SECTION B. PLEADINGS

SECTION B. MÉMOIRES

MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

(Federal Republic of Germany/Denmark)

INTRODUCTION

1. This Memorial is submitted to the Court in pursuance of an Order made by the Judge discharging the duties of President of the International Court of Justice under Article 12 of the Rules of Court, dated 8 March 1967. The Minister of Foreign Affairs of the Kingdom of the Netherlands had transmitted by a letter, dated 16 February 1967 and received in the Registry of the Court on 20 February 1967, the Special Agreement, signed at Bonn on 2 February 1967 for the Government of the Federal Republic of Germany and the Government of the Kingdom of Denmark, for the submission to the International Court of Justice of a dispute between the Federal Republic of Germany and the Kingdom of Denmark concerning the delimitation, as between the Parties, of the Continental Shelf in the North Sea. Attached to this letter was an original copy of a protocol, signed at Bonn on 2 February 1967 for the Governments of the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands (*infra* para. 5), in which provision is made for the notification of the Special Agreement to the International Court of Justice by the Netherlands Government.

2. As it is set forth in the preamble of the Special Agreement, the Federal Republic of Germany, not being a party to the Statute of the International Court of Justice, by declaration of 29 April 1961 and in conformity with the resolution of the Security Council of the United Nations of 15 October 1946 on conditions under which the International Court of Justice shall be open to States not parties to the Statute of the Court, has accepted the jurisdiction of the Court in respect to all disputes which may arise between the Federal Republic of Germany and any of the parties to the European Convention of 29 April 1957 for the Peaceful Settlement of Disputes. The Kingdom of Denmark is a party to the said Convention. The Danish instrument of ratification was deposited on 17 July 1959 and by virtue of its Article 41 the Convention entered into force for the Kingdom of Denmark on the same date.

3. The *Special Agreement*, which provides for its entry into force on the day of its signature, reads as follows:

"Special Agreement
for

the submission to the International Court of Justice of a difference between the Federal Republic of Germany and the Kingdom of Denmark concerning the delimitation, as between the Federal Republic of Germany and the Kingdom of Denmark, of the continental shelf in the North Sea.

The Government of the Federal Republic of Germany and the Government of the Kingdom of Denmark,

Considering that the delimitation of the coastal continental shelf in the North Sea between the Federal Republic of Germany and the Kingdom of

Denmark has been laid down by a Convention concluded on 9 June 1965,

Considering that in regard to the further course of the boundary disagreement exists between the German and Danish Governments, which could not be settled by detailed negotiations,

Intending to settle the open questions in the spirit of the friendly and good-neighbourly relations existing between them,

Recalling the obligation laid down in Article 1 of the Danish-German Treaty of Conciliation and Arbitration of 2 June 1926 to submit to a procedure of conciliation or to judicial settlement all controversies which cannot be settled by diplomacy,

Bearing in mind the obligation assumed by them under Articles 1 and 28 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 to submit to the judgment of the International Court of Justice all international legal controversies to the extent that no special arrangement has been or will be made,

By virtue of the fact that the Kingdom of Denmark is a party to the Statute of the International Court of Justice, and of the Declaration of acceptance of the jurisdiction of the International Court of Justice made by the Federal Republic of Germany on 29 April 1961 in conformity with Article 3 of the Convention of 29 April 1957 and with the Resolution adopted by the Security Council of the United Nations on 15 October 1946 concerning the 'Conditions under which the International Court of Justice shall be open to States not parties to the Statute of the International Court of Justice',

Have agreed as follows:

Article 1

(1) The International Court of Justice is requested to decide the following question:

What principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the above-mentioned Convention of 9 June 1965?

(2) The Governments of the Kingdom of Denmark and of the Federal Republic of Germany shall delimit the continental shelf in the North Sea as between their countries by agreement in pursuance of the decision requested from the International Court of Justice.

Article 2

(1) The Parties shall present their written pleadings to the Court in the order stated below:

1. a Memorial of the Federal Republic of Germany to be submitted within six months from the notification of the present Agreement to the Court;

2. a Counter-Memorial of the Kingdom of Denmark to be submitted within six months from the delivery of the German Memorial;

3. a German reply followed by a Danish rejoinder to be delivered within such time limits as the Court may order.

(2) Additional written pleadings may be presented if this is jointly proposed by the Parties and considered by the Court to be appropriate to the case and the circumstances.

(3) The foregoing order of presentation is without prejudice to any question of burden of proof which might arise.

Article 3

The present Agreement shall enter into force on the day of signature thereof.

DONE at Bonn on 2 February 1967 in triplicate in the English language.

For the Government of the Federal Republic of Germany

(Signed) SCHÜTZ

For the Government of the Kingdom of Denmark

(Signed) K. KNUTH WINTERFELDT"

4. In accordance with Article 2 of the Special Agreement and with Article 37 of the Rules of Court, the Judge discharging the duties of President of the International Court of Justice under Article 12 of the Rules of Court, in the Order dated 8 March 1967, has fixed 21 August 1967 as the time-limit for the filing of the Memorial of the Federal Republic of Germany and 20 February 1968 as the time-limit for the filing of the Counter-Memorial of Denmark.

5. This Memorial takes into account the fact that an identical dispute has arisen between the Federal Republic of Germany and the Kingdom of the Netherlands which was submitted to the International Court of Justice by a similar Special Agreement equally signed at Bonn on 2 February 1967 and transmitted to the Court together with the German-Danish Special Agreement by the above-mentioned letter of the Minister of Foreign Affairs of the Kingdom of the Netherlands dated 16 February 1967. Moreover, the German-Danish and the German-Netherlands Special Agreements are linked by a trilateral Protocol, signed together with the Special Agreements at Bonn on 2 February 1967, for the Governments of the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands and equally transmitted to the Court by the Minister of Foreign Affairs of the Kingdom of the Netherlands, which reads as follows:

"Protocol

At the signature of the Special Agreement of today's date between the Government of the Federal Republic of Germany and the Governments of the Kingdom of Denmark and the Kingdom of the Netherlands respectively, on the submission to the International Court of Justice of the difference between the Parties concerning the delimitation of the continental shelf in the North Sea, the three Governments wish to state their agreement on the following:

1. The Government of the Kingdom of the Netherlands will, within a month from the signature, notify the two Special Agreements together with the present Protocol to the International Court of Justice in accordance with Article 40, paragraph 1, of the Statute of the Court.

2. After the notification in accordance with item 1 above the Parties will ask the Court to join the two cases.

3. The three Governments agree that, for the purpose of appointing a judge *ad hoc*, the Governments of the Kingdom of Denmark and the Kingdom of the Netherlands shall be considered parties in the same interest within the meaning of Article 31, paragraph 5, of the Statute of the Court.

DONE at Bonn on 2 February 1967 in four copies in the English language.

For the Government of the Federal Republic of Germany
(Signed) SCHÜTZ

For the Government of the Kingdom of Denmark
(Signed) K. KNUTH-WINTERFELDT

For the Government of the Kingdom of the Netherlands
(Signed) VAN ITTERSUM"

The present Memorial, therefore, refers in the same way to the German-Danish dispute as to the German-Netherlands dispute.

6. This Memorial is divided into the following parts:

Part I reports upon the facts of the case and records the history of the development of the dispute.

Part II contains the legal arguments brought forward by the German side.

Part III contains the submissions to the Court as to what principles and rules of international law are applicable to the delimitation of the areas of the continental shelf in the North Sea appertaining to the Parties.

Part IV contains the Annexes, with English translations if the text is not in English.

PART I. FACTS AND HISTORY OF THE DISPUTE

CHAPTER I

THE CONTINENTAL SHELF OF THE NORTH SEA

7. The North Sea is a shallow sea on the periphery of the Atlantic Ocean and almost entirely surrounded by the land masses of the European continent and of the British Isles (vide *infra* fig. 1, page 24). Its depth as far as 61° latitude North, where it joins the Atlantic Ocean, is on the whole less than 200 m., and in the southern part even less than 100 m. The slope into oceanic depths begins only north of 61° latitude. There is only one area of greater depth and that is a submarine trench 20 to 50 nautical miles wide running along the Norwegian coast, known as the Norwegian Trough (200-650 m. deep). The extensive Dogger Bank in the middle of the North Sea is notable for its shallowness (20-40 m. deep).

From the geological point of view, the subsoil of the North Sea is part of the continental platform on which the European mainland and the British Isles off the mainland rest. A large part of the North Sea covers land which only submerged in a relatively recent geological period. After the discovery of a very rich field of natural gas near Slochteren in the Dutch province of Groningen close to the mouth of the Ems, the first test drillings were made in 1963. Since then a number of finds have been made, including several exploitable deposits of natural gas in the British area of the continental shelf of the North Sea.

8. The waters of the North Sea that are less than 200 m. deep cover a continental shelf within the meaning of international law. Article 1 of the Geneva Convention on the Continental Shelf of 29 April 1958 defines the term "continental shelf" as—

> "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas";

Article 2, paragraphs (1) and (2), of the Convention recognizes the exclusive right of the coastal States to exercise—

> "over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources".

This definition of the continental shelf, at least as far as it applies to waters up to a depth of 200 m., and the said rights of the coastal States in relation to the continental shelf so defined, are today generally recognized. The Federal Republic of Germany has not yet ratified the Geneva Convention on the Continental Shelf but recognizes that the submarine areas of the North Sea constitute a continental shelf over which the coastal States are entitled to exercise the rights defined in Article 2 of the Convention. Yet it is necessary to point out already at this stage that the North Sea represents a special case in that, on account of its relative shallowness, its submarine areas constitute a single continental shelf which must be divided up among the surrounding coastal States in its entirety. In this respect, the North Sea is different from

other cases of delimitation of continental shelf areas where the continental shelf constitutes but a narrow belt off the coast.

9. The German North Sea coast forms almost a right angle because of the bend at the mouth of the Elbe. It has deep indentations at the mouths of the Elbe, the Weser, and the Ems, as well as in the Jadebusen and the Dollart. All of the North Frisian and East Frisian Islands off the German coast from Sylt to Borkum are less than 3 to 5 nautical miles distant from each other and from the mainland. The shallows landwards from these chains of islands as well as those between the West Frisian Islands and the northern coast of the Netherlands, are internal national waters. In determining the outer limit of the German territorial sea to a width of 3 nautical miles seawards from those islands, a number of sandbanks and flats as well as elevations drying at low tide must be taken into account. The rock island of Heligoland lies approximately 27 nautical miles seawards in the angle of the German North Sea coast.

CHAPTER II

DELIMITATION OF CONTINENTAL SHELF AREAS BY THE COASTAL STATES IN THE NORTH SEA

Section I. Unilateral Acts of the Coastal States Claiming Continental Shelf Areas

10. Since 1963, Norway, Denmark, the Federal Republic of Germany, Great Britain, and the Netherlands, in that order, have claimed, by executive or legislative acts, exclusive rights over the continental shelf of the North Sea off their coasts.

Norway: Royal Resolution of 31 May 1963 (Norsk Lovtidend 1963, No. 21, p. 573); Law of 21 June 1963 (Norsk Lovtidend 1963, No. 23, p. 659);

Denmark: Royal Decree of 7 June 1963 (Lovtidende A, No. 259, 1963, p. 457);

Federal Republic of Germany: Proclamation of the Federal Government of 20 January 1964 (Federal Law Gazette 1964, Part II, p. 104); Law of 24 July 1964 (Federal Law Gazette 1964, Part I, p. 497);

Great Britain: Continental Shelf Act 1964 of 15 April 1964 (Statutory Instruments 1964 Ch. 29); Continental Shelf (Designation of Areas) Order 1964 of 12 May 1964 (Statutory Instruments 1964, No. 697); Continental Shelf (Designation of Additional Areas) Order 1965 of 3 August 1965 (Statutory Instruments 1965, No. 1531);

Netherlands: Law of 23 September 1965 (Staatsblad 1965 No. 428, p. 1141); Government Resolution of 27 January 1967 (Staatsblad 1967, No. 24, p. 67).

The aforementioned acts by coastal States of the North Sea contain the following provisions regarding the delimitation of the areas of the continental shelf which they claim:

11. *Norway:* The Royal Proclamation of 31 May 1963 states:

> "The natural resources of the subsoil and seabed of the submarine areas contiguous to the coast of the Kingdom of Norway are regarded as appertaining to the Kingdom of Norway, however not beyond a boundary midway between Norway and other countries."

In the same way, Article 1 of the Law of 21 June 1963 states that the outer limit of the Norwegian part of the continental shelf is "the boundary midway between Norway and other countries".

12. *Denmark:* The Royal Decree on the Exercise of Danish Sovereign Rights over the Continental Shelf, dated 7 June 1963, states:

> "The delimitation of the continental shelf in relation to foreign States whose coasts are opposite the coasts of the Kingdom of Denmark or which are adjacent to Denmark shall be determined in accordance with Article 6 of the Convention" (i.e. the Geneva Convention on the Continental Shelf, signed on 29 April 1958) "so that, in the absence of any special agreement, the boundary shall be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

The content of this decree was transmitted to the German Ministry of Foreign Affairs by Note Verbale of the Royal Danish Embassy in Bonn on 10 July 1963. In a further Note Verbale, dated 10 September 1964 (Annex 1), the Danish Government states—

> "that Denmark, by virtue of a Royal Decree of 7 June 1963, exercises sovereign rights over that part of the continental shelf which according to the Convention on the Continental Shelf signed at Geneva on 29 April 1958 at the United Nations Conference on the Law of the Sea belongs to the Kingdom of Denmark, and that the delimitation in relation to foreign States adjacent to Denmark shall be determined in accordance with Article 6 of the said Convention, so that the boundary, in the absence of any special agreement, shall be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured".

These Notes Verbales led to contacts between the German Ministry of Foreign Affairs and the Royal Danish Embassy at Bonn resulting in the formal German-Danish negotiations described *infra* (paras. 24 et seq.).

13. *Federal Republic of Germany:* The Federal Government's Proclamation of 20 January 1964 states with regard to the question of delimitation:

> "In particular, the delimitation of the German part of the continental shelf in relation to the parts of the continental shelf of foreign States shall remain subject to agreements with those States."

The Law for the Provisional Determination of Rights over the Continental Shelf, dated 25 July 1964, regulates the exploitation of natural resources in the German continental shelf area within the meaning of the Federal Government's Proclamation of 20 January 1964. Accordingly, licences for the exploitation of the sea and its subsoil have been granted.

14. *Great Britain:* The Continental Shelf Act 1964, passed on 15 April 1964, authorized the executive to designate by Order in Council those areas within which exploitation rights with respect to the seabed and subsoil are exercisable. By virtue of these powers, the Continental Shelf (Designation of Areas) Order 1964 was issued on 12 May 1964, which for the time being provisionally defined the shelf boundary in the North Sea as "a temporary median line". In view of the expected contractual settlement of boundaries with the other coastal States, this line was drawn so as not quite to coincide with the median line between the Continent and the British Isles. After the conclusion of the agreements between the Government of the United Kingdom on the one hand and the Governments of the Kingdom of Norway, the Kingdom of the Netherlands, and the Kingdom of Denmark on the other hand relating to the delimitation of the continental shelf between these countries (vide *infra* paras. 17, 19 and 21), the Continental Shelf (Designation of Additional Areas) Order 1965, dated 3 August 1965, extended the sphere of application of the Continental Shelf Act to include the areas within the boundaries fixed by the aforesaid agreements.

15. *The Netherlands:* The Law on the Regulation of Mining in the Netherlands Continental Shelf Area, dated 23 September 1965, did not contain any delimitation of the area subject to the provisions of Netherlands mining law. However, a map of the area for which the Netherlands Government considers itself entitled to grant licences is attached to the Government Resolution

of 27 January 1967 implementing Article 12 of that Law. The boundaries of that area in relation to its neighbour States are determined in accordance with the agreements concluded (vide *infra* paras. 16, 19, 22) and, in particular, vis-à-vis the Federal Republic of Germany, on the principle of equidistance.

The Royal Netherlands Government had already by Note Verbale of 21 June 1963 (Annex 2) declared that the part of the continental shelf of the North Sea over which it claims sovereign rights in conformity with the Convention on the Continental Shelf signed at Geneva on 29 April 1958 is delimited to the east by the equidistance line beginning at the point where the talweg in the mouth of the Ems reaches the territorial waters. This announcement led to the German-Netherlands negotiations described *infra* (paras. 24 et seq.).

Section II. Bilateral Agreements between the Coastal States of the North Sea regarding the Delimitation of their Continental Shelf Areas

16. Treaty between the Federal Republic of *Germany* and the Kingdom of the *Netherlands* concerning the Lateral Delimitation of the Continental Shelf near the Coast, dated 1 December 1964, in force since 19 September 1965 (Annex 3):

Article 1 of that Treaty fixes the dividing line between the Netherlands and German parts of the continental shelf by means of co-ordinates established by arcs of Great Circle from a point on the seaward limit of the territorial waters through two other points up to a point on 54° latitude North. The Treaty thereby fixes only a partial boundary extending approximately 25 nautical miles from the coast, following, without expressly mentioning it, between the three last seaward points of the boundary the equidistance line.

The Joint Minutes to the negotiations (Annex 4) drawn up in The Hague on 4 August 1964 on the occasion of the initialling of the draft treaty states the reasons for which the boundary of the continental shelf could only be determined near the coast. The German delegation declared that it should not be inferred from the course of the partial boundary that it would have to be continued in the same direction. The Netherlands delegation stated that the further course of the boundary would also have to be determined in accordance with the principle of equidistance.

17. Agreement between the Government of the United Kingdom of *Great Britain* and Northern Ireland and the Government of the Kingdom of *Norway* relating to the Delimitation of the Continental Shelf between the two Countries of 10 March 1965, in force since 29 June 1965 (Annex 5):

According to Article 1 of the Agreement—

> "the dividing line between that part of the Continental Shelf which appertains to the United Kingdom of Great Britain and Northern Ireland and that part which appertains to the Kingdom of Norway shall be based, with certain minor divergencies for administrative convenience, on a line, every point of which is equidistant from the nearest point of the baselines from which the territorial sea of each country is measured."

In implementation of this principle, Article 2 stipulates that the dividing line shall be arcs of Great Circle between 8 points determined by co-ordinates. The southernmost point meets the British-Danish and Danish-Norwegian continental shelf boundaries (vide *infra* paras. 20, 21). The Norwegian Trough (vide para. 1 *supra*) is not mentioned in the Agreement, being included, in spite of its greater depth, together with that part of the shelf beyond it, as part of the Norwegian area.

18. Treaty between the Federal Republic of *Germany* and the Kingdom of *Denmark* concerning the Delimitation of the Continental Shelf of the North Sea near the Coast, dated 9 June 1965, in force since 27 May 1966 (Annex 6).

Article 1 of that Treaty stipulates that the boundary between the German and Danish parts of the continental shelf shall run in a straight line from the former seaward termination point of the lateral boundary in the territorial sea to a point fixed by co-ordinates at a distance of approximately 30 nautical miles from the coast. The Treaty thus only determines the boundary near the coast.

The Protocol (Annex 7) drawn up on 9 June 1965 on the occasion of the signing of the aforesaid Agreement, stated that divergent views existed on the principles applicable to the delimitation of the continental shelf of the North Sea, that agreement could be reached only on the shelf boundary near the coast, and that, as regards the further course of the dividing line, each Contracting Party reserved its legal standpoint.

In the joint press communiqué issued on 18 March 1965 (Annex 8), the following view was expressed on this point:

> "In the draft a partial boundary approximately 30 nautical miles long has been drawn as far as a point which is equidistant from Kap Blavandshuk" (in Denmark) "and the Island of Sylt" (German); "the negotiations brought no agreement on the further course of the boundary. Each delegation has reserved its viewpoints as to the principles that should be applied..."

19. Agreement between the Government of the United Kingdom of *Great Britain* and Northern Ireland and the Government of the Kingdom of the *Netherlands* relating to the Delimitation of the Continental Shelf under the North Sea between the two Countries of 6 October 1965, in force since 23 December 1966 (Annex 9).

According to the Preamble of the Agreement the contracting parties desire—

> "to establish the boundary between the respective parts of the Continental Shelf under the North Sea on the basis of a line, every point of which is equidistant from the nearest point of the baselines from which the territorial sea of each country is at present measured."

In implementation of this principle, Article 1 of that Agreement stipulates that the dividing line shall be arcs of Great Circles between 19 points fixed by co-ordinates. Article 2 characterizes the termination point in the south (point No. 1) as the point of intersection of the dividing lines between the British, Netherlands, and Belgian parts of the continental shelf, and the termination point in the north (point No. 19) as the point of intersection of the dividing lines between the British, Netherlands, and Danish parts of the continental shelf. The Federal Republic of Germany, by Aide-Mémoire of 12 July 1966 (Annex 10), protested against this characterization of point No. 19 which implies that the part of the continental shelf of the Federal Republic of Germany does not touch on the British part of the continental shelf, and pointed out that the final settlement of the delimitation of the continental shelf in the North Sea between the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands was still outstanding.

20. Agreement between the Government of the Kingdom of *Denmark* and the Government of the Kingdom of *Norway* concerning the Delimitation of the Continental Shelf, dated 8 December 1965, in force since 22 June 1966 (Annex 11):

Article 1 of that Agreement reads:

> "The boundary between that part of the continental shelf over which Norway and Denmark exercise respective sovereign rights shall be the median line to be determined so that every point of that line is equidistant from the nearest points of the baselines from which the breadth of the outer territorial waters of the Contracting States is measured."

In implementation of this principle, Article 2 stipulates that the boundary shall be drawn as straight lines (compass lines) through eight points. The Norwegian Trough (vide *supra* para. 1) is not mentioned in the Agreement, being included, in spite of its greater depth, together with that part of the shelf beyond it, as part of the Norwegian area.

21. Agreement between the Government of the United Kingdom of *Great Britain* and Northern Ireland and the Government of the Kingdom of *Denmark* relating to the Delimitation of the Continental Shelf between the two Countries of 3 March 1966, in force since 6 February 1967 (Annex 12):

According to Article 1 of the Agreement—

> "the dividing line between that part of the Continental Shelf which appertains to the United Kingdom of Great Britain and Northern Ireland and that part which appertains to the Kingdom of Denmark is in principle a line which at every point is equidistant from the nearest point of the baselines from which the territorial sea of each country is measured."

In implementation of this principle, Article 2 defines the dividing line as an arc of Great Circle between two points fixed by co-ordinates whereby the northern point is characterized as the point of intersection of the dividing lines between the British, Danish, and Norwegian parts of the continental shelf, and the southern point as the point of intersection of the dividing lines between the British, Danish, and Netherlands parts of the continental shelf. The Federal Republic of Germany, by Aide-Mémoire of 12 July 1966 (Annex 13), protested against this characterization of the termination point in the south which implies that the German part of the continental shelf of the North Sea does not touch on the British part, and pointed out that the final settlement of the delimitation of the continental shelf in the North Sea between the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands was still outstanding.

22. Agreement between the Government of the Kingdom of the *Netherlands* and the Government of the Kingdom of *Denmark* concerning the Delimitation of the Continental Shelf under the North Sea between the Two Countries, dated 31 March 1966 (Annex 14):

The Agreement is based on the assumption that the submarine areas of the North Sea have to be divided among the coastal States solely by application of the principle of equidistance, even in relation to the Federal Republic of Germany, and that, consequently, the continental shelf areas of Denmark and the Netherlands are contiguous. The Contracting Parties have stated in the Preamble to the Agreement that they desire to delimit their respective parts of the continental shelf in the North Sea by a line every point of which is equidistant from the nearest points of the baselines from which the territorial waters of either country are at present measured, and in Article 1 of the Agreement in implementation of the principle of the median line, have laid down the boundary line by four co-ordinates joined by arcs of Great Circle, the co-ordinates of

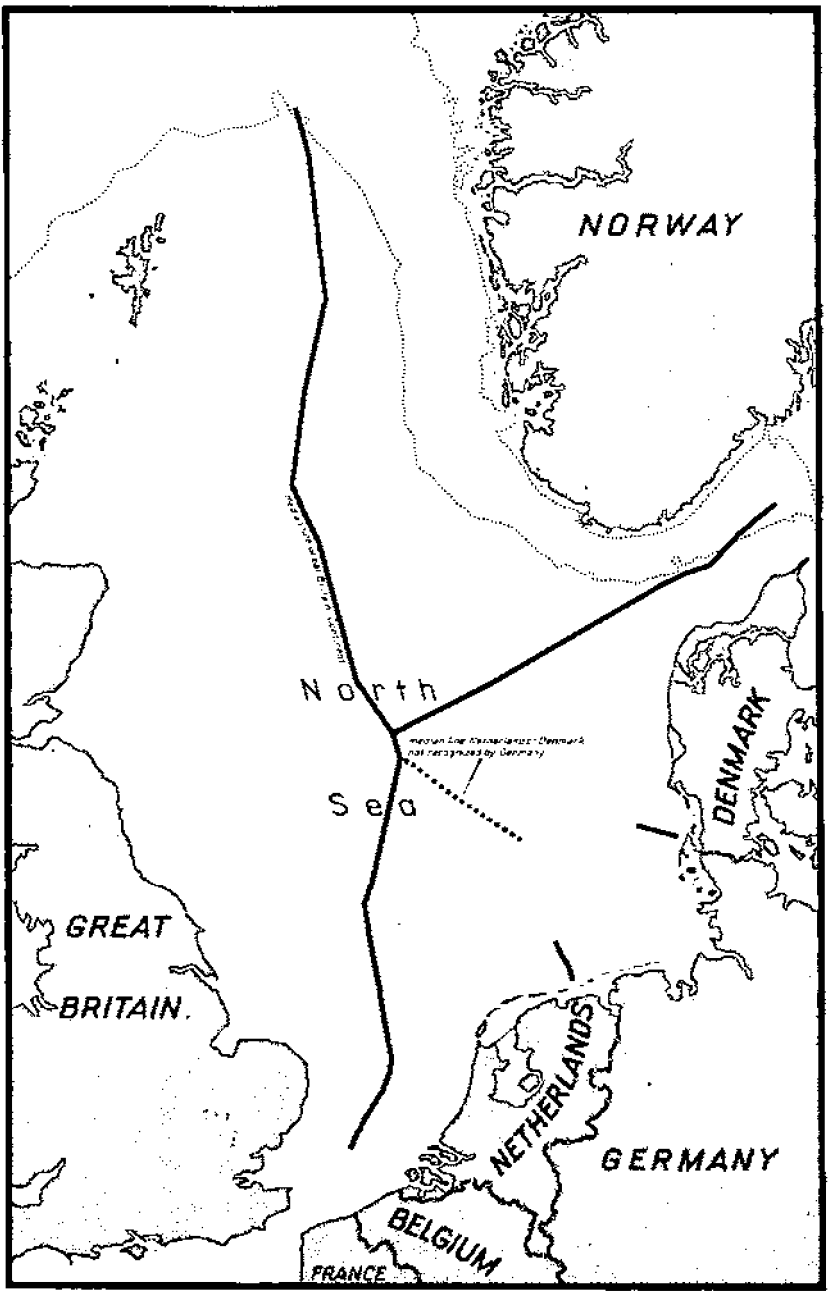

NORWAY
North
Sea
DENMARK
GREAT
BRITAIN
NETHERLANDS
GERMANY
BELGIUM
FRANCE

Figure 1

the northern termination point coinciding with the northern termination point of the British-Netherlands boundary line (vide *supra* para. 19) and the southern termination point of the British-Danish boundary line (vide *supra* para. 21).

The Federal Republic of Germany has lodged a legal protest against this Agreement. By Aide-Mémoire of 25 May 1966 (Annex 15), which was delivered to the Embassies of the Kingdom of Denmark and of the Kingdom of the Netherlands in Bonn, it was pointed out that this bilateral arrangement cannot prejudice the continental shelf boundary of the Federal Republic of Germany. That protest was also communicated to the Government of the United Kingdom of Great Britain and Northern Ireland by the above-mentioned Aide-Mémoire of 12 July 1966 (vide *supra* para. 19).

23. The boundaries as far as they have been fixed by the bilateral agreements specified *supra* in paragraphs 16 to 22 are illustrated in a diagram (figure 1, page 24). The resulting shares of the coastal States concerned are the following:

(a) The boundaries of the *British part* of the continental shelf under the North Sea have been fixed by the British-Norwegian, British-Netherlands, and British-Danish agreements on the basis of the equidistance method. The Federal Republic of Germany raises no objection on principle to this delimitation of the British part; legal protest is levelled only at the assumption contained in the British-Netherlands (vide *supra* para. 19) and the British-Danish agreements (vide *supra* para. 21) that the German part of the continental shelf does not touch upon the median line between the British Isles and the Continent.

(b) The boundaries of the *Norwegian part* have been fixed by the British-Norwegian and Danish-Norwegian agreements on the basis of equidistance between the opposite coasts, irrespective of the Norwegian Trough. The Federal Republic of Germany has no objection to this delimitation, either.

(c) Definite boundaries of those parts in the remaining areas of the North Sea which the Kingdom of *Denmark* and the Kingdom of the *Netherlands* on the one hand and the Federal Republic of *Germany* on the other have to divide between them, exist as yet only near the coast, the seaward extensions of those partial boundaries being undecided. The boundary line laid down in the Netherlands-Danish Treaty of 31 March 1966, as shown in the diagram (figure 1) by a dotted line, being based on the equidistance method, is not recognized by the Federal Republic of Germany (vide *supra* para. 22).

CHAPTER III

THE NEGOTIATIONS BETWEEN THE PARTIES TO THE DISPUTE RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF BENEATH THE NORTH SEA

24. Since 1964 there have been negotiations between the Kingdom of Denmark, the Kingdom of the Netherlands, and the Federal Republic of Germany concerning the delimitation of their respective parts of the continental shelf of the North Sea. Negotiations with Netherlands delegations have taken place on 3 to 4 March, 4 June, and 14 July 1964. Negotiations with Danish delegations followed on 15 to 16 October 1964 and 17 to 18 March 1965.

25. At the negotiations the *Kingdom of Denmark* and the *Kingdom of the Netherlands* persisted in their view that the boundaries must be delimited by the equidistance method in the south-east area of the North Sea, too. They base this assertion on paragraph (2) of Article 6 of the Geneva Convention on the Continental Shelf of 29 April 1958, which, failing agreement and unless special circumstances justify another boundary line, prescribes delimitation according to the equidistance method. Paragraph (2) of Article 6 of the Convention reads as follows:

> "Where the same continental shelf is adjacent to the territories of the two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

The Kingdom of Denmark and the Kingdom of the Netherlands have taken the standpoint that the provisions contained in Article 6 of the Convention are to be regarded as general international law and apply also to those States that have not yet ratified the Convention.

> The Convention entered into force on 10 June 1964.
>
> Those littoral States on the North Sea that have ratified the Convention are the Kingdom of Denmark (on 12 June 1963), the United Kingdom of Great Britain and Northern Ireland (on 10 June 1964), and the Kingdom of the Netherlands (on 18 February 1966); the French Republic acceded to the Convention (on 14 June 1965) but made reservations with regard to Article 6 (vide *infra* para. 55); the Federal Republic of Germany has signed the Convention (on 30 October 1958), but not yet ratified it; the Kingdom of Belgium and the Kingdom of Norway have neither signed the Convention nor as yet acceded to it.

26. At the negotiations, the *Federal Republic of Germany* has maintained the standpoint that the delimitation of the respective parts of the continental shelf of the North Sea requires contractual agreements between the States concerned. In the German view the application of the equidistance method is neither dictated by international law nor does it result in an equitable division of the parts of the continental shelf in the North Sea between the coastal States concerned. The diagram (figure 2, page 27) shows the delimitation as it would be in

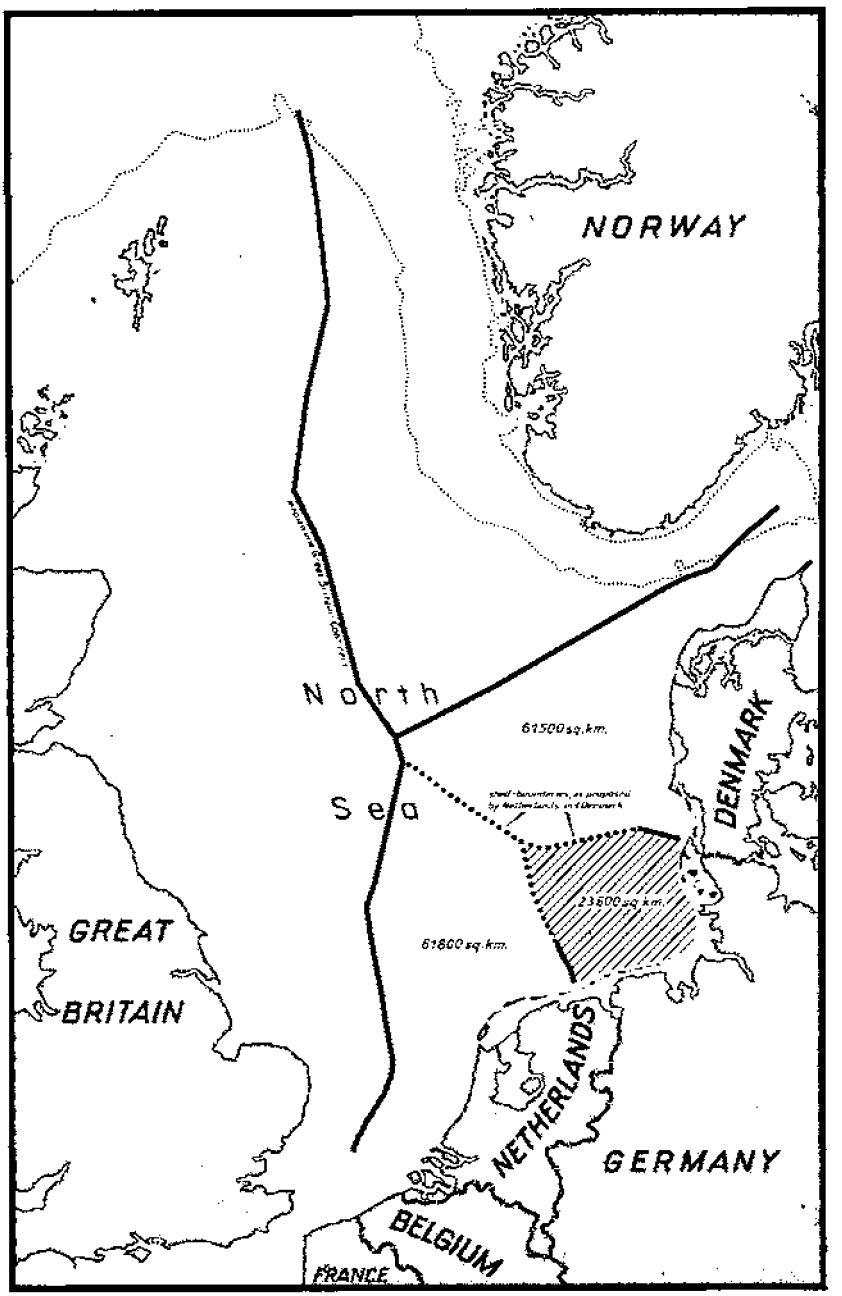

NORWAY
North
Sea
61500 sq. km.
DENMARK
23600 sq. km.
61800 sq. km.
GREAT
BRITAIN
NETHERLANDS
GERMANY
BELGIUM
FRANCE

Figure 2

the south-east area of the North Sea if the equidistance method were applied strictly. If the German part of the continental shelf in the North Sea were delimited in relation to the Kingdom of the Netherlands, on the one hand, and the Kingdom of Denmark on the other, on the equidistance principle it would be confined, as a result of the right-angled configuration of the German North Sea coast, to the area shown in figure 2, and would not reach the middle of the North Sea. Such delimitation would reduce the German part of the continental shelf to a small fraction (about 1/25) of the total area of the continental shelf in the North Sea; its area would be approximately but 2:5 of the Netherlands and of the Danish parts respectively.

The German delegations upheld the view that the German part of the continental shelf in the North Sea should touch the median line between the British Isles and the Continent and that its area, compared with the parts appertaining to the States concerned, should be proportional to the length of the coast. As alternative solutions, the German delegation suggested the division of the continental shelf of the North Sea by sectors (vide *infra* para. 84) or the joint exploitation of the disputed areas.

27. As the Netherlands and Danish delegations showed no inclination to negotiate on any other basis than that of the strict application of the equidistance principle, the negotiations only led to the conclusion of the German-Netherlands and German-Danish partial delimitation treaties mentioned above (vide *supra* paras. 16 and 18) in which boundary lines extending to a distance of 25 to 30 nautical miles from the coast were agreed upon.

After the conclusion of the German-Netherlands and the German-Danish partial delimitation treaties, tripartite talks were begun on 28 February 1966 in The Hague between German, Netherlands, and Danish delegations concerning the division of the continental shelf in the south-east of the North Sea. In the course of further tripartite discussions held in Bonn on 13 May 1966, it ultimately became clear that agreement could not be reached about the further delimitation of the German part of the continental shelf because both sides maintained their respective legal standpoints. The Kingdom of Denmark, the Kingdom of the Netherlands, and the Federal Republic of Germany then agreed to submit the case to the International Court of Justice.

PART II. THE LAW

28. By the Special Agreements of 2 February 1967, the Court is requested to decide what principles and rules of International Law are applicable to the delimitation of the areas of the continental shelf in the North Sea which appertain to each of the Parties beyond the partial boundaries determined by the above mentioned Treaties of 1 December 1964 and 9 June 1965 (cf. *supra* paras. 16, 18).

It should be observed that the question submitted to the Court refers only to the continental shelf boundaries in the North Sea, in particular in that part of the North Sea where the Kingdom of Denmark, the Kingdom of the Netherlands, and the Federal Republic of Germany claim jurisdiction over the continental shelf before their coasts. For the purpose of finding the law applicable in this case, it is to be ascertained, in the first place, whether there are any principles or rules of international law governing the delimitation of the continental shelf between two or more States adjacent to that shelf, and if so, whether such principles and rules of international law apply in the special case of the continental shelf of the North Sea which has to be divided up between several littoral States surrounding the North Sea basin.

CHAPTER I

THE PRINCIPLE OF THE JUST AND EQUITABLE SHARE

29. It is generally recognized today that the coastal State, by virtue of its geographic position, whether this may be called "contiguity", "geographic continuity", "propinquity", "appurtenance", or "identity of the submarine areas in question with the non-submerged contiguous land",

> cf. International Law Commission Report on its 1956 Session, Commentary to Article 68, Yearbook of the International Law Commission 1956, Vol. II, p. 298,

is vested with exclusive sovereign rights over the continental shelf adjacent to its coast for the purpose of exploiting its natural resources. It is immaterial whether these exclusive sovereign rights over the continental shelf adjacent to its coast are vested in the coastal State ipso iure, as assumed in Article 2 paragraph (3) of the Convention on the Continental Shelf—

> "The rights of the coastal State over the continental shelf do not depend upon occupation, effective or notional, or on any express proclamation",

or whether the coastal State must assert such rights by some formal and unequivocal action. In any case, it is generally recognized that the rights of the coastal State over the continental shelf adjacent to its coast are exclusive in the sense that other States are excluded a limine from claiming or acquiring rights over that part of the continental shelf which "appertains" to the coastal State.

