INTERNATIONAL COURT OF JUSTICE

MARITIME DELIMITATION
IN THE AREA BETWEEN
GREENLAND AND JAN MAYEN
(DENMARK/NORWAY)

COUNTER-MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF NORWAY

VOLUME I

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SUMMARY TABLE OF CONTENTS

TABLE OF CONTENTS

APPENDICES

INTRODUCTION

1. This Counter-Memorial is being filed pursuant to the Order made by the President of the Court on 14 October 1988 fixing 15 May 1990 as the time-limit for the filing of the Counter-Memorial of the Kingdom of Norway.

2. The present proceedings commenced with the filing on 16 August 1988 by the Government of Denmark of a unilateral Application in accordance with Article 36, paragraph 2, and Article 40 of the Statute of the International Court of Justice, cf. Article 38 of the Rules of Court.

3. In its Memorial of 31 July 1989, submitted pursuant to the above-mentioned Order of 14 October 1988, the Government of Denmark defined the subject-matter of the dispute in its request to the Court in the following terms:

> "To adjudge and declare that Greenland is entitled to a full 200-mile fishing zone and continental shelf 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).

4. It should be noted at the outset that the Danish Application was made unilaterally, without any attempt to reach agreement as to the submission of the dispute to the Court, and without any notification of its intention to initiate Court proceedings. This is extraordinary for several reasons. First, the Parties had for a long time discussed the possibility of solving of their disagreement by judicial settlement. As late as 21 June 1988, following the Danish expression of a preference for arbitration, the Norwegian side had suggested a combination of settlement of the legal issues in dispute by arbitration, followed by negotiations to implement the arbitral decision and to settle other matters relating to the area between Jan Mayen and Greenland which might be outstanding. Without any definite response to this suggestion, a unilateral Application was made to the Court.

5. Secondly, the issues of maritime delimitation are normally presented to the Court on the basis of a carefully negotiated

special agreement. Indeed, in the sphere of general international law, it is recognized that the primary instrument for effecting any maritime delimitation and, at the same time, the principal means of settlement of any dispute relating thereto, is the agreement of the parties (as in Articles 74 and 83 of the United Nations Convention on the Law of the Sea of 1982).

6. The Applicant presents as its primary claims its *entitlements* to a full 200 mile fishing zone and a full 200 mile continental shelf area vis-à-vis Jan Mayen. It is the position of the Norwegian Government that these claims are without any basis in international law and must be rejected.

7. As to the *continental shelf*, the claim totally disregards the bilateral Agreement of 8 December 1965 between the parties, applicable by its own wording to all parts of the continental shelf of the two States, that the boundary between them shall be the median line. Further, even if the Parties had not been bound by that Agreement, both States are Parties to and bound by the 1958 Continental Shelf Convention, as it must be applied in the light of the relationship between the two Parties and of their consistent conduct. There is no foundation in the 1958 Convention, nor in general international law as expressed in that Convention and as subsequently developed, for the Danish Claim to disregard the existence of Jan Mayen in the delimitation of the continental shelf between the two States.

8. In regard to *zones of fisheries jurisdiction*, the issues have arisen more recently. Denmark enacted enabling legislation in 1976 to extend fisheries zones up to 200 nautical miles from base lines, but in respect of Greenland decided initially not to implement the extension north of 67° N on the east coast, and north of 75° N on the west coast. Norway likewise enacted legislation concerning the economic zone in 1976. That legislation applied to Jan Mayen, but was only implemented in relation to the waters off Jan Mayen in May 1980, and then not beyond the median line in relation to Greenland. Denmark extended its 200 mile zone northwards in May 1980, but decreed that "for the time being", fisheries jurisdiction would not be exercised beyond the median line in relation to Jan Mayen. A confrontation was created only when Denmark in 1981 repealed this restraint on the exercise of its fisheries zones jurisdiction. By its 1981 Order, Denmark exceeded the powers granted under the Danish enabling Act, which specifically defines the Danish fisheries zone as not extending beyond the median line in relation to other States.

9. The Danish claim for entitlement to a full 200 mile fishery zone vis-à-vis Jan Mayen is without foundation. Although there is no specific agreement between the Parties in respect of delimitation of fisheries (or economic) zones (except the 1979 median line delimitation between the Danish Faroes and the Norwegian mainland), Denmark by its consistent conduct must be seen as having recognized, and acquiesced in, delimitation between the two States on the basis of equidistance. On the basis of general international law, the entitlements accruing to Norway on account of Jan Mayen must be respected.

10. The Danish claims appear to be inspired by concessions granted by Norway to Iceland, as the outcome of negotiations conducted on a political basis, at the stage when well-established Danish attitudes started to change. Accommodation within a political framework between two States is not a declaration with regard to the state of the law. There is no claim to most-favoured-nation treatment with regard to maritime delimitations negotiated between States.

11. The request by Denmark that the Court shall "draw a single line of delimitation of the fishing zone and continental shelf area "between Greenland and Jan Mayen" is presented as a secondary or derivative claim in *consequence* of Denmark's alleged entitlement to a continental shelf and a fishing zone.

12. Norway does not dispute that boundaries of the continental shelf and of the fisheries (or economic) zones may well be identical in practice. On the contrary, there has been extensive practice to the effect that the delimitation of fisheries or economic zones follows the continental shelf boundary already in place. Recent maritime delimitation agreements have stated this specifically. In other cases, fisheries jurisdiction has in fact been exercised within the confines of existing continental shelf boundaries. It does not, however, follow from this practice that the subsequent establishment of a fisheries zone should lead to a completely new exercise in delimitation. In the case of the waters between Jan Mayen and Greenland, it would seem natural that the boundary between the fisheries zones should coincide with the continental shelf boundary already in place.

13. To the extent that the Danish claim for a *single maritime boundary* is a claim to a delimitation of a different nature, as compared with other delimitations, Norway is bound to point out that no agreement exists between the two Parties, either

on a procedural level or with regard to the substance of such a claim. Without the agreement of the Parties, such a claim would not be admissible.

14. The Danish Memorial deals with the interests of third States at pages 10-11, in paragraphs 25 – 29. Norway shares the view that Iceland is the only third State whose jurisdictional interests could be affected by the decision of the Court in these proceedings. It also shares the view suggested in paragraph 29 that the interests of Iceland should be left unaffected. However, by requesting the Court to extend its consideration as far southwards as to a line BCD, terminating to the west at the intersection of the median line between Jan Mayen and Greenland and the parallel of 69° 51' N, Denmark in effect requests the Court to determine its entitlements to an area which by Agreements between Norway and Iceland of 28 May 1980 and 22 October 1981 (Annexes 70 and 72) has been afforded to Iceland, and in effect seeks an implied recognition of the Danish point of view as to the baselines to be taken into account in a delimitation between Iceland and Greenland (cf. the Danish Memorial, footnote 2 to paragraph 29).

15. However, the present proceedings should not extend to possible disputes involving other parties than Norway and Denmark. The Court is therefore respectfully requested to confine its consideration to an area which to the south is bounded by the outer limit of the economic zone of Iceland (as defined by the latter), to the point where this limit intersects the median line between Jan Mayen and Greenland at 70° 12' 04" N.

16. The lines of argument which will be put forward in the present Counter-Memorial are independent of one another, but not mutually exclusive. They are to some extent interwoven, in that the existence of a treaty relationship and the history of the conduct of the Parties are interlinked, and – severally and together – have an impact on the assessment of the elements of an equitable solution. They are interrelated in that the operation of the rules of general international law will be seen to confirm and reinforce the conclusions which flow from the other lines of argument.

17. Therefore, each line of argument is presented as being in the alternative, without prejudice to Norway's position in relation to any of the other lines of argument.

PART I
THE FACTS

A: JAN MAYEN AND THE NORTH ATLANTIC REGION

CHAPTER I: GENERAL OVERVIEW

1. Historical Perspectives

18. The seas between Norway, the Faroe Islands, Iceland and Greenland, along with the Barents Sea to the east, have a certain unity. The region forms the link between the Arctic Ocean to the north, and the Atlantic Ocean to the south. By virtue of the ice coverage in the main Arctic Ocean, and the channels leading north from the area, the obvious link is to the Atlantic. In terms of transport and economic relationships, this maritime region can be said to form a continuation of the Atlantic Ocean. In terms of the economic interests of the coastal populations, however, the region has a distinctive character. In informal usage, references to the region often use the adjective "Atlantic".

19. The region is characterized by a great deal of interaction between the coastal communities and the different sea areas. Norway has long played a major role in that interrelationship.

20. Human habitation in Norway was encouraged by the existence of the Gulf Stream, which carries comparatively warm sea water from the Caribbean to the Norwegian and Barents Seas. The Gulf Stream has given the seaboard area of Scandinavia a reasonably temperate climate. The water temperature helps to establish an environment for rich fisheries.

21. Norwegian dependence on the sea is amply demonstrated by the persistent pattern of settlement in most of the country: apart from the agricultural regions in the central areas around Oslo and in Trøndelag, settlement has been almost exclusively along the coast (see Map I at the end of this volume).

22. In the early Middle Ages, population pressures caused the general Scandinavian outward movement associated with Viking expeditions, launched for both trade and more warlike purposes. For Norway, this period also provided a pattern of more durable overseas settlement, showing that for seafaring peoples the ocean is not necessarily a separating factor.

23. It may be assumed that Norsemen settled in the Shetlands and the Orkneys in late Merovingian times. At the end of the ninth century, Norse settlement was extended to the Faroes and to Iceland. This settlement was superimposed on earlier Irish settlement, but the Norse elements rapidly became dominant in these islands (in contrast to developments in the western Scottish islands and further south).

24. Norse society was established in the North Atlantic territories with a basic economy which did not differ in any essential way from that of western Norway. The settlers brought with them their forms of government, their laws and their social customs.

25. In the southern islands, political relations with the mainland were retained in various degrees of feudal dependence. In Iceland, a unique aristocratic-popular republic was formed, for the most part quite independent of the Norwegian Crown until 1262.

26. Settlement in Iceland from the Norwegian mainland lasted from around 870 until around 930. From then on, there was a separate Icelandic community with its own identity. It was from this community that Eirik the Red set sail westwards in 982, and discovered new land which he named Greenland.

27. In the following years, Eirik founded a settlement along the unpopulated southwestern shore of Greenland. The settlers found deserted dwellings, boats and tools from earlier Inuit settlers who had left this part of Greenland for unknown reasons.

28. The Norse settlement in Greenland was to exist for close to 500 years. Although the settlement could at most have comprised 16 parishes, as well as two monasteries, Greenland had its own place in the organization of the Church, and its own bishop (first appointed in 1125).

29. The Kings of Norway gradually increased their influence over the Atlantic settlements. In 1261, a compact was made between Greenland and the Crown: In return for the King's protection, Greenlanders would pay taxes. After an extended period of strife among the leading families in Iceland, the dominion of the Crown was recognized in 1262. Henceforth, the King of Norway maintained his officers in both territories to keep the peace, dispense justice and collect taxes.

30. In the middle of the thirteenth century, the King of Norway reigned throughout the Northern Seas. Administratively, all the island territories formed part of the Kingdom and, ecclesiastically, they were part of the Archbishopric of Nidaros (now Trondheim).

31. To the east, the King's domain extended along the coast of the Kola peninsula. Taxes were paid by the *Sami* people (in earlier terminology: the "Lapps"), who were also tributary to the Muscovite Tsars. Finns and Russians did not venture far into the Norwegian Sea, although the Russians carried on hunting and fishing in the White Sea and Barents Sea, and sent expeditions to Spitsbergen.

32. The power and the vitality of the Norwegian Crown declined as a function of several developments – not least the ravages of the Black Death in the middle of the fourteenth century. The native Norwegian aristocracy did not generate enough wealth or military force to keep up the strength of the institutions of the Realm. The Norwegian Crown was hereditary; this led to personal unions with Denmark and Sweden, at one time giving rise to a trilateral union.

33. Political decline in Norway was accompanied by economic recession. This led to a decrease in trade with the Atlantic territories. In particular, the shipping links between the mainland and Greenland were severed, and it is not known with certainty when the Norse community ceased to exist. Archaeological finds suggest a gradual decline in population, which may have been related to a colder climate. It appears that first, the northernmost settlements were given up, and that the southernmost settlements became extinct before the year 1500. The areas which had been settled by the Norsemen were repopulated by Eskimos who migrated southwards along the west coast.

34. In 1536, Norway and Denmark were joined in a real union, the terms of which were to Norway's disadvantage, and which resulted in a subordinate position for Norway. Along with the Norwegian mainland, the King of Denmark took possession of the Norwegian provinces in the Atlantic. They continued, however, to be regarded as an appendage of the Norwegian Crown.

35. Under the Treaty of Kiel of 14 January 1814, the union between Norway and Denmark was dissolved, as mainland

Norway was ceded to Sweden by the King of Denmark. The Danish Crown was able to retain the Norwegian provinces: the Faroe Islands, Iceland and Greenland.

36. Norway adopted a liberal constitution based on constitutional monarchy on 17 May 1814. This could not prevent the conclusion of a union with Sweden. In November 1814, after a short war, Norway had to accept terms whereby important parts of the new Constitution were retained, but the entire executive power was vested in the King of Sweden. It was only upon the dissolution of this union in 1905 that Norway again resumed full control over its foreign policy. In this sense, it was only in the twentieth century that Norway emerged as a truly independent State.

2. The Territories of the Region

37. The territories which border on this maritime region are Norway, Iceland, the Faroe Islands and Greenland. Norway and Iceland are independent States. Greenland and the Faroe Islands form part of the Kingdom of Denmark.

Norway

38. Norway is a North Atlantic State with a mainland coastline of approximately 1,500 kilometres (approximately 800 nautical miles) facing the Norwegian Sea (between the 62nd parallel and the North Cape), with sovereignty over the archipelago of Svalbard (Spitsbergen) with a western coastline of approximately 500 kilometres (approximately 270 nautical miles), and with sovereignty over the island of Jan Mayen with a coastline of approximately 60 kilometres facing the Norwegian Sea and of approximately 60 kilometres facing the Greenland Sea. A line from the North Cape over Bear Island to Spitsbergen's South Cape marks the limit between the Norwegian Sea and the Barents Sea, and has a length of approximately 650 kilometres (approximately 350 nautical miles). A line from the South Cape over Jan Mayen to Fontur (Iceland) marks the limit between the Norwegian Sea and the Greenland Sea, and has a length of approximately 1,600 kilometres (approximately 865 nautical miles).

39. Norway has a population of 4.2 million. Despite increasing industrialization during the last century, Norway's economy continues to depend heavily on marine resources. Shelf-

derived oil and gas exports in 1985 amounted to NOK 85,000 million, equivalent to approximately USD 13,000 million[1] (47.7 per cent. of total export value). Fisheries also remain an important element of Norway's external economy, providing an export value of NOK 7,000 million, corresponding to USD 1,100 million (9.5 per cent. of export value excluding oil, gas, ships and offshore platforms).

40. In the fabric of Norwegian society, the main impact of the fishing industry lies in its general contribution to the maintenance of population settlement and viable regional economies in almost all coastal districts where fisheries constitute the predominant livelihood. With almost 30,000 full-time or part-time fishermen operating 9,000 decked boats, the fishing industry constitutes the main element in the economy of most coastal communities in northwestern and northern Norway.

41. The traditional dependence on and utilization of the surrounding seas led to wide-ranging activities by Norwegian whalers, sealers, trappers, fishermen, scientists and explorers throughout this northernmost part of the North Atlantic and the adjoining seas. In particular, the pattern of Norwegian fishing activities eventually covered the whole region. None of the other fishing industries which today are active in the region are as long-established or as geographically diversified as the Norwegian operations. These varied efforts by Norwegians of many professions also formed the basis for the extension of Norway's political interest by the inclusion of the new territories of Svalbard and Jan Mayen, by the Treaty of 1920 and the proclamation of 1929 respectively.

Faroe Islands

42. The archipelago of the Faroe Islands, which is situated where the Norwegian Sea abuts on the Atlantic Ocean, has a total coastline of approximately 350 kilometres (approximately 190 nautical miles).

43. The Faroe Islands economy is also concentrated on the fishing industry. Since the mid-twenties, the Faroese fishing fleet has relied increasingly upon distant water fisheries. In the 1950s and 1960s, the Faroese were major participants in the cod

[1]) Throughout the Counter-Memorial figures in Norwegian kroner ("NOK") have been converted into US Dollars ("USD") on the basis of the rate of exchange on 2 May 1990, when USD 1 equalled NOK 6.53.

fisheries off the West Greenland coast. After the establishment of the Greenland 200 mile fisheries limit, the Faroese long-distance fishing fleet has turned its attention to the Northeast Atlantic. Negotiated access rights have been obtained in Greenland, Icelandic, Norwegian and Soviet waters.

Greenland

44. Greenland has an eastern coastline of approximately 2,100 kilometres (approximately 1,135 nautical miles), between Cape Farvel in the south and Nordostrundingen in the north.

45. Fishing as a major industry, producing for export, is a relatively new enterprise in Greenland. The activities of the modern Greenland fishing fleet have been almost exclusively confined to Greenland west coast waters. Greenland's interest in east coast fishing is of very recent date. Vessels from West Greenland have to a limited extent participated in the cod and shrimp fisheries off the southeast coast. Available resources off the east coast have, after the establishment of the 200 mile fishing zone, been allocated mainly for the licensing of non-Greenland vessels. Before 1976, Greenland catches off the east coast generally stayed below 1,000 tons per year (data from the International Council for the Exploration of the Sea ("ICES")). After 1976, catches of fish (excluding shrimp) by Greenland registry vessels have only twice (1979 and 1985) exceeded 2,000 tons (see Table 5.2 in Appendix 5). According to available information, out of a total of 310 registered modern fishing vessels of more than 5 gross register tons, only five had their home port in East Greenland (namely Tasiilaq / Angmagssalik). Previously, one such vessel was registered with its home port at Ittoqqortoormiit / Scoresbysund, but is no longer registered[2].

46. The reasons for the absence of modern fishing operations based in East Greenland may perhaps be sought in the unfavourable natural conditions: the capacity of inshore east coast waters for biomass production, the occurrence of pack ice and consequent restrictions on navigation and the utilization of harbours, the capability of the local communities to generate the required capital base for modern fishing activities, and the remoteness of east coast waters from the home ports of the modern Greenland fishing fleet. There seems to be no disagree-

[2]) Source: *"Grønland 1988"*, Yearbook published by the Greenland Section of the Prime Minister's Bureau, Copenhagen 1989, at p. 372: Table 41, *The Greenland Fishing Fleet, 1987 and 1989*; compared with previous editions. See excerpts at Annex 82.

ment as to the paucity of the fish resources in East Greenland inshore waters, cf. the Danish Memorial p. 14, paragraph 41.

Iceland

47. Iceland is the second independent State in this distinct maritime environment, with a relevant coastline to the north of approximately 850 kilometres (approximately 460 nautical miles).

48. Iceland likewise has an important interest in this maritime region. The relative weight of fisheries in Iceland's economy is great, and support and promotion of the fishing industry has always figured importantly in the conduct of Iceland's international relations. Iceland has rich fishing grounds in the waters close to its coasts, and Icelandic fishermen have concentrated their operations to Icelandic waters. Only sporadically have they fished in distant waters. Iceland's resource interests are prominent with respect to the western part of the region.

Denmark

49. Denmark is present in the North Atlantic area only by virtue of Greenland and the Faroe Islands.

50. Continental Denmark does not fall within this geographical region. The distances between continental Denmark and the Atlantic provinces are considerable (Copenhagen-Torshavn, (Faroe Islands): approximately 1,300 kilometres (approximately 700 nautical miles; sailing distance 750 nautical miles), Copenhagen-Nuuk/Godthaab (Greenland) approximately 3,500 kilometres (approximately 1,900 nautical miles; sailing distance 2,200 nautical miles).

3. Living Resources

51. For an understanding of the implications for fishing of the general geography of the region, it is essential to be aware of the relative distances.

52. The distance between Jan Mayen and Icelandic fishing ports is approximately 350 to 380 nautical miles, between Jan Mayen and Tromsø (continental Norway) 572 nautical miles, between Jan Mayen and Ålesund (continental Norway) 636

nautical miles The sailing distance from Nuuk/Godthaab (Greenland) to Jan Mayen is 1,500 nautical miles, and from Cape Farvel (the southernmost point in Greenland) 1,114 nautical miles The distances from Ittoqqortoormiit/Scoresbysund (Greenland) to Cape Farvel and to Nuuk/Godthaab are 859 and 1,245 nautical miles respectively (see Sketch Map at p. 16).

53. It is a dominant feature of the resource situation in the waters around Greenland that the most important and most exploited fish stocks are concentrated along the west coast. The table below shows average annual cod catches for this area from 1952 to 1978.

Table 1[3]

Average Annual Catches of Cod (in 1,000 tons) in the West Greenland Area, 1952–1978.

Period	Norway	Greenland	Denmark	Others
1952–59	34.0	19.8	–	212.2
1960–69	35.5	26.6	–	282.8
1970–78	7.8	21.9	–	37.3

Complete figures for total catches from 1958 to 1986 are given in Appendix 5, Table 5.8. The main fishing grounds for cod and shrimp off the Greenland coasts are shown in the Sketch Map at page 17.

54. Off the east coast of Greenland, stocks of shrimp and halibut are found within the fisheries zone south of 68° N. Most of the cod catches are taken south of 65° N. Fishing for redfish, which previously was the main activity, takes place both within the Greenland zone and beyond it, mainly south of 63° N. Fishing for cod and shrimp in this area (within 200 miles, or to the west of the Greenland/Iceland median line) is of comparatively recent date.

55. In the northern part of this area, north of 65° N, Norwegian operations were dominant in the fishery for shrimp and halibut. In the more northerly areas off the East Greenland coast, north of 68° N, the natural conditions are such that, apart from local stocks in fjords and other inshore waters, there are no demersal species (*i.e.*, white or bottom fish), but only pelagic species (moving close to the surface), such as herring, capelin, whales and seals.

[3]) Source: ICNAF Statistical Bulletin. For further details see Appendix 5, Table 5.9.

56. Apart from Soviet sealing (the regulation of which was coordinated with Norwegian management under a special agreement in 1957, see Annex 42), Norwegian sealing, hunting, whaling and fishing were virtually the only activities in this area.

