International Court
of Justice
THE HAGUE

Cour internationale
de Justice
La HAYE

YEAR l993

Public sitting

held on Friday 15 January 1993, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

in the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen

(Denmark v. Norway)

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le vendredi 15 janvier 1993, à 10 heures, au Palais de la Paix,

sous la présidence de sir Robert Jennings, Président

en l'affaire de la Délimitation maritime dans la région située entre le Groenland et Jan Mayen

(Danemark c. Norvège)

COMPTE RENDU

Present:

President Sir Robert Jennings
Vice-President Oda
Judges Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola

Judge *ad hoc* Fischer

Registrar Valencia-Ospina

Présents:

Sir Robert Jennings, Président
M. Oda, Vice-Président
MM. Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola, juges

M. Fischer, juge *ad hoc*

M. Valencia-Ospina, Greffier

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Mr. John Bernhard, Ambassador, Ministry of Foreign Affairs,

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Mr. Per Magid, Attorney,

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Dr. Eduardo Jiménez de Aréchaga, Professor of International Law, Law School, Catholic University of Uruguay

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Mr. Milan Thamsborg, Hydrographic Expert,

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Ms. Aase Adamsen, Head of Section, Ministry of Foreign Affairs,

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Ms. Jeanett Probst Osborn, Ministry of Foreign Affairs,

Ms. Birgit Skov, Ministry of Foreign Affairs,

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Mme Kristine Ryssdal, procureur général adjoint,

M. Rolf Einar Fife, premier secrétaire à la mission permanente de la Norvège auprès de l'Organisation des Nations Unies à New York,

comme conseillers;

Mme Nina Lund, fonctionnaire administratif au ministère des affaires étrangères,

Mme Juliette Bernard, agent administratif au ministère des affaires étrangères,

Mme Alicia Herrera, La Haye,

comme personnel technique.

The PRESIDENT: Now we begin the hearing of the case for Norway in the first round and I call upon Mr. Bjorn Haug, the Agent for Norway to make the opening statement. Mr. Haug.

Mr. HAUG: Mr. President, distinguished Members of the Court,

Introduction

It is a special honour for me to appear before this Court on behalf of the Government of Norway, to introduce our response to the oral pleadings of Denmark.

It is a cornerstone of Norwegian foreign policy to seek peaceful settlement of international disputes. As a small country with a deep commitment to the rule of law, Norway has, from the earliest years of the Permanent Court, been a staunch upholder of the institution of an international court. This is not motivated by idealism only. For a small country, it is also good *Realpolitik*.

As the Court well knows, we have appeared before this Court and the Permanent Court in three previous proceedings, all of which have dealt with matters of the highest national, political and economic importance, namely the *Eastern (*and *Southeast) Greenland* cases with Denmark in 1933, the *Fisheries* case with the United Kingdom in 1951, and the *Norwegian Loans* case against France in 1957. All of these proceedings were founded on the optional clause jurisdiction of Article 36, paragraph 2, of the Statute. Norway has had an optional clause in effect, without substantial reservations, since the year 1921.

In keeping with our traditions we joined in negotiations for a peaceful settlement when Denmark in 1980, rather abruptly, took the step of declaring a full 200-mile fisheries zone vis-à-vis Jan Mayen, and such negotiations started already in December of that year.

When Denmark filed its unilateral application to this Court in August 1988, the immediate reaction of our Minister for Foreign Affairs, Mr. Stoltenberg, was to state that it is perfectly normal that a dispute between two friendly countries, with a close relationship in so many fields, should be settled by this Court.

It is against this background, Mr. President, that I wish to assure you that Norway appears

before this Court, not only as a consequence of the Danish application but as a function of our long-standing commitment to the jurisdiction of this Court as we have expressed it in our Declaration under Article 36, paragraph 2, of the Statute.

One may wonder why two friendly nations like Norway and Denmark should not be able to agree on a negotiated settlement, or at least conclude a special agreement concerning the adjudication of their dispute. I must confess, Mr. President, that Norway is also asking that very question. Norway proposed, in June 1988, a procedure for settling the dispute partly by assistance of arbitration, but Denmark preferred to apply unilaterally to the Court, without even raising the question of a special agreement.

Denmark is, of course, in its full right to do so, but tries to explain or defend its behaviour by suggesting that Norway has somehow been confrontational or aggressive. We must be allowed to dispel the notion that Norway has triggered this dispute by its behaviour.

First, Denmark continues to contend that there was a "serious incident" in August 1981, in spite of the fact that all the documents relating to this so-called incident are now on the files of this case (Danish Annexes 12, 59 and Norwegian Annexes 89-91, 93). What Mr. Lehmann, in his opening speech, referred to as "a serious incident ... when a Norwegian coastguard ship boarded two Danish fishing vessels" (CR 93/1, p. 13) consisted merely of officers of the Norwegian Coast Guard handing over a document with a written instruction to stop fishing and leave the area (Rejoinder, p. 13, para. 37).

Second, there were incidents of Norwegian seal hunters who illegally hunted for seals in indisputable Greenland waters. Ms. Kirsten Trolle (CR 93/2, p. 58) even went as far as to suggest in her intervention that this was an activity on behalf of the Norwegian Government. The exchange of letters in the record (Danish Annexes 90-94) shows that the Norwegian Foreign Minister immediately regretted this trespassing by private Norwegian nationals and made it clear that such activity in Greenland waters was, of course, neither supported nor tolerated by the Norwegian Government.

Mr. President, in the face of these well-documented facts, it is regrettable that the applicant

State gives a seriously exaggerated account of Norway's conduct.

As a third element, Denmark has referred to the restraint parties ought to exercise during times of dispute. In this case, Denmark unilaterally proclaimed a fishery zone beyond the median line vis-à-vis Jan Mayen, up to the full 200-mile distance, and then, in effect, said to the Norwegians: "Keep out of the area which we are now claiming, and if you continue your long-standing activity in that area, then you are aggressive". To which of course Norway in effect responded that: "Let us negotiate, but until such time as the matter is settled, we shall continue to use our fishing area east of the median line, as we have done in the past." Under the circumstances, if there is a lack of restraint, it must be on the Danish side.

Characteristics of the case

Although we willingly appear before this Court, the fact that this case is brought by unilateral application, and the peculiarity of the claims and submissions made by Denmark, lends a particular character to our proceedings. May I point out some of these peculiarities:

1. Almost without exception, all other maritime delimitation cases before this Court and, indeed, before any tribunal, have been instituted by an agreement between the parties, expressed in a special agreement or compromis, to settle the matter by adjudication.

Everyone is fully aware that the negotiation of such special agreements has often proved difficult. That is not surprising, in view of the many fundamental and sensitive issues which the parties must consider in the drafting of such an agreement. But however difficult the negotiations and regardless of all the compromise which may have affected the outcome, the very existence of a special agreement, defining the subject-matter of the proceedings and the functions of the Court, has proved an essential foundation for the structure and scope of the proceedings. In previous maritime delimitation cases, the Court has paid great attention to the specific special agreement and, in interpreting the agreement, has exercised great prudence and correctly noted the consent of the parties as the very foundation for international adjudication.

In this case, there is no special agreement to submit the dispute to the Court. This case, unlike other similar disputes, is solely based on Article 36, paragraph 2, of the Statute of this Court and the

general agreement of the Parties expressed in their optional clause declarations. The approach of the Court in this case will, it may be assumed, be directed to the proper interpretation and application of Article 36, paragraph 2, in relation to the claims and submissions of the Parties.

2. The second peculiarity of this case is the extreme nature of the Danish claims.

It appears to be the first case concerning maritime delimitation before the International Court of Justice where a party requests that no weight at all shall be given to the coast of an island larger than Malta. In doing so, Denmark is ignoring not only the existence of the island coast, but also the existence of its own treaty obligations. An example is the Geneva Convention on the Continental Shelf of 1958, to which both Norway and Denmark are party. Denmark invoked and referred to it as late as 1984 in an agreement with Sweden - two years after the conclusion of the 1982 Convention on the Law of the Sea, but hardly mentions the existence of this treaty obligation in the present proceedings.

3. Third, the case is further complicated by the lack of clarity of the Danish claims and submissions.

In its first Application of 16 August 1988 Denmark asked the Court:

> "*(a)* to decide, in accordance with international law, where a *single line of delimitation shall be drawn* between Denmark's and Norway's fishing zones and continental shelf areas in the waters between Greenland and Jan Mayen;" (emphasis added).

The Registry of the Court quite naturally described the application as a case of "maritime delimitation".

But then, in its Memorial of 31 July 1989, Denmark changed its submission, to request the Court:

> "To adjudge and declare that Greenland is entitled to a full 200-mile fishery zone and continental shelf area vis-à-vis the island of Jan Mayen; and consequently
>
> To draw a single line of delimitation of the fishing zone and continental shelf area of Greenland in the waters between Greenland and Jan Mayen at a distance of 200 nautical miles measured from Greenland's baseline." (Emphasis added.)

In the Danish Reply of 31 January 1991 the submissions were amended again, to specify 21 turning points, with geographical co-ordinates.