30. If, by virtue of their geographic position, two or more coastal States can claim that a continental shelf "appertains" to each of them, the necessity arises of apportioning that common continental shelf between them. This applies in particular to the continental shelf under the North Sea, which in its entirety must be divided between the surrounding States. The problem of division which poses itself in such a situation, is a problem of "distributive justice" *(justitia distributiva)* as it is sometimes called.

If goods or resources which are held in common by several parties by virtue of the same right have to be divided up between these parties, it is a recognized principle in law that each of these parties is entitled to a just and equitable share which is to be meted out in accordance with an appropriate standard equally applicable to all of them. This principle, hereafter called *the principle of the just and equitable share*, is a basic legal principle emanating from the concept of distributive justice and a generally recognized principle inherent in all legal systems, including the legal system of the international community. Nobody would probably deny the convincing force of that principle; therefore, it is not surprising that it has been applied in international situations of the same kind as a matter of course.

31. *State practice* since 1945—the date at which claims to exclusive rights over the continental shelf began to be made—shows that from the very beginning, insofar as conflicting claims of neighbouring States to the same continental shelf had been visualized at all, the principle of the just and equitable share was regarded as the overriding principle governing the delimitation of the

continental shelf. Already President Truman's Proclamation of 28 September 1945, by which the United States of America claimed the continental shelf adjacent to its coast, provided for delimitation vis-à-vis neighbouring States as follows:

> "In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance *with equitable principles*" (United Nations Legislative Series, Laws and Regulations on the Regime of the High Seas, Vol. I, 1951, p. 38; italics added).

This Proclamation was followed by similar action on the part of various littoral States of the Persian Gulf:

Article 2 of an *Iranian* Bill, submitted to the Iranian Parliament on May 19, 1949, relating to Persian Gulf subsea resources, contained the provision:

> "Should the continental shelf of Iran extend to the coasts of another country or be common with another adjacent country, the limits of the interested countries will be fixed *equitably* between the interested governments with respect to the natural resources of the continental shelf "(italics added; cited by *M. W. Mouton*, The Continental Shelf, 1952, p. 10)."

Royal Pronouncement of the Kingdom of *Saudi Arabia* with respect to the subsoil and seabed of areas in the Persian Gulf of 28 May 1949:

> "The boundaries of such areas will be determined *in accordance with equitable principles* by Our Government in agreements with other States having jurisdiction and control over the subsoil and seabed of adjoining areas" (Laws and Regulations on the Regime of the High Seas, Vol. I, 1951, p. 22; italics added).

The Proclamations of the Sultan of Bahrein of 5 June 1949, the Sheik of Qatar of 8 June 1949, the Sheik of Kuwait of 12 June 1949, the Ruler of Abu Dhabi of 10 June 1949, the Ruler of Dubai of 14 June 1949, the Ruler of Sharjah of 16 June 1949, the Ruler of Ras-al-Khaimah of 17 June 1949, the Ruler of Umm-al-Qaiwain of 20 June 1949, and the Ruler of Ajman of 20 June 1949, apart from slight variations in the text, all contained the formula that their rights over the continental shelf extend to—

> "boundaries to be determined more precisely as occasion arises *on equitable (just) principles*, after consultations with the neighbouring States" (*ibid.*, pp. 23-30; italics added).

Article 2 of the Declaration of the two Houses of Parliament of *Nicaragua* of 28 May 1949 makes provision for treaties with the neighbouring States on the delimitation of the continental shelf to which a claim is made "on the basis of equity":

> "En los casos en que la plataforma continental se extienda hasta las playas de otro Estado, la línea divisoria será establecida mediante convenios *a base de equidad*" (italics added; cited in Francesco *Durante*, La Piattaforma litorale nel Diritto internazionale, Milano, 1955, p. 291).

32. When the members of the *International Law Commission*, in their 1951 and 1953 Sessions, discussed possible methods for the delimitation of the continental shelf between States lying adjacent or opposite to each other, their preoccupation was to find a formula that would guarantee a just and equitable apportionment among the States concerned. The report of the rapporteur *J. P. A. François*, which was submitted to the Commission in the 1951

Session, provided for the boundary being drawn in the first place through "commun accord entre les parties", and in the second place, should agreement not be reached, through an extension of the lateral boundary of the territorial waters; in the case of States lying opposite each other, the median line should form the boundary.

> Yearbook of the International Law Commission, 1951, Vol. II, p. 102 (text *infra* para. 48).

The members of the International Law Commission were inclined to adopt the first part of this proposal, but not the second part. The chairman of this session, *J. L. Brierly*, said that the correct solution was that—

> "the allotment should be made by agreements between the States concerned or by amicable arbitration, not by means of hard and fast rules . . . Any rule which the Commission laid down was bound to be arbitrary" (*ibid.*, Vol. I, p. 288).

The member of the International Law Commission *Sh. Hsu*, wished to see the second part of the proposal of the rapporteur replaced by the words—

> ". . . or failing agreement, by arbitration on a fair and equitable basis" (*ibid.*, Vol. I, p. 289).

Further discussion then concentrated upon the question of the way in which provision could be made for obligatory arbitration, in order to assure a just and equitable solution in each case where the States failed to reach an agreement. Article 7 of the Draft Articles on the Continental Shelf adopted at the 1951 Session of the International Law Commission read as follows:

> "Two or more States to whose territories the same continental shelf is contiguous should establish boundaries in the area of the continental shelf by agreement. Failing agreement, the parties are under the obligation to have the boundaries fixed by arbitration" (*ibid.*, Vol. II, p. 143).

In the commentary of the Commission added to this Article it was stated:

> "It is not feasible to lay down any general rule which States should follow; and it is not unlikely that difficulties may arise . . . It is proposed therefore that if agreement cannot be reached and a prompt solution is needed, the interested States should be under an obligation to submit to arbitration *ex aequo et bono*" (*ibid.*, p. 143).

When discussion on the subject was renewed at the 1953 Session of the International Law Commission, the Rapporteur *François* suggested the equidistance line as a subsidiary method of drawing a boundary, in the case of a failure to reach agreement on delimitation. Again voices were raised against such an inflexible rule; in particular the Soviet member, *F. I. Koshevnikov*, opposed the attempt to lay down a hard and fast rule establishing a definite method of boundary drawing, and spoke in favour of the former solution, that the establishment of the boundary should be left exclusively to agreement between the States concerned.

> Yearbook of the International Law Commission, 1953, Vol. I, p. 128.

Finally the equidistance method was accepted by the majority as a subsidiary rule if no agreement was forthcoming, but the important reservation was added that its application should not be considered so long as "special circumstances" justified another delimitation. A more detailed account of these discussions will

be given later (vide *infra* paras. 68-73); for the moment it is sufficient here to point out that the International Law Commission tried hard to find a solution which in every case would lead to an equitable apportionment. In this context it might be useful to cite the Report of the *International Law Association Committee on the Rights of the Sea Bed and Subsoil*, prepared by *R. Young* for the 46th Conference of the International Law Association Conference 1954 in Edinburgh, which contained the following judgment on the result of the discussions in the International Law Commission:

> "The new ILC formula would appear to be superior to the old because of the more precise and objective nature of the rule proposed. So long as it is understood that geometric principles are not applied *ad absurdum*, they can be useful means of ascertaining what should be *prima facie* an equitable division" (International Law Association, Report of the 46th Conference, 1954, p. 439).

33. When the proposal of the International Law Commission was debated at the *Geneva Conference on the Law of the Sea* in 1958, the same preoccupations became apparent. During the discussions of the Fourth Committee of the Conference several delegates emphasized that the proposed methods for the delimitation of the continental shelf between neighbouring States must be judged from the point of view whether and to what extent they would lead to a fair and equitable apportionment of the continental shelf between the States concerned:

The Venezuelan delegate *Schwarck Anglade* declared—

> "... that failure to make due provision for special circumstances such as were frequently imposed by geography could not result in *a solution which would be fair to all States*" (United Nations Conference on the Law of the Sea, Official Records, Vol. VI: Fourth Committee (Continental Shelf), p. 92; italics added).

The British delegate *Kennedy* said that maritime boundaries by extension of the land frontier or by other methods—

> "... often did not result in a *fair apportionment* of the sea area between the two States concerned" (*ibid.*, p. 93; italics added).

The Italian delegate *Gabrielli* said—

> "... that, while the criterion of the median line proposed by the International Law Commission could not be contested in principle, it might, if rigidly applied, lead to *inequitable* results and considerable technical difficulties" (*ibid.*, p. 93; italics added).

The delegate of the United States of America Miss *Whiteman* stated that the median line—

> "... would enable *equitable apportionment* to be made of the seabed area to each coastal State concerned" (*ibid.*, p. 95; italics added).

These quotations show that the delegates attributed only secondary value to the geometric method of drawing boundaries, and that also those who accepted the median or equidistance line as the general method of delimiting the continental shelf, did not accept it because of its intrinsic legal value but rather because of its quality as a method which in their view would normally lead to a just and equitable apportionment of the continental shelf.

34. The *doctrine* has up to now concerned itself only very little with the

problem of boundary delimitation. Most of the authors who have devoted attention to this question were, however, of the opinion that the delimitation of the shares of States in a common continental shelf could not be effected by the rigid application of some geometric method, but that such methods could only be regarded as a starting point or as a means to achieve a just and equitable apportionment. The following authors may be cited (italics added):

> *Sir Hersch Lauterpacht*, "Sovereignty over Submarine Areas", British Yearbook of International Law, Vol. XXVII (1950), p. 410: "As adumbrated in the various proclamations, the delimitation can properly be effected by reference to *equitable considerations*, and any *formula* based on a system of median and lateral lines ought to be no more than the starting point in *search for an equitable solution*";
>
> *Olivier de Ferron*, Le Droit de la Mer, Vol. II, 1960, p. 201 (referring to the "median line"): "Plusieurs pays ont critiqué à la Conférence de Genève cette disposition qui, d'après eux, manquerait de souplesse et ne saurait répondre à tous les cas qui peuvent se présenter. Appliquée d'une manière rigide, elle peut conduire à des injustices et donner lieu à des difficultés d'application";
>
> *Aaron L. Shalowitz*, Shore and Sea Boundaries, Vol. II, 1964, p. 384 (referring to "lateral boundaries"): "In delimiting such boundaries, the objective is to apportion the sea area in such a manner as will be *equitable* to both States";
>
> *Leo J. Bouchez*, The Regime of Bays in International Law, Leyden 1964, p. 198: "In the exploitation of the resources of the subsoil the local circumstances must be taken into consideration for the establishment of an *equitable apportionment*";
>
> *Myres S. McDougal/William T. Burke*, The Public Order of the Oceans, New Haven and London, 1962, p. 428: "The major community policy at stake with respect to the boundary problems of adjacent and opposing States is that of achieving *equitable apportionment*, thereby avoiding disputes arising out of insistence by one or both states on a method of delimitation which does not respect the interests of the other."

35. The problem of the division of a common continental shelf among several littoral States is by no means a singular problem in international law. In all cases where limited natural resources have to be divided up between several States having a right equal in kind to such resources, the problem of apportionment arises. A case of this sort is the use of the waters of a river basin which extends over the territories of several States. There is widespread agreement today that such a river basin must be regarded as an integrated whole, and that, if necessary, its limited amount of water resources must be apportioned between the basin States. The principles of international law governing the distribution of waters have been thoroughly investigated by the competent Committee of the International Law Association; the principle that each of the participating States can claim an equitable share of the resources available has been accepted as a matter of course and considered as existing international law. The "Helsinki Rules on the Uses of the Waters of International Rivers", which were proposed by the Committee on the Uses of Waters of International Rivers unanimously and adopted at the 52nd Conference of the International Law Association on 20 August 1966, in Helsinki, have laid down the following principle:

Article IV:

"Each basin state is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage basin".

Article V (1):

"What is a reasonable and equitable share within the meaning of Article IV is to be determined in the light of all relevant factors in each particular case".

36. State practice and doctrine cited above (paras. 31-35) indicate that we have to distinguish between the *legal principle* by which each State may claim a just and equitable share of a common continental shelf, and the *technical methods* which are employed in determining the boundary line in harmony with that principle. Geometric methods of drawing boundary lines cannot have any legal value of their own; they can acquire the status of legal rules only if their application is approved by agreement between the States concerned. Failing this, States may resort to the equidistance line, or any other specific method, only if it can be shown that this will lead to a just and equitable apportionment of the continental shelf between the States concerned. The legal objective, as embodied in the principle of the just and equitable share, takes precedence over the technical methods of achieving this objective. This must be clearly realized in order to understand the proper function of such methods. The equidistance line, or any other technical method of drawing maritime boundary lines, derives its *raison d'être* from its function of producing an equitable result; it is applicable only in so far as it will lead to a just and equitable apportionment of the continental shelf among the coastal States.

37. The principle that each State adjacent to a common continental shelf is entitled to a just and equitable share, is a principle of *law* and not merely one of *equity*. It is a principle of law because its substance derives its binding force from the legal conviction of the international community. It could be regarded as an emanation of the principle of equality of States: the just and equitable share to which each State is entitled must be measured by a standard equally applicable to all of them. If, as it is submitted, the Court would declare that each State adjacent to a common continental shelf is entitled to a just and equitable share, and that any method of delimiting the continental shelf between these States is applicable only if it leads to a just and equitable apportionment, the Court is being requested to make a *legal* decision and not a decision *ex aequo et bono* which would not be within its competence under the Special Agreement of 2 February 1967. Obviously, the general principle that each State adjacent to a continental shelf is entitled to a just and equitable share, does not alone suffice to fix the boundary lines delimiting the shares of the States concerned, unless more precise criteria or methods can be found for the delimitation of these shares of the North Sea. In this case the Court could do no more than state the general principle that each State is entitled to a just and equitable share, and leave it to the Parties to agree on a boundary line which will satisfy the requirements of this principle. Failing agreement, the Parties might then again appear before the Court with the request for a decision on a boundary line which might be regarded as just and equitable. It will be shown later in this Memorial (see *infra* paras. 76 et seq.) that there are more precise criteria which may be applied to the special case of the North Sea, and which will facilitate a just and equitable apportionment of the submarine areas of the North Sea among the States concerned.

38. In view of the arguments put forward in the preceding paragraphs 28 to

37, it is respectfully submitted that the following general principle governs the delimitation of the continental shelf between the Parties in the North Sea:

Where the same continental shelf is adjacent to the territories of several States, each of these States is entitled to a just and equitable share of that continental shelf, irrespective of the method used for the determination of the boundaries between the States concerned.

CHAPTER II

THE EQUIDISTANCE LINE

39. The Kingdom of Denmark and the Kingdom of the Netherlands contend that the so-called "principle of equidistance" should govern the delimitation of the continental shelf between two adjacent States, and consequently also the delimitation of the continental shelf beneath the North Sea between the Kingdom of Denmark, the Kingdom of the Netherlands, and the Federal Republic of Germany. This contention seems to imply that the principle of equidistance which has been adopted in Article 6 of the Convention on the Continental Shelf of 29 April 1958, as well as in the Articles 12 and 24 of the Convention on the Territorial Sea and the Contiguous Zone, and in Article 7 of the Convention on Fishing of the same date, under the conditions specified therein as a method for drawing maritime boundaries, had already developed into a rule of general international law and would consequently govern the delimitation of the continental shelf also between States not parties to these Conventions. The Federal Republic of Germany is unable to follow such a reasoning and maintains the view that the principle of equidistance does not constitute a rule of general international law, but offers only one useful method among others for drawing maritime boundaries between opposite or adjacent States. The equidistance method may lead, albeit not necessarily, to an equitable and just apportionment of the continental shelf between adjacent States; on the other hand, there are enough cases conceivable where the application of the principle of equidistance would lead to an unjust and inequitable result.

Therefore, the German Government maintains that the equidistance line can be accepted as a boundary line only under the condition that it will lead to an equitable and just apportionment, and that it is for the Party which relies on the equidistance line to show that such conditions are fulfilled. It would therefore appear necessary to demonstrate the limited scope of application of the equidistance line.

Section I. Terminology

40. State practice and doctrine use the terms "median line" and "equidistance line" sometimes synonymously and sometimes differently, in the latter case making the distinction whether a boundary has to be drawn between States lying opposite or adjacent to each other. This Memorial uses these terms in the following sense:

(a) Maritime boundaries between two States lying *adjacent* to each other, if they are drawn in application of the equidistance method, will be termed "lateral equidistance boundaries" or "lateral equidistance lines". This means that the boundary is drawn in such a way that every point on the boundary line is equidistant from the nearest points of the coastlines or baselines of the neighbouring States from which the breadth of the territorial sea is measured. The expression "median line" which is occasionally used for lateral equidistance boundaries should be avoided, since these are not true median lines.

> The Netherlands delegate *Verzijl* proposed in the First Committee on the Conference on the Law of the Sea ". . . that the term 'median' be deleted from paragraph 1 of the Norwegian proposal. The paragraph was appli-

cable not only to the case of opposite coasts, but also to the case of adjacent coasts and, in the latter case, it was clearly inappropriate to speak of a median line" (U.N. Conference on the Law of the Sea, Off. Rec., Vol. III, Doc. A/Conf. 13/39-p. 192).

Shalowitz, op. cit., Vol. I, 1962, p. 231: "This distinction between an equidistant line and a median line seems valid from a geometrical point of view, for a true median line presupposes a line that is in the middle. Theoretically, at least, a boundary line through the territorial sea between two adjacent States, while an equidistant line, is not a true median line."

(b) Maritime boundaries between two States lying *opposite* each other, if they are drawn in application of the equidistance method, will be termed "median lines". This means that the boundary is drawn in such a way that every point on the boundary line is equidistant from the nearest points of the coastlines or baselines of the States lying opposite to each other, from which the breadth of the territorial sea is measured.

Lateral equidistance lines and median lines are not geometrical straight lines, but what are called Great Circle lines, namely the shortest line joining two points on the earth's surface.

cf. *R. M. Kennedy*, Brief Remarks on Median Lines and Lines of Equidistance and on the Methods Used in Their Construction (Paper distributed by the British Delegation to the Geneva Conference on the Law of the Sea on 2 April 1958): ". . . (vi) Finally, it should be stated that there is no simple method of drawing lines of equidistance through the oceans or through extensive tracts of sea or continental shelf. Such lines of equidistance are not straight lines but are each parts of a 'great circle' and the median lines themselves are also formed by portions of 'great circles'."

41. Lateral equidistance lines and median lines have in common that they are drawn according to the same geometrical method of equidistance from the nearest points on the coasts of both States; depending upon the configuration of the coast the lateral equidistance line may merge into a median line, as does for instance the Finnish-Soviet boundary in the Gulf of Finland. The conditions under which the two boundary lines have been applied are, however, not the same:

(a) Median lines as sea, lake or river boundaries have existed for a long time past. In most cases—leaving out of account irregularities in the geographical configuration of the coasts opposite each other and provided no islands lie between them—they effectuate a just and equitable apportionment of the waters between the two States concerned.

S. Wh. Boggs, International Boundaries, 1940, p. 179: ". . . in fact, the division into two *equal areas* seems to be an important element of the concept" (italics added).

G. Gidel, Le droit de la mer, Vol. III, 1934, p. 768: ". . . la ligne médiane, c'est à dire la solution qui tend à attribuer aux états limitrophes *une égale partie* des eaux maritimes proches de la côte . . ." (italics added).

During the discussions in the International Law Commission on the delimitation of the territorial sea and of the continental shelf the median line was regarded as an appropriate boundary, long before the equidistance line had been suggested for lateral boundaries.

(b) Lateral equidistance boundaries are, in contrast, a novel method of drawing water boundaries; they had not been put to the test before the Geneva Conference on the Law of the Sea of 1958. Nor is it by any means as obvious as in the case of the median line that the lateral equidistance boundary leads to a just

and equitable division of the maritime areas in question, since such a result depends upon the configuration of the coast to a far greater degree than in the case of the median line. This point will be dealt with in greater detail later (vide *infra* paras. 42 et seq.).

(c) A very special situation arises when—as in the case of the North Sea—a *continental shelf* which is *surrounded by several littoral States* has to be divided among these States. Here a problem *sui generis* arises which cannot be solved satisfactorily by the application of methods developed for drawing maritime boundaries in normal geographical situations.

F. A. V. (Vallat), "The Continental Shelf", British Yearbook of International Law, Vol. 23 (1946), p. 333 ff., 335-336: ". . . Where a large bay or a gulf is bounded by several States the problem is more complicated. Perhaps the most equitable solution would be to divide the submarine area outside territorial waters among the contiguous states in proportion to the length of their coast lines. Even if this were adopted as a basis, it would not provide the necessary boundaries. It would probably not be possible to draw these according to any simple geometric rule."

Richard Young, "The Legal Status of Submarine Areas beneath the High Seas", American Journal of International Law, Vol. 45 (1951), p. 236-237: "Submarine areas in shallow seas or gulfs—such as the Baltic, the Persian Gulf, and the Gulf of Paria—present perhaps the most difficult situation of all. . . . In the absence of any large area lying beyond the 100-fathom line—such as is found in the narrow but deep Red Sea—the entire bed and subsoil must be divided equitably among the littoral states. . . The lines of division in such cases must almost inevitably be artificial in character, resulting from negotiation and agreement among the interested governments, and it seems difficult to lay down in advance any principles of general application."

P. C. L. Anninos, The Continental Shelf and Public International Law, 1953, p. 99-100: "Submarine areas of concern to more than two States: The main type of case that belongs to this group is that of a gulf or bay, where there are several littoral States . . . it is perhaps safe to say that it is well-nigh impossible to formulate one general principle . . .".

Section II. Technique and Effects of the Equidistance Method

42. Maritime boundaries which are drawn by application of the equidistance method are boundary lines all points of which are equidistant from the nearest points on the coasts of the two States concerned. Since the sole factor determining the course of the equidistance line is the distance from the nearest points on the coasts of both States, it is possible, by means of geometrical construction, to draw a precise boundary line under all possible geographical circumstances, provided that there is no difference with regard to basepoints or baselines from which the distances are to be measured. This would not be the case, for instance, if the baseline of the territorial sea, the terminus of the land frontier, or the lateral boundary of the territorial sea are unsettled or contested. It may also be questioned whether points on so-called "straight baselines" should be accepted as base points for the calculation of equidistance. Strict application of the method to complex configurations of the coast may not always produce practical boundary lines; in drawing the equidistance line numerous angles may develop, so that the boundary line becomes angular and bizarre.

R. M. Kennedy, British delegate to the Geneva Conference 1958: "When properly drawn, the median line was a precise line consisting of a series of short straight lines. In agreeing upon a boundary, adjacent or opposite States might well decide to *straighten* the series of lines so as to avoid an excessive number of angles, giving *an equal sea area to each State* and also taking into account any *special circumstances*" (United Nations Conference on the Law of the Sea, Official Records, Vol. VI (Fourth Committee), p. 93; italics added).

In such cases, therefore, boundaries must be simplified or straightened. This was the procedure followed in the boundary treaties between the North Sea littoral States (*supra* paras. 17, 19-22).

43. The undeniable advantages of a method which produces in any geographical situation a precise and uncontestable boundary line do not, however, per se guarantee a just and fair apportionment of the waters between the States concerned. The real object of all the methods developed for drawing maritime boundaries, to assure a just and equitable share for each State, is not thereby achieved automatically.

cf. *Richard Young*, "The Geneva Convention on the Continental Shelf", American Journal of International Law, Vol. 52 (1958), p. 737: ". . . its application in complex geographical situations is not always easy, and if applied strictly, it often produces a line which is unduly complicated or which, in the light of other considerations, appears *inequitable or impracticable*" (italics added).

In drawing a boundary between two neighbour States, the equidistance method establishes a line which at all points is equidistant from the nearest points on the coastlines or baselines of the two States. The maritime areas on the two sides of the boundary line are thereby allocated to one or other of the two States, according to their propinquity to a point on its shore. The equidistance method thus attempts, by taking into account indentations of the coast,

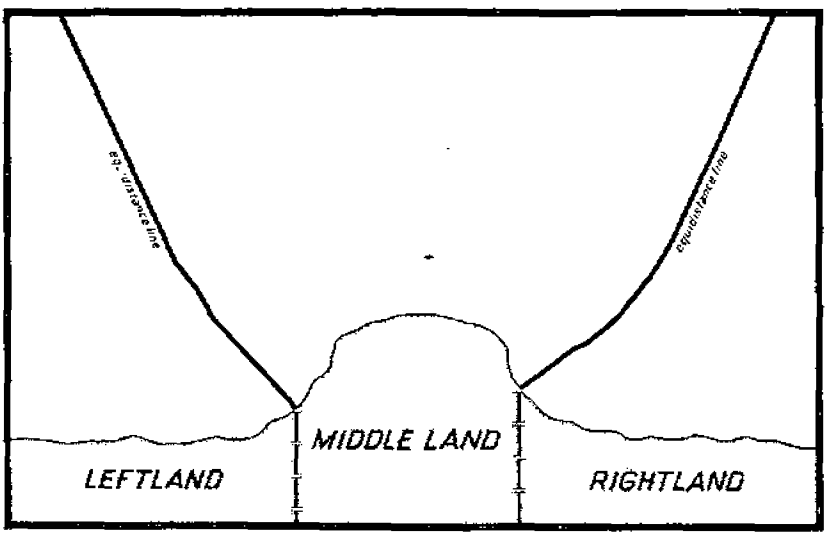


Figure 3

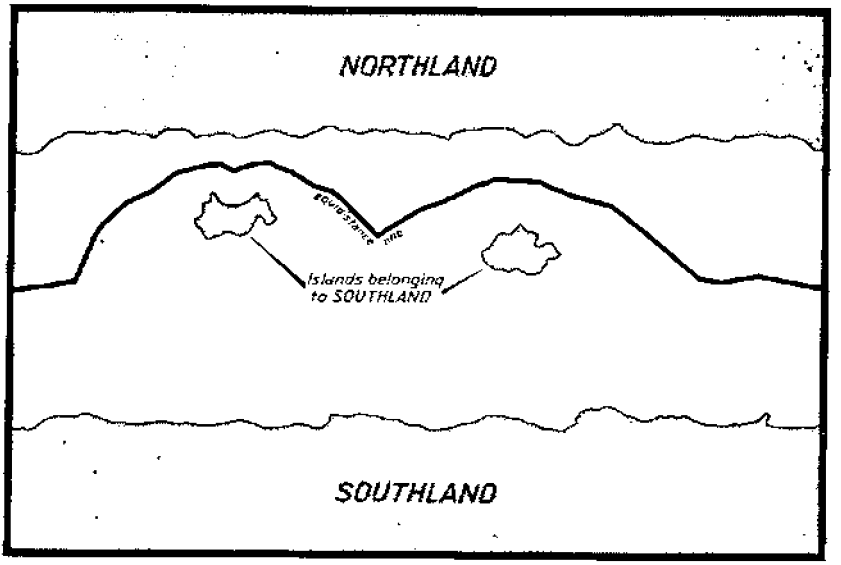


Figure 4

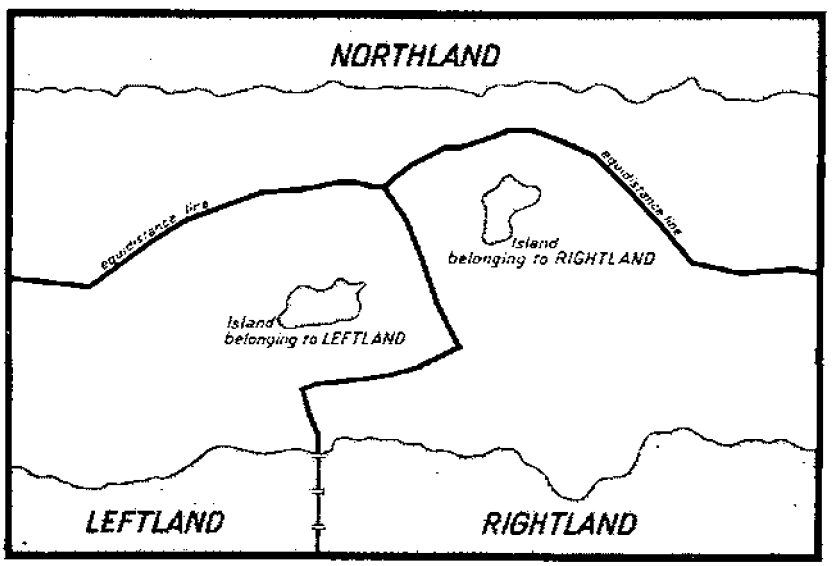


Figure 5

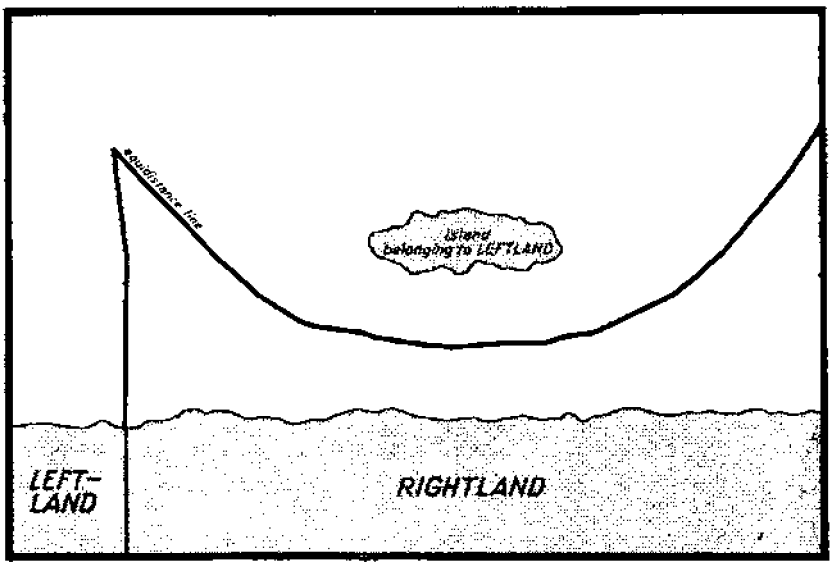


Figure 6

to avoid the shortcomings of another method of boundary drawing which uses a line drawn vertically on the coastline. Since the rights of coastal States to the continental shelf are based upon the geographical contiguity or identity of the continental shelf with the non-submerged contiguous coast, it may not seem unreasonable to take propinquity to the coast as a main criterion for delimiting the shares of neighbouring States in the continental shelf. Even this point of view cannot justify that a single point on a salient part of the coast should decide the allocation of extensive sea areas. This would mean promoting a single geographic factor, the importance of which is very questionable, to an absolute determinant, while leaving other factors entirely out of account.

Without going here into further detail regarding these factors (see *infra* paras. 78-81), the following diagrams (figures 3-6, pages 40-42) are presented illustrating the effects of the equidistance method on the allocation of sea areas under various coastal configurations.

That these diagrams are not hypothetical constructions, but correspond to actual geographical situations, is shown by the following true-to-scale drawings (figures 7-14, pages 43-49) of some coasts all over the world if equidistance lines would be used for the division of the waters before these coasts among the coastal States.

As a matter of fact, it must be added that because of the depth of the sea off these coasts, the problem of drawing boundaries in these parts of the oceans is not an acute problem for the moment. But as Article 1 of the Continental Shelf Convention makes the assertion of sovereign rights over the seabed and subsoil dependent on the technical possibilities of exploitation, the question whether such parts of the oceans should also be divided up between the coastal States may demand an answer in the not too distant future.

44. As demonstrated graphically, the equidistance method, by making the distance from the nearest coastal points the absolute criterion, necessarily

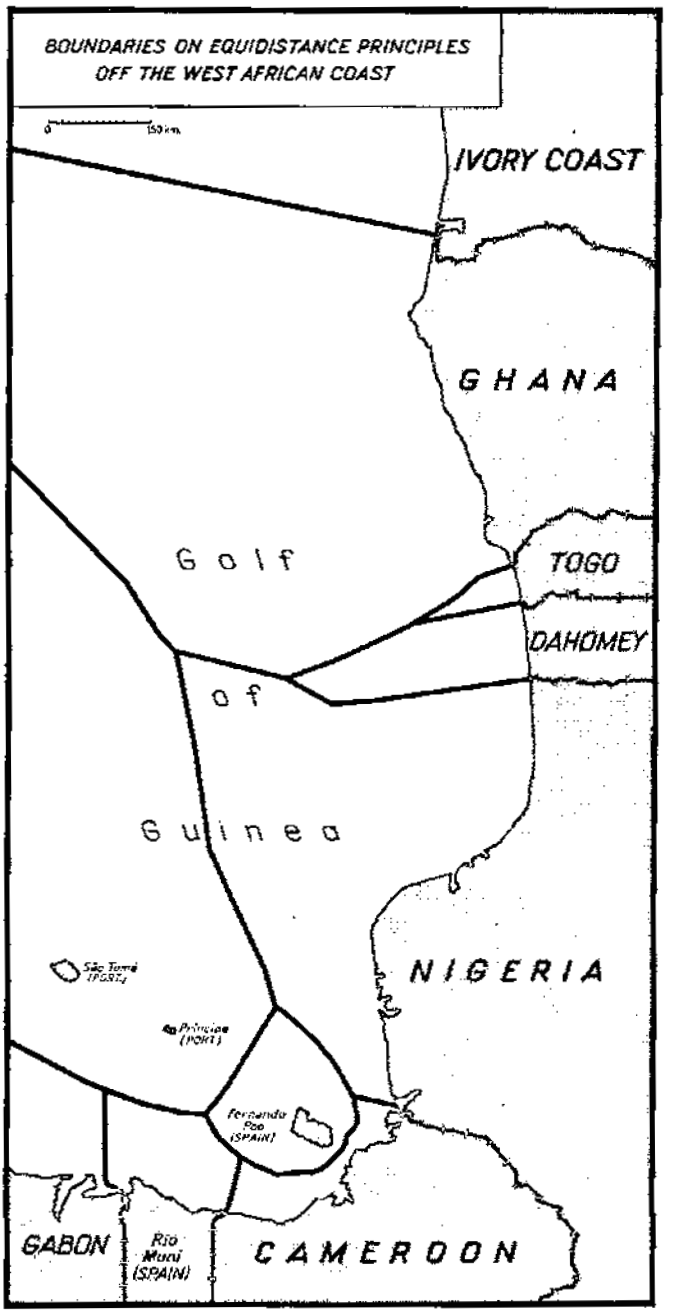
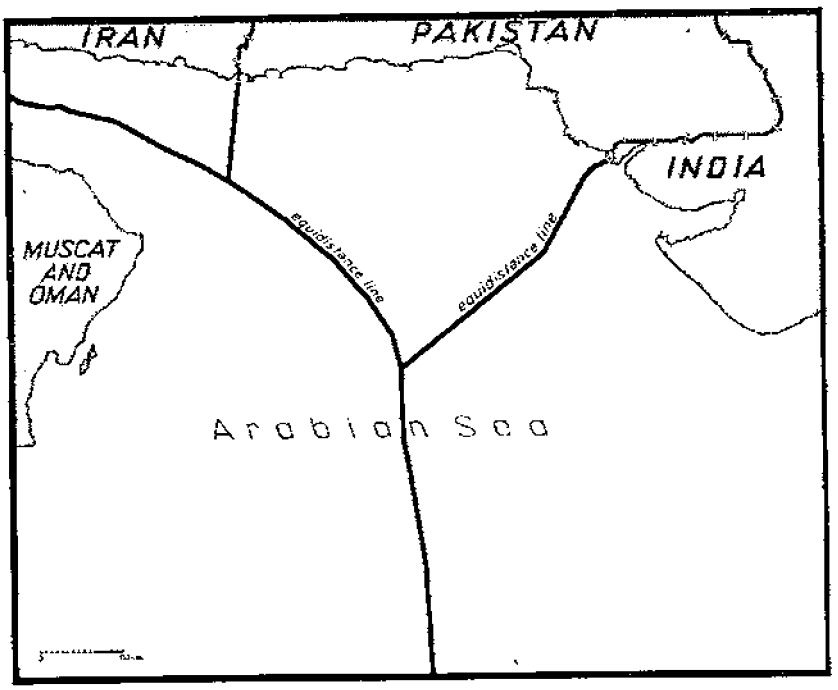
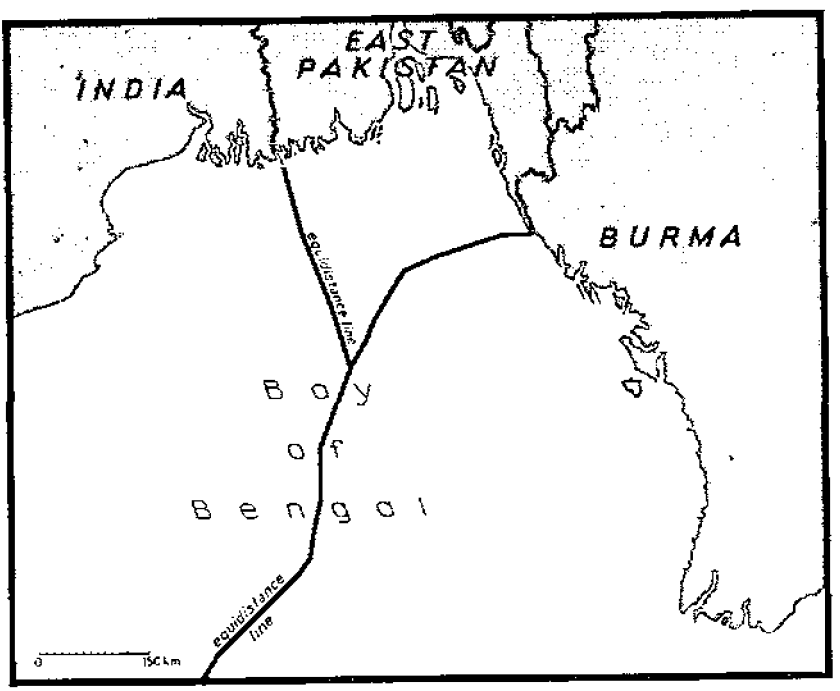

BOUNDARIES ON EQUIDISTANCE PRINCIPLES
OFF THE WEST AFRICAN COAST
IVORY COAST
GHANA
Golf
of
Guinea
TOGO
DAHOMEY
NIGERIA
São Tomé (PORT.)
Príncipe (PORT.)
Fernando Poo (SPAIN)
GABON
Rio Muni (SPAIN)
CAMEROON

Figure 7


IRAN
PAKISTAN
INDIA
MUSCAT AND OMAN
equidistance line
equidistance line
Arabian Sea

Figu


INDIA
EAST PAKISTAN
BURMA
equidistance line
Bay of Bengal
equidistance line
0
150 km

Fig

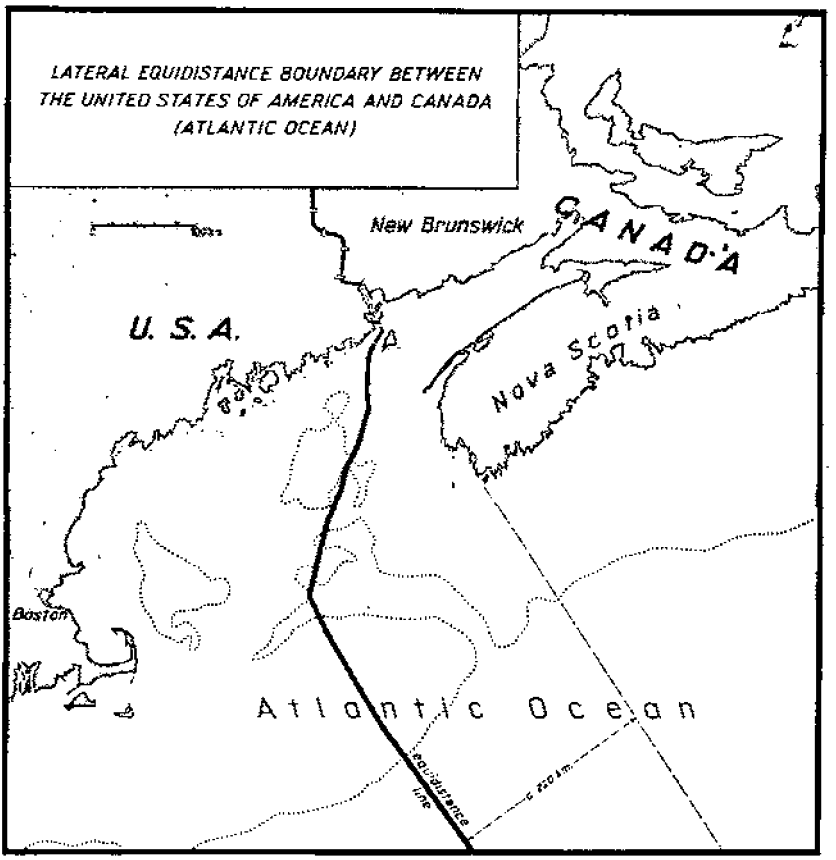


Figure 10

attributes undue weight to projecting parts of the coast, and so not infrequently leads to inequitable solutions. The danger of overrating the principle of equidistance was clearly envisaged during the debate on the principle of equidistance in the International Law Commission and at the Conference on the Law of the Sea.