57. The fishing activity pattern in the area is shown in the following tables:

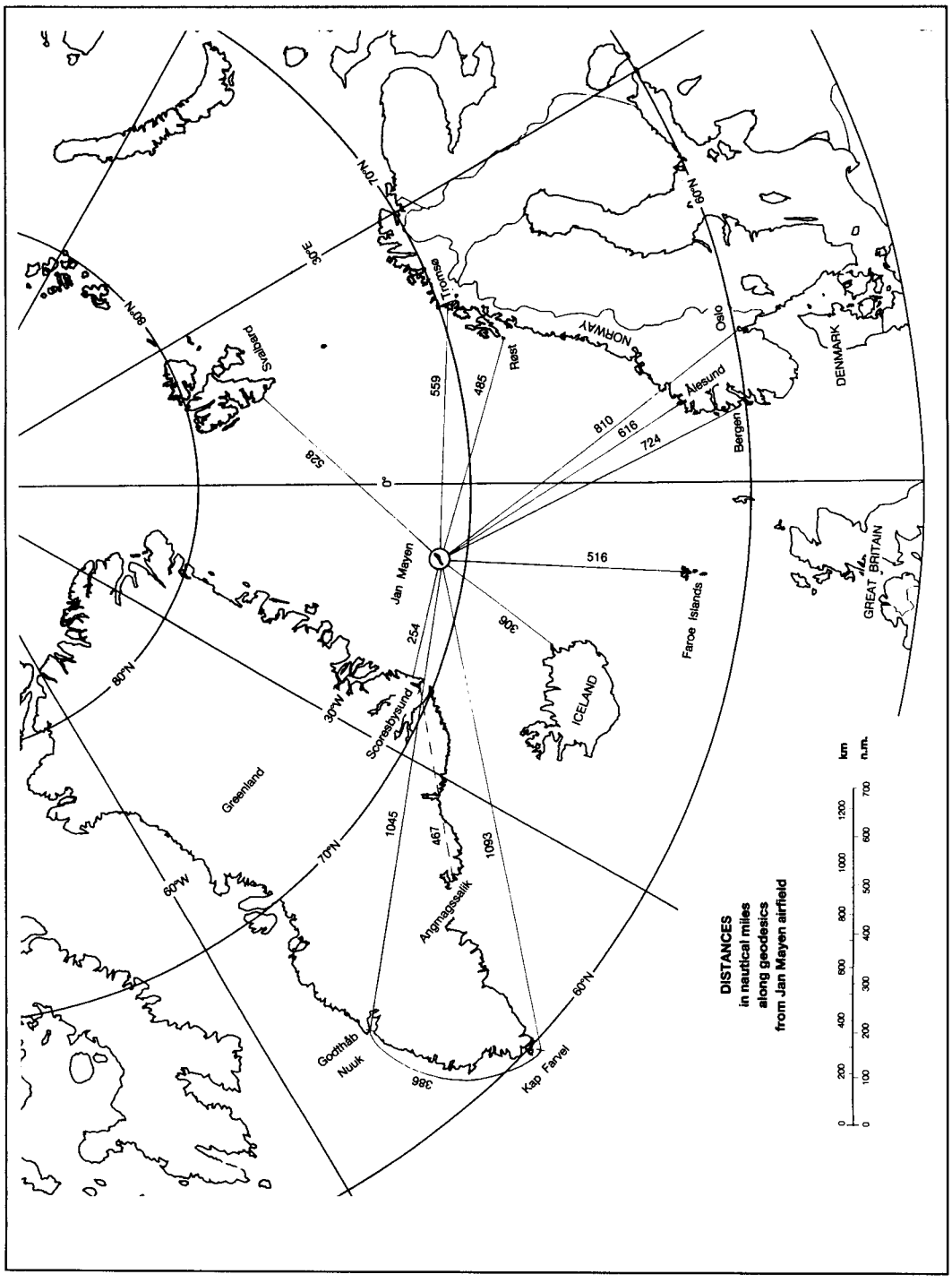
Table 2[4]

Total Catches of Fish (in 1,000 tons) in the Northeast Greenland Area North of 68°N, 1978–1986

Year	Nor-way	Green-land	Den-mark	Ice-land	Others
1978	165.4	–	–	154.5	0.7
1979	77.8	–	–	114.6	–
1980	74.6	–	–	108.5	20.6
1981	0.5	–	17.2	44.1	13.4
1982	–	–	–	–	0.5
1983	–	–	–	–	–
1984	27.4	–	–	–	3.8
1985	189.1	–	–	173.6	5.8
1986	86.9	–	5.9	148.5	85.5

[4]) Source: ICES Bulletin Statistique des Pêches Maritimes. For further details see Appendix 5, Table 5.4.

Distances in the North Atlantic



Main Fishing Grounds around Greenland

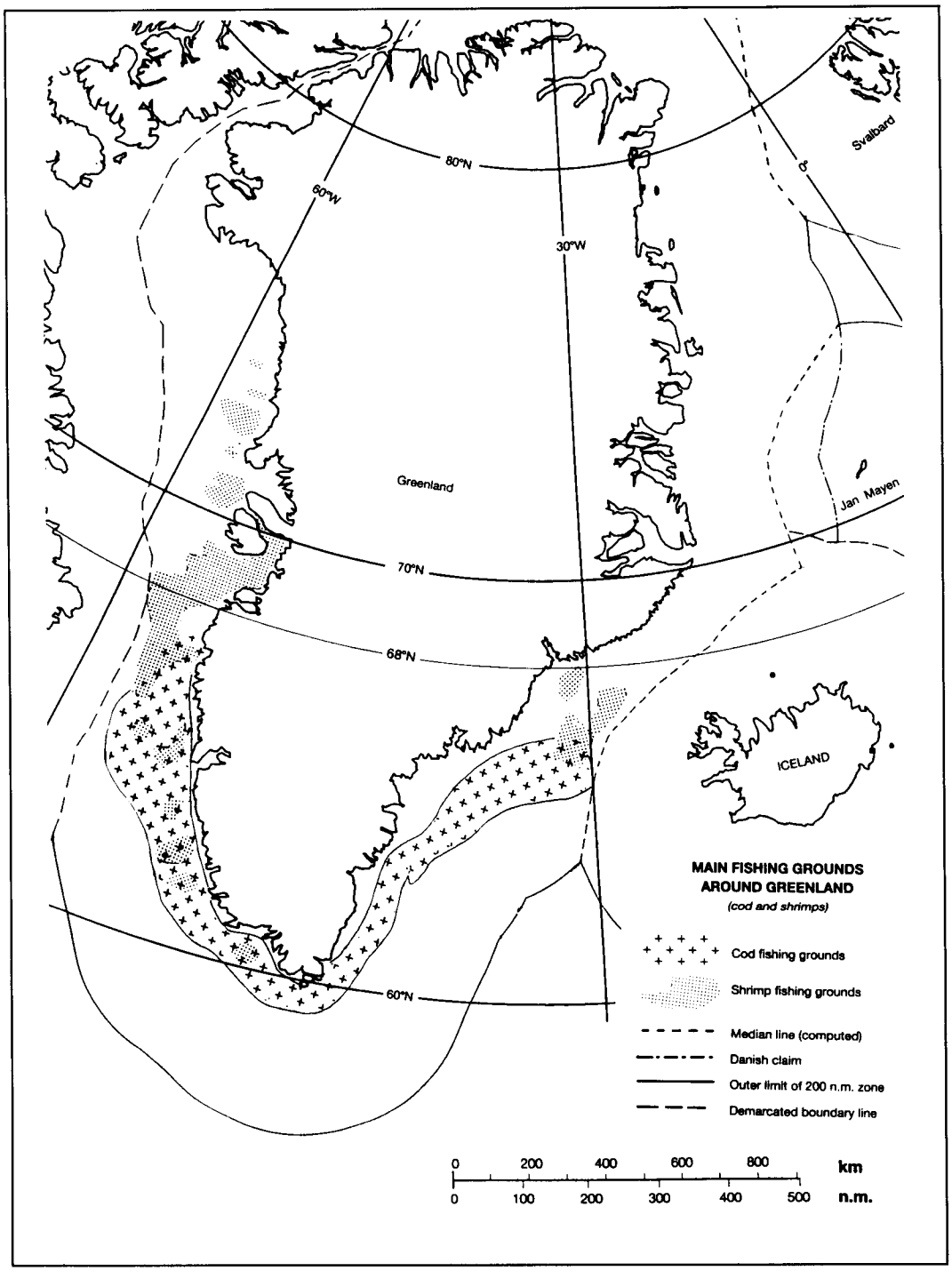


Table 3[5]

Total Catch Activities in the Northeast Greenland Area and in the Jan Mayen Area North of 68° N, 1978–1986.

Year	Norway				Denmark		Ice-land	Faroes		USSR
	Seal	Minke Whale	Cape-lin	Shrimp	Cape-lin	Shrimp	Cape-lin	Cape-lin	Shrimp	Seal
1978	30.5	–	154.1	0.1	–	–	154.6	0.8	–	5.0
1979	33.0	–	126.0	1.1	–	–	114.6	–	–	6.7
1980	19.6	13	118.6	3.2	–	–	108.5	20.6	–	5.0
1981	23.5	1	91.4	2.6	17.2	0.6	44.1	13.3	–	4.0
1982	23.2	–	–	2.0	–	–	–	–	–	4.4
1983	3.4	23	–	1.8	–	–	–	–	0.3	4.8
1984	2.6	90	104.6	3.7	–	0.4	–	3.4	–	–
1985	0.9	55	188.7	4.3	–	0.3	173.6	–	–	1.8
1986	2.9	54	149.7	4.0	5.4	0.4	148.4	65.5	–	6.6

58. In the 1950s and 1960s, fishing fleets of East European States operated in the waters south and east of Jan Mayen, fishing mainly for herring. As an element of an Agreement of 16 April 1962 between Norway and the Soviet Union on reciprocal fishing arrangements, Norway obtained certain fishing opportunities within 12 nautical miles from the Soviet coast, contingent upon continued access for Soviet fishing vessels to carry out loading and unloading operations in waters outside the 4 nautical mile limit of the territorial sea of Jan Mayen. That arrangement is an indication of the practical need of Soviet vessels at that time (see Annex 43).

59. Subsequently, East European fishermen developed during the 1970s a blue whiting fishery of very significant proportions in the North Atlantic. It is assumed that most of these catches were taken to the east of Jan Mayen. In fisheries management discussions between Norway and the Soviet Union, an interest in blue whiting fishing within the Jan Mayen fishery zone was also evinced. In a letter dated 15 June 1981 Norway agreed to open up for such a fishery (see Annex 13).

4. Geology and Geomorphology

60. The geological origins of the region lie in the separation of the original landmass into distinct continents. As the

[5]) All catches in 1,000 except minke whale. Source: For capelin: ICES Bulletin Statistique des Pêches Maritimes. For further details see Appendix 5, Table 5.5.

continents started to drift apart about 57 million years ago, Greenland separated from the European continent. It is this continental drift which has shaped the maritime area of the region. It is the operation of the same processes which has contributed to the creation of the volcanic island territories of Iceland and Jan Mayen.

61. Greenland has an extensive and relatively shallow continental shelf along its east coast. There has recently been an increase in commercial interest in exploring that part of the Greenland continental shelf.

62. Jan Mayen is a landmass which is situated on a ridge of continental crust which has separated from the Greenland landmass and now forms a mid-ocean micro-continent.

63. The hydrocarbon potential of the shelf areas of the Jan Mayen ridge continental shelf has been recognized, and has been the object of systematic investigations. The evaluation of the hydrocarbon potential of this area has not been finally determined.

64. Iceland has a separate geological history, but the volcanic eruptions which have built up the island are linked to the same process of continental drift.

65. The Faroe Islands are of volcanic origin. The submarine areas around the islands are of continental origin, left behind in the process of continental drift.

66. Along the west coast of mainland Norway, the continental shelf in some areas continues to the outer edge of the continental margin considerably beyond 200 miles from land. To the North, the landmass of mainland Norway has a natural prolongation northwards, across the Barents Sea and beyond Svalbard (Spitsbergen), of considerable extent.

67. The existence of ridges and rift zones, and the submarine eruptive and volcanic activity which takes place along these rift zones, also create an environment which may provide for the occurrence of deposits of polymetallic sulphides. The ocean depths at which these submarine eruptive activities take place are comparable to those obtaining in the waters off the west coast of North America, where the prospects of the exploitation of such deposits are actively being considered.

5. Oceanography and Glaciology

68. The physical properties of the oceanic water in the western North Atlantic are particularly well suited to provide optimum conditions for marine living resources. The overall interaction of bottom topography, variations in temperature, ocean chemical composition and ocean current systems all work together to create an environment which has been able to sustain some of the richest and most valuable fisheries in the world along the coasts of the region. Marine mammals including whales, seals and polar bears have occurred in varying numbers at different periods. All these resources have been harvested, by the local population or by outsiders.

69. The role of this maritime region is also felt far beyond the coastal rim, due to the important influences on the climate of the northern hemisphere of the interchanges between the ice masses of the Arctic Ocean and the temperate waters of the Atlantic Ocean which take place in the region.

70. There is a tremendous outwelling of ice from the Arctic Ocean, in particular through the channel between Greenland and Svalbard. Strong currents annually carry around 5,000 cubic kilometres of ice along the east coast of Greenland. This is "pack ice" which provides a layer of varying density and extent, rather than isolated, individual ice bergs. The ice cover depends on the season, the sea state, temperatures in the atmosphere and the water, wind conditions, and other climatic factors. The ice coverage has important immediate consequences for all surface maritime transport along the east coast of Greenland. It is also a limiting factor on the utilization of both living resources and seabed resources in that area. Anything but the lightest incidence of ice prohibits fishing with purse seine gear. Heavier ice cover permits only specially reinforced vessels to sail safely. Ice coverage for the months of heaviest and lightest coverage is illustrated in Map II at end of this volume.

6. Human Environment

71. The climatic conditions are vastly different within the region, strongly influenced by oceanic current systems such as the Gulf Stream and the East Greenland Current. Thus Iceland enjoys a considerably warmer climate than any part of Greenland, even though Greenland extends further south than Iceland. Wind is also an important factor in determining human survivability in cold weather: the wind-chill effect is as important as the absolute temperature.

72. Flora and fauna are variables of climate, although generally extreme adaptation has taken place to withstand the effects of cold. The marine environment has proved capable of supporting life more generously than has the land.

73. Historically, human settlement in the region was dependent on the presence of resources to a degree which could sustain life. In more recent history, human settlement may also be based on outside support. The incidence of human habitation in the region therefore varies, from the comparatively densely populated Faroe Islands (32 inhabitants per square kilometre), to Norway (13 inhabitants per square kilometre) and Jan Mayen (0.06 inhabitant per square kilometre) to Greenland (0.025 inhabitant per square kilometre). Arctic territories are generally sparsely populated, but settlements relying on outside support may provide greater population densities than is the case for traditional communities. The major increases in the population of Greenland after the Second World War have taken place only as a result of outside material and financial support becoming available.

7. Security Policy Aspects

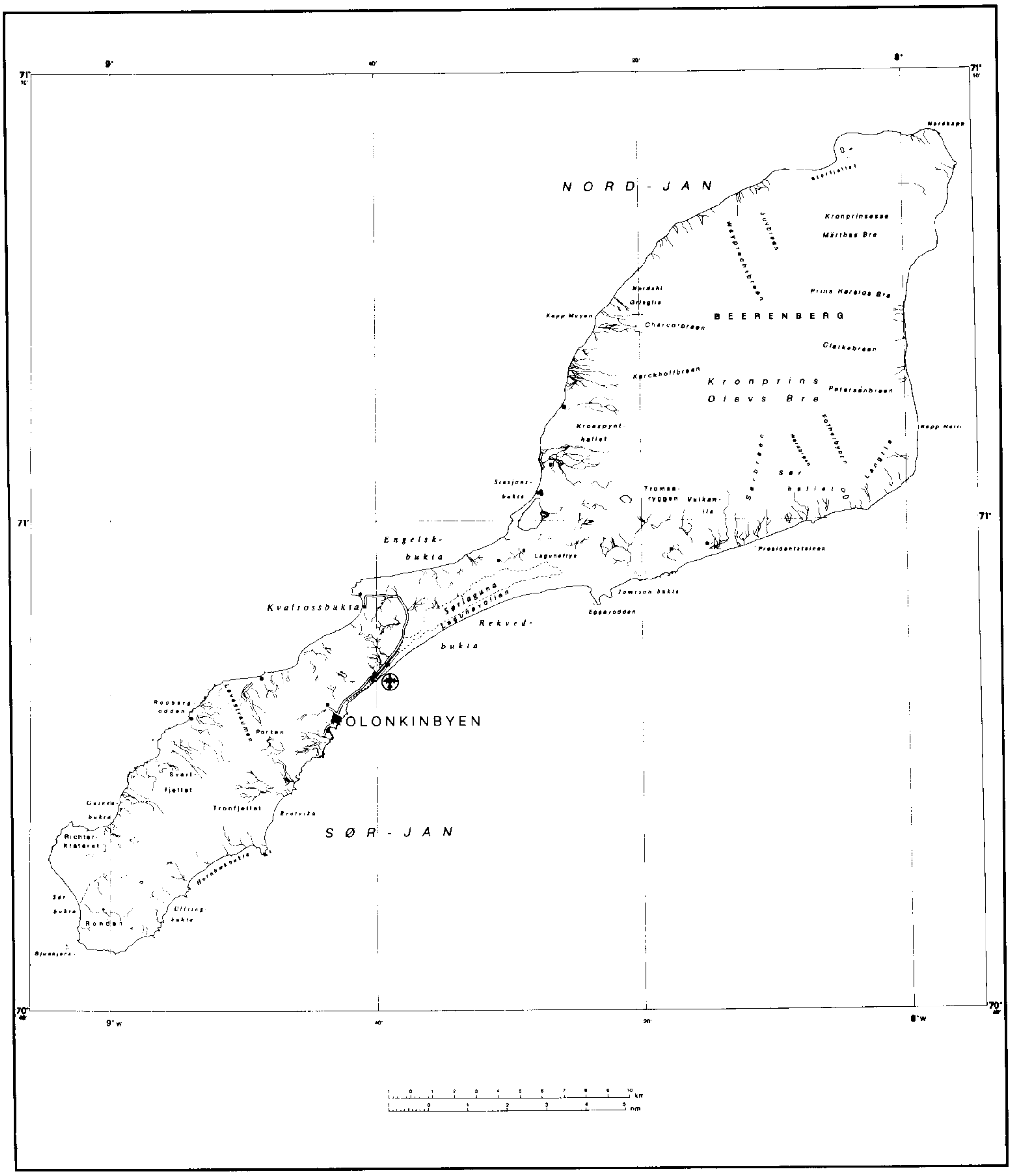
74. All the States in the region are linked to the same political and military Alliance. However, they pursue somewhat differing policies in relation to military matters.

75. Denmark maintains a separate military command for Greenland, including naval units and aircraft. Greenland is host to two air bases which include foreign forces. The Faroe Islands have no foreign bases; the number of permanently stationed Danish defence units is modest.

76. Iceland maintains a Coast Guard, but no combatant military force, and is host to a foreign air base.

77. Norway maintains land, naval and air forces (which in relation to the country's resources must be regarded as considerable), but does not act as host to foreign military bases. One element of Norwegian defence operations in this region is the organization of a Home Guard unit in Jan Mayen, composed of local personnel, which trains regularly. A mainland Army mobilization unit is deployed for manoeuvres in Jan Mayen on the same regular rotation pattern as other reserve units.

Sketch Map of Jan Mayen



CHAPTER II
JAN MAYEN

1. The General History of Jan Mayen

78. The island of Jan Mayen has as its southernmost point Sørkapp ("the South Cape") at 70° 49'6 N, 9° 00'0 W, and stretches northeastwards to Nordkapp ("the North Cape") at 71° 09'7 N, 7° 58'3 W. The length of the island is 53.6 kilometres; the breadth varies between 2.5 and 16 kilometres. The total area is 380 square kilometres (148 square miles). For comparison, the total area of the Republic of Malta is 316 square kilometres (123 square miles). Its shape can be compared to a club: the head is formed by the volcanic mountain Beerenberg (2,277 metres above sea level) in the northeastern part, the handle is the southwestern part, varying in elevation from 20 metres to peaks of between 700 and 800 metres. Beerenberg's upper part is covered by a glacier which extends several arms down to sea level. Beerenberg is an active volcano and the latest eruption was in 1970. A map of the island is found in the pocket of the back cover of this volume. A sketch map of the island is reproduced on page 22.

79. The mean temperature for the coldest month (March) is -5.8°C (21.6° F), for the warmest month (August) + 5.1°C (41.2°F). The flora comprises around 60 varieties of plants, a similar number of mosses and around 150 lichens. There is a permanent terrestrial fauna of blue and white polar fox. Polar bears visit the island regularly. A number of seal species occur in the waters around Jan Mayen, and there are permanent stocks of ringed seals and bearded seals. There is a varied and abundant avifauna.

80. There appears to be uncertainty as to the first discovery of Jan Mayen. Icelandic annals record for the year 1194 the discovery of new land to the north. Previously, this discovery was held to relate to the Svalbard (Spitsbergen) archipelago. It is now believed to be equally likely that the discovery of 1194 in fact related to Jan Mayen.

81. Its rediscovery is linked to the quest by Britons and Dutchmen in the early seventeenth century for an alternative navigation route to the East Indies, north of the Eurasian or American continents, and to the exploitation of the whale stocks which were discovered in the process. Its present name is derived from observations by Jan Jacobszoon May in 1614.

82. In the first half of the seventeenth century, Jan Mayen attracted the interest of whalers. British, Dutch, Norwegian and Danish whalers developed a land-based hunt for whales, especially the bowhead. After a comparatively short span of time the bowhead whale stocks, which migrated along the coast of Jan Mayen, had been decimated. The whaling station on Jan Mayen was no longer utilized by the whalers after around 1650.

83. The resumption in the nineteenth century of human activity in the Jan Mayen region is linked to two simultaneous developments: the general awakening of scientific interest in the Arctic regions, and the expansion of Norwegian economic interest in northern waters.

84. The first detailed map of the island was drawn by William Scoresby Jr. around 1820. Jan Mayen was thereafter intermittently visited by scientific expeditions, including the Norwegian Northern Oceans Expedition in 1877. The first sustained scientific effort occurred during the First International Arctic Research Year, when an Austrian expedition wintered in Jan Mayen in 1882/83.

85. Norwegian sealing commenced in Jan Mayen waters in 1846. This activity attracted a number of vessels from several regions on the Norwegian mainland.

86. In 1906, Norwegian trappers for the first time wintered on Jan Mayen. Hunting (mainly for Arctic fox) was good, and in subsequent years other trappers found transport on sealers and occasional sailings. Some of these expeditions proved disastrous. Others were successful, and Jan Mayen became clearly and permanently established as a field of operations for Norwegian hunters.

87. Similar activities were carried out in East Greenland, where Norwegians erected huts in otherwise uninhabited and unutilized areas. At this juncture, there was a difference of opinion with regard to whether Denmark had established its sovereignty over East Greenland. Norway and Denmark nonetheless concluded a Convention of 9 July 1924, providing for equal access and working conditions for Norwegian and Danish hunters, and the possibility for both Parties to set up wireless, meteorological and scientific stations in East Greenland (Annex 39). This Convention was concluded without prejudice to the views of either Party with regard to the question of sovereignty. The dispute on the sovereignty issue was decided by the Permanent Court of

International Justice in 1933 *(Judgment, 1933, P.C.I.J., Series A/B, No. 51, p. 22)*. The arrangements for access to East Greenland subsisted undisturbed by the dispute, and were renewed with minor modifications in 1947 for a further period of 20 years (see Annex 40). They were succeeded by an Agreement of 20 April 1967 relating to fishing off East Greenland, and assuring national treatment for Norwegian fishermen (see Annex 50). Although providing for a conditional possibility for termination after five years, this Treaty was maintained in force for the entirety of the ten-year period foreseen. Thus, until 1977, Norway's particular interests in hunting and fishing in this area were recognized in a formal treaty relationship between Norway and Denmark. That relationship remained stable throughout half a century, withstanding a grave political and legal dispute, and changes in social and economic conditions.

88. Several hunting expeditions on Jan Mayen during the First World War gave rise to the formulation of claims to property rights in the island. Such claims were common in those Arctic territories over which no State had established sovereignty. Property claims regarding Jan Mayen were registered with the Norwegian authorities.

89. In 1921, the Norwegian Meteorological Institute[1] established a permanent reporting station on Jan Mayen. In 1922, the Institute claimed rights to ownership over parts of the island. In 1926 this claim was extended to cover the entire island. Public interest in Jan Mayen increased with its utilization for weather reporting, and suggestions were made for the annexation of the island by Norway. The practical protection of both public and private Norwegian interests would be improved by the establishment of governmental authority and an orderly administration on the island. The nation was again taking charge of its own destiny, and would be able to obtain for its people the secure dominion over those far-flung areas which Norwegians utilized to supplement the limited opportunities for farming and other land-based activities on the mainland and the coastal islands.

