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GEOGRAPHIC INTELLIGENCE REPORT

ANGLO-NORWEGIAN FISHERIES CASE AND ITS IMPLICATIONS FOR OTHER NATIONS



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Norway: Territorial Sea (Anglo-Norwegian Fisheries Case)
(CIA 12343)

Norway: Delimitation of Territorial Sea (Anglo-Norwegian
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ANGLO-NORWEGIAN FISHERIES CASE
AND ITS IMPLICATIONS FOR OTHER NATIONS

SUMMARY

The settlement of the Anglo-Norwegian Fisheries dispute by the International Court of Justice at The Hague has world-wide implications. The Court approved the method adopted by Norway for delimiting its territorial sea, that is, the width of sea bordering the coast over which Norway could exercise jurisdiction for the purpose of excluding foreign fishing vessels. At stake were valuable fishing grounds along the Norwegian coast in which fishermen of both Norway and the United Kingdom had vital interests.

Norway defined its territorial sea as a belt 4 nautical miles wide extending seaward from a series of straight base lines connecting the outermost points along the coast. This method is advantageous to Norway because the coast is deeply indented and is fringed by an estimated 120,000 islands, rocks, and reefs, some of them 30 miles from the mainland. In approving the Norwegian method, the International Court implied that each nation had the right to determine its territorial sea in accordance with international law, using such criteria as "geographical realities," historical precedent, and economic necessity.

The decision has had the effect of encouraging other states to make more extensive claims to territorial sea. Iceland, having a coast line somewhat like that of Norway and being vitally interested in coastal fisheries, has already adopted the Norwegian method of delimiting its territorial sea. The question has arisen as to whether other nations with comparable geographic conditions might take similar action. Yugoslavia, with an island-fringed coast, has for several years used a system resembling that of Norway. The USSR claims a 12-mile limit and in many cases has taken action against vessels and aircraft well beyond this limit. Similar action is being taken by some of its satellites. In the United States, California advocates the adoption of the Norwegian method in its claim to littoral oil lands. However, in view of the criteria formulated by the Court, its decision cannot be interpreted as sanctioning indiscriminate widening of claims without regard to international law.

I. Introduction

On 18 December 1951, the International Court of Justice rendered its decision in the Anglo-Norwegian Fisheries Case, ruling by a 10 to 2 vote in favor of Norway.

The litigation was instituted by the United Kingdom as the result of a fishing controversy extending over more than 40 years. The long-standing conflict between the British and the Norwegians arose over the penetration of British trawlers into the territorial sea 1/^{*} ** of Norway.2/₃ The dispute has been aggravated within the last few years, not only by the claim of the Norwegians to a 4-mile limit, but also by the conversion of their fjords, irrespective of width, into territorial sea.4 At various points along the Norwegian coast, the fjords penetrate inland great distances, the Porsangerfjord ingressing as much as 75 sea miles (see map CIA 12344).

Evidence laid before the Court verified the fact that from 1616-18 until 1905-6 British fishermen refrained from fishing in the Norwegian coastal waters. Violations then began to occur and became more frequent. On 12 July 1935 the Government of Norway delimited the Norwegian fisheries zone by Royal Decree (see map CIA 12343). Between the seizure in 1911 of the British trawler, Lord Roberts, and 5 May 1949, 63 British and other fishing vessels were arrested for fishing in alleged Norwegian waters, their catches were confiscated, and their skippers were fined.5/₆ As a result of these altercations, the United Kingdom on 24 September 1949 started proceedings before the World Court.7

II. Methods of Determining Territorial Limits

Essentially, the Anglo-Norwegian fisheries dispute concerned the method used by Norway of determining the limits of its territorial sea at 4 nautical miles seaward from base lines drawn between extreme points of the coast. This usage is contrary to the accepted practice of many countries of measuring limits by parallel or curved lines 3 miles from the mainland at low-water mark.8

The coast of northern Norway presents an unusual problem. The waters in this area abound in commercially valuable fish, which have attracted to the region a comparatively large population of Norwegian fishermen and also exploitation by foreign fishermen from

* Footnote references in arabic numerals refer to sources listed in Appendix B.

** The Second Commission (that on Territorial Waters) at the Conference for the Codification of International Law (The Hague, 1930) recommended the term "territorial sea" in preference to the more commonly used "territorial waters." It should also be noted that the terms "marginal sea" and "littoral sea" are used synonymously with "territorial sea."

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nearby countries. The exclusion of these foreign fishermen from the area near the coast was a part of Norway's motive for extending seaward the limits of its territorial sea.

At the Conference for the Codification of International Law held at The Hague in 1930, no agreement was reached regarding the limits of territorial sea. On this question, 20 nations, including the United States and the United Kingdom, favored a 3-mile limit, 12 other nations, including Rumania, Turkey, and Yugoslavia, favored a 6-mile limit, and Norway, Sweden, Finland, and Iceland voted for a 4-mile limit. The USSR sent observers to the meeting but did not vote.^{9/*}

One of the three generally accepted methods of determining the limits of territorial sea,** the "envelope of the arcs of circles" (la courbe tangente) method,*** was recommended by the United States delegation at the 1930 Hague Conference. This method applies the principle that the belt of territorial sea must follow the line of the coast 10/ -- that is, every point of the line delimiting the territorial sea must be precisely 3 miles (or any other stipulated distance) from the nearest point on the coast. The American amendment stated:

"Except as otherwise provided in this Convention, the seaward limit of the territorial waters is the envelope of all arcs of circles having a radius of three nautical miles drawn from all points on the coast (at whatever line of sea level is adopted in the charts of the coastal State), or from the seaward limit of those interior waters which are contiguous with the territorial waters."^{11/}

In its deliberations in the Anglo-Norwegian Fisheries Case, the International Court of Justice did not find that this system was obligatory by law, and it was not further considered.

* The report cited includes a comprehensive study of the historical background of Soviet claims, the present position of the USSR and its satellites, and the implications of the problem. No mention is made of the Anglo-Norwegian Fisheries Case or the decision of the International Court.

** The three general methods of delimitation are listed and explained in Source 12.

*** S. Whittemore Boggs, technical adviser of the American delegation to the 1930 Hague Conference, credits the British with originating the principle of the "envelope of the arcs of circles" method.

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The other suggested method of delimitation -- lines parallel to the general trend of the coast and following all the sinuosities of the coast (tracé parallèle)^{12/} -- was ruled as impractical, since the method could not readily be applied to the exceptional coastal configuration of Norway. The Court assumed its principal function to be the review of the method of straight lines as decreed and employed by Norway.