> cf. the remark of the Venezuelan delegate *Schwarck Anglade* (United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 94): "The situations that existed in different parts of the world were too varied to justify the adoption of any such general rule. Moreover the cases in which the median line would offer the best solution were likely to arise less frequently than any others, so that exceptions would be more numerous than the cases covered by the general rule. The median line was only one of the systems that might have been selected by the International Law Commission . . . no single one of these systems could, any more than the median line method, meet the requirements of all the situations that would be encountered."

These doubts have also been expressed in the doctrine.

cf. *McDougal-Burke*, op. cit. p. 436: "The least familiarity with the extremely complex geographical conditions, not to mention conditions of use, involved in concrete instance is sufficient to indicate that any special insistence on a median line is impossible"; p. 725: "In the absence of mutual agreement either on the boundary itself or on a process of resolving disputes, because of the great variety of factors in specific contexts no meaningful, detailed recommendation seems possible".

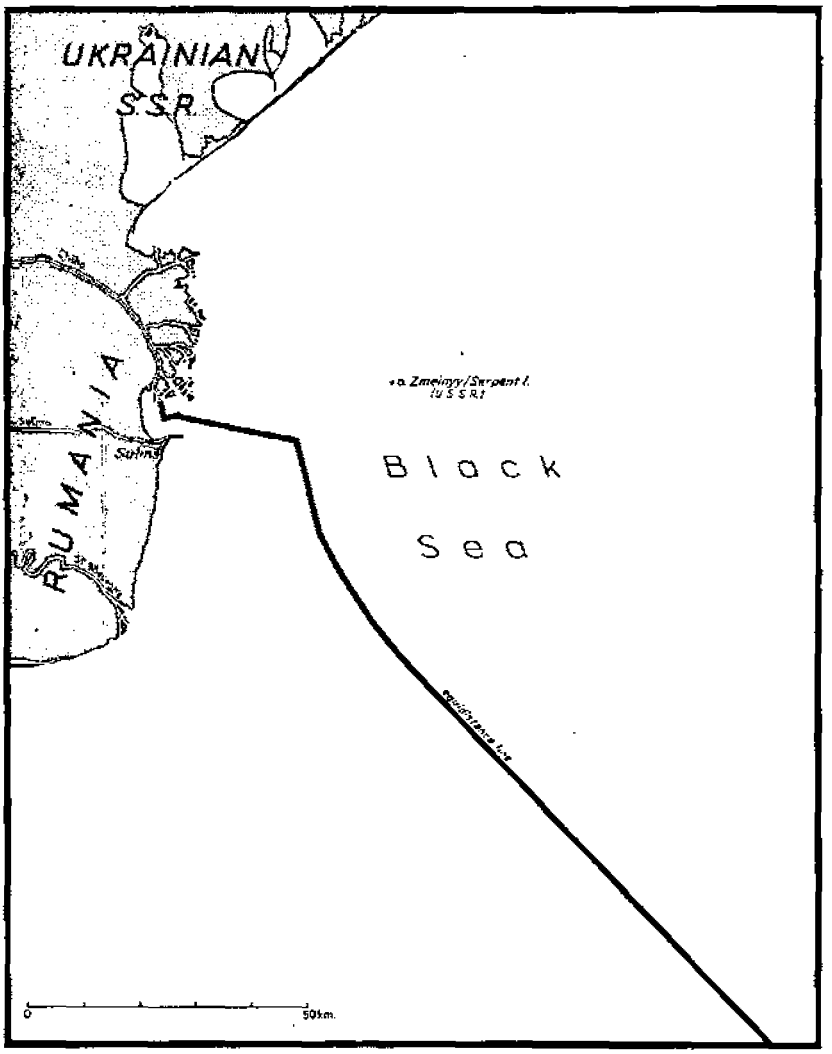


Figure 11

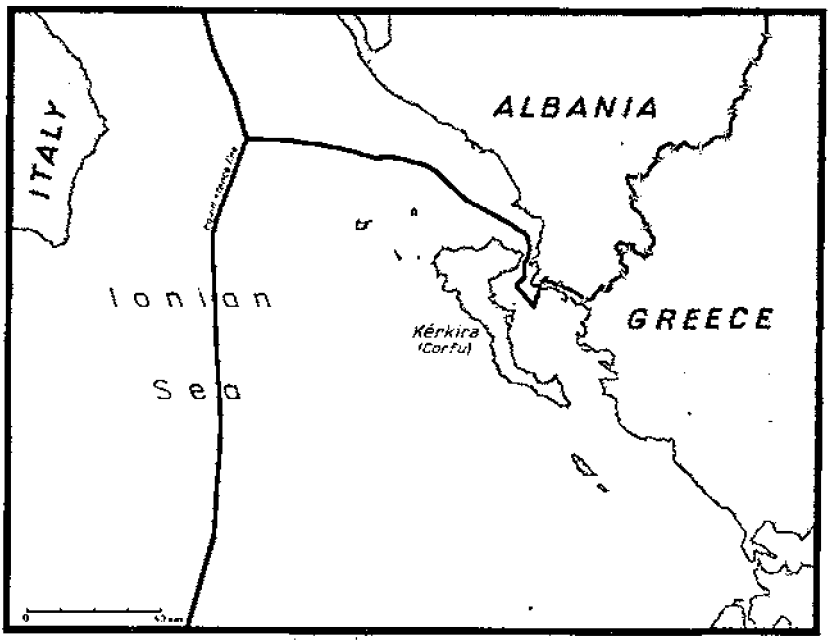


Figure 12

45. The effects resulting from the utilization of the equidistance technique under various geographic circumstances (vide *supra* paras. 43, 44) lead to the general conclusion that the applicability of the equidistance method becomes the more questionable as the distance which the boundary line runs from the coast increases. A further point which has not always received sufficient consideration, is that the equidistance method was developed solely for the delimitation of territorial waters between two neighbour States.

Boggs, op. cit. p. 184-192; *idem*, "Delimitation of Seaward Areas under National Jurisdiction", American Journal of International Law, Vol. 45 (1951), p. 240-266.

The construction of lateral equidistance boundaries in territorial seas developed by *Boggs* is based upon the idea that the seaward boundary of the territorial sea of each of the two adjacent States will be the envelope of the arcs of a circle of a 3 miles' radius drawn from all points on its coast, and that the two boundaries so constructed will then necessarily intersect at a point which will be equidistant—3 miles—from the nearest points of both coasts.

Boggs, op. cit. p. 189.

This is a "triple point" in the boundary sense, i.e., a point where three boundaries meet: the boundary between the territorial seas of the two States, and the two seaward boundaries of the territorial sea of each of the two States. This "equidistant" point is the necessary consequence of the geometric construction of the seaward boundaries of the territorial sea, provided that the

breadth of the territorial sea claimed by the two States is the same. This construction, therefore, is not based upon considerations of an equal or appropriate division of maritime areas but rather upon purely geometric deductions. The application of this construction to the drawing of boundaries beyond the territorial sea, therefore, necessitates a special justification which can only consist of the proof that the application of the equidistance method will in such a case result in a boundary line which will apportion to each State concerned a just and equitable share of the continental shelf.

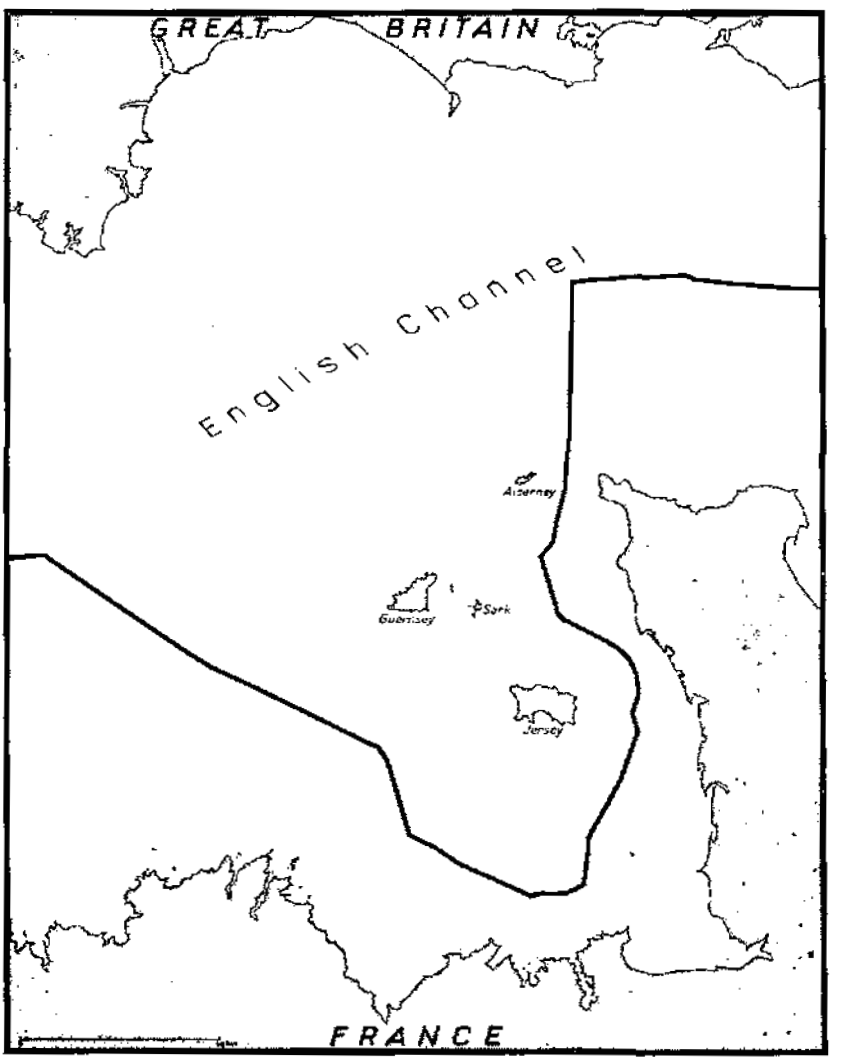


Figure 13

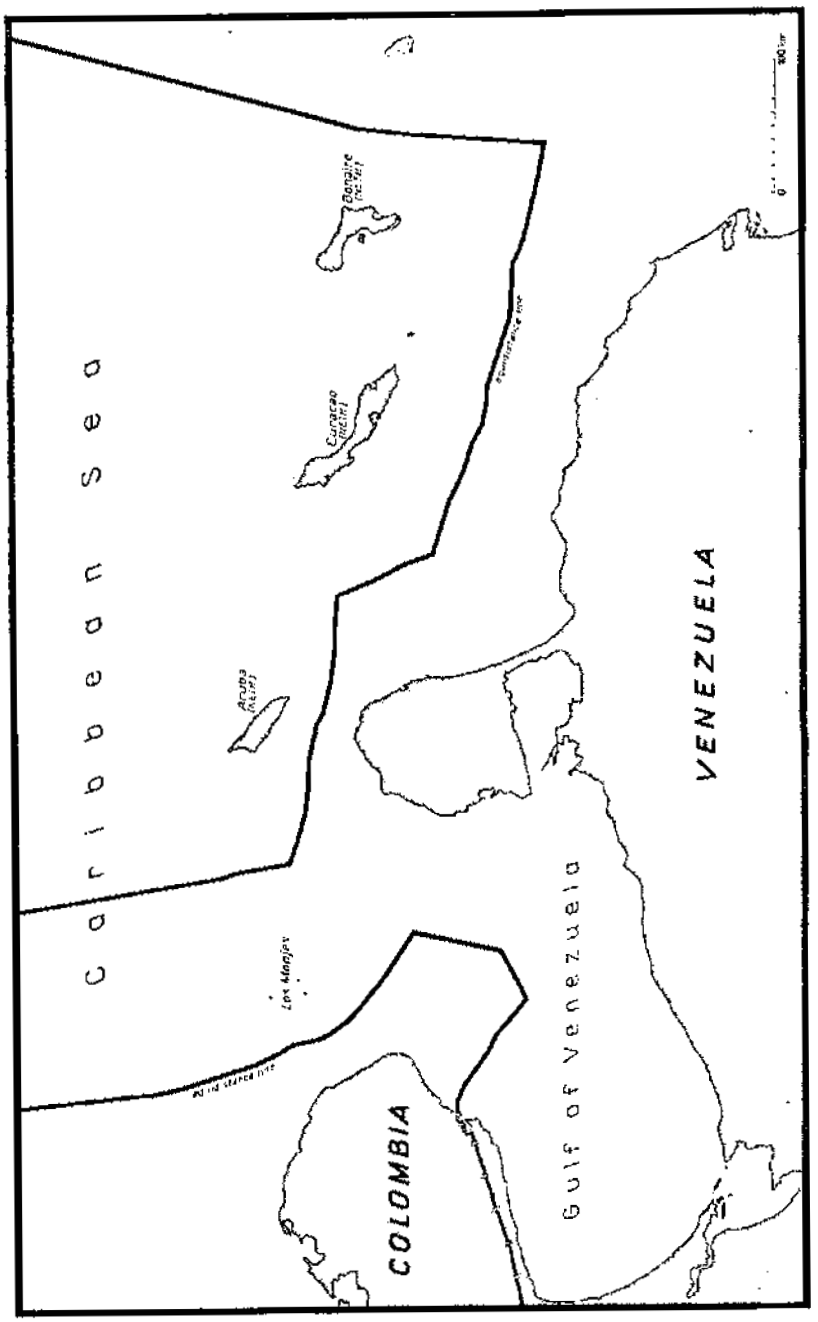

Caribbean Sea
Bonaire (Neth.)
Curaçao (Neth.)
Aruba (Neth.)
Los Monjes
VENEZUELA
Gulf of Venezuela
COLOMBIA

Figure 14

Section III. Genesis of the Equidistance Line as a Method for the Delimitation of a Continental Shelf

46. Only relatively recently has the equidistance line been adopted as a *technique for the drawing of maritime boundaries*. It is true that median lines have been constructed by application of the equidistance method already and have as a rule produced an equal division of the waters between the two opposite coasts, unless islands have to be taken into consideration. The occasional division of rivers, lakes, or inland seas between two States lying opposite each other by median lines is no proof of a general recognition of the so-called principle of equidistance also for other geographical situations than those of opposite coasts. The drawing of a maritime boundary between two coasts lying opposite each other is, by the very nature of the circumstances, different from the drawing of a lateral boundary between two neighbouring States into the open sea. For the drawing of lateral boundaries the equidistance method has hardly been practised at all. If among the existing boundaries a small number of median lines are to be found which grosso modo correspond to an equidistance line, it does not follow therefrom that the equidistance line has been generally recognized as the principal rule for the drawing of maritime boundaries.

47. Maritime boundaries established by treaty are not common. State practice in this field has justly been described as sparse and inconclusive.

> cf. *David J. Padwa*, International and Comparative Law Quarterly, Vol. 9 (1960), p. 629: "State practice ... has not only been sparse, but inconclusive. While several techniques have been utilised in the occasional treaties delimiting maritime boundaries, their reference is to local geographical conditions and they contain little of general applicability."
>
> *US Department of State*, Sovereignty of the Sea, Geographical Bulletin No. 3 (April 1965), p. 13: "Any two countries with contiguous offshore waters may agree on a common line of demarcation between them, but usually agreements of this type are non-existent."

As far as States thought it necessary to fix maritime boundaries between them, they have not developed a consistent and uniform practice in the case of lateral sea boundaries. This is apparently due to the geographical variety of coastal configuration. Even with regard to rivers, lakes, and inland seas no uniform method for the drawing of boundaries can be ascertained. The median line between the opposite shores competes with the "thalweg". The middle of the river or lake which, moreover, corresponds only approximately to the equidistance line, is generally taken as the boundary only if the demands of navigation or other special circumstances do not call for a different boundary.

> cf. *K. Schulthess*, Das internationale Wasserrecht, Zürich, 1915, p. 19: "Wohl so ziemlich einhellig betrachtet man in der Doktrin die Mitte als die präsumptive Grenze, wenn nicht besondere Verhältnisse eine andere Abgrenzung erheischen. Solche besonderen Verhältnisse sind z.B. die Fälle, da mehr als zwei Staaten an einem Grenzsee beteiligt sind, wie etwa beim Bodensee."
>
> *Boggs, op. cit.*, p. 184:
> "The median line is less used as a boundary than formerly, so far as rivers are concerned. In lakes it is frequently the most desirable boundary; but in rivers and streams, particularly if navigable by any water craft, since about 1800 the boundary has more often been defined as the line of greatest depth or the stream line of the fastest current, which is called in German 'thalweg'."

It appears that the existing lateral boundaries in the territorial sea that have been established by treaty, do not include a single one which has been drawn exclusively according to the equidistance principle.

48. The *International Law Commission* of the United Nations dealt in great detail with the question of the continental shelf and its delimitation during the period 1949 to 1956. Their debates provide a great deal of information on the legal situation up to the Geneva Conference on the Law of the Sea of 1958:

François, as Rapporteur, submitted his first report in *1950*; in respect of the treatment of the continental shelf it contained only a few remarks on the apportionment (or internationalisation) of the continental shelf in the case of several States being interested. The question put by the Rapporteur to the Governments as to their ideas on the problem of apportionment had remained unanswered at that time.

Yearbook of the International Law Commission 1950, II, pp. 52-65.

Discussions in the Commission during its 1950 Session were more concerned with fundamental points than with details; they showed, as was only natural, a great deal of uncertainty regarding the way to solve the problem of delimitation and regarding any rules which might be applied.

Yearbook 1950 I, pp. 214-239.

Here, as also later, suggestions were made that the international community and not the littoral States should be entrusted with the exploitation of the continental shelf—suggestions which, as is known, were not followed.

ibid., p. 215 et seq., p. 305, but also pp. 221, 227 et seq.; cf. for later pertinent remarks Yearbook 1951 I, p. 407 et seq.; 1953 II p. 16; 1953 I p. 82, 84, 113 et seq.

At this first discussion on the legal regime of the continental shelf the question of apportionment between several States was also touched upon, on which occasion the necessity of contractual agreements between the States concerned was emphasized several times. The question was also put at that time of what would apply should the States concerned fail to reach agreement, to which a member of the Commission—*Amado* replied that in that case an arbitral tribunal should decide, since no other general principle existed.

ibid., pp. 232-234, 306.

Manley O. *Hudson* made reference to a report drawn up in the International Law Association, according to which, among other factors, "the configuration of the coastlines, the economic value of proven deposits of minerals, etc." should be taken into consideration in the delimitation of the continental shelf.

ibid., p. 233.

The principle of equidistance received no mention at all.

For the Session of the Commission in 1950 a memorandum had been prepared by the Secretariat of the United Nations on the existing law of the sea which also dealt with the continental shelf:

For the drawing of boundaries between two or more States interested in the same continental shelf reference was made to the Truman Proclamation of 1945; furthermore various possibilities of delimitation were mentioned, but were considered unsuitable for doing justice to the peculiarities of individual cases; the matter was summed up as follows:

"C'est donc en définitive à des ententes entre Etats intéressés ou à des

solutions obtenues par les modes amiables du droit qu'il faut laisser le soin d'opérer les répartitions et non pas à des règles rigides qu'il serait prématuré de vouloir poser dès maintenant" (Yearbook 1950 II, pp. 67 et seq., 112).

At the *1951* Session of the International Law Commission a further report was submitted by *François*. On the question of delimitation of the continental shelf the Rapporteur again suggested agreements between the parties and added:

> "Faute d'accord, la démarcation entre les plateaux continentaux de deux Etats voisins sera constituée par la prolongation de la ligne séparant les eaux territoriales et la démarcation entre les plateaux continentaux de deux Etats séparés par la mer sera constituée par la ligne médiane entre les deux côtes" (Yearbook 1951 II, pp. 75 et seq., 102).

It appears noteworthy that here, as well as in later discussions, the median line was considered as a normally appropriate boundary in the case of States lying opposite each other, but was apparently not envisaged in the case of neighbouring States. The discussion by the Commission on the question of delimitation

> Yearbook 1951 I, p. 285 et seq.

again showed the variety of possible methods, and the impossibility of finding a general rule which would be applicable without exception. Thus suggestions were made, for instance, that the continental shelf should be divided through a prolongation of the boundary of the territorial waters *(Córdova)*, or that the boundary should be drawn as a line vertical to the coast *(Spiropoulos)*. A short reference is made to the principle of equidistance; it is, however, regarded as "hardly . . . possible" *(Hudson)*. Once again settlement by agreement was advocated, since "any rule which the Commission laid down was bound to be arbitrary" *(Brierly)*. Naturally the question was again put of what should apply should neighbouring States fail to reach agreement. It was suggested that in case of a dispute none of the States concerned should be entitled to exploit the continental shelf unilaterally, but appeal should be made to the International Court of Justice *(Scelle)*. To this the objection was raised that the International Court of Justice would not be able to find any clear rules of law on which it might base its decision. Finally the opinion prevailed that in case of dispute recourse should be had to an arbitral tribunal which would decide ex aequo et bono.

> *ibid.*, p. 291 et seq.; Yearbook 1951 II, p. 143 (Article 7 of the draft adopted at the 1951 Session; text *supra* para. 32).

It appeared that until then the International Law Commission was of the opinion that no rule of general application existed for the apportionment of the continental shelf.

49. The equidistance method was first mentioned as such in *1952* by the Rapporteur *François* when he again suggested the median line for delimiting the territorial sea between two coasts lying opposite to each other, with the reservation, however, that it was practical and acceptable only under uncomplicated geographical conditions.

> cf. Yearbook 1952 II, p. 38: "Mais cette solution ne saurait être retenue au cas où la configuration spéciale exigerait des modifications."

As, however, neither the members of the International Law Commission nor the Governments consulted agreed to this proposal, a committee of experts was appointed which should investigate—first and foremost for the delimitation

of territorial waters—the most appropriate method of boundary drawing. The report of this committee

> U.N.Doc. A/CN.4/61/Add.1/Annex, Yearbook of the International Law Commission 1953 II, pp. 77-79

is of particular importance for the reason that the equidistance method, albeit envisaged only for the delimitation of the territorial sea, now appeared in the foreground for the first time. The members of the committee of experts, who as technicians were above all interested in a generally applicable procedure, had achieved satisfactory results with the equidistance method in drawing median lines in lakes, enclosed bays, and straits. When they decided to recommend the equidistance method for the drawing of boundaries in territorial waters, they restricted its applicability by the following reservation:

> "In a number of cases this may not lead to an equitable solution which should then be arrived at by negotiations" (*ibid.*, par. VII, 2).

The experts had investigated several methods for the delimitation of territorial waters as, for example, a prolongation of the land frontier into the sea, a perpendicular line on the coast at the intersection of the land frontier and the coastline, a line drawn vertically on the general direction of the coast, a median line. Finally they came to the conclusion that the following solution was the best one to put forward—

> "... that the lateral boundary should be drawn according to the principle of equidistance from the respective coastlines" (*ibid.*, par. VII, 1).

All that was said about the delimitation of the continental shelf was:

> "The Committee considered it important to find a formula for drawing the international boundaries in the territorial waters of States which could also be used for the delimitation of the respective continental shelves of two States bordering the same continental shelf" (*ibid.*, p. 79).

50. In the discussions during the *1953* Session of the International Law Commission, the rapporteur *François* referred to the conclusions of the committee of experts and again advocated the equidistance principle, not without pointing out, however, that the experts had stated that no universally and generally acceptable principle of delimitation could be found. Some of the members of the Commission were then in favour of François' new suggestion while others were against it. Other voices were raised in favour of coupling the delimitation of the continental shelf with that of the territorial waters, while others spoke against it; the majority still favoured the solution that the boundaries should in the first place be established by agreement between the States concerned.

> Yearbook 1953 I, pp. 107-108, 125-135, 373-375.

After prolonged discussion eventually the equidistance line was adopted in principle, but its application was restricted by important reservations: agreements between the States concerned which might establish another boundary should be the first approach to the solution of the boundary problem, and consideration should be given in one way or another to the existence of special circumstances. A suggestion in accordance with that view was first made by *Sandström*,

> *ibid.*, p. 126: "He was concerned about the point made by the experts to the effect that there might be special reasons, such as navigation and fishing rights, which might divert the boundary from the median line... The

> Commission should perhaps consider whether rules should not be laid down for such special cases where the application of the normal rule would lead to manifest hardship"

whereupon *François* suggested that the principle of equidistance should be recognized only "as a general rule", which proposal met with opposition. This was followed by a proposal from *Spiropoulos* that the following reservation should be added to the equidistance principle:

> "unless another boundary line is justified by special circumstances" (*ibid.*, p. 130).

This is obviously the origin of the reference to special circumstances in Article 6 of the Continental Shelf Convention. In the further course of the discussion there was no lack of suggestions to replace the equidistance line by another formula, e.g., that contractual agreements should be the only solution, that delimitation should always be ex aequo et bono etc., or that the equidistance principle should be furnished with another reservation than that of special circumstances.

> cf. *Lauterpacht ibid.*, p. 132: "In cases in which such delimitation is physically impossible or in which it may cause undue hardship to one of the coastal States . . .".

However, the equidistance line gained acceptance in the end, but subject to considerable restrictions. According to the final text adopted by the International Law Commission at its 1953 Session the equidistance line would apply—

> ". . . in the absence of agreement between those States or unless another boundary line is justified by special circumstances . . ." (*ibid.*, p. 134, Yearbook 1953 II p. 213).

The commentary of the International Law Commission to this article adds in explanation:

> "As in the case of the boundaries of coastal waters, provision must be made for departures necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels. To that extent the rule adopted partakes of some elasticity" (Yearbook 1953 II, p. 216).

51. The deliberations at the *1956 Session of the International Law Commission* did not produce anything new on the question of delimitation. The discussion on this question was only short; it was pointed out that "special circumstances" might exist very often *(Fitzmaurice)* and the superiority of settlement by agreement between the States concerned was again emphasized *(Zourek)*.

> Yearbook 1956 I, pp. 150-153, 277.

The formula adopted at the 1953 Session (*supra* para. 50) rested unchanged. Its substance was embodied in Article 72 of the final draft of the International Law Commission on the Law of the Sea. Article 72 (which became later Article 6 of the Continental Shelf Convention) made separate, though in substance identical provision for the delimitation of the continental shelf between States whose coasts are lying *opposite* to each other, and between *adjacent* States. Primarily, the boundaries were to be determined by agreement between the States concerned; in the absence of agreement, and unless another boundary line would be justified by special circumstances, the boundary between opposite coasts should be the median line, drawn in accordance with the

equidistance method (paragraph (1) of Article 72), and the boundary between adjacent States should be determined by application of the equidistance method (paragraph (2) of Article 72).

The text of Article 72 read as follows:

> "1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the baselines from which the breadth of the territorial sea of each country is measured.
>
> 2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the two countries is measured."

The commentary added by the International Law Commission to Article 72 on this point read:

> ". . . provision must be made for departures necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels. This case may arise fairly often, so that the rule adopted is fairly elastic" (Yearbook 1956 II, p. 300).

It is also worthy to note that the subsequent Article 73 of the draft of the International Law Commission provided that any dispute concerning the interpretation or application of the Articles of the Continental Shelf was to be submitted to the International Court of Justice at the request of any of the parties. This article, however, has not been retained in the Convention on the Continental Shelf; in its place an optional Protocol providing for the compulsory settlement of disputes was opened for signature to the parties of the Convention.

At this point it appears necessary to draw some *conclusions* from the deliberations in the *International Law Commission:*

(1) There can be no doubt that, at least until 1956, the so-called principle of equidistance was not a rule of customary international law. No constant practice in application of the equidistance method can be shown; nor is there any proof that the principle of equidistance had been accepted as a rule of law. It was not until 1953, that the method of establishing maritime boundaries by application of the equidistance formula had been put forward seriously in the Commission, and its usefulness as a reasonable solution of the boundary problem continued to be questioned by the members of the Commission. This makes certain that no customary law existed in respect of the delimitation of the continental shelf at that time.

(2) The Commission did accept the principle of equidistance only under two conditions:—priority of a settlement by agreement and a reservation with respect to special circumstances. Demands for a flexible provision played a very great part in the discussion among the members of the Commission; some members were still uneasy about the effects of the equidistance method. There can be no doubt that the Commission by adopting the formula contained in Article 72, by no means assumed a general applicability of the equidistance line.

These conclusions will not be prejudiced by the fact that the rights of the coastal State over the continental shelf before its coast were at that time probably already regarded as part of customary international law; the codification work of the International Law Commission may contain both: rules which are already part of the *lex lata*, as well as rules proposed *de lege ferenda*.

52. The negotiations at the *Geneva Conference on the Law* of the *Sea* in 1958 were based upon Article 72 of the draft Articles prepared by the International Law Commission. Some attempts were made to replace the flexible system contained in Article 72 by more rigid rules. But all amendments proposed in this direction met with overwhelming opposition both in the Fourth (Continental Shelf) Committee (8-9 April 1958) and in the Plenary Session (22 April 1958), and were rejected.

> United Nations Conference on the Law of the Sea, Official Records, Vol. VI: Fourth Committee p. 91 to 98; 130 to 134, 138, 142; Vol. II: Plenary meetings, pp. 11-15.

The proposal of the Yugoslav delegate, that the equidistance method should be declared determinant, without reservations, for the apportionment of the continental shelf, was rejected at the Plenary Session of the Conference by 45 votes to 5 (with 11 abstentions). A very large majority of the States was not prepared to make the equidistance method a solely applicable rule. Rather did the Conference recognize very clearly that the equidistance method was suitable for the drawing of boundaries only under certain circumstances.

The substance of Article 72 of the draft of the International Law Commission was finally embodied in Article 6 of the Geneva Convention on the Continental Shelf, with slight amendments, in the wording, but without any changes in the substance. Thus paragraphs (1) and (2) of this Article read:

> "(1) Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baseline from which the breadth of the territorial sea of each State is measured.
>
> (2) Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

It should further be pointed out that, pursuant to the express stipulation of Article 12, paragraph (1) of the Convention, any State may make reservations to all articles of the Convention other than Articles 1 to 3; that means that reservations to Article 6 are allowed. Therefrom it follows clearly that the substance of Article 6 was neither regarded as part of customary international law nor accorded any sort of fundamental significance.

53. It was necessary to describe the genesis of Article 6 of the Geneva Convention on the Continental Shelf in detail here in order to show that the so-called principle of equidistance was not laid down in the Continental Shelf Convention for the reason that it was a generally recognized rule of inter-

national law. Rather did the International Law Commission as well as the signatory States regard it as a useful method for an equitable apportionment of the continental shelf between States lying opposite or adjacent to each other, insofar as circumstances permitted. Thus Article 6 is not a codification of already existing international law, but it is the outcome of an effort to develop the existing legal situation, with its demand for an equitable solution, by the establishment of a method which it was assumed would, under normal geographical conditions, lead to an equitable and just apportionment of the continental shelf between the States concerned. Article 6 must be interpreted in this sense, with the consequence that an equidistance boundary may not be imposed upon a State which has not acceded to the Convention, so long as it has not been proved that it would be the best method of apportioning the continental shelf between the adjacent States in a just and equitable manner, having regard to the special geographical situation of the individual case.

Section IV. The Practice after the 1958 Conference on the Law of the Sea

54. If, accordingly, it cannot be contended that Article 6 of the Continental Shelf Convention codified customary international law, there is equally little ground for the contention that the principle of equidistance has now been generally accepted as a rule of international law by the international community—including those States who have not yet become parties to the Convention either by ratification or accession. This is excluded not only by the fact that the Convention has, up to now, been accepted only by a minority of the States (to date 37), and that reservations to Article 6 have been made by some States, but above all by the fact that State practice necessary for the development of such a customary rule is up to now still lacking.

A. The Reservations to Article 6 of the Continental Shelf Convention

55. Article 12, paragraph (1), of the Convention allows for reservations being made to all articles of the Convention, other than to Articles 1 to 3, which therefore includes Article 6. Two States, *Iran* and *Venezuela*, availed themselves of this right at the time of signing the Convention: the Iranian reservation is not of interest here, stipulating that, given certain circumstances, the high water line should be taken as the baseline for determining the continental shelf boundary.

> United Nations, Status of Multilateral Conventions, ST/LEG/3, Rev. 1 p. XXI-24.

The Venezuelan reservation contained the statement that in certain areas off the Venezuelan coast "special circumstances" within the meaning of Article 6 existed, which excluded the application of the equidistance method.

> United Nations, Status of Multilateral Conventions, ST/LEG/3, Rev. 1 p. XXI-24.

When *France* acceded to the Convention on 14 July 1965, she made, in addition to other reservations, the following reservation to Article 6:

> "Le Gouvernement de la République française n'acceptera pas que lui soit opposée, sans un accord exprès, une délimitation entre des plateaux continentaux appliquant le principe de l'équidistance:
>
> si celle-ci est calculée à partir de lignes de base instituées postérieurement au 29 avril 1958;
>
> si elle est prolongée au-delà de l'isobathe de 200 mètres de profondeur;

si elle se situe dans des zones où il considère qu'il existe des 'circonstances spéciales', au sens des alinéas 1 et 2 de l'article 6, à savoir: le golfe de Gascogne, la baie de Grandville et les espaces maritimes du Pas-de-Calais et de la mer du Nord au large des côtes françaises."

(Journal Officiel de la République française, Lois et Décrets, 1965, p. 10859).

By this reservation France specified wide areas off her north and west coasts as areas where she did not consider the equidistance principle to be an appropriate and just method of division. A point of particular interest in this reservation is that it is based on the view that the equidistance line, as far as it is to be applied at all, should be used as a method of apportioning submarine areas only near the Atlantic coast (to a depth of 200 metres) and should in particular not be used for the apportionment of the North Sea. The Netherlands, on the occasion of their ratification on 18 February 1966, protested against the Venezuelan and French reservations without, however, being able to deprive these reservations of their effect.

B. State Practice Since 1958

56. In accordance with Article 38, paragraph (1), letter (b) of the Statute of the International Court of Justice, two elements are generally demanded for the development of customary law: constant practice extending over some considerable time and a legal conviction in support of this practice.

P.C.I.J., Lotus Case 1927, Series A 10 p. 18 "... usage generally accepted as expressing principles of law";

I.C.J. Reports 1950, *Asylum* Case, p. 276: "... Constant and uniform usage ...";

G. Jaenicke, "Völkerrechtsquellen", Wörterbuch des Völkerrechts, Vol. III (1962), p. 766, 775;

O'Connell, International Law, 1965, Vol. I, p. 15 et seq. as well as further sources referred to here.

Regarding the legal régime of the continental shelf, no such practice over some length of time exists. However, the period necessary for the establishment of customary law cannot be defined generally for all circumstances. As a rule a constant practice extending over many years, often over decades, is required. It must be admitted, however, that in new technical fields in which urgent need for a settlement calls for the immediate establishment of legal rules, short-term development of rules of customary law is not excluded. This might also apply to the régime on the continental shelf, since, as the result of technological development, the exploitation of the seabed, even at some distance from the shore, has been intensified in recent times, and a delimitation of submarine areas affording possibilities of exploitation has become increasingly urgent. For this reason the short time which has passed since the adoption of the principle of equidistance in the Continental Shelf Convention, in itself alone constitutes no argument against the development of customary law in this field. On the other hand consideration must be given to the following: the shorter the length of time in which a rule of customary law is said to have developed, the stricter are the requirements for consistency and uniformity of usage and for proof of an underlying legal conviction in support of this usage. It is not the length of time alone which is decisive, but rather the fact of whether or not during this time a specific usage, supported by legal conviction, can be proved. In this case such usage has been lacking. The few manifestations

in favour of the equidistance principle, which are, moreover, contested, certainly do not suffice for the development of customary law.

57. The cases in which States, which have not yet become parties to the Continental Shelf Convention, have relied on the principle of equidistance for the delimitation of their share of the continental shelf, or at least have in fact applied it, are very few indeed. It is significant that every one of them deals with coasts which lie opposite each other, where the median line is applied; in the establishment of lateral boundaries between adjacent States the principle of equidistance has not yet been applied—not even in the case of the North Sea to be dealt with below (paras. 58 to 60). As has been pointed out already, the median line does normally result in an equitable, if not equal division of the sea areas between two opposite coasts, provided no islands lying in between would considerably deflect the boundary line. The following cases may be mentioned:

(a) The Island of Malta Act of 28 July 1960 (Act No. XXXV to Make Provision as to the Exploration and Exploitation of the Continental Shelf) contains in its Section 2 the following provision:

> "... the boundary of the continental shelf shall be that determined by agreement between Malta and such other State ..., or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baselines" (Suppliment tal Gazetta tal Gvern ta' Malta, Nru 11, 922, 29 t' Iulju, 1966, Taqsima A,A 282).

(b) The Treaty between the Union of Soviet Socialist Republics and Finland of May 20, 1965, on the boundary of the territorial sea and the continental shelf in the Gulf of Finland. This treaty, in establishing the boundary near the coast (Article 1), where it may be regarded as a lateral boundary between adjacent States, does not follow the principle of equidistance. Only on its seaward extension where it becomes a boundary between two opposite coasts, it is based on the principle of the median line which is referred to in the treaty (Articles 2 and 3).

> Vedomosti Verchovnogo Sovieta Sojusa Sovietskich Sozialisticeskich Respublik, 1966, Art. 740; Finlands Författningssamling, Fördragsserie, 1966, No. 20, p. 122 to 125.