90. The Norwegian Government ascertained that there would be no opposition to Norway's annexation of the island. Thereupon, by Royal Decree of 8 May 1929, Norwegian sovereignty over Jan Mayen was proclaimed (see Annex 17).

[1]) The Norwegian Meteorological Institute had been established in 1866 as an institution under the University of Oslo. The Institute was turned into a separate public service entity in 1909.

91. Since the Norwegian annexation, the meteorological station has been maintained on a permanent basis. The Norwegian Polar Research Institute carried out a complete mapping of the island, and has conducted a broad scientific survey of the island.

92. After the German occupation of Norway in 1940, the staff of the meteorological station was evacuated to the United Kingdom by a Norwegian naval vessel, and the radio transmitter rendered inoperative. Later, an attempt by German forces to establish their own meterological post on Jan Mayen was thwarted. That attempt led to the dispatch in March 1941 of a small Norwegian garrison to Jan Mayen from their main base in the United Kingdom. From then on, and for the duration of the war, the garrison was maintained. Norwegian and United States military personnel provided indispensable meteorological and radio-locating services without interruption.

93. The meteorological installations were extended and modernized after the Second World War. The station has continued to serve as an important source of data for both Norwegian and international meteorological services, even after data derived from weather observation vessels and satellite recordings have become available. Appendix 2 contains a Note on the activities of the meteorological station, giving further details.

94. In 1959, the meteorological station was joined by a new facility offering long-range radio navigation (the "LORAN A" and "LORAN C") services. Originally reserved for military use, these navigation services are now open to all ships and aircraft. From 1970 to 1985, a facility for Consol radio navigation service was in operation.

95. All these facilities are at present maintained with an aggregate staff of 25 persons. The radio navigation services are operated by the Norwegian Defence Communications and Data Services Administration ("NODECA"). Modern housing is provided. A coastal radio service is available, and is widely used by fishermen in the area. This service makes it possible to maintain ship-to-shore communications with individual telephone subscribers in mainland Norway. In addition to the safety factor and the technical and emergency services provided, the coastal radio station provides considerable social services for fishermen. Since 1962, the island has had a landing field which is capable of handling large transport aircraft. There is a regular service by military aircraft (C-130 Hercules), which permits personnel trans-

fers and light cargo deliveries. Civilian aircraft provide mail services. The landing field provides an additional possibility for search and rescue operations, and for giving emergency evacuation and medical assistance.

96. Bulk supplies are brought in by ship.[2] Permanent harbour works have been proposed, but despite strong support from fishermen, it has not been possible to give financial priority to the construction of a permanent, all-weather port.

2. The Administration of Jan Mayen

97. The administration of Jan Mayen was provided for in an Act of 27 February 1930 (see Annex 18, including also the relevant Bill thereon). The principal feature of this legislation was the integration of the island into the Kingdom of Norway, not as a colony or dependency but as an inalienable part of the Realm. This had important constitutional implications. Section 1 of the Norwegian Constitution of 17 May 1814 provides that the Kingdom is "free, independent, indivisible and inalienable", and the incorporation of Jan Mayen into the Realm has been held to imply that the territory henceforth may not be separated, ceded or otherwise transferred.

98. At the same time, Norwegian exploration and whaling activities in the Antarctic led to the annexation of the territories of Bouvet-øya ("Bouvet Island") and Peter I's øy ("Peter I Island"). However, the legislation regarding Norway's possessions in this region, also adopted on 27 February 1930, clearly distinguishes their constitutional and administrative character by specifying that these territories shall have the status of "biland" (that is to say, "dependencies", literally "adjunct lands").

99. The Jan Mayen Act of 1930 provides for an administration which is simple and addressed to the needs of a sparsely settled Arctic region. Norwegian private law and criminal law applies, as well as the laws of judicial procedure. The right to all lands which are not transferred to private parties is vested in the State, and prescriptive acquisition of real rights to property is

[2]) The statement at para. 207 of the Danish Memorial that "Transportation to and from the island is possible only by air" is not correct. Most unloadings from ships are carried out in Hvalrossbukta (Walrus Bay) regardless of whether one elects to call this bay "a natural harbour" or not (Danish Memorial, p. 55, para. 206).

precluded. Inversely, rights retained by the State in property transferred to a private party cannot be superseded by prescriptive use.

100. The Sysselmann (Governor) of Svalbard nominally holds the chief administrative responsibility, while the Chief of Police at Bodø exercises civil executive authority with regard to Jan Mayen. Local authority for police and public order purposes is deputed to the Officer-in-Charge of the NODECA, who is at the same time responsible for all administrative and logistic tasks for the island as a whole. The City Court at Bodø is the competent judicial forum. Jan Mayen has a post office.

101. Appendix 1 reproduces a more detailed Note on the administration of Jan Mayen.

3. The Geology of Jan Mayen and of the Region between Jan Mayen and Greenland

102. Since the mid-sixties the southwestern part of the Norwegian-Iceland-North Greenland Sea has attracted the interest of the international geo-scientific community (see Map III at the end of this volume for the bathymetric situation in the area). Extensive bathymetric and geophysical measurements have been carried out to unravel the details of the unique geological history of the area. Special emphasis has been put on mapping the Jan Mayen ridge.

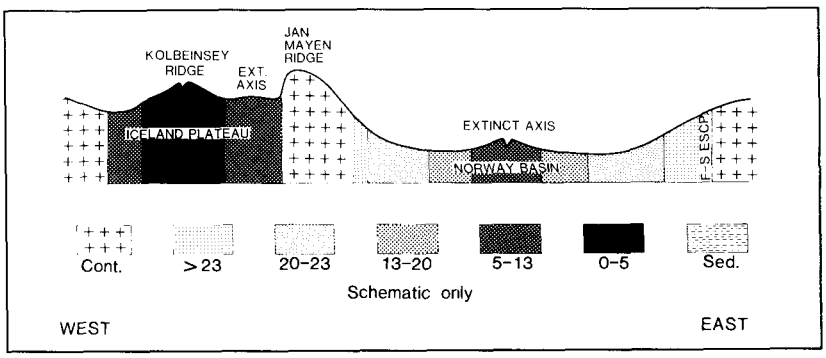
103. The Jan Mayen ridge is characterized as a submerged micro-continent, predating in origin the nascence of the islands of Jan Mayen and Iceland. Both those islands are described as being composed of relatively young rocks of volcanic origin. The ridge, however, is a long sliver of continental crust – a micro-continent – once a part of the Laurasian supercontinent. During the Tertiary Geological Era it was split off the Norwegian and Greenland continental margins through a two-phased process of seafloor-spreading: About 57 million years ago the ridge, still connected to Greenland was split off from the Norwegian coast, while the final split from Greenland took place about 26 million years ago.

104. Notwithstanding the difference in geology between the volcanic landmasses of Jan Mayen and the continental ridge upon which the island rests, morphologically the northern part of the

Jan Mayen ridge is a southward extension of the Jan Mayen shelf, and does not constitute an extension from the Icelandic shelf. Between Jan Mayen and Greenland there is a mid-oceanic rift – the Kolbeinsey Ridge – created by a process typical of such rifts. The Kolbeinsey Ridge follows a northeasterly direction, approximately midway between Jan Mayen and Greenland.

105. A schematic illustration of the results of the geological process which separated the Jan Mayen micro-continent from Greenland is set out below:

Profile of Continental and Oceanic Formations

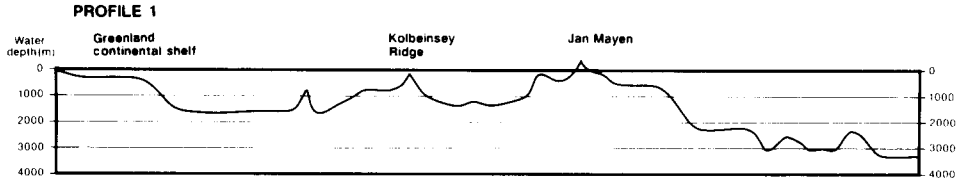


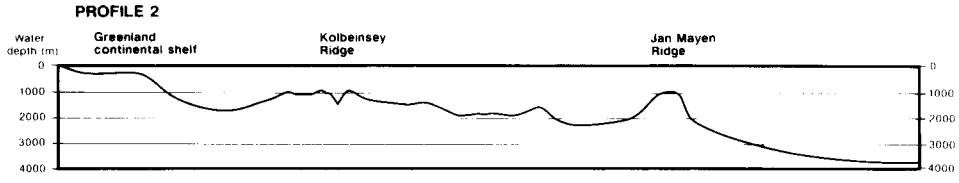
106. Two bathymetric profiles are shown on page 30, illustrating the geomorphology of the shelf areas between Jan Mayen and Greenland. The Greenland shelf shows a classical continental shelf, a gradual slope, and a rise. The Jan Mayen shelf comprises areas of lesser depths towards the west, where the elevations of the Kolbeinsey Ridge are clearly noticeable in the central area between the two islands. The more southerly profile provides a parallel picture of the topography of the shelf areas.

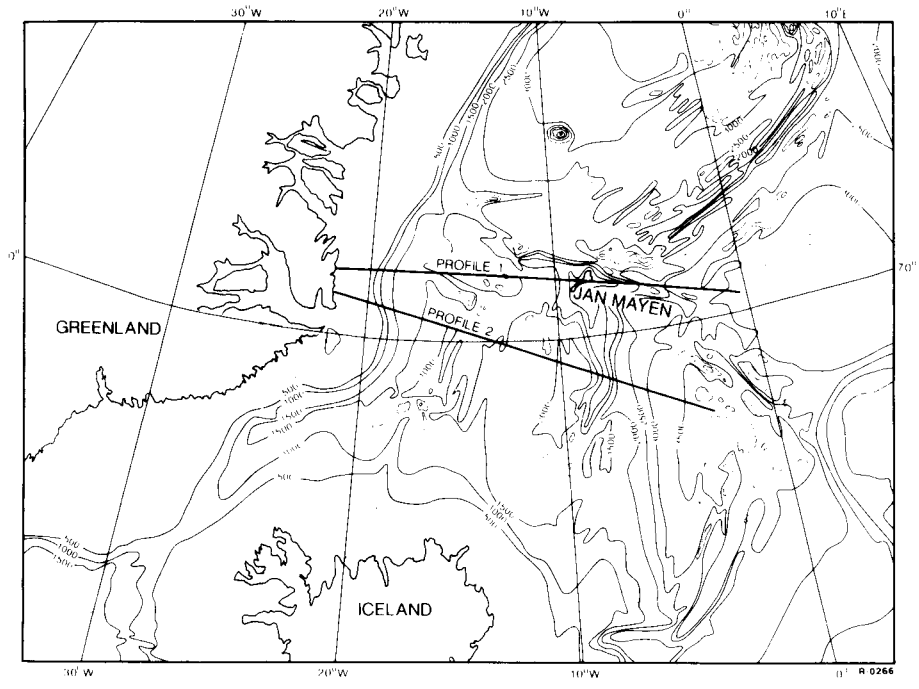
107. Investigation of the hydrocarbon potential of the Jan Mayen continental margin has so far concentrated on the Jan Mayen ridge. The reason is that the micro-continent is assumed to offer the greatest hydrocarbon potential of the area. There is at present no sufficiently detailed geological material to warrant any prognostication on the hydrocarbon potential of the western part of the Jan Mayen continental shelf.

108. There appears to be an increasing commercial interest in exploring the continental shelf along the east coast of Greenland, to the west and north of Jan Mayen.

Bathymetric Profiles of the Area between Jan Mayen and Greenland







109. As has been noted, the Kolbeinsey Axis projects northeastwards on the central portion of the continental shelf between Jan Mayen and Greenland, while the Jan Mayen Fracture Zone projects southeastwards to connect the Kolbeinsey Ridge and the Mohn's Ridge north of Jan Mayen. Both the rift zone and the fracture zone are of a nature which is capable of providing deposits of polymetallic sulphides. Investigations which have been undertaken so far appear to indicate that there is hydrothermal activity in the relevant area, which would sustain the possibility that polymetallic sulphide concentrations could be found.

CHAPTER III
NORWAY'S INTEREST IN THE JAN MAYEN REGION

1. Historical Background

110. Norway's traditions as a coastal State with varied interests in the Northwestern Atlantic go back more than a thousand years. Those traditions were not unbroken. But the history of the early period of Norwegian settlement in the island territories served *inter alia* to inspire public support for the notable Arctic exploration voyages undertaken by Norwegian expeditions around the turn of the century, and for continuing Norwegian efforts in Arctic scientific research.

111. Commercial sealing and whaling in this region dates back to the Middle Ages. The Basques were the pioneers in off-shore whaling, with the Dutch and the English taking over later. Norwegian whaling expeditions commenced in the late eighteenth century, and expanded in the following decades. The Napoleonic wars brought famine to Norway, and the authorities adopted a series of measures to encourage sealing and whaling as a part of the economy of coastal communities. In the towns of Tromsø and Hammerfest in North Norway, a specialized industry grew up, based on broad experience from Arctic operations. By the early 1830s, these two towns had an Arctic fleet of around 90 vessels, employing around 900 seamen.

112. Increases in population, scarcity of continental land-based resources, and an enhanced ability to finance sea-going craft led to a steadily intensifying search for distant-water resource potential by Norwegian hunters and fishermen. From the latter half of the nineteenth century, Norwegian fishing, sealing and whaling activities in the North Atlantic expanded. Norwegian vessels took up a bottlenose whale fishery in 1882. This small scale whaling turned into a separate activity. Fishing vessels were fitted with small calibre harpoon guns, and spread their operations to follow the migratory pattern of the smaller whales (bottlenose and minke) within the whole of the North Atlantic.

113. The whalers in the seventeenth century started Arctic sealing (and walrus hunting) as a side activity, from their shore-based whaling stations along the coasts of the North Atlantic. Norwegian sealing as an independent, regular activity started in the nineteenth century. The field of operations extended from East

Greenland in the west to Franz Joseph Land, Novaya Zemlya, and the White Sea and its approaches in the east. There were two main areas: Vesterisen ("the West Ice")[3], which is the name used for the ice edge and the breeding lairs thereon stretching from Jan Mayen northeastwards until it reaches the warm Atlantic surface current which passes to the west of Bjørnøya (Bear Island) and Spitsbergen, and Østisen ("the East Ice"), which was the name used for the fields in the eastern Barents Sea. In addition, Norwegian sealers operated in the Denmark Strait, between Iceland and East Greenland, off Newfoundland, and in the Davis Strait, between Greenland and Canada.

114. Towards the end of the eighteenth century, Norwegian hunters from time to time operated off the east coast of Greenland. In 1845, the first specially fitted sealing vessel (of more that 400 tons) sailed for the West Ice. After this first expedition by a large sealing vessel, Norwegian sealing has continued virtually every year (except during the Second World War) in the West Ice.

115. The seal hunt increased towards the close of the nineteenth century. It peaked in 1870, when 32 vessels (steam as well as sail) brought home a total of 120,000 pelts. By the turn of the century, the large sealers were refitted as whalers for Arctic whaling. Smaller vessels (of 50 to 70 tons) with crews of 12 to 14 men took over in the sealing trade in the North Atlantic. This pattern of operations has continued without great changes (except for the adoption of diesel engines for propulsion) until the present.

116. Sealing was a hazardous activity: 115 vessels were lost between 1925 and 1939, and 28 vessels from 1945 till 1970. Earnings were correspondingly rewarding: participation in a sealing expedition for two or three months would bring a crew member more that half of his total yearly income.

117. Details of Norwegian sealing activities in the West Ice and the Denmark Strait are given in Appendix 3.

118. In the 1920s, Norwegian vessels started long-line fishing off Greenland. The Norwegian fishery for Greenland shark became an important operation. This fishery was an additional activity for vessels hunting hooded seals in the Denmark Strait in the summer season. Norwegian long-liners also engaged in the cod fishery along the coast of West Greenland from the early 1920s. This fishery increased gradually after the Second World War.

[3]) To be distinguished from the Danish term to describe the ice masses in the Davis Strait and Baffin Bay west of Greenland, see Danish Memorial, p. 41.

Norwegian cod catches (which formed the bulk of the Norwegian catches in the area) rose to more than 40,000 tons in the early 1960s. A supply and welfare facility was established for Norwegian fishermen at Færingehavn (West Greenland) in 1950. For a long time, it was supported by Norwegian public funds. The welfare station was closed down in 1983. Norwegian fishing for cod off West Greenland ceased by the end of the 1970s (see Appendix 5, Table 5.8 for a tabulation of cod fisheries in the West Greenland area).

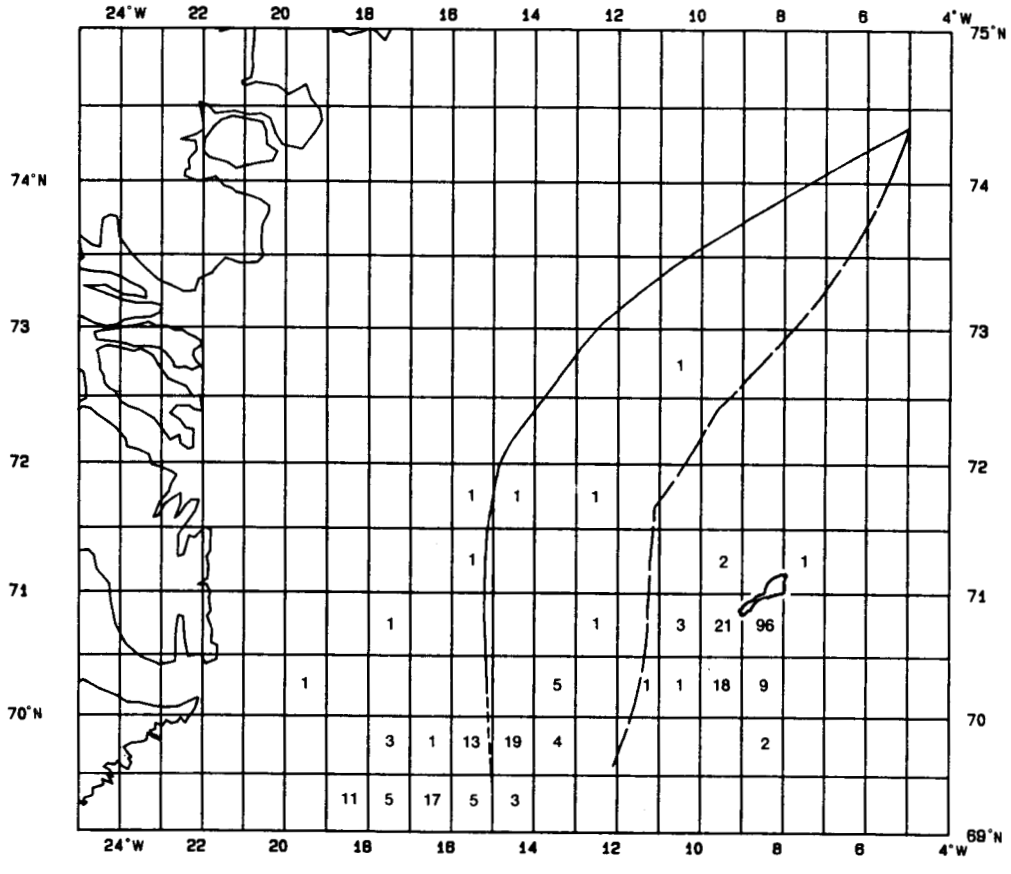
2. The Development of Whaling, Sealing and Fishing in the Jan Mayen Region

119. The seabed topography in the area between Jan Mayen and Greenland varies greatly, with depths ranging from 100 metres to 1,700 metres. Two major currents – the Greenland Current and the Atlantic Current – converge in the region. Together, these factors create a unique oceanographic environment, with exceptional conditions for the fauna in the area. A great proportion of the water masses that are carried with the Greenland Current has its origin in the Arctic Ocean, is very cold, and has low salinity. This light Arctic water flows in the upper water layers, above the warmer water mass coming from the Norwegian Atlantic Current. The meeting of warm and cold water masses creates a very beneficial environment for krill and other plankton, which occur in great volume. Plankton is an important food for the commercially exploitable species in the area. The relatively steep slopes of the submarine seamounts in the area do not provide fishing banks. These conditions are not beneficial for demersal fish (such as cod and haddock). The marine fauna in the region therefore consists of *pelagic* species, *i.e.*, those species that swim freely in the water column and near the surface, such as whales, seals, capelin, herring and blue whiting. Certain stationary species, such as shellfish and local shrimp stocks, are found in locations close to the coast of Jan Mayen.

(a) Whaling

120. The waters in the vicinity of Jan Mayen have traditionally been important for Norwegian whaling. Norwegian small type whaling near Jan Mayen started with a bottlenose fishery in 1882. This fishery increased towards the end of the century, and continued at a decreased level until its cessation in 1972.

Norwegian Minke Whale Catches
off Jan Mayen 1984–1987



Figures indicate the total number of whales caught in each location, 1984–1987.
Source: Norwegian Directorate of Fisheries

121. The minke whale stock which is present in the waters off Jan Mayen, Iceland and East Greenland is defined as a separate stock – the Central North Atlantic Stock – by the International Whaling Commission. This stock has in recent years been harvested by Norwegian whalers. This fishery was taken up in the early 1960s by Norwegian vessels, in the waters south and west of Jan Mayen, along the Icelandic coast, and off the East Greenland coast. Aggregate catches in this area up to 1973 were close to 3,500 whales. After the International Whaling Commission adopted specific catch quotas for minke whale stocks in 1976, Norwegian whalers were allowed an initial annual take of 120 whales (out of an annual quota of 320 whales). This take was somewhat reduced after 1984.

122. Norwegian commercial small type whaling was temporarily suspended in 1987, in connection with the conduct of a major national research programme for all whale stocks exploited by Norway, and the consideration by the International Whaling Commission of a so-called "comprehensive assessment" following its decision to observe a moratorium on commercial whaling (the comprehensive assessment is to be completed by 1990).

123. Details on Norwegian minke whale catches in this area are given in Appendix 5, Table 5.12. The sketch map at page 36 shows the location of catches for a recent representative period.

(b) Sealing

124. Two species, hooded seals and harp seals, form the main resource base for Norwegian sealing in the waters off Jan Mayen. These seal species are pelagic, that is to say, the stocks migrate over long distances in search of food. During certain periods of each year, the seals concentrate in great numbers on the drifting pack ice. Both hooded seals and harp seals have their breeding lairs in the West Ice in areas north of 68° N during April and May. The hunt takes place during this season. The location varies from year to year, depending on where the ice edge is, and on ice conditions in general (see Appendix 3 for sketch maps showing seal concentrations for the years 1974-1986). In June and July, herds of hooded seals gather further south, along the ice edge in the Denmark Strait between Iceland and Greenland.

125. Norwegian sealers have been operating in the West Ice and the Denmark Strait since the middle of the last century. Norwegian vessels carried on a summer seal hunt in the Denmark Strait until this hunt was curtailed in 1961. After 1930, this hunt was combined with a long-line fishery for Greenland shark in the fjords of Greenland, south of 68° N, pursuant to the 1924 Convention (Annex 39). After 1945, statistical returns for this hunt were given separately, showing that between 10 and 20 sealers took part in the hunt each year. Catches varied between 15,000 and 20,000 hooded seals per year.

126. Traditionally, the West Ice hunt has been of greater importance than the hooded seal hunt in the Denmark Strait. The West Ice hunt is still carried on. The level of the hunt peaked in the 1950s, when 40 to 50 vessels took part each year. The hunt employed between 500 and 900 men. In 1950, the catch in the West Ice reached 100,000, and 138,000 the following year. Since 1969, participation in the hunt has gone down to less than 20 vessels, with catches between 20,000 and 30,000. Since 1982, catches of hooded seals and harp seals in the West Ice have been limited. A fuller account of Norwegian sealing in the West Ice and the Denmark Strait is given in Appendix 3.