The disputed coastal area of Norway is situated north of latitude 66°28'48"N, commencing at the Norwegian-Soviet frontier and extending north, west, and south along the coast to Traena.^{13/} (See map CIA 12343.) This section of coast is more than 1,500 kilometers long and is broken by fjords and bays. The estimated 120,000 islands, islets, rocks, and reefs that fringe the coast make up the skjærgaard (rock rampart).^{14/} For most countries, the coast constitutes a clear dividing line between land and sea, but this is not the case with Norway. From abreast of Trondheim northward to Vestfjord and the Lofotens, the skjærgaard extends from 25 to 30 miles beyond the mainland.^{15/} It was apparent to the Court that because of the geographical realities of northern Norway the relevant line was that of the skjærgaard rather than that of the mainland.

In holding that straight base lines could be drawn along the outermost extremities of the skjærgaard, the Court said in effect that the waters between the base lines of the belt of territorial sea and the mainland are internal waters. The bodies of water enclosed by the base lines vary in area. Although the limit of the territorial sea is 4 miles from base points, in some places it is 18 miles from the mainland. Similarly, the intervals between fixed points vary, reaching at one place (the LoppHAVet Basin -- base points 20-21 on map CIA 12344) a distance of 44 miles.^{16/*}

III. Establishment of Base Lines

The major part of the controversy between the Governments of the United Kingdom and Norway concerned the lines prescribed by the Royal Decree of 1935 as the "base lines" for the delimitation of the Norwegian fisheries zone. Over a period of years the two countries had proposed various base lines in an attempt to resolve their differences in regard to the extent of the territorial sea. The British contended that the line separating the territorial sea from the high seas should be measured from the line of low water

* The article cited deals with the problem of delimitation and offers an examination of the contribution of the judgment to international law.

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along the whole Norwegian coast, subject to special provisions for islands and historic waters.^{17/18/} Norway contended that base lines, even when connecting extreme points and headlands up to 40 miles apart, made up the limits from which the territorial sea should be measured.

Another problem involved in the choice of base lines pertained to whether certain sea areas lying within these lines were sufficiently linked to the land domain to be regarded as being internal waters. The Court found that the unique coast of Norway made this conception valid.^{19/20/} In addition, the waters of all fjords were conceded to be internal waters. The Court ruled, however, that the "Indrelia" (the interior channel) was not a strait but a navigational route, established as such by means of artificial aids to navigation provided by Norway.^{21/} (See map CIA 12343.) Without the use of navigational aids, the interior channel would be of no practical use.

The Norwegian Government, in presenting its case, pointed out that it recognized only one base line, that established by the decree of 12 July 1935, in which some 48 base points between the Soviet border and Traena (12 on the mainland or islands and 36 on rocks or reefs, computed at low-water mark) were identified as foci through which the line was drawn (see map CIA 12343). Since this line is usually shown on charts in blue, it is called the "blue line."^{22/23/24/25/}* Although the precise distance beyond the base line was not specified in the Royal Decree, Norway claimed as its fishing limit the area lying 1 geographical mile** -- 7,420 meters (4 nautical miles) -- outside the base line.^{26/} For customs purposes, the Norwegian territorial sea was to extend 10 nautical miles beyond the most distant islands or rocks uncovered by the sea at the lowest tide.

At the Anglo-Norwegian discussions that took place in Oslo in 1924, a "red line" was tentatively drawn by Norwegian experts in an attempt to clarify the extent of Norway's claims to territorial sea.*** During the negotiations it was stipulated

* The lines shown on all maps or charts used in this case derive their names from the colors in which they are drawn. The official charts used by the British and Norwegians in the fisheries dispute (^{22/}, ^{23/}, ^{24/}, and ^{25/}) are essential to an understanding of the problem.

** This measurement is generally referred to as a "Scandinavian league."

*** The differences between the "red line" and the other proposed lines of territorial-sea claims are shown on map CIA 12344.

that this line should not prejudice the position of any of the parties. The Norwegian Government never recognized this line.^{27/} (See map CIA 12344.)

In the meantime, the relations between British trawlers and the Norwegian authorities became more satisfactory, except for a few minor incidents. The lines drawn at the Oslo Conference acquired special significance in 1925, when they came to be known as the tacit red-line modus vivendi. This operated successfully until 1931. A more explicit, but still informal, red-line modus vivendi was adopted in 1933.^{28/}

The whole situation was radically changed by the promulgation on 12 July 1935 of the Norwegian Royal Decree defining the territorial limits. As previously stated, the British opposed the 4-mile limit and the Norwegian system of drawing a base line from two promontories rather than following the coast line. The Government of the United Kingdom continued to regard the modus vivendi of 1933 as being still in force. The British were apparently under the impression that the Norwegian authorities would act leniently toward British ships and would confine themselves to enforcing the red line. A few months later, Norwegian interference with three British trawlers proved this assumption incorrect. By the end of February 1936, however, a satisfactory arrangement was reached whereby the Norwegian Government informally agreed not to molest British ships outside the red line. This modus vivendi continued until the outbreak of World War II.^{29/}

Also indicated on the Norwegian charts drawn at the time of the Oslo negotiations in 1924 (see Annex 2 of the Counter-Memorial, Source 24) was a 3-mile-limit line plotted according to the British thesis. This became known as the "green line." It is essential not to confuse this "firm" green line with the later (1950) British "pecked" green line shown on the British charts in Annex 35 of the Reply (Source 23). The latter line (see map CIA 12344) designated the 4-mile outer limit of Norwegian territorial sea according to the contentions of the United Kingdom in its submissions.^{30/} All waters inside the pecked line would be Norwegian waters, either territorial or internal. Except in special instances, territorial sea is measured by the British from points on a coast. The accompanying map (CIA 12344) shows in green the points that the British maintained were the correct base points for measuring the Norwegian territorial sea.

In January 1949, eight months before applying to the International Court for settlement of the dispute, the United Kingdom held further negotiations with Norway. At this consultation a new

comprise "yellow line" was proposed, and the British informed the Norwegians that they must take either the red or the yellow line but could not insist on receiving the benefits of the best features of both. The yellow line, like its predecessor the red line, was found unacceptable to the Storting (Norwegian Parliament).^{31/}

IV. Norwegian and British Economic Interests in Norwegian Waters

A. Vital Role of Fishing in Norwegian Economy

The preamble to the Norwegian Royal Decree of 12 July 1935, in setting forth the considerations on which its provisions were based, referred to "the safeguard of vital interests of the inhabitants of the northernmost parts of the country."^{32/} In its judgment in the case, the Court noted that certain economic interests peculiar to a region cannot be overlooked even though they extend beyond purely geographic factors, provided the reality and importance of such interests are clearly evidenced by long usage.^{33/34/} In the opinion of the Court, therefore, Norway's case was strengthened by "economic necessity."^{35/}

The meagerness of the land resources of Norway is compensated for in part by the wealth to be found in the adjacent seas. Few modern nations are as dependent upon fishing for subsistence as is Norway.^{36/} The importance of fishing in the Norwegian economy can be attributed not only to the length of the coast line in relation to total area and population, but also to the presence of the Gulf Stream, which makes the waters around the coast a very productive spawning ground.^{37/}

Fishing has always been among Norway's most important sources of income. More fish are brought ashore in Norway than in any other European country, and Norwegian fish and fish products are sold in all parts of the world.^{38/} Recent catches have averaged approximately a million metric tons per year,^{39/40/} about one-fourth of the total annual fishing catch for Europe.^{41/} In 1948, the country's total catch of fish reached a high of 1,297,215 metric tons.^{42/}* Production figures show that the 1950 catch was only 5 percent below that of 1948, the record year. The estimated value of the 1950 catch was 323 million kroner (1945 value, based on 4.97 kr. to the dollar, approximately \$65,000,000; 1949 value, with kroner devalued to 7.14 to the dollar, approximately \$45,230,000).^{43/}

* An excellent treatment of fish production in Norway, in which recent statistics are cited, appears in reference 42.