(c) The Protocol to the Treaty between the Kingdom of Denmark and the Federal Republic of Germany of 9 June 1965 (*supra* para. 12), after stating that divergent opinions exist concerning the principles for the delimitation of the continental shelf of the North Sea, lays down the following for the delimitation of the continental shelf in the *Baltic Sea*:

> "With respect to the continental shelf adjacent to the coasts of the Baltic Sea which are opposite each other, it is agreed that the median line shall be the boundary. Accordingly, both Contracting Parties declare that they will raise no basic objections to the other Contracting Party delimiting its part of the continental shelf of the Baltic Sea on the basis of the median line". (Federal Law Gazette of the Federal Republic of Germany, Part II, 1966, p. 207, translation from the German text).

These sporadic cases in which the principle of equidistance was applied, certainly do not suffice to prove its general recognition beyond the scope of Article 6 of the Continental Shelf Convention. The method of boundary drawing on the principle of the median line may have a certain chance of gaining gradually general recognition as a suitable method for a just and equitable apportionment of the continental shelf between opposite coasts, be-

cause it allocates equal parts to both States in normal geographical situations. The application of the equidistance method for the determination of lateral maritime boundaries between neighbouring States has, however, not yet been tried out at all.

C. The Application of the Equidistance Line in the North Sea

58. It is true that the equidistance method has been applied by several littoral States of the North Sea to delimit their share of the continental shelf, namely in the boundary treaties between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Norway of 10 March 1965 (*supra* para. 17), between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands of 6 October 1965 (*supra* para. 19), between the Kingdom of Denmark and the Kingdom of Norway of 8 December 1965 (*supra* para. 20), between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark of 3 March 1966 (*supra* para. 21), and between the Kingdom of Denmark and the Kingdom of the Netherlands of 31 March 1966 (*supra* para. 22). However, it should be pointed out that all the boundaries established by these treaties are median lines between coasts lying opposite to each other or, as in the Treaty between the Kingdom of Denmark and the Kingdom of the Netherlands of 31 March 1966, are at least considered as such; no lateral equidistance boundary between neighbouring States has been established as yet. These treaties demonstrate that the States concerned recognized the median line as an equitable and therefore appropriate standard for the apportionment of the submarine areas between their opposite coasts. They might therefore, at the utmost, be regarded as contributing to the general recognition of the equidistance method for the drawing of maritime boundaries between opposite coasts. These treaties, however, contribute nothing to a general recognition of the equidistance method in other geographical situations.

59. Nor can it be asserted that, by virtue of the boundary treaties concluded between the littoral States of the North Sea, the equidistance method has been promoted to the status of a rule of regional customary law valid for the North Sea. This is precluded by the fact that France, in her reservation to Article 6 of the Continental Shelf Convention, expressly excluded the equidistance method for the drawing of boundaries in the North Sea (*supra* para. 55), and the Federal Republic of Germany has from the beginning opposed the claims of the Kingdom of Denmark and the Kingdom of the Netherlands to an equidistance boundary. No regional customary law on the basic principles governing the apportionment of submarine areas of the North Sea between the littoral States can be established without the concurrence of France and Germany. The opposition of a State which has a direct interest in the matter or would be affected by the alleged rule, prevents the development of such a rule of customary law.

> I.C.J., *Anglo-Norwegian Fisheries case*, Reports 1951, p. 131: "In these circumstances the Court deems it necessary to point out that although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law."

60. Finally it cannot be contended that the treaties establishing partial boundaries between the Kingdom of the Netherlands and the Federal Republic

of Germany of 1 December 1964 (*supra* para. 16) and between the Kingdom of Denmark and the Federal Republic of Germany of 9 June 1965 (*supra* para. 18) have created precedents for the recognition of the equidistance method in the North Sea. It is true that in the treaty between Germany and the Netherlands the boundary line, to some extent, follows in fact the equidistance line, without however referring to the equidistance method, and that the seaward terminus of the German-Danish partial boundary is equidistant from the German and the Danish coasts. These boundaries, however, had been agreed upon only because both sides were interested in a speedy determination of the boundary, and because the boundary line, even if it in fact followed the equidistant line to some extent in the vicinity of the coast, was not considered inequitable. The Federal Republic of Germany stated clearly when signing the treaties that it did not recognize the equidistance method as determining the extended seaward course of the boundaries in the North Sea (*supra* para. 16 and para. 18). These treaties cannot, therefore, be invoked against the Federal Republic of Germany as precedents for the application of the principle of equidistance in the apportionment of the North Sea.

61. It can also not be asserted that the provision contained in Article 6 of the Continental Shelf Convention has become general international law for the reason that the exclusive rights of the coastal State over the continental shelf lying adjacent to its coasts specified in Articles 1 to 3 are today generally recognized also beyond the scope of application of the Convention. If it is established that the basic principles of a multilateral convention are already generally recognized as customary law beyond the scope of their applicability as treaty law, the question arises whether the same must apply to other provisions contained in the convention. The reply to this question depends upon whether or not these other provisions are bound up so insolubly with the basic principles, that the convention would not be capable of application or implementation without them. Only if it were impossible to apportion the continental shelf among the coastal States in an equitable and practicable way without the application of the equidistance method, it could perhaps be asserted that the customary law character or Articles 1 to 3 of the Continental Shelf Convention must extend also to Article 6. That is certainly not the case. It is true that a necessary, logical consequence of the recognition of the right of the coastal State over the continental shelf is that, in the case of conflicting claims of several coastal States adjacent to the same continental shelf, an apportionment must be made between them, and that the international legal order must provide methods and standards for the apportionment. There is, however, no cogent reason that this apportionment must be made according to the equidistance method. The drafting of Article 6 shows that the equidistance method was only one method among others of attaining a just and equitable apportionment, and that the objections against making the equidistance method the exclusive rule were so strong that the equidistance method was adopted only under the condition that it would not apply in the presence of any "special circumstances". The apportionment of a continental shelf shared by several States has not been made easier by Article 6. Even when Article 6 is applied, the question remains open whether the equidistance method is suitable or whether in a concrete case "special circumstances" exist which would justify another boundary line.

62. From the arguments put forward in paragraphs 46 to 61 it follows that *the so-called principle of equidistance is not a rule of customary international law determining the delimitation of the continental shelf and is therefore not applicable as such between the Parties.*

Section V. The Scope of Application of the Equidistance Line

A. The Shortcomings of the Equidistance Line

63. The Federal Republic of Germany does not wish to deny the equidistance method any value whatsoever for the apportionment of submarine areas. Even if it cannot be recognized as the primary method prescribed by international law for the delimitation of the continental shelf, it may produce an equitable and appropriate boundary line under normal geographical circumstances. This applies in particular to the drawing of a boundary line between two opposite coasts (as a median line) and to the drawing of a boundary near the coast (as a lateral boundary in the territorial sea). In such cases the Federal Republic has not in principle opposed the application of the principle of equidistance (vide *supra* paras. 16, 18, 57, 60). The equidistance method is, however, not suitable for effecting an equitable apportionment of larger submarine areas because, as set forth above (paras. 43 et seq.), it lends disproportionate significance to special configurations of the coast. For this reason the limits of application of the equidistance method are to be demonstrated in detail in the following.

64. It may be recalled that the equidistance method was envisaged first and foremost for the delimitation of the territorial sea and was developed out of the generally recognized method of determining the seaward limit of the territorial sea (cf. *supra* paras. 45, 49). This is shown by a comparison with Article 6 of the 1958 Convention on the Territorial Sea, which determines the outer limit of the territorial sea according to a similar method of equidistance:

> "The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea."

The meeting point of the outer limits of the territorial seas of two adjacent States thus determined is, provided the territorial seas are of the same breadth, a geometrical point of equidistance because it is equidistant from the nearest points of the coasts of the two States.

The equidistance line is indeed pertinent to the delimitation of the territorial sea between two adjacent States. An important factor to the coastal State for the exercise of its rights over the territorial sea is the possibility of control from the coast. Thus the distance from the nearest points on the coast is a sound and—looked at from the point of view of control over the territorial sea—an indispensable criterion for the apportionment of the territorial waters. The weight of this factor as a rule justifies the application of equidistance lines. The fact that the equidistance line has a far wider scope of application in the delimitation of territorial waters than in the delimitation of continental shelf areas was recognized at the Geneva Conference on the Law of the Sea through the different wording of Article 12 of the Convention on the Territorial Sea and Article 6 of the Convention on the Continental Shelf: whereas in the case of delimitation of the territorial sea the equidistance method does not apply only—

> "... where it is *necessary* by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision" (italics added),

in the case of delimitation of the continental shelf the equidistance method does not apply already where—

"... another boundary line is *justified by special circumstances* ..." (italics added).

Whereas the equidistance line is looked upon as the most suitable method for the delimitation of the territorial sea, to be deviated from only for cogent reasons, in the delimitation of the continental shelf the cases in which boundary lines based on other principles of delimitation are justified, are considered as far more frequent alternatives. The difference in the wording of the two provisions has an important bearing on the interpretation of Article 6 (vide *infra* para. 68).

65. The generally recognized exclusive rights of the coastal State over continental shelf areas before its coast do not necessarily imply a certain mode of the delimitation of the areas under control, neither by their very nature nor by the force of juridical logic. The rights over the continental shelf imply a certain spatial extension of the areas under control into the high sea, but by no means provide any rule for their lateral delimitation. The continental shelf under the North Sea is common to all the coastal States surrounding it. The degree to which it "appertains" to each of them cannot be deduced from the legal character of the rights every coastal State may claim over the continental shelf before its coast. With respect to the part of the Doggerbank situated in the middle of the North Sea, for instance, no single one of all the littoral States may be regarded as the State to which this shelf area "appertains" incontestably, unless slight differences in distance—some nautical miles in this case—are taken as the sole factor for allocating this area to one of these States.

Kelsen in "Rechtsfragen der internationalen Organisation", Festschrift für Hans Wehberg, 1955, p. 203, criticises sarcastically the point of view that contiguity should be regarded as the underlying principle of the rights of a coastal State to the continental shelf: ... "the continental shelf of one state is almost always contiguous to the continental shelf of another state".

66. The equidistance method as developed by geographers has introduced the distance from the nearest point on each of the two coasts as the sole and decisive criterion for the attribution of a submarine area to one coastal State or another, without regard to the fact whether projecting sandbanks, headlands, capes, uninhabited promontories, harbourless islands, or densely inhabited stretches of coasts with plenty of harbours are involved. Salient parts of the coast are given predominant influence on the direction of the boundary, bays and gulfs are neglected. "Contiguity" as justification for the claim of a coastal State to the continental shelf before its coast can, however, not be interpreted exclusively as geographical nearness to individual points on the coast. The idea of "contiguity" to which also those appeal who adhere to the principle of equidistance, is in itself sound. "La terre domine la mer" is a fundamental principle of maritime law. In the *Fisheries case* between Great Britain and Norway the International Court of Justice ruled:

I.C.J., Reports 1951, p. 133: "C'est la terre qui confère à l'Etat riverain un droit sur les eaux qui baignent ses côtes."

If under the legal concept of "contiguity" not only the propinquity to the coast in general, but also the propinquity to the nearest point on the coast is understood, this may be justified in situations in which—as in the case of control over the territorial sea—the decisive factor is the actual distance from the nearest land in a certain situation (e.g., the position of a ship). There is no justification, however, for such an exclusive reference to single points on the

coast if the apportionment of large submarine areas at greater distance from the coast is involved. From the point of view of exploitation and control of such submarine areas, the decisive factor is not the nearest point on the coast, but the nearest coastal area or port from which exploitation of the sea-bed and subsoil can be effected. The distance of an oil, gas or mineral deposit from the nearest point on the coast is irrelevant for practical purposes, even for the laying of a pipeline, if this point on the coast does not offer any possibilities for setting up a supply base for establishing a drilling station or for the landing of the extracted product. A better criterion for the apportionment of shelf areas would be to understand "contiguity" in a larger sense; the geographical relation to the coast of a State as a whole, and not to one single point, should be the basis of apportionment. To make the delimitation of the continental shelf more than necessary dependent on the coastal contours (vide *supra* paras. 43 et seq.) would be a departure from the geographical basis underlying the legal title of the coastal State to the continental shelf before its coast, namely the continuance of its territories into the sea. On the contrary, the tectonic-geographical connection between land and shelf should be an argument in favour of the thesis that special configurations of the coast should have no influence on the apportionment of a common continental shelf between the adjacent States.

67. The limits and shortcomings of the equidistance method become particularly apparent when larger maritime areas have to be divided up between adjacent States. This does not apply so much to the median line apportioning maritime areas between two coasts lying opposite each other; here the median line drawn in application of the equidistance method does, as a rule—if no islands have to be taken into consideration—provide an appropriate division into equally large areas. The construction of lateral boundaries between adjacent States by the equidistance method, on the other hand, tends to produce distortions and unfair results. The diversion of the equidistance line from the (originally intended) perpendicular to the coast, caused by projecting or salient parts of the coast of one of the two States, results in areas of the shelf being allotted to that State to whose coast they cannot be considered, in an unprejudiced view, as being adjacent. The effects of a diversion of the equidistance line become magnified the further they are extended seawards. Should, by reason of irregular coastal configuration, lateral shelf boundaries have to be extended far into the open sea, the construction might well produce bizarre results, which must be regarded as inequitable. The aim of the equidistance method, to effect a just and equitable apportionment of maritime areas, would thereby be completely reversed; *cessante ratione, cessat ipsa lex.*

> cf. McDougal-Burke, op. cit., p. 429: "The difficulty with a general principle of this sort, however, is that it is composed entirely of reference to abstract distances and geometric conditions which may not, in the concrete case, accord with the functions and uses of the water areas being delimited and may not, therefore, constitute a solution which satisfactorily takes into account the real, and perhaps different, interests of the states concerned."

That the authors of Article 6 of the Geneva Convention on the Continental Shelf did not pay more consideration to these effects may partly be due to the fact that at that time the technical possibilities of drilling at great distances from the coast were not so far developed. It was indeed pointed out during the discussions in the International Law Commission that the delimitation of the continental shelf must be judged differently from the delimitation of the territorial sea and the contiguous zone. The member of the Commission *Sh. Hsu* drew attention to this—

"... the question was whether it was equitable to extend seawards the dividing-line between the territorial waters, since that line would vary according to the configuration of the coast. The dividing-line would be relatively unimportant in the case of territorial waters, which were a narrow belt, but might take on great significance and cause injustice if applied to continental shelves which were sometimes of considerable extent" (Yearbook of the International Law Commission, 1951, I, p. 288).

However, the members of the International Law Commission and the delegates of the States present at the Geneva Conference on the Law of the Sea were obviously more concerned with finding a practicable solution for the drawing of boundaries in areas near the coast. Here the equidistance line normally succeeds in producing just and equitable boundaries.

The fact that the equidistance method is unsuitable for the apportionment of extensive sea areas far from the coast has become obvious since exploitation of the seabed at greater depths and at greater distances from the coast calls for a legal settlement. The diagram figure 15 (pages 66, 67), showing an apportionment of the North Atlantic on the lines of equidistance, makes clear how grotesque the prospects for the future would be should the equidistance method be applied to such a situation: Canada, Greenland, Iceland, Ireland, and Portugal would, by virtue of their projecting position, exclude the other littoral States from the northern part of the ocean; relatively unimportant groups of islands would attract enormous sea areas. This hypothesis shows that the basis upon which the equidistance method rests must be reconsidered, and that the limits of the applicability of the equidistance method must be clearly realized.

B. The "Special Circumstances" in Article 6 of the Continental Shelf Convention

68. The authors of the Continental Shelf Convention were indeed not unaware of the fact that the equidistance method has only a limited scope of application. Article 6 of the Convention (text *supra* para. 52) provides that the equidistance line applies only if no agreement on the appropriate delimitation of the continental shelf is reached between the States concerned in the concrete case and if there are no "special circumstances" present which would justify another boundary line. This formula contained in Article 6 limits the scope of application of the equidistance method considerably and confirms the opinion put forward above (*supra* para. 63) that the equidistance method is applicable only to the extent that, and as long as, it is suitable to assure a just and equitable apportionment of the continental shelf areas between the States concerned. It has been suggested that the exclusion of the equidistance method in cases where "special circumstances" are present, should be interpreted as a narrow exception from the rule, as if the real meaning of Article 6 was that the equidistance line could be discarded only in cases where exceptional circumstances required it. Such a restrictive interpretation is not in harmony with Article 6 as it stands, neither with its wording nor with its history or purpose.

69. The reservation that "special circumstances" might call for a different method of delimitation of the continental shelf had been formulated by the International Law Commission in its 1953 Session. In view of the objections against the general applicability of the equidistance method, the Rapporteur *François* at first suggested that the equidistance method should be prescribed only "as a general rule", which should be departed from if necessary. He substantiated this with the following example:

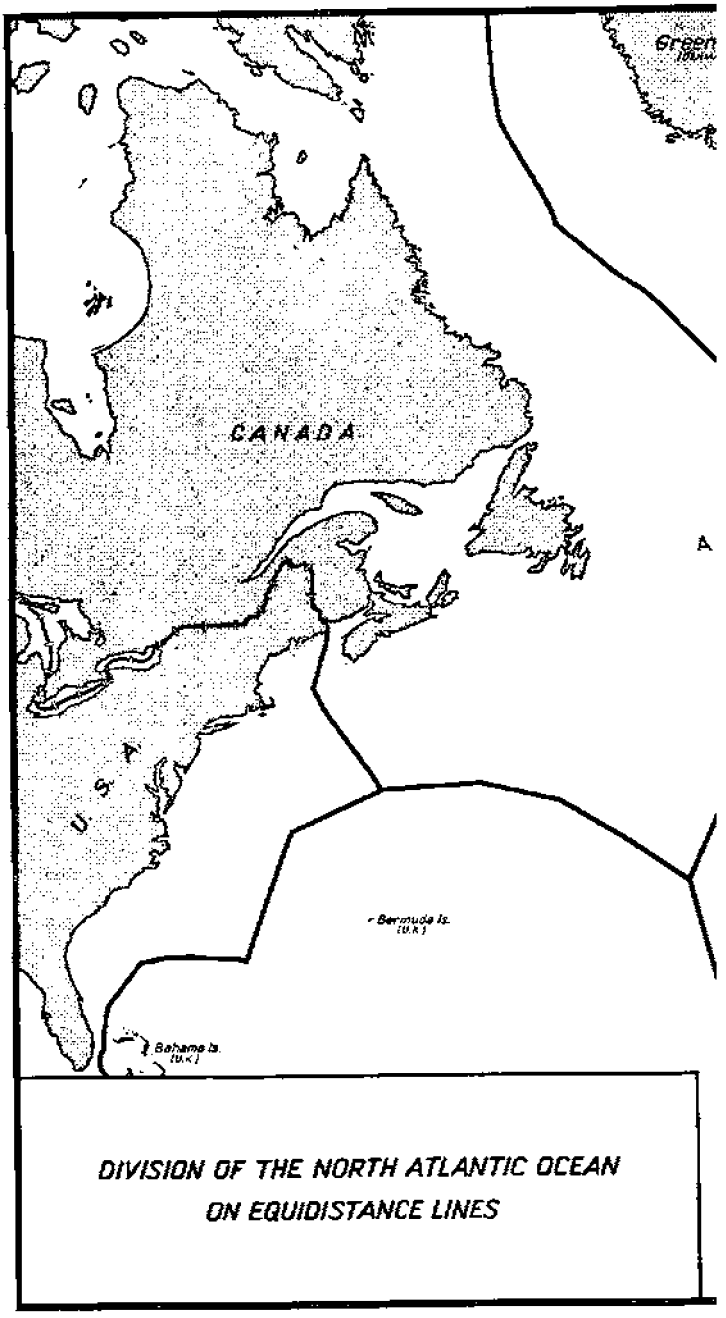
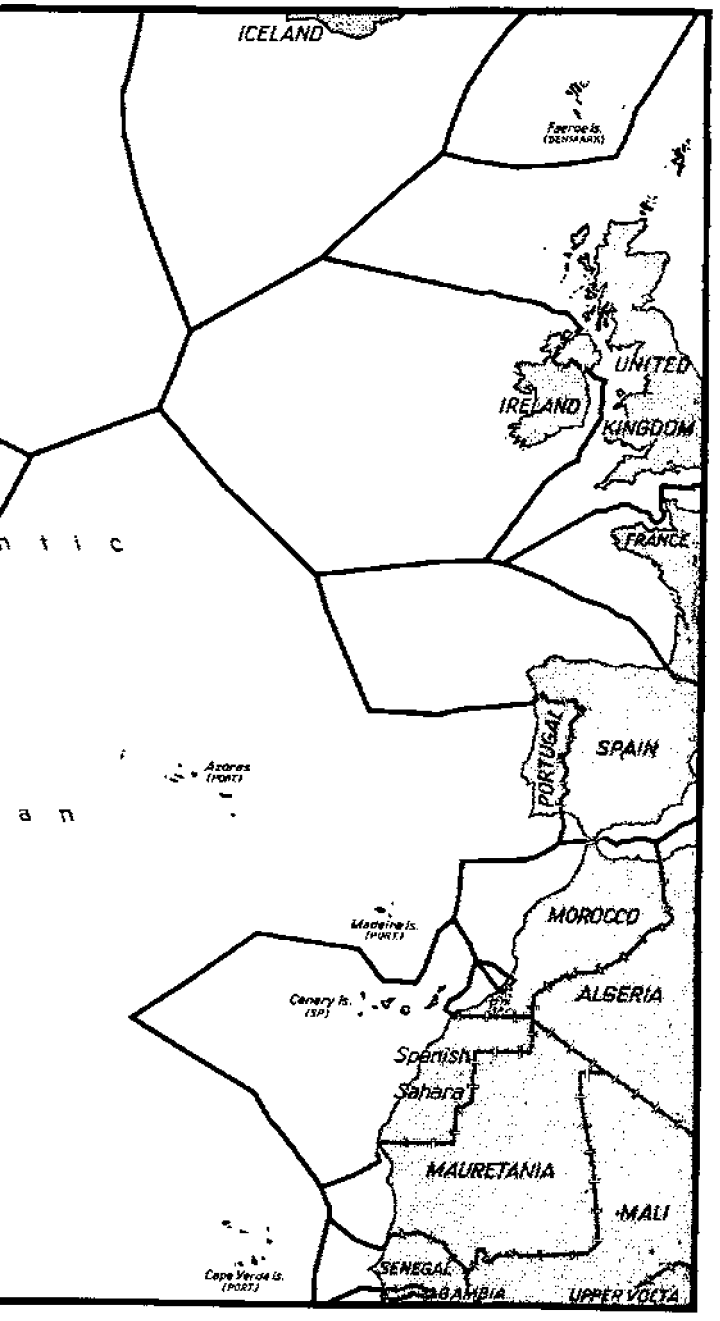

CANADA
U S A
Bermuda Is. (U.K.)
Bahama Is. (U.K.)
DIVISION OF THE NORTH ATLANTIC OCEAN
ON EQUIDISTANCE LINES

Figure 15


ICELAND
Faeroe Is. (DENMARK)
UNITED KINGDOM
IRELAND
FRANCE
SPAIN
PORTUGAL
Azores (PORT.)
Madeira Is. (PORT.)
MOROCCO
Canary Is. (SP.)
ALGERIA
Spanish Sahara
MAURETANIA
MALI
SENEGAL
GAMBIA
UPPER VOLTA
Cape Verde Is. (PORT.)

> "There were cases, however, where a departure from the general rule was necessary in fixing boundaries across the continental shelf; for example, where a small island opposite one State's coast belonged to another, the continental shelf surrounding that island must also belong to the second State. A general rule was necessary, but it was also necessary to provide for exceptions to it" (Yearbook of the International Law Commission, 1953, Vol. I, p. 128).

Since the wording "as a general rule" appeared not sufficiently clear as a legal term to some members of the International Law Commission, it was replaced at the suggestion of *Spiropoulos* by the wording:

> ". . . unless another delimitation is justified by special circumstances . . ." (*ibid.*, p. 130-133).

The discussion on the reservation of "special circumstances" showed that this clause was understood not so much as a limited exception to a generally applicable rule, but more in the sense of an alternative of equal rank to the equidistance method. The wide field of application which was ascribed to this alternative may be gathered from a remark by *G. Amado*, Vice-Chairman of the Commission and Chairman of the meeting, that this wording laid more emphasis on the exception than on the rule—

> ". . . that the formula proposed by Mr. Sandström and Mr. Spiropoulos stressed the exceptions rather than the rule. He hoped, therefore, that the Special Rapporteur would accept that formula which was preferable to the bald expression 'as a rule'" (*ibid.*, p. 133).

This is also confirmed by the commentary which the International Law Commission added to Art. 72 of its draft (subsequently Article 6 of the Continental Shelf Convention):

> "provision must be made for departures" (i.e., from the equidistance line) "necessitated by any exceptional configuration of the coast, as well as by the presence of islands or of navigable channels. This case may arise fairly often, so that the rule adopted is fairly elastic" (Yearbook of the International Law Commission, 1956, II, p. 300).

Attempts made at the Geneva Conference on the Law of the Sea again to strike out the alternative of "special circumstances" and to make the equidistance method the only rule, were rejected by a large majority. This was rightly done because the arrangements under discussion dealt with novel institutions, the pattern of which must be kept flexible, in order not to anticipate its further development and its interpretation by international jurisdiction.

The difference in the wording of Article 6 of the Continental Shelf Convention on the one hand and of the corresponding Article 12 of the Territorial Sea Convention on the other, which has already been referred to above (*supra* para. 64), confirms the intention of the States concluding the Convention to concede a wider field of application to "special circumstances" in the drawing of boundaries across the continental shelf than in the drawing of boundaries in the territorial sea.

70. "Special circumstances" are always present should the situation display not inconsiderable divergencies from the normal case. The normal case, in which the application of the equidistance method leads to a just and equitable

apportionment, is a more or less straight coastline, so that the areas of the shelf apportioned through the equidistance boundary more or less correspond to the shorelines (*façades*) of the adjacent States. Should this not be the case, and should therefore no equitable and appropriate solution result, the clause of the "special circumstances" applies. This interpretation is in line not only with the Commentary of the International Law Commission cited above (para. 69), but also with the opinions expressed in the literature on the applicability of the equidistance method. In addition to special situations of a technical nature—such as navigable channels, cables, safety or defence requirements, protection of fisheries (fish banks), indivisible deposits of mineral oil or natural gas—special geographical situations such as special coastal configurations have, above all, been regarded as "special circumstances" within the meaning of Article 6:

Sir Hersch Lauterpacht, loc. cit., p. 410: "The problems involved may become particularly complicated if islands belonging to one state are situated within the area of the continental shelf . . . of another state . . . A further technical problem of considerable potential importance and complexity, requiring adjustment and regulation, will arise in connexion with the existence of pools of deposits situated across the surface boundaries of the respective submarine areas."

M. W. Mouton, "The Continental Shelf", Recueil des Cours, Vol. 85 (1954 I) p. 420: "It is stipulated that this rule is applicable in the absence of agreement between the States concerned and unless another boundary line is justified by special circumstances. The modifications to the general rule are allowed either because the exceptional configuration of the coasts, the presence of islands or navigable channels necessitate departure from these rules, or because of the existence of common deposits situated across the mathematical boundary."

Colombos, The International Law of the Sea, 1959, p. 70: "The rule, however, admits of some elasticity in the case of islands or navigable channels as well as in the case of an exceptional configuration of the coast."

de Ferron, op. cit. Vol. II p. 202: "L'article 6 de la Convention de Genève stipule en effet qu'elles" (i.e., the median line and the lateral equidistance line) "peuvent être modifiées d'un commun accord entre les Etats intéressés, dans le cas où 'des circonstances spéciales justifient une autre délimitation', par exemple lorsque la configuration exceptionnelle de la côte ou la présence d'îles ou de chenaux navigables l'exigent. Les règles adoptées par la Conférence de Genève sont donc assez souples pour permettre une solution équitable dans tous les cas."

Padwa, loc. cit. p. 645: "It is conceivable that the doctrine of special circumstances may be invoked in still another context, which relates to the geography of the resources. Thus, for example, an oil pool might be divided by a line based on the principle of equidistance. . . . While the presence of various exceptional issues may give rise to an allegation of special circumstances, the doctrine is most likely to be invoked with respect to certain purely geographical conditions affecting the measurement of the line of equidistance" (the author continues discussing geographical features in detail, such as peninsulas, capes, artificial harbourworks, islands; cf. p. 645-651).

Shalowitz, op. cit. Vol. I, 1962, p. 232 footnote 55: "Exceptional configurations of a coast, the presence of islands, the existence of special mineral or fishery rights in one of the States, or the presence of a navigable

channel are among the special circumstances which might justify a deviation from the median line".

McDougal/Burke, op. cit. p. 436, 437: "It was admitted during Committee discussion that no definition for it" (i.e., the special circumstances) "could be given, but that certain 'special circumstances' were readily identifiable, including the location of the navigable channel and the complication occasioned by small islands in the vicinity of the two states".

Shigeru Oda, International Control of Sea Resources, 1963, p. 168: "... some additional situations constituting 'special circumstances': the geological structure of submarine areas and the geographical or economic situation of each coastal area".

71. A recognized case of "special circumstances" is the presence of *islands* in the area under division. Already in the discussions of the Geneva Conference on the Law of the Sea the question of islands was raised without any result.

United Nations Conference on the Law of the Sea, Off. Rec., Vol. VI, Fourth Committee, p. 93-95; cf. in particular the remarks by the British delegate *Kennedy* (p. 93), the Swedish delegate *Gihl* (p. 94), and the American delegate Miss *Whiteman* (p. 95). The British delegate Miss *Gutteridge* described the problem in her report on the Geneva Conference on the Law of the Sea as follows:

"There is also some obscurity in Article 6 of the Convention as to what is meant by 'special circumstances'. One clear example of 'special circumstances' is, however, the presence of islands.

Where the continental shelf underlies an area of shallow sea, such as the Persian Gulf, which has many islands and is surrounded by the coasts of opposite or adjacent States, the drawing of the boundary on the strict principle of the median line could, it is clear, result in many curious and inequitable deflections of the median line. There may, for instance, be a very small island which lies approximately in the middle of the shallow sea; or there may be islands which are so close to the mainland as to be justifiably considered part of the mainland for the purposes of working out the boundary of the continental shelf. Again there may be islands which although near the coast of State A are under the sovereignty of State B. All these circumstances not only show the difficulty of a uniform application of the median line principle, but also explain why the 1958 Geneva Conference found itself unable (as did the International Law Commission in its draft Articles) to include in the Convention any specific provisions about the effect of the presence of islands on the delimitation of the boundaries of the continental shelf." (J.A.C. *Gutteridge*, "The 1958 Geneva Convention on the Continental Shelf", The British Yearbook of International Law, XXXV (1959) p. 102 ff., 120).

States have already relied on the presence of islands as a ground for invoking the clause of "special circumstances". Thus *Venezuela*, when signing the Continental Shelf Convention, declared in her reservation to Article 6 that in the Gulf of Paria, in the contiguous zone between the coast of Venezuela and the Netherlands island of Aruba, and in the Gulf of Venezuela, "special circumstances" in the sense of Article 6 existed. *France* also, when acceding to the Convention on 14 July 1965, declared in her reservation to Article 6 that "special circumstances" existed in the Gulf of Gascony, the Straits of Dover, in the North Sea before the French coast, as well as in the Bay of Granville. Other States have hesitated to ratify or to accede to the Convention,

obviously on account of the still unresolved problem how islands should be treated in the delimitation of the continental shelf. In the literature on the subject, therefore, islands are treated as a typical, but also as a most important and complicated case for the application of the reservation on "special circumstances".

Sir Hersch Lauterpacht, loc. cit., p. 410;
Nic. Mateesco, Vers un nouveau droit international de la mer, Paris 1950, p. 137;
Mouton, loc. cit., p. 420;
Oda, op. cit., p. 168;
de Ferron, op. cit., p. 201;
Anninos, op. cit., p. 95-97.

If islands are taken as bases for drawing boundaries according to the equidistance method, regardless of their position, size or importance, very peculiar results may emerge, in particular when it is a small, unimportant island without harbours, which is not even suitable as a base for the exploitation of the surrounding continental shelf. The presence of islands may cause enormous dislocations in the apportionment of shelf areas and reduce the equidistance method *ad absurdum*.

The Argentine delegate R. *Moreno* referred in the Fourth Committee of the Conference on the Law of the Sea 1958 to the case of the small island St. Helena in the Atlantic off the west coast of Africa:
"... Presumably, the intention was not, by drawing the median line between that island and the African coast, to grant rights over enormous stretches of ocean to what was a mere pinpoint in the Atlantic" (United Nations Conference on the Law of the Sea, Official Records, Vol. VI, p. 95).

Attempts to arrive at equitable solutions here have given preference to a division into equal areas over the criterion of equidistance. In order to exclude small islands from consideration or at least reduce the continental shelf areas attracted by them under Article 1 of the Continental Shelf Convention, it has been suggested

Padwa, loc. cit., p. 648-650, referring to similar proposals made by *Boggs*, American Journal of International Law, Vol. 45 (1951) p. 257-259.

that islands should be treated like enclaves with separate continental shelf areas proportional to their size, thereby leaving the division of the area between opposite coasts into equal parts by means of the median line unaffected.

72. Another typical category of special coastal configuration under the heading of "special circumstances" are *gulfs, bays, and shallow seas* surrounded by land. The fact that these geographical situations call for special solutions, in order to arrive at an equitable apportionment of the joint seabed and subsoil of such waters, has been recognized in the literature on the subject at an early date:

Richard Young, American Journal of International Law, Vol. 45 (1951), p. 236/237: "Submarine areas in shallow seas or gulfs—such as the Baltic, the Persian Gulf, and the Gulf of Paria—present perhaps the most difficult situation of all. In addition to due regard for the interests of adjoining states lying along the same coast, the interests of all states facing on such a body of water must be taken into account. In the absence of any large area lying

beyond the 100-fathom line—such as is found in the narrow but deep Red Sea—the entire bed and subsoil must be divided equitably among the littoral states" (p. 236).

"The lines of division in such cases must almost inevitably be artificial in character, resulting from negotiation and agreement among the interested governments, and it seems difficult to lay down in advance any principles of general application. The chief precedent for such an agreed settlement is the British-Venezuelan Treaty on the Gulf of Paria; analogies of value may also be found in treaties establishing water boundaries, such as those dealing with the Great Lakes. Numerous problems can be envisaged, such as that of providing fair shares both for an island state and for a mainland state whose coast it masks. These will tax the resourcefulness of diplomats, lawyers, geographers, and engineers, yet none is insoluble if the pressure for settlement is great enough. The situation in a gulf or shallow sea is, indeed, only the most complex among many problems of delimiting and demarcating boundaries for submarine areas; these will call for the careful considerations of geographers and technical experts" (p. 237).

If in case of gulfs, bays, or other major indentations of the coastline, one or even both seaward sides belong to a neighbour State, the geographical situation corresponds to the problem of islands which lie before the coast, but belong to another State. In both cases the drawing of a boundary line in application of the equidistance method must, by geometrical necessity, cut off the State from the sea. As shown above (*supra* paras. 43 et seq.) projecting parts of the coastline of the neighbour State affect the direction of the equidistance line considerably; the further the equidistance line is drawn into the sea, the greater is the effect of this deviation upon the allocation of submarine areas before the coast. The following diagram (figure 16) illustrates how markedly a projecting

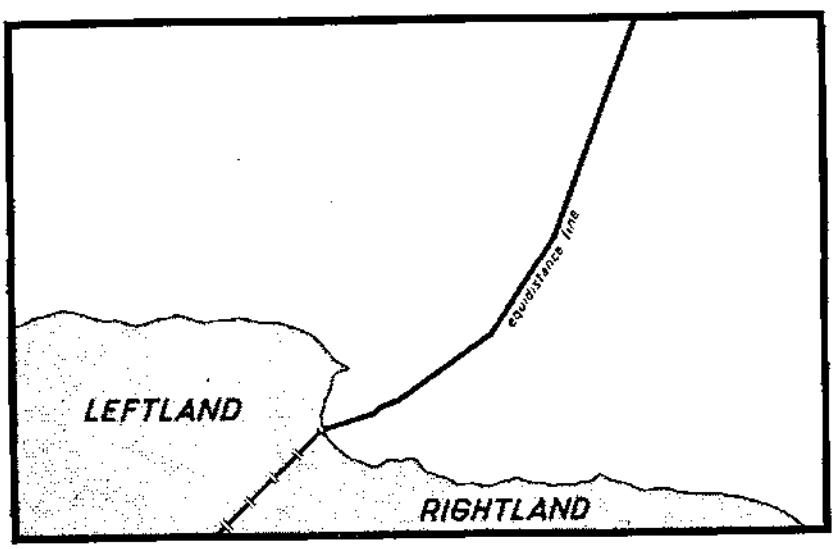


Figure 16

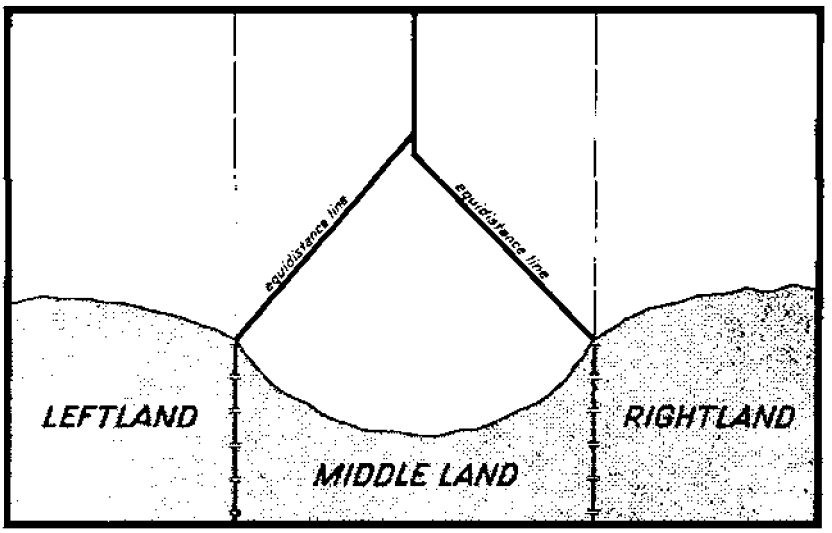


Figure 17

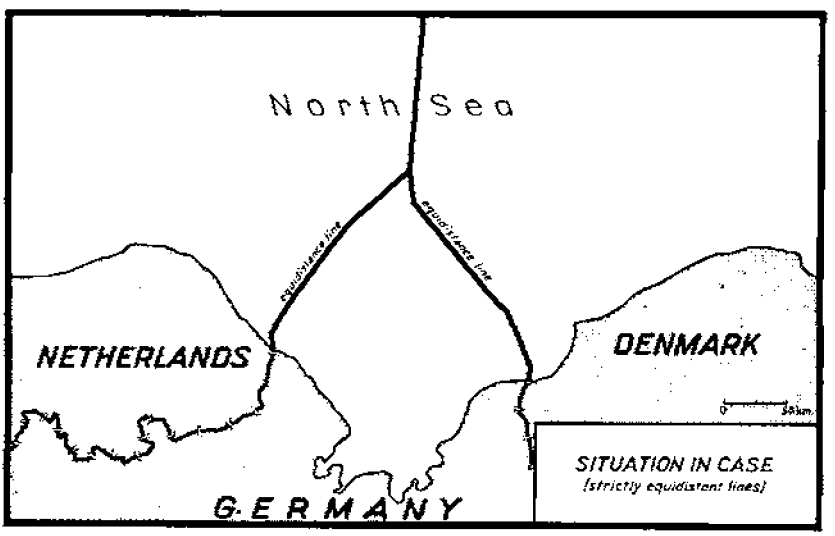


Figure 18

part of the coast of a neighbour State influences the course of an equidistance line drawn into the sea even at a greater distance from the coast.