So, while the first application was simply for a single line of delimitation, the principal

submission was changed to ask for a declaratory judgment of entitlement to a full 200-mile fishery zone and a full 200-mile continental shelf vis-à-vis the Norwegian island of Jan Mayen. It is somewhat surprising that Denmark is asking for a declaratory judgment concerning something that nobody could, or ever would, deny. Both Denmark and Norway are naturally entitled to a 200-mile continental shelf and a 200-mile fishery zone by law, and nobody would deny that as a starting-point. But, the Danish submission omits any reference to the equally obvious fact that any entitlement to shelf or zone is subject to delimitation in the case of overlapping claims of other States.

However eccentric such a claim must seem, Denmark has technically raised a question of international law within the meaning of Article 36, paragraph 2, of the Statute, to which the Norwegian Government is bound to respond.

The lack of clarity also affects the second leg of the Danish submission. Denmark uses the word *consequently*, and thereby indicates that what follows is in consequence of the Court's findings on the first request. Denmark does not actually request the Court to perform a delimitation, as it did in its first submission filed with the Application, but to "draw a line of delimitation". Also, it is asking for a "single line" to be drawn, which has now been confirmed to be a boundary line for all legal purposes, both present and future.

In other words, on the basis of a declaratory adjudication of the legal situation in respect of two separate aspects, namely the continental shelf and the fishery zone, the Court is invited to declare and draw an all-purpose line applicable to all matters, present and future. Let me point out, Mr. President, that Denmark does not claim an exclusive economic zone, and indeed has no legislation to provide for one. Nevertheless, the Court is requested to determine also the boundaries for such a non-existent legal relationship.

Norway is bound to state that this must be rejected, for several reasons. I shall revert to that in a moment.

To set the Danish claims in perspective, may I also refer to map V, submitted with the Norwegian Rejoinder. As the Court will see from that map, the total Greenland zone amounts to more than 2 million square kilometres. The area now additionally claimed amounts to 2.9 per cent of

the Greenland zone, which at the same time is more than 20 per cent of the Jan Mayen zone. [within the median line.] These figures, together with the admitted fact that there is no fishing activity by the Greenlanders in this relatively small area, confirm the impression of excessiveness in the Danish claims.

I hardly need to stress the importance the Court's decision will have in matters of maritime delimitation law. Mr. Thamsborg, in his first intervention (CR 93/1, p. 54), pointed out that this is evidently the first maritime case north of the Arctic Circle. However, this is a case like all others, based on globally applicable rules and principles of international law.

It would indeed be of immense consequence if the Court were to state that, in given circumstances of opposing coasts, one may totally ignore the existence of a coast the size of the coast of Jan Mayen. The fact is that the question of entitlement in relation to islands juxtaposed to long coasts affects a large number of States both in the northern hemisphere and in the southern hemisphere. The question of entitlement is sensitive for States in various regions of the world. In my respectful submission a decision which appeared to give some degree of support for the eccentric Danish thesis would militate against the development of a stable régime of maritime boundary delimitation in the future.

It would also be of considerable consequence if the Court, on the basis of a general optional clause, should find itself able to impose a single, all-purpose line of delimitation upon a country, against its will.

Comments on certain concepts

Before I go on to give an overview of Norway's position, I would like to make some comments about three concepts:

1. I mention first that there are *several types of entitlements or rights* pertaining to a coastal State.

In the first and principal part of the Danish submission, we are faced with two such entitlements, namely the continental shelf and the fishery zone. May I point out some of the differences between them.

The continental shelf entitlement exists *ipso facto* and *ab initio*, and has had a development of its own in international law. Over the years it has been the object of international conventions, the 1958 Continental Shelf Convention and more recently the 1982 Convention on the Law of the Sea. There are also numerous bilateral agreements around the world, settling the boundaries in relation to opposite or adjacent States, a majority of them on the basis of the rules and principles of the Geneva Convention.

The development of the concept of the exclusive economic zone has a more recent history. The exclusive economic zone including the fisheries zone was also the object of the 1982 Convention on the Law of the Sea. In each case the establishment of the zone is dependent on a declaration by the respective State, which may or may not elect to declare a zone, or zones. The State in question is free, after political and other considerations, to determine a limited extent of the zones and also limit the qualitative contents of the declared zone. In the present case, neither Party has chosen to declare a full-fledged exclusive economic zone in the area between Greenland and Jan Mayen, only fishery zones.

The State practice in respect of bilateral fisheries delimitation agreements is moderate as compared to continental shelf agreements. Quite often the delimitation of these zones vis-à-vis other States has been left unsettled, or the respective States as a matter of convenience exercise jurisdiction on the basis of a continental shelf boundary already in place.

2. Second, there are different *types of maritime boundaries*.

One has the single purpose boundaries, legally relevant in one legal relationship only. Typical examples would be a single purpose continental shelf boundary or fishery zone boundary.

One may also have the dual-purpose, or multi-purpose, or all-purpose boundaries. One practical example is a dual-purpose boundary, legally relevant for continental shelf and fishery zones delimitation, but not in other relations.

In the present case, as we have heard, Denmark is requesting a single line boundary, to be legally relevant for all purposes, present and future, known and unknown.

It is worthwhile to point out the significant difference between *coinciding single-purpose*

boundaries and genuine *multi-purpose boundaries*. State practice offers a number of examples of agreements where a single-purpose fishery zone boundary is placed on top of an already existing single-purpose continental shelf boundary. That does not make the boundary into a single, dual-purpose boundary, and certainly not into a single, all-purpose boundary.

Dr. Jiménez de Aréchaga, in his intervention, suggested that since Norway in its submission has requested a separate adjudication of a single-purpose continental shelf boundary and of a separate, single-purpose fishery zones boundary, and since, in the view of Norway, these boundaries would be coinciding on the median line, he concluded that Norway has requested not only a dual-purpose but an all-purpose single line boundary (CR 93/2, p. 66). That is not correct, as also expressly stated in the Norwegian Counter-Memorial (pp. 3-4, paras. 11-13 and pp. 197-198, paras. 702-704) as well as in the Rejoinder (pp. 191-192, paras. 648-658).

3. Third, I would briefly comment on the *various types of agreements* relevant to our discussion.

One group of agreements goes to the substance of the matter. In doing so, they may offer various degrees of specificity. Some agreements stipulate the principle or method of delimitation to be employed. Others may proceed to the final articulation of the boundary, down to the degree of giving geographical co-ordinates for all turning points. Some agreements do both, as we shall be contending that we find in the Agreement of 8 December 1965 between Norway and Denmark. Article 1 of that Agreement states in general terms that the median line shall be the boundary in those parts of the continental shelf over which the two States exercise sovereign rights, which is in three places. Article 2 then proceeds to set out the actual boundary for one of those parts, that in the North Sea.

It is a question of terminology whether, or when, one would say that a boundary is "in place". When, for instance, in the *Temple of Preah Vihear* case (*I.C.J. Reports 1962*, p. 6), the parties had agreed that the watershed constitutes the boundary between them, I would say that there was an agreed boundary in place, even if the actual details of the line of that watershed remained to be articulated.

In the same manner, Norway contends that both the 1965 Agreement with Denmark and the 1958 Geneva Convention on the Continental Shelf, Article 6, paragraph 1, establish the median line as the boundary. In that sense the median line boundary is already in place, even though it still remains to be articulated in practical detail.

We shall come back to this later, but again taking as an example the situation in the area between Jan Mayen and Greenland: it may well be that when it is - hopefully - established that the median line constitutes the boundary both in respect of the continental shelf and the fishery zone, then practical considerations may induce slightly different adaptations. The practical situation may well be different for drawing a boundary line applicable to the granting of licenses for the exploration and exploitation of resources in the sea-bed or subsoil, and the drawing of a line convenient for the fishermen.

Then there is another type of agreement which does not go to the substance of the definition of the boundary, but which is an agreement for a third party to adjudicate and determine a boundary dispute between the parties. Such special agreements constitute the terms of reference for the body to which the dispute is referred, be it this Court, a chamber of this Court, or arbitration. For good reasons the Court, Chamber or arbitral tribunal examine with scrutiny such special agreements to define its function and the scope of its mandate. The agreement may only ask for a determination of the principles or methods of delimitation to be employed between the parties, as for instance in the *North Sea* cases. Or it may go to mandate a full fledged drawing of a detailed boundary line, such as in the *Gulf of Maine* case and the recent Canada/France arbitration.

Obviously, an agreement to submit to binding adjudication may also contain elements of substance as to the boundary to be determined. A prime example are those agreements which mandate the third party to determine "a single line" boundary, as for instance in the *Gulf of Maine* case, where the special agreement was construed to the effect that the rules and principles of the 1958 Geneva Convention on the Continental Shelf were not applicable, even though both parties to the dispute were also parties to that Convention.

May I already now point out that there is no such specific agreement existing between Norway

and Denmark, neither any special agreement to submit the dispute to adjudication nor any agreement to have determined a multi-purpose or all-purpose single line boundary.

Overview of Norway's position

I then turn to an overview of the positions Norway is taking in the present dispute.

Generally, it is Norway's view that a delimitation dispute, by its very nature, is particularly suited for agreement between the parties, either an agreement directly concerning the boundary or a special agreement to submit the dispute to adjudication by others. In either case the parties will be able to take account of all legal as well as political and other considerations normally involved in a boundary agreement. For this reason, Norway holds that the line of action Denmark has chosen is less than satisfactory.

