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Fishing Ind

Foreign and Commonwealth Office

London SW1A 2AH

(4)

7 January 1981

Prime Minister.

Mr Walker would seem to have rather overlooked his case on the Hague Agreement. The real damage was done before we joined the Community.

Dear Michael.

COMMON FISHERIES POLICY

As requested in your letter of 15 December to Paul Lever, and agreed when we spoke subsequently, I enclose a note on the background to the introduction of the 200-mile fisheries limit in 1976, for which the Prime Minister has asked in the light of Mr Walker's letter of 12 December about the 'Hague Agreement'..

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As you will see, the conclusion of the note is somewhat at variance with the suggestion in the note attached to Mr Walker's letter that the 'Hague Agreement' was almost entirely disadvantageous to our present negotiating position over the CFP. We would not necessarily dispute that it was one of the factors affecting the strength of our position, and it may be thought that there are presentational advantages in Mr Walker's line. But by far the most significant limitation on our freedom of action at the time of the move to 200-mile limits was that imposed by the 'equal access' provisions in the existing CFP concluded before UK accession: we could not have excluded EC fishing from the limits even if we had declared a 200-mile limit unilaterally.

The note also points to the advantageous aspects of the agreement, namely the establishment of the principle of Member States'

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responsibility for enforcement, the right to continue to operate ~~mult~~ unilateral conservation measures in the absence of an agreed Community régime, and its contribution to the eventual ending of Eastern European fishing in Community waters.

I am copying this letter to Kate Timms (MAFF) and David Wright (Cabinet Office).

Yours ever
Stephen Gomersall.

S J Gomersall

THE UK 200-MILE FISHERIES LIMIT

Background

1. 200-mile limits were claimed by some South American countries as early as the 1950s, but were not accepted. By the mid-1970s, however, a considerable number of states had adopted or were on the point of adopting 200-mile limits, and opinion at the United Nations Conference on the Law of the Sea (UNLOSC) was generally in favour of such limits. The UK announced as early as July 1974 its willingness to consider such a move. Our view remained, however, that any move to 200-mile limits should take place as part of a general agreement reached at UNLOSC.

2. By 1976 a number of countries, mostly South American but also Iceland, had unilaterally adopted 200-mile fisheries limits without waiting for agreement in UNLOSC, while several more countries with important fisheries in the North Sea and North Atlantic, such as Norway, Canada, the US and the Faroes (the last are outside the European Community for fisheries purposes) had indicated their intention to move to 200-mile limits early in 1977.

3. This development caused a major problem for the UK. The only rules governing fishing in the important waters around Britain outside our 12-mile limit were those of the North-East Atlantic Fisheries Convention. Most of the countries fishing in 'our' waters were parties to this Convention, but it provided very limited powers of enforcement; a vessel found fishing in defiance of NEAFC conservation measures could only be reported to the authorities of the flag state with a request to take action. This had already led to an unsatisfactory free-for-all in the waters around the UK, which had already been seriously over-fished. With the imminent move to 200-mile fishery limits by many other North Atlantic states, and the consequent exclusion of other countries' fishing fleets from those limits, the problem threatened to get out of hand, as more and more foreign fishermen moved to our own largely unprotected fishing grounds.

4. In consequence, the UK decided that it could no longer afford to await the adoption of a Convention by UNLOSC (which was moving very slowly) before moving to a 200-mile fisheries limit. While we could have moved to 200 miles unilaterally, it was for policy reasons

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thought preferable to act within a Community framework. (The European Commission had itself been canvassing a general EC move to 200-mile limits since at least late 1975.) It was thought that our hand would be strengthened against those third countries (such as the USSR) which we wanted eventually to exclude from our waters altogether if we took action as part of a general Community move. A further consideration was that general Community acceptance of 200-mile fisheries limits would strengthen our position in the Common Fisheries Policy (CFP) negotiations, particularly on access where we were arguing - in the face of opposition from most of the Community except the Irish Republic - for preference for UK fishermen well beyond the existing 12-mile limits.

5. The UK therefore played a leading part in securing Community agreement on a move to 200-mile fisheries limits (though it remained our position, not contested by other Member States, that the act of extension remained the legislative responsibility of individual Member States; there could be no question of the extension being made by the Community as such). At the Foreign Affairs Council on 27 July 1976 a Declaration of Intent to establish 200-mile limits from 1 January 1977 was adopted. The firm decision to extend as from 1 January 1977 was not taken until the meeting of Community Foreign Ministers at The Hague on 30 October: the decision formed part of a Resolution which subsequently became known as the 'Hague Agreement'.

6. Meanwhile, the UK had resolved, and British Ministers had stated publicly, that it would extend to 200 miles as from 1 January 1977 irrespective of what the Community decided and had made contingency legislative preparations for this. The Fishery Limits Act 1976 giving effect to the extension was enacted on 22 December 1976 and came into effect on 1 January 1977. The Act was followed up by Orders designating a number of third countries, as well as all Community Member States, as being entitled for the time being to continue fishing within the UK 200-mile limit, and provided for the application within that limit, on a 3-month interim basis, of existing NEAFC Conservation rules.