127. The following table summarizes the number of Norwegian sealing vessels taking part in this hunt in the years 1850–1989, and their catches:

Table 4

Average Annual Norwegian[4] Participation and Catches in West Ice Sealing, 1850-1989.

Period	Average No. of Vessels	Total No. of seals
1850-55	5.3	19,780
1856-59	No figures available	
1860-69	17.1	56,129
1870-74	26.0	87,749
1875-81	No figures available	
1882-89	19.0	72,386
1890-99	17.6	65,604
1900-09	15.3	29,614
1910-19	34.5	51,922
1920-29	27.2	57,894
1930-40	37.0	58,960
1946-49	31.8	71,395
1950-59	42.9	77,792
1960-69	34.3	55,831
1970-79	15.3	35,562
1980-89	4.3	11,274

128. The West Ice seal hunt has a duration of maximum two months each season. It has often been possible for a vessel to combine this hunt with the hunt for harp seals in the Barents Sea and with fishing for the rest of the year. West Ice catches have yielded comparatively higher revenues than other catches in relation to the numbers taken. This is because the greater part of the more valuable Blueback hooded seal has been caught here.

129. Only Norwegians took part in sealing in the West Ice up to 1955. But by the mid 1950s, seal stocks in the White Sea and the Barents Seas were in decline, and Soviet sealers turned to sealing in international waters in the West Ice.

130. Norwegian scientists pointed to the risk of over-exploitation when catch efforts in the West Ice increased. Norway proposed scientific collaboration, and negotiations on conservation measures were initiated between Norway and the Union of Soviet Socialist Republics. As a result, the parties on 22 November 1957 signed an Agreement on management and protection of seal stocks in the North Atlantic east of Cape Farvel (see Annex 42). The Agreement covered harp seals and hooded seals, but an

[4]) Source: Based upon Thor Iversen's tabulations and data from the Norwegian Directorate of Fisheries. For further details see Appendix 3, Table 3.1.

extension to other stocks was provided for. Annual meetings under the Agreement dealt with regulatory measures and catch quotas. Sealing is now discussed bilaterally by the joint Commission established within the framework of general fisheries cooperation between Norway and the Soviet Union.

131. The relative catches of Norway and the Soviet Union are shown in the table below:

Table 5[5]

Average Annual Soviet and Norwegian Catches of Seal in the West Ice 1958–1989.

Norwegian Catches		Soviet Catches	
Period	Catches	Period	Catches
1960-69	55,831	1958-66	7,946
1970-79	37,523	1975-79	3,504
1980-89	9,311	1980-89	4,378

(c) Fishing

Herring

132. Historically, herring fishing in the region of Jan Mayen and Iceland has been an important fishery for Norway. Prior to 1970, the mature herring stock migrated between this area and the coast of mainland Norway. During the summer months, the herring fed along the polar ice front between Jan Mayen and Iceland. By October, the herring tended to concentrate in an area east of Iceland before migrating to the Norwegian mainland coast to spawn. After spawning, the fish migrated back to the feeding grounds off Iceland and Jan Mayen.

133. An indeterminate, but not insignificant part of the catches of Atlanto-Scandic herring is assumed to have been taken in waters south and east of Jan Mayen. After the reduction of this stock in the 1960s, the very meagre available schools of herring have remained in the eastern part of the North Atlantic. Should this stock again reach the volume it has had before, the traditional feeding grounds of a large stock would presumably be utilized

[5]) Source: ACFM Report to the ICES October 1989 Meeting. For further details see Appendix 3, Table 3.4.

again. This would provide catch opportunities for herring in the waters east of Jan Mayen, and in the area between Jan Mayen and Iceland.

134. The share of the Norwegian herring catches taken off Jan Mayen varied greatly from year to year. In 1964, some 16,000 tons were taken in this area, accounting for 17 per cent. of total herring catches. Most of the catch off Jan Mayen was probably taken more than 200 nautical miles from the Greenland coast. Overall Norwegian herring catches from 1930 to 1969, and the proportion taken off Jan Mayen, are shown in Appendix 5, Table 5.10.

Blue Whiting

135. The blue whiting in the Norwegian Sea belongs to the stock that spawns west of the British Isles and migrates into the Norwegian Sea to feed. At the end of the 1970s and in the early 1980s, the blue whiting was distributed throughout large parts of the northern seas, extending far to the north and the northwest. Until 1981, blue whiting was fished east of Jan Mayen, and considerable quantities were taken (around 120,000 tons in 1981 in the vicinity of Jan Mayen alone). In some years, blue whiting also occurred west of Jan Mayen. At present, blue whiting does not migrate north of 65-66° N.

Shrimp

136. The shrimp fishery began off Greenland (West and Southeast Greenland) in the early 1970s, and off Jan Mayen some years later. Most of the shrimp concentrations are found due south of Jan Mayen, within 50 nautical miles from the coastline. From the very beginning, fishing for shrimp off Jan Mayen has been combined with the shrimp fishery around Greenland and, later on, also with fishing operations off Svalbard.

137. In the 1970s, the Norwegian catch volume off Jan Mayen increased from 100 tons in 1975 to more than 800 tons in 1979. The catch volume was reduced to around 200 tons in 1982 and 1983, and has since fluctuated between 1,200 and 2,000 tons. During the past few years, the shrimp fishery has been carried out on an almost year-round basis.

138. In recent years, between 20 and 25 Norwegian vessels have participated in the shrimp fishery off West Greenland and

East Greenland between 65° N and 67° N. In the main, the same vessels also operate off Jan Mayen. Some 300 men are employed in this fleet. Statistical material is presented in Appendix 5, Table 5.11.

Iceland Scallop

139. Iceland scallop was an unexploited resource in the Jan Mayen zone prior to 1985. In that year Norwegian vessels began dredging operations in the zone. By 1986, the harvest had reached around 9,100 tons of Iceland scallop round weight, at a first-hand value of just under NOK 60 million.

140. Catches in 1987 showed a clear decline, and the areas off Jan Mayen were temporarily closed to all Iceland scallop fishery. Most of the Iceland scallop banks are located south of Jan Mayen, within 20 nautical miles of the island. The vessels taking part in this fishery had been specifically built or fitted for shell dredging. As of 1 January 1990, a trial fishery on a limited scale has been allowed in areas in the Jan Mayen zone which have not previously been harvested.

Capelin

141. The most important stock for current – and most likely also future – large-scale fisheries in the waters between Jan Mayen, Iceland and Greenland is capelin. The capelin fishery off Iceland began in 1964, with the introduction of the purse seine. Up to 1977, this stock was fished exclusively by Icelanders during the winter season. Fishing for the stock during the summer season in the area north of Iceland was developed by a Norwegian fleet of purse seine vessels during the summer of 1978.

142. Capelin (*mallotus villotus*) is a small fish, distantly related to salmon. The oceanic capelin occurs in schools of great concentration and volume, as a pelagic, highly migratory species. Capelin is also found in local stocks, independent of the oceanic stocks. The capelin in the fjords of East Greenland consists of such stationary stocks. A small proportion of commercial capelin catches goes for direct consumption as human food, mainly in the luxury market (including roe). The bulk of the catches is processed for oil and meal.

143. Although the pattern of movement of the oceanic capelin stock is assumed to be unstable, it is known that at certain

stages of its development cycle, it moves from the Icelandic Zone northwards. For a period each year, it occurs in fishable concentrations in the waters between Jan Mayen and Greenland, and between Jan Mayen and Iceland. These occurrences vary in volume and location from year to year, depending upon availability of feed plankton, which again is conditional on water temperature, currents and other factors which influence the volume of basic nutrients at the low range of the marine food chain.

144. A table of recorded annual catches, covering both winter and summer operations, for the Jan Mayen, Iceland and East Greenland area, is given below.

Table 6[6]

Total Annual Catch of Capelin (in 1,000 tons) in the Jan Mayen, Iceland, East Greenland Area, 1964–1988.

Year	Winter season			Summer/autumn season				
	Iceland	Faroes	Norway	Iceland	Norway	Faroes	EEC	Total
1964	8.6	–	–	–	–	–	–	8.6
1965	49.7	–	–	–	–	–	–	49.7
1966	124.5	–	–	–	–	–	–	124.5
1967	97.2	–	–	–	–	–	–	97.2
1968	78.1	–	–	–	–	–	–	78.1
1969	170.6	–	–	–	–	–	–	170.6
1970	190.8	–	–	–	–	–	–	190.8
1971	182.9	–	–	–	–	–	–	182.9
1972	276.5	–	–	–	–	–	–	276.5
1973	440.9	–	–	–	–	–	–	440.9
1974	461.9	–	–	–	–	–	–	461.9
1975	457.6	–	–	3.1	–	–	–	460.7
1976	338.7	–	–	114.4	–	–	–	453.1
1977	549.2	25.0	–	259.7	–	–	–	833.9
1978	468.4	38.4	–	497.5	154.1	–	–	1,158.4
1979	521.7	17.5	–	441.9	126.0	2.5	–	1,109.6
1980	392.0	–	–	367.2	118.6	24.4	14.3	916.5
1981	156.0	–	–	484.6	91.4	16.2	20.8	769.0
1982	13.0	–	–	–	–	–	–	13.0
1983	–	–	–	133.3	–	–	–	133.3
1984	439.6	–	–	425.2	104.6	10.2	8.5	988.1
1985	348.5	–	–	644.8	188.7	81.4		1,263.4
1986	342.0	–	49.9	552.3	149.7	64.4	5.3	1,163.6
1987	500.6	–	59.9	16.0	82.0	66.3	–	1,019.5
1988	600.6	–	57.3	25.0	11.5	47.0	–	741.4

[6]) Source: ACFM Report to the NEAFC May Meeting 1989. For further details see Appendix 5, Table 5.6.

145. The figures accompanying paragraphs 182 and 183 of the Danish Memorial give a misleading view of the recorded migratory pattern of this capelin stock. The catches taken by Norwegian fishermen show a more easterly occurrence of the stock in most years than is shown in the very schematic figure in the Danish Memorial (Catch locations for the years 1980-1989 are shown in sketch maps at pp. 45-46).

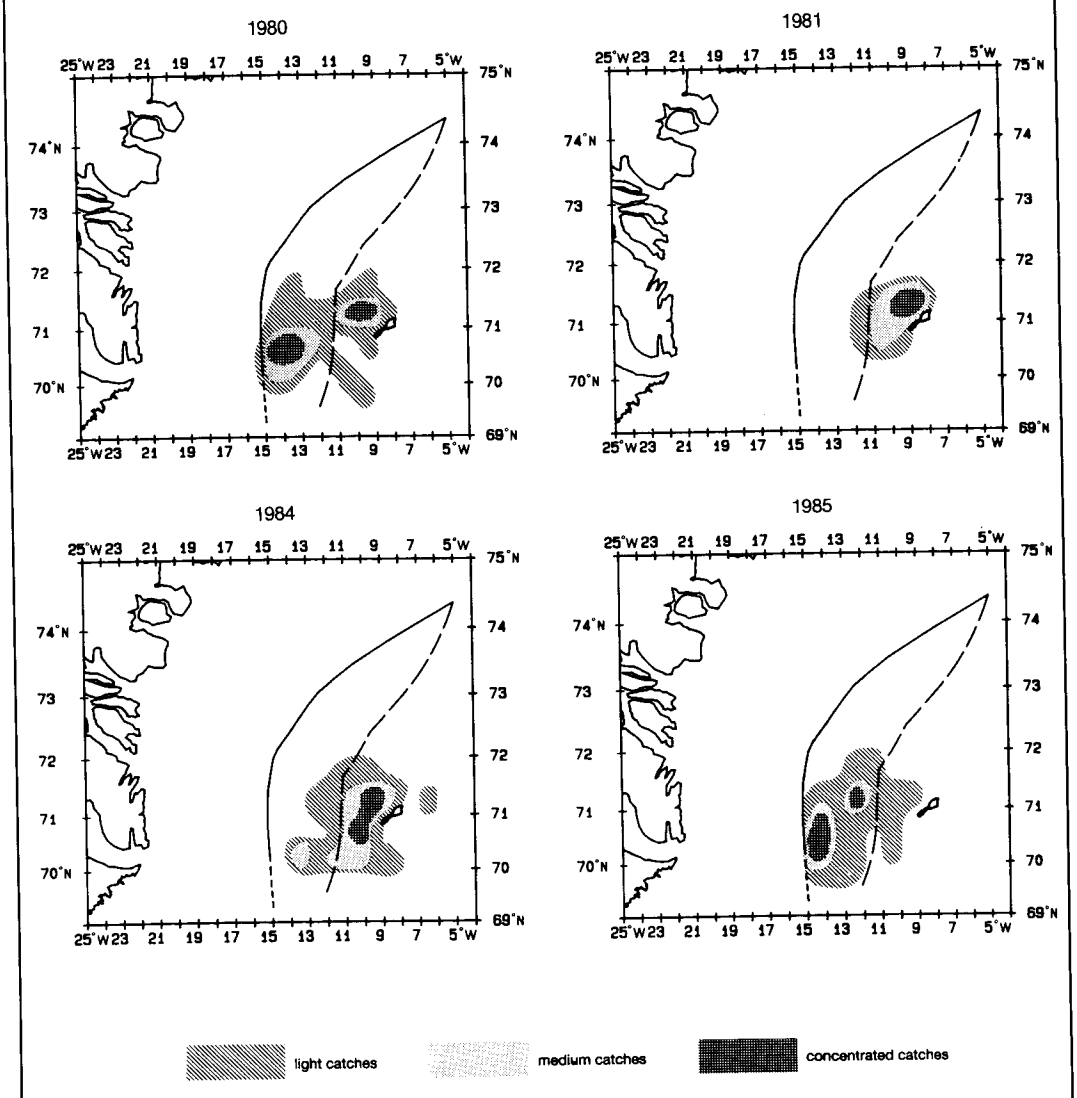
146. In addition to the uncertainties provided by the peculiarities of capelin biology, fishing operations in the waters between Jan Mayen and Greenland may be hampered by the presence of sea ice. This obstacle increases closer to the Greenland coast.

3. Cooperation on Capelin Management

147. Because capelin is a migratory species, a unified approach to management and fishing operations is highly desirable. In certain years, the distribution of the stock would theoretically allow both Norway and Iceland (with large, well-equipped and flexible purse seine fleets) to harvest a major part of the total allowable catch within their own (undisputed) zones, provided a sufficient number of vessels were in the area when the capelin stock moved into it. Although these possibilities for separate management exist within each national zone, a joint approach to management and catch patterns would better serve the interests of all parties. Separate management policies always carry with them risks of over-fishing. Moreover, if Norwegian catches and Greenland licensed catches were to be concentrated at the times when the capelin stock moves through the respective national zones, that would not provide an optimal harvest in relation to the potential of the stock: in these phases of migration, the capelin is lean, and a larger number of individual fish would have to be taken in order to provide a given quantity of meal or oil. Both scientists and fisheries administrators from Norway, Iceland and Greenland were fully aware of these fundamental factors which influence management of the capelin stock.

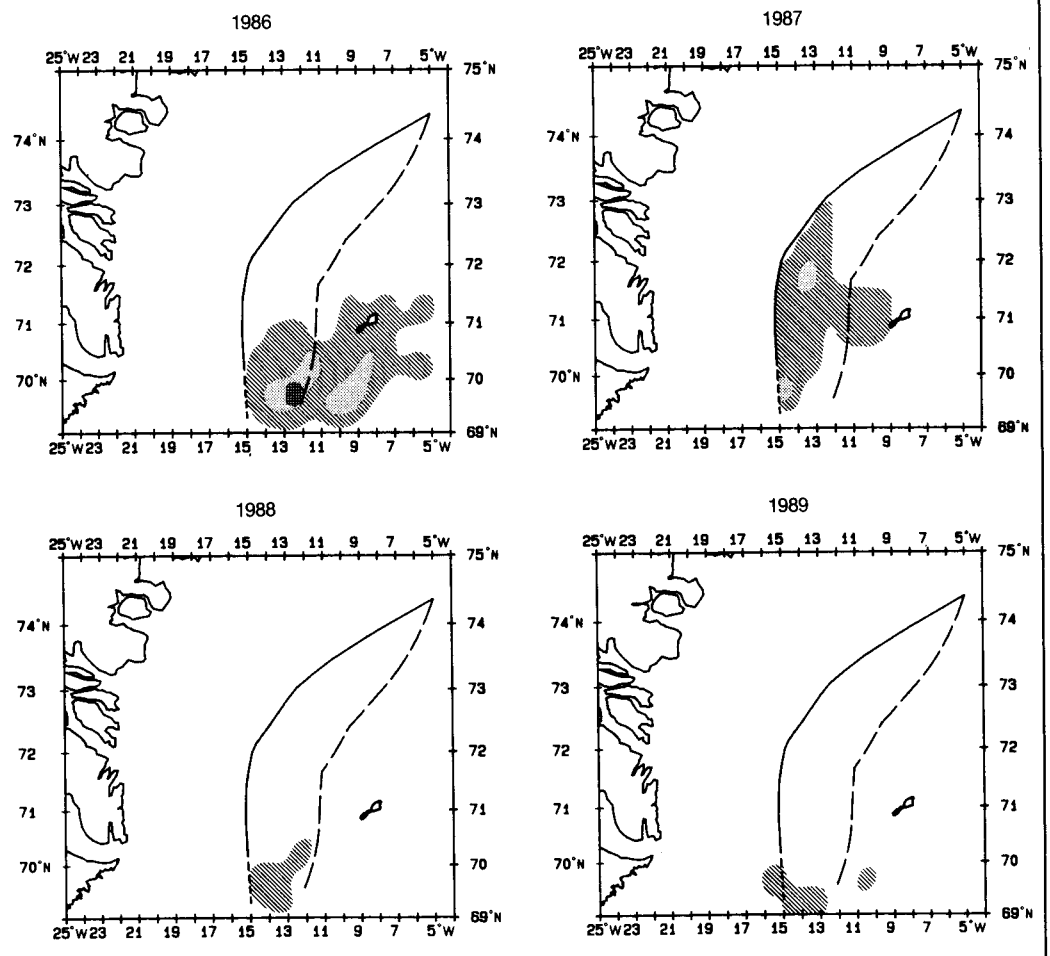
148. The basis for scientific advice on management is provided by data collected during research cruises undertaken primarily by marine research institutions in Norway and Iceland, and by studies linked to the actual fishery activity (see Appendix 4, Table 4.2 for a further account). These data are discussed bilaterally and trilaterally by the competent agencies of the

Pattern of Location of Norwegian Capelin Catches
in the Jan Mayen Area



Source: Norwegian Directorate of Fisheries

Pattern of Location of Norwegian Capelin Catches in the Jan Mayen Area



Source: Norwegian Directorate of Fisheries

parties. As is the practice in the management of North Atlantic fisheries, scientific evaluations, management strategies and alternative catch volumes in relation to alternative options for stock development have been discussed within the Advisory Committee on Fisheries Management of the International Council for the Exploration of the Sea ("ICES")[7]. That provides a basis on which the level of a Total Allowable Catch ("TAC") for the stock as a whole must be determined, and the allotments for fishermen of each party (or their third-country flag licensees).

149. In 1980, Norway and Iceland set a pattern for management of the capelin stock which gave both parties a strong inducement to adopt advice from the Advisory Committee for Fishery Management. The distribution as between these two parties had already been established in the governing fisheries agreement of 28 May 1980 (see Annex 70), on the basis of available scientific advice. This pattern did not provide an allotment for Greenland, since no Greenland catch had occurred previously. Nevertheless, in this situation, Greenland authorities subsequently chose to issue licences to other fishermen (mainly Faroese), thereby automatically authorizing an element of overfishing in relation to the recommended TAC.

150. In 1982, Norway took the initiative for talks between Iceland, Norway and the European Communities (which were at the time the competent authority for Greenland fisheries management) on the regulation of the capelin fishery. This initiative was prompted by concern over the risk of over-fishing, after Norwegian and Icelandic scientific investigations had shown that the capelin stocks were at an alarmingly low level. The ensuing negotiations led to an agreement of 18 August 1982 setting a total ban on capelin fishing for the winter season 1982/83. This ban was later extended to cover the following season.

151. This marked the inception of the tripartite negotiations between Norway, Iceland and Greenland (until 1984 represented by the European Communities) on management of the capelin stock occurring in the zones of the three parties, and on the distribution of catch allotments. The negotiations were extremely

[7]) The International Council for the Exploration of the Sea was established in 1902. It is an intergovernmental organization constituted at present under the Convention signed on 12 September 1964. The Council promotes and coordinates marine scientific research, in particular with regard to marine living resources, primarly in the North Atlantic. It comprises 18 Member States which are coastal States in the North Atlantic and in the Baltic, and offers a focal point both for scientific investigation and for management-related consideration and advice.

complex, and turned out to be uncommonly lengthy before the parties arrived at the temporary Agreement of 12 June 1989 (see Annex 79).

152. The main elements of the Agreement are directed towards sensible conservation policies, flexible opportunities for catch irrespective of zonal boundaries, and allocation of catches as between the parties. That distribution is fixed for the three-year duration of the agreement at 78 per cent. of total catches to Iceland, and 11 per cent. each to Norway and Greenland.

153. The flexible fishing arrangements of the tripartite Agreement reflect the specific management requirements for capelin as a highly migratory stock. The geographical distribution of the stock will vary from year to year, and all parties are served by an arrangement which provides access for fishing in the whole area of migration, irrespective of zonal boundaries. This mutual fishing access provides for a more flexible, and thus a more efficient and more profitable fishery. The Agreement takes into account Greenland's special situation: its allotment of the TAC is exploited through the sale of fishing licences to third countries, since Greenland does not have a fleet of purse seiners which could participate in the capelin fishery. Foreign vessels licensed by Greenland are treated on a basis of equality with vessels from Greenland, Iceland and Norway, and are *inter alia* allowed to fish in the Icelandic and Norwegian zones. The Agreement also authorizes the landing of catches in ports of the other parties. This provision is particularly advantageous for Greenland-licensed vessels, since there are no processing plants for capelin in Greenland, and the distances to the vessels' home ports are great.

154. The Danish Memorial, in paragraphs 90 and 91, appears to suggest that the settlement of the delimitation issue would have an influence on the management questions which were addressed in the tripartite negotiations. That is a misconception. Both Norway and Iceland dispose of fishing fleets which could easily fish more than their share of the TAC within their own (undisputed) zones. The exact location of the boundary line is therefore not a decisive factor in determining national allotments. It is far too simple to assume that entitlement to a national share of the total allowable catch of migratory fish stocks is related exclusively – or even predominantly – to the area of the national maritime zone. Biology and fishing operations are far too complex to lend themselves to mechanical adjustment, depending on where the maritime boundary runs, when migrating stocks are unrestrained by these boundaries. The States through the zones of

which the stocks move must agree on, or at least coordinate their management policies, regardless of the manner in which a maritime boundary separates those zones.

155. Whereas delimitation may not necessarily be decisive for resource management, it is clear that the existence of clear, agreed boundaries would generally facilitate enforcement of conservation and other regulatory measures, as well as the general policing of fishing operations by the competent public authorities. In the capelin fishery, however, the main concern is to ensure that permitted catch quantities (per vessel, by area or otherwise) are not exceeded. The important concern is to ensure that the catches are correctly reported. This control element is in the main taken care of where catches are landed. The same applies to minimum fish size requirements, which is the other specific regulation of importance in this fishery. Operations in the purse seine fishery are thus conducted in a manner which does not normally call for any particular policing effort. Therefore, in the context of the capelin fishing currently carried out in the waters between Jan Mayen and Greenland, the absence of agreement on delimitation does not place any practical restriction on any surveillance or enforcement activities which would be material for a coastal State's ability to safeguard its interests and discharge its management responsibilities with regard to the resources of its fishing zone.