The enclosure of the coast of a State by projected parts of the coasts of the two neighbour States to the left and to the right has a cumulative geometric effect; at a relatively short distance from the coast the two equidistance lines intersect, thereby cutting off the inside coast from the high sea. The diagrams (figures 17, 18, page 73) demonstrate this geometrical consequence very clearly. Figure 18 shows the situation of the North Sea coast contours, simplified to the baseline of the territorial sea, where the German part is flanked on the one side by the West Frisian Islands of the Netherlands coast, and on the other side by the Danish coast of Jutland. It is obvious that a division of the submarine areas between the three States made on these lines cannot be considered as an equitable result. Geographical situations of such a kind, affecting the course of the equidistance line to such an extent, represent a special configuration of the coast which excludes the application of the equidistance method.

73. The foregoing analysis of the scope of application of the equidistance method (*supra* paras. 63-72) has shown that this method is not generally applicable. The so-called principle of equidistance is not a rule of international law, but merely a geometrical construction which, under normal geographical situations, may lead to a just and equitable apportionment of the continental shelf, but may also, under other geographical conditions, produce unjust and inequitable results. Before applying the equidistance method, therefore, an investigation ought first to be made whether or not, under the given geographical conditions, it is likely to lead to a just and equitable apportionment of the submarine areas between the States concerned. This is more frequently the case with the median line, and less so with the lateral equidistance line, especially if the boundary extends farther into the sea and submarine areas at a greater distance from the coast have to be apportioned. This explains why "special circumstances" are accorded different treatment in Article 12 of the Convention on the Territorial Sea compared with Article 6 of the Convention on the Continental Shelf. Article 12 of the Convention on the Territorial Sea envisages a wide scope of application of the equidistance method in the delimitation of the territorial sea, that is, near the coast (cf. *supra* para. 64). Article 6 of the Continental Shelf Convention, on the other hand, excludes the equidistance method already if "another boundary is justified by special circumstances"; according to the interpretation put forward here this is always the case should the application of the equidistance method not lead to a just and equitable apportionment (*supra* paras. 66 et seq.).

Section VI. Conclusions

74. In view of the arguments put forward in paragraphs 39 to 73 the following conclusions regarding the delimitation of the continental shelf between the Parties in the North Sea are respectfully submitted:

I. *The method of determining boundaries of the continental shelf in such a way that every point of the boundary is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured (equidistance method), is not a rule of customary international law and is therefore not applicable as such between the Parties.*

II. *The equidistance method cannot be employed for the delimitation of the continental shelf unless it is established by agreement, arbitration, or otherwise, that it will achieve a just and equitable apportionment of the continental shelf among the States concerned.*

CHAPTER III

THE SPECIAL CASE OF THE NORTH SEA

75. It has already been pointed out (*supra* para. 8) that the North Sea represents a special case: it is a shallow sea surrounded by several coastal States; because of its shallowness it overlies a single continental shelf which must be apportioned among the coastal States. An equitable apportionment of such a well enclosed sea cannot be achieved by separately drawing bilateral boundaries between each pair of adjacent or opposite coastal States as an isolated act; the apportionment rather must be considered as a joint concern of all the coastal States and should be effectuated according to a uniform standard which will assure each coastal State a just and equitable share. The most appropriate procedure to achieve a generally acceptable apportionment would be a multilateral agreement between all the North Sea States. To this purpose a conference of all North Sea States was suggested by the Federal Republic of Germany during the negotiations with its neighbours; unfortunately the suggestion met with no response.

Section I. Criteria for a Just and Equitable Apportionment of the Continental Shelf in the North Sea

76. The Kingdom of Denmark and the Kingdom of the Netherlands are apparently of the opinion that the equidistance method is properly applied here not only because it must be regarded as a rule of general international law, but also because it would lead to an equitable apportionment of the North Sea. The fact that the utilization of the equidistance method does not necessarily lead to an equitable apportionment of large maritime areas has already, we believe, been sufficiently demonstrated (*supra* para. 67). The shortcoming of the method applies especially to lateral boundaries, where it brings about results the doubtfulness and arbitrariness of which increases directly with the distance from the coast.

The equidistance method is suitable for the drawing of boundaries, if at all, only to the extent that it leads to an equitable apportionment of the North Sea continental shelf among the coastal States. This raises the question of what constitutes an "equitable" apportionment of the seabed and subsoil of the North Sea under the given circumstances.

A. The Apportionment of the Seabed and Subsoil of a Shallow Sea Surrounded by Several States

77. The just and equitable apportionment of the seabed and subsoil of a shallow sea which may be considered as a common continental shelf of all adjacent States is a special problem totally different from that of dividing the waters of the territorial sea or of the contiguous zone between two adjacent States. In the latter case the crucial point is not the apportioning of large areas of water, but the establishing of a practicable boundary commensurate to the needs of control of the territorial sea and the contiguous zone. In apportioning a common continental shelf over which all the coastal States can equally claim rights under the principle of contiguity, the primary issue is to assure that each of the States concerned should receive a just and equitable share of that conti-

nental shelf. It is not the course of the boundary line to which the standard of equity is to be applied, but rather the size of the share to be apportioned to each of the States concerned. What must be considered, therefore, are the criteria by which the share of each coastal State should be measured.

B. Factors Determining the Share of Each Adjacent State

(a) The Geographical Factor

78. The coastal State's privilege of exploiting adjacent submarine areas rests upon the geographical-geological connection of these areas with the coast. Therefore, the degree of the natural connection of the land territory with the submarine areas adjoining the coast should be regarded as the decisive factor in measuring the share of each of the States which surround a shallow sea. In the case of the North Sea this would mean that the share of each coastal State should be measured by the length of its North Sea coastline. The length of the coastline was mentioned in the relevant literature at an early date as a decisive factor, particularly in the apportionment of well enclosed seas among several coastal States.

> *F.A.V.* (Vallat), loc. cit., p. 333 et seq., p. 335-336: "... Where a large bay or gulf is bounded by several States the problem is more complicated. Perhaps the most equitable solution would be to divide the submarine area outside territorial waters among the contiguous States in proportion to the length of their coastlines. Even if this were adopted as a basis, it would not provide the necessary boundaries. It would probably not be possible to draw these according to any simple geometric rule. The mere seaward extension of the land boundaries certainly would not do. A more satisfactory method would be to take a point or a line, the position of which could be calculated to give the desired division of area, and to draw the boundaries of the submarine areas from the point or line to the land boundaries of the limitrophe States."

The objection to the length of coastline criterion has been raised that thereby States with long coastlines would be disproportionately privileged.

> *J.M.Py*, Les limites maritimes des Etats dans la théorie du plateau continental, Paris, 1949, p. 70.

This criticism would only be justified, however, if the entire length of the coastline, with all its curves and indentations, were taken as the standard. It should, however, not be a relevant factor whether the coastline runs straight, or whether it contains frequent and deep indentations which increase its length. The degree of the geographic connection between the coast and the submarine areas lying in front of it does not manifest itself by the length of the coastline measured with all its articulations, but by the breadth of contact of the coast with the sea—the country's coastal frontage. The degree of connection of the German coast with the submarine areas of the North Sea would accordingly be measured by the linear distance between Borkum and Sylt, two German islands immediately adjacent to both end points of the German coast between the Danish and Netherlands continental territories. If the breadth of the German coast is evaluated in this fashion, and the breadth of the Danish and Netherlands coasts were to be ascertained in like fashion, then the shares of these countries would stand in the ratio 6 : 9 : 9 respectively. If this ratio is compared with the allocation of submarine areas which, according to the Danish and Netherlands view, would result from an application of the equi-

distance method (Denmark 61,500 sq.km., Netherlands 61,800 sq.km., Germany 23,600 sq.km.) it is obvious that apportionment according to the equidistance method does not correspond to geographical realities and is, therefore, not a just and equitable solution.

(b) Other Factors

79. While the geographical factor by its nature is essential in apportioning the submarine areas between several adjacent States, other factors can by no means be excluded, if a just balance between the interests of all adjacent States were to be achieved. Whereas among such other factors only the presence of "navigable channels" had been mentioned by the International Law Commission, in its commentary on the proposed formula for the delimitation of the continental shelf (now embodied in Article 6 of the Continental Shelf Convention), the literature on the subject attributes relevance also to historical, economic, and technical factors, in particular to the geographical distribution of the mineral resources of the continental shelf and to the maintenance of the unity of their deposits.

> cf. the authors cited supra para. 70 and No. II para. (3) of the Proposals of the International Law Association Committee on Rights to the Sea-Bed and its Subsoil: "Criteria for the division of the sea-bed (and subsoil) of a continental shelf shared by two or more coastal States should be developed, taking into account factors such as the configuration of the coastlines, the economic value of proven deposits of minerals, etc." (Report of the 44th Conference of the International Law Association, Copenhagen 1950, p. 135).

Up to now no such particular factors are ascertainable which would have to be taken into account in apportioning the North Sea between the Parties; the case may be different regarding Belgium and France which, despite their maritime and economic importance, have only a narrow link with the continental shelf of the North Sea. In its negotiations with its neighbour States, however, the Federal Republic of Germany has never insisted that its economic needs (e.g., the size of its population, the degree of its industrialization, its requirements of power supply, etc.) or its particular economic capacity (e.g., exploitation capacity) should be given particular consideration. Despite its need and capacity to exploit the continental shelf, Germany does not wish to base its claim on these considerations. All the more, therefore, the Federal Republic of Germany is of the opinion that the apportionment of the submarine areas of the North Sea should be made primarily according to the geographical criterion described above.

(c) The Principle of Equality

80. If the apportionment of the North Sea among its coastal States is to be an equitable one, it must also take into account the principle of equality of all adjacent States. The coastal States of the North Sea form a community with a common interest that the potentials and resources of the North Sea should be exploited in an orderly fashion. They are all interested in the maintenance and safety of the routes of navigation, in the regulation and conservation of fishery, and in the appropriate exploitation of the mineral deposits of the seabed in order to avoid wasteful or harmful methods of extraction which would lead to despoliation.

This common interest has already manifested itself in a number of agreed regulations, mostly of a technical nature, in the fields of navigation and fishery.

The coastal States of the North Sea are maritime partners in this area, whose interests demand equal consideration. The Federal Republic of Germany, in the negotiations with its neighbour States, has also put forward the idea of jointly exploiting those areas of the North Sea which are not in immediate proximity to the coast. As a precedent, the Supplementary Agreement of 14 May 1962 (see Annex 16) to the German-Netherlands Ems-Dollart-Treaty of 8 April 1960 may be mentioned. The exploitation of the subsoil in that part of the Ems estuary, over which both parties to the Treaty claim jurisdiction, has been made the joint concern of both parties under this agreement.

> Article 5, para. (1), of the Supplementary Agreement reads: "The German participants on the one hand and the Netherlands participants on the other are entitled to an equal share in the mineral oil and natural gas extracted, as well as of other material obtained from their extraction" (translation from the German text).

The role played by Germany in the development, utilization, and supervision of the North Sea does not suffer in comparison to that of the other coastal States. Germany's traditional position is evidenced by manifold achievements to the benefit of the North Sea States and other seafaring nations, inter alia the German contribution to the safeguarding of navigation routes, to the protection of fisheries, to the emergency and weather services, to the supervision of radiotelephony, and to the scientific exploration of the North Sea.

The existence of a community of interest does not necessarily lead to the conclusion that every coastal State of the North Sea can claim an equal share of the continental shelf, regardless of the differences in the geographical situations of the individual coastal States. The Federal Republic of Germany has not insisted on such a division in the negotiations with its neighbour States. Nevertheless, the Federal Republic of Germany, in view of the extent of its maritime responsibility as coastal State of the North Sea, is at least justified in hoping that any criterion chosen for the apportionment of the North Sea will not be of a nature as to reduce the share of the Federal Republic of Germany disproportionately in comparison with the shares of the other coastal States. If the principle of equality of all coastal States of the North Sea is to be interpreted in this sense, it becomes evident that the equidistance method, which will reduce the German share to merely *1/25* of the North Sea (*supra* para. 25), can no longer be regarded as an equitable method of apportionment. On the other hand a proportional division based on the breadth of the coastal frontage on the North Sea, which is submitted here as an equitable standard (*supra* para. 78), would, therefore, better correspond to the principle of equality.

(d) The Access to the Middle of the North Sea

81. During the negotiations with its neighbour States, the Federal Republic of Germany took the view that, should it be impossible to arrive at an agreement concerning a joint exploitation of the middle of the North Sea, no method of apportionment should be employed which would cut off Germany from the middle of the North Sea. The Federal Republic of Germany maintains that in an apportionment of maritime areas which are surrounded by a number of States, it would be an equitable principle of division for every coastal State to receive a portion which extended to the middle of the sea. In its function as an apportioning determinant the middle of such an "enclosed" sea corresponds to median lines drawn between opposite coasts; from a natural and unprejudiced point of view either of them seem to be an appropriate starting point for a just apportionment. In the case of such an "enclosed" shallow sea as here, it

cannot be maintained that the middle of the sea "appertains" by necessity to one single of the coastal States, all of them having an equal legal title to the continental shelf under the sea. While this does not mean that the apportionment of the North Sea must necessarily be made in such a way that the continental shelf of the Federal Republic of Germany reaches to the middle of the sea, it should, however, at least demonstrate that the equidistance method, which would accord the Federal Republic of Germany only a corner of the Heligoland Bay, does not lead to a just and equitable solution, having regard to the geographic conditions of the North Sea.

Section II. The Sector Principle

A. The Polar Sector Theory

82. The problem of the equitable apportionment of a sea surrounded by a number of States is not new. It has given rise, albeit also for other reasons, to the so-called polar sector theory. The principle was put forward as early as 1907 in the Canadian Senate, when it was asserted that all islands lying between the Canadian Arctic coastline and the North Pole within the line of longitude drawn from the eastern and western ends of the coastline, belonged as of right to Canada.

Senator Pascal Poirier, Canadian Senate Debates, 20 February 1907, p. 266-273.

After a series of semi-official and official announcements to the same effect, the Canadian Minister of the Interior in 1925 formally claimed all the territory lying between the meridians 60° W and 141° W, and extending to the North Pole, as Canadian territory.

Canada, House of Commons Debates, 10 June 1925, Vol. IV, p. 4069, 4084, 1 June 1925, Vol. IV, p. 3773; cf. also *G. W. Smith*, "Sovereignty in the North: The Canadian Aspect of an International Problem", in: The Arctic Frontier, ed. by R. St. J. Macdonald, 1966, p. 194, 214-216.

The declaration by the Canadian Minister of the Interior was followed on 15 April 1926 by a Decree of the Soviet Government which formally claimed all lands and islands already discovered, as well as those to be discovered in the future, lying between the Soviet Arctic coast and the North Pole, from longitude 32° 4' 35" East to 168° 49' 30" West.

British and Foreign State Papers 1926, Vol. CXXIV, pp. 1064-1065; see also *Lakhtine*, "Rights over the Arctic", American Journal of International Law, Vol. 24 (1930), pp. 703-717.

In a similar way, a division of the Antarctic Continent was sought by the sector claims made by the United Kingdom of Great Britain and Northern Ireland (1908, 1917), New Zealand (1923), Australia (1933), France (1938), Argentina (1939), Norway (1939), and Chile (1940), although some of the claims conflict with each other.

see *G. W. Smith*, op. cit. p. 216-217.

The division of the Antarctic and the Arctic resulting from these sector claims is illustrated by sketches (figures 19, 20, pages 81, 82).

83. The geographical sectors claimed in the Arctic and Antarctic regions correspond to geometric sectors. By reason of its geometric symmetry the sector principle has been advocated as the most logical and equitable way of

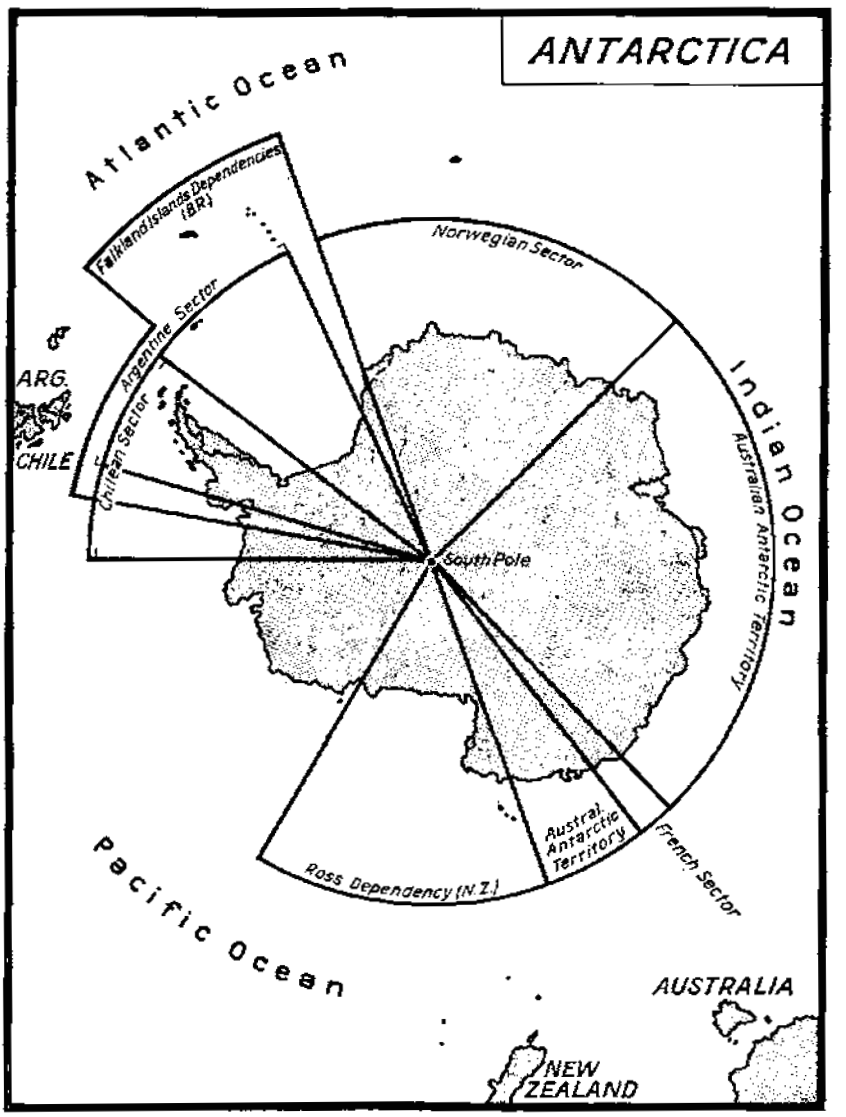


Figure 19

apportioning spheres of interest in the polar regions, the breadth of the surrounding coastlines being taken as basis for the delimitation of these spheres. It is true that the territorial claims based upon the sector theory have been contested by other States. It is indeed doubtful whether the sector theory could confer sovereignty over the territories claimed, although in the literature on the subject the close similarity to the legal concept of "contiguity" has repeatedly been pointed out.

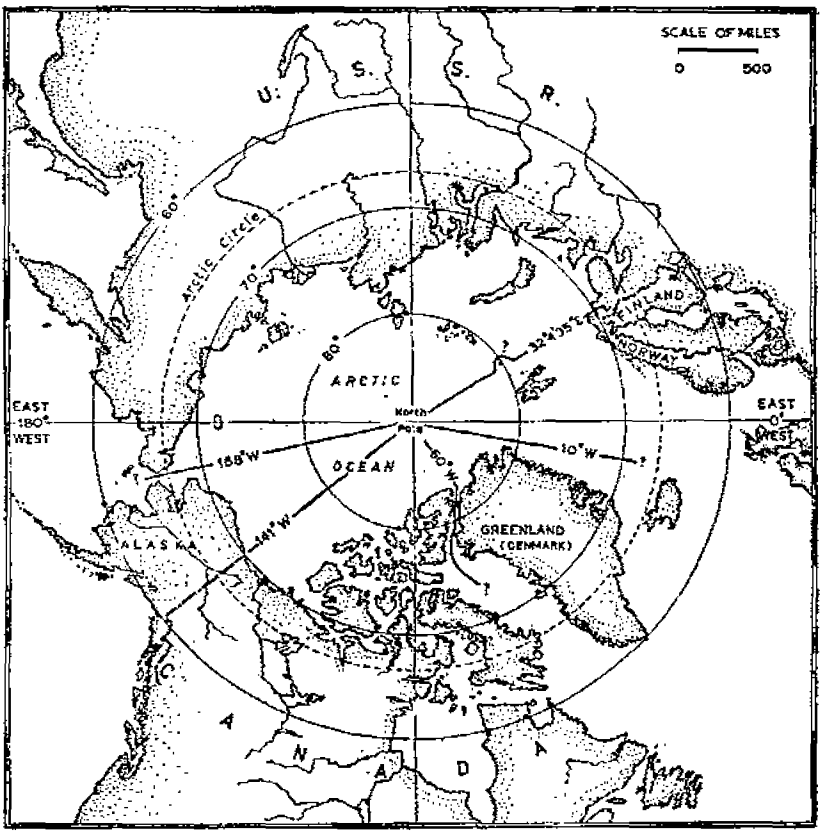


Figure 20

(Map reproduced from *R. St. J. Macdonald*, The Arctic Frontier, Toronto 1966, p. 219, bearing the legend: "Map 2. Arctic sectors. The line along 10°W shows Danish and Norwegian-Finnish sectors as proposed in 1927 by L. Breitfuss, who also assigned an Alaskan sector to the United States. Scale of miles is approximately accurate only near the Pole.")

Sir Hersch Lauterpacht, loc. cit. p. 376 et seq., 427: "Some aspects of the doctrine of contiguity also underlie the claims to Arctic and Antarctic regions put forward by a number of States—such as Great Britain, Canada, New Zealand, France, Russia, and Norway—in so far as it is based on the so-called sector principle".

Memorandum of the U.N. Secretariat of 14.7.1950 to the International Law Commission, Yearbook of the International Law Commission 1950, Vol. II, p. 106, para. 302: "Cependant, les points de contact ne manquent pas entre les deux théories. Le système des secteurs est un procédé de répartition des terres polaires entre les Etats qui se trouvent placés au voisinage de ces terres, dans des conditions géographiques déterminées. A cet égard on aperçoit une analogie avec la doctrine du plateau continental qui se propose d'éliminer les compétitions et les concurrences pour

l'exploitation des ressources naturelles des plateaux en attribuant des droits spéciaux aux Etats dont ils prolongent les masses terrestres. C'est une pensée politique qui inspire l'un et l'autre des systèmes en restreignant les possibilités de participation des Etats au bénéfice d'une situation donnée."

Anminos, op. cit. p. 72: "Some aspects of the doctrine of contiguity also underlie the claims to Arctic and Antarctic regions put forward by a number of States, such as Great Britain, Canada, New Zealand, France, Russia, and Norway since 1939. In so far as it is based on the so-called sector principle, with regard to the Arctic these areas are, in a sense, contiguous to the territories of the States concerned, in the case of the Antarctic the contiguity is distinctly symbolic."

Opposition to the polar sector theory is directed, however, primarily against the attempt to assert, on its basis, sovereign rights over territories which were not at the time effectively occupied. On the other hand, apparently no serious objections have been raised against the view that the geometric principles of division by sectors based upon the eastern and western endpoints of the coast would be an equitable method of delimiting the spheres of interest in the Arctic Ocean or the Antarctic Continent. To this extent the application of the sector principle in the Arctic and Antarctic regions is still a valid precedent for a just and equitable division of such enclosed regions.

B. The Application of the Sector Principle to the Case of the North Sea

84. The suggestion that the sector principle should be applied in the apportionment of the submarine area of a gulf or "enclosed" sea bounded by several States has already been advanced in the literature.

F. A. Vallat, loc. cit. (*supra* para. 78).

Assuming that the breadth of the "coastal frontage" of the littoral States is a just standard for the apportionment of a gulf or an "enclosed" sea (*supra* para. 78), and assuming furthermore that no special interests of any one coastal State merit special consideration, then an apportionment based upon sectors does in fact represent the most equitable solution. If the maritime area to be divided is roughly circular, sectoral division, by reason of its geometrical construction, guarantees not only an apportionment proportional to the breadth of the "coastal frontage", but also a division in the middle between the opposite coasts. In the apportionment of circular-shaped maritime areas among several coastal States, sectoral division assumes the same function as does the median line in the simpler case of the apportionment of maritime areas between States lying opposite each other: it will effect an apportionment that would be equitable both regarding the size of the areas allocated to each of the States and regarding the distance of the dividing point or dividing line from the coasts of the States.

85. If the sector principle is applied in apportioning the submarine areas beneath the North Sea, this procedure should not be understood in the sense of a strict and exact method of boundary delimitation. The sectoral division should rather supply a general guiding line as to how an equitable apportionment of the North Sea should by and large be made, if every coastal State is to receive a just and equitable share. For this approach to the matter it is sufficient that the submarine area to be divided should be approximately circular or elliptic in shape; at least the divergencies must not be so great that considerable distortions arise and the sectors are no longer in proportion to the "coastal frontage" of the coastal States. The construction of a sectoral division provides a standard for evaluating the extent to which a certain boundary delimitation, even a

boundary drawn by application of the equidistance method, can still be regarded as just and equitable; if the answer is negative, another boundary must be agreed upon between the States concerned.

86. If the sector principle is understood in this larger sense as being a standard of evaluation, it is applicable in the case of the North Sea. Excluding the far northern part of the North Sea, which concerns only Great Britain and Norway, the remainder of the North Sea can be regarded as roughly circular, without doing violence to the geographic realities. The sketch (figure 21, page 85) is illustrative in this respect. The equidistance boundaries already agreed upon between Great Britain on the one hand, and Denmark, the Netherlands and Norway on the other hand (see figure 1, page 24), show that a geographical centre of the North Sea can be found. From this centre the North Sea can be divided into sectors, the area of which is roughly proportional to the "North Sea frontage" of each coastal State. Figure 21 (page 85) illustrates such a division of the North Sea. If lines are drawn from the centre of the North Sea to the seaward ends of the German-Danish and German-Netherlands partial boundaries (*supra* paras. 16, 18), and the other North Sea boundaries with Great Britain and Norway already agreed upon are taken into account, the resulting areas measure roughly 36,700 sq. km. for the Federal Republic of Germany, 56,300 sq. km. for the Netherlands, and 53,900 sq. km. for Denmark. This ratio of roughly 6 : 9: 9 corresponds to the ratio considered equitable on the basis of the breadth of the coastal frontage which each of the three States presents towards the North Sea (vide *supra* para. 78).

87. The sector principle provides therefore a well suited standard of evaluation of what constitutes a just and equitable apportionment of the submarine areas of the North Sea among the adjacent States. This standard could be applied uniformly for the apportionment of the entire North Sea, and not only to the boundaries under dispute here. As we have previously submitted (vide *supra* para. 75), the continental shelf of the North Sea should be viewed as a whole entity, and must, therefore, be divided with a view towards the rights of all the coastal States. While the application of the sector principle to the North Sea in its entirety should not be understood as a judgment on the boundary agreements already concluded bilaterally between some of the North Sea States, this principle nevertheless provides a standard to ensure that no matter what the validity of such agreements, they cannot prejudice or pre-empt the rights of third parties to a just and equitable share of the continental shelf of the North Sea.

Section III. The Applicability of the Principle of Equidistance in the North Sea

88. On the basis of the criteria stated above (paras. 78 et seq.) for a just and equitable apportionment of the submarine areas of the North Sea, it must now be examined to what extent the equidistance method can be applied in the drawing of boundaries or whether the boundary must be settled by agreement.

A. The Median Line Between Great Britain and the Continent

89. If the sectoral division of the North Sea based on the breadth of the coastal frontage facing the North Sea (*supra* para. 86, figure 21, page 85) is compared to the median line boundary drawn by application of the equidistance method, as agreed upon between Great Britain on the one side and Denmark, the Netherlands, and Norway on the other side (*supra* paras. 17, 19, 21, figure 1,

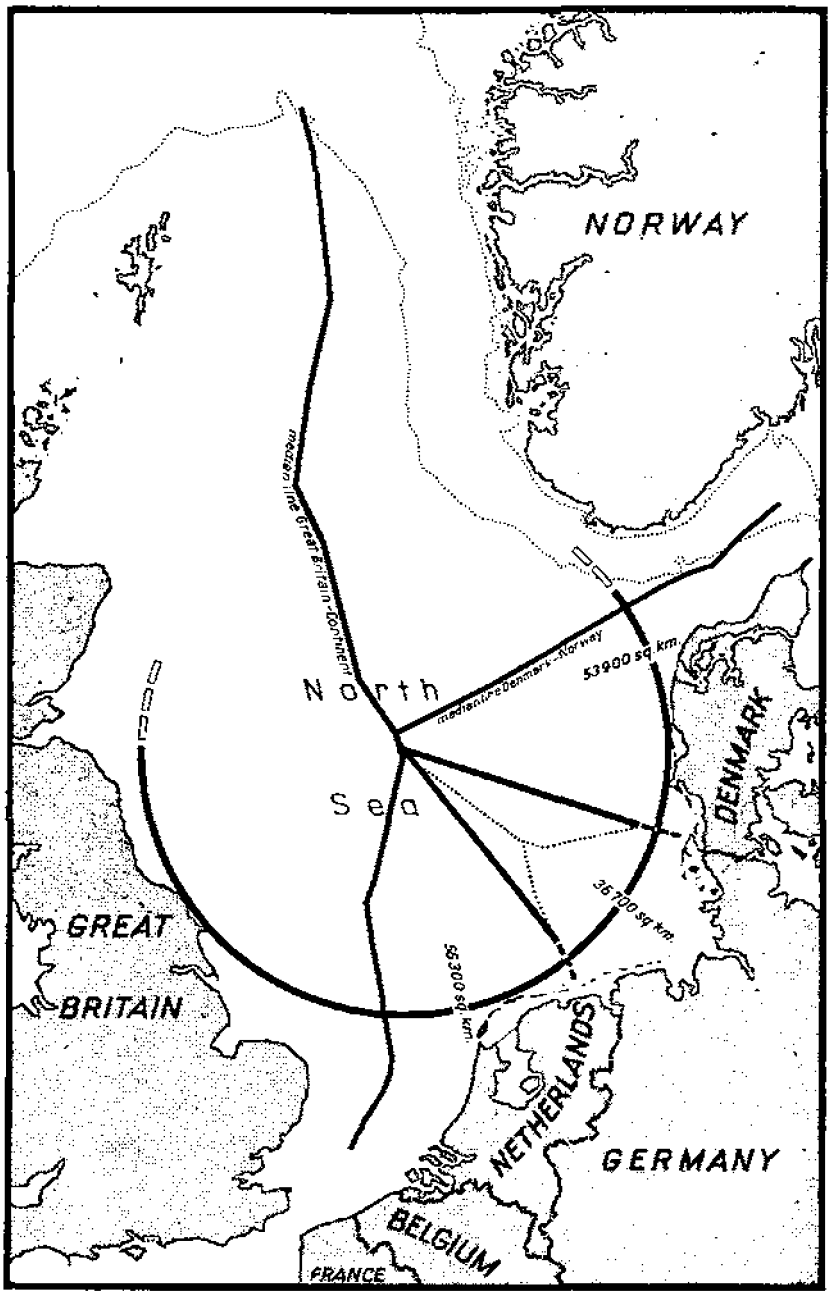

NORWAY
Provisional line Great Britain-Continent
Median line Denmark-Norway
53900 sq km
North
Sea
DENMARK
36700 sq km
58300 sq km
GREAT
BRITAIN
NETHERLANDS
GERMANY
BELGIUM
FRANCE

Figure 21

page 24), it will be seen that this median line boundary deviates only slightly from the theoretical sectoral boundary. The deviations are relatively unimportant so that the boundary drawn on the equidistance method (median line) between the British Isles and the Continent admittedly apportions each party a *just and equitable share*. That Great Britain should receive such a large share of the continental shelf of the North Sea is the consequence of natural geographic conditions: the land mass of the British Isles embraces almost one half of the North Sea; this justifies an appropriate share of the common continental shelf. In this case the median line between Great Britain and the continental coastal States may be regarded as an equitable mode of division. This median line divides the North Sea into a western and an eastern sector. Whereas the western sector falls to the share of one single State, namely Great Britain, the eastern sector must be apportioned between a number of States. Whatever form this apportionment takes, it would not affect the equitableness of the British share.

90. From the arguments advanced above, therefore, no objection can be raised against the results reached by application of the equidistance method in delimiting the British share under the bilateral agreements concluded between Great Britain on the one hand and Denmark, the Netherlands, and Norway on the other hand. The Federal Republic of Germany, in consequence, has not objected to the drawing of this boundary, in so far as it concerns the delimitation of the British share.

B. The Division of the Submarine Areas East of the Median Line Between Great Britain and the Continent

91. If the sectoral division of the North Sea based on the breadth of the coastal frontage facing the North Sea (*supra* para. 86, figure 21, page 85) is applied to the area east of the median line between Great Britain and the Continent, it is obvious that here the drawing of boundaries by application of the equidistance method, if compared with the sectoral division, would lead to considerable disproportions as to the boundary lines and as to the size of the areas allocated to each of the States concerned. The differences in results according to the method of sectoral division and to the equidistance method are illustrated by figure 21 (page 85). The differences are so disproportionate (share of the Federal Republic of Germany according to the sectoral division 36,700 sq. km., according to the equidistance method 23,600 sq. km.) that a delimitation according to the equidistance method cannot be regarded as a just and equitable apportionment. This makes the equidistance method inapplicable for the delimitation of the continental shelf in this part of the North Sea and obliges the States concerned to seek an equitable apportionment of the submarine areas in this region by contractual agreement.

92. The comparison of the equidistance boundaries with a division of the North Sea according to the sectoral principle does not mean that the boundary line must necessarily follow the hypothetical geometric sector lines. States may by agreement fix another boundary line if it ensures that the area allotted to each State would be equitable on the basis of the proportional breadth of its coastal frontage facing the North Sea. If the boundaries between the Kingdom of Denmark and the Kingdom of the Netherlands on the one hand and the Federal Republic of Germany on the other hand, would be drawn in application of the equidistance method, as proposed by the Kingdom of Denmark and the Kingdom of the Netherlands, these boundaries could not be regarded as acceptable under this test. It is submitted, however, that the sector solution

appears to be the best method of attaining a just and equitable apportionment, and as long as no agreement on another boundary line is forthcoming, the Federal Republic of Germany may well claim a share of the submarine areas of the North Sea which corresponds to the most equitable mode of division, i.e., the sectoral division. Furthermore, the Kingdom of Denmark and the Kingdom of the Netherlands, as neighbour States of the Federal Republic of Germany, have already fixed their boundaries contractually vis-à-vis the other North Sea States in such a way as leaves them little room for other solutions in an apportionment of the North Sea.

Section IV. Establishment of the Boundary by Agreement

93. From the foregoing arguments it follows that the equidistance method is not suitable for delimiting the areas of the continental shelf in the North Sea between the Federal Republic of Germany and the Kingdom of Denmark, as well as between the Federal Republic of Germany and the Kingdom of the Netherlands, since its application prevents a just and equitable apportionment among the North Sea States. The Federal Republic, therefore, fails to perceive the basis upon which the Kingdom of Denmark and the Kingdom of the Netherlands could plead that the boundary must be drawn by application of the equidistance method. Therefore, further negotiations are necessary between the Kingdom of Denmark and the Kingdom of the Netherlands on the one hand and the Federal Republic of Germany on the other hand to come to an agreement on an equitable delimitation of the continental shelf as provided for in Article 1, paragraph (2), of the Special Agreements between the Parties of 2 February 1967. The German Government hopes that it will be possible by means of negotiations to find a suitable delimitation which corresponds to an equitable solution as expounded here. The Federal Republic of Germany would also be prepared to resubmit the case again to this Court or to an arbitral tribunal to be agreed upon, in order to have the location of the boundary line established by judicial decision, if the subsequent negotiations between the Parties do not lead to an agreement on the boundary line. The Federal Republic of Germany has repeatedly made this offer to the other Parties. Contractual agreements between the States concerned are the best method of arriving at a just and equitable solution in the apportionment of the submarine areas of the North Sea. This method is not only given prominence in Article 6 of the Continental Shelf Convention, but is also regarded in the literature on the subject as the only suitable method of dealing adequately with complex geographical situations.

G. Gidel, La plataforma continental ante el derecho, Valladolid 1951, p. 154: "Es, en definitivo, mediante acuerdos entre los Estados interesados, o por soluciones alcanzadas por medios jurídicos amistosos, cómo podrán realizarse los oportunos repartos, y no mediante reglas rígidas que sería prematuro querer establecer desde ahora."

J. Azcárraga y de Bustamante, La plataforma submarina y el derecho internacional, Madrid 1952, p. 206-207: "La mejor solución para evitar los posibles conflictos es, sin duda alguna, la de concertar acuerdos particulares entre los Estados que compartan la misma plataforma, y como muy claramente ha visto el illustre Gidel, el problema podrá complicarse cuando la frontera atraviese un yacimiento minero, sobre todo cuando sea petrolífero. El principio que no deberá perderse de vista, y que aconsejará la práctica, es el de unidad de yacimiento. Los acuerdos particulares que

suscriban los Estados interesados tendrán, lógicamente, una base física, pero habrá que atender también a consideraciones equitativas aducidas con cierta flexibilidad."

M. W. Mouton, The Continental Shelf, The Hague 1952, p. 294: ". . . we believe that it should be left entirely to the countries concerned. The situations may differ very much from one case to another and we do not believe that any general rule could be given, not even principles. We think that the Truman Proclamation and Article 2 of the Iranian Bill express the idea clearly. Similar wording is used in the instrument of the other countries of the Persian Gulf" (*supra* para. 31).

F. Durante, op. cit., p. 171: "Si comprende, perciò, la grande importanza che gli accordi particolari assumeranno per questo aspetto della teoria della piattaforma litorale, dovendo l'applicazione di eventuali principi generali di delimitazione essere integrata e corretta da accordi specifici di natura quanto mai delicata data la complessità ed importanza dei problemi tecnici e scientifici che ne sono alla base."

G. E. Pearcy, "Geographical Aspects of the Law of the Sea," Annals of the Association of American Geographers, Vol. 49 (1959) No. 1, p. 20: ". . . the coasts of the world are sufficiently irregular to defy any predetermined universal pattern. Each boundary must be constructed in the light of its own physical surroundings and in accordance with the principles accepted in international law. The articles of the Conventions, i.e., the Geneva Convention on the Continental Shelf providing for the boundaries . . . can do no more than provide an equitable guide for successful agreements."

R. Young, American Journal of International Law, Vol. 52 (1958), p. 738: "One is led by these considerations to the conclusion that, in spite of the effort in Article 6 to provide an acceptable method of determining boundaries in the event of disagreement, the only reliable boundary line remains one fixed by agreement or by the judgment of a competent tribunal."