However, it is Denmark's undisputed right to avail itself of the Court's general jurisdiction under Article 36, paragraph 2, of the Statute and the optional clause declarations. But Norway's position is then that we stand on our rights under international law, on matters of substance as well as procedure. This position does not reflect any hesitation in respect of the Court, but is a reflection of an inappropriate approach to the delimitation problem taken by Denmark.

The positions taken by the Government of Norway are expressed in our written pleadings, but I will summarize them as follows:

As regards the substantive issues, it is first to be noted that the sources of law in respect of the continental shelf and fisheries zone issues are different.

As for the continental shelf, Norway relies on four different legal bases for its submission that the median line constitutes the boundary for continental shelf purposes. The four bases work independently and also conjointly to support this result, and are follows:

(i) The Agreement of 8 December 1965 between Norway and Denmark.

(ii) The Continental Shelf Convention of 1958, Article 6, which would be operative also under the auspices of the 1982 Law of the Sea Convention.

(iii) The consistent conduct of the parties, and

(iv) In the further alternative, there is the median line solution dictated by the principles of general international law.

In its written pleadings, Denmark has expressed surprise over the variety of legal sources supporting the Norwegian contention. On closer analysis the situation should not be a matter for surprise. They are all interrelated. For instance, the 1965 Agreement is modelled upon the 1958 Geneva Convention but is an independent legal instrument. The consistent conduct of the Parties represents an implementation of the rules and principles expressed in the Geneva Convention but is in itself a legal factor. General international law, although further developed over the past 30 years, renders the same result in the circumstances prevailing in the Jan Mayen-Greenland situation.

In the case of the fisheries zones, there exists no bilateral agreement. Nor is there any general convention in force, although the provisions of the 1982 Law of the Sea Convention has, to a considerable extent, become part of general international law. So the two legal bases for the Norwegian contentions, in respect of fisheries zones, is the consistent conduct of the Parties and general international law.

As for the claim to a single line made by Denmark, in the sense of an all-purpose delimitation line, we are aware of the tendency in international law to prefer the use of multi-purpose or all-purpose boundaries. But the status of general international law as of today is that, if two States want to establish a multi-purpose or all-purpose boundary, it must be agreed between them. It can not be imposed on a party against its will. There exists no agreement in this case to the effect of accepting a single line, nor any prorogation in this Court to adjudicate the matter on that basis.

May I offer a few words of explanation why the Norwegian Government maintains that the boundary should be determined separately for the continental shelf and the fisheries zones. First, as a matter of principle, Norway sees no reason why it should not maintain its position as it results from the relevant legal material before us. Second, practical considerations may result in different lines for shelf and zones purposes. Indeed, the Court itself may, in a delimitation case, arrive at different boundaries of the continental shelf and other maritime zones.

Third, but not least, I must inform the Court that it will be in the national interest of Norway to maintain the present and perfectly legal distinction between the continental shelf and other maritime zones as separate legal régimes.

Mr. Lehmann in his opening speech (CR 93/1, p. 18) pleaded for an agreement between the Parties that seeking an equitable solution should be the ultimate goal and, as I understood him, the governing, and the only governing, principle or rule to determine the dispute. He seemed to suggest that the Parties should forget existing treaty relations between them - that is, treaty relations which, in the Norwegian view, determine the matter in respect of the continental shelf. He underscored this suggestion by hardly mentioning those treaty relations.

We shall try to show in the following interventions that the solution we are seeking is indeed equitable. Norway maintains the full range of legal sources and arguments as presented in the written pleadings.

Denmark has made several references to Bear Island and the fisheries protection zone around Svalbard. We shall later present the fallacies of the specific Danish argument as it relates to Bear Island. But I must point out, and Denmark has also acknowledged, that the Spitsbergen Treaty of 1920 is not an issue before this Court. We shall therefore make no comments related to the Spitsbergen Treaty.

As for the procedural aspects of the case the Norwegian position is briefly as follows:

1. Article 36, paragraph 2, of the Statute and the optional clause declarations is the only basis for the Court's jurisdiction and functions in the present case. The mandate is to decide any question of international law submitted to it by the Parties. It is clearly then within this general mandate

(a) to adjudge whether the 1965 Agreement, Article 1, extends in geographical scope to the continental shelf in the area between Jan Mayen and Greenland,

(b) to adjudge, in the alternative, whether the 1958 Convention is valid and applicable, and to apply the rules contained in Article 6 of that Convention, and

(c) to adjudge whether the consistent conduct of the Parties can be deemed under general international law to create a situation of recognition, acquiescence or

estoppel to determine that the median line boundary is opposable to Denmark.

Some doubt is created, however, in the procedural perspective, when Denmark claims a single, all-purpose line, and nothing else: is it then within the mandate of the Court to consider and adjudge in the alternative a single-purpose line for the continental shelf and a single-purpose line for the fisheries zone? Denmark has not made any claim or submission in the alternative.

It is also doubtful whether the Court can perform a full-fledged and ordinary delimitation on the basis of the Danish submissions as they have now been formulated. Norway most definitely has not requested a delimitation in any ordinary sense. But Norway has, in connection with the principal Danish submission, requested the Court to adjudicate and declare that the median line constitutes the boundary in the two relevant relations.

Danish admissions

In the course of the oral pleadings Denmark has made several admissions which simplify our arguments, of which I will mention two:

1. First, Denmark has declared and confirmed that it is Denmark and not Greenland as a separate entity which is the Party to this case.

2. Second, Denmark has expressly conceded that the coast of mainland Norway is not relevant to delimitations in the area between Jan Mayen and Greenland. There is no question of Jan Mayen being "on the wrong side" of any median line between the coasts of Greenland and mainland Norway. It is only the coast of Jan Mayen itself and Greenland which form the geographical context to be considered.

Presentations on behalf of Norway

To explore further the position of Norway we shall offer the following oral presentations:

First, Mr. President, elements of the historical and factual background will be recounted by my colleague and Co-Agent, Mr. Per Tresselt.

Next, I will again myself have the privilege of addressing the Court on the treaty law applicable between the Parties and the effect of the conduct of the Parties.

Following this, Professor Ian Brownlie will address Denmark's claim in the light of general international law, with particular reference to the problem of equality in delimitation and the length of coasts.

Thereafter, Professor Prosper Weil will analyse the underlying implications of the theories on which the Danish claims rely.

After that, Professor Keith Highet will discuss the functions and role of the Court in the present case.

And finally, there will be a brief statement by myself as Co-Agent to close this portion of the Norwegian defence.

Mr. President, may I now ask you to call upon my friend, colleague and Co-Agent, Mr. Per Tresselt?

Thank you, Mr. President.

The PRESIDENT: Thank you very much. Mr. Per Tresselt would you be prepared to begin and perhaps find a convenient place to give us our break at about quarter past or twenty past, if that would be alright?

Mr. TRESSELT:

Historical and factual background

Introductory Remarks

Mr. President, distinguished Members of the Court, I am deeply conscious of the responsibility as well as the honour and privilege of addressing the Court on behalf of my Government.

Let me assure the Court that the Norwegian Government is sincere in its wish to maintain close and friendly relations with the Greenland Home Rule Authority, and to foster friendship between the peoples of Norway and Greenland. There is close collaboration between our authorities

in many fields. Norwegian fishermen have made investments in joint-venture operations with Greenland interests. Greenland crews have been mustered aboard Norwegian fishing vessels, and young fishermen from Greenland are training in Norway. In many other respects, business relationships are developing to the benefit of both sides.

It is our hope that the different positions of the two Parties in relation to the delimitation issues between Jan Mayen and Greenland should not affect the stability and growth of this multi-faceted relationship.

Indeed, we think we have been successful in that respect, both during the time of negotiations, and after the present proceedings were brought. However our differences may have been regarded in political circles in Denmark's national capital, and in the Copenhagen press, our contacts with representatives of the Home Rule Authority have always been cordial and constructive. The best testimony is perhaps the fact that we have been able to conclude an Agreement on mutual Fisheries Relations signed on 9 June 1992 (Norwegian Annex 92). We have also managed to establish a coherent and even-handed arrangement for the management of the capelin stock, which has been modified slightly, and extended for another two years (Norwegian Annex 104). Finally, on a broader multilateral basis, we have established a new body for regional co-operation with regard to the scientific study and management of marine mammals, the North Atlantic Marine Mammals Commission (NAMMCO) (Norwegian Annex 99).

It was very much with this perspective on the general relationship with the people and authorities of Greenland that we listened to the impressive orientation that was given to us by Mr. Lynge. His statement provided a lucid presentation of Greenland's history and present-day outlook.

Let me use the opportunity now to underline that the territorial claims which were made by Norway in eastern and southeastern Greenland in 1931 and in 1932 were extremely pacific occupations. They were essentially administrative measures to safeguard the land and occupational interests of the Norwegian hunters and trappers.

But there were no warships involved, there were no troops landed. And both areas were uninhabited; no Inuit community was disturbed, no single Inuit hunter was deprived of his traditional area. Only three men disembarked from a hunting vessel: one had a Royal Commission as Governor, the other had police powers, and the third was a radio operator whose task it was to relay weather observations.