156. The capelin fishery off Jan Mayen has taken on greater economic significance both for the purse seine fleet and for the shore-based processing industry, especially since the capelin fishery in the Barents Sea has been stopped since the winter of 1986. In 1987, for example, the fishery represented a value of approximately NOK 52 million, or approximately USD 8 million. For the most part, the entire Norwegian purse seine fleet has been able to participate in the capelin fishery off Jan Mayen. This means that the number of vessels participating has decreased in accordance with the general reduction in the purse seine fleet, i.e., from 156 vessels in 1978 to less than 100 vessels today.

4. Other Activities in the Jan Mayen Region

157. In the area between Jan Mayen and Greenland, the natural conditions for the occurrence of deposits of polymetallic sulphides are present (see p. 31, para. 109).

158. Investigation of these aspects of the ocean geology of the region are at an initial stage. If the presence of such deposits is confirmed, it is clearly of significant interest for Norway, which has a traditional metal-processing industry based on hydro-electric power. Thus, Norway possesses both the technology and a non-polluting source of energy for the processing of the metals which may be extractable from this marine base material.

159. Norway likewise has an interest in and the industrial and technological background for the exploration of the hydrocarbon resource potential in this area. Joint investigations have been undertaken with the competent Icelandic agencies in regard to the continental shelf along the Jan Mayen ridge, whereas the potential for hydrocarbon deposits in the shelf to the west of Jan Mayen has not yet been investigated. At the same time, there are indications of commercial interest in prospecting activities on the East Greenland Shelf.

160. In the period 1950 to 1989 marine research has been carried out in the East Greenland-Jan Mayen area by a Norwegian state agency, the Directorate of Fisheries, Institute of Marine Research. A significant proportion of the research is devoted to the charting and sampling of fish stocks related to the Jan Mayen area. The work was concerned, at different times, with herring, capelin, blue whiting and shrimp stocks. Further details of the research, both on fish stocks and the marine environment in general, are set forth in Appendix 4.

5. Conclusion

161. Norway is dependent on its maritime environment. That environment has a great capacity for generating living resources. These resources will, with prudent and rational management, provide a sustainable base for a reasonable harvest. The seabed has a potential for providing both well-known and novel forms of exhaustible hydrocarbon and mineral resources. At the same time, unsound management, over-exploitation and pollution may create risks that resources are depleted, that the quality of the marine environment may be diminished or destroyed, and that fewer benefits may be reaped. If those risks can be avoided or minimized, Norway's dependence on the marine environment will endure.

162. Norway is a coastal State with three different land territories in the North Atlantic region. In relation to each of

them, Norwegians carry out a variety of maritime pursuits. In this respect, the value of the interests linked to Jan Mayen is greater than what appears from the catch statistics alone. The services made possible by the various facilities on Jan Mayen make a positive contribution to the exploitation of marine living resources far beyond the island and its fishery zone: navigation aids, radio communications, weather forecasting. The scientific data which are collected in or around Jan Mayen likewise have a value for the assessment and management of resources in the maritime areas off the mainland and Svalbard. For marine living resources in particular, the broadest possible scope for scientific observation and enquiry is essential for forming the "best available" picture of all the biological parameters which influence the growth and volume of stocks, their location and movement, the interaction between stocks and species, and the occurrence of these stocks in fishable or huntable concentrations.

163. Norway's direct interest with regard to activities conducted in the waters off Jan Mayen has changed over time. Yet there is a remarkable consistency in the nature of that interest. The motivating force has been that of coastal communities seeking their livelihood where it can be found, regardless of adverse conditions. The specific type of activity has varied, but not the purpose of the activity: to provide a living for those Norwegian coastal communities which have found a resource base on Jan Mayen, and in the surrounding waters.

164. With the great changes in the economic and social conditions which have taken place in Norway in the recent past, it remains a policy objective for successive Norwegian Governments to sustain a pattern of population settlement which does not leave Norway's long coastline unpopulated. That means in turn sustaining and supporting all maritime industries.

165. Whaling is the oldest activity. It has been maintained under changing marketing conditions and changing approaches to management. Sealing is the second oldest industry, and the one which, in the long run, has provided the greatest returns.

166. At present, both these industries are labouring under adverse public attitudes in many countries far from the North Atlantic.

167. This has led to the temporary suspension of Norwegian commercial whaling, and a reduction in seal catches. Many have seen a link between the curtailment of the harvesting of whales

and seals, and the huge invasions of seals which have taken place along the Norwegian mainland coast. This has led to a serious diminution of fish stocks, and to large-scale destruction of fishing gear. The ecological balance may have been disrupted.

168. A National Marine Mammals Research Programme is now under way to provide a sound scientific basis for determining the size and condition of the minke whale stocks in which Norway has an interest, and of the seal stocks in northern waters. Norway is determined to seek broader recognition of the need to manage and harvest whales and seals in order to make possible the scientific management of fish stocks on an overall, ecological foundation. That will require a great deal of scientific effort, and the refinement of management procedures, as well as a more sophisticated understanding by the international community at large. On this basis, Norway confidently expects that whaling and sealing will again become activities which are regarded as useful and constructive, contributing to the economy of Norwegian coastal communities, and playing a part in multispecies management practices covering both whales, seals and fish.

169. Against this background, the area around Jan Mayen will retain a primary importance also in the future. At present, the main interest is concentrated on the fishery of capelin and shrimp, and to a more limited extent, on scallop and on seal. The different activities in the area account for up to 8.6 per cent. of total Norwegian catches, and 3.5 per cent. of the total first-hand value of Norwegian fish production (figures for 1986). Again, the activities in the Jan Mayen area have greater significance than the tonnage of catches, and the values they bring directly. The opportunity for employment for the purse seine fleet is of decisive importance.

170. Norway has a general interest in retaining the ability to monitor the environmental developments in the widest possible area around Jan Mayen, and to maintain a high level of preparedness against threatening pollution, or other influences of change.

171. The seabed resources should not be neglected, even if prospecting will have to be carried much further before any precise indication of possible deposits, and of their exploitability, can be obtained.

B: THE PARTIES' APPROACH TO MARITIME JURISDICTION AND DELIMITATION

CHAPTER IV
CONTINENTAL SHELF JURISDICTION AND DELIMITATION

1. NORWAY

(a) Norwegian Continental Shelf Legislation

172. By Royal Decree of 31 May 1963, Norway proclaimed that the seabed and subsoil in the submarine areas abutting on its coast were subject to the sovereign rights of Norway with respect to the exploitation and exploration of natural deposits, to such extent as the depth of the sea permits the utilization of such deposits, irrespective of any maritime limits otherwise applicable, but not beyond the median line in relation to other States (see Annex 21).

a common expedient - it does not dictate a principle of delimitation

173. Act No. 12 of 21 June 1963 relating to the exploration for and exploitation of submarine natural resources restated the description of the area of application. The Act further stated that the right to submarine natural resources is vested in the State. The Act went on to authorize the King[8] to establish regulations for off-shore resource operations. The rights of navigation and fishing would remain unaffected (see Annex 22).

174. The geographical scope of application of the Act legally defined the Norwegian continental shelf. In positive terms, the Act – following the Royal Decree – established Norway's governmental and administrative authority in respect of shelf rights up to the median line in relation to other States, and vested the right to resource deposits in the Crown. On the other hand, the exercise of powers and authority under the Act was limited by the median line. Norwegian regulations were not applicable beyond the median line.

175. The scope of the Act did not exclude Norwegian jurisdiction in areas on the Norwegian side of an agreed shelf

[8]) Constitutionally, this term implies that formal decisions under the authority provided by the Act must be adopted in the Council of State under the presidency of the King, and countersigned by responsible Ministers. In political terms, the implication is that the Cabinet takes the decision.

boundary, where administrative adjustments in relation to the true median line had resulted in the drawing of the boundary on the far side of this mathematical line. But it was recognized that a legal problem existed with regard to the exercise of jurisdiction over installations beyond the median line (or adjusted boundary) in connection with the operation of unitized deposits which straddled a continental shelf boundary. It was considered desirable specifically to expand the scope of jurisdiction in respect of these instances. This was effected by an amendment made by Act No. 21 of 25 March 1977, extending the original Act to comprise activities in areas outside the Norwegian part of the continental shelf, where this would follow from specific agreement with another State or from international law. This extension of jurisdiction would, however, not imply any change in the definition of the Norwegian continental shelf as such[9] (Amendment incorporated in text at Annex 22).

176. The definition of the Norwegian continental shelf was reformulated in Act No. 11 of 22 March 1985 pertaining to petroleum activities. The new definition states that the continental shelf is the seabed and its subsoil beyond the territorial sea, as far as it may be deemed to be the natural prolongation of Norwegian land territory, but not less than 200 nautical miles from baselines. The amended definition specifically stated that the continental shelf would not extend beyond the median line in relation to other States (Section 4, subsection (f), see Annex 28).

177. The 1963 Act continues to govern resources other than hydrocarbon resources (Annex 23).

(b) Norwegian Delimitation Practice

178. Norway acceded to the 1958 Convention on the Continental Shelf in 1971. However, Norway applied the principles of Article 6 of the Convention in its delimitation practice from the very first stage. This practice commenced with the Proclamation of 31 May 1963, and was confirmed by the Act of 21 June 1963.

179. Norway concluded an Agreement with the *United Kingdom* on the delimitation of the continental shelf on 10 March 1965 (see Annex 44). That agreement applies the median line

[9]) One effect of the amendment was to provide authority for the exercise of Norwegian jurisdiction with respect to pipelines licensed by Norway and traversing shelf areas appertaining to third States, and even to on-shore facilities at the terminals of such pipelines, on the basis of agreements with States concerned.

principle. The mathematical median line has been simplified for administrative convenience, with minor adjustments. The boundary has the character of a partial line, to be prolonged northwards from the initial terminal point of 61° 44' 12" N., 1° 33' 36" E.

180. The Norwegian-British continental shelf boundary was completed by an Additional Protocol dated 22 December 1978, prolonging the boundary up to the Norwegian-British-Danish tripoint (as between the Shetland Islands, the Faroe Islands and the Norwegian mainland) (see Annex 67). The new stretch of demarcated boundary is likewise a median line. With improvements in navigation and positioning techniques, the new segment of the boundary is drawn from the terminal point of the boundary line already demarcated, 61° 44' 12,00" N., 1° 33' 36,00" E., directly westwards over a distance of around 173 metres, to a new position described as 61° 44' 12,00" N., 1° 33' 13,44" E. From this point, the boundary continues northwards to the Danish-British-Norwegian tripoint, as a true, mathematical median line, without adjustments for administrative convenience.

181. Norway and the United Kingdom have further entered into three separate agreements for the unitized development of petroleum deposits which extend on both sides of the agreed boundary, signed on 10 May 1976 (the Frigg Field), on 16 October 1979 (the Statfjord Field), and again on 16 October 1979 (the Murchison Field).

182. Norway and *Denmark* concluded a general Agreement on the delimitation of the continental shelf between the two countries on 8 December 1965 (see Annex 46). The Agreement establishes that the boundary between those parts of the continental shelf over which Norway and Denmark respectively exercise sovereign rights shall be the median line. The specific delineation of that line is declared to be in application of that principle, and follows the true median line, adjusted for administrative convenience. The Agreement has been amended twice, to establish new co-ordinate values for the turning points, and to establish the tripoint with Sweden.

183. The agreement has been supplemented once, by the Agreement of 15 June 1979 relating to the delimitation of the continental shelf and the fishing zone and economic zone respectively in the area between Norway and the Faroe Islands (see Annex 69).

184. On 24 July 1968 Norway and *Sweden* concluded an Agreement concerning the delimitation of the continental shelf (see Annex 52). The agreement provides for a median line boundary, adjusted for administrative convenience.

185. An Agreement between Norway and *Iceland* concluded on 22 October 1981 provides for a continental shelf boundary for the area between Jan Mayen and Iceland (see Annex 72). The boundary is drawn in a manner to take account of the Agreement signed on 28 May 1980, concerning fishery and continental shelf questions (see Annex 70), and the report of the Conciliation Commission established under that agreement.

186. Formal negotiations between Norway and the *Union of Soviet Socialist Republics* concerning the delimitation of the continental shelf areas appertaining to each of them in the Barents Sea and the Arctic Ocean commenced in 1974. Those negotiations have not yet been concluded. Norway has consistently argued that in terms of international law, the median line would form the equitable boundary, and that the geographical situation provided no special circumstances which could influence the delimitation.

2. DENMARK

(a) Danish Continental Shelf Legislation

187. Denmark was among the early States to sign the 1958 Continental Shelf Convention, and deposited its instrument of ratification on 12 June 1963.

188. Almost concurrently, Denmark issued a Royal Decree of 7 June 1963 concerning the exercise of Danish powers over the continental shelf (Annex 29).

189. The Decree proclaims that "Danish sovereignty shall be exercised, in so far as the exploration and exploitation of natural resources are concerned, over *that portion of the continental shelf which, according to the Convention ... belongs to the Kingdom of Denmark, cf. article 2*" (Article 1, emphasis supplied). Article 2, paragraph 1 sets out the shelf definition of the Convention in identical terms. Article 2, paragraph 2 paraphrases and compresses the provisions of Article 6, paragraphs 1 and 2 of the Convention. The language of the Decree distinguishes between States, the coasts of which "are opposite the coasts of the Kingdom of Denmark" and those coasts which are "adjacent to

Denmark", while providing in both instances that the boundary "shall be determined in accordance with Article 6 of the Convention, that is to say, in the absence of special agreement, the boundary *is* the median line, ..." (emphasis supplied).

190. The Decree addresses delimitation in relation to opposite and adjacent coasts on the same basis. The terminology employed reflects the fact that only the continental part of the Kingdom, that is to say Denmark proper, has neighbouring States with adjacent coasts.

191. The Decree states without qualification that the boundary "*is*" the median line. There is no reference to special circumstances.

192. Article 3 of the Decree states that activities for the exploration and exploitation of shelf resources are conditional upon the issuance of concessions pursuant to previous legislation. In respect of Greenland a separate statutory instrument applies. It is thus made quite explicit that the Decree of 7 June 1963 relates to the whole of the Kingdom, including Greenland.

193. More detailed provisions governing continental shelf activities were set out in Act No. 259 of 9 June 1971 concerning the continental shelf (Annex 30). This legislation chiefly makes clear that the natural resources of the continental shelf are vested in the Danish State, and sets out in a more detailed manner the conditions for the granting of concessions, provides for jurisdiction with respect to installations and safety zones (including the application of law relating specifically to Greenland in respect of "the Greenland part of the continental shelf"), and gives enabling powers for competent ministers to issue detailed regulations. Such regulations have been issued for Greenland in respect of prospecting. The Act also contains provisions relating to the revocation of concessions, and penal clauses.

194. The Act has subsequently been amended by enactments of 1972 (No. 278) and 1977 (No. 654). A consolidated text is given in Promulgation Order No. 182 of 1 May 1979 (Annex 37). No further amendments have been made to the 1963 Decree.

195. The 1963 Decree remains the governing instrument defining the continental shelf of the Kingdom of Denmark. The Decree must still be held to define the claim to continental shelf jurisdiction of the Kingdom of Denmark as against third States, in terms of international law.

(b) Danish Delimitation Practice

196. As mentioned in paragraph 187 above, Denmark signed the 1958 Convention on the Continental Shelf and deposited its instrument of ratification in 1963.

197. The first Danish continental shelf Agreement was concluded with the Federal Republic of Germany on 9 June 1965 (Annex 45). The Agreement provided for a delimitation of the continental shelf in the area close to the North Sea coasts of the two States. On the same date, the parties signed a Protocol stating their agreement that the boundary for the continental shelf adjacent to the coasts of the parties in the Baltic Sea opposite each other, shall be determined according to the median line.

198. On 8 December 1965, Denmark and Norway concluded an Agreement establishing the median line as the line of delimitation between areas of continental shelves appertaining to the two parties respectively (Annex 46).

199. On 3 March 1966, Denmark concluded an Agreement with the United Kingdom, establishing a median line boundary between the continental shelves appertaining to the two parties (Annex 47).

200. On 31 March 1966, Denmark and the Netherlands concluded an Agreement establishing the median line as the boundary between those areas of their continental shelf which were closer to their coasts than to the coast of any other State (Annex 48).

201. Subsequent to the judgment of the International Court of Justice in the *North Sea Continental Shelf Cases* (*I.C.J. Reports 1969*, p. 3), a further agreement between Denmark and the Federal Republic of Germany was concluded on 28 January 1971 (Annex 53). That agreement completed the delimitation of the continental shelf areas appertaining to each of the two parties, taking account of the judgment which was rendered at the request of both parties.

202. Further, an Agreement was signed on 25 November 1971 between Denmark and the United Kingdom, amending the former agreement, and retaining the median line (for a shorter boundary, to take account of the delimitation with the Federal Republic, see Annex 54).

203. On 17 December 1973, an Agreement was concluded between Denmark and Canada, establishing a median line bound-

ary for the continental shelf between Greenland and Canada (Annex 55). This Agreement takes into account divergences over the sovereignty over a small island, and reserves the drawing of the boundary line in the Lincoln Sea.

204. On 9 November 1984, Denmark and Sweden concluded an Agreement for the delimitation of the continental shelves appertaining to the two parties in all the relevant maritime areas, that is to say, the Skagerrak, the Kattegat north of the Sound, in the Sound, and in the Baltic Sea (see Annex 74). In the Sound, the continental shelf delimitation was determined to coincide with the line of demarcation established by the Declaration of 30 January 1932 between the two parties relating to the boundary situation in the Sound. In both the Skagerrak and the Kattegat area and in the Baltic Sea, the continental shelf boundary is demarcated as a true, mathematical median line, taking full account of the several islands, the influence of which on the delimitation had been the subject of considerable dispute during the preceding negotiations.

205. On 14 September 1988 Denmark and the German Democratic Republic concluded an Agreement on the delimitation of the continental shelf and the fishery zones, in the main following the median line, but providing for a deviation allocating the Adler Grund fishing bank to the German Democratic Republic (Annex 77).

CHAPTER V
ZONES OF FISHERIES JURISDICTION

1. NORWAY

(a) Traditional Zones of Fisheries Jurisdiction

206. Norway is a fishing nation, and questions relating to fisheries limits have historically played an important part in Norway's international relations.

207. The point of departure in recent times has been the definition of the general maritime boundary (corresponding to the modern term territorial sea) in 1812 (see Annex 16). The 1812 Decree fixed a limit of four nautical miles from what today would be termed baseline points (precisely one marine league of 7,420 metres, applied now as four nautical miles (7,408 metres)). The 1812 Decree continues to define Norway's *territorial sea.*

208. In the latter half of the nineteenth century, Norway started to develop a system of straight baselines for the four mile territorial sea. In 1906, an Act specifically prohibited fishing by foreign nationals within the Norwegian *fisheries limit,* and set out a punishment for contravention.

209. The implementation of Norway's fisheries limit policy and in particular the use of the system of straight baselines, led to a dispute between Norway and the United Kingdom. That dispute was adjudged by the Court in the 1951 *Fisheries Case,* (*I.C.J. Reports 1951*, p. 116).

210. After the First and Second United Nations Conferences on the Law of the Sea, Norway proceeded in 1961 to establish a 12 mile fisheries limit, in keeping with the terms of the compromise proposal which had narrowly failed to be adopted in 1960.

211. By the Act of 24 March 1961 relating to Norway's fishery limit (see Annex 19), the limit was extended to 12 nautical miles. This enabling Act applied to mainland Norway and Jan Mayen, and allowed for the gradual implementation of the extended zone, and the possibility for distinguishing between various parts of the coast. The 12 mile zone was established for part of the mainland coast (i.e., west of Lindesnes). Implementa-

tion took place in two stages, first to six miles, then to 12. Arrangements were made for transitional fishing rights between six and 12 miles.

212. The extension of the fisheries limit to 12 nautical miles did not in Norway's case raise the general issue of delimitation in respect of opposite States. The relevant legislation does not specifically address the delimitation aspect.

213. In relation to adjacent States, the issue did arise. In one instance, the lateral delimitation had, in the main, been dealt with in an existing agreement (see the Agreement between Norway and the Union of Soviet Socialist Republics of 15 February 1957, relating to the maritime boundary between the two States in the Varangerfjord, Annex 41). The agreed boundary is drawn from the terminal point of the land boundary, in a straight line to the intersection of the outer limits of the territorial seas of the two Parties, and applies an equidistance consideration (the mid-point between the promontories of Kibergnes and Cape Nemetsky) to establish a line beyond which neither Party would extend its jurisdiction.

214. Maritime delimitation in relation to Sweden had been determined by an Arbitration Award in 1909 in the *Grisbadarna Case (Reports of International Arbitral Awards*, Vol. XI, p. 147). The Award was based on the principle of the perpendicular on the general direction of the coastline (that is to say, a notional equidistance line), somewhat attenuated by the Tribunal's findings with regard to the Grisbadarna lobster grounds. The new delimitation for the extended fisheries zone took the existing boundary, and the Tribunal's Award, as its point of departure (see Agreement concerning the delimitation of the Norwegian and Swedish fishing areas in the northeast Skagerrak, with a Declaration, Annex 49).

(b) Extension to 200 Nautical Miles

215. After the implementation of fisheries limits of 12 nautical miles in most of the North Atlantic area, it became clear that there remained a need for extended coastal State jurisdiction with regard to the living resources of the sea. For Norway it was an important foreign policy objective to achieve this goal without serious disruptions in other fields which affect international relations.

216. After the first substantive session of the Third United Nations Conference on the Law of the Sea ("UNCLOS III"), the Norwegian Government outlined its approach to achieving this goal in a "Declaration on principles for a fisheries limits policy", issued 26 September 1974 (see Annex 1). That approach comprised steps to avoid conflict between trawlers and other fishermen in areas beyond the 12 mile limit; preparations for an interim extension of that limit to 50 nautical miles; as well as continued work at UNCLOS III for the 200 mile Economic Zone. This policy would be implemented, within the framework of international law, after contact and negotiation with other States concerned.

217. In pursuance of that policy, negotiations were entered into with a number of States, and arrangements were concluded on 30 January 1975 with France, the Federal Republic of Germany and the United Kingdom respectively, relating to trawler-free zones outside, and adjoining the Norwegian 12 mile fisheries limit in certain specified areas. Similar arrangements were subsequently concluded with the Union of Soviet Socialist Republics, the German Democratic Republic and Poland. Three trawler-free zones were established by Royal Decree of 31 January 1975.

218. The results of the deliberations at UNCLOS III during 1975, the progress of the substantive negotiation on the regime of the 200 mile Exclusive Economic Zone, and the planning by other States for implementing extended coastal State resource jurisdiction, led the Norwegian Government to determine that it would be unnecessarily complicated to establish a transitional fisheries regime based on a 50 mile limit. Instead, preparations for implementing the 200 mile exclusive economic zone concept would be undertaken immediately.

219. Negotiations with a number of States ensued, comprising those States in relation to which Norway had mutual fishing and management interests, States whose fishermen had a long-established practice of fishing in waters off Norway's coasts, and neighbouring States.

220. These negotiations eventually led to agreement on a number of conventional arrangements with regard to management cooperation and fishing access.

221. An Act relating to Norway's economic zone was approved on 17 December 1976 and entered into force immedi-

ately (see Annex 24, setting out the text as originally adopted, and consolidated versions of clauses subsequently amended).

222. The Act establishes an Economic Zone in maritime areas off the entire Kingdom, i.e., including Svalbard and Jan Mayen. The King is, however, authorized to determine the timing for the establishment of the Zone and the areas for which the Zone was to be implemented (Section 1, first paragraph). The extent of the Zone is defined by its outer limit, to be drawn at a distance of 200 nautical miles from baselines, but not beyond the median line in relation to other States (Section 1, second paragraph).