In view of the friendly relations and the spirit of co-operation prevailing between all the North Sea States and, furthermore, in view of the negotiations pending between the Parties on an agreement about the delimitation of the areas of the continental shelf in the North Sea, the Federal Republic of Germany has in the past refrained and, in view of the case now pending before the Court, has continued to refrain from fixing unilaterally the seaward boundaries of the German continental shelf vis-à-vis its neighbours.

95. The Court could restrict its decision to a ruling on the issue of the applicability of the equidistance method. The Court may, however, go farther and, within its competence and discretion, feel inclined to indicate the criteria which should govern an agreement between the Parties on a just and equitable settlement of the boundary question. If the Court decides that each of the States adjacent to the continental shelf of the North Sea is entitled to a just and equitable share, we submit, respectfully, that it would be within the competence of the Court to interpret what, in the special case of the North Sea, is to be understood under a "just and equitable share". It would be part of the proper competence of the Court, and also within the terms of reference under the special Agreement of 2 February 1967, to define the meaning of any principle or rule governing the delimitation of the continental shelf in its application to the special case submitted by the Parties to the Court. The Court would thus not be prevented, if inclined to do so, to indicate the criteria which, as already

submitted in this Memorial (*supra* para. 76 et seq.), should be taken into account in order to achieve a just and equitable apportionment of the submarine areas of the North Sea.

Section V. Conclusions

96. In view of the arguments put forward in paragraphs 75 to 95 the following conclusions regarding the delimitation of the continental shelf between the Parties in the North Sea are respectfully submitted:

(I) *In apportioning the continental shelf among the coastal States, the breadth of their coastal frontage facing the North Sea should be the principal criterion for evaluating whether the area allocated to one of these States is a just and equitable share.*

(II) *The most equitable apportionment of the continental shelf among the coastal States would be a sectoral division based on the breadth of their coastal frontage facing the North Sea.*

(III) *As to the delimitation of the continental shelf between the Parties, the equidistance method cannot find application, since it would not apportion a just and equitable share to the Federal Republic of Germany.*

(IV) *The boundary line dividing the continental shelf between the Parties must be settled by agreement in accordance with the judgment of the Court.*

PART III. SUBMISSIONS

In view of the facts and the arguments put forward in Parts I and II of this Memorial

May it please the Court to recognize and declare:

1. The delimitation of the continental shelf between the Parties in the North Sea is governed by the principle that each coastal State is entitled to a just and equitable share.

2. The method of determining boundaries of the continental shelf in such a way that every point of the boundary is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured (equidistance method), is not a rule of customary international law and is therefore not applicable as such between the Parties.

3. The equidistance method cannot be employed for the delimitation of the continental shelf unless it is established by agreement, arbitration, or otherwise, that it will achieve a just and equitable apportionment of the continental shelf among the States concerned.

4. As to the delimitation of the continental shelf between the Parties in the North Sea, the equidistance method cannot find application, since it would not apportion a just and equitable share to the Federal Republic of Germany.

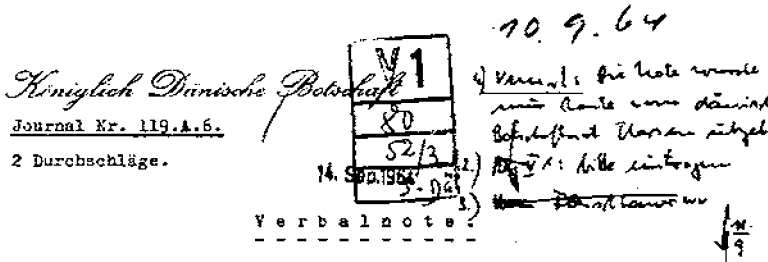
21 August 1967

(signed) Günther JAENICKE
Professor Dr. iur.
Agent for the Government
of the Federal Republic
of Germany

PART IV. ANNEXES TO THE MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

Annex 1

NOTE VERBALE, DATED 10 SEPTEMBER 1964, FROM THE ROYAL DANISH EMBASSY AT BONN TO THE GERMAN MINISTRY OF FOREIGN AFFAIRS



Königlich Dänische Botschaft

Journal Nr. 119.A.6.

2 Durchschläge.

10. 9. 64

V 1 / 80 / 52/3

14. Sep. 1964

Verbalnote

Unter Bezugnahme auf die Verbalnote des Auswärtigen Amtes vom 6. August 1964 - V 1 - 80.52/3 - 8 Dänemark - hat die Königlich Dänische Botschaft die Ehre, weisungsgemäss mitzuteilen, dass man dänischerseits dem Vorschlag, mündlich die Frage der Abgrenzung der an das deutsche und das dänische Hoheitsgebiet angrenzenden Teile des Festlandsockels zu erörtern, zustimmen kann. Die dänischen Behörden begrüssen ferner den Vorschlag, die Besprechungen in der Zeit vom 15. bis 17. Oktober 1964 in Bonn durchzuführen.

In dieser Verbindung findet die Dänische Regierung Anlass, daran zu erinnern, dass Dänemark durch Königlichen Erlass vom 7. Juni 1963, dessen Inhalt dem Auswärtigen Amte in englischer Übersetzung mit Verbalnote der Botschaft vom 10. Juli 1963 bekanntgegeben wurde, sein Hoheitsrecht über den Teil des Festlandsockels ausgedehnt hat, der nach der auf der Seerechtskonferenz der Vereinten Nationen am 29. April 1958 unterzeichneten Konvention über den Festlandsockel dem Dänischen Reich gehört, und dass die Abgrenzung im Verhältnis zu anderen Staaten, die an Dänemark grenzen, in Übereinstimmung mit Artikel 6 dieser Konvention erfolgt, so dass die Grenze mangels besonderer Verabredung die Mittellinie ist, die in jedem Punkt gleichmässig weit entfernt von den nächsten Punkten auf den Basislinien liegt, von wo

An das Auswärtige Amt,

Bonn.

/.

die Breite des äusseren Territorialgewässers jeden Staates gemessen wird.

Auf die Frage der Zusammensetzung der dänischen Verhandlungsdelegation, die wahrscheinlich etwa fünf Personen umfassen wird, wird die Botschaft sich gestatten, zu gegebener Zeit zurückzukommen.

Die Botschaft benutzt diesen Anlass, das Auswärtige Amt erneut ihrer ausgezeichneten Hochachtung zu versichern.

Bonn, den 1o. September 1964.

Annex 1 A

(Translation)

Journal No. 119.A.6.

NOTE VERBALE

With reference to the Note Verbale, ref. No. V 1-80.52/3-S Dänemark, transmitted by the German Federal Foreign Office on 6 August 1964, the Royal Danish Embassy has been directed to state that the Danish side can agree to the proposal to discuss orally the question of the delimitation of the parts of the Continental Shelf adjacent to the German and Danish territories. The Danish authorities also welcome the proposal that the talks should be held in Bonn between 15 and 17 October 1964.

In this connexion the Danish Government finds occasion to remind the Federal Foreign Office that Denmark, by virtue of a Royal Decree issued on 7 June 1963, the contents of which were made known to the Federal Foreign Office in an English Note Verbale transmitted by the Danish Embassy on 10 July 1963, has extended her sovereign rights over that part of the Continental Shelf which according to the Convention on the Continental Shelf signed on 29 April 1958 at the United Nations Conference on the Law of the Sea belongs to the Kingdom of Denmark, and that the boundary of the continental shelf in relation to foreign States adjacent to Denmark is determined in accordance with Article 6 of that Convention, so that, in the absence of any special agreement, the boundary should be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

The Embassy will return to the question of the composition of the Danish negotiating delegation, which will comprise approximately five persons, at the appropriate time.

The Embassy avails itself of this opportunity to renew to the Federal Foreign Office the assurance of its high consideration.

Bonn, 10 September 1964

Annex 2

NOTE VERBALE, DATED 21 JUNE 1963, FROM THE ROYAL NETHERLANDS EMBASSY AT BONN TO THE GERMAN MINISTRY OF FOREIGN AFFAIRS

AMBASSADE
DER
NEDERLANDEN
*

No. 7099. V e r b a l n o t e .

Die Königlich Niederländische Botschaft beehrt sich im Auftrag ihrer Regierung dem Auswärtigen Amt folgendes mitzuteilen.

Im Zusammenhang mit der beabsichtigten Ratifikation des am 29. April 1958 in Genf unterzeichneten Übereinkommens über den Festlandsockel, legt die Königlich Niederländische Regierung Wert darauf zu erklären, dass der Teil des Festlandsockels der Nordsee über den sie konform dem obengenannten Übereinkommen Hoheitsrechte zur Geltung bringt, nach Osten begrenzt wird durch die mittlere Grenzlinie ("equidistance line"), anfangend an dem Punkt wo der Talweg in der Emsmündung die Territorialgewässer erreicht.

Die Botschaft erlaubt sich das Auswärtige Amt zu bitten die zuständigen innerdeutschen Behörden nötigenfalls auf das Obenerwähnte aufmerksam zu machen.

Die Königlich Niederländische Botschaft benutzt diesen Anlass das Auswärtige Amt erneut ihrer ausgezeichneten Hochachtung zu versichern.

Bonn, den 21. Juni 1963.

KÖNIGLICH NIEDERLÄNDISCHE BOTSCHAFT BONN 1411

An das Auswärtige Amt

B o n n . -

Annex 2 A

(Translation)

—7099—

NOTE VERBALE

The Royal Netherlands Embassy presents its compliments to the German Federal Foreign Office and, on the instructions of its Government, has the honour to communicate the following.

In connection with the proposed ratification of the Convention on the Continental Shelf signed at Geneva on 29 April 1958, the Royal Netherlands Government wishes to state that the part of the continental shelf of the North Sea over which it claims sovereign rights in conformity with the said Convention, is delimited to the east by the equidistance line beginning at the point where the thalweg in the mouth of the Ems reaches the territorial waters.

The Embassy takes the liberty of asking the Federal Foreign Office, if necessary, to invite the attention of the appropriate German domestic authorities to the foregoing.

The Royal Netherlands Embassy avails itself of this opportunity to renew to the Federal Foreign Office the assurance of its high consideration.

Bonn, 21 June 1963

The German Federal Foreign Office
BONN

Annex 3

TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF THE NETHERLANDS CONCERNING THE LATERAL DELIMITATION OF THE CONTINENTAL SHELF NEAR THE COAST, DATED 1 DECEMBER 1964

Vertrag zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über die seitliche Abgrenzung des Festlandsockels in Küstennähe

Verdrag tussen de Bondsrepubliek Duitsland en het Koninkrijk der Nederlanden inzake de zijdelingse begrenzing van het continentale plat in de nabijheid van de kust

DIE BUNDESREPUBLIK DEUTSCHLAND
und
DAS KÖNIGREICH DER NIEDERLANDE,

IN DER ERWÄGUNG, daß eine einvernehmliche seitliche Abgrenzung des an ihre Hoheitsgebiete angrenzenden Festlandsockels der Nordsee für das küstennahe Gebiet vordringlich ist und daß die Teilgrenze im Anschluß an die im Zusatzabkommen vom 14. Mai 1962 zum Ems-Dollart-Vertrag vom 8. April 1960 getroffene gemeinschaftliche Regelung zu ziehen ist,

HABEN FOLGENDES VEREINBART:

Artikel 1

(1) Die Grenze zwischen dem deutschen und dem niederländischen Anteil am Festlandsockel der Nordsee verläuft bis zum 54. Breitengrad Nord von dem nördlichen Endpunkt der im Zusatzabkommen vom 14. Mai 1962 zum Ems-Dollart-Vertrag vom 8. April 1960 vereinbarten Linie, die den Grenzbereich der Emsmündung in der Längsrichtung teilt, auf der kürzesten Linie über die Punkte E_1 und E_2 zum Punkt E_3.

(2) Die Koordinaten (nach den deutschen Seekarten Nr. 50, Ausgabe 1956, VII und Nr. 90, Ausgabe 1964, V) des Punktes E_1 sind: 53°45'06" N, 6°19'56" O,
des Punktes E_2: 53°48'56" N, 6°15'49" O,
des Punktes E_3: 54°00'00" N, 6°06'26" O.

Artikel 2

(1) Die Bestimmungen dieses Vertrages berühren nicht die Frage des Verlaufs der Staatsgrenze in der Emsmündung. Jede Vertragspartei behält sich insoweit ihren Rechtsstandpunkt vor.

(2) Eine Entscheidung nach Artikel 46 Abs. 2 des Ems-Dollart-Vertrages läßt diesen Vertrag unberührt.

Artikel 3

Dieser Vertrag gilt auch für das Land Berlin, sofern nicht die Regierung der Bundesrepublik Deutschland gegenüber der Regierung des Königreichs der Niederlande innerhalb von drei Monaten nach Inkrafttreten des Vertrages eine gegenteilige Erklärung abgibt.

DE BONDSREPUBLIEK DUITSLAND
en
HET KONINKRIJK DER NEDERLANDEN

OVERWEGENDE dat het dringend noodzakelijk is, de begrenzing van het aan hun grondgebied grenzende continentale plat der Noordzee voor het gebied in de nabijheid van de kust in gemeenschappelijk overleg vast te stellen en dat dat grensgedeelte dient te worden vastgesteld in aansluiting op de in de Aanvullende overeenkomst van 14 mei 1962 bij het Eems-Dollardverdrag van 8 april 1960 getroffen gemeenschappelijke regeling, zijn

HET VOLGENDE OVEREENGEKOMEN:

Artikel 1

(1) Tot aan de 54ste noordelijke breedtegraad loopt de grens tussen het Duitse en Nederlandse deel van het continentale plat der Noordzee van het noordelijke eindpunt van de in de Aanvullende overeenkomst van 14 mei 1962 bij het Eems-Dollardverdrag van 8 april 1960 overeengekomen lijn die het grensgebied der Emsmonding in longterichting verdeelt, volgens de kortste lijn over de punten E_1 en E_2 tot punt E_3.

(2) De coördinaten (volgens de Duitse zeekaarten No. 50, uitgave 1956, VII en No. 90, uitgave 1964, V) zijn:
van het punt E_1: 53°45'06" N, 6°19'56" O,
van het punt E_2: 53°48'56" N, 6°15'49" O,
van het punt E_3: 54°00'00" N, 6°06'26" O.

Artikel 2

(1) De bepalingen van dit Verdrag zijn niet van invloed op het vraagstuk van het verloop der staatsgrens in de Eemsmonding. Iedere Verdragsluitende Partij behoudt zich in dit opzicht haar rechtsstandpunt voor.

(2) Een beslissing ingevolge lid 2 van artikel 46 van het Eems-Dollardverdrag laat dit Verdrag onverlet.

Artikel 3

Dit Verdrag geldt eveneens voor het "Land" Berlijn, tenzij de Regering van de Bondsrepubliek Duitsland binnen drie maanden na de inwerkingtreding van dit Verdrag de Regering van het Koninkrijk der Nederlanden mededeling doet van het tegendeel.

Artikel 4

(1) Dieser Vertrag bedarf der Ratifikation; die Ratifikationsurkunden sollen so bald wie möglich in Den Haag ausgetauscht werden.

(2) Dieser Vertrag tritt an dem Tag in Kraft, der auf den Tag des Austausches der Ratifikationsurkunden folgt.

GESCHEHEN zu Bonn am 1. Dezember 1964 in zwei Urschriften in deutscher und niederländischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Artikel 4

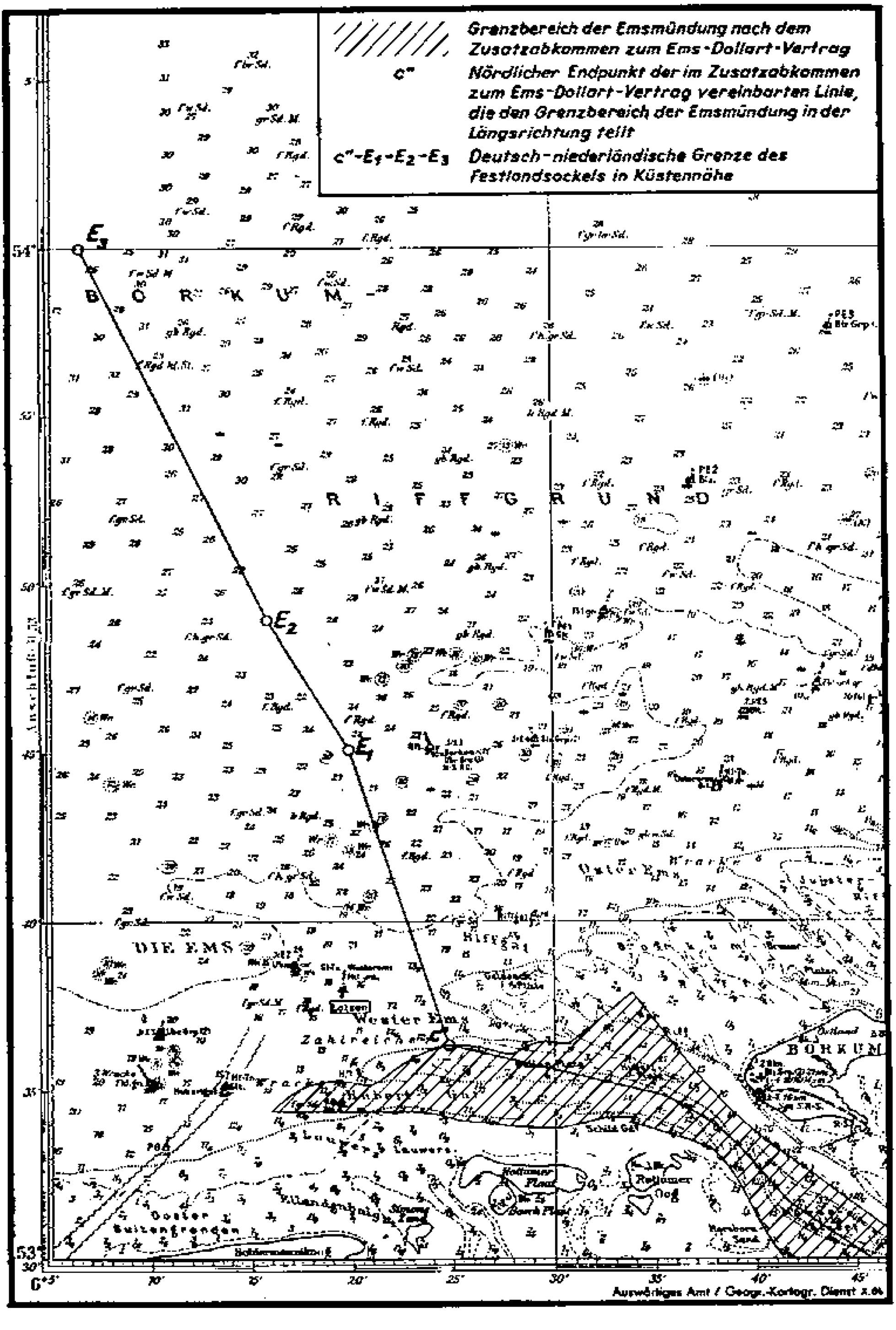
(1) Dit Verdrag moet worden bekrachtigd; de akten van bekrachtiging dienen zo spoedig mogelijk te 's-Gravenhage te worden uitgewisseld.

(2) Dit Verdrag treedt in werking op de dag volgende op de dag van uitwisseling der akten van bekrachtiging.

GEDAAN te Bonn, 1 december 1964, in tweevoud, in de Duitse en de Nederlandse taal, zijnde beide teksten gelijkelijk authentiek.

Für die Bundesrepublik Deutschland:
Voor de Bondsrepubliek Duitsland:

Für das Königreich der Niederlande:
Voor Koninkrijk der Nederlanden:


Grenzbereich der Emsmündung nach dem Zusatzabkommen zum Ems-Dollart-Vertrag
c"
Nördlicher Endpunkt der im Zusatzabkommen zum Ems-Dollart-Vertrag vereinbarten Linie, die den Grenzbereich der Emsmündung in der Längsrichtung teilt
c"-E1-E2-E3
Deutsch-niederländische Grenze des Festlandsockels in Küstennähe
E3
E2
E1
BORKUM
RIFFGRUND
DIE EMS
Wester Ems
BORKUM
Auswärtiges Amt / Geogr.-Kartogr. Dienst

Annex 3 A

(Translation)

TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF THE NETHERLANDS CONCERNING THE LATERAL DELIMITATION OF THE CONTINENTAL SHELF NEAR THE COAST

THE FEDERAL REPUBLIC OF GERMANY

and

THE KINGDOM OF THE NETHERLANDS,

CONSIDERING that a lateral delimitation by mutual agreement of the continental shelf near the coast adjacent to their territories is urgently required, and that the partial boundary in extension of the line determined in the Supplementary Agreement of 14 May 1962 to the Ems-Dollart Treaty of 8 April 1960 has to be defined,

HAVE AGREED AS FOLLOWS:

Article 1

1. The boundary between the German and the Netherlands parts of the continental shelf of the North Sea up to the 54th degree of latitude North shall start at the northern termination point of the line agreed in the Supplementary Agreement of 14 May 1962 to the Ems-Dollart Treaty of 8 April 1960 which divides the boundary area in the mouth of the Ems lengthways, and follows the shortest line to point E3 through E1 and E2.
2. The co-ordinates (according to German Sea Charts No. 50, 1956 Edition, VII, and No. 90, 1964 Edition, V) of point E1 are: 53°45′06″ N, 6°19′56″ E, of point E2: 53°48′56″ N, 6°15′49″ E, of point E3: 54°00′00″ N, 6°06′26″ E.

Article 2

1. The provisions of the present Treaty shall not affect the question of the course of the boundary line in the mouth of the Ems. In that respect either Contracting Party reserves its legal standpoint.
2. Any decision under paragraph 2 of Article 46 of the Ems-Dollart Treaty shall not affect the present Treaty.

Article 3

The present Treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Kingdom of the Netherlands within three months of the date of entry into force of the Treaty.

Article 4

1. The present Treaty is subject to ratification; the instruments of ratification shall be exchanged as soon as possible in The Hague.
2. The present Treaty shall enter into force on the day following the day on which the instruments of ratification are exchanged.

DONE at Bonn on 1 December 1964 in duplicate in the German and Netherlands languages, each text being equally authentic.

For the Federal Republic of Germany:
CARSTENS

For the Kingdom of the Netherlands:
G. E. VAN ITTERSUM

Annex 4

JOINT MINUTES OF GERMAN AND NETHERLANDS DELEGATIONS, DATED 4 AUGUST 1964

GEMEINSAME VERHANDLUNGSNIEDERSCHRIFT

Zwischen einer deutschen Delegation, geleitet von

Herrn Ministerialdirigent Professor Dr. Meyer-Lindenberg, Auswärtiges Amt,

und einer niederländischen Delegation, geleitet von

Herrn Professor Riphagen, Rechtsberater des Ministeriums für Auswärtige Angelegenheiten,

haben am 4. und 23. März, 4. Juni, 14. Juli und 4. August 1964 in Bonn und Den Haag Besprechungen über die Abgrenzung des an das deutsche und niederländische Hoheitsgebiet angrenzenden Teiles des Festlandsockels der Nordsee stattgefunden.

Die beiden Delegationen sind übereingekommen, ihren Regierungen den Abschluß des am heutigen Tage im Entwurf paraphierten Vertrages zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über die seitliche Abgrenzung des Festlandsockels in Küstennähe vorzuschlagen, der eine Vereinbarung gemäß Artikel 6 Abs. 2 Satz 1 der Genfer Festlandsockelkonvention vom 29. April 1958 darstellt. Sie sind hierbei davon ausgegangen, daß eine Grenzziehung im küstennahen Seegebiet vordringlich ist und daß die Teilgrenze im Anschluß an die im Zusatzabkommen zum Ems-Dollart-Vertrag getroffene gemeinschaftliche Regelung unter Berücksichtigung der im Emsmündungsgebiet vorliegenden besonderen Umstände zu ziehen ist.

Die beiden Delegationen stellen fest, daß es sich im Laufe der bisherigen bilateralen Besprechungen herausgestellt hat, daß kein Einverständnis über die Fortsetzung der Grenzlinie auf dem Festlandsockel über den 54. Breitengrad hinaus besteht, so daß den Delegationen eine einvernehmliche Festlegung der gemeinsamen Festlandsockelgrenze in ihrer gesamten Länge nicht möglic war.

Die deutsche Delegation hat hierzu folgenden
andpunkt vertreten:

Der deutsche Anspruch in bezug auf den Verlauf
r Grenzlinie auf dem Festlandsockel über den 54. Breiten-
ad hinaus wird durch die Festlegung der vorgeschlage-
n Teilgrenze nicht berührt; insbesondere darf aus dem
rlauf der in Aussicht genommenen Teilgrenze nicht ge-
hlossen werden, daß sie weiter seewärts in derselben
chtung fortgesetzt werden müßte.

Die niederländische Delegation ist der Ansicht,
ß der weitere Verlauf der Grenzlinie auch durch das
uidistanzprinzip bestimmt wird.

Im übrigen kündigte die deutsche Delegation an,
e Bundesregierung sei im Begriff, auf die Einberufung
ner Konferenz der Nordseeanliegerstaaten hinzuwirken,
t dem Ziele, eine angemessene Aufteilung des Festland-
ckels in der Nordseemitte gemäß Artikel 6 Abs. 1 Satz 1
d Abs. 2 Satz 1 der Genfer Festlandsockelkonvention
rbeizuführen.

Die niederländische Delegation hat von dieser
sicht Kenntnis genommen.

[illegible] den 4. August 1964

Annex 4 A

(Translation)

JOINT MINUTES

A German delegation led by Assistant Ministerial Director Professor Dr. Meyer-Lindenberg, of the Federal Foreign Office, and a Netherlands delegation led by Professor Riphagen, Legal Adviser to the Ministry of Foreign Affairs, held talks in Bonn and The Hague on 4 and 23 March, 4 June, 14 July, and 4 August 1964, on the subject of the delimitation of the continental shelf of the North Sea adjacent to the German and Netherlands territories.

The two delegations have agreed to propose to their Governments the conclusion of a treaty, a draft of which was initialled today, between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the lateral delimitation of the continental shelf near the coast, such treaty constituting an agreement in accordance with the first sentence of paragraph 2 of Article 6 of the Geneva Convention on the Continental Shelf, dated 29 April 1958. The two delegations started from the assumption that it is urgently necessary to draw a dividing line in the sea area near the coast and that the partial boundary in extension of the line determined in the Supplementary Agreement to the Ems-Dollart Treaty should be defined with due regard to the special circumstances prevailing in the mouth of the Ems.

The two delegations note that it has been evident during the bilateral talks held that no agreement exists on the boundary line on the continental shelf beyond the 54th degree of latitude, so that it has not been possible for the delegations to determine by agreement the full length of the common boundary on the continental shelf.

The German delegation has expressed the following view on this point:

The determination of the partial boundary as suggested does not affect the German claim with respect to the boundary line on the continental shelf beyond the 54th degree of latitude; in particular it must not be concluded from the direction of the proposed partial boundary that the latter would have to be continued in the same direction.

The Netherlands delegation considers that the further course of the boundary is bound to be also determined by application of the principle of equidistance.

The German delegation moreover announced that the Federal Government is seeking to bring about a conference of States adjacent to the North Sea with a view to arriving at an appropriate division of the continental shelf situated in the middle of the North Sea in accordance with the first sentence of paragraph (1) and the first sentence of paragraph (2) of Article 6 of the Geneva Convention on the Continental Shelf.

The Netherlands delegation has taken note of this intention.

Bonn, 4 August 1964

Annex 5

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF NORWAY RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN THE TWO COUNTRIES, DATED 10 MARCH 1965

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF NORWAY RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN THE TWO COUNTRIES

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway;

Desiring to establish the boundary between the respective parts of the Continental Shelf;

Have agreed as follows:

ARTICLE 1

The dividing line between that part of the Continental Shelf which appertains to the United Kingdom of Great Britain and Northern Ireland and that part which appertains to the Kingdom of Norway shall be based, with certain minor divergencies for administrative convenience, on a line, every point of which is equidistant from the nearest points of the baselines from which the territorial sea of each country is measured.

ARTICLE 2

(1) In implementation of the principle set forth in Article I, the dividing line shall be arcs of Great Circles between the following points, in the sequence given below:

Point 1. 56° 05′ 12″ N., 3° 15′ 00″ E.
Point 2. 56° 35′ 42″ N., 2° 36′ 48″ E.
Point 3. 57° 54′ 18″ N., 1° 57′ 54″ E.
Point 4. 58° 25′ 48″ N., 1° 29′ 00″ E.
Point 5. 59° 17′ 24″ N., 1° 42′ 42″ E.
Point 6. 59° 53′ 48″ N., 2° 04′ 36″ E.
Point 7. 61° 21′ 24″ N., 1° 47′ 24″ E.
Point 8. 61° 44′ 12″ N., 1° 33′ 36″ E.

The positions of the points in this Article are defined by latitude and longitude on European Datum (1st Adjustment 1950).

(2) The dividing line has been drawn on the chart annexed to this Agreement.

ARTICLE 3

(1) In the south the termination point of the dividing line shall be point No. 1., which is the point of intersection of the dividing lines between the Continental Shelves of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Norway and the Kingdom of Denmark. The position of the above-mentioned point No. 1 shall be subject to acceptance by the Kingdom of Denmark.

(2) For the time being the Contracting Parties have not deemed it necessary to draw the dividing line further north than point No. 8.

ARTICLE 4

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand or gravel, extends across the dividing line and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, the Contracting Parties shall, in consultation with the licensees, if any, seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the proceeds deriving therefrom shall be apportioned.

ARTICLE 5

This Agreement shall not affect the status of the superjacent waters or air space above.

ARTICLE 6

(1) This Agreement shall be ratified. Instruments of ratification shall be exchanged at Oslo as soon as possible.

(2) The Agreement shall enter into force on the date of the exchange of instruments of ratification.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

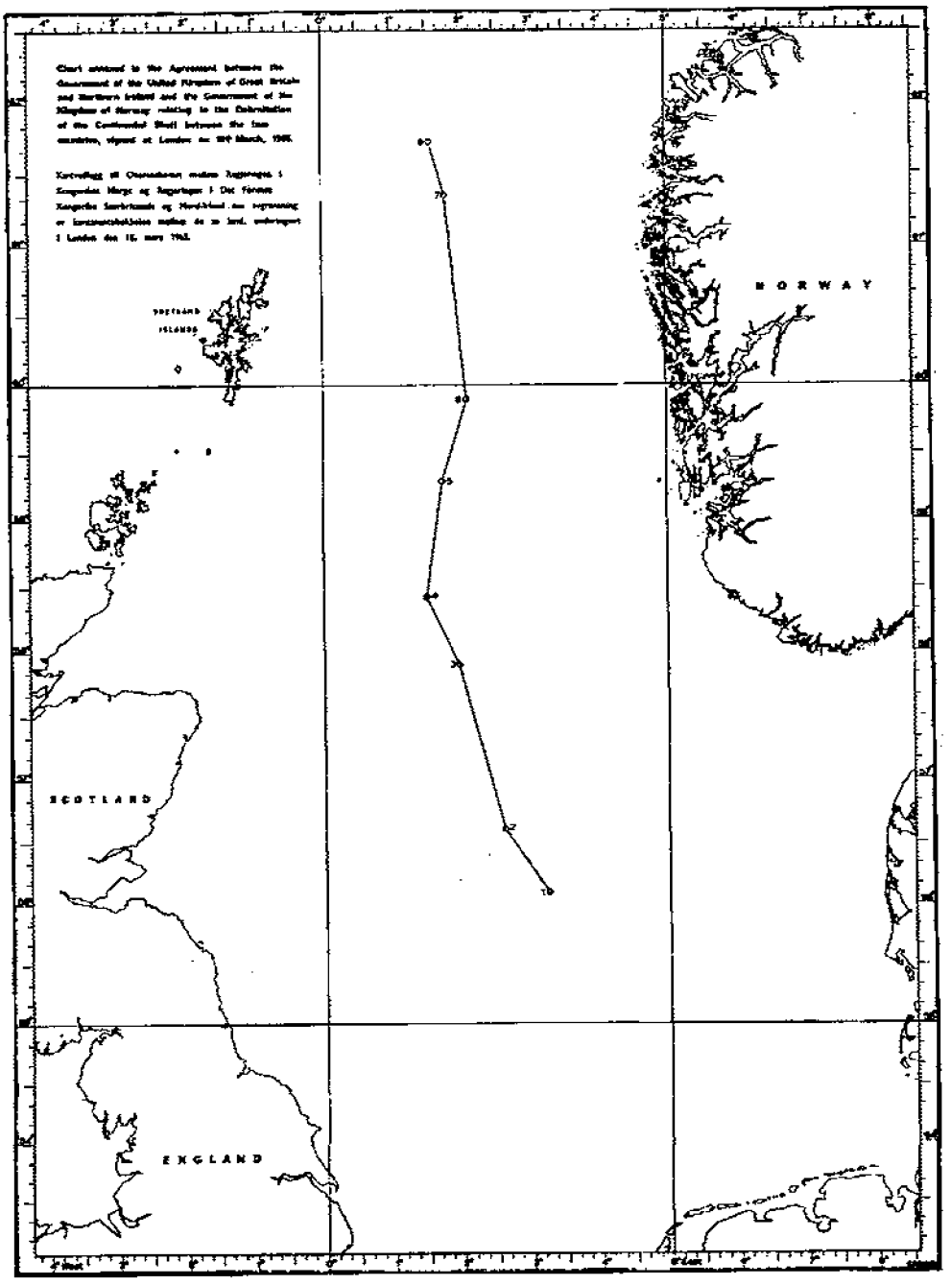
Done in duplicate at London the 10th day of March, 1965, in the English and Norwegian languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland :

WALTER PADLEY.

For the Government of the Kingdom of Norway:

ARNE SKAUG.


NORWAY
SCOTLAND
ENGLAND

Annex 6

Vertrag
zwischen der Bundesrepublik Deutschland und dem Königreich Dänemark über die Abgrenzung des Festlandsockels der Nordsee in Küstennähe

Overenskomst
mellem Forbundsrepublikken Tyskland og Kongeriget Danmark om afgrænsningen af den kontinentale sokkel i Nordsøen i kystområdet

DIE BUNDESREPUBLIK DEUTSCHLAND
und
DAS KÖNIGREICH DÄNEMARK

IN DER ERWÄGUNG, daß eine einvernehmliche Abgrenzung des an ihre Hoheitsgebiete angrenzenden Festlandsockels der Nordsee für das küstennahe Gebiet vordringlich ist,

HABEN FOLGENDES VEREINBART:

Artikel 1

Die Grenze zwischen dem deutschen und dem dänischen Anteil am Festlandsockel der Nordsee verläuft in Küstennähe in gerader Linie von dem in der Grenzbeschreibung von 1921 genannten Punkt, in dem die Verlängerung der Verbindungslinie des List-Ost-Feuers mit dem Mittelpunkt der Verbindungslinie der beiden List-West-Feuer das freie Meer erreicht, zu dem Punkte 55° 10' 03,4" N, 7° 33' 09,6" O des European Datum System (entsprechend den dänischen geographischen Koordinaten 55° 10' 01,1" N, 7° 33' 16,7" O und den deutschen geographischen Koordinaten 55° 10' 07,1" N, 7° 33' 07,7" O).

Artikel 2

Dieser Vertrag gilt auch für das Land Berlin, sofern nicht die Regierung der Bundesrepublik Deutschland gegenüber der Regierung des Königreichs Dänemark innerhalb von drei Monaten nach Inkrafttreten des Vertrages eine gegenteilige Erklärung abgibt.

Artikel 3

(1) Dieser Vertrag bedarf der Ratifikation. Die Ratifikationsurkunden sollen so bald wie möglich in Kopenhagen ausgetauscht werden.

(2) Dieser Vertrag tritt mit dem Tage nach dem Austausch der Ratifikationsurkunden in Kraft.

GESCHEHEN zu Bonn am 9. Juni 1965 in zwei Urschriften in deutscher und dänischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Für die Bundesrepublik Deutschland:
Schröder

Für das Königreich Dänemark:
Haekkerup

FORBUNDSREPUBLIKKEN TYSKLAND
og
KONGERIGET DANMARK er

I BETRAGTNING AF, at det er tiltrængt i området nærmest kysten ved aftale at foretage en afgrænsning af den kontinentale sokkel i Nordsøen, der støder op til deres højhedsområder,

BLEVET ENIGE OM FØLGENDE:

Artikel 1

Grænsen mellem den tyske og den danske del af Nordsøens kontinentale sokkel forløber i området nærmest kysten i lige linie fra det i grænsebeskrivelsen af 1921 nævnte punkt, i hvilket forlængelsen af linien gennem Lists østre fyr og midtpunktet mellem Lists to vestre fyr når det åbne hav, til punktet 55° 10' 03,4" N, 7° 33' 09,6" O som angivet efter European Datum System (svarende til henholdsvis de danske geografiske koordinater 55° 10' 01,1" N, 7° 33' 16,7" O og de tyske geografiske koordinater 55° 10' 07,1" N, 7° 33' 07,7" O).

Artikel 2

Denne overenskomst gælder også for Land Berlin, medmindre Forbundsrepublikken Tysklands regering inden tre måneder fra overenskomstens ikrafttræden har afgivet modstående erklæring over for Kongeriget Danmarks regering.

Artikel 3

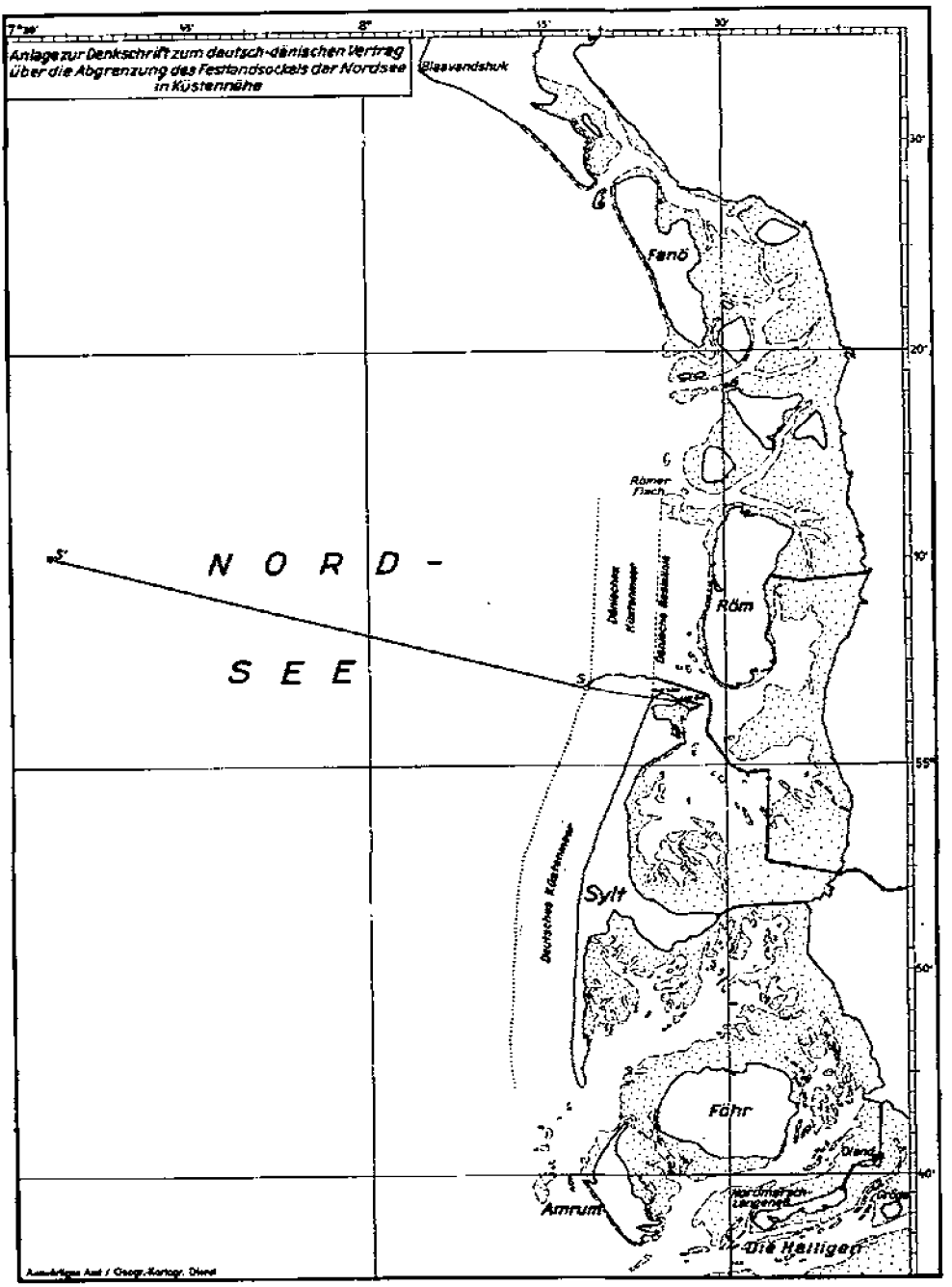
(1) Nærværende overenskomst skal ratificeres. Ratifikationsinstrumenterne skal udveksles i København så snart som muligt.