The value of fish exported in the years 1946 and 1947 averaged approximately 500 million kroner per year and constituted nearly one-third of the total value of Norwegian exports.^{44/} Official statistics show that during the first 8 months of 1950 total shipments of canned fish alone amounted to 24,674 metric tons, valued at 89.2 million kroner, as compared with 17,210 metric tons, valued at 58.8 million kroner, for the corresponding period of 1949. Exports for the same 8-month period in 1948 totaled 25,997 metric tons, valued at 86.5 million kroner.^{45/} The value of the exports of the fishing industry is a positive index of its importance in the Norwegian economy.^{46/}

Among the nations of Europe (excluding Iceland), Norway ranks first in per capita fish consumption (1947-49, 48 kilograms per year, landed weight).^{47/} The diet of the Norwegians includes all types of edible fish that are caught in the coastal waters.^{48/} About 65 percent of the total catch of 1950 was exported, either in fresh or processed form, and the remainder went to meet domestic needs. In the early postwar years, when food was generally scarce throughout Europe, cheap, nutritious fish proved a boon to thousands of people.^{49/}

According to recent statistics, there are roughly 85,000 fishermen in Norway (as compared with 124,655 in 1939). Of these, 68,000 are engaged in fishing as their main means of livelihood, and 17,000 follow the sea as a secondary occupation. A total of 35,000 Norwegians are alternately fishermen and farmers, depending upon the season.^{50/51/} Although the Norwegians fish mainly in their own coastal waters, Norwegian fishermen are also active around Iceland, the North Sea banks, Greenland, and Bear Island.^{52/}

The two most important fish caught are the cod and herring. Other principal species are saithe, sprat, ling, mackerel, haddock, halibut, flounder, and salmon, as well as the crustaceans (chiefly lobster and shrimp).^{53/} Cod fishing off the Lofoten Islands, normally the most productive fishing grounds in the world, has shown above-average yields in all postwar seasons. The total annual yield of cod is about 200,000 metric tons.^{54/55/56/}

The Norwegian fishing fleet at present consists of approximately 280 steamships, 12,300 covered-in motor boats, 10,700 open motor boats, and 10 trawlers over 50 feet long. The task of increasing the trawler fleet has been undertaken by the Government, which recently purchased some trawlers in Canada under the provisions of a \$13,000,000 loan. The domestic industry is also being encouraged to undertake new shipbuilding.^{57/58/59/}

B. British Interest

The loss of Norwegian waters has been a severe blow to British fishing interests. Shortly after the beginning of the twentieth century, when the radius of operation of steam trawlers was greatly extended, the Norwegian coastal fisheries became increasingly important to certain foreign countries. Supplies of fish in the North Sea were rapidly being exhausted, and British fishing vessels were compelled to go farther afield. Trawlers soon pushed as far as Iceland and shortly afterwards to the Faeroes. British fishermen then commenced operations in the Bay of Biscay and along the coasts of Spain and Portugal. By 1905 English trawlers had begun to fish in the waters off northern Norway.^{60/} For many years this rich coastal area provided British fishing fleets with extensive and valuable fishing grounds,^{61/} which were a source of fish of the better quality, such as turbot, plaice, and halibut. As a result of the International Court's ruling, the United Kingdom is confronted with a problem of major importance.

V. The Hague Decision

In delivering its 18 December 1951 judgment in the Anglo-Norwegian Fisheries Case, the Hague Court ruled that the Norwegian straight-line method for delimiting the fishing zone was not contrary to international law. It further decided, by an 8 to 4 vote, that the base lines fixed by the 1935 Royal Decree in applying this method was equally not contrary to international law.^{62/63/}

In its decision, the Court noted that a Norwegian decree of 1812, as well as subsequent decrees, reports, and diplomatic correspondence, showed that the method of straight lines imposed by the irregularity of the coast line, had been established in the "Norwegian system" and consolidated by a constant and sufficiently long practice. The application of this system (in 1869) had encountered no opposition from other nations over the years. The judgment confirmed that the lines drawn by this method were justified.^{64/65/}

Fundamentally, the British Government accepted the right of Norway to a 4-mile limit but disagreed with the method of delimitation employed. It was the contention of the United Kingdom that the territorial sea adjacent to any country should be measured from the physical coast of the mainland and its offshore islands. The British also endorsed the rule that the length of straight lines across bays should not exceed 10 miles. Nevertheless, in its

submissions to the Court, the United Kingdom approved (on "historic grounds") as Norwegian internal waters "all fjords and sunds [sounds] which fall within the conception of a bay as defined by international law,"^{66/67/} regardless of the length of the closing line. At the same time, the British recognized as territorial sea "all the waters of the fjords and sunds which have the character of legal straits."^{68/} These concessions with respect to fjords, sunds, and other disputed waters were based on the contention that the Court should employ the "envelope of the arcs of circles" method.^{69/} Under that method, numerous water areas would have been included as high seas that became Norwegian territorial sea under the straight-line method.

The majority decision of the World Court, in approving Norway's method of delimitation as conforming with the requirements of international law, took a broad view of territorial sea.^{70/} It stated that the limits "must follow the general direction of the coast,"^{71/} but rejected any system that would interpret this strictly. The Court also pointed out that the 10-mile rule on the closing line of bays had not acquired the authority of a general rule of international law.^{72/73/} It recognized that a country should be allowed the necessary latitude in order to be able to adapt its delimitation to practical needs and local requirements. This did not mean that a nation had the right to set the limits of its territorial sea as it desired. The validity of delimitation with regard to other states still depended on the rules of international law.

The intrinsic significance of the decision in the case of Norway can be ascertained from a statement made by Norwegian Foreign Minister Halvard M. Lange, who expressed his Government's "great satisfaction" with the ruling and declared that the award would be welcomed by people all over Norway, particularly by the fishing population of Finnmark. He mentioned the Svaerholthavet (Svaerholt Sea) at Nord Kapp (North Cape) as the most important area affected by the judgment;^{74/} this region with its abundance of fish had been attracting many British and other foreign trawlermen. The adjudication by the Court had the unquestionable effect of making much of Norway's rich coastal area off-limits to vessels of other nations.