1. General Background

Mr. President, the law which applies as between Norway and Denmark with regard to maritime delimitation does not call for any extended examination of the economic or social situation of the Parties. Plain geography is enough.

I shall try to convey to you a sense of that plain geography. I shall also try to give you an overview of the fishing and sealing operations in the area between Jan Mayen and Greenland, and of the resources of that area and their management.

But first I wish to recall to you that Norway has a long-standing interest in the region.

Geography and practical interest are central to that theme.

Continental Norway is situated at the northwestern edge of the Eurasian continent. Our topography is such that before the advent of air transport, landmass was a separating and isolating factor, and the sea was the connecting factor, in all communication. Turning northwards and westwards was a natural thing, in search for additional resources, and for the livelihood that these resources could bring.

In the years after the Second World War, international politics and the revolution in military technology have made the Arctic an even more vital field of interest to Norway and to her population.

The practical and material interest has been the dominant factor, not only in distant history but throughout most of the last 200 years, and even today.

Norwegian sealers have operated in the West Ice between Jan Mayen and Greenland since the middle of the last century. Sealing has recently become the object of much negative public attention in North America and in many European countries. But to Norwegians as well as to Greenlanders,

sealing continues to represent a rational harvest of natural resources, to be carried out in a responsible and rational way. It remains an honourable and important industry. Many nations were engaged in sealing in the past and, as you know, one of the important early international arbitrations dealt with that industry (Behring Sea Fur Seal Arbitration, Parl. Pap., U.S. No. 4 (1893)).

Sealing was one of the few industries to which the coastal population of north and northwest Norway could turn, and one of the few means available for improving their livelihood.

It is interesting that the sealing industry and other maritime crafts expanded from around the year 1800, when Norway began to experience an unprecedented increase in her population, which abated only in the 1920's. This change in population dynamics was due in part to better nutrition, and to better medical and hygienic conditions. However, Norway's economic base did not expand correspondingly; and Norway has limited scope for agriculture: the climate is not suited and only 2 per cent of the land area of continental Norway is arable. The resulting population pressure was partly relieved by emigration: Norway had a population of around 2.2 million at the turn of the century; it is estimated that around 700,000 Norwegians had settled in North America before the quota system limited immigration into the United States in 1919.

For those who did not emigrate, the maritime areas around Norway, and the Arctic lands which bordered on these seas provided the only fields open for new endeavour. Sealing and whaling at sea, and the extension of fishing to new, more distant banks, and trapping on land, offered the only worthwhile possibilities for employment. Worthwhile, but dangerous and unpleasant possibilities. But the only way of finding additional sources of income for maintaining a livelihood.

That is the driving force behind the extension of the field of activities of Norwegian hunters, sealers and whalers and fishermen into the Northern seas and into Svalbard, Eastern Greenland and Jan Mayen. Not a type of aggressive, chauvinistic expansionism, as the Danish pleadings insinuate. But the imperative necessity of finding a livelihood. To illustrate: in 1903, the average annual income in rural districts in continental Denmark amounted to 732 kroner. The corresponding figure for Norway was 152 kroner. The value of the currency was identical, but of course we must allow for differences in taxation laws and assessment practices. Nevertheless, these figures serve to

illustrate the real difference in living conditions between Norway and Denmark at that time.

Norway had a chiefly rural economy, based upon subsistence farming, not market farming. Forestry constituted the only exception in southern Norway, providing export products, and there were favourable conditions for merchant shipping which gave jobs to sailors. But in western and northern Norway, fishing and other maritime activities accounted for the cash element in the economy. The industrial revolution arrived late in Norway, and the changes it brought to society were felt only in the first two decades of this century.

That is the explanation for seeking out faraway sources of income, in the West Ice, in Svalbard, on Jan Mayen, and in eastern Greenland.

Once the utilization of these distant areas had been integrated into the economy of Norway's coastal communities, they remained a source of activity and income, as they still do.

The Convention of 1924 between Norway and Denmark relating to East Greenland (Counter-Memorial, Ann. 39) took account of Norwegian on-shore activities in Greenland. This Convention was manifestly not an instrument under which Denmark bowed to Norwegian imperialistic urges - on the contrary, it was made clear by both Parties that the Convention was concluded without prejudice to legal positions on the issue of sovereignty.

By virtue of this Convention, the conditions for Norwegian activities were unaffected by the Judgment of the Permanent Court of International Justice in 1933 (*P.C.I.J., Series A/B, No. 51*, p. 22). With slight modifications, these conditions were maintained until 1967 (Counter-Memorial, Ann. 40). For still another ten years, until 1977, Norwegian fishermen enjoyed national treatment in coastal waters off East Greenland (Counter-Memorial, Ann. 50).

That means, Mr. President, that until three years before the events which have given rise to the present proceedings, a treaty relationship continued between Norway and Denmark, recognizing those particular interests which Norway has held for a century and a half in fishing and hunting in this region.

Those interests remain, and we foresee that they will continue in the future.

Thus, in the years after the Second World War, Norwegian sealers have taken some

2.1 million hooded and harp seals in the West Ice. The location of the ice edge varies from year to year and, therefore, no specific figures for catches within the disputed area are available.

Since the commencement of the capelin fishery off Jan Mayen in 1978, Norwegian fishermen have caught approximately 1.5 million tons of capelin from this stock, to an aggregate nominal value of around US$ 110 million. This catch we know the location of; 40 per cent was taken in the disputed area.

Norway continues to maintain meteorological services in Jan Mayen - they were established more than 70 years.

For more than 30 years, Jan Mayen has been host to a LORAN C radio navigation facility. Last year, a multilateral agreement was signed for the continued operation of the LORAN C system in the North Atlantic region, supported by six States (see Norwegian Annex 103). This facility in Jan Mayen will serve the system for the foreseeable future, as the western-most station in the system.

Mr. President, these are tangible interests. They correspond with Norway's undisputed assumption of sovereignty over Jan Mayen more than 60 years ago, in 1929.

They are consistent with Norway's decision a year later to incorporate Jan Mayen into the realm of Norway proper. In terms of constitutional law, that means that Jan Mayen is inseparable and inalienable from the rest of the Kingdom.

Mr. President, I would now like to change my tone a little bit and I wonder whether it would be convenient if I could continue later.

The PRESIDENT: That will be a very convenient place, Mr. Tresselt. Thank you very much and we will be back after the break.

The Court adjourned from 11.10 to 11.30 a.m.

The PRESIDENT: Mr. Tresselt.

Mr. TRESSELT:

2. Jan Mayen Presentation

Mr. President, distinguished Members of the Court, in Norway's written pleadings, we have sought to provide background information on the island of Jan Mayen, and we have produced a detailed map which has been put into the pocket at the back cover of Volume I of the Counter-Memorial. I would like now to try to offer a more direct impression of the island.

Jan Mayen has a total area of 380 km2, or 148 square miles. That is something like five and a half times the total area of the municipality of The Hague. The island is exactly 53.6 km in length; the distance from The Hague to Amsterdam by road is 55 km.

To provide another illustration of the relative importance of Jan Mayen as a geographical feature, it may be noted that the Republic of Malta has an area of 316 km2, i.e., Malta, Gozo and, of course Filfola (Fig. 1). Of the 179 Member States of the United Nations, there are seven States (Grenada, Liechtenstein, Maldives, Malta, Marshall Islands, San Marino, St. Kitts and Nevis) which are smaller in area than Jan Mayen. The Encyclopaedia Britannica has a list of 215 States and other geographically entities which are distinct geographically. Thirty-three of those entities have a smaller surface area than Jan Mayen, and a not inconsiderable proportion of these 33 territories are islands in the Pacific, with their proper zones of maritime jurisdiction, and in many instances, their agreed maritime boundaries. To make it clear that Jan Mayen is not a two-dimensional abstraction, I ask you to note that the Beerenberg Mountain has an impressive elevation: 2,277 metres, or 7,470 feet above sea level. Beerenberg is the second highest volcano in Europe - Mount Etna is higher, but as you see, Mount Vesuvius is exactly 1,000 metres less in height (Fig. 2).

Mr. President, we have also taken the liberty of providing Members of the Court with a small folder of photographs from Jan Mayen, to give a very simple visual impression.

I will not ask you to leaf through it, but simply say that you will notice that it is a bleak place, and although photographs taken in sunshine makes it look dazzling, sunshine is less than frequent in the island. But you will also note from the first few pictures in the album that Jan Mayen has a varied landscape, and that it is a geographical feature of significant dimensions.

And you will see that it is in use. There is a picture of the building complex (picture 5) for the

Jan Mayen main station which comprises the LORAN C facility; and there is a picture of the aerial mast for the system which has a height of 200 metres (picture 4).

We also tried to show (Pictures 10 and 11) how supplies are landed from ships, and how the station barge is launched and beached.

There is a small picture of a very small hunting cabin showing the housing standard which hunters used to enjoy (picture 12).

Mr. President, the station crew of the LORAN C facility at Jan Mayen consists now of the Head of Station, who is always a serving military officer, and 19 technicians and service personnel. The meteorological station employs five meteorologists and technicians. That is altogether - as has been said before - 25 men and women.

