness to spend some of her limited resources for conservation efforts, as illustrated by the improvements made in the Red River. The additional costs of policing are beyond the means of a nation like Atlantica,

and are more equitably distributed among those more developed nations that share Atlantica's conservatory interests.

2. The principle that an underdeveloped coastal state may require financial assistance to police conservation regulations has been recognized.

The difficulties of enforcing conservation regulations over a large fishery and the responsibility of co-users to help finance enforcement have been recognized. For example, the United States has agreed to give Brazil $200,000 in order to assist that nation in enforcing her fishery regulations against infringers, including ships from the United States.[63] This agreement was made despite the fact that the United States does not recognize the validity of the Brazilian claim to a 200 mile fisheries zone.

C. Atlantica's regulations are a legitimate means of assuring her participation in the results of oceanic research conducted off her shores.

The right of coastal states to share in scientific data gathered off their shores is recognized in international law. The right to share scientific data is implicit in the well-recognized "special right" of coastal states to "explore, conserve and exploit" their offshore resources and to promulgate regulations to achieve that result.[64] Depriving the coastal state of new knowledge about these offshore assets is inconsistent with the state's right to "explore, conserve and exploit". Other international agreements explicitly recognize the right to share in research.[65] The twenty states that participated in the Lima Conference concluded that a coastal state has a right to (a) authorize research activities, (b) participate and share in data collected, (c) retain all samples taken, and (d) insure that all research is strictly scientific.[66] The purpose of these controls was to insure that the knowledge is shared. That is the precise effect of the Fisheries Research Act.

Atlantica does not seek to prohibit true scientific research in the waters off her coast. To maximize the potential benefits of conservation Atlantica needs to have access to the results of the experiments and observations off her shores. Better knowledge of the fish will enable Atlantica to conserve this resource more effectively. In addition, this knowledge may help Atlantica's own fishermen learn more effective fishing and conservation techniques. Access to the most recent scientific data is therefore necessary both for the efficient conservation of the fisheries and for the continued economic development of Atlantica.

Respectfully submitted,

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FOOTNOTES

1. [1927] P.C.I.J., ser. A, No. 10.

2. [1927] P.C.I.J. at 18.

3. J. Brierly, The Law of Nations 51 (6th ed. 1963)

4. These states were parties to the Declaration of Santo Domingo, XI Int'l Legal Mat'ls 892 (1972). See generally F. Garcia-Amador, Latin America and the Law of the Sea (1972).

5. Decree 1542 of Nov. 10, 1966.

6. Law 31 of Feb. 2, 1967.

7. Decree-Law 1098 of March 25, 1970.

8. Law 17.094 of 1966; Decree 8.802 of Nov. 22, 1967.

9. Decree 332 of June 4, 1963.

10. Constitution of 1962, art. 8; Legislative Decree 1961 of Oct. 25, 1955.

11. Supreme Decree 781, Aug. 1, 1947.

12. Law 13.833 of Dec. 23, 1969.

13. Resolution of Feb. 15, 1972, quoted in Application Instituting Proceedings in the Fisheries Jurisdiction Case, annex G. (filed June 5, 1972) (mimeo).

14. See S. Oda, The International Law of the Ocean Development 362 (1972).

15. [1951] I.C.J. 116

16. [1951] I.C.J. at 146.

17. McDougal, The Hydrogen Bomb Tests and the International Law of the Sea, 49 Am J. Int'l L. 356-57 (1955).

18. Id.

19. See, e.g., Girvan, The Question of Compensation: A Third World Perspective, 5 Vand. J. Transnat'l L. 340 (1972).

20. U.N. Doc. A/CONF. 48/10 (1972). See generally Press Release HE/78/Rev. 1 at 8-9 (1972).

21. Resolution of the Meeting of the Trade Negotiation Committee, BISD 135/109 (1964), quoted in E. Stein & P. Hay, Law and Institutions in the Atlantic Area 249, 251 (1967).