The award of damages, as originally demanded by Great Britain in its submissions, had been left to subsequent settlement by the parties involved.^{75/} When asked whether, in view of the decision, a claim for compensation would now be made by Norway, Mr. Lange replied that Norway had reserved its position on this question. He further stated that a study of this and other related problems would be made in the near future.

Despite the favorable settlement of the fisheries dispute, Norway is facing new problems as other countries take up the lead given by the Hague Court.^{76/} If other nations in turn apply the "Norwegian system" of delimitation, the trawlers of Norway will be restricted in their fishing activities in foreign waters. The Norwegian Labor newspaper, Arbeiderbladet, in a brief comment, hoped that the decision would provide the basis for further negotiations with the British and other states to establish rules for fishing outside the 4-mile limit.

The judgment rendered by the World Court was the first delivered by an authority of such eminence on the general question of territorial sea.* Of fundamental importance was the tribunal's ruling that the principle of the 3-mile limit and the British method of establishing base points were not necessarily applicable in delimiting the territorial sea. At the same time, the decision sets a precedent to be followed by other countries.

Various foreign newspapers have pointed out that the ruling should help to dispel doubts regarding the impartiality and integrity of the International Court, as well as fears that it is influenced by great-power politics.^{77/} Many Norwegian newspapers commented on the fact that the decision demonstrated to the world that two nations, one small and the other a great power, could settle an issue of major economic importance by recourse to an International Court, and had done so at a time when international relations were characterized by abusive language and the rattling of sabers.

VI. Implications for Other Nations

A. Iceland

Although it may be some time before the aggregate effects of the International Court's ruling regarding fishing rights become fully apparent, results of the decision are already being felt in all parts of the world. The most immediate effect of the judgment concerns Iceland. Before the ruling, the Icelandic Government had issued a decree marking off an exclusive fishing zone using the "Norwegian system," but had deferred enforcement pending the outcome of the Anglo-Norwegian Fisheries Case.^{78/} The following background information is pertinent in connection with Iceland's claim to control over adjacent waters:^{79/80/}

* The Conference for the Codification of International Law held at The Hague in 1930 did not result in any treaty or convention.

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(1) Icelandic Law No. 44, 5 April 1948, authorized the Ministry of Fisheries to establish conservation zones within the limits of the Icelandic continental shelf.

(2) Ministry of Fisheries regulations of 22 April 1950 extended control over fisheries to a 4-mile limit off the north coast of Iceland, using arbitrary base lines for the closure of bays and fjords.

(3) Iceland denounced the 1901 treaty between Denmark and Great Britain that had assured British vessels of fishing rights within the customary 3-mile zone during the last 50 years (the treaty lapsed on 3 October 1951).

In the spring of 1951, the United Kingdom asked the Icelandic Foreign Office not to apply its new regulations to British vessels until the two Governments had the opportunity to discuss the question in the light of the judgment of the International Court. Iceland complied with the British request by stating that the status quo would be maintained.^{81/} Nevertheless, the Ministry for Foreign Affairs issued a press release on 23 August 1951 proclaiming Iceland's right to adopt measures concerning its own fishing grounds on a unilateral basis.^{82/83/84/}

The ruling of the World Court in favor of Norway confirmed the belief of Icelanders that they possessed the right to extend control over their territorial sea. The Icelandic Government felt that the judgment justified the steps it had taken in the past two years.

The following basic principles, which were also involved in the Anglo-Norwegian dispute, were taken to be valid in the case of Iceland:^{85/} (1) the 4-mile limit; (2) the straight-base-line method of determining the limits of territorial sea; (3) closing off of bays regardless of width; and (4) importance of the essential economic interests of the coastal state.

The Court's decision prompted the United Kingdom to request Iceland to discuss the status of the territorial-sea problem in a series of informal talks, which were held in London in January 1952.^{86/87/} Meanwhile, Iceland continued to study the legal aspects of the Hague judgment before taking any action.

Finally, on 19 March 1952, the Icelandic Government issued regulations, to become effective 15 May 1952, establishing a 4-mile zone for fishing around the entire country, with straight base lines drawn from outermost points of coasts, islands, and rocks and

across the openings of bays, regardless of outer width. All trawling and Danish seine netting,* as well as all other foreign fishing activities, were prohibited within this zone.88/89/

A short press release was also issued by the Icelandic Government on 19 March summarizing the regulations made public on that date and emphasizing the economic importance to Iceland of the action taken. In a radio address, Olafur Thors, the Minister of Industries, claimed that the movement by various states to claim jurisdiction over fishing on the "continental shelf"** was given impetus by the proclamation issued by the President of the United States on 28 September 1945. The Minister stated that the Icelandic Law of 1948, which authorized the Government to control fisheries over the continental shelf of Iceland, was passed after a study of actions by the United States and other nations. He mentioned that the decision of the International Court of Justice of 18 December 1951 in the case involving Norway and Great Britain had been carefully studied by Iceland before the new regulations were announced.90/

The Icelandic press unanimously approved the announcement of the extension of Iceland's territorial sea in protection of its fishing grounds.91/ Commenting on the new regulation, the chairman of the Norwegian-Iceland Herring Fishermen's Association told the Norwegian newspaper, Dagbladet, that for all practical purposes the new decree would have no effect on Norwegian fishermen as long as the herring are far out at sea. He warned, however, that should the herring go nearer the land, the new regulation might have serious effects on Norwegian fishing off Iceland.92/

In May, the Foreign Office in London published the text of a note from the British Government to the Government of Iceland requesting that Iceland modify her new fishing regulations. The note expressed deep regret that Iceland should have published the regulations without further consultations between the two countries, as the United Kingdom had proposed.93/94/95/ Iceland rejected Great Britain's plea and the British have been warned that vessels

* One of the most efficient forms of seine net is the instrument chiefly used by Danish fishermen and adopted to some extent in recent years by the British fishing industry.

** The "continental shelf" is the zone around a continent extending from the low-tide line to a depth at which there is a marked increase of slope to greater depths. Conventionally, its outer edge is taken as 100 fathoms or 600 feet.

entering the newly restricted areas run the risk of detention.^{96/}
In a note dated 18 June 1952, the United Kingdom expressed the view that the Icelandic regulations in question were not in accordance with international law and stated that the British reserved their right to claim compensation for any interference with British fishing vessels in waters that, in the opinion of the British Government, are high seas.^{97/98/}

Both Belgium and the Netherlands have recently protested the extension of the Icelandic fishing limits.^{99/100/} Although the United States has not officially delivered a note of protest to the Icelandic Government, it can be assumed from previous reactions ^{101/102/103/} that the Government of the United States would object to certain basic principles involved in the extension of Iceland's territorial sea.