Under the new multilateral arrangements for the maintenance of the LORAN C Navigation System in Northern Europe and the North Atlantic, the facility in Jan Mayen will continue to be operational for the foreseeable future. The multilateral arrangement replaces previous arrangements between host countries and the United States Coast Guard. The resolve of six governments to carry on the operation of the LORAN C navigation chain testifies to the value of the system, both as a primary navigational aid and for back-up purposes. The station at Jan Mayen represents the westernmost extension of the system - so to speak, a cornerstone of the network.

Norway's commitment to this system is evident from its willingness to provide almost two-thirds of the total new investment funding, including a calculated 50 per cent of the capital expenditure which goes towards the building of a totally new station in the Faroe Islands. That makes the total capital contribution from Norway an estimated US$ 19 million (value August 1991) out of the total requirement of US$ 31.5 million. In addition, Norway will contribute two-thirds of the cash contribution towards the running of the system, i.e., US$ 1.9 million per year, out of a total projected sum of US$ 2.8 million.

The meteorological observation post in Jan Mayen will be maintained. There has been an unbroken supply of meteorological data from this part of the North Atlantic since 1921. These data continue to be essential for weather forecasting operations in Europe. Contrary to common belief,

the use of satellite weather observation has not done away with the need to gather weather data by conventional means. In particular, the ability to collect atmospheric wind and temperature data using radio-equipped balloons remains very important.

The meteorological station at Jan Mayen at the same time provides all the services of a coastal radio station which serves shipping, the fishing fleets and aircraft in the region.

Jan Mayen constitutes a significant platform for activities which provide essential services not only for Norway, but for the whole of Northern Europe.

The island is being put to good and profitable use. The men and women who are working at the LORAN C station and at the meteorological station provide important services for which society is willing to pay - and not only Norwegian authorities pay for exclusively national purposes, but several States have an interest in a public service which is common to them.

The climatic conditions which obtain throughout the Arctic are extremely severe. There is little scope for human habitation. That explains why such a small proportion of Greenland's population lives along the east coast. And that is why, north of Scoresbysund, the manned stations at Daneborg, Danmarkshavn and Station Nord have exactly the same character as the Norwegian establishment on Jan Mayen. Each of these manned stations is reported to have a staff of around ten. At Mesters Vig, the now discontinued mining operation did not give rise to a thriving community; personnel was brought in to work the deposits, but these people had their homes elsewhere. It is reported that there are now no staff left at Mesters Vig, which is just north of Scoresbysund.

This is the normal situation in the high Arctic. You find corresponding conditions in Svalbard, in Alaska, northern Canada, in the Russian and Siberian islands and along the Siberian coast. The west coast of Greenland represents an exceptional case and it can be compared only with a very limited number of similarly-favoured Arctic localities.

Within the generality of high Arctic geography, Jan Mayen is typical and not exceptional.

3. Regional Geography

Mr. President, our perception of geographical distance is conditioned by many factors:

personal experience, a sense of dimension, our habit of looking at maps. Now, all maps are distorted; maps of the polar regions are often more distorted than others. Most of us have not travelled in the polar regions, and we derive our impression of those regions from maps, which may give us a very unsatisfactory basis for our judgement.

We should be grateful to Mr. Thamsborg, who, in his very thorough demonstration on Monday, has reminded us that the whole general region of the North Atlantic, which comprises the Greenland Sea and the Norwegian Sea, has dimensions which can best be compared to those of the whole of the Mediterranean, with regard both to area and to the distances involved. The Mediterranean has a very complex geography, with irregular coastlines, protruding peninsulas, a number of islands, a number of separately-defined, semi-enclosed areas abutting onto the main body of water and, most essentially, it has a great number of riparian States.

The ensemble of the Norwegian and Greenland seas presents a totally different and much simpler picture. We have the Svalbard Archipelago to the northeast, we have Iceland to the south (and Iceland is not to be involved), then we have the coasts of Greenland, and we have Jan Mayen.

That is all. That is the setting in which our problems have arisen.

In order to make the geography of this region more understandable, I should like to make some of the geographical factors of this region a bit more tangible, if I may refer you to Figure 3 in the folder of sketch-maps (see also Counter-Memorial, Vol. I, p. 16).

The distance from Copenhagen to Nuuk or Godthaab, the administrative centre of Greenland, is approximately 1,800 nautical miles (or 3,300 kilometres). That is slightly more than the distance between The Hague and Cairo.

The shortest distance between Jan Mayen and the east coast of Greenland is 254 nautical miles, or 470 kilometres, and that is slightly more than the distance from The Hague to Paris.

The sailing distance from Nuuk around the coast and then to Jan Mayen is approximately 1,480 nautical miles; that is somewhat more than the distance between The Hague and Casablanca and - indeed - it is slightly greater than the distance between the Hague and Jan Mayen. Now, on the other hand, the distance to Jan Mayen from the main fishing ports in continental Norway, from

which fishermen ship out to these fishing grounds and for the West Ice, that is, Tromsø in the north and Alesund in middle Norway, is 559 nautical miles and 616 nautical miles respectively.

The sailing distance, as apart from the distance by air, from the major fishing port on the east coast of Greenland, Ammassalik, and Jan Mayen is 707 nautical miles. That is eight hours sailing time longer than from Tromsø to Jan Mayen.

We have to bear in mind that, in practical terms, these distances have to be translated, not into flight hours but into days and hours of sailing time. At the average running speed for fishing vessels, the sailing time from Nuuk to Jan Mayen is 4 days and nights. The sailing time from the Norwegian mainland ports would range between 37 and 41 hours.

This gives me an opportunity, Mr. President, to make it quite clear that the fishermen of Tromsø and Alesund are not foreign, distant-water fishermen in the waters around Jan Mayen. They are fishing in their traditional waters, they are fishing in waters that now form part of Norway's fisheries jurisdiction, and they have their home ports closer to these waters than do the Greenland fishermen, or most Greenland fishermen. But, admittedly, Icelandic fishermen have a somewhat shorter sailing from their ports in Northern Iceland.

The Geography of Delimitation

Mr. President, Mr. Thamsborg showed us a series of interesting maps. And he demonstrated very clearly how, as a point of departure, any isolated island benefits from a "radial projection" of its entitlement on all sides. On this basis, Mr. Thamsborg illustrated the use of what he calls the "radial technique" to identify the maximum entitlements of the Greenland coast and of the Jan Mayen coast, with provision made to avoid any prejudice or injury to Iceland. In its construction and in its conception, Mr. Thamsborg's map is identical to Map VI annexed to the Norwegian Rejoinder, which I would now like to show you in a simplified form; it is included in the folder as Figure 4. This map is essentially the same as the map which appears in Mr. Thamsborg's Figure 14, but it excludes the specifications of the potential entitlement of Kolbeinsey and the Iceland main coast, and the Norwegian map is drawn to a conical projection, which provides a somewhat truer picture of areas and distances than does the Mercator projection of Mr. Thamsborg's map.

Mr. Thamsborg concluded his remarks by throwing a challenge at Norway. And I hope to accommodate him to some extent by confirming that this map very precisely indicates which coastlines work together, first of all to determine the median line, and secondly to illustrate the maximum extent of overlap of the 200-mile projections of each of those coastlines, north of the area where Iceland's interests might be involved.

I should like to be very clear about this, Mr. President: this line shows the maximum extent of the projection of entitlement from the Greenland coast, and this line shows the maximum extent of the projection of entitlement from the Jan Mayen coast. The area between those two lines - this fat banana - constitutes the *area of overlap* of the entitlements of the two territories of Jan Mayen and Greenland. It has been clear since the Judgment of 1969 that this is the area which is to be delimited, the area of overlapping projections. And it is within the confines of the two competing coastal projections, in their maximum, it is within the confines of this area that any line of delimitation must be located, if it is to be a true boundary.

As you will see, the median line does not divide the area of overlap into equal parts. It is the longer coast of Greenland which causes the median line to bend to the east, here in the south, and even more pronouncedly, to bend eastwards in the north.

The northeasterly direction of Jan Mayen's coastline also contributes to this difference in the areas on either side of the median line.

This map, which is essentially identical to Mr. Thamsborg's map, brings out very clearly the capacity of each coast to generate entitlements. The map also demonstrates that the median line allocates to Greenland a considerably larger area than to Jan Mayen.

This identifies the *area of overlap*. And I think it has demonstrated the influence of the two coasts, and the bonus or premium which automatically is given to the long coast by the effect of a median line within the area of overlapping entitlements.

Now the dispute between Norway and Denmark does not relate to the whole area of overlap. That is simply an effect of the pertinent Norwegian legislation, which also governs the contents and extent of Norway's claims. That legislation states specifically that the Norwegian continental shelf

cannot extend "beyond the median line in relation to other States" (Norwegian shelf proclamation of 31 May 1963, Ann. 21 to the Norwegian Counter-Memorial, Act No. 12 of 21 June 1963, relating to exploration for and exploitation of submarine natural resources, Ann. No. 22, and maintained by Act No. 11 of 22 March 1985 pertaining to petroleum activities, Section 4, para. (f), Ann. 28). The same provision in identical language is applicable to the Economic Zone of Norway (Act No. 91 of 17 December 1976, Section 1, para. 2 in fine, Ann. 24).

The net effect of the applicable Norwegian law is then to exclude any pretension to a continental shelf area or to an economic zone, on behalf of Norway, beyond the median line. This leaves us with a disputed area which comprises only that part of the area of overlap which is situated to the east of the median line: you might call it the *banana split*, if I may.

