

DECLARATION OF JUDGE MARSIT

[*Translation*]

1. I have voted in favour of this Judgment but I should nevertheless like to give my view on certain aspects of this case or any similar case that might give cause for concern not only to developed countries but in particular the young States which are endeavouring to achieve a higher level of development, especially from the economic point of view.

2. The new law of the sea acknowledges coastal States' exclusive sovereign rights to take advantage of the resources of the maritime areas over which they have sovereignty or jurisdiction. However, this particular case demonstrates, if the charges complained of by the Respondent prove to be true, that it is far from easy to protect those resources from any serious, repeated attack. If a country such as Australia or France is not always able to provide such protection, what about new developing countries, regardless of whether they open onto oceans or smaller seas?

3. It should be noted that a number of people have seen fit to voice their firm support for the right of the coastal State to defend itself in order to preserve its resources from any illegal, unregulated and unreported exploitation having ruinous consequences. Such an attitude reflects the concern of the international community to safeguard the maritime waters within the domestic jurisdiction from reckless action of this kind and seeks to protect the marine environment from an imbalance that will sooner or later prove harmful and may be seriously detrimental to the rights of future generations. It is to be hoped that, on the basis of such an approach, the conduct of fishermen will no longer be guided solely by material interests and a desire for quick profits regardless of the rights of others.

4. Furthermore, it would be desirable for the Tribunal to pronounce clearly and explicitly at some stage or other on the meaning and significance of the expression "reasonable bond"; it must, in my humble opinion, invariably take into account not only the interests of the parties involved in a case but also the impact or effect of the jurisprudence of this universal court on any future cases that may affect one or more developing countries. This means that a reasonable sum must be reasonable for all parties concerned, irrespective of whether they are developed or developing countries.

(Signed) Mohamed Mouldi Marsit