B. Great Britain

It has been unofficially suggested that Great Britain now take the opportunity of widening her fishing zone off the Scottish coast. It was pointed out that the United Kingdom might secure for the exclusive use of British vessels a larger area of coastal waters by adopting the Norwegian base-line system and drawing lines across the mouths of large estuaries, for example, the Moray Firth.^{104/105/} Such action would close to Norwegian fishing vessels a large expanse of sea off the northwest coast of Scotland, where they at present have fishing privileges.^{106/} At the same time, other retaliatory measures could be imposed, such as the limitation of landings from foreign ships of fish for the British market. Actually, officials of the United Kingdom have been at pains to accept the Court's decision with good grace, and there has been no move on the part of the Government to take any precipitate action. British newspaper comment, however, reflected great disappointment with the ruling.

In a press conference after the ruling of the International Court was announced, Sir Eric Beckett, the British Foreign Office Legal Adviser, said that "for the future the United Kingdom Government will naturally consider the effect of this decision of the Court as a precedent of general application." In any event, the British Government has accepted the adverse judgment as binding.^{107/} Sir Eric told the reporters that his Government was still of the opinion that legal disputes between states should be settled by judicial decision. The majority decision, he continued, "contains rulings on certain questions of general principles applicable to territorial waters, which are contrary to the views which the United Kingdom Government has hitherto entertained regarding the

rules of international law, and which in consequence it has hitherto followed."108/

It has been unofficially noted in British legal quarters that the judgment upset the previously employed "envelope of the arcs of circles" method, and that it meant that any nation with a coast line dotted with islands now possessed all the waters between the islands and the coast line.

One definite outcome of the fisheries case has been active consideration on the part of the British Government and British trawler skippers of the development of fishing off the coast of Greenland. There have been reports of trawlers operating in Davis Strait below Baffin Bay and of the discovery of "prolific" fishing grounds.109/110/

A direct aftermath of the fisheries dispute (as reported by the British press of 13 January 1952) was the arrest of the British trawler, Paynter, off the mouth of the Tanafjord by a Norwegian patrol vessel that escorted it to Hammerfest. The skipper of the trawler stated in his own defense that he did not know of the Hague decision or that he was fishing within the "red line." Nevertheless, he was fined 35,000 kroner.111/112/ As a result of the verdict, the sentence was to be appealed as of 15 January 1952.

C. Denmark-Greenland

It is interesting to observe that if the "Norwegian system" is applied to the cod fisheries of Greenland extensive areas would be closed to foreign fishermen. Greenland's coast line, with numerous small islands lying off its shores, is indented by deep, long fjords, which like the Norwegian fjords probably have a threshold with shallow water near their mouths.

There has been some speculation in British circles as to what action Denmark may take in regard to Greenland.113/ Although Greenland is Danish territory, its own national council has recently been demanding, in the interests of the local inhabitants, that not only foreigners but also Danish and Faeroese fishermen should be forbidden to fish off its coast.

D. Yugoslavia

The coast line of Yugoslavia on the Adriatic Sea, with its great number of indentations and its many islands, poses a similar problem as to fishing rights. Three years before the Anglo-Norwegian decision, the Federal Peoples Republic of Yugoslavia had

established basic laws and regulations delimiting the territorial sea.^{114/} Using a method resembling the system employed by the Norwegians and upheld by the World Court, the Yugoslav Government drew a series of base lines connecting capes, islands, and rocks along their coast.^{115/} Article V of Law 876, published in the Official Gazette (No. 106) on 8 December 1948, states that the territorial sea of Yugoslavia extends 6 nautical miles into the open sea and is measured from the limits of domestic sea waters, or from the coast at lowest ebb tide, or from the coasts of islands lying outside the domestic waters of Yugoslavia.^{116/} The base lines form the outer limit of the domestic waters. Furthermore, the regulations provide for search of foreign vessels within an area 4 nautical miles beyond the 6-mile limit when Yugoslavia suspects activities contrary to its interests. Yugoslavia also extends jurisdiction into this zone for the purpose of protecting marine resources.^{117/} The Yugoslav method of drawing base lines between designated areas following the coast line encloses less open sea than the Norwegian system, however.

The actions taken by Yugoslavia in the Adriatic during the past year have heightened existing tensions between the Yugoslav and Italian Governments. According to recent reports, Italian fishing vessels are being seized 14 to 20 miles from the Dalmatian coast.
118/119/120/

It is possible that Italian fishermen have been disregarding the seaward limits of the territorial sea established by Yugoslav law in 1948 and have been encroaching upon waters regarded as internal by Yugoslavia. It is also possible that in the light of the Hague decision there has been a shift in Yugoslavia's course of action regarding its territorial limits. To date, no official announcement of such a change in Yugoslav policy has been made.

E. The United States

The decision of the International Court in the Anglo-Norwegian Fisheries Case has had repercussions affecting the United States in both the international and national fields. Immediately after the ruling, Peruvian fishing interests launched a series of complaints against the activity of American tuna fishermen off the coast of Peru. (Peru claims jurisdiction over waters extending 200 miles from its coast.)

The decision has also played an important part in the Supreme Court case between the United States Government and the State of

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California over littoral oil deposits, in which the issue of a base line marking the territorial sea is involved.¹²¹/* The suit filed by the United States involved the right of the State of California to grant leases and receive revenue for the extraction of oil and other products from the 3-mile marginal belt off the coast of California.¹²²/ Federal officials have contended that coastal states have no more right to oil reserves under the marginal sea than inland states have to Federal forests and minerals.

On 23 June 1947, the Supreme Court of the United States declared by a 6 to 2 vote (United States vs. California, 332 US 19) that the Federal Government, and not the State of California, possessed ownership of the submerged lands lying 3 nautical miles seaward of the ordinary low-water mark and outside the inland waters of the state. It further stated that "paramount rights" in and full dominion over this area are attributes of national sovereignty.¹²³/ On 28 September 1945 President Truman had issued a proclamation that reserved to the United States all mineral rights on the submerged "continental shelf" off its shores.
¹²⁴/¹²⁵/¹²⁶/

The decision was not a departure from previous Supreme Court pronouncements. In the cases of Texas (United States vs. Texas, 339 US 707) and Louisiana (United States vs. Louisiana, 339 US 699), the Supreme Court had ruled that the U.S. Government, and not the states, had control of the mineral-rich underwater lands off their coasts.¹²⁷/¹²⁸/ The decision, however, does not affect the established rule of law that the states, and not the Federal Government, own the "tidelands,"¹²⁹/**¹³⁰/¹³¹/ as well as the submerged lands under inland navigable waters.

The case of the United States vs. California (332 US 19) is still before the Supreme Court for the determination of the base line of the marginal sea along sections of the California coast. Continuation of the hearings on the matter have been held before the Special Master since the first of the year.

The State of California has placed great reliance on the Anglo-Norwegian Fisheries Case as a precedent, proposing the

* A comprehensive treatment of the whole problem can be found in Submerged Lands, Source 121.

