



(c) crown copyright

Printed for the Cabinet. July 1952

CONFIDENTIAL

CABINET OFFICE
RECORD COPY

Copy No. 72

C. (52) 247

21st July, 1952

CABINET

DELIMITATION OF TERRITORIAL WATERS: APPLICATION BY HER MAJESTY'S GOVERNMENT OF THE PRINCIPLES LAID DOWN BY THE INTERNATIONAL COURT OF JUSTICE

MEMORANDUM BY THE SECRETARY OF STATE FOR FOREIGN AFFAIRS

The Hague Court Judgment.—On 18th December, 1951, the International Court of Justice at The Hague delivered a judgment in the Anglo-Norwegian Fisheries case in favour of Norway. This judgment was concerned with the manner in which territorial waters could be delimited (though not with their actual breadth), and, in delivering it, the Court laid down certain general principles of international law governing the matter.

2. These new principles differ radically from those which Her Majesty's Government have hitherto conceived to be the law. They entitle a country to reckon its territorial waters from a "base-line" joining outer headlands, islands and rocks, provided that the resulting line is "reasonable" and follows the general direction of the coast. Her Majesty's Government have in the past held that the belt of territorial waters should be measured from the low-water mark along the coast and across the entrances to bays at a point where they are not more than 10 miles wide.

3. *Implications for the United Kingdom.*—The question arises whether Her Majesty's Government should in future claim round the United Kingdom and round the Colonies, Protectorates and other territories overseas for which Her Majesty's Government are responsible, territorial waters measured according to the more liberal principles enunciated by The Hague Court. The effect would be to increase considerably the area of waters over which Her Majesty's Government could claim jurisdiction, including exclusive fishery rights. This question has been considered by the Home Affairs Committee, who have, however, decided that, in view of the importance of the issues at stake, it should be submitted to the Cabinet.

4. *Divergent Views of Government Departments.*—In spite of prolonged discussion at the official and Ministerial level, it has not been possible to reach an agreed recommendation. Considerable pressure is being brought to bear by fisheries interests in Scotland to have The Hague Court principles applied round the Scottish coast in order to close larger areas to foreign trawlers. The Scottish Home Department are wholly in favour of extending our territorial limits in this way as early as possible in the interests of the Scottish inshore fishing industry. The White Fish Authority, whose responsibilities cover all sections of the British white fish industry, have recommended to the Government that action on these lines should be taken.

5. On the other hand, the immediate adoption of The Hague Court principles is opposed by the Admiralty and the Ministry of Transport on the ground that it is not yet clear that they are going to be generally adopted by other countries including particularly the United States, or that they will be approved by the International Law Commission of the United Nations. They believe that as a naval and maritime Power we should hold to our established policy of maintaining

a maximum area of the seas free from national jurisdiction and should do nothing which would encourage other countries to apply The Hague Court principles in a manner detrimental to our interests.

6. *The International Position.*—The fact is, however, that some other countries, including Norway, Sweden, Saudi Arabia, Ecuador, Yugoslavia, Egypt and France (the last-named to a limited extent), had already adopted the new principles to a greater or lesser extent even before the announcement of The Hague Court's judgment. Iceland, which had adopted them on her northern coast before the announcement, has subsequently applied them to the remainder of her coast line. There is considerable pressure from fishing interests in Greenland and the Faroes for the adoption of the principles by the Danish Government. All this is part of a general tendency in favour of the extension of territorial limits which has only been strengthened by The Hague Court's judgment. Even in the Commonwealth there is no chance of solid opposition to the new principles. The position now is that Her Majesty's Government cannot seriously challenge base-lines adopted by other countries as long as they apply The Hague Court principles in a reasonable fashion. The interests of Her Majesty's Government would therefore appear to be best served by exercising a moderating influence without, at the same time, adopting an attitude so hostile to the new principles that it would have little or no support outside the United Kingdom. Moreover by accepting base-lines we are more likely to obtain support from other countries for our efforts to maintain the principle that the actual belt of territorial waters should be limited to 3 miles (except where there is a valid prescriptive claim to a wider limit); a principle to which all Departments attach importance.

7. The International Law Commission, which is a body of jurists established by the United Nations to make recommendations to the General Assembly for the codification of international law, is intending to study the questions of the delimitation and breadth of territorial waters, and will probably be issuing a report in 1953. The rapporteur of the Commission has recently produced a first report to provide the basis of the Commission's discussion. In this he recommends the general acceptance of The Hague Court base-line principles for indented coasts, though with some safeguards (such as the limitation of the length of base-lines to 10 miles in some cases). Although it is impossible to prophesy what the Commission itself will recommend, it seems most improbable that there will be any general return to the stricter methods of delimitation still applied by the United Kingdom or that any great degree of international support for such an attitude could be obtained.

8. In the circumstances there would appear to be no advantage to be gained from postponing a decision to apply The Hague Court principles to the United Kingdom.

9. *Action Required to Apply The Hague Court Principles.*—If it is decided to adopt The Hague Court principles, it will be necessary—

- (a) to introduce legislation providing for the definition of the new limits of the territorial waters of the United Kingdom, Colonies, Protectorates, &c.;
- (b) to consider whether certain international treaties, namely the Anglo-French Fishery Convention of 1839 and the North Sea Fisheries Convention of 1882, which lay down limits based on the previous conception of the law, should be abrogated or amended by agreement. This action will be necessary to secure the full benefits of the new principles for our inshore fishermen.

10. *Recommendation.*—For the reasons given above, my recommendation is that a decision in principle should now be taken to accept the use of the base-line method for the delimitation of territorial waters round the United Kingdom and that the interdepartmental official committee on territorial waters should be instructed to prepare specific recommendations on the following points:—

- (a) the timing of any public statement on the subject and the date when the decision should be put into effect, bearing in mind the desirability of prior consultation with the Commonwealth and with the United States and other Governments;
- (b) the detailed definition of the exact waters to be claimed around the United Kingdom on the basis of a reasonable and moderate application of the principles laid down by The Hague Court;

- (c) the action to be taken in regard to the Anglo-French Fishery Convention of 1839 and the North Sea Fisheries Convention of 1882;
- (d) the action to be taken in respect of territorial waters round the Colonies, Protectorates and other territories overseas for which Her Majesty's Government are responsible;
- (e) the desirability of holding a conference of fishing Powers to discuss exclusive fishery limits (a suggestion which has been made in the House of Commons and in the Press);
- (f) any other points which require consideration before steps can be taken to introduce the necessary legislation in the House of Commons.

A. E.

*Foreign Office, S.W. 1,
21st July, 1952.*