That leaves Norway with an amputated disputed area. Norway has at the outset lost a limb of the area of overlap. The Norwegian legislation has discounted in advance the balancing-up of the process of delimitation which leaves Norway in a disadvantaged tactical situation, if one is to be guided only by the map of the disputed area alone. I shall refrain from arguing at this stage the effect of complementary national legislation regarding the extent of continental shelves and jurisdictional zones, but plead only for the recognition by the Court of Norway's handicap in this regard.

Thus far, Mr. President, I do not think there is any difference between the assessments of the two Parties of the effects of the two coastlines in question on the delimitation process.

But I must disappoint Mr. Thamsborg with regard to the rest of his challenge. Whereas Norway of course recognizes that some coastlines have an effect on delimitation, and other coastlines do not influence the same delimitation, Norway must reject that there is any valid mechanical method for constructing a so-called "relevant area", which is to be used for abstract calculation of ratios between the same coastal lengths and the resulting allocation of entitlements. My colleagues will revert to that in greater detail.

Comparison with other geographical settings

Mr. President, let us briefly compare this regional picture to the geographical relationships in

other cases with which the Court has dealt with:

- the distance between the coasts of Denmark, on the one hand, and the coasts of the Netherlands, on the other, which was a factor in the first delimitation case, is approximately 120 nautical miles;
- the distance between the coasts of Libya and Malta is approximately 180 nautical miles;
- the distance between Cape Cod and the coast of Nova Scotia is 201 nautical miles at the shortest - and distances within the Gulf of Maine are still shorter.

The extent of a disputed area is a function of the claims of coastal States. In our case, the area of overlapping entitlements - that is the area between the theoretical potential entitlement of Jan Mayen 200 nautical miles to the west of its baselines, and the theoretical entitlement of Greenland 200 miles to the east of its baselines, north of any area of possible conflict with areas appertaining to Iceland, - that area is 142,000 square kilometres. The area between the median line and the Danish claimed line at 200 miles from Greenland - that area of Jan Mayen entitlement which Norway, according to her legislation, is entitled to claim, and to which Denmark also lays a claim - that area is 64,500 square kilometres. In comparison, the continental shelf which was left to Germany after the conclusion of the boundary agreement between Denmark and the Netherlands was 24,000 square kilometres, and the total area of German continental shelf after the rearrangement of the boundaries following the Judgment of the Court is something like 35,600 square kilometres - the German gains from both sides, as a consequence of the Judgment, turned out to be less than 12,000 square kilometres.

Geology and geomorphology

In his description of the regional geography, Mr. Thamsborg has also described the bathymetry and the sea-bed topography of the waters between Jan Mayen and Greenland. His analysis confirms what was stated in the Norwegian Rejoinder (paras. 68-70): that the depths are rather moderate, and the sea-bed morphology is rather irregular. Although Mr. Thamsborg did not draw that conclusion, there can be no doubt that the sea-bed area between Jan Mayen and Greenland does not comprise any part of the deep ocean floor, and likewise that at all material times, the

natural prolongations of the two land territories have met and overlapped on a continuous area over which the coastal States would exercise the sovereign rights pertaining to the continental shelf.

4. Norway's Agreements with Iceland

Mr. President, Mr. Lehmann has referred to Norway's Agreements with Iceland of 1980 and 1981, and argued that these Agreements represent an *opinio juris*, and Mr. Bowett has asked why Norway has been disinclined to grant to Denmark the same concessions as were given to Iceland. The answer to that question is that the situations are completely different, the history is different, and the politics are different.

First and foremost, there are, of course, essential distinctions between the situation of Iceland and the situation of Greenland with respect to their interests in relation to the waters between these territories and Jan Mayen.

There has traditionally been a considerable Icelandic activity in the waters between Iceland and Jan Mayen. This was manifest already at the time when Norway was preparing to assume her sovereignty over Jan Mayen: the Icelandic authorities were interested in maintaining their traditional gathering of drift timber along the Jan Mayen coastline. The short sailing distance from ports in Northern Iceland makes Jan Mayen waters a natural area of operation for Icelandic fishermen.

Iceland has shared with Norway an interest in whaling in the waters between Jan Mayen and Iceland, and specific arrangements were made for the distribution of the quotas of the International Whaling Commission for Minke whale between the two countries. Fishermen from both countries took part in the important herring fishery which continued in these waters until the late 1960s.

More recently, the opening up of a new capelin fishery around Jan Mayen by Norwegian fishermen in 1978 brought about a community of interest between Norway and Iceland in the prudent and rational management of the joint capelin stock. This stock moves between the zones off Iceland, Jan Mayen and Greenland and has its spawning grounds within the Icelandic zone.

That is one of the explanations why the Agreement of 28 May 1980 between Norway and Iceland on Fishery and Continental Shelf Questions (Counter-Memorial, Ann. 70, pp. 265 ff.) was to a very very large extent concerned with fishery management issues alone.

It should be borne in mind that this Agreement was signed on the day before the establisment of the fisheries zone around Jan Mayen entered into effect. Nor is it without interest that the Agreement resulted from lengthy and extremely difficult negotiations in which the Foreign Ministers of the two parties led their respective delegations. By the Agreement, Iceland recognized and accepted Norwegian fisheries jurisdiction in the waters off Jan Mayen, and Norway recognized and accepted the Icelandic regulations according to which Iceland's zone had an extent of 200 miles from baselines vis-à-vis Jan Mayen. This mutual recognition found its expression in the preambular part of the Agreement.

Most of the operative clauses deal with fisheries management, and they implement a régime which took account both of Iceland's predominant interest in the stock, and of Iceland's "strong economic dependence on fisheries" (fourth preambular clause). On the operational level, a joint Fisheries Commission was created, ground rules were given for the setting of the total allowable catch (TAC) (with Iceland making the ultimate determination of the TAC if the parties do not agree), and the shares of the TAC were fixed at 85 per cent for Iceland, 15 per cent for Norway for an initial period (this distribution was in fact observed by the two parties until the tripartite capelin arrangement took effect).

Only one of the provisions of the 1980 Agreement dealt with continental shelf matters. That clause was procedural, and provided for the setting-up of a Conciliation Commission to formulate recommendations for the delimitation of the continental shelf in the area between Jan Mayen and Iceland. It was particularly noted in the mandate that the Commission should take into account Iceland's strong economic interests in these sea areas.

It is clear that this Agreement was exceedingly favourable to Iceland. That goes for the fisheries management provisions, and it goes for the *de facto* concession of an area of nearly 30,000 square kilometres to the north of the median line. Part of the explanation for these concessions lies in the close political relationship between the two countries - with the deep emotional bonds and the shared cultural tradition which has had a great deal of influence on Norway's national consciousness. Part of the explanation lies in the recognition - by Norwegian

political authorities as well as by Norwegian fishermen - of Iceland's active utilization of the waters between Iceland and Jan Mayen.

But, we must remember also that the negotiations between Norway and Iceland had been the subject of some controversy in Iceland.

There was a segment of public opinion which had adopted a negative view with respect to the question of whether Jan Mayen rightfully was capable of generating any fisheries zone. There were even voices which claimed that Jan Mayen should properly belong to Iceland and not to Norway. All these currents in Icelandic political debate had contributed to creating a certain level of political excitement in Iceland. In that situation, Norway was bound to take into account that in 1979-1980, any aggravated fisheries dispute between Norway and Iceland could have had major ramifications, far beyond the realm of fisheries or the law of the sea.

Mr. President, Norway would definitely not engage in any "capelin war". Anyone who recalls the various repercussions of the "cod wars" between Iceland and other States will understand Norway's position in this regard. The ensuing Agreement testifies to Norway's willingness to "walk that extra mile" to avoid a capelin war.

In his intervention on Wednesday, the Danish Agent, Mr. Lehmann, was careful to quote the statements of acceptance from various quarters in the Norwegian *Storting*, in the debate on the Agreement of 28 May 1980 between Norway and Iceland.

But he omitted to mention that all the members representing the county of Møre and Romsdal voted against approval, regardless of party affiliations, because the fishermen from Møre and Romsdal have traditionally taken part in West Ice sealing, and had taken an early interest in the capelin fishery at the close of the 1970s.

He also omitted to mention that while the majority approved the agreement with Iceland, a number of prominent members were careful to distinguish the case in relation to a forthcoming delimitation with Denmark.

Those members included the Rapporteur of the Foreign Affairs Committee, Mr. Arvid Johanson (Counter-Memorial, Vol. II, p. 40). It also included the leading opposition

spokesman and later Prime Minister, Mr. K_re Willoch. Mr. Willoch referred to the Danish claim for a full 200-mile zone as "an unfriendly act by the Danes", and emphasized his determination not to allow "Danish efforts to squeeze Norway out of any part of the area on the Norwegian side of the median line between Greenland and Jan Mayen" (*ibid*., pp. 41-42). Mr. Willoch also made it perfectly clear that he was aware of "Iceland's traditional fishing interests in the area in question on the Norwegian side of the median line". But he went on to point out that there was

> "no corresponding traditional Danish, Greenland or EC activity in the part of the Norwegian zone which Denmark is attempting to incorporate in its zone. Nor is there any dependence on Greenland's part on fisheries in the area in question, ...
>
> There is, in short, no reason for Norway to recognize anything but the median line as the delimitation line between the economic zones off Jan Mayen and Greenland ..."