** "Tidelands" refers to the land that is covered and uncovered by the ebb and flow of the tide; it is commonly known as the shore.

the location of base lines outside the outlying rocks and islands off its shores. In the channel areas off the coast of California, such islands as San Miguel, Santa Rosa, Santa Cruz, San Nicolas, Santa Barbara, Santa Catalina, and San Clemente are separated from the mainland by as much as 10 to 60 nautical miles. The United States has held that in the absence of historical exceptions the boundary line should follow the sinuosities of the coast and should not jump from point to point, rock to rock, or island to island.^{132/} Whereas California's claims to water areas such as bays are not limited to deep indentations of 10 miles or less between headlands, the United States considers indentations in the coast as inland waters only if they are deep, and then only the part where the mouth is 10 miles or less in width.^{133/134/*}

The Solicitor General of the United States, Philip B. Perlman, in a letter of 21 January 1952 to Senator Joseph C. O'Mahoney, Chairman of the U.S. Senate Committee on Interior and Insular Affairs, stated that "nothing in the International Court's opinion seems to require any modification of the legal position of the United States with respect to the determination of the location of the marginal sea."^{135/} Similarly, on 12 February 1952, Secretary of State Dean Acheson, in a letter to the Attorney General, J. Howard McGrath, asserted:

"... The decision of the International Court, however, does not indicate, nor does it suggest, that other methods of delimitation of territorial waters such as that adopted by the United States are not equally valid in international law. The selection of base lines, the Court pointed out, is determined on the one hand by the will of the coastal state which is in the best position to appraise the local conditions dictating such selection, and on the other hand by international law which provides certain criteria to be taken into account such as the criteria that the drawing of base lines must not depart to any appreciable extent from the general direction of the coast, that the inclusion within those lines of sea areas surrounded or divided by land formations depends on whether such sea areas are sufficiently closely linked to the land domain to be subject to the regime of internal waters, and that economic interests should not be overlooked the reality and importance of which are clearly evidenced by long usage..."^{136/}

* A statement of U.S. policy on the question of the territorial sea, appears in Source 134.

Congressman Yorty of California on 11 February 1952 introduced in the House of Representatives Joint Resolution 373, which would fix the boundaries of the internal waters of the United States in a manner consistent with the decision in the Anglo-Norwegian Fisheries Case.^{137/} It was his opinion that the ruling of the International Court had a very great bearing on the case of the United States against California. Mr. Yorty emphasized that immediate Congressional action was needed, not only because the rules of international law had been clarified, but also because it was imperative not to leave our coast defenses unnecessarily exposed.^{138/} The preamble of Joint Resolution 373 reads as follows:

"Joint resolution declaring the boundaries of the inland or internal waters of the United States to be as far seaward as is permissible under international law, and providing for a survey of such boundaries to be made by the United States Coast and Geodetic Survey in the light of the Anglo-Norwegian Fisheries Case."^{139/}

The State of California has consistently maintained throughout the proceedings that the determination of the boundary of the internal waters of the United States is a question for the political branch of the Government and not the judicial branch to decide. In its brief, the Federal Government recognizes that the Anglo-Norwegian decision confirms that the delimitation of the marginal sea is a political act.^{140/}

On 15 May 1952, the House of Representatives by a 247 to 289 vote approved a compromise bill for state control of oil-rich lands beneath the marginal sea.^{141/} The next day, without debate and by a voice vote, the Senate approved and sent to the White House a compromise Senate-House bill giving the states clear title to the submerged coastal lands.^{142/} On 29 May President Truman vetoed the bill, stating in his message that he saw no reason for the Federal Government to make an outright gift "for the benefit of a few coastal states" of property worth billions of dollars. It was his opinion that the property belonged to the 155 million people of the nation.^{143/} A proposed Senate vote to override the President's veto, which requires a two-thirds majority, was not taken before Congress adjourned.

F. USSR

The outcome of the dispute between Great Britain and Norway has had no noticeable effect on the basic policy of the Union of Soviet Socialist Republics regarding the littoral sea.

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Indirectly, the Soviet Union may find the Court's decision beneficial. The Soviets have claimed a 12-mile limit for their own territorial sea while insisting on the right to approach within 3 miles of the shores of other countries.^{144/} The USSR has maintained in the past that no general rules exist governing the extent of a nation's territorial sea and that it is a matter for each nation to decide for itself.^{145/} It is the opinion of some observers that the ruling handed down by the Hague Court strengthens the Soviet case.

Since the end of World War II, the USSR has been involved in a series of incidents concerning her claim to a 12-mile territorial sea.^{146/} Seizures of fishing vessels by the Soviets have become more frequent in an effort to discourage nationals of non-Communist countries from fishing in waters adjacent to the USSR. British, Norwegian, Danish, Swedish, Finnish, West German, and Japanese vessels have been detained. In many instances, the evidence reveals that the incidents occurred well beyond the 12-mile limit.
147/148/149/150/151/152/

In 1951, in an exchange of notes with Sweden and Denmark over jurisdiction in the Baltic Sea, the USSR referred to a 1909 Tsarist decree claiming 12 nautical miles as the territorial limit for customs purposes.^{153/} Another law cited extended Soviet jurisdiction over fisheries throughout the White Sea and 12 miles off the coast of the Barents Sea. This claim to a 12-mile limit is based on the existence of three statutes promulgated in 1921, 1927, and 1935.
154/155/ By adoption of these decrees, the USSR reaffirmed its stand that the 12-mile limit applied to all coasts of the country, with the exception of areas where such a limit would overlap with foreign claims.

The motives of the USSR for claiming and enforcing a 12-mile limit are not clear-cut. Several plausible reasons have been advanced for the present Soviet policy,^{156/} including (1) a desire on the part of the USSR and its satellites to prevent the entry of unauthorized persons behind the "Iron Curtain" and to prohibit Soviet emigration, and (2) an attempt to prevent the observation and photographing of the coast and coastal activities. On the over-all question of the littoral sea, it appears that the primary aim of the USSR is the effective control of the seas washing its shores, particularly the Baltic and Black Seas. At the same time it is evident that the Soviet Union is unwilling to settle matters through established international organizations.