Community Aspects

7. The principal limitation on our freedom of action over fisheries limits imposed by our membership of the Community was the

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existing CFP regulation, No EEC 2141/70, which had been hastily agreed by the Six in 1970 in preparation for the accession negotiations with the UK, Ireland, Denmark and Norway. This provided for equal access to all waters within the fisheries jurisdiction of Member States. This effectively formed the acquis communautaire in the fisheries context. Articles 100-103 of the Accession Treaty provided inter alia for derogations from the principle of equal access within Member States' 12-mile fisheries limits until 31 December 1982, and for the establishment of a Community conservation regime by the end of 1978 (ie 6 years after accession). Regulation EEC 2141/70 refers simply to waters under the sovereignty or within the jurisdiction of Member States, and so applies whatever the limits of that jurisdiction are: the UK was thus not free to enact measures excluding or otherwise discriminating against Community fishing vessels between the old 12-mile and a new 200-mile limits. We have always contested the view of other Member States, notably France and Germany, that the principle of equal access is also enshrined in Article 7 of the EEC Treaty, which prohibits discrimination against other Member States on grounds of nationality; and it could be argued that the Commission's long-held view, that the imposition of national quotas as part of a revised CFP does not violate the principle of non-discrimination, supports our case. Nevertheless, there is no doubt that a unilateral extension to 200 miles involving discriminatory measures against other Member States would have led to actions against the UK in the European Court for violations of the CFP regulation which would have been difficult to contest. This is why even when announcing our readiness to extend unilaterally on 1 January 1977 if the Community as a whole did not decide to do so, the UK made it clear that any measures taken would be in accordance with our Treaty and CFP obligations; it also shows that whether we had extended as part of a Community decision or unilaterally we would not have been able to take steps to exclude or otherwise restrict Community fishing within our new limits outside the original 12-mile belt.

The 'Hague Agreement'

8. As well as confirming the decision to extend to 200-mile fisheries limits, the Commission proposals under consideration by Foreign Ministers on 30 October 1976 contained detailed mandates

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for negotiations with third countries, and proposals for the internal CFP regime. Mainly because of the UK's urgent need for progress on the negotiations with third countries, particularly Iceland, we agreed to the second element of the proposals. It is debatable whether by so doing we admitted the competence of the Community for third country negotiations, since there was strong argument at the time that such competence already formed part of the acquis communautaire deriving from the existing CFP. We made it clear, however, that the UK could not accept in toto the proposals for the internal regime, particularly where they conflicted with UK views on access; the UK made clear in a statement for the Council minutes annexed to the 'Hague Agreement' that the UK agreement to the resolution did not mean that HMG had 'in any way modified their view on the width and scope of the coastal bands which should be incorporated in a revised CFP'.

9. Some important principles were established in what was agreed in the 'Hague Agreement' which have been advantageous to the UK. The principle that Member States should be responsible for enforcement of a CFP conservation regime within their own fisheries limits is a case in point; a CFP would be very much more difficult to sell to the UK industry without this provision. Annex VI to the 'Agreement' also gave Member States the right to adopt conservation measures unilaterally on an interim basis until there was agreement on a Community conservation regime. In the event, the Community conservation regulation was not established until 1 October 1980, ie well after the expiry of the time allowed in the Accession Treaty. Finally, the Community extension to 200-mile limits agreed at The Hague, together with the Commission's assumption of responsibility for third-country negotiations, provided a framework under which it proved possible to end Soviet and other East European fishing in our waters; (the Soviet Union, GDR and Poland were designated under the Fishery Limits Act 1976 as entitled to fish within UK limits on an interim basis for three months from 1 January 1977, pending their response to an invitation from the Commission to enter into negotiations about future reciprocal fishing arrangements: in the event they did not respond and no agreements were reached). The exclusion of the East Europeans was an extremely delicate task which could have been more difficult had we had to negotiate bilaterally with the Soviet Union.

/Conclusion

Conclusion

10. It would have been legally possible for the UK unilaterally to declare a 200-mile fisheries limit from 1 January 1977, and we were prepared to do so if necessary. It would not have been possible, however, to exclude EC fishermen from the new limit. For this and other policy reasons, it was considered preferable to concert action on a Community basis, and this was achieved in the 'Hague Agreement' of 30 October 1976. There were advantageous aspects of the Agreement. The limitations on our freedom of action within the waters under our jurisdiction, whatever their extent, derived mainly from the acquis communautaire, in the form of the existing CFP with its prohibition on discriminatory measures against other Member States: the extent to which further damage was done to our position by acceptance of the 'Hague Agreement' must at best remain debatable.

EUROPEAN COMMUNITY DEPT (INTERNAL)

2 January 1981