(2) Overenskomsten træder i kraft dagen efter udvekslingen af ratifikationsinstrumenterne.

UDFÆRDIGET i Bonn, den 9. juni 1965, i to originaleksemplarer på tysk og dansk, og således at hver tekst har samme gyldighed.

For Forbundsrepublikken Tyskland:
Schröder

For Kongeriget Danmark:
Haekkerup


Anlage zur Denkschrift zum deutsch-dänischen Vertrag über die Abgrenzung des Festlandsockels der Nordsee in Küstennähe
Blaavandshuk
Fanö
Römer Flach
Dänisches Fahrwasser
Deutsche Bucht
Röm
N O R D -
S E E
Deutsches Fahrwasser
Sylt
Föhr
Amrum
Die Hallig
8°
55°
54°

Annex 6 A

(Translation)

TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF DENMARK CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF OF THE NORTH SEA NEAR THE COAST

THE FEDERAL REPUBLIC OF GERMANY
and
THE KINGDOM OF DENMARK,

CONSIDERING that a delimitation by mutual agreement of the continental shelf adjacent to their territories near the coast is urgently required,
HAVE AGREED AS FOLLOWS:

Article 1

The boundary between the German and the Danish parts of the continental shelf of the North Sea near the coast shall run in a straight line starting from the point mentioned in the boundary description of 1921 at which the extension of the connecting line between the List East beacon and the central point of the connecting line between the two List West beacons reaches the high seas, and ending at point 55°10'03,4"N, 7°33'09.6"E of the European Datum System (in accordance with the Danish geographical co-ordinates 55°10'01.1"N, 7°33'16.7"E and the German geographical co-ordinates 55°10'07.1"N, 7°33' 07.7"E).

Article 2

The present Treaty shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Kingdom of Denmark within three months of the date of entry into force of the Treaty.

Article 3

1. The present Treaty is subject to ratification. The instruments of ratification shall be exchanged as soon as possible in Copenhagen.
2. The present Treaty shall enter into force on the day after the exchange of instruments of ratification.

DONE at Bonn this ninth day of June 1965 in duplicate in the German and Danish languages, both texts being equally authentic.

For the Federal Republic of Germany:
SCHRÖDER

For the Kingdom of Denmark:
HAEKKERUP

Annex 7

PROTOCOL TO THE GERMAN-DANISH TREATY (ANNEX 6), DRAWN UP 9 JUNE 1965

Protokoll
zum Vertrag zwischen der Bundesrepublik Deutschland
und dem Königreich Dänemark
über die Abgrenzung des Festlandsockels der Nordsee in Küstennähe

Protokol
til overenskomst mellem Forbundsrepublikken Tyskland
og Kongeriget Danmark
om afgrænsningen af den kontinentale sokkel i Nordsøen i kystområdet

Die auf deutsche Anregung geführten deutsch-dänischen Verhandlungen über die Abgrenzung des der deutschen und der dänischen Küste vorgelagerten Festlandsockels haben ergeben, daß über die Grundsätze der Abgrenzung des Festlandsockels der Nordsee abweichende Auffassungen bestehen. Eine Einigung konnte lediglich über den Verlauf der Sockelgrenze in Küstennähe erzielt werden; bezüglich des weiteren Grenzverlaufs behält sich jede Vertragspartei ihren Rechtsstandpunkt vor.

Bezüglich des Festlandsockels vor den einander gegenüberliegenden Küsten der Ostsee besteht Einverständnis darüber, daß sich die Grenze nach der Mittellinie bestimmt. Demgemäß erklären beide Vertragsparteien, daß sie keine grundsätzlichen Einwendungen dagegen erheben werden, wenn die andere Vertragspartei ihren Teil des Festlandsockels der Ostsee unter Zugrundelegung der Mittellinie abgrenzt.

GESCHEHEN zu Bonn am 9. Juni 1965 in zwei Urschriften in deutscher und dänischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

De på tysk foranledning førte tysk-danske forhandlinger angående afgrænsningen af den ud for den tyske og den danske kyst liggende kontinentale sokkel har vist, at der består afvigende opfattelser med hensyn til grundsætningerne for afgrænsningen af den kontinentale sokkel i Nordsøen. Der kunne kun nås til enighed om forløbet af sokkelgrænsen i området nærmest kysten; med hensyn til grænsens videre forløb forbeholder hver kontraherende part sig sit retsstandpunkt.

Med hensyn til den kontinentale sokkel ud for de over for hinanden liggende Østersøkyster består der enighed om, at grænsen bestemmes efter midterlinien. I overensstemmelse hermed erklærer de to kontraherende parter ikke at ville gøre principielle indvendinger, når den anden kontraherende part afgrænser sin del af den kontinentale sokkel i Østersøen på grundlag af midterlinien.

UDFÆRDIGET i Bonn, den 9. juni 1965, i to originaleksemplarer på tysk og dansk, og således at hver tekst har samme gyldighed.

Für die Bundesrepublik Deutschland
Schröder

Für das Königreich Dänemark
Haekkerup

For Forbundsrepublikken Tyskland
Schröder

For Kongeriget Danmark
Haekkerup

Annex 7 A

(Translation)

PROTOCOL TO THE TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE KINGDOM OF DENMARK CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF OF THE NORTH SEA NEAR THE COAST

The German-Danish negotiations conducted at the suggestion of Germany on the delimitation of the continental shelf adjacent to the German and the Danish coasts have shown that divergent views exist on the principles applicable to the delimitation of the continental shelf of the North Sea. Agreement could be reached only on the shelf boundary near the coast; as regards the further course of the dividing line, each Contracting Party reserves its legal standpoint.

With respect to the continental shelf adjacent to the coasts of the Baltic Sea which are opposite each other, it is agreed that the boundary shall be the median line. Accordingly, both Contracting Parties declare that they will raise no basic objections to the other Contracting Party's delimiting its part of the continental shelf of the Baltic Sea on the basis of the median line.

DONE at Bonn this ninth day of June 1965 in duplicate in the German and Danish languages, each text being equally authentic.

For the Federal Republic of Germany
SCHRÖDER

For the Kingdom of Denmark
HAEKKERUP

Annex 8

JOINT PRESS COMMUNIQUÉ OF GERMAN AND DANISH DELEGATIONS, ISSUED 18 MARCH 1965

GEMEINSAMES PRESSEKOMMUNIQUE

Zwischen einer dänischen und einer deutschen Delegation haben im Oktober 1964 und im März 1965 Verhandlungen über die Abgrenzung des an das dänische und das deutsche Hoheitsgebiet angrenzenden Teiles des Festlandsockels der Nordsee stattgefunden. Als Ergebnis dieser Verhandlungen haben sich die beiden Delegationen über einen Vertragsentwurf geeinigt, der nunmehr den beiden Regierungen zur Zustimmung vorgelegt wird. Der Vertragsentwurf soll nach Zustimmung der Regierungen in Bonn unterzeichnet werden; er bedarf der Ratifikation.

In dem Entwurf wird eine etwa 30 Seemeilen lange Teilgrenze gezogen bis zu einem Punkt, der von dem Kap Blaavandshuk und der Insel Sylt gleich weit entfernt ist; über den weiteren Verlauf der Grenzlinie konnte in den Verhandlungen noch keine Einigung erzielt werden. Die beiden Verhandlungspartner haben sich ihre Auffassungen über die hierfür massgeblichen Grundsätze vorbehalten. Die deutsche Delegation hat vorgeschlagen, Verhandlungen über den weiteren Verlauf der Grenzlinie in nächster Zeit aufzunehmen. Dieser Vorschlag wird dänischerseits geprüft werden.

Annex 8 A

(Translation)

JOINT PRESS COMMUNIQUÉ

In October 1964 and March 1965 negotiations were held between a Danish and German delegation on the delimitation of those parts of the continental shelf of the North Sea adjacent to Danish and German territory. As a result of those negotiations, the two delegations have agreed on a draft treaty which will now be submitted to their respective Governments for their approval. It will then be signed in Bonn and be subject to ratification.

In the draft a partial boundary approximately 30 nautical miles long has been drawn as far as a point which is equidistant from Kap Blaavandshuk and the island of Sylt. The negotiations have not produced agreement on the further course of the boundary line. Each delegation has reserved its viewpoint as to the principles that should be applied. The German delegation has proposed that negotiations on the further course of the boundary be resumed in the near future. The Danish side will consider this proposal.

Annex 9

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF UNDER THE NORTH SEA BETWEEN THE TWO COUNTRIES, DATED 6 OCTOBER 1965

191 2

B. TEKST

Overeenkomst tussen de Regering van het Koninkrijk der Nederlanden en de Regering van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland inzake de begrenzing van het tussen deze landen gelegen continentale plat onder de Noordzee

De Regering van het Koninkrijk der Nederlanden en de Regering van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland;

Verlangende de grens tussen de onderscheiden delen van het continentale plat onder de Noordzee vast te stellen op basis van een lijn waarvan elk punt op gelijke afstand ligt van de dichtstbij gelegen punten van de basislijnen vanwaar de territoriale zee van elk land op dit moment wordt gemeten;

Zijn overeengekomen als volgt:

Artikel 1

1. Met inachtneming van artikel 2 van deze Overeenkomst, wordt de grenslijn tussen het deel van het continentale plat dat toebehoort aan het Koninkrijk der Nederlanden en het deel dat toebehoort aan het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland gevormd door de bogen van grootcirkels tussen de volgende punten, in de volgorde als hieronder aangegeven:

1.	51°	48′	18″	N.,	2°	28′	54″ O.
2.	51	59	00		2	37	36
3.	52	01	00		2	39	30
4.	52	05	18		2	42	12
5.	52	06	00		2	42	54
6.	52	12	24		2	50	24
7.	52	17	24		2	56	00
8.	52	25	00		3	03	30
9.	52	37	18		3	11	00
10.	52	47	00		3	12	18
11.	52	53	00		3	10	30
12.	53	18	06		3	03	24
13.	53	28	12		3	01	00
14.	53	35	06		2	59	18
15.	53	40	06		2	57	24
16.	53	57	48		2	52	00
17.	54	22	48		2	45	48
18.	54	37	18		2	53	54
19.	55	50	06		3	24	00

Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the Delimination of the Continental Shelf under the North Sea between the two Countries

The Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to establish the boundary between the respective parts of the Continental Shelf under the North Sea on the basis of a line every point of which is equidistant from the nearest points of the baselines from which the territorial sea of each country is at present measured;

Have agreed as follows:

Article 1

(1) Subject to Article 2 of this Agreement the dividing line between that part of the Continental Shelf which appertains to the United Kingdom of Great Britain and Northern Ireland and that part which appertains to the Kingdom of the Netherlands shall be arcs of Great Circles between the following points in the sequence given below:

1.	51°	48′	18″	N.,	2°	28′	54″ E.
2.	51	59	00		2	37	36
3.	52	01	00		2	39	30
4.	52	05	18		2	42	12
5.	52	06	00		2	42	54
6.	52	12	24		2	50	24
7.	52	17	24		2	56	00
8.	52	25	00		3	03	30
9.	52	37	18		3	11	00
10.	52	47	00		3	12	18
11.	52	53	00		3	10	30
12.	53	18	06		3	03	24
13.	53	28	12		3	01	00
14.	53	35	06		2	59	18
15.	53	40	06		2	57	24
16.	53	57	48		2	52	00
17.	54	22	48		2	45	48
18.	54	37	18		2	53	54
19.	55	50	06		3	24	00

ligging van de in dit artikel genoemde punten is uitgedrukt in lengte en breedte volgens Europese coördinaten (1e Vereffening 1950).

2. De grenslijn is aangegeven op de aan deze Overeenkomst gehechte kaart.

Artikel 2

1. In zuidelijke richting is het eindpunt van de grenslijn punt 1, dat het snijpunt vormt van de grenslijnen tussen de continentale platten van het Koninkrijk der Nederlanden, het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland en het Koninkrijk België.

2. In noordelijke richting is het eindpunt van de grenslijn punt 19, dat het snijpunt vormt van de grenslijnen tussen de continentale platten van het Koninkrijk der Nederlanden, het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland en het Koninkrijk Denemarken.

Artikel 3

Indien er een geschil mocht rijzen aangaande de positie van een installatie of andere inrichting, dan wel van een drainagepunt van een boring, ten opzichte van de grenslijn, stellen de Overeenkomstsluitende Partijen in onderling overleg vast aan welke zijde van de grenslijn de installatie of de andere inrichting, dan wel het drainagepunt van de boring, is gelegen.

Artikel 4

1. Deze Overeenkomst wordt bekrachtigd. De akten van bekrachtiging worden zo spoedig mogelijk te 's-Gravenhage uitgewisseld.

2. Deze Overeenkomst treedt in werking op de datum van de uitwisseling van de akten van bekrachtiging.

TEN BLIJKE WAARVAN de ondergetekenden, daartoe behoorlijk gemachtigd door hun onderscheiden Regeringen, deze Overeenkomst hebben ondertekend.

GEDAAN in tweevoud te Londen, de 6e oktober 1965, in de Nederlandse en de Engelse taal, zijnde de beide teksten gelijkelijk authentiek.

Voor de Regering van het Koninkrijk der Nederlanden:

(w.g.) D. W. VAN LYNDEN

Voor de Regering van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland:

(w.g.) WALTER PADLEY

The positions of the points in this Article are defined in terms of latitude and longitude on European Datum (1st Adjustment 1950).

(2) The dividing line has been drawn on the chart annexed to this Agreement.

Article 2

(1) In the south the termination point of the dividing line shall be point No. 1, which is the point of intersection of the dividing lines between the Continental Shelves of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands and the Kingdom of Belgium.

(2) In the north the termination point of the dividing line shall be point No. 19, which is the point of intersection of the dividing lines between the Continental Shelves of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands and the Kingdom of Denmark.

Article 3

Should any dispute arise concerning the position of any installation or other device or a well's intake in relation to the dividing line, the Contracting Parties shall in consultation determine on which side of the dividing line the installation or other device or the well's intake is situated.

Article 4

(1) This Agreement shall be ratified. Instruments of ratification shall be exchanged at The Hague as soon as possible.

(2) This Agreement shall enter into force on the date of the exchange of instruments of ratification.

IN WITNESS WHEREOF the undersigned being duly authorised thereto by their respective Governments have signed the present Agreement.

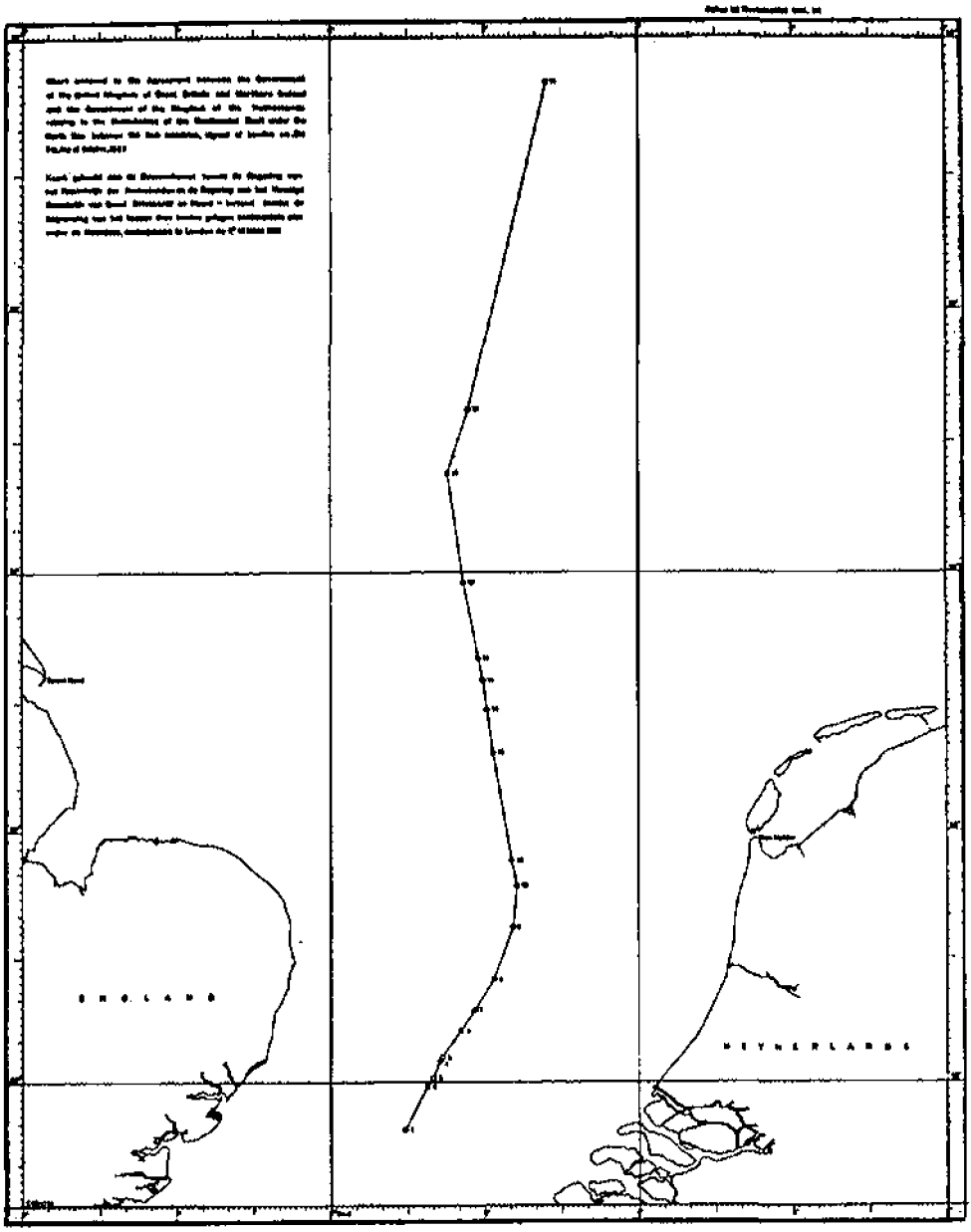
DONE in duplicate at London the 6th October, 1965 in the English and Netherlands languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

(sd.) WALTER PADLEY

For the Government of the Kingdom of the Netherlands:

(sd.) D. W. VAN LYNDEN


ENGLAND
NETHERLANDS

Annex 10

AIDE-MÉMOIRE OF THE GERMAN EMBASSY AT LONDON, DATED 12 JULY 1966, RELATING TO THE SIGNATURE OF THE BRITISH-NETHERLANDS AGREEMENT (Annex 9)

Copy of Foreign Office draft)

V 1 - 80/52/2

Aide-Mémoire

Die Bundesregierung ist darüber unterrichtet, daß die Regierung des Vereinigten Königreichs von Großbritannien und Nordirland und die Regierung des Königreichs Dänemark am 3. März 1966 einen Vertrag über die Abgrenzung ihrer Anteile am Festlandsockel in der Nordsee unterzeichnet haben. Der südliche Endpunkt der britisch-dänischen Grenzlinie wird in Artikel 3 Absatz 2) dieses Vertrages als derjenige Punkt bezeichnet, an dem die Festlandsockel Großbritanniens, Dänemarks und der Niederlande aneinandergrenzen.

Unter Bezugnahme auf die Verbalnote des Auswärtigen Amts vom 17. September 1964 - V 1 - 80.52/3 - S - GB - möchte die Bundesregierung nicht verfehlen, die britische Regierung darauf aufmerksam zu machen, daß eine endgültige Regelung der Frage der seitlichen Abgrenzung des Festlandsockels in der Nordsee zwischen der Bundesrepublik Deutschland, dem Königreich Dänemark und dem Königreich der Niederlande noch aussteht. Die Bundesregierung möchte der britischen Regierung ferner das in Abschrift beigefügte Aide-Mémoire vom 25. Mai 1966 zur Kenntnis bringen und bemerken, daß die in dem erwähnten Vertrag getroffene Regelung die Frage der Abgrenzung des Festlandsockels zwischen der Bundesrepublik Deutschland und Dänemark in der östlichen Nordsee nicht präjudizieren kann.

Bonn, den 12. Juli 1966

L.S.

Annex 10A

(Translation)

AIDE-MÉMOIRE OF THE GERMAN EMBASSY AT LONDON, 12 JULY 1966

The Federal Government has been informed that the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands signed on 6 October 1965 an Agreement concerning the delimitation of their respective parts of the continental shelf in the North Sea. Paragraph 2 of Article 2 of that Agreement defines the northern termination point of the British-Netherlands boundary line to be the point of intersection of the dividing lines between the continental shelves of Great Britain, Denmark, and the Netherlands.

With reference to the Note Verbale of the Federal Foreign Office No. V 1-80. 52/3-S-GB dated 17 September, 1964, the Federal Government wishes to point out to the British Government that the final settlement of the question of the lateral delimitation of the continental shelf in the North Sea between the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands is still outstanding. The Federal Government would moreover bring the Aide-mémoire of 25 May 1966, a copy of which is attached, to the attention of the British Government and would add that the arrangement made in the aforementioned Agreement cannot prejudice the question of the delimitation of the continental shelf between the Federal Republic of Germany and the Netherlands in the eastern part of the North Sea.

Bonn, 12 July 1966
L.S.

Annex 11

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE KINGDOM OF NORWAY CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF, DATED 8 DECEMBER 1965

Overenskomst om avgrensning av kontinentalsokkelen mellom Norge og Danmark.

Vedlegg.

1965
8. des.

Overenskomst om avgrensningen av kontinentalsokkelen mellom Norge og Danmark.

Regjeringen i Kongeriket Norge og regjeringen i Kongeriket Danmark, som har besluttet å fastlegge den felles grense mellom de deler av kontinentalsokkelen som Norge, respektive Danmark, utøver høyhetsrett over for såvidt angår utforskning og utnyttelse av naturforekomster, er blitt enige om følgende:

Artikkel 1.

Grensen mellom den del av kontinentalsokkelen som henholdsvis Norge og Danmark utøver høyhetsrett over, skal være midtlinjen,

* Overenskomsten trådte i kraft i medhold av art. 5 i.f. 22. juni 1966. Ratifikasjonsdokumentet ble undertegnet 22. april 1966 i medhold av Kgl. resolusjon av samme dato, jfr. St.prp. nr. 68 (1965-66) og Innst. S. nr. 123.

som bestemmes slik at hvert punkt på linjen ligger like langt fra de nærmeste punkter på de grunnlinjer som bredden av de kontraherende parters ytre territorialfarvann beregnes fra. 1965 8. des.

Artikkel 2.

For å få en hensiktsmessig anvendelse av det prinsipp som er kommet til uttrykk i art. 1, trekkes grensen som rette linjer (kompasslinjer) gjennom følgende punkter i den angitte rekkefølge:

Pkt. 1	58°15,8'N	10°02,0'E
» 2	57°59,3'N	9°23,0'E
» 3	57°41,8'N	8°53,3'E
» 4	57°37,1'N	8°27,5'E
» 5	57°29,9'N	7°59,0'E
» 6	57°10,5'N	6°56,2'E
» 7	56°35,5'N	5°02,0'E
» 8	56°05,2'N	3°15,0'E

De geografiske koordinater som er nevnt ovenfor refererer seg til vedlagte norske sjøkart nr. 301 utgave 1941, trykt i november 1963, hvor grenselinjen er inntegnet. Kartet utgjør en integrerende del av denne overenskomst.

Artikkel 3.

Endepunktene for den norsk-danske grenselinje er de punkter hvor linjen møter grenselinjen for andre staters deler av kontinentalsokkelen.

De kontraherende parter har til hensikt, om nødvendig, endelig å fastsette disse punkter etter konsultasjon med vedkommende tredje land.

Artikkel 4.

Dersom det konstateres at naturforekomster på havbunnen eller i dennes undergrunn strekker seg på begge sider av grensen mellom de kontraherende parters kontinentalsokkel, med den følge at forekomster som finnes på den ene parts område, helt eller delvis vil kunne utvinnes fra den annen parts område, skal det, etter begjæring fra den ene av de kontraherende parter, treffes avtale om utnyttelsen av disse naturforekomster.

1966

1965

Artikkel 5.

8. des.

Denne overenskomst er avfattet i to originaleksemplarer, i en norsk og en dansk tekst, som har samme gyldighet.

Overenskomsten skal ratifiseres og utveksling av ratifikasjonsdokumentene skal finne sted i København.

Overenskomsten trer i kraft den dag ratifikasjonsdokumentene utveksles.

Annex 11 A

(Translation)

AGREEMENT CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN NORWAY AND DENMARK

The Government of the Kingdom of Norway and the Government of the Kingdom of Denmark resolved, in so far as the exploration and exploitation of natural resources are involved, to establish the common boundary between the parts of the continental shelf over which Norway and Denmark exercise respective sovereign rights, and have agreed as follows:

Article 1

The boundary between that part of the continental shelf over which Norway and Denmark exercise respective sovereign rights, shall be the median line to be determined so that every point of that line is equidistant from the nearest points of the baselines from which the breadth of the outer territorial waters of the Contracting States is measured.

Article 2

In order to arrive at a practicable application of the principle expressed in Article 1 of the present Agreement, the boundary shall be drawn as straight lines (compass lines) through the following points in the sequence given below:

Point 1	58°15, 8′N	10°02, 0′E
Point 2	57°59, 3′N	9°23, 0′E
Point 3	57°41, 8′N	8°53, 3′E
Point 4	57°37, 1′N	8°27, 5′E
Point 5	57°29, 9′N	7°59, 0′E
Point 6	57°10, 5′N	6°56, 2′E
Point 7	56°35, 5′N	5°02, 0′E
Point 8	56°05, 2′N	3°15, 0′E

The geographical co-ordinates designated above refer to the attached Norwegian chart No. 301, 1941, edition, printed in November 1963, on which the boundary line is indicated. That chart shall constitute an integral part of the present Agreement.

Article 3

The termination points of the Norwegian-Danish boundary line shall be the points at which the line meets the boundary line of the continental shelves of other States.

The Contracting Parties intend, if necessary, to establish those points definitively after consultation with the third States concerned.

Article 4

If it is discovered that natural resources on the seabed or subsoil extend over both sides of the boundary between the continental shelf of the Contracting Parties, so that resources located in the territory of one Contracting Party can, either in whole or in part, be extracted from the territory of the other Contracting Party, an arrangement shall be concluded at the request of either Contracting Party concerning the exploitation of those natural resources.

Article 5

The present Agreement shall be drawn up in duplicate in the Norwegian and Danish languages, both texts being equally authentic.

The present Agreement shall be subject to ratification and the instruments of ratification shall be exchanged in Copenhagen.

The present Agreement shall enter into force on the day of the exchange of the instruments of ratification.

Annex 12

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN THE TWO COUNTRIES, DATED 3 MARCH 1966

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN THE TWO COUNTRIES

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark;

Having decided to establish their common boundary between the parts of the continental shelf over which the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark respectively exercise sovereign rights for the purpose of exploration and exploitation of the natural resources of the Continental Shelf,

Have agreed as follows:

ARTICLE 1

The dividing line between that part of the Continental Shelf which appertains to the United Kingdom of Great Britain and Northern Ireland and that part which appertains to the Kingdom of Denmark is in principle a line which at every point is equidistant from the nearest points of the baselines from which the territorial sea of each country is measured.

ARTICLE 2

(1) In implementation of the principle set forth in Article 1, the dividing line shall be an arc of a Great Circle between the following points:

56° 05′ 12″ N., 3° 15′ 00″ E.

55° 50′ 06″ N., 3° 24′ 00″ E.

The positions of the two above-mentioned points are defined by latitude and longitude on European Datum (1st Adjustment 1950).

(2) The dividing line has been drawn on the chart annexed to this Agreement.

ARTICLE 3

(1) In the north the termination point of the dividing line is the point of intersection of the dividing lines between the Continental Shelves of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Denmark and the Kingdom of Norway.

(2) In the south the termination point of the dividing line is the point of intersection of the dividing lines between the Continental Shelves of the United Kingdom of Great Britain and Northern Ireland, the Kingdom of Denmark and the Kingdom of the Netherlands.

ARTICLE 4

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand or gravel, extends across the dividing line and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, the Contracting Parties shall seek to reach agreement as to the exploitation of such structure or field.

ARTICLE 5

(1) This Agreement shall be ratified. Instruments of ratification shall be exchanged at Copenhagen as soon as possible.

(2) The Agreement shall enter into force on the date of the exchange of instruments of ratification.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

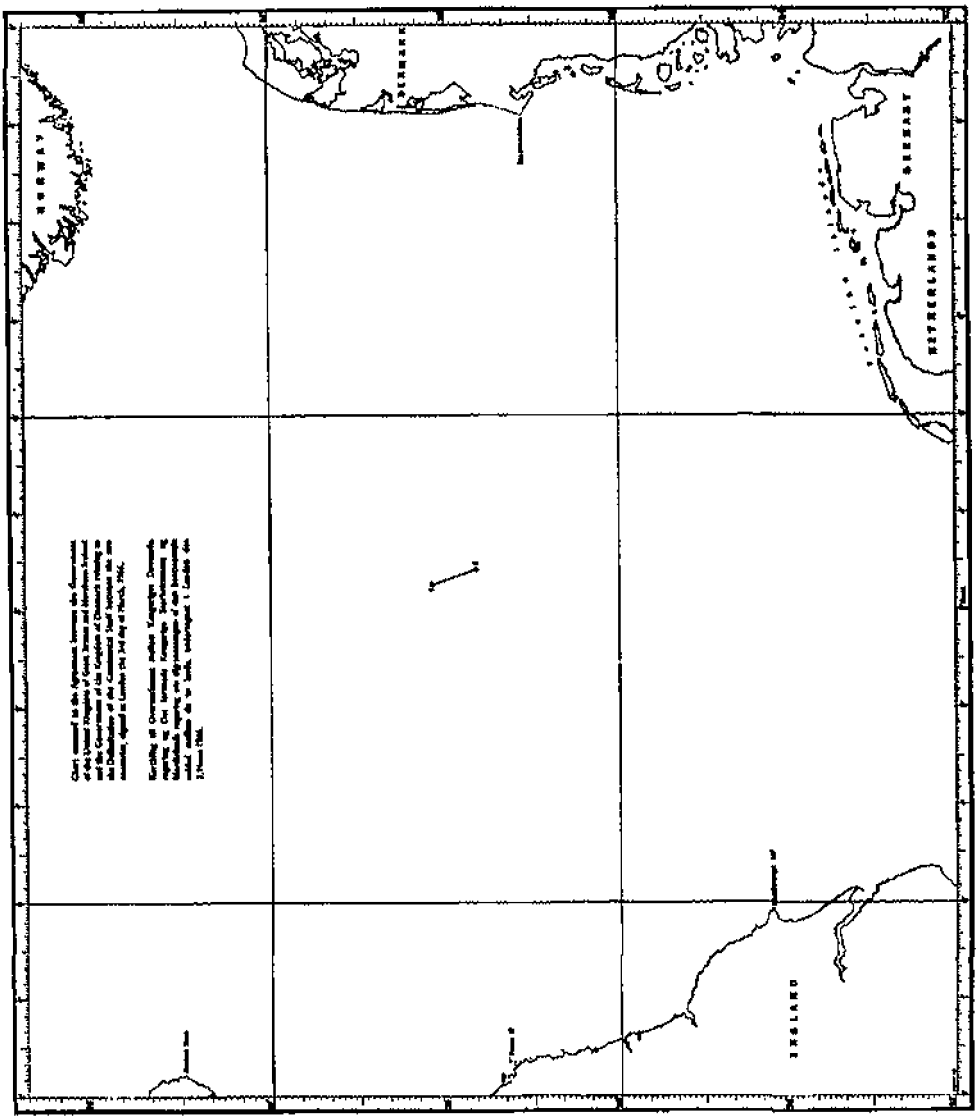
Done in duplicate at London the 3rd day of March, 1966, in the English and Danish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

WALTER PADLEY

For the Government of the Kingdom of Denmark:

E. KRISTIANSEN


NORWAY
DENMARK
GERMANY
NETHERLANDS
BELGIUM
ENGLAND

Annex 13

AIDE-MÉMOIRE OF THE GERMAN EMBASSY AT LONDON, DATED 12 JULY 1966, RELATING TO THE SIGNATURE OF THE BRITISH-DANISH AGREEMENT (ANNEX 12)

(Copy of Foreign Office draft)

V 1 - 80/52/2

Aide - Mémoire

Die Bundesregierung ist darüber unterrichtet, daß die Regierung des Vereinigten Königreichs von Großbritannien und Nordirland und die Regierung des Königreichs der Niederlande am 6. Oktober 1965 einen Vertrag über die Abgrenzung ihrer Anteile am Festlandsockel in der Nordsee unterzeichnet haben. Der nördliche Endpunkt der britisch-niederländischen Grenzlinie wird in Artikel 2 Absatz (2) dieses Vertrages als derjenige Punkt bezeichnet, an dem die Festlandsockel Großbritanniens, Dänemarks und der Niederlande ineinandergrenzen.

Unter Bezugnahme auf die Verbalnote des Auswärtigen Amts vom 17. September 1964 - V 1 - 80.52/3 - S - GB - möchte die Bundesregierung nicht verfehlen, die britische Regierung darauf aufmerksam zu machen, daß eine endgültige Regelung der Frage der seitlichen Abgrenzung des Festlandsockels in der Nordsee zwischen der Bundesrepublik Deutschland, dem Königreich Dänemark und dem Königreich der Niederlande noch aussteht. Die Bundesregierung möchte der britischen Regierung ferner das in Abschrift beigefügte Aide-Mémoire vom 25. Mai 1966 zur Kenntnis bringen und bemerken, daß die in dem erwähnten Vertrag getroffene Regelung die Frage der Abgrenzung des Festlandsockels zwischen der Bundesrepublik Deutschland und den Niederlanden in der östlichen Nordsee nicht präjudizieren kann.

Bonn, den 12. Juli 1966

L.S.

Annex 13A

(Translation)

AIDE-MÉMOIRE OF THE GERMAN EMBASSY AT LONDON, DATED 12 JULY 1966

The Federal Government has been informed that the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark signed on 3 March 1966 an Agreement concerning the delimitation of their respective parts of the continental shelf in the North Sea. Paragraph 2 of Article 3 of that Agreement defines the southern termination point of the British-Danish boundary line to be the point of intersection of the dividing lines between the continental shelves of Great Britain, Denmark, and the Netherlands.

With reference to the Note Verbale of the Federal Foreign Office No. V 1-80. 52/3-S-GB, dated 17 September 1964, the Federal Government wishes to point out to the British Government that the final settlement of the question of the lateral delimitation of the continental shelf in the North Sea between the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands is still outstanding. The Federal Government would moreover bring the Aide-mémoire of 25 May 1966, a copy of which is attached, to the attention of the British Government and would add that the arrangement made in the aforementioned Agreement cannot prejudice the question of the delimitation of the continental shelf between the Federal Republic of Germany and Denmark in the eastern part of the North Sea.

Bonn, 12 July 1966
L.S.

Annex 14

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE KINGDOM OF DENMARK CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF UNDER THE NORTH SEA BETWEEN THE TWO COUNTRIES, DATED 31 MARCH 1966

3 (1966) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1966 Nr. 130

A. TITEL

Overeenkomst tussen het Koninkrijk der Nederlanden en het Koninkrijk Denemarken inzake de begrenzing van het tussen deze landen gelegen continentaal plat onder de Noordzee; 's-Gravenhage, 31 maart 1966

B. TEKST

Overeenkomst tussen de Regering van het Koninkrijk der Nederlanden en de Regering van het Koninkrijk Denemarken inzake de begrenzing van het tussen deze landen gelegen continentale plat onder de Noordzee

De Regering van het Koninkrijk der Nederlanden en de Regering van het Koninkrijk Denemarken,

Verlangende de grens tussen de onderscheiden delen van het continentale plat onder de Noordzee vast te stellen op basis van een lijn waarvan elk punt op gelijke afstand ligt van de dichtstbij gelegen punten van de basislijnen vanwaar de territoriale zee van elk land op dit moment wordt gemeten;

Zijn overeengekomen als volgt:

Artikel 1

1. Ter uitvoering van het beginsel van de gelijke afstand, neergelegd in de preambule van deze Overeenkomst, wordt de grenslijn tussen het deel van het continentale plat dat toebehoort aan het Koninkrijk der Nederlanden en het deel dat toebehoort aan het Koninkrijk Denemarken gevormd door de bogen van grootcirkels tussen de volgende punten, in de volgorde als hieronder aangegeven:

A. 55° 02′ 36″ N — 5° 29′ 09″ O.
B. 55° 26′ 11″ N — 4° 25′ 34″ O.
C. 55° 46′ 22″ N — 3° 36′ 40″ O.
D. 55° 50′ 06″ N — 3° 24′ 00″ O.

De ligging van de in dit artikel genoemde punten is uitgedrukt in lengte en breedte volgens Europese coördinaten (1e Vereffening 1950).

2. De grenslijn is aangegeven op de aan deze Overeenkomst gehechte kaart.

Artikel 2

1. Op verzoek van een van beide Overeenkomstsluitende Partijen maakt de andere Partij zo spoedig mogelijk haar standpunt bekend betreffende de positie, ten opzichte van de grenslijn, van een reeds aanwezige of nog op te richten installatie of andere inrichting, dan wel van een drainagepunt van een boring.