Mr. Karstensen, who was quoted by Mr. Lehmann, stated that "where the zone off Greenland is concerned, there is no basis for similar considerations, and Norway must stick to the median line principle".

Mr. President, it is difficult to read into these statements, and into the full verbatim report of the debate of the Storting which is annexed to the Norwegian Counter-Memorial (Ann. 11), any testimony to an *opinio juris* among responsible Norwegian politicians to the effect that the Jan Mayen fisheries zone had been devalued in any way as regards delimitation by the approval of the Agreement with Iceland.

5. Considerations on East Greenland Fisheries

Mr. President, the Greenland fishing industry has never been involved in utilizing the resources of the offshore waters between Jan Mayen and Greenland.

There are many reasons for this.

First of all, most of the population lives along the western coast of Greenland and most of the economic activity takes place in that region. The population of East Greenland on 1 January 1992 was less than 3,500, something around 6 per cent of the total population of Greenland. The major part (nearly 3,000 people) were resident in Ammassalik. Only 538 persons were listed as living in Scoresbysund, which is almost directly to the west of Jan Mayen.

The Greenland fishing fleet in 1991 comprised 497 vessels over 5 gross registered tonnes. Six of these vessels had their home port in East Greenland. These six vessels all belong to the town of Ammassalik, which is more than 700 nautical miles away from Jan Mayen. It may be of interest to note that while the Greenland fishing fleet has developed considerably in the past 15 years, Scoresbysund is no longer a home port to any fishing vessels of more than 5 gross registered tonnes. But in the early 1980s, one such vessel had been registered there.

All these figures reflect the simple fact that not only is West Greenland more habitable than East Greenland and very far from the disputed area; the waters off West Greenland are also more fishable. Along the east coast, the waters off Scoresbysund are heavily ice-infested for most of the year.

You will see in Figure 5 in the folder and on this display, the probabilities for heavy ice cover of 40 per cent in the month of April. You will see that, all along the coast there is a belt in which the possibility of 40 per cent ice cover is a hundred per cent. The only exception is a small stripe just off the coast which has a probability for 40 per cent ice cover of between fifty and one hundred per cent. This illustrates the icebound character of this portion of the Greenland coast and it shows that normally Jan Mayen will be free from ice cover of 40 per cent in that area. The summer months provide some improvement in ice conditions but they remain difficult. Scoresbysund is accessible by non-specialized vessels - by vessels which are not icebreakers - for only some three months of the year.

The volume of ice which moves through the waters between Jan Mayen and Greenland is calculated at 2,000 cubic kilometres. That is a volume which would correspond to an ice cover of 50 metres' thickness covering the entire surface of the Netherlands. These ice masses explain a great deal.

It is only when you get south of 68° N, that you will find shrimp fishing grounds, and still further to the south (off this map), you will find a fishery for cod. But, as we have seen, the East Greenland fishermen play only a minor part in Greenland's fishing industry.

Catch figures which have been published by the International Council for the Exploration of

the Sea (ICES) and by the North Atlantic Fisheries Organization (NAFO) show that the total catch by Greenland vessels of capelin in 1990 amounted to 169 tonnes off West Greenland, 2 tonnes in southeast Greenland waters, and no catches in the waters off the east coast north of 68° N. There may be some subsistence fishing, some coastal fishing, which is not reported in those figures, Mr. President, but the general picture is clear and unquestionable.

It should finally be borne in mind that there has never been any Greenland participation in the offshore seal hunt in the West Ice. Greenlanders are traditionally great *inshore* hunters for seals. That is an art and a craft which they master superbly and they continue to catch 50,000 head per year. Greenlanders have simply not engaged in vessel-based hunting at sea, along the ice edge. But, of course, the possibility may be there to be developed.

Danish oral pleadings on Greenland fisheries

Mr. President, on Tuesday, Ms. Kirsten Trolle gave us a very straightforward and very frank picture of the present condition of the Greenland fishing industry, its resource situation, the incidence of foreign fishing in the Greenland fishery zone, and the prospects for the future. I wish to say at the outset that the Norwegian Government welcomes the positive note on which Ms. Trolle concluded her presentation.

I should also like to say that there appears to be only superficial differences between the Norwegian and the Greenland evaluation of the data available relating to Greenland fishing interests. It seems to us that Ms. Trolle's presentation makes it clear that:

- the fisheries interest relating to West Greenland waters are far greater than those relating to East Greenland waters;
- the Greenland interests linked to East Greenland resources are concentrated south of 68° N;
- there has been no offshore Greenland fishing north of 68° N;
- the agreement between Greenland and the European Communities provides for quotas which are considerably greater than the actual catches at present;
- the quotas reserved for Greenland fisherman are greater than actual catches.

Ms. Trolle's presentation does not contradict the Norwegian finding that there has been no

Greenland fishing within the disputed area.

Let me assure you, Mr. President, that Norway does not belittle Greenland's potential interest in fisheries, and that we are fully aware that the allocation of quotas to third States is not only an international duty when national catch capacities are insufficient, but it is also a rational and practical way for a coastal State to derive revenue from the resources under its jurisdiction.

Our only concern is that *potential* Greenland fishing interests should not take precedence over *actual* Norwegian fishing activities in any consideration of the relative interests of the two Parties in relation to the waters between Jan Mayen and Greenland.

Mr. President, I do not think the Parties disagree that sealing in the West Ice has for a long time been an activity in which Norwegian - and to some extent Russian - sealers have engaged. There has over time been considerable fishing activity in the area around Jan Mayen by fishermen of many nationalities - but never from Greenland. There has been an important capelin fishery in the area for the past 14 years, developed and dominated by Norwegian fishermen - never by Greenland fishermen.

Let me again say very emphatically, Mr. President, that we do not accept the repeated slanderous labelling of Norwegian fishermen and sealers as "distant-water fishermen" - some sort of trespassing intruders - in this region.

There are some specific matters which have been raised in Ms. Trolle's statement and to which I would like to respond more directly.

We would note that the Greenland decision to invest in a new small purse seiner, to work out of Ammassalik, is based, not upon the prospects of fishing access specifically to the disputed area, but on what was called the "increased catch opportunities for capelin" available through "the possibility of mutual fishing and landing rights inside the other party's zone" by virtue of the Tripartite Agreement on Capelin Management and Exploitation. We understand and agree with the considerations which connect this investment decision with a line of reasoning which is linked to the Tripartite Agreement. We would only make the point that this reasoning assumes that the essence of the tripartite arrangement will have a duration which extends far beyond 1994, if the investment is to

have a normal period of depreciation (cf. CR 93/2, pp. 53-54).

Ms. Trolle mentioned the illegal sealing by Norwegian vessels within the undisputed Greenland fishery zone in 1989, 1990 and 1991. I must again impress upon the Court that those illegal catches constitute violations by individual skippers, and is in no way condoned by Norwegian authorities. On the contrary, this illegal catch activity was brought to light not by the vigilance of the Danish Coast Guard, but through data reported to the Norwegian Fisheries Authorities. When the occurrences came to the knowledge of central Government authorities in Norway, steps were immediately taken to inform the Danish Government, and the regrets of the Norwegian Government were expressed without reservation.

However, the Norwegian Government has no compunction about continued sealing in the disputed area. Norwegian and Russian vessels have carried out this activity over a long period of time; the harvest of seal stocks is in Norway's view no different in nature from the harvest of fish stocks: the management is conservative and responsible; the stocks are in no way affected; the activity is not of a nature to reinforce or support any Norwegian rights or to prejudice any Danish or Greenland rights; the activity is in no way likely to create any international incident - it is simply a continuation of a normal, traditional catch pattern - albeit on a much lower level of intensity than previously (CR93/2, p. 58).

Ms. Trolle also referred to the recent conclusion of the multilateral agreement establishing the NAMMCO Commission to deal with co-operation in research, conservation and management of marine mammals in the North Atlantic. We very much agree with the view expressed that "marine mammals .... are still a resource of undoubted value within the disputed area" (CR93/2, p. 56).

It appears to be acknowledged by Greenland that seals which breed on the ice edge have so far not been a direct interest to Greenland. It is our view that there is nevertheless a strong common interest both on the Norwegian and on the Greenland side in the rational management of the seal stocks which migrate through this area and which have their breeding grounds along the ice edge, in the West Ice.

That common interest covers a number of areas. There is of course the potential value of the

seal catch per se. At present, to the detriment of both Greenland and Norway, the prices for seal skins are depressed, due to emotional public sentiments in some of the world markets. It is difficult to escape the feeling that some well-intentioned environmental organizations are concentrating on campaigns which have a broad sentimental appeal, on the basis of symbolic politics and the naturally appealing nature of baby seals and little whales. This undermines the interests and even the very existence of Inuit hunters in Greenland and Canada and Alaska, and the livelihood of traditional huntsmen in Canada and Norway, in Iceland and in the Faroe Islands.

There is, therefore, a common interest in seeking recognition for rational policies of resource development and exploitation, on a responsible and environmentally sensitive basis with respect for sustainable development, of marine mammal species and stocks. Co-operation in the new regional organization will be most valuable in this context.