223. The Act expressly states that there shall be no change with respect to the Norwegian territorial sea (Section 1, third paragraph), and that the high seas rights of navigation and overflight, or to lay submarine cables and pipelines shall be unaffected (Section 2, first paragraph). The Act specifies that it does not in any way alter the existing Norwegian rules in force regarding the continental shelf (Section 2, second paragraph), thereby leaving the seabed and subsoil subject to the legal provisions which were in effect previously.

224. The Act lays down a general prohibition of fishing for those who are not Norwegian nationals or assimilated thereto (Section 3). At the same time, the Act authorizes the King to make exceptions to the prohibition, and by regulation provide for foreign fishing (Section 3, second paragraph and Sections 4 and 5).

225. Also on 17 December 1976, a Royal Decree (see Annex 25) was promulgated to establish the Economic Zone off the mainland coast with effect from 1 January 1977. The Decree sets out the limits of the zone in conformity with the enabling Act. It went on to state that, where the Economic Zone is adjacent to an area of jurisdiction of another State, the limit shall be drawn "according to agreement" (Section 1). In this manner, the Government is authorized to implement the intentions of the enabling Act, so as to demarcate the boundary line, in keeping with the system which had been established.

226. Negotiations concerning delimitation have taken place with the Union of Soviet Socialist Republics. In the absence of agreement on delimitation between the relevant zones of the two States, the parties on 11 January 1978 entered into an Agreement on a temporary practical arrangement for fishing in an adjacent area in the Barents Sea (Annex 62). The provisional character of

Given an island in a central maritime position, the smaller it is, the more sea it subtends, after the equidistance principle.

the Agreement was underlined by the fact that it only applied until 30 June 1978, and had no provision for automatic renewal. However, these arrangements have subsequently been renewed for periods of one year.

227. Detailed regulations in respect of foreign fishing in the mainland economic zone have been established. General Norwegian fisheries law, as well as administrative, procedural and penal legislation relevant to fishing activities and the enforcement of fisheries legislation, have been made applicable to fishing activities in the Zone.

228. A Fisheries Protection Zone around Svalbard was established by Royal Decree of 3 June 1977, under the powers granted in the Act of 17 December 1976 relating to Norway's economic zone (see Annex 26). The zone has the extent specified in the Act and is defined as being situated north of the outer limit of the mainland economic zone (Section 1, second and third paragraphs). Section 1, fourth paragraph, relates to delimitation as against adjacent States in terms identical to the mainland Decree. The Decree provides authority for the Ministry of Fisheries to issue conservation regulations for the zone (Section 3), and sets out certain substantive rules with regard to catch reporting (Section 4). The Decree states a duty to assist inspectors (Section 5), and contains a penal clause (Section 6).

229. In recognition of the difference in conservation needs with regard to the waters around Svalbard, it was not considered necessary to establish priority for Norwegian vessels, nor to apply a licensing requirement, nor to establish fishing quotas especially for foreign fishing.

230. The possibility of differing views concerning a point of interpretation in respect of the Spitsbergen Treaty of 9 February 1920 was also present, as it had been claimed that provisions of the Treaty in favour of ships and nationals of all Parties should be extended to cover the continental shelf (although the provisions of the Treaty relate these provisions to the territorial sea). The applicable regulatory measures for the Fisheries Protection Zone are at present designed to cover specific conservation needs and to ensure the proper and orderly conduct of fishing operations, without curtailing foreign fishing. The regulations are under continual review in the light of Norway's management responsibilities and changing conditions and needs.

231. It was this difference in applicable regulations which made it necessary to distinguish the Fisheries Protection Zone geographically. There was no question of "delimiting" the zone around Bjørnøya (Bear Island), as implied in paragraph 316 of the Danish Memorial, or that the mainland economic zone should have been "fully respected". Indeed, there can be no delimitation *per se* as between areas under the jurisdiction of the same Sovereign. An administrative distinction was made between two areas with respect to which different rules apply, and nothing more. This administrative distinction was established along the outer limit of the mainland economic zone exclusively for considerations of practicality and effectiveness.

2. DENMARK

(a) Traditional Zones of Fisheries Jurisdiction

232. The traditional four mile limit of the 1812 Decree (see Annex 16) was also the point of departure for Denmark's policy with regard to fisheries limits.

233. However, in becoming a party to the 1882 North Sea Convention, Denmark accepted the three mile limit for fisheries in the North Sea (i.e., for the continental Danish coastline from Hanstholm to the German frontier).

234. In connection with an Agreement between Denmark and the United Kingdom in 1901, the three mile limit was also adopted for the Faroe Islands and Iceland.

235. In 1959, a 12 mile fisheries limit was established around the Faroe Islands. Historical rights were recognized within the outer six mile belt of this zone. (In 1964, access for traditional fishing within the 12 mile fisheries limit for the Faroe Islands was restricted at the same time as baselines were reduced in number and lengthened.) In 1963, the same fisheries limit of 12 miles was established for Greenland, with recognition of historical fishing rights in the outer six mile belt for a period of 10 years.

236. Denmark became a party to the new 1964 North Sea Fisheries Convention. On that basis, Denmark applied the 12 mile fisheries limit in the North Sea, the Skagerrak and the Kattegat from 1965, while maintaining, for the time being, a limit of 3 nautical miles in the Belt region and in the Baltic. Act No. 195 of 26 May 1965 on salt water fisheries stated in Section 1, paragraph

3, that in respect of opposite coasts, the fisheries limit could not extend beyond the equidistance line between the low water lines, except where provided by special agreement with the foreign State concerned.

(b) Extension to 200 Nautical Miles

237. Act No. 597 on the fishing territory of the Kingdom of Denmark (Annex 31) was adopted on 17 December 1976. The Act is in the main an enabling Act. One important substantive provision concerns delimitation as against other States, in the following terms:

> "[1.] (2) Failing any agreement to the contrary, the delimitation of the fishing territory relative to foreign States whose coasts are situated at a distance of less than 400 nautical miles opposite the coasts of the Kingdom of Denmark or adjacent to Denmark, shall be a line which at every point is equidistant from the nearest points on the baselines at the coasts of the two States (the median line)."

238. The terminology employed is entirely parallel to and consistent with the language of the Decree of 7 June 1963 relating to the continental shelf (Annex 29). Reference to the 1958 Geneva Convention on the Continental Shelf is omitted. It is noted that the need for delimitation arises in cases where opposite coasts are less than 400 nautical miles apart. Again, the text is clear in its application to the Kingdom as a whole, and distinguishes between adjacent situations, which occur only in respect of continental Denmark, and opposite situations, which present themselves in relation to all three parts of the Realm. The statement on the actual course of delimitation in the Act of 1976 differs slightly in the choice and order of terms from that of the 1963 instrument, but with no variation in meaning. The proviso in respect of alternative agreed boundaries is couched in identical terms in the original text: "... in the absence of special agreement ..."[10] Apart from this proviso, the text relating to delimitation is unequivocal and unqualified.

239. An Executive Order of 22 December 1976, issued pursuant to this Act, established the fishing territory of Denmark

[10] This may not be adequately reflected in the translation provided at Annex 1 to the Danish Memorial ("Failing any agreement to the contrary...").

in the North Sea with effect from 1 January 1977 (Annex 33). The delimitation established by the Order as against third States in fact coincides with agreed continental shelf boundaries.

240. Order No. 629 of the same date, also issued pursuant to the Act, established the fishing territory of Greenland, along both coasts, but not further north than 75° N on the west coast and 67° N on the east coast (Annex 34). Section 1, paragraph 2, states as against Canada a boundary corresponding to the agreed continental shelf boundary. Section 1, paragraph 4 provides for a median line delimitation as against Iceland. The Order further specifies baseline points for determination of the outer limit of the zone.

241. A further Order of 22 December 1977 extended the North Sea fisheries zone in the Skagerrak and the Kattegat, again stating a boundary as against Norway corresponding to the continental shelf boundary. In respect of Sweden, where no continental shelf boundary had as yet been agreed, a joint fisheries jurisdiction was established, pending agreement on a final delimitation (Annex 35). The joint arrangement was formalized in an exchange of Notes dated 29 December 1977.

242. On 1 February 1978, an Order established Denmark's fisheries zone in the Belt, the Sound and the Baltic (Annex 36). The Order states expressly that the outer limit as against the Federal Republic of Germany, the German Democratic Republic, Poland and Sweden, is to be determined by agreement, and that, pending such agreement, the zone limit is the median line (except in the Sound, where existing arrangements would continue to apply).

243. By Order No. 176 of 14 May 1980, the Greenland fisheries zone was extended northwards along both coasts, with effect from 1 June 1980 (Annex 38). The limit of the zone as against Canada is stated to be in accordance with the agreed continental shelf line and, to the north, the median line (Section 1, paragraph 2). Section 1, paragraph 3 specifies the median line in relation to Iceland, in terms apparently corresponding to those employed in the 1976 Order. As against Norway, Section 1, paragraph 4, provides for a median line in relation to Svalbard (Spitsbergen), whereas, in relation to Jan Mayen, it is stated that "... jurisdiction of fisheries shall not, until further notice, be exercised beyond ..." the median line.

244. By an Order of 31 August 1981, the last-mentioned Order was amended in this regard, so that Section 1, paragraph 4, second sentence would read:

> "Where the island of Jan Mayen lies opposite Greenland, the breadth of the fishing territory is 200 nautical miles, measured from the baselines mentioned in Section 2."

It is noted that this language departs from the terminology employed by Denmark in all the above-mentioned contexts, and is in conflict with the enabling Act No. 597 of 17 December 1976 Section 1, paragraph 2, with reference to which the Order was issued.

Fail to see how an interim limit of modern line can be said to prejudice a definitive line which is a matter of the m. l. Of course this must be attended in the first instance by agreement.

CHAPTER VI
THE PRESENT DISPUTE

1. The General Background

245. Norway and Denmark participated in the practice which developed in all parts of the North Atlantic by enacting legislation in 1976 which provided for the exercise of fisheries jurisdiction within a distance of 200 nautical miles from appropriate baselines. The implementation of this extended jurisdiction differed with regard to geographical scope and timing.

246. The Danish Executive Order of 22 December 1976 limited the extension of the Greenland fishing zone along both the west and the east coasts.

247. Norway implemented its economic zone first for the mainland, on 1 January 1977, then for Svalbard. There was initially no pressing need to establish an exclusive economic zone, or a fisheries zone for the waters around Jan Mayen.

248. The development of a considerable capelin fishery off Jan Mayen in the late summer of 1978 made it clear that there was a need to make provision for the regulation of fishing activities also in this area. In view of the obvious community of interests between Norway and Iceland in the management of this capelin stock, the Norwegian Government stated its intention to establish a fisheries jurisdiction zone off Jan Mayen in due course, on the basis of cooperation with Iceland (see Annex 7).

249. Contacts were initiated between Norway and Iceland. The Government of Denmark made its interest in the matter known to Norway. As is shown by the Norwegian ministerial letter of 4 July 1979, replying to a Danish letter of the preceding day, Norway reacted to those comments by stating that it was aware that, in the negotiations with Iceland, decisions should not be taken which would prejudice Danish interests, including the delimitation in relation to Greenland (see Annex 6).

250. Negotiations proceeded between Norway and Iceland on all matters relating to the management and appropriate regulation of fisheries, including the establishment and delimitation of jurisdictional zones. The result of these negotiations was recorded in an Agreement, signed on 28 May 1980, concerning fishery and continental shelf questions (see Annex 70).

251. In dealing with delimitation, the Agreement took a somewhat indirect approach by referring in the preamble to the fact that Iceland's establishment of an economic zone had already been carried out (in a manner which would extend its outer limit to 200 nautical miles in the waters between Iceland and Jan Mayen) while noting that the establishment of a fishery zone around Jan Mayen would follow. At the same time, the Agreement, in its preamble, noted the recognition by the international community of Iceland's economic dependence on fisheries. A decision was made to appoint a Conciliation Commission to assist the Parties in dealing with the delimitation of the continental shelf.

252. The Agreement illustrates the influence of political and pragmatic considerations. Those influences had a bearing on the pressing need to provide an appropriate framework for the regulation of the capelin fishery. They also embraced the general political relationship between the Parties, and the particularly close community of their interests.

253. After the conclusion of the substantive negotiations on this Agreement, Norway issued a Royal Decree on 23 May 1980, establishing a fishery zone around Jan Mayen with effect from 29 May 1980 (see Annex 27). The Decree expressed specific recognition of the accepted extent of Iceland's fisheries zone (Section 2). In relation to Greenland, the Decree restated the delimitation norm of Act No. 91 of 17 December 1976 relating to the economic zone of Norway (see Annex 24, Section 1, second paragraph *in fine*, cf. Section 2 of the Decree). The Decree further stated that "where the fishery zone adjoins the zone off East Greenland, the delimitation line shall be drawn by agreement" (Section 3 of the Decree).

254. The extension of the Greenland fishery zone in the area north of 67° N along the east coast followed on 1 June 1980, pursuant to an Executive Order dated 14 May 1980 (see Annex 38). The Order specified that in relation to Jan Mayen, jurisdiction should not, until further notice, be exercised beyond the equidistant line.

255. In Notes exchanged in June 1980, the two Governments stated their respective reservations and positions with regard to the delimitation of the two zones (Annex 10 and 12).

2. Formal Negotiations 1980-1983

256. The conduct of negotiations relating to the delimitation question is dealt with in paragraphs 53–72 of the Danish Memorial. That account provides the dates of some of the meetings and conversations which were held, and indicates some of the subject matter of the negotiations and talks, but it is not very complete.

257. The negotiations may be separated into several distinct phases. The first phase consisted of a series of meetings of formally appointed delegations. Each Party provided a detailed presentation of its legal position. In the several meetings from December 1980 until January 1983, these positions were supplemented and argued.

258. It is noteworthy that, throughout these negotiations, both Parties maintained that the 1958 Convention continued to govern their relationships in respect of the continental shelf, and formed the natural point of departure also in respect of the negotiation of a boundary relating to the fisheries zones.

259. At the close of the fourth round of formal negotiations, it was agreed that both aides would refer back to consideration at a political level.

260. This first phase also comprised a procedural *modus vivendi*, under which it was agreed that certain activities by inspection vessels would not be held to prejudice the positions of the Parties.

3. Further Contacts 1983–1988

261. A second phase involved informal talks between officials of the two sides. On the Norwegian side, it was felt desirable to explore whether a broader approach to the delimitation issue might prove more fruitful than a strictly legal approach. On this basis, questions relating to the mutual access of fishermen of both Parties to the zones of the other Party, and other aspects of a collaborative approach to resource management and exploitation would be taken into account. By June 1985, the attempt to extend the field of discussion had failed to produce results.

262. After a period of contacts at the level of Ministers, a subsequent phase consisting of meetings of officials of the two

Foreign Ministries took place in 1987 and 1988. In this phase, efforts were made to develop an appropriate procedure for judicial settlement of the delimitation issue. Both sides presented suggestions in writing concerning possible procedures. The Norwegian suggestion sought to combine strictly judicial findings on questions of law with a procedure for resuming negotiations between the Parties. The thrust of the Norwegian suggestion was that an Arbitral Tribunal would be asked to decide those legal issues which the Parties agreed to submit to it. Thereafter the Parties would have an opportunity to revert to negotiations in order to determine the actual delimitation on the basis of those decisions and at the same time deal with related matters.

263. In the Danish Application of 16 August 1988, it is alleged that: "It was made clear by the Danish representatives that the possibility of arbitration should be clarified by the end of June 1988." At the meeting which took place in Copenhagen on 21 June 1988, the Norwegian side presented its suggestions in writing. Those proposals did not immediately find favour with the Danish negotiators. They were not, however, rejected out of hand by the Danish side. It was the impression on the Norwegian side, at the close of the meeting, that the Danish side would revert to the matter after further consultation with their Government. It was the understanding of the Norwegian delegation that contacts between the Parties with a view to exploring further the possibility of agreement on the procedures for judicial settlement were still in progress at the time when the unilateral Danish Application was made to the Court.

264. The Danish side made no approach to seek the collaboration of Norway in presenting a joint request to the Court in the form of a Special Agreement, as is the usual procedure in matters relating to maritime delimitation.

265. Throughout the period of negotiations, the Norwegian side had been conscious of the long-range interest in maintaining a friendly and constructive basis for the relationship between Norwegian authorities and the Greenland Home Rule authorities.

4. Remarks on the Danish Memorial

266. Two elements in the account of the negotiating history in the Danish Memorial require comment:

267. (a) In paragraphs 54–57, circumstances relating to the issuance by Norwegian Coast Guard officers of warning notices to Masters of Danish vessels fishing to the east of the median line in the waters between Jan Mayen and Greenland are characterized as "The Incident". It should be noted that at this time, in late August 1981, the pertinent Danish Order expressly stated that Denmark for the time being would not exercise jurisdiction beyond the median line. Norway had not relinquished or suspended any part of its jurisdiction according to the Norwegian Decree. Norway acted completely within its rights under international law in instructing Norwegian Coast Guard officers to issue warnings to unauthorized vessels fishing within the limits of the Norwegian fisheries zone.

268. The only actual element of escalation was the dispatch of a Danish inspection vessel to the area, in particular when this was accompanied by a decision to repeal the restraint clause in the Executive Order No. 176 of 14 May 1980, which had served to prevent the underlying difference of views from becoming a dispute.

269. It is noteworthy that the *modus vivendi* subsequently worked out did not rule out the further issuance of such warning notices. It is difficult to see how this sequence of events could be termed an "incident", with the connotations attaching to that concept in current diplomatic usage.

270. (b) In paragraph 60 of the Danish Memorial, reference is made to an alleged "mutual understanding" between the two Parties with regard to the conduct of surveillance operations upon the resumption of fishing activities after two years in which no capelin catches had been taken. It is correct that there had been contacts between the Parties in this regard.

271. An informal paper, resembling the text exhibited at Annex 13 to the Danish Memorial, was produced by the Danish side in the course of these contacts, but was rejected by the Norwegian side. No "mutual understanding" was arrived at. On the contrary, it was clearly stated by the Norwegian side that no "understanding", formal or informal, would be acceptable.

272. A proper description of the outcome of the contacts referred to would be that each of the Parties, independently and autonomously, and without offering or accepting any undertakings, would instruct its relevant naval, coast guard or other units to carry out surveillance operations in the area in a manner compatible with the common desire of both parties to avoid any action with regard to the disputed area which might be prejudicial to the ongoing delimitation negotiations.

PART II
THE LAW

INTRODUCTION

273. The relevant considerations of law fall into three separate but mutually compatible categories as follows:

(a) the treaty obligations of the parties *inter se;*

(b) the principles of recognition and acquiescence depending upon the conduct of the parties, together with the pertinent elements of opposability and estoppel; and

(c) general international law in the form of the equitable principles applicable in order to achieve an equitable solution.

274. The Norwegian position is that these three categories constitute independent bases of the legal validity of the median line boundary in respect of continental shelf rights and also the delimitation of adjoining fishery zones.

275. Whilst the Court is at liberty to approach the submissions of the parties as it sees fit, in the circumstances of the present case there are considerations both of law and of judicial convenience which militate in favour of treating the legal arguments in a certain order of priority.

276. The independent validity of three legal bases of the strict median line notwithstanding, the particular history of the relations of the parties in this case involves a certain determinism. The question of delimitation cannot be approached *de novo*: there is a series of transactions between the parties relating precisely to delimitation of maritime boundaries. Moreover, the recent legal sources consistently give emphasis to the importance and priority of the agreement of the parties.

277. Consequently, there is a specific legal order bearing upon delimitation which antedates these proceedings and which as a matter of legal logic and good policy qualifies for a certain priority in the process of decision.

278. In any event there is no incongruity in this case between special and general international law. The conduct of the parties is a primary guide to what is equitable. The median line is the legally valid boundary as recognized by the express agreement of the parties, the conduct of the parties in general, and the application of the *modus operandi* of equitable principles which form part of general international law.

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A: TREATY OBLIGATIONS OF THE PARTIES *INTER SE*

CHAPTER I
DELIMITATION OF THE CONTINENTAL SHELF

1. The Background

279. The relationship between the Parties involves a considerable number of transactions, in the form of treaty obligations and practice relating to treaties, and other transactions which constitute acts of express recognition or implied recognition of a median line boundary between the continental shelves of Greenland and Jan Mayen. In this Chapter, the treaty obligations of the Parties in relation to delimitation of their continental shelves as between themselves will be explored.

2. The Treaty Obligations

(a) The 1965 Agreement between Norway and Denmark

280. The primary basis of the median line boundary applicable in the continental shelf areas between Greenland and Jan Mayen is to be found in the bilateral Agreement relating to the Delimitation of the Continental Shelf signed in Oslo on 8 December 1965 (Annex 46).

281. Article 1 of the Agreement provides as follows:

> "The boundary between those parts of the continental shelf over which Norway and Denmark respectively exercise sovereign rights shall be the median line which at every point is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each Contracting Party is measured."

282. This provision contains a dispositive statement: "... shall be the median line ...", and it is general in scope, unqualified and without reservation. There is no geographical restriction linked to it. It makes no reference to any exceptional or anomalous situations for which any other solution could be considered. At the time, the Parties had every inducement to assess their respective geographical situations, and to evaluate whether any of

them presented such special circumstances as might affect the detailed demarcation of their continental shelf boundaries. The conclusion of the Agreement clearly indicates that both Parties found that this was not the case.

283. The natural meaning of the unambiguous language of Article 1 of the treaty must be to establish definitively the basis for all boundaries which would eventually fall to be demarcated between the two Kingdoms. Article 2, which is concerned with *demarcation*, relates exclusively to the shelves of the two mainlands.

284. That meaning corresponds to the structure of the 1965 Agreement: First, it sets out the governing principle in Article 1, then, in a separate article, the detailed application of the principle is set out, to the extent a concrete delineation of the trajectory of the median line is required at the time.

285. The same process was again applied in 1979 in the drawing of the boundary between the appurtenant parts of the continental shelf (and the respective jurisdictional zones) of the Parties between the Norwegian mainland and the Faroe Islands (Annex 69).

286. The 1979 Agreement is explicit in dealing with both the delimitation of the shelf and of the zones. The delimitation of the zones appears as a separate, and almost incidental matter ("Desiring at the same time to establish the boundary between the fishery zone near the Faroe Islands and the Norwegian economic zone ... " (third preambular paragraph)). This dual character of the demarcation task made it natural to draft a completely new instrument, rather than to supplement the 1965 Agreement by a Protocol.

287. The main purpose of the 1979 Agreement was the delimitation of the continental shelf. This is apparent both from the structure of the Agreement, and from its contents. The text keeps open the further extension of the continental shelf boundary as the need may arise for further delineation:

> "... *for the time being*, they will not establish the boundary further north than to the point which lies 200 nautical miles from the nearest points of the baselines ..." (second preambular paragraph, emphasis supplied).

288. The structure of the Agreement of 1979 follows that of the 1965 Agreement: The statement of principle in Article 1, the

details of the demarcation in Article 2: "In the application of the median line principle referred to ...". The Agreement confirmed that both Parties remained committed to the median line principle of the 1965 Agreement.

289. It must be a further corollary that the Parties are bound to demarcate or delineate any such boundary on that same basis, as and when the need for a more precise definition of the boundary might arise.

290. When the occasion arose to demarcate the continental shelf boundary (and other zonal boundaries) between Greenland and Jan Mayen in 1980, Norway was fully prepared to enter into negotiations with Denmark with a view to reaching agreement as to the details of the demarcation. In a manner of which the legal logic escaped the Norwegian side, the Danish claims deviated completely from the principle stated in the 1965 Agreement as well as from the consistent Danish conduct in the matter of delimitation of its continental shelf vis-à-vis its neighbouring States. As has been described in Chapter VI of Part I above, even attempts from the Norwegian side to settle the matter amicably by taking into account a broader range of factors, or to seek a combination of judicial decision and practical negotiation, were in vain.