2. Indien er een geschil mocht rijzen aangaande de positie van een installatie of andere inrichting, dan wel van een drainagepunt

Overenskomst mellem Kongeriget Nederlandenes regering og Kongeriget Danmarks regering om afgrænsningen af den kontinentale sokkel under Nordsøen mellem de to lande

Kongeriget Nederlandenes regering og Kongeriget Danmarks regering,

der ønsker at fastlægge grænsen mellem deres respektive dele af den kontinentale sokkel under Nordsøen på basis af en linie, som i ethvert punkt ligger lige langt fra de nærmeste punkter på de basislinier, hvorfra hvert lands ydre territorialfarvand på indeværende tidspunkt måles,

er blevet enige om følgende:

Artikel 1

1. Ved anvendelse af midterlinieprincippet, som det er udtrykt i indledningen til nærværende overenskomst, skal grænselinien mellem den del af den kontinentale sokkel, der tilhører Kongeriget Danmark, og den del, der tilhører Kongeriget Nederlandene, være storcirkelbuer mellem følgende punkter i den angivne rækkefølge:

A. 55° 02′ 36″ N — 5° 29′ 09″ Ø.
B. 55° 26′ 11″ N — 4° 25′ 34″ Ø.
C. 55° 46′ 22″ N — 3° 36′ 40″ Ø.
D. 55° 50′ 06″ N — 3° 24′ 00″ Ø.

Positionerne for punkterne i denne artikel er bestemt ved bredde og længde i henhold til European Datum (første revision 1950).

2. Grænselinien er indtegnet på et kort, der er vedføjet denne overenskomst.

Artikel 2

1. På begæring af en kontraherende part skal den anden kontraherende part snarest belejligt fremsætte sine synspunkter vedrørende beliggenheden i forhold til grænselinien af en bestående eller planlagt installation, andet anlæg eller et brøndindtag.

2. I tilfælde af tvist om beliggenheden i forhold til grænselinien af en installation eller andet anlæg eller et brøndindtag skal de kon-

van een boring, ten opzichte van de grenslijn, stellen de Overeenkomstsluitende Partijen in onderling overleg vast aan welke zijde van de grenslijn de installatie of de andere inrichting, dan wel het drainagepunt van de boring, is gelegen.

Artikel 3

1. Deze Overeenkomst wordt bekrachtigd. De akten van bekrachtiging worden zo spoedig mogelijk te Kopenhagen uitgewisseld.

2. Deze Overeenkomst treedt in werking op de datum van de uitwisseling van de akten van bekrachtiging.

TEN BLIJKE WAARVAN de ondergetekenden, daartoe behoorlijk gemachtigd door hun onderscheiden Regeringen, deze Overeenkomst hebben ondertekend.

GEDAAN in tweevoud te 's-Gravenhage, de 31e maart 1966, in de Nederlandse en de Deense taal, zijnde de beide teksten gelijkelijk authentiek.

Voor de Regering van het Koninkrijk der Nederlanden:
For Kongeriget Nederlandenes regering:

(w.g.) J. LUNS

Voor de Regering van het Koninkrijk Denemarken:
For Kongeriget Danmarks regering:

(w.g.) H. HJORTH-NIELSEN

traherende parter i samråd bestemme, på hvilken side af grænselinien installationen, anlægget eller brøndindtaget er beliggende.

Artikel 3

1. Denne overenskomst skal ratificeres. Ratifikationsinstrumenterne skal snarest muligt udveksles i København.

2. Overenskomsten træder i kraft på datoen for ratifikationsinstrumenternes udveksling.

TIL BEKRÆFTELSE HERAF har undertegnede, som er blevet behørigt bemyndigede dertil af deres respektive regeringer, underskrevet denne overenskomst.

UDFÆRDIGET i Haag den 31. marts 1966 i to eksemplarer, på hollandsk og dansk, begge tekster af samme gyldighed.

[For map attached to Annex 14 see pocket inside back cover]

Annex 14 A

(Translation)

AGREEMENT

BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE KINGDOM OF DENMARK CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF UNDER THE NORTH SEA BETWEEN THE TWO COUNTRIES

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
and
THE GOVERNMENT OF THE KINGDOM OF DENMARK,

DESIRING to establish the boundary between their respective parts of the Continental Shelf under the North Sea on the basis of a line every point of which is equidistant from the nearest points of the baselines from which the territorial waters of either country are at present measured,

HAVE AGREED AS FOLLOWS:

Article 1

1. In order to apply the principle of equidistance laid down in the preamble to the present Agreement the boundary line between the part of the Continental Shelf appertaining to the Kingdom of the Netherlands and the part appertaining to the Kingdom of Denmark shall be formed by arcs of Great Circle between the following points in the sequence given below:

A. 55°02′36″ N — 5°29′09″ E.
B. 55°26′11″ N — 4°25′34″ E.
C. 55°46′22″ N — 3°36′40″ E.
D. 55°50′06″ N — 3°24′00″ E.

The positions of the points mentioned in this Article are defined in latitude and longitude on European Datum System (1st adjustment 1950).

2. The boundary line is indicated on the map attached to the present Agreement.

Article 2

1. At the request of either Contracting Party the other Contracting Party shall as soon as possible make known its views regarding the position—in relation to the boundary line—of any existing or planned installation or other device, or a well's intake.

2. Should a difference of opinion arise with regard to the position, in relation to the boundary line of any installation or other device or of a well's intake, the Contracting Parties shall determine in mutual agreement on which side of the boundary line the installation or other device, or the well's intake is situated.

Article 3

1. The present Agreement shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible in Copenhagen.

2. The present Agreement shall enter into force on the day of exchange of the instruments of ratification.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have affixed their signatures.

DONE at The Hague on 31 March 1966 in duplicate in the Netherlands and Danish languages, both texts being equally authentic.

For the Government of the Kingdom of the Netherlands:
(signed) J. LUNS

For the Government of the Kingdom of Denmark:
(signed) H. HJORTH-NIELSEN

Annex 15

AIDE-MÉMOIRE OF THE GERMAN MINISTRY OF FOREIGN AFFAIRS, DATED 25 MAY 1966

Auswärtiges Amt

V 1 - 80.52/ 2 Nordsee

A i d e - M é m o i r e

Die Bundesregierung ist darüber unterrichtet, dass die Regierung des Königreichs Dänemark und die Regierung des Königreichs der Niederlande am 31. März 1966 einen Vertrag über die Abgrenzung der beiderseitigen Anteile am Festlandsockel der Nordsee unterzeichnet haben.

Die Bundesregierung möchte nicht verfehlen, die dänische (bzw. niederländische) Regierung darauf aufmerksam zu machen, dass die in dem dänisch-niederländischen Vertrag getroffene Regelung die Frage der Abgrenzung des deutsch-niederländischen und des deutsch-dänischen Festlandsockels in der Nordsee nicht präjudizieren kann.

Bonn, den 25. Mai 1966

Annex 15 A

(Translation)

GERMAN FEDERAL FOREIGN OFFICE

V 1 - 80.52/2 North Sea

AIDE-MÉMOIRE

The Federal Government has been informed that the Government of the Kingdom of Denmark and the Government of the Kingdom of the Netherlands signed on 31 March 1966 a Treaty on the Delimitation of their respective parts of the Continental Shelf in the North Sea.

The Federal Government wishes to draw the attention of the Danish (Netherlands) Government to the fact that the arrangement made in the Danish-Netherlands Treaty cannot have any effect on the question of the delimitation of the German-Netherlands or the German-Danish parts of the Continental Shelf in the North Sea.

Bonn, 25 May 1966

Annex 16

Supplementary Agreement to the German-Netherlands Ems-Dollart Treaty, Dated 14 May 1962

Zusatzabkommen zu dem zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande am 8. April 1960 unterzeichneten Vertrag über die Regelung der Zusammenarbeit in der Emsmündung (Ems-Dollart-Vertrag)

Aanvullende Overeenkomst bij het op 8 april 1960 voor de Bondsrepubliek Duitsland en het Koninkrijk der Nederlanden ondertekende Verdrag tot regeling van de samenwerking in de Eemsmonding (Eems-Dollardverdrag)

DIE BUNDESREPUBLIK DEUTSCHLAND

und

DAS KÖNIGREICH DER NIEDERLANDE

IN DEM WUNSCH, die Ausbeutung der Bodenschätze im Untergrund der Emsmündung zu fördern, und in der Absicht, dabei im Sinne von Artikel 48 des Ems-Dollart-Vertrags zusammenzuarbeiten,

HABEN FOLGENDES VEREINBART:

Artikel 1

In diesem Abkommen bedeutet:

„Grenzbereich" das in der diesem Abkommen beigefügten Karte schraffiert eingezeichnete Gebiet mit seinem Untergrund;

„Linie" die Linie, die den Grenzbereich in der Längsrichtung teilt und die in anliegender Karte mit grüner Farbe eingetragen ist;

„Bodenschätze" alle festen, flüssigen oder gasförmigen Stoffe im Untergrund, deren Gewinnung nach dem Bergrecht einer der beiden Vertragsparteien eine Berechtigung voraussetzt;

„Berechtigter" derjenige, der ein Recht zur Aufsuchung oder Gewinnung von Bodenschätzen (Berechtigung) hat.

Artikel 2

Die Vertragsparteien werden bei allen Fragen, die sich im Zusammenhang mit der Aufsuchung und Gewinnung von im Untergrund der Emsmündung vorkommenden Bodenschätzen ergeben sollten und bei denen beiderseitige Interessen berührt werden, im Geiste guter Nachbarschaft zusammenarbeiten.

Artikel 3

Die Artikel 4 bis 10 dieses Abkommens beziehen sich auf die im Grenzbereich vor Beginn der Gewinnung vorhandenen Vorkommen von Erdöl und Erdgas und die bei der Gewinnung anfallenden sonstigen Stoffe. Die Vertragsparteien werden in einem weiteren Abkommen die sinngemäße Anwendung dieser Bestimmungen auf andere Bodenschätze im Grenzbereich vereinbaren, falls eine von ihnen dies für erforderlich erklärt.

Artikel 4

(1) Im Grenzbereich kommt unbeschadet des Ems-Dollart-Vertrags für

a) die Aufsuchung und Gewinnung

DE BONDSREPUBLIEK DUITSLAND

en

HET KONINKRIJK DER NEDERLANDEN

GELEID DOOR DE WENS de ontginning van de bodemschatten in de ondergrond van de Eemsmonding te bevorderen en met de bedoeling daarbij samen te werken in de geest van artikel 48 van het Eems-Dollardverdrag,

ZIJN HET VOLGENDE OVEREENGEKOMEN:

Artikel 1

In deze Overeenkomst betekent:

„grensgebied" het in de bij deze Overeenkomst gevoegde kaart gearceerd aangegeven gebied met zijn ondergrond;

„lijn" de lijn die het grensgebied in de lengterichting verdeelt en die op bijgaande kaart met groen is aangegeven;

„bodemschatten" alle vaste, vloeibare of gasvormige stoffen in de ondergrond voor de winning waarvan volgens het mijnrecht van een van beide Overeenkomstsluitende Partijen een ontginningsrecht is vereist;

„gerechtigde" een persoon die een recht tot opsporing of winning van bodemschatten (hierna te noemen „recht") heeft.

Artikel 2

De Overeenkomstsluitende Partijen zullen bij alle vraagstukken die zich in verband met de opsporing en winning van in de ondergrond van de Eemsmonding voorkomende bodemschatten mochten voordoen en waarbij wederzijdse belangen zijn betrokken in een geest van goede nabuurschap samenwerken.

Artikel 3

De artikelen 4 tot en met 10 van deze Overeenkomst hebben betrekking op de in het grensgebied vóór het begin van de winning aanwezige aardolie- en aardgasvoorkomens en andere stoffen die gelijktijdig bij de winning worden verkregen. De Overeenkomstsluitende Partijen zullen in een afzonderlijke overeenkomst de overeenkomstige toepassing van deze bepalingen op andere bodemschatten in het grensgebied regelen, indien een van hen verklaart dat zulks noodzakelijk is.

Artikel 4

(1) In het grensgebied vindt, onverminderd het Eems-Dollardverdrag, met betrekking tot

a) de opsporing en winning

b) mit der Aufsuchung und Gewinnung im Zusammenhang stehende Handlungen und Unterlassungen

c) die zur Aufsuchung und Gewinnung errichteten Anlagen

niederländischerseits der Linie niederländisches, deutscherseits der Linie deutsches Recht zur Anwendung. Entsprechendes gilt hinsichtlich der Zuständigkeit der Behörden und Gerichte; in bezug auf ortsfeste Anlagen zur Aufsuchung oder Gewinnung findet Artikel 33 Abs. 2 bis 6 des Ems-Dollart-Vertrags sinngemäß Anwendung.

(2) Die Vertragsparteien können nach ihrem innerstaatlichen Recht Berechtigungen erteilen, die für den ganzen Grenzbereich Gültigkeit haben. Von diesen und den beim Inkrafttreten dieses Abkommens bereits bestehenden Berechtigungen darf jedoch nur nach Maßgabe dieses Abkommens Gebrauch gemacht werden.

(3) Jede Vertragspartei wird der anderen unverzüglich die bestehenden Berechtigungen mitteilen. Dasselbe gilt, wenn neue Berechtigungen erteilt oder Berechtigungen geändert oder aufgehoben werden.

b) een met de opsporing en winning verband houdend handelen en nalaten

c) de voor de opsporing en winning ingerichte installaties

aan de Nederlandse zijde van de lijn het Nederlandse recht, en aan de Duitse zijde van de lijn het Duitse recht toepassing. Het voorgaande vindt ten aanzien van de bevoegdheid der autoriteiten en gerechten overeenkomstige toepassing; met betrekking tot met de bodem verbonden installaties voor de opsporing of winning is artikel 33, lid 2 tot en met lid 6, van het Eems-Dollard-verdrag van overeenkomstige toepassing.

(2) De Overeenkomstsluitende Partijen kunnen krachtens hun interne recht rechten verlenen die voor het gehele grensgebied geldig zijn. Van deze rechten en van rechten die bij de inwerkingtreding van deze Overeenkomst reeds bestaan mag echter slechts in overeenstemming met de bepalingen van deze Overeenkomst gebruik worden gemaakt.

(3) Iedere Overeenkomstsluitende Partij doet de andere Partij onverwijld mededeling van de bestaande rechten. Hetzelfde geldt wanneer nieuwe rechten worden verleend of wanneer rechten worden gewijzigd of ingetrokken.

Artikel 5

(1) Den deutschen Berechtigten einerseits und den niederländischen Berechtigten andererseits steht an dem gewonnenen Erdöl und Erdgas sowie den bei ihrer Gewinnung anfallenden sonstigen Stoffen der gleiche Anteil zu.

(2) Ein Berechtigter kann mit Genehmigung seiner Regierung ganz oder teilweise auf den ihm zustehenden Anteil verzichten oder eine Verrechnung in Geld vereinbaren.

(3) Die der Aufsuchung und Gewinnung der aufgeteilten oder in Geld verrechneten Produkte billigerweise zuzurechnenden Kosten werden im gleichen Verhältnis wie die Produkte aufgeteilt, soweit nicht die Berechtigten eine abweichende Vereinbarung nach Artikel 7 treffen.

Artikel 5

(1) De Duitse gerechtigden enerzijds, en de Nederlandse gerechtigden anderzijds, komt een gelijk deel toe van de gewonnen hoeveelheden aardolie en aardgas, alsmede van bij de winning daarvan gelijktijdig verkregen hoeveelheden andere stoffen.

(2) Een gerechtigde kan met toestemming van zijn regering geheel of gedeeltelijk afstand doen van het hem toekomende deel of verrekening in geld overeenkomen.

(3) De kosten die redelijkerwijs aan de opsporing en winning van de verdeelde of in geld verrekende producten kunnen worden toegerekend worden in dezelfde verhouding verdeeld als de producten, voor zover de gerechtigden niet overeenkomstig artikel 7 een afwijkende regeling treffen.

Artikel 6

(1) Die Aufsuchung und Gewinnung erfolgt auf der niederländischen Seite der Linie durch die niederländischen Berechtigten, auf der deutschen Seite der Linie durch die deutschen Berechtigten.

(2) Entspricht ein Berechtigter auf seiner Seite der Linie der Aufforderung des Berechtigten auf der anderen Seite, zweckdienliche Arbeiten zur Aufsuchung oder Gewinnung vorzunehmen, nicht innerhalb eines Jahres, so kann dieser die Aufsuchung oder Gewinnung unter Beachtung etwaiger Auflagen, welche dem anderen Berechtigten nach dem Inhalt seiner Berechtigung auferlegt sind, selbst vornehmen. Hat der erste Berechtigte Gewinnungsanlagen errichtet, so muß er dem anderen auf Verlangen die Benutzung dieser Anlagen gegen angemessene Entschädigung gestatten, sofern die Errichtung neuer Anlagen unzweckmäßig ist.

(3) Hat ein Berechtigter in Anwendung von Absatz 2 Satz 1 auf der anderen Seite der Linie ein Vorkommen von Erdöl oder Erdgas festgestellt und nimmt der andere Berechtigte seinen Anteil der aus diesem Vorkommen gewonnenen Produkte nach Artikel 5 ganz oder teilweise in Anspruch oder wird eine Verrechnung in Geld vereinbart, so hat der erste Berechtigte über den Anteil an den bereits aufgewandten Kosten nach Artikel 5 Abs. 3

Artikel 6

(1) De opsporing en winning geschiedt aan de Nederlandse zijde van de lijn door de Nederlandse gerechtigden, aan de Duitse zijde van de lijn door de Duitse gerechtigden.

(2) Indien een gerechtigde binnen een jaar aan zijn zijde van de lijn niet voldoet aan het verzoek van de gerechtigde aan de andere zijde van de lijn om doelmatige werkzaamheden te verrichten tot opsporing of winning, kan laatstgenoemde gerechtigde, met inachtneming van de eventuele voorwaarden die de andere gerechtigde bij de verlening van zijn recht zijn opgelegd, zelf de opsporing of winning ter hand nemen. Indien eerstgenoemde gerechtigde ten dienste van de winning installaties heeft aangelegd, moet hij de andere gerechtigde op diens verzoek toestaan tegen een passende vergoeding van die installaties gebruik te maken, voorzover de aanleg van nieuwe installaties niet doelmatig zou zijn.

(3) Indien een gerechtigde, onder toepassing van het bepaalde in de eerste volzin van lid 2, aan de andere zijde van de lijn een aardolie- of aardgasvoorkomen heeft vastgesteld en de andere gerechtigde zijn deel van de uit dit voorkomen gewonnen produkten overeenkomstig artikel 5 geheel of gedeeltelijk opeist of indien verrekening in geld wordt overeengekomen, heeft eerstgenoemde gerechtigde, behalve op het aandeel overeenkomstig artikel 5,

hinaus Anspruch auf eine angemessene Risikoprämie, soweit nicht zwischen den Berechtigten eine anderweitige Vereinbarung nach Artikel 7 Abs. 2 getroffen ist.

Artikel 7

(1) Die Berechtigten der einen Seite werden mit denen der anderen Seite bei der Aufsuchung und Gewinnung eng zusammenarbeiten. Hierfür haben sie alle Planungen für Arbeiten im Grenzbereich und deren Ergebnisse auszutauschen.

(2) Die Berechtigten schließen zum Zwecke der Zusammenarbeit baldmöglichst Verträge über folgende Angelegenheiten:

a) Die Art und Weise der Berechnung der Erdöl- und Erdgasvorräte und deren Ergebnis;

b) die Einzelheiten der Aufteilung der Produkte und Kosten gemäß Artikel 5 sowie die Buchführung und Rechnungsprüfung;

c) die Frage, ob und in welcher Höhe Risikoprämien nach Artikel 6 Abs. 3 zu gewähren sind;

d) die Regelung von Streitigkeiten.

(3) Es bleibt den Berechtigten unbenommen, Verträge über sonstige Fragen ihrer Zusammenarbeit zu schließen; in diesen Verträgen können auch für solche Fälle Risikoprämien vereinbart werden, in denen die Voraussetzungen des Artikels 6 Abs. 3 nicht gegeben sind.

(4) Verträge im Sinne von Absatz 2 und 3 sind den Regierungen beider Vertragsparteien mitzuteilen. Verträge nach Absatz 2 und Vereinbarungen in anderen Verträgen, in denen die Gewährung einer Risikoprämie oder eine von Artikel 5 Abs. 3 abweichende Aufteilung der Kosten vorgesehen ist, bedürfen der Genehmigung durch jede der beiden Regierungen.

(5) Tritt an die Stelle eines Berechtigten ein neuer Berechtigter, so muß er einen der in Absatz 2 bezeichneten Verträge gegen sich gelten lassen, bis ein neuer Vertrag geschlossen ist.

Artikel 8

Kommt ein Vertrag nach Artikel 7 Abs. 2 nicht innerhalb einer angemessenen Frist zustande, so werden die Regierungen der Vertragsparteien in Verhandlungen eintreten, um den Berechtigten einen gemeinsamen Vorschlag zu machen. Führen die Bemühungen der Regierungen nicht zu einer Einigung zwischen den Berechtigten, so kann jede Regierung das in Kapitel 12 des Ems-Dollart-Vertrags vorgesehene Schiedsgericht anrufen.

Artikel 9

Wird von einer oder beiden Regierungen die Genehmigung nach Artikel 7 Abs. 4 nicht innerhalb von vier Monaten erteilt, so werden die Regierungen in Beratungen eintreten. Führen diese nicht zu einer Einigung, so kann jede Regierung das Schiedsgericht anrufen. Die Beratungen können auch zu einem gemeinsamen Vorschlag führen, auf den Artikel 8 entsprechende Anwendung findet.

Artikel 10

(1) In den Fällen, in denen das Schiedsgericht auf Grund der Artikel 8 oder 9 angerufen wird, gelten, soweit sich aus den nachfolgenden Absätzen dieses Artikels nichts anderes ergibt, die Bestimmungen des Kapitels 12 des Ems-Dollart-Vertrags entsprechend.

lid 3, in de reeds gemaakte kosten, aanspraak op een passende risicopremie, voor zover niet tussen de gerechtigden ingevolge artikel 7, lid 2, een andere regeling is getroffen.

Artikel 7

(1) De gerechtigden aan de ene zijde van de lijn zullen bij de opsporing en winning nauw samenwerken met de gerechtigden aan de andere zijde. Te dien einde dienen zij alle plannen voor de werkzaamheden in het grensgebied en de resultaten daarvan uit te wisselen.

(2) De gerechtigden sluiten ten behoeve van deze samenwerking zo spoedig mogelijk overeenkomsten ten aanzien van de volgende aangelegenheden:

a) de wijze van berekening der aardolie- en aardgasvoorraden en de uitkomst daarvan;

b) de bijzonderheden betreffende de verdeling der produkten en kosten overeenkomstig artikel 5, alsmede de boekhouding en accountantscontrole;

c) de vraag of en tot welk bedrag risicopremies als bedoeld in artikel 6, lid 3, dienen te worden toegekend;

d) de geschillenregeling.

(3) Het staat de gerechtigden vrij overeenkomsten af te sluiten over andere met hun samenwerking verband houdende vraagstukken; in deze overeenkomsten kunnen ook voor andere gevallen dan die bedoeld in artikel 6, lid 3, risicopremies worden overeengekomen.

(4) Overeenkomsten als bedoeld in lid 2 en lid 3 dienen aan de regeringen der Overeenkomstsluitende Partijen te worden medegedeeld. Overeenkomsten als bedoeld in lid 2 en in andere overeenkomsten vervatte regelingen die voorzien in de toekenning van een risicopremie of een van artikel 5, lid 3, afwijkende kostenverdeling, behoeven de goedkeuring van elk van beide regeringen.

(5) Indien in de plaats van een gerechtigde een nieuwe gerechtigde treedt, geldt een overeenkomst als bedoeld in lid 2 tegenover deze nieuwe gerechtigde totdat een nieuwe overeenkomst is gesloten.

Artikel 8

Indien een overeenkomst als bedoeld in artikel 7, lid 2, niet binnen redelijke termijn tot stand komt, zullen de regeringen der Overeenkomstsluitende Partijen in overleg treden ten einde de gerechtigden een gemeenschappelijk voorstel te doen. Indien de bemoeiingen van de regeringen niet tot overeenstemming tussen de gerechtigden leiden, kan iedere regering een beroep doen op het Scheidsgerecht, waarin hoofdstuk 12 van het Ems-Dollardverdrag voorziet.

Artikel 9

Indien de goedkeuring bedoeld in artikel 7, lid 4, niet binnen vier maanden door een regering of door beide regeringen wordt verleend, treden de regeringen in overleg. Indien dit overleg niet tot overeenstemming leidt, kan elk van beide regeringen een beroep doen op het Scheidsgerecht. Het overleg kan tevens leiden tot een gemeenschappelijk voorstel, waarop artikel 8 van overeenkomstige toepassing is.

Artikel 10

(1) In de gevallen waarin op grond van artikel 8 of artikel 9 een beroep wordt gedaan op het Scheidsgerecht, zijn, voorzover uit de hiernavolgende leden van dit artikel niet anders blijkt, de bepalingen van hoofdstuk 12 van het Ems-Dollardverdrag van overeenkomstige toepassing.

(2) Die Regierung der Bundesrepublik Deutschland ernennt die nach Artikel 51 von ihr zu ernennenden Beisitzer aus vier vom Präsidenten des Bundesgerichtshofes vorzuschlagenden Richtern dieses Gerichts. Die Regierung des Königreichs der Niederlande ernennt die nach Artikel 51 von ihr zu ernennenden Beisitzer aus vier vom Präsidenten des Hoge Raad der Nederlanden vorzuschlagenden Richtern dieses Gerichts.

(3) Die Klageschriften im Sinne von Artikel 52 Abs. 1 und 4 müssen einen Antrag enthalten, der eine Regelung der streitigen Fragen vorsieht.

(4) Ein Doppel der Klageschrift wird von der Regierung, die sie einreicht, jedem der betroffenen Berechtigten zugeleitet. Artikel 52 Abs. 2 findet keine Anwendung.

(5) Jeder betroffene Berechtigte kann sich am Verfahren als Partei beteiligen. Die betroffenen Berechtigten nehmen auch an den Erörterungen nach Artikel 52 Abs. 3 und 5 teil.

(6) Das Schiedsgericht stellt hinsichtlich aller streitigen Rechts- und Ermessensfragen eine für die Vertragsparteien und die betroffenen Berechtigten verbindliche Regelung fest. Es kann in dieser Entscheidung auch Billigkeitsgesichtspunkte berücksichtigen.

(7) Das Schiedsgericht regelt sein Verfahren selbst, soweit die Anwendung dieses Artikels Abweichungen von der in Kapitel 12 vorgesehenen Verfahrensregelung erforderlich macht.

(8) In den Fällen des Artikels 8 kann das Schiedsgericht die Kosten des Verfahrens ganz oder teilweise dem oder den am Verfahren beteiligten Berechtigten auferlegen.

(2) De Regering van de Bondsrepubliek Duitsland benoemt de ingevolge artikel 51 door haar te benoemen assessoren uit vier door de president van het „Bundesgerichtshof" voor te dragen rechters van dit college. De Regering van het Koninkrijk der Nederlanden benoemt de ingevolge artikel 51 door haar te benoemen assessoren uit vier door de president van de Hoge Raad der Nederlanden voor te dragen rechters van dit college.

(3) De conclusies van eis als bedoeld in artikel 52, lid 1 en lid 4, dienen een voorstel te bevatten dat voorziet in een regeling van de geschilpunten.

(4) De Regering die de conclusie van eis indient, doet daarvan een duplicaat toekomen aan ieder der betrokken gerechtigden. Artikel 52, lid 2, is niet van toepassing.

(5) Iedere betrokken gerechtigde kan als partij aan de procedure deelnemen. De betrokken gerechtigden nemen eveneens deel aan de besprekingen overeenkomstig artikel 52, lid 3 en lid 5.

(6) Het Scheidsgerecht stelt ten aanzien van alle omstreden juridische en beleidsvragen een voor de Overeenkomstsluitende Partijen en voor de betrokken gerechtigden bindende regeling vast. In zijn beslissing kan het Scheidsgerecht tevens rekening houden met overwegingen van billijkheid.

(7) Het Scheidsgerecht stelt zelf zijn procedure vast voorzover de toepassing van dit artikel afwijkingen van de procedureregeling voorzien in hoofdstuk 12 noodzakelijk maakt.

(8) In de gevallen bedoeld in artikel 8 kan het Scheidsgerecht de kosten van de procedure geheel of gedeeltelijk opleggen aan de gerechtigde of gerechtigden die aan de procedure deelneemt of deelnemen.

Artikel 11

Eine Entscheidung nach Artikel 46 Abs. 2 des Ems-Dollart-Vertrags läßt dieses Abkommen unberührt.

Artikel 11

Een beslissing ingevolge artikel 46, lid 2, van het Ems-Dollardverdrag laat deze Overeenkomst onverlet.

Artikel 12

Das Schlußprotokoll zu diesem Abkommen und der beigefügte Briefwechsel vom heutigen Tage sind Bestandteile dieses Abkommens.

Artikel 12

Het Slotprotocol bij deze Overeenkomst en de bijgevoegde briefwisseling van heden maken deel uit van deze Overeenkomst.

Artikel 13

Dieses Abkommen gilt auch für das Land Berlin, sofern nicht die Regierung der Bundesrepublik Deutschland gegenüber der Regierung des Königreichs der Niederlande innerhalb von drei Monaten nach Inkrafttreten des Ems-Dollart-Vertrags eine gegenteilige Erklärung abgibt.

Artikel 13

Deze Overeenkomst geldt eveneens voor het „Land" Berlijn, tenzij de Regering van de Bondsrepubliek Duitsland binnen drie maanden na de inwerkingtreding van het Eems-Dollardverdrag de Regering van het Koninkrijk der Nederlanden mededeling doet van het tegendeel.

Artikel 14

Dieses Abkommen bedarf der Ratifikation. Die Ratifikationsurkunden sollen so bald wie möglich in Bonn ausgetauscht werden.

Artikel 14

Deze Overeenkomst moet worden bekrachtigd. De akten van bekrachtiging dienen zo spoedig mogelijk te Bonn te worden uitgewisseld.

Artikel 15

Dieses Abkommen tritt einen Monat nach Austausch der Ratifikationsurkunden in Kraft. Es ist Bestandteil des Ems-Dollart-Vertrags.

Artikel 15

Deze Overeenkomst treedt een maand na de uitwisseling der akten van bekrachtiging in werking. Zij maakt deel uit van het Eems-Dollardverdrag.

ZU URKUND DESSEN haben die Bevollmächtigten der Vertragsparteien dieses Zusatzabkommen unterschrieben.

GESCHEHEN zu Bennekom am 14. Mai 1962, in zwei Urschriften, jede in deutscher und niederländischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

TEN BLIJKE WAARVAN de gevolmachtigden der Overeenkomstsluitende Partijen deze Overeenkomst hebben ondertekend.

GEDAAN te Bennekom, 14 mei 1962, in tweevoud, in de Duitse en de Nederlandse taal, zijnde beide teksten gelijkelijk authentiek.

Für die Bundesrepublik Deutschland:
Voor de Bondsrepubliek Duitsland:

R. Lahr

Für das Königreich der Niederlande:
Voor het Koninkrijk der Nederlanden:

Dr. H. R. van Houten

Annex 16 A

(Translation)

SUPPLEMENTARY AGREEMENT

to the Treaty, signed on 8 April 1960, between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the Regulation of Co-operation in the Mouth of the Ems (Ems-Dollart Treaty)

The Kingdom of the Netherlands and the Federal Republic of Germany,

desiring to promote the exploitation of mineral resources in the subsoil of the mouth of the Ems and intending in so doing to co-operate in the spirit of Article 48 of the Ems-Dollart Treaty,

have agreed as follows:

Article 1

In the present Agreement

"boundary area" shall mean the area and its subsoil hatched on the map attached to the present Agreement;

"line" shall mean the line which divides the boundary area lengthways and is indicated in green on the attached map;

"mineral resources" shall mean all solid, liquid or gaseous substances in the subsoil the extraction of which is subject to authorization under the mining legislation of either of the two Contracting Parties;

"beneficiary" shall mean the person who has the right to explore or extract mineral resources (authorization).

Article 2

The Contracting Parties shall co-operate in spirit of good-neighbourliness in all matters arising in connection with the exploration and extraction of mineral resources in the subsoil of the mouth of the Ems and where mutual interests are affected.

Article 3

Articles 4 to 10 of the present Agreement refer to any oil or gas deposits present in the boundary area before extraction begins, as well as other substances yielded in extracting such deposits. The Contracting Parties shall, in an additional agreement, agree on the analogous application of these provisions to other mineral resources in the boundary area if either of them declare this to be necessary.

Article 4

1. In the boundary area

a) exploration and extraction
b) acts or omissions in connection with such exploration and extraction
c) installations set up for such exploration and extraction

shall, notwithstanding the provisions of the Ems-Dollart Treaty, be subject, on the Netherlands side of the line to Netherlands law, and, on the German side of the line, to German law. The same shall apply with regard to the competence of authorities and courts; in relation to stationary installations for the exploration or extraction of mineral resources the provisions of paragraphs 2 to 6 of Article 33 of the Ems-Dollart Treaty shall apply mutatis mutandis.

2. The Contracting Parties may grant according to their respective domestic legislation authorizations valid for the entire boundary area. These and any other authorizations existing at the time of entry into force of the present Agreement may, however, only be used in accordance with the provisions of the present Agreement.
3. Either Contracting Party shall inform the other without delay about any such authorizations. The same shall apply if new authorizations are issued or existing authorizations altered or cancelled.

Article 5

1. The German beneficiaries on the one hand and the Netherlands beneficiaries on the other shall be entitled to equal shares in the oil and gas extracted as well as of any other substances yielded during such extraction.
2. A beneficiary may, with the approval of his Government, forgo his share in whole or in part or make an agreement to take payment of money in lieu.
3. The costs reasonably attributable to the exploration and extraction of the products shared or for which payment has been made in lieu shall be shared in the same proportion as the products in so far as the beneficiaries do not make a different arrangement under Article 7 of the present Agreement.

Article 6

1. Exploration and extraction shall be carried out, on the Netherlands side of the line by the Netherlands beneficiaries, and on the German side of the line by the German beneficiaries.
2. If a beneficiary fails to comply within a period of one year with a request by the beneficiary on the other side to carry out on his side of the line work which will be conducive to exploration or extraction, the latter can undertake such exploration or extraction himself subject to any conditions imposed on the other beneficiary in his authorization. If the first beneficiary has set up installations for the purpose of extraction he is obliged to allow the other beneficiary, upon request, to use those installations subject to adequate indemnification, insofar as the setting up of new installations would be inexpedient.
3. If a beneficiary has found, in application of sentence 1 of paragraph 2 of this Article, deposits of oil or gas on the other side of the line and if the other beneficiary, pursuant to Article 5 of the present Agreement, claims his share of the products gained from that deposit either in whole or in part, or if he has opted for payment in lieu, the first beneficiary shall be entitled to claim, in addition to the share in the cost already defrayed in accordance with paragraph 3 of Article 5 of the present Agreement, an adequate risk premium, insofar as the beneficiaries have not made a different arrangement under paragraph 2 of Article 7 of the present Agreement.

Article 7

1. The beneficiaries of either side shall co-operate closely with the beneficiaries of the other side in exploration and extraction projects. For this purpose they shall exchange all plans for work in the boundary area as well as the results of such work.
2. The beneficiaries shall, for the purpose of co-operation, conclude contracts as soon as possible on the following matters:
a) the method of calculating the deposits of oil or gas as well as the results thereof;
b) details of product and cost distribution pursuant to Article 5, as well as of book-keeping and auditing;

c) the question whether, and to what extent, risk premiums shall be granted under paragraph 3 of Article 6 of the present Agreement;
d) settlement of disputes.
3. The beneficiaries shall be at liberty to conclude contracts on other matters of co-operation; in such contracts they may also agree on risk premiums for such cases in which the conditions of paragraph 3 of Article 6 of the present Agreement do not apply.
4. The Governments of both Contracting Parties shall be informed of any contracts within the meaning of paragraphs 2 and 3 of this Article. Contracts under paragraph 2 and arrangements contained in other contracts in which provision is made for a risk premium or a distribution of costs in a manner which differs from the provisions of paragraph 3 of Article 5 of the present Agreement shall require the approval of each of the two Governments.
5. If a beneficiary is succeeded by a new beneficiary, the latter must accept the conditions of the contracts mentioned in paragraph 2 of this Article until such time as a new contract has been concluded.

Article 8

If a contract pursuant to paragraph 2 of Article 7 of the present Agreement is not concluded within a reasonable period of time, the Governments of the Contracting Parties shall enter into negotiations for the purpose of making a joint proposal to the beneficiaries. If the efforts of the two Governments do not produce agreement between the beneficiaries either Government can appeal to the arbitral tribunal provided for in Chapter 12 of the Ems-Dollart Treaty.

Article 9

If either or both Governments do not give approval under paragraph 4 of Article 7 of the present Agreement within a period of four months the Governments shall enter into consultations. If such consultations fail to produce agreement either Government may appeal to the arbitral tribunal. These consultations may also lead to a joint proposal to which Article 8 of the present Agreement shall apply mutatis mutandis.

Article 10

1. In cases where an appeal is made to the arbitral tribunal pursuant to Article 8 or Article 9 of the present Agreement the provisions of Chapter 12 of the Ems-Dollart Treaty shall apply mutatis mutandis to the extent that the following paragraphs of this Article do not provide otherwise.
2. The Government of the Federal Republic of Germany shall appoint the member to be appointed by it in accordance with Article 51 of the Ems-Dollart Treaty from four judges of the said tribunal to be nominated by the President of the Bundesgerichtshof. The Government of the Kingdom of the Netherlands shall appoint the member to be appointed by it in accordance with Article 51 of the Ems-Dollart Treaty from four judges of that tribunal to be nominated by the President of the Hoge Raad der Nederlanden.
3. The applications to institute proceedings within the meanings of paragraphs 1 and 4 of Article 52 of the Ems-Dollart Treaty must contain a petition for a settlement of the points at issue.
4. A duplicate copy of the application shall be forwarded to each of the beneficiaries concerned by the Government which submits it. Paragraph 2 of Article 52 of the Ems-Dollart Treaty shall not apply.
5. Each beneficiary concerned may be a party to the proceedings. The beneficiaries concerned shall also participate in the discussions provided for in paragraphs 3 and 5 of Article 52 of the Ems-Dollart Treaty.

6. The arbitral tribunal shall fix a settlement with regard to all points of law and discretion at issue which shall be binding upon the Contracting Parties and the beneficiaries concerned. In making this award it may also judge ex aequo et bono.
7. The arbitral tribunal shall regulate its own procedure to the extent that the application of this Article makes it necessary to diverge from the arrangement of procedure provided for in Chapter 12 of the Ems-Dollart Treaty.
8. In cases arising under Article 8 the arbitral tribunal may award the costs of the proceedings in whole or in part against the beneficiary or beneficiaries concerned in the proceedings.

Article 11

Any decision under paragraph 2 of Article 46 of the Ems-Dollart Treaty shall not affect the present Agreement.

Articles 12–15
(final clauses not translated)

IN WITNESS WHEREOF the plenipotentiaries of the Contracting Parties have signed this Supplementary Agreement.

Done at Bennekom on 14 May 1962, in two originals, each in the Netherlands and German languages, both texts being equally authentic.

For the Kingdom of the Netherlands:
(signed) Dr. H. R. van HOUTEN

For the Federal Republic of Germany:
(signed) R. LAHR