1. Relations with Sweden and Denmark

Before World War II, Swedish and Danish fishermen regularly caught salmon off the coasts of Latvia, Lithuania, and

East Prussia. Fishing was carried on outside the 3- and 4-mile limits claimed by the Governments of the Baltic States and of Germany.^{157/} At the end of the war, both the Swedes and the Danes returned to their former fishing grounds in this area, but in 1948 the Russians began to arrest and detain foreign fishing vessels operating in the Baltic Sea.^{158/} Notes were exchanged between Sweden and the USSR regarding the series of incidents, the Russians justifying their actions by citing the decree of 1927, which applied a 12-mile limit to all Soviet territorial sea. A Swedish note to the USSR pointed out that in 1927 the southeastern shore of the Baltic was not Soviet territory and that therefore the 12-mile limit did not apply to the Baltic States.^{159/} The reply stated that Soviet legislation automatically included the Baltic States upon their joining the USSR.^{160/}

In July 1951, Sweden and Denmark jointly suggested that the matter be referred to the International Court of Justice, but the Soviets refused the request, declaring that they were free to define their waters as they chose.^{161/}

It was then rumored that the Swedish and Danish Governments were contemplating discussions with the USSR regarding a possible agreement by which fishing boats of all three countries could fish anywhere outside the 4-mile limit despite the Russian claim of a 12-mile limit. The rumored agreement would be similar to a treaty concluded by the Russians with Great Britain in 1930 concerning fishing in the Arctic Ocean and the White Sea.^{162/}

Later, Mr. Sven Dahlman, Director of the Political Affairs Division of the Swedish Foreign Office, stated that the Danes and the Swedes had decided that it would be better to await the decision in the Anglo-Norwegian Fisheries Case before determining what to do next.^{163/164/} Although it appears that the ruling handed down by the World Court did not help the Swedish-Danish cause, both countries are anxious to settle the problem of fishing limits with the USSR. It has been estimated that Denmark alone is losing a million kroner a year because of the Soviet restrictions.

The Danish newspaper, Ekstrabladet, in March 1952 reported that Sweden and Denmark intended to dispatch a joint note to the Soviet Union in reply to its rejection of the idea of submitting the question of territorial-sea limits to the International Court.^{165/166/167/} Three months later, similar notes addressed by the Swedish and Danish Governments to the USSR were delivered by the Scandinavian Ministers in Moscow. The notes stress the point made in the findings of the Hague Court in the Anglo-Norwegian fisheries dispute to the effect that the Court has proper jurisdiction over

such matters.168/169/170/ No change in the attitude of the Soviets was expected, but the Governments of both countries believe that the notes will place on record their official views and keep the issue open.

2. Attitudes of Soviet Satellites

Among the USSR satellites, only Rumania and Bulgaria 171/ have made postwar revisions of claims to territorial sea. Each of these countries now maintains a 12-mile limit, and it is likely that this precedent may be followed by Poland, Albania, and Communist China.172/ Recently Poland warned both Sweden and Denmark that "illegal" fishing in Polish waters would be severely punished. Poland has not yet defined its claims, but Swedish fishermen fear that the Poles, like the Russians, may insist on a 12-mile limit. 173/174/

G. Norway-Sweden

The decision of the Hague Tribunal has created other problems in respect to fishing rights. Fishermen from ports on the west coast of Sweden have long frequented the Oslofjord, which is especially rich in shrimp.175/ The Norwegians also fish in these waters, and after World War II they discovered that the Swedes, whose ships and equipment had been modernized while Norway stagnated under German occupation, were getting the bulk of the catches. Norwegian fishermen have protested that mutual concessions made during the war should not continue in time of peace. They feel that under present conditions it is not necessary for the Swedes to fish in the limited Norwegian shrimp grounds.176/ As a result of this controversy, Norwegian authorities have declared that fishing by Swedish trawlers inside an area 4 miles from the base line is illegal. A temporary agreement on Swedish rights in the fjord was finally reached between the two Governments, but it will expire at the end of 1955. Sweden fears that Norway may then cite the International Court's ruling as justification for excluding the Swedes altogether.

H. Great Britain-France

For some 300 years, England and France have been contending for ownership of English Channel islets, Minquiers and Ecrehos.177/ The Minquiers group lies approximately 17 miles and Ecrehos about 7 miles from the French coast. Fishing rights are involved, for the waters surrounding the islets are valuable fishing grounds, with lobster and mollusks the main catch. An interesting sidelight on the general fisheries problem was the decision by the Governments of Great Britain and France to submit the dispute on sovereignty

rights over the two islets to the International Court of Justice for settlement.178/179/ The British and French have reached an advance agreement concerning the right to fish in the area of these islets pending the decision of the Court.180/

APPENDIX A

GAPS IN INTELLIGENCE

Almost all the source material on the Anglo-Norwegian Fisheries Case was available or readily obtainable. The only serious gap in information concerns the "yellow line," the compromise base line proposed by the British to the Norwegians in 1949. It is believed that official charts or reports bearing on this line are in existence, but they are not available. However, an inset map showing the "yellow line," clipped from a Norwegian newspaper and enclosed with a Department of State despatch, was obtained.

APPENDIX B

SOURCES AND EVALUATION OF SOURCES

1. Evaluation of Sources

The sources covering the Anglo-Norwegian Fisheries Case were voluminous and diverse. The primary official sources were excellent in both coverage and quality. Department of State despatches were of great value in providing information on recent developments. The secondary sources used for background material were both accurate and comprehensive.

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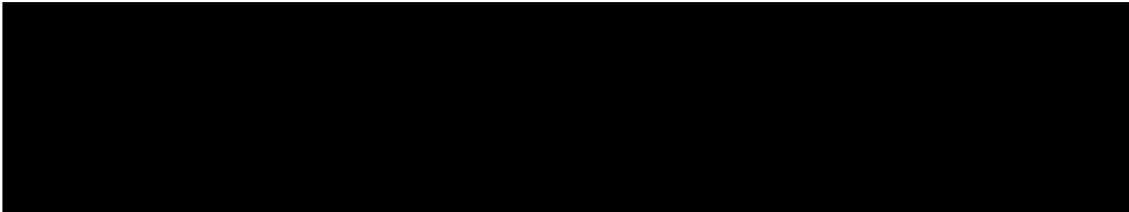
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171. "Ukase for the Territorial and Internal Waters of the People's Republic of Bulgaria," Izvestia of the Presidium of the National Assembly, No. 85, 23 October 1951.

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173. Department of State Despatch 3402, London, 4 February 1952, enclosure.

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176. Ibid.