291. It is the contention of the Norwegian Government that in respect of the continental shelf between Greenland and Jan Mayen, Denmark is bound by its obligations under the 1965 Agreement to apply the median line as the boundary, and to enter into negotiations for the precise demarcation of that boundary, based on the agreed principle. As Jan Mayen is a part of the Kingdom of Norway, and Greenland is a part of the Kingdom of Denmark, Article 1 of the Agreement by its own wording, in the plain and natural meaning of the words used, established the median line as the boundary. What is left is the precise demarcation, with the possibility of simplification for administrative convenience.

292. It is to be noted that the bilateral 1965 Agreement fully conforms with the general pattern of the conduct of the Parties relating to continental shelf delimitation. This adds to the probative value of the Agreement in identifying the views of both Parties with regard to the legal principles underlying any continental shelf delimitation, in general and in their mutual relations.

(b) The 1958 Convention on the Continental Shelf

293. Denmark signed and ratified the 1958 Geneva Convention on the Continental Shelf at an early stage. For reasons unrelated to the questions of delimitation of the continental shelf, Norway deferred its formal adherence to the Convention until 1971. However, it was Norway's view from the outset that Article 6 of the Convention expressed general international law in this matter, and it consistently applied those principles in its relationship with other States. Thus, the principles of Article 6 of the Convention formed a basis for the Norwegian proclamation and legislation in 1963 concerning the Norwegian continental shelf, as well as for the bilateral Agreement with Denmark in 1965. The same applies to the other continental shelf delimitation agreements entered into by Norway prior to its formal accession to the 1958 Convention in 1971.

294. The provisions of the 1958 Convention, including its Article 6, entered into force, and became binding treaty obligations as between Denmark and Norway, on 9 September 1971. Neither of the Parties has made any reservation to the 1958 Convention, or made any other statement purporting to exclude or modify the legal effect of any provision of the Convention. On the contrary, Norway, on depositing its instrument of accession, recorded its objection to reservations taken by France with respect to Articles 5 and 6 of the Convention.[11]

295. Article 6 employs the well-known equidistance/special circumstances formula in the following terms:

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

[11]) The Norwegian objection reads as follows: "In depositing their instrument of accession regarding the said Convention, the Government of Norway declare that they do not find acceptable the reservation made by the Government of the French Republic to Article 5, paragraph 1, and to Article 6, paragraphs 1 and 2."

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

296. For Norway and Denmark, being also bound by the bilateral Agreement of 1965, the general references to "special circumstances" in Article 6 of the 1958 Convention must be understood to be subordinate to the provisions of the 1965 Agreement. That Agreement adopts without reservation "the median line" as the basis of delimitation. In the circumstances and given the notoriety of the formulation in Article 6, the omission of reference to "special circumstances" in the instrument of 1965 must have been deliberate. Indeed, given the context of other delimitation matters with which each of the Parties was concerned, the omission may be regarded as declaratory of the interpretation by the Parties of the 1958 Convention, in its application to their geographical situations: no relevant special circumstances were present.

297. The practice of the Parties, including their respective legislation with respect to continental shelf delimitation, unequivocally supports the principle of the median line subject only to modification on the basis of agreement. The relevant materials are set forth in paragraphs 172–186 of the present pleading, and commented further upon in Chapters III and IV of this Part.

298. The primacy of the median line formula contained in Article 1 of the 1965 Agreement is also confirmed by two well-recognized principles of treaty interpretation. In the first place, given the overall pattern of the mutual relations of the Parties, to contend that the formulation of the Agreement of 1965 is subordinate to the "special circumstances" qualification would be contrary to the obligation to perform treaties in good faith, an obligation which also operates in the sphere of the interpretation of treaties, as Lord McNair pointed out in his authoritative work (*The Law of Treaties*, 1961, p. 465).

299. Secondly, there is the basic legal maxim that "a specific provision prevails over a general provision", described by the Court as "a well-recognized principle of interpretation" in the *Ambatielos Case* (*I.C.J. Reports 1952*, pp. 87-88). The operation of

this principle must be especially compelling when the more specific provision reflects the overall practice of the Parties more faithfully than does the general provision.

300. In the light of this practice and the conduct of the Parties overall in relation to continental shelf delimitation, the provisions of Article 6 of the 1958 Convention are to be applied in the light of the provisions of Article 1 of the 1965 Agreement, and thus the two treaty obligations operate *conjointly*. Any contrary contention that "another boundary line is justified by special circumstances" must be excluded on the basis of the undertakings in the 1965 bilateral Agreement. The content and scope of that Agreement was in no way restricted or diminished by Norway's accession to the 1958 Convention in 1971. None of the Parties have claimed the presence of special circumstances in their geographical situations (until new tones from Danish representatives surprised the Norwegian Foreign Minister in 1979). None of the Parties had made any reference to special circumstances in their pertinent legislation (and the Danish Royal Decree of 7 June 1963 relating to the continental shelf was promulgated *after* the decision had been made to ratify the 1958 Convention).

301. It is the contention of the Norwegian Government that in respect of the continental shelf between Greenland and Jan Mayen, territories whose coasts are opposite each other, Denmark is bound by its obligations under the 1958 Convention on the Continental Shelf not to exercise jurisdiction with regard to any part of the continental shelf beyond the median line, which under the terms of the Convention constitutes the boundary.

3. The United Nations Convention on the Law of the Sea of 1982

302. Both Parties are signatories to the United Nations Convention on the Law of the Sea of 1982, but neither Party has so far ratified it.

303. The coming into force of the new Convention will maintain the effect of the 1965 bilateral Agreement, and confirm the application as between the parties of the provisions of Article 6 of the Convention of 1958.

304. This follows directly from the provisions of the Convention itself, and the manner in which it deals with delimitation

of the continental shelf and other maritime zones. The effect and operation of the 1982 Convention will lead to the same results as the application of the bilateral treaty, or of the 1958 Convention, respectively. That result will be that a delimitation of the continental shelf and other maritime zones as between the Parties, should follow the median line. That result will also within the prevailing geographical situation satisfy the objective of achieving an equitable solution, as set out in Article 83, paragraph 1 of the 1982 Convention.

305. Under the specific terms of Article 83, paragraph 4 of the 1982 Convention, it is clear that the 1965 Agreement, is "an agreement in force between the States concerned". Article 83, paragraph 4 then provides that: "questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement." Thus, the continued validity and applicability of the existing bilateral treaty relationship between the Parties is explicitly confirmed by the 1982 Convention.

306. The prevalence of the 1965 Agreement is, moreover, reinforced by a series of cogent indicators:

307. (a) Neither Party has denied the full force and effect of the Agreement, as a consequence of the adoption of the 1982 Convention, or of other developments in the law of the sea.

308. (b) In their delimitation practice, the Parties – with the notable exception of the Danish claims raised in the present case – have overall confirmed their continuing acceptance of the principle laid down in Article 1 of the 1965 Agreement.

309. (c) The Parties have by their conduct confirmed that the median line principle would not be and has not been modified by the new Law of the Sea Convention.

310. Article 83, paragraph 1 of the 1982 Convention states the primacy of agreement as the means of effecting the delimitation of the continental shelf. The provisions of Article 1 of the 1965 Agreement are therefore in full conformity with the policy of the new Convention.

311. The effect of the 1982 Convention is further that the existing delimitation provisions of the 1958 Convention shall continue to govern the relationship between the parties thereto.

312. Specifically, the new Convention contains a reference, or a *renvoi* to the 1958 Convention, for those States which are party thereto. Article 83, paragraph 1 of the 1982 Convention does not contain any substantive rule on delimitation, but prescribes delimitation by agreement "on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution". As an earlier general international convention establishing a rule expressly recognized by the States in question, the 1958 Convention on the Continental Shelf would clearly remain applicable by virtue of the text of Article 83 of the 1982 Convention itself, as between Norway and Denmark.

313. It has also been the stated view of both Parties that the 1958 Convention continues in force, undisturbed by the 1982 Convention. As far as Denmark is concerned, that is made clear by the statement of a prominent negotiator for Denmark at UNCLOS III, writing in *Danish Foreign Policy Yearbook 1983* on the new Convention and Denmark's law of the sea policies (see Annex 81). Similar public statements have been made by Norwegian representatives.

314. Further and generally, Article 311, paragraph 1 of the 1982 Convention states that its provisions shall "prevail ... over" the provisions of the Geneva Conventions of 1958. This implies that the provisions of the 1958 Conventions are to remain in effect in the relationship between those States which are party to both the new Convention and one or more of the older Conventions. Only in the case of *conflict* between the two sets of rules will the provisions of the new Convention have priority. Paragraph 2 of Article 311 states this explicitly with regard to "other Agreements compatible with the Convention". This is, of course, entirely corresponding to the operation of the normal test of treaty law: where a subsequent treaty provision deals with the same subject matter as an older treaty, the test for the relationship between the two treaties is the test of compatibility. In the submission of the Norwegian Government, in relation to the test of compatibility, the principal criterion is the intention of the Parties interested in the issue of compatibility.

315. The Parties have relied on the 1958 Convention in the negotiations which they have conducted between themselves, and in their relations with third States. Thus, the Preamble of the Agreement between Denmark and Sweden of 9 November 1984 on the delimitation of the continental shelf and fishing zones

expressly invokes the 1958 Convention: the Parties "Have *in accordance with* the Geneva Convention ... agreed to the following....." (emphasis supplied, see Annex 74).

316. The conduct of the Parties is a major aspect of the history of the present proceedings. The continuing relevance of Article 6 of the Continental Shelf Convention of 1958, as interpreted and applied in the light of the bilateral Agreement of 1965 and the general pattern of the relations of Denmark and Norway *inter se*, provides the complement to the elements of recognition and acquiescence to be reviewed in the Part which follows. All these elements are underpinned by the principles of consistency and good faith and constitute a well-established pattern of bilateral relations with reference to continental shelf delimitation.

CHAPTER II
DELIMITATION OF FISHERIES ZONES

317. The question of the delimitation of fisheries zones was first addressed by the Parties in their enactments of 17 December 1976. It was further expressly dealt with by Norway and Denmark, in treaty form, in respect of the boundary between the Faroe Islands and the Norwegian mainland.

318. The Agreement of 15 June 1979 (referred to at pages 82–83, paragraphs 285–289 above, text at Annex 69) covers both the delimitation of the continental shelf, and the delimitation between the fisheries zone of Denmark and the economic zone of Norway. As noted in the foregoing, the course of the zonal boundary was decided by the statement that it "shall follow" the demarcation established for the continental shelf.

319. This solution conforms to the general practice, taken almost for granted, of applying existing continental shelf boundaries in respect of the new jurisdictional zones.

320. This practice was followed by Norway and Denmark in respect of their respective zones in the North Sea. The boundary line established by the 1965 Agreement has in fact been the line of demarcation in relation to all aspects of the exercise of fisheries jurisdiction in extended zones of the Parties. This has been effected without formality, by virtue of the application by each Party of the continental shelf boundary for those new needs which had to be taken care of when fisheries jurisdiction was extended. The access rights which are granted to foreign fishermen require a geographical definition: that is provided by the median line between Norway and Denmark, as demarcated by the 1965 Agreement. Similarly, enforcement activities by the inspection vessels of each Party are restricted by the median line. Whenever questions of resource management in the North Sea are discussed, between the Parties or in multilateral bodies, it is taken for granted that the continental shelf boundary marks the extent of jurisdictional areas, that is to say, the areas in which each State in the end determines the practicalities of fishing.

321. This practice represents a recognition of existing continental shelf boundaries as being applicable as well to the exercise of fisheries jurisdiction and to execution of management responsibilities. It is further a demonstration that the States which have contributed to this practice have regarded the use of existing

continental shelf boundaries for new purposes several years later as being the equitable and acceptable solution, under general international law.

322. In this way, the 1965 Agreement has been applied, as a matter of course, to a new situation arising more than ten years after that Agreement formally defined the median line, with administrative adjustments, for its original purpose. That is a manner of utilizing a treaty for a new purpose in a manner which is entirely loyal both to the underlying original purposes of the treaty, and to the rules and principles of international law which formed the basis for the substantive contents of that treaty.

B: THE CONDUCT OF THE PARTIES. RECOGNITION AND ACQUIESCENCE

INTRODUCTION. THE ROLE OF RECOGNITION AND ACQUIESCENCE

323. The role of recognition and acquiescence in general international law is well-recognized. These principles, together with the related concept of estoppel, are grounded in "the fundamental principles of good faith and equity" (see the Judgment of the Chamber in the *Gulf of Maine Case*, *I.C.J. Reports 1984*, p. 305, para. 130).

324. These principles, involving basic elements of consistency and good faith, are of major relevance in the present proceedings, and this not least because Denmark has seen fit to depart from the established pattern of bilateral relations and agreements by commencing litigation on the basis of a unilateral application.

325. Prior to the appearance of signs of wavering in the Danish attitude in the nineteen-eighties, the conjoint conduct of the Parties had long recognized the applicability of a median line delimitation in their mutual relations. This recognition took several distinct forms: specific treaty obligations, other forms of express recognition, and a general pattern of conduct constituting tacit recognition of, or acquiescence in, a median line delimitation. These different forms of recognition interact in such a way as to produce a reciprocal process of acceptance and confirmation, and the pattern of conduct overall involves a period of more than 20 years.

326. The conduct of the parties is also invoked in Chapter VII of this Part of the Counter-Memorial (pp. 154–161, paras. 528–560) as an aspect of the various relevant circumstances to be taken into account in confirming that the median line constitutes an equitable solution in the context of the principles of general international law relating to the delimitation of areas of continental shelf and fisheries zones.

CHAPTER III
THE CONSISTENT CONDUCT OF THE PARTIES

1. The Sequence of Consistent Conduct

327. The sequence of consistent conduct begins with the appearance of legislation concerning the continental shelf in Denmark and Norway in 1963. This legislation was complementary in language and in function. The adoption of the median line as the boundary for continental shelf delimitation is subsequently confirmed by the conclusion of the bilateral Agreement on 8 December 1965 (see paras. 280–292 above). The sequence is then maintained by Danish legislation concerning fisheries in 1976 which coincides with the Norwegian Act relating to the Economic Zone. By this further instance of coincident and complementary legislation, the two States adopted the median line as the boundary also for fishery purposes and, in doing so, provided further evidence of a consistent adherence to the median line by the two Governments in their relations *inter se*.

The Danish Royal Decree of 7 June 1963 Concerning the Continental Shelf

328. Denmark was among the early States to ratify the 1958 Continental Shelf Convention. After Parliamentary approval for the ratification of the Convention had been obtained, Denmark issued on 7 June 1963 a Royal Decree concerning the exercise of Danish sovereignty over the continental shelf (Annex 29).

329. The Decree proclaims that "Danish sovereignty[12] shall be exercised, in so far as the exploration and exploitation of natural resources are concerned, over *that portion of the continental shelf which, according to the Convention... belongs to the Kingdom of Denmark, cf. Article 2*" (Article 1, emphasis supplied). Article 2, paragraph 1, sets out the shelf definition of the Convention in identical terms. Article 2, paragraph 2 paraphrases and compresses the provisions of Article 6, paragraphs 1 and 2 of the Convention. The language of the Decree distinguishes between States, the coasts of which "are opposite coasts of *the Kingdom* of

[12] The translation reproduced at Annex 29 corresponds to the text contained in *UN Legislative Series* (doc. ST/LEG/SER.B/15) at p. 344. The Danish word employed, "højhedsret", may be held to have a meaning which is closer to "sovereign rights" than to "sovereignty".

Denmark" and those coasts which are "adjacent to Denmark", while providing in both instances that the boundary "shall be determined in accordance with Article 6 of the Convention, *that is to say, in the absence of special Agreement, the boundary is the median line, ...*" (Article 2, paragraph 2 of the Decree, emphasis supplied).

330. The Decree is explicit in addressing delimitation in relation to opposite and adjacent coasts on the same basis. The terminology makes it clear that this aspect has been studied in detail: only the continental part of the Kingdom, that is to say Denmark itself, has neighbouring States with adjacent coasts. There is an invocation of the Convention ("... in accordance with Article 6...."). The language of the Decree, however, omits any reference to special circumstances, and states without reservation that the boundary "*is*" the median line, choosing the more categorical alternative where the Convention distinguishes as between adjacent and opposite States. The inference must be that in the course of the Danish legislative process, the geographical situation of the Kingdom had been examined, and no special circumstances had been found which would call for delimitation on any other basis than the median line.

331. Article 3 of the Decree concerns the regulation of the exploration and exploitation of shelf resources. In respect of Greenland, a separate statutory instrument applies. It is thus made quite explicit that the Decree of 7 June 1963 relates to the whole of the Kingdom, including Greenland.

332. More detailed provisions governing continental shelf activities were set out in Act No. 259 of 9 June 1971 relating to the continental shelf (Annex 30). This legislation sets out in a more detailed manner the conditions for the granting of concessions, provides for jurisdiction with respect to installations and safety zones (including the application of law relating specifically to Greenland in respect of "the Greenland part of the continental shelf"), and enables competent ministers to issue detailed regulations. Such regulations have been issued for Greenland in respect of prospecting. The Act also contains provisions relating to the revocation of concessions, and penal clauses. This Act has subsequently been amended by enactments of 1972 and 1977 (see Annex 37).

333. The 1963 Decree thus remains the governing instrument defining the continental shelf of the Kingdom of Denmark. The language of Article 1 of the Decree, as read with the

provisions of Article 2, paragraph 2, appears to imply that, in the absence of special agreement, Denmark does not claim to exercise sovereign rights with respect to the continental shelf, nor to exercise the concomitant jurisdiction, beyond the median line in relation to any foreign State, unless the boundary thus established is modified subsequently by express agreement.

The Norwegian Royal Decree of 31 May 1963 relating to the Exploitation of and Exploration for Submarine Natural Resources

334. The Danish legislation was enacted more or less in parallel with similar legislation in Norway. The Norwegian Royal Decree of 31 May 1963 (Annex 21) proclaimed sovereign rights as regards exploitation and exploration of natural resources of the seabed and subsoil in the submarine areas outside the coast, as far as the depth of the superjacent waters admits of exploitation of natural resources, but not beyond the median line in relation to other States.

335. The Decree was followed by Act No. 12 of 21 June 1963 (Annex 22) relating to exploitation of and exploration for submarine natural resources, which restates the definition in the Decree in, and again specifies "but not beyond the median line in relation to other States". As in the case of the Danish instruments, the reference to the median line appears in a context in which international law is clearly being applied.

336. Thus the invocation of "*the* median line" is normative and definitive; and the legislation involves both the application of the pertinent legal rules and the establishment of a boundary. Moreover, in the constitutional and legislative practice of Norway the provisions would apply to all parts of the Kingdom of Norway (excluding thereby territories located in the southern hemisphere).

The Boundary Agreement between Norway and Denmark of 1965

337. A detailed analysis of the bilateral continental shelf boundary Agreement of 1965 (Annex 46) has been given in Chapter I of this Part. For present purposes it is invoked in order to underline the elements of consistency and continuity in the relations between Norway and Denmark. The Agreement must also be seen as an expression by the Parties of their view that the application of the median line also would follow under general international law, for delimitation of the continental shelf. The Agreement was expressly made applicable to both Kingdoms, i.e.,

in the practice of both Parties covering all territories: For Denmark the Faroe Islands and Greenland, for Norway Jan Mayen and Svalbard.

338. It is to be emphasized that the provisions of Article 1 of the Agreement appear in an instrument concluded subsequently to the legislation enacted by the two States respectively. Consequently, those provisions would necessarily be compatible with the delimitation already effected by the legislation, and, in fact, they conform precisely. A consequential and faithful demarcation of the boundary in the North Sea, applying the median line principle set out in Article 1, was effected in the separate provisions of Article 2.

339. Further practical demarcation in accordance with the 1965 Agreement was carried out by means of the technical agreement concerning a tripoint with Sweden: see the Exchange of Notes of 24 April 1968 (Annex 51).

The Fishing Territory of Denmark Act of 17 December 1976

340. The Fishing Territory of Denmark Act of 17 December 1976 (Annex 31) empowered the Prime Minister to extend "the fishing territory of the Kingdom of Denmark" to a breadth of 200 nautical miles. (Section 1(1)). Section 1 (2) provided as follows:

> "Failing any agreement to the contrary, the delimitation of the fishing territory relative to foreign States whose coasts are situated at a distance of less than 400 nautical miles opposite the coasts of the Kingdom of Denmark or adjacent to Denmark, shall be a line which at every point is equidistant from the nearest points on the baselines at the coasts of the two States (the median line)."

341 The Act was applicable to the Kingdom of Denmark in its entirety, that is specifically including Greenland.

342. The legislation was implemented in respect of the Faroes by Decree No. 598 of 21 December 1976 (Annex 32) and in respect of Greenland by Executive Order No. 629 of 22 December 1976 (Annex 34). Both these instruments implemented the delimitation provisions of the parent legislation. Thus the measure concerning Greenland recognized the median line as the boundary of the fishing territory in relation to Iceland (Art. 1(4)). However, the Order only applied to areas as far as 67° N on the east coast (Article 1(1)).

The Economic Zone of Norway Act of 17 December 1976

343. On the same day as the enactment of the Danish parent Act, Norway adopted Act No. 91 relating to the economic zone of Norway (Annex 24), of which Section 1 provided as follows:

> "An economic zone shall be established in the seas adjacent to the coast of the Kingdom of Norway. The King shall determine the date of the establishment of the economic zone and the waters to which it shall apply.
>
> The outer limit of the economic zone shall be drawn at a distance of 200 nautical miles (1 nautical mile = 1,852 metres) from the baselines applicable at any given time, but not beyond the median line in relation to other States.
>
> The establishment of the economic zone shall not entail changes in the provisions regarding the territorial sea of Norway."

344. This legislation applied to "the Kingdom of Norway", a phrase which is always employed to cover all Norwegian territories forming part of the Kingdom, including Jan Mayen. Moreover, Section 1 is specific in its application of the median line as a definitive boundary, and indeed, as part of the definition of the Zone.

The Positions of the Parties During Negotiations at UNCLOS III

345. The attitudes demonstrated by Denmark and Norway in the course of the Third United Nations Conference on the Law of the Sea show the firm and consistent adherence of both Governments to the median line. They supported it as a rule of existing international law, and it was their preferred choice for incorporation as a substantive provision in the new Convention, as the law to be applied when that instrument would enter into force. In particular, the positions taken in the context of "Negotiating Group 7," established during the Seventh Session of the Conference in 1978, are of interest. It may be recalled that the brief of Negotiating Group 7 was the "Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon" (A/Conf. 62/62, 13 April 1978, page 3).

346. During the work of Negotiating Group 7, both Norway and Denmark expressed their continued adherence to the principle of the median line at several junctures. The recorded

expression of this view is document NG7/2, dated 20 April 1978, and entitled: "Informal Suggestions Relating to Paragraphs 1, 2 and 3 of Articles 74 and 83, ICNT" (see Annex 2).

347. In this document Denmark joined with Norway and eighteen other States in proposing the adoption of the following text:

> "1. The delimitation of the Exclusive Economic Zone/ Continental Shelf between adjacent or opposite States shall be effected by agreement employing, as a general principle, the median or equidistance line, taking into account any special circumstances where this is justified.
> 2. If no agreement can be reached, within a period of ..... from the time when one of the interested parties asks for the opening of negotiations on delimitation, the States concerned shall resort to the procedures provided for in part ... (settlement of disputes) or any other third party procedure entailing a binding decision which is applicable to them.
> 3. Pending agreement or settlement in conformity with Paragraphs 1 and 2, the parties in the dispute shall refrain from exercising jurisdiction beyond the median or equidistance line unless they agree on alternative interim measures of mutual restraint."