22. See Allen, Law, Fish and Policy, 5 Int'l Lawyer 621 (1971).

23. D. Johnston, International Law of Fisheries 321 (1965).

24. See Cisneros, The 200 Mile Limit in the South Pacific, Proc. A.B.A. Section of Int'l & Comp. L. 56 (1964).

25. See 4 M. Whiteman, Digest of International Law 506 (1965).

26. See D. Johnston, supra note 23, at 322.

27. See L. Leonard, International Regulation of Fisheries 166 (1944).

28. Cisneros, supra note 24, at 59.

29. Compromiis, at 1.

30. Comrpomiis, annex D.

31. Compromiis, at 1. See generally D. Johnston, supra note 23, at 337.

32. Compromiis, at 1, 3.

33. Compromiis, at 1.

34. Compromiis, at 3.

35. Id.

36. Mavrommatis Palestine Concessions (Jurisdiction), [1924] P.C.I.J., ser.A, No. 2.

37. Santiago Declaration on the Law of the Sea of 1952, quoted in S. Oda, supra note 14, at 345. See also The Institute of Ecology, Man in the Living Environment 237 (1972) [hereinafter cited as Living Environment]; United Nations Conference on Trade and Development, General Principle 3.

38. Statute of the I.C.J., art. 34 (1); Reparations for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. 174. See generally L. Orfield & E. Re, International Law 138-57 (1955).

39. J. Brierly, supra note 3, at 49; C. Fenwick, International Law 271-72 (4th ed. 1965).

40. W. Friedman, O. Lissitzyn & R. Pugh, International Law 604.(1969).

41. Order Concerning the Request for Indication of Interim Measures of Protection, Aug. 17, 1972 (J. Padillo Nervo, dissenting), quoted in XI Int'l Legal Mat'ls 1073, 1074 (1972).

42. See notes 4-14 supra and accompanying text.

43. Statement Presented Before the Meeting of Subcommittee II of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction, March 21, 1972, at 7 (mimeo) [hereinafter cited as McKernan Statement].

44. McKernan Statement, supra note 43, at 2.

45. McKernan Statement, supra note 43, at 4.

46. Compromiis, annex D.

47. 19 U.S.C. § 1701 (1970). See generally P. Jessup, The Law of Territorial Waters and Maritime Jurisdiction 75-76, 91-96 (1927).

48. Living Environment, supra note 37, at 228; D. Johnston, supra note 23, at 335-36.

49. See S. Riesenfeld, Protection of Coastal Fisheries Under International Law 278-82 (1942). See also notes 41, 43-45 supra and accompanying text.

50. D. Johnston, supra note 23, at 344-57; S. Riesenfeld, supra note 49, at 282.

51. See generally Living Environment, supra note 37.

52. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, art. 24.1.(a), 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

53. P. Jessup, supra note 47, at 75-76.

54. Compromiis, annex D.

55. Convention on the High Seas, April 29, 1958, art. 2, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.

56. Resolution of the Geneva Conference on the Law of the Sea of 1958, quoted in S. Oda, supra note 14, at 26, 28. See also S. Riesenfeld, supra note 49, at 282; 4 M. Whiteman, supra note 25, at 504.

57. See Bacardi Corp. of America v. Domenech, 311 U.S. 150, 163 (1940); Nielsen v. Johnson, 279 U.S. 47 (1929); 5 G. Hackworth, Digest of International Law 255-59 (1943); 2 C. Hyde, International Law 1478-8] (2d ed. 1945).

58. Compromiis, at 3.

59. Compromiis, at 4.

60. C. Fenwick, supra note 39, at 546.

61. Restatement (Second), Foreign Relations Law of the United States, § 153 (1965); International Law Commission, Draft Articles on the Law of Treaties, [1966] 2 Ybk. Int'l L. Comm'n 177, 256-58.

62. "The evidence of the principle [of rebus sic stantibus] in customary law is considerable . . . ." [1966] 2 Ybk. Int'l L. Comm'n 257, comment (2).

63. Agreement with Brazil Concerning Shrimp, Executive Report No. 92-37, Senate Foreign Relations Committee Report to Accompany Ex. P, 92d Cong., 2d Sess. 1972.

64. 1970 Montivedeo Declaration of Principles on the Law of the Sea, quoted in S. Oda, supra note 14, at 347.

65. 1970 Lima Declaration on the Law of the Sea, quoted in S. Oda, supra note 14, at 349.

66. Lima Declaration, supra note 65, Resolution 5.