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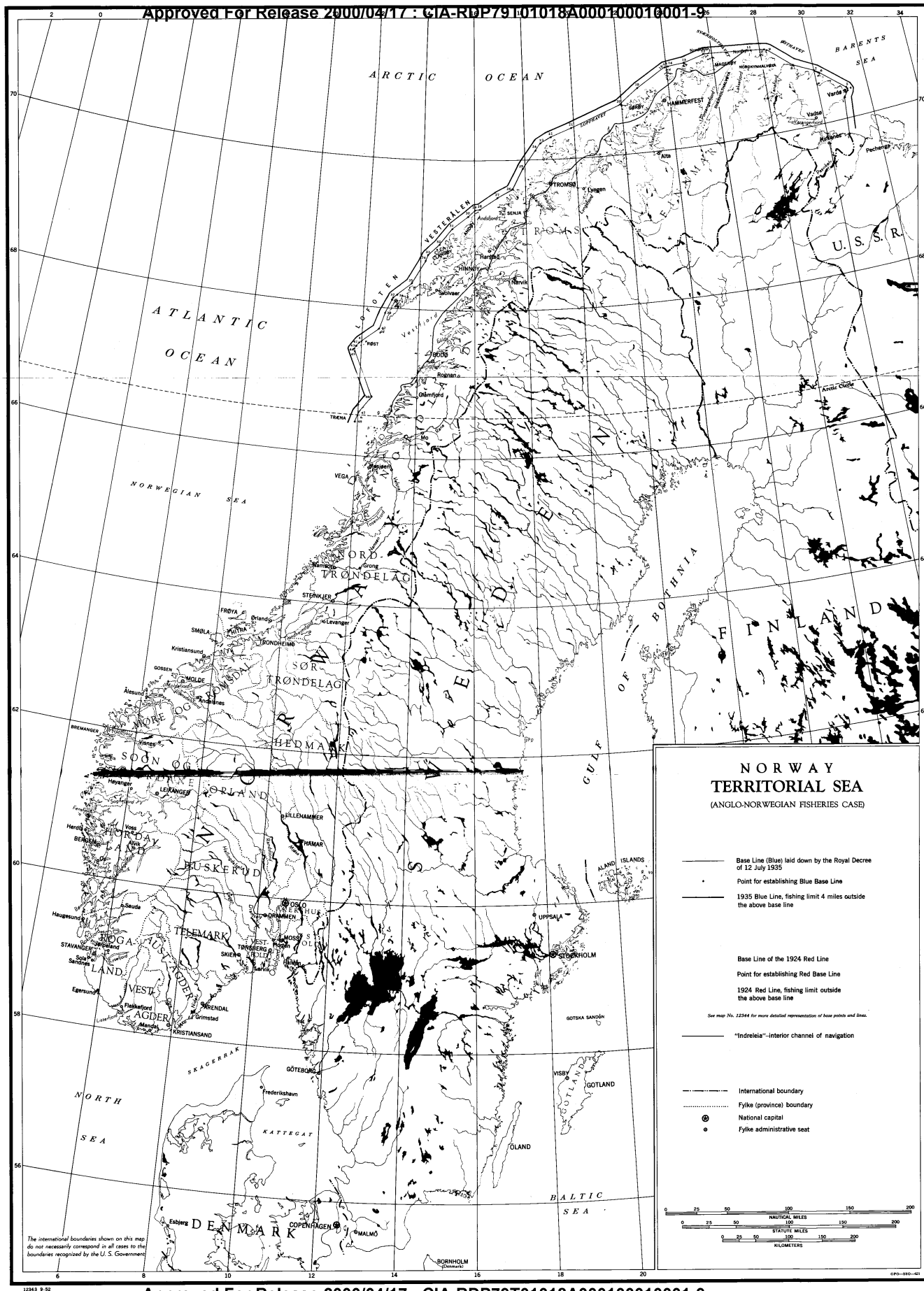
177. The New York Times, 16 December 1951.

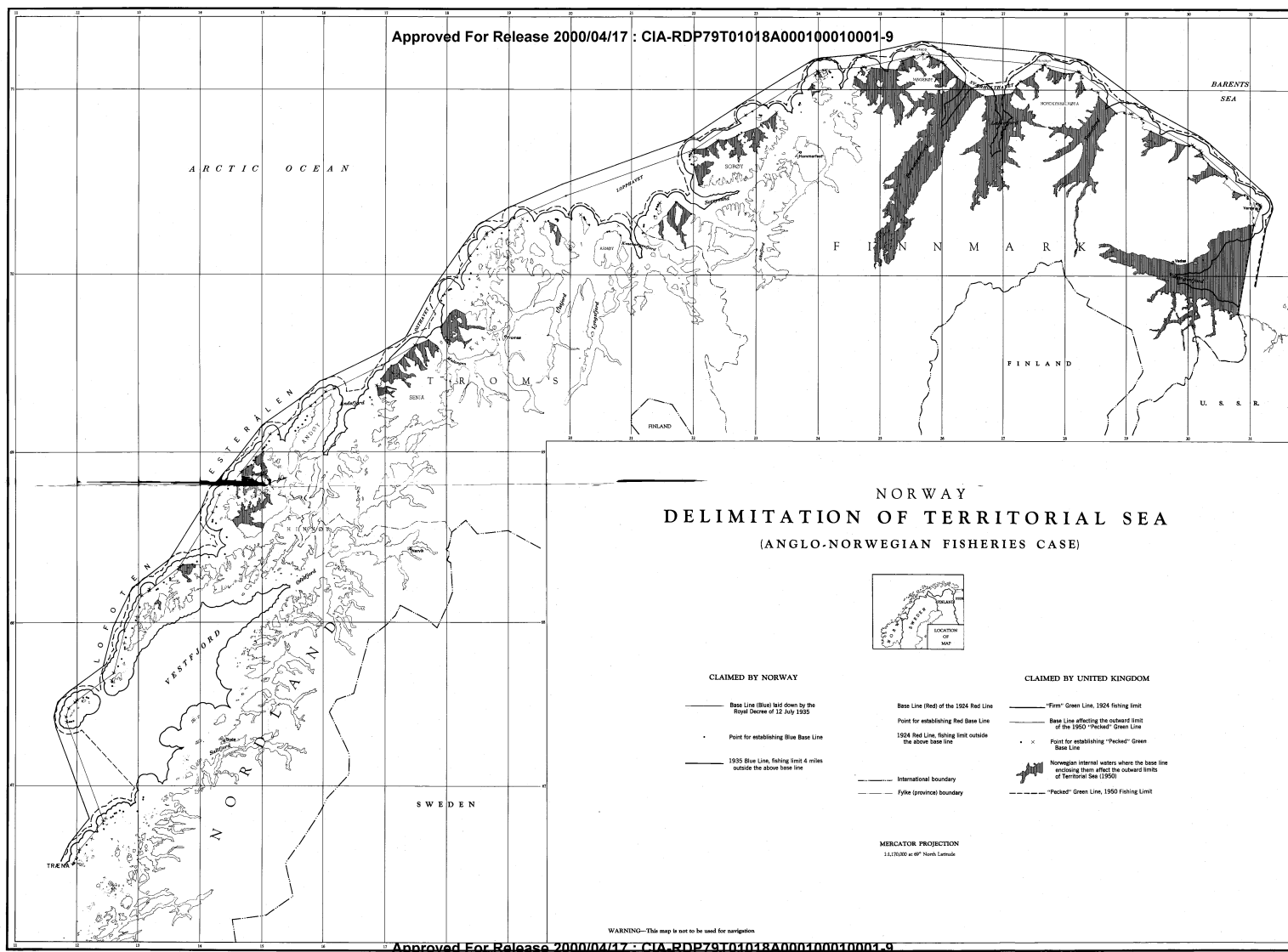
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179. International Court of Justice, The Minquiers and Ecrehos Case (United Kingdom/France), Reports of Judgments, Advisory Opinions and Orders, Order of 15 January 1952.

180. Department of State Despatch 3302, London, 28 January 1952.

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