There is also a community of interest in developing multi-species management. We know that there are important interrelations between various species in the marine ecological system, at various levels in the food chain. We know, for instance, that seals and certain whales compete for food with some of the most valuable species of harvested fish. We may not know enough about these relationships, but the fundamental theoretical insight is already there. We are already beginning to experience the upsetting effects of the cessation of sealing off the east coast of Canada, where the seal population has increased almost threefold, from the usual 1.5 million seals to around 4 million seals, after the culling of pups along the ice edge was abandoned some ten years ago. At the same time, the stocks of cod and capelin are drastically reduced - and we are entitled to the hypothesis that the competition from seals in exploiting the feedstocks for cod, which consists inter alia of capelin, may have had an impact, in addition to climatic changes and fisheries. Multi-species management is a very complex field, and the fishing nations of the North Atlantic need to pool their scientific knowledge, their research capabilities, their management skills and practices and their political determination in order to grapple with the situation. We welcome the co-operative attitude of the Greenland Home Rule Authorities in this respect.

6. Negotiating History

Mr. President, the history of the negotiations and contacts between the Parties concerning delimitation issues between Jan Mayen and Greenland has been rehearsed extensively in the written pleadings of both Parties.

There is, in the Norwegian view, nothing unusual or singular about the conduct of those negotiations. And in this connection, Mr. President, I shall be most careful to avoid picking up Mr. Lehmann's bait - I speak as Agent and Counsel, not as a witness.

After the establishment by Norway and Denmark of fishery zones in the water between Jan Mayen and Greenland in May-June 1980, negotiations extended for a period of eight years, with regard to the delimitation issue.

That is not an excessive period of time, compared to a number of other situations where continental shelf or fishery zone boundaries remain unresolved. The duration of the negotiations can be seen as a function of an underlying lack of urgency: there was no sense of acute crisis or conflict in relation to the unresolved boundary situation; there was no pressing need to establish a definitive boundary for any resource management or surveillance and enforcement purpose.

We note in this connection, Mr. President, that no continental shelf or fisheries zone boundary has been agreed between Denmark and Iceland - that would cover two different sectors, i.e., between Greenland and Iceland, and between the Faroes and Iceland. Nor has agreement been reached in the negotiations between Denmark and the United Kingdom over any shelf or fisheries zone boundary in the Atlantic, between the Faroes and Shetland/Scotland.

Mr. President, we have asked ourselves why Denmark sees the eight years' duration of the negotiations with Norway as constituting an intolerable delay, and we have not found any convincing explanation.

Denmark has characterized those negotiations as fruitless (Reply, p. 20, para. 49), and has sought to convey the impression that Norwegian recalcitrance is to be blamed for the lack of results.

Mr. President, Norway approaches every international negotiation with a desire to achieve results that respond to practical needs and which can be regarded as honourable by both sides. Norwegian attempts to make the delimitation talks with Denmark "meaningful" and productive were

met by Denmark in a manner which we could only regard as condescending and unproductive.

Looking back at was has really happened with regard to the disputed area in the waters between Jan Mayen and Greenland, the general conclusion must be that this has been an extraordinarily peaceful dispute. Shots have not been exchanged, there have been no attempted rammings between surveillance vessels and fishing vessels, there have been no arrests, no legal proceedings, no punishment. The Parties maintained an attitude of calm and moderation, even during that long period when there was no tripartite agreement on capelin management (indeed, it is probably true that it was the demands of the third Party, Iceland, that prevented an agreement earlier).

The Parties have now twice reached agreement on capelin management, based on parity between the share of capelin catches accruing to Norway and to Greenland respectively.

It will be seen that the Parties have been able to work together in the practical handling of fisheries management throughout the duration of the dispute. There have been no dangerous incidents and the situation has not been dramatic, no disturbance of the peace; and relations between the Greenland Home Government and Norwegian Authorities appear to have been unaffected.

7. The Iceland - Jan Mayen - Greenland Capelin Stock

To conclude, Mr. President, I would say something about the capelin stocks of which we have spoken so much. Capelin is a little pelagic fish which occurs in the northern parts of the Atlantic and in the Pacific, where the cold water currents from the polar region meet with the temperate currents from the south. In the Atlantic, capelin stocks are found off Newfoundland and in the Greenland-Jan Mayen-Iceland area, and in the Barents Sea.

There are also localized occurrences of capelin in fjords in Greenland and Norway. In many cases, these occurences must be considered as separate and independent stocks, distinct from the greater, pelagic stocks.

Capelin feeds on plankton, small micro-organisms that are suspended in the water column. Higher in the food chain, capelin is a feedstock for larger fish, notably cod, seabirds, seals and certain whales (Humpback, Fin whale, Minke and lesser-toothed whales).

The pelagic capelin stock in the Greenland-Jan Mayen-Iceland region has a wide area of distribution. The stock has a regular pattern of seasonal migration. In winter, the spawning capelin is concentrated in the waters south and southeast of Iceland. In summer, all age groups feed in the waters between Jan Mayen and Iceland and the stock extends its distribution to the west, into Greenland waters.

The stock varies in size on a seasonal basis and over years. These variations are influenced by the natural life cycle of the capelin, by the availability of food (which again depends on fundamental conditions such as water temperatures and stability or change in ocean currents) and, of course, by the numbers and appetite of natural predators, and by fishing.

This capelin stock is monitored by the marine science research establishments of Norway, Iceland and Greenland, with Iceland currently accounting for the major part of field investigations. Catch statistics and scientific data are considered under procedures established within the International Council for the Exploration of the Sea (ICES). The state of the capelin stock is studied by a special Working Group within the ICES Advisory Committee on Fisheries Management, which provides recommendations for quotas.

In October 1992, the total biomass of the capelin stock was estimated to be 1.2 million tonnes. The stock is in a good condition, and the recruitment is expected to be good for the next year, but the short life span of capelin makes it difficult to forecast stock development for more than one year ahead. Unexpected high mortality, due to catches beyond the recommended quotas or unfavourable environmental conditions, may, of course, affect this generally optimistic perspective.

Managing Fish Stocks

When we speak of the "management" of fish stocks we speak of a concept which has arisen after the Second World War, as we increased our knowledge and understanding of marine biology and oceanography, and as the harvesting power of modern fishing fleets increased remarkably.

Management requires first a determination of the volume of a stock, and of its natural mortality and reproductive capacity. Assumptions must be made about the predation by other species which feed on the stock, and of the implications for the species of planned catches. Then the

management agency establishes the "Total Allowable Catch" (TAC), having regard to scientific recommendations.

But the setting of a TAC is not a mechanical application of scientific data and methods. Fishing is also an economic activity, and furnishes a livelihood for those who engage in it. Therefore, economic, social and political considerations also play a part in management. The management agency must weigh the implications of competing economic, social or political objectives against the hard facts of natural history - including the repercussions of fishing of one stock on the availability of other stocks.

After having established the TAC, the management agency must see to it that fishing efforts are commensurate with the catch limits, and the actual conduct of fishing must be surveyed and, if necessary, policed to ensure that catch limits are not exceeded. Fishery management is a very complex exercise.

From 1980 until 1989, Norwegian management perspectives for this stock were directly linked to the Norwegian-Icelandic Agreement of 1980. Denmark remained on the wings, and fishing was authorized by the Greenland fisheries administration in excess of the TAC which had been established by Norway and Iceland, pursuant to scientific advice. However, all parties loyally observed the ban on capelin catches from this stock in 1982 and 1983.

Since 1989, the management agency for the Iceland-Jan Mayen-Greenland capelin stock has in fact been the fisheries authorities of the three parties, working in conjunction. Collaboration in encouraged by the sobering knowledge that, if they do not agree, Iceland will unilaterally establish the TAC (Article 2 of the Tripartite Agreement of 12 June 1989, Annex 79 to the Norwegian Counter-Memorial).

The fishing season normally starts in July and ends in March of the following year.

An initial quota is set for the whole fishery before the commencement of the summer season in July-August. This initial quota is then adjusted, on the basis of any changes in actual catches, changes in stock estimates or the evaluation of recruitment.

Fishing entitlements for each of the three parties follow directly from the Tripartite

Agreement. After extended negotiations, the Agreement was first concluded for a three-year period and then renewed for a further two-year term. Under this new Agreement, Iceland continues to dispose of 78 per cent of the total TAC. The remainder is shared equally by Norway and Greenland, as before, with allotments of 11 per cent to each.

It is then for each of the three parties to dispose of their quotas in accordance with national policies, regulations and procedures.

For Norway, that means that the available tonnage is distributed among suitable vessels holding a licence for purse seining and the number of those vessels is, today, around 100.

Since Greenland vessels have not yet taken part in the offshore capelin fishery, the Greenland share of the TAC has mainly been allocated to the European Community (EC), the Faroe Islands, Iceland and Norway. Since 1986, the European Community has not realized their capelin allocations.

Mr. President, that concludes my presentation of the history and the factual background and I would thank you, Mr. President, and the Members of the Court for their attention. Thank you.

The PRESIDENT: Thank you very much, Mr. Tresselt. We will resume on Monday morning at 10 o'clock. Thank you.

The Court rose at 12.50 p.m.