348. The text of this proposal speaks for itself to a considerable extent. However, the Government of Norway would respectfully emphasize two aspects of this formulation which are of particular relevance. First, the formulations are a faithful reflection, so far as Denmark and Norway are concerned, of the previous commitments on the issue of delimitation. Secondly, the proposal underlines the legislative and executive practice of both Parties of treating the median line as a boundary in place representing a legal status quo.

349. Shortly after the tabling of the proposal, the Danish delegation made a statement (on 29 April 1978) in Negotiating Group 7 (Annex 3) which (so far as material) was as follows:

> "As to the legal concept of delimitation it will at this stage of our debate be well known that my delegation cannot support the present wording of Articles 74 and 83[13] where the

[13]) The speaker refers to the following texts: "Article 74/83: 1. The delimitation of the exclusive economic zone/continental shelf between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where

delimitation is based on the criterion of equity.
We have great doubts as to the wisdom of a wording of the delimitation articles which not only deviate substantially from the 1958 Convention but also from the basis of a very great number of bilateral agreements negotiated during the last decades.
This is not to say that the delimitation of the EEZ or the continental shelf should not be equitable – of course it should. But in the view of my delegation the principle of median line taking due account of special circumstances would lead to equitable solutions. In other words, the principle of equity is the result which should be reached, but it cannot be the principle criterion for reaching agreement on delimitation of marine boundaries, because it does not in itself contain any objective guidance for a solution of these problems.
In an intermediate period where no final agreement between the involved countries has been reached, it would of course not, as it is now stipulated in the ICNT, be satisfactory to refer these countries to establish a provisional arrangement on the basis of the delimitation provision in paragraph 1, on which there in the existing situation obviously is no agreement.
In this often very difficult period it will in order to avoid a very complicated situation be necessary for all parties involved to exercise restraint, and the legal concept governing the situation should be as clear as possible. That is why my delegation together with several other countries cosponsored a proposal which stipulates that pending a final agreement the parties should refrain from establishing jurisdiction beyond the median line. Such a rule, would be in conformity with present international law."

350. In another statement in Negotiating Group 7, delivered on 8 September 1978 (Annex 4), the Danish delegation emphasized the quality of the median line as "an objective criterion" and stressed that it had "been used in a great number of bilateral agreements during the last decade".

351. The full text of the statement is as follows:

"As our discussions in this negotiating group have clearly indicated, there exists a close connection between the basic substantive norms for delimitation, interim measures and

appropriate, the median or equidistance line, and taking account of all the relevant circumstances." (Taken from the Informal Composite Negotiating Text, Document A/CONF.62/WP.10 of 15 July 1977).

dispute settlements. Without diminishing the importance of this link, I would, however, like to stress that my delegation attaches the greatest importance to the formulation of a clear and objective guideline for states in their search for an agreement on delimitation questions.

Such an objective criterion is contained in the median-line principle as it has found expression in the Geneva Convention and has been used in a great number of bilateral agreements during the last decade. We also find this objective criterion in the compromise formula contained in document NG7/2.

It has, of course, been said before but I think it is important to reiterate that in our view the median-line principle, taking due account of special circumstances, would lead to equitable results. The fact that delimitation negotiations should lead to an equitable solution could be one of the elements in a compromise formula, as you yourself, Mr. Chairman, have mentioned in your informal suggestions contained in document NG7/9.

To substitute the substantive principle of median-line delimitation with a principle of equity as the criterion for delimitation would in the view of my delegation lead to uncertainty because the concept of equity does not in itself contain any objective guideline for the solution of the problems.

It will from what I have said be clear that my delegation maintains the view that the present formula of the ICNT Articles 74/83 is not acceptable. It will furthermore be clear that as my delegation is of the opinion that the provisions should give objective guidelines for states involved in delimitation questions, we could not either foresee a solution on the basis of a curtailed provision limiting the delimitation rule only to the concept of agreement between states."

352. The commitment of the Government of Denmark to these Statements is confirmed by their inclusion in the official reports on Danish participation in UNCLOS III. The significance of such careful expressions of position by the Danish delegation is considerable. The median line is affirmed as the principle applicable both in relation to the continental shelf and in relation to the resources of the water column. In recognizing the relevance of the median line in both these contexts, Denmark was, of course, following a principle consistent with its own legislation.

353. Both the delegations of Denmark and Norway maintained their sponsorship of the proposal in document NG7/2, as this document was reissued with additional sponsors on 25 and 28 March 1980.

Danish-Norwegian Delimitation Agreement concerning the Faroes

354. The significance of this Agreement signed on 15 June 1979 (Annex 69) has been explained in paragraphs 285–289 above. However, the conclusion of the Agreement, with its recognition of a median line boundary (Article 1), is relevant for present purposes. First, it provides a further case of the recognition of an unmodified median line in the relations *inter se* of Denmark and Norway. Secondly, the context includes both the delimitation of continental shelf areas (Articles 1 to 3) and the delimitation of the boundary affecting fisheries (Article 4).

The Danish Executive Order of 14 May 1980

355. Of particular relevance is the next item in the chronological sequence of legislation. On 14 May 1980 Denmark produced an Executive Order (No. 176) on the Fishing Territory in the Waters surrounding Greenland (Annex 38). It declared the extension of the fisheries zone to 200 nautical miles from the base lines, to areas not covered by the Order (No. 629) of 22 December 1976. This new measure was issued with reference to Act No. 597 of 17 December 1976.

356. Section 1, paragraph 1 of the Executive Order provides a definition of the fisheries zone north of 75° N on the west coast and 67° N on the east coast, in terms corresponding to the definition of the outer limit of the zone, as set out in the Act and in the Order of 22 December 1976, establishing the zone for the south coast of Greenland. Paragraphs 2, 3 and 4 specify the delimitation of the zone in relation to Canada, Iceland and Svalbard, in terms of an agreed continental shelf boundary (for Canada), or the median line for Canada (north of the agreed boundary), Iceland and Svalbard. In relation to Jan Mayen, Section 1, paragraph 4 states:

> "Where the island of Jan Mayen lies opposite Greenland at a distance of less than 400 nautical miles, jurisdiction of fisheries shall not, until further notice, be exercised beyond

the line which everywhere is equidistant from the nearest points of the baselines of the coasts concerned (median line)."

357. The language of Section 1, paragraph 1, when read with the proviso in paragraph 4 referring to Jan Mayen, seeks to establish an outer limit for the Greenland fisheries zone along the coast facing Jan Mayen at a distance of 200 nautical miles from the baselines.

358. It is recalled that Section 1, paragraph 2 of Act No. 597 states:

> "(2) Failing any agreement to the contrary[14], the delimitation of the fishing territory relative to foreign States whose coasts are situated at a distance of less than 400 nautical miles opposite the coasts of the Kingdom of Denmark or adjacent to Denmark, shall be a line which at every point is equidistant from the nearest points on the baseline at the coasts of the two States (the median line)." (Annex 31)

359. It will be seen that the pretensions of Order No. 176 not only disregard the clear provisions of the enabling Act on the delimitation of fisheries zones, but also seek to establish the zone beyond the scope of the authority granted under the Act.

360. At the same time, it was stated that "jurisdiction of fisheries shall not, until further notice, be exercised beyond the line which everywhere is equidistant ... (median line)". In the present context it is of interest to note that even as an attempt was made to extend the Greenland zone beyond the definition of the "Fishing Territory of the Kingdom of Denmark", the Order recognized that it would be inappropriate to carry this attempt to the point of implementation. The expression of restraint is general, and covers all coastal State competences subsumed under the establishment of a fisheries zone ("jurisdiction of fisheries ... shall not ... be exercised"), and is not restricted to any single competence, such as enforcement. Implementation of zonal jurisdiction and authority beyond the median line in relation to Jan Mayen (or to any other territory of a foreign State) would be in contravention of those rules of general international law which both Denmark and Norway had espoused, and the legally established status quo. By limiting the exercise of jurisdiction, even

[14]) Or rather: "...in the absence of special agreement...", see text accompanying footnote 6 above (p. 63).

while expressing an ambition to extend it also in practice at some future time, the provision, retaining the median line as the *de facto* boundary for the fisheries zone, maintains legal continuity and regularity, and observes the established tradition in the Danish-Norwegian relationship.

The Norwegian Royal Decree of 23 May 1980

361. By a Royal Decree of 23 May 1980 (Annex 27) Norway established a fishery zone in the sea areas around Jan Mayen with effect from 29 May 1980 (Section 1). In relation to Greenland it was confirmed that the zone would be delimited by the median line (Section 2). The precise demarcation of the boundary was left to agreement (Section 3).

Diplomatic Exchanges in the Period 1979-1980

362. The Danish Memorial refers to certain diplomatic contacts and exchanges in the period from July 1979 until June 1980. In the opinion of the Norwegian Government the somewhat tentative expression of misgivings on the part of the Danish Government in its letter dated 3 July 1979 (Annex 5) could not involve any denial of the long-standing pattern of mutual recognition of the median line boundary. The response of the Norwegian Foreign Minister, Mr. Frydenlund, on 4 July 1979 (Annex 6) was to give an assurance that Danish interests would not be prejudiced by the negotiations between Norway and Iceland.

363. In face of this exchange in 1979 the Norwegian Government is moved to observe that it is more than a little ironical that, having reserved its position as regards the Icelandic negotiations, the Government of Denmark should, in effect, seek to rely upon the result of those negotiations.

364. The Danish Memorial (p. 15, para. 47) refers also to the minutes of the Danish Foreign Minister's talks with the Norwegian Foreign Minister in Reykjavik on 30 August 1979 (Annex 8). (The minutes were not agreed minutes but Norway does not seek to challenge their accuracy.) For present purposes the key point is that the Norwegian Foreign Minister is reported in terms which provide ample confirmation of the Norwegian position. The minutes read:

> "Mr. Frydenlund said that the experts in the Legal Affairs Division of the Norwegian Foreign Ministry did not think

that the negotiations between Norway and Iceland would give rise to any delimitation problems in relation to Greenland since it was assumed that in the case of Greenland the median line principle would be applied."

365. When, according to the Danish minutes, the Danish Foreign Minister "emphatically" went on to explain the Danish position in terms dramatically different from what had previously been a clear and consistent policy, the Norwegian Minister's spontaneous response must have been very clear: "apparently this viewpoint took the Norwegian Foreign Minister by surprise".

366. In any event the Norwegian position on the legal validity of a median line boundary in respect of *all* continental shelf areas and all fishing zones involving delimitation with neighbouring States and in respect of all parts of the Norwegian realm was fully maintained. Thus in response to the Danish Executive Order of 14 May 1980 (Annex 38), the Norwegian Government stated its position in the following Note dated 4 June 1980, which reads in translation (see Annex 10):

"The Royal Norwegian Embassy, acting upon instructions from its Government and referring to Executive Order of 14 May 1980 on a fishing zone in Greenland waters effective from 1 June 1980, has the honour to submit the Norwegian Government's observations as follows:

The Norwegian Government reserves its position with regard to the extension of the fishing zone to 200 nautical miles also in the area between Greenland and Jan Mayen in spite of the fact that the distance between the two coasts in that area is less than 400 nautical miles. In the opinion of Norway the general principles of international law imply that a State cannot extend its fishing zone beyond the median line in relation to a foreign State except upon agreement with that State.

The Norwegian Government notes, however, that Denmark, for the time being, will not exercise jurisdiction over fisheries beyond the median line between Greenland and Jan Mayen. As will be known, Norway has, effective from 29 May 1980, established a fishing zone of 200 nautical miles off Jan Mayen but not beyond the median line in relation to Greenland. The regulations to be laid down with regard to the fishing zone will, however, be enforced within the entire zone.

The Norwegian Government hopes that the governments of the two countries will be able as soon as possible to reach agreement by negotiation on the final dividing line between their zones in the area."

367. In response to this statement of the Norwegian position, Denmark produced a Note Verbale dated 9 June 1980 (Annex 12). The terms of the Note call for three observations. In the first place this appears to be the first time the Danish Government was disposed formally to state a departure from the median line principle. Secondly, the Danish Note makes no mention of a "200-mile outer limit" principle of delimitation in the areas between Greenland and Jan Mayen. Thirdly, it is argued that, in the Danish view, "Jan Mayen, in terms of international law, falls within the concept of 'special circumstances' ", however, no geographical feature can be a special circumstance unto itself.

Ministerial Statements in the Norwegian Parliament on 6 June 1980

368. On 6 June 1980 the Norwegian Parliament debated the Recommendation from the Enlarged Standing Committee on Foreign Affairs and the Constitution relating to consent to entry into an agreement between Norway and Iceland concerning fisheries and continental shelf questions (the debate, in English translation, is reproduced in Annex 11). (In Annex 9, Recommendation No. 318 (1979–80) from the Enlarged Committee on Foreign Affairs on the 1980 Agreement with Iceland is reproduced. Further, Recommendation No. 194 (1981-82) from the same Committee on the 1981 Agreement with Iceland and the Records of the parliamentary debate thereon are included in Annexes 14 and 15.)

369. In the course of this debate the responsible Minister affirmed that the Norwegian position was that the extraordinary considerations which motivated the making of substantial concessions to Iceland in the matter of delimitation had no application to any other States in relation to which questions of delimitation might arise. Thus the Foreign Minister, Mr. Frydenlund, affirmed the validity of the median line boundary between Greenland and Jan Mayen (see Annex 11, p. 51).

370. In concluding his speech the Foreign Minister summarized the position in terms which leave no room for commentary:

"Much of the criticism of the agreement with Iceland stems from the fear that it may have unfortunate effects, not least on the delimitation of the zone off Greenland, but also on delimitation in the Barents Sea. In this connection I would refer to the Committee's Recommendation, which emphasizes that the special reasons for departing from the median line when determining the delimitation between the Norwegian and Icelandic zones do not exist in certain other cases. That is also the Government's view. The relations with Iceland in this context are a circumstance which does not arise in connection with the delimitation with Greenland or in the Barents Sea, as has been heavily underlined by the Chairman of the Committee and other speakers in this debate, and as the Government also believes."

The Formal Negotiations, 1980–1983

371. Formal negotiations between Denmark and Norway on the delimitation of maritime areas between Jan Mayen and Greenland took place in December 1980, May 1981, December 1981, and January 1983. An account of these negotiations is set forth in Part I of the present pleading. For present purposes, only certain ramifications of these talks need to be reviewed.

372. The ramifications are two-fold. First, the Norwegian delegation maintained its position on the issues of legal principle involved, and underlined the obligation to respect the median line boundary which resulted from the relations of the parties *inter se* over a long period. Secondly, the Danish Government, whilst claiming that the 1958 Convention remained the point of departure, for the first time began to assert that Denmark should receive, as a matter of legal entitlement, what Norway had granted to Iceland as a political concession unrelated to legal principle.

2. Practice Concerning Delimitation of Fisheries Zones

373. The 1965 bilateral Agreement deals specifically with delimitation of the continental shelf. The 1958 Convention on the Continental Shelf does not, in its wording, purport to address the issue of the delimitation of other maritime areas falling under the jurisdiction of coastal States. These instruments – and in any case the legal principles to which they give expression – may nevertheless have a bearing on the issue of delimitation, as between the present Parties, of other zones of jurisdiction.

374. The establishment of extended zones of coastal State maritime resource jurisdiction in the waters of the North Atlantic and its abutting seas took place at a time when the principle of the Exclusive Economic Zone had been accepted at UNCLOS III.

375. The establishment of these zones occurred, not pursuant to a set of agreed rules, but as acts of State practice, inspired by and taking due account of the results achieved in the informal Conference negotiations, and given some documentary record in the evolving texts used as a negotiating tool at the Conference. This process of creating new customary law was thus in some respects supported by texts which were published and familiar to the international community.

376. At this stage, the issues relating to delimitation of the continental shelf and the Exclusive Economic Zone were still under discussion. There was a broad measure of agreement on certain aspects. It was common ground that agreement between the Parties would always be the primary factor in establishing boundaries. Equally, it was taken as a given that the conclusion of the new Convention on the Law of the Sea should not disturb or otherwise affect existing maritime boundaries. There was likewise consensus that provisions relating to the norms of delimitation should be drafted in corresponding terms in respect of the continental shelf and of the Exclusive Economic Zone. Disagreement subsisted only with regard to which rules or principles were to apply to *future* negotiations on delimitation, or to the establishment of boundaries by other means than negotiation, and with regard to the peaceful settlement of disputes in regard to delimitation. On this outstanding issue, looking to future resolution of unfinished or "new" delimitation situations, there was a division within the Conference, and some degree of controversy (in which Norway and Denmark held identical positions).

377. As coastal States proceeded in this general area to establish exclusive economic zones or corresponding extended zones of fisheries jurisdiction, the need arose to make provision for the delimitation of these zones as against adjacent States as well as against opposite States whose coasts were less than 400 nautical miles away. In most cases, they based their national policy with regard to the delimitation of the new zones on the established pattern of their continental shelf delimitation practice. States took advantage of the fact that the continental shelf boundary represented a boundary in place. These boundaries already determined the extent and area of application of public and private rights in one broad area of national importance.

Although that element of the Exclusive Economic Zone which deals specifically with the exploitation of marine living resources has characteristics and ramifications which are distinct from those which are specifically related to the continental shelf, it was nevertheless felt that the overall benefits of applying a boundary in place to new zones of jurisdiction were decisive (and in keeping with the understanding at the Conference that the substantive norms for the delimitation of the new zone should correspond to the norms for the continental shelf). In many instances, the decision to apply existing continental shelf boundaries was made clear in national legislation.

378. That is the case for both Denmark and Norway. The legislative instruments which for both Parties provide the basis for the extension of governmental authority in a maritime belt beyond the old 12 mile fisheries zones make it abundantly clear that this authority would follow the pattern established for the continental shelf, and not extend beyond the median line (see Section 1, second paragraph of the Norwegian Act of 17 December 1976 at Annex 24, and Section 1, paragraph 2 of the Danish Act of the same date at Annex 31). Danish practice took this approach to delimitation one step further, in that the various instruments establishing the extended fisheries zone in different locations would specify the limit as against the (actual or potential) zones of jurisdiction of other States in terms corresponding to those continental shelf boundaries which had already been agreed. Only where such boundaries had not been agreed was a reference made to the enabling Act and its median line norm of delimitation, without specific coordinates.

379. Norway, on its part, did not make the same specific statement on the delimitation of each particular segment of its economic or fisheries zones. Existing agreed continental shelf boundaries in respect of the economic zone were simply applied.

380. This practice coincided with the attitude of most other coastal States in the region. The Norwegian Government is not informed of any instance in which a coastal State in this region has sought to apply its fisheries (or corresponding) jurisdiction beyond the agreed boundaries established for the continental shelf. Indeed, it is believed that this has not been the case in any other region, except where this may be specifically agreed, either in the context of supplementing, or modifying, the previously obtaining continental shelf delimitation arrangements, or by negotiating a new agreement, superseding older instruments.

381. To that extent, the existing treaty norms which establish legal obligations for the Parties with respect to the delimitation of the continental shelf will also have relevance for the delimitation of maritime resource jurisdiction zones regardless of the description or qualification.

3. Conclusions on the Evidence

382. The legal consequences of this evidential sequence will be presented in Chapter IV. The essence of the matter is that from 1958 until at least 1981 the two Governments of Denmark and Norway pursued a consistent policy on delimitation in their relations *inter se*. This policy was based on explicit considerations of legal principle and on treaty obligations, and related first to continental shelf areas and, subsequently, to fishery zones.

383. This policy was manifested in a long series of legal transactions and appears as a joint position of Denmark and Norway at UNCLOS III, *inter alia* in the proceedings of Negotiating Group 7. It is Denmark which eventually sought to disrupt the well-established pattern of bilateral legal relations based on the principle of a median line boundary.

384. The change of attitude was such as to surprise Denmark's partner and to do so in two ways. First, the change was unexpected and, secondly, the basis of the change was a bizarre notion approximating to a claim to "most favoured nation" treatment in the context of delimitation. The result was for Denmark to invoke the "principle" that the "200 mile outer limit" was a principle of delimitation.

CHAPTER IV
THE LEGAL EFFECTS OF THE CONDUCT OF THE PARTIES

1. The Overall Picture

385. The evidence reviewed in the previous chapter forms a coherent body of transactions and confirmatory material, and also constitutes a readily understood progression of understandings. Consequently, to a great extent the evidence may be seen to produce a series of legal effects which are both cumulative and may also operate in the alternative.

386. A pervasive quality of the evidence is that the documents are in every case concerned directly with the legal question of delimitation as such. Thus the legislation is expressly related to the impact of delimitation on third States. The relevant instances of treaty-making and reciprocal legislation all take place at the highest levels of government and legal policy-making. This is no less true of the highly significant statements presented to Negotiating Group 7 on behalf of Denmark.

387. The adherence to the median line as a boundary on the part of the Danish Government went far beyond its recognition as a principle of international law. The Danish position was that the median line represented an actual boundary in place and thus constituted a status quo in relation to the exercise of jurisdiction.

388. This aspect of the median line as perceived by Denmark and Norway is stressed in the proposal placed before Negotiating Group 7 on 20 April 1978 (above, p. 100, para. 347). Paragraph 3 of the draft provision (on delimitation of the exclusive economic zone and continental shelf) states that "pending agreement or settlement in conformity with Paragraphs 1 and 2, the parties in the dispute shall refrain from exercising jurisdiction beyond the median or equidistance line unless they agree on alternative interim measures of mutual restraint". This approach is completely consistent with the provisions of the Danish Royal Decree of 1963.

389. The evidence available produces the following cumulative or alternative legal effects:

(a) The Danish Government has by its various public acts

expressly recognized and adopted a median line boundary in its relations with Norway both in the context of continental shelf delimitation and in the context of fisheries zone delimitation.

(b) The general pattern of conduct on the part of the Danish Government constitutes acquiescence in, or tacit recognition of, a median line boundary in its relations with Norway.

(c) The consistent pattern of Danish conduct, together with knowledge of the long-standing position of the Norwegian Government in the matter of maritime delimitation, prevents Denmark from challenging the existence and validity of the median line boundary between Greenland and Jan Mayen, which boundary is consequently opposable to Denmark.

(d) The consistent pattern of Danish conduct, together with knowledge of the long-standing position of the Norwegian Government in the matter of maritime delimitation, prevents Denmark from asserting the existence and validity of a delimitation in the form of the outer limit of a 200-mile fishery zone and continental shelf area vis-à-vis the island of Jan Mayen: in other words, the claim presented in the Danish Memorial is not opposable to Norway.

2. Express Recognition and Adoption of the Median Line Boundary

390. The conduct of the Danish Government includes several separate episodes each involving express recognition and acceptance of a median line boundary applicable in the relations of the parties. The Danish Royal Decree of 7 June 1963, the terms of which have been set out above in paragraph 189, constitutes an express declaration of the legal position of Denmark with respect to continental shelf delimitation. The preamble and the provisions of Articles 1 and 2 of the Decree make direct reference to the Convention on the Continental Shelf of 1958 and the Decree (Article 2, paragraph 2) expressly incorporates the provisions of Article 6 of the Convention.

391. This express acceptance of the median line boundary was confirmed by the provisions of Article 1 of the boundary agreement concluded between Norway and Denmark on 8 December 1965 (Annex 46). These provisions have a marked declaratory effect (see paras. 282-283 above) and against the background of the Danish legislation constitute a general recognition of the median line in the context of continental shelf delimitation.

392. The third episode of express recognition and acceptance of the median line boundary consists of the Fishing Territory of the Kingdom of Denmark Act of 17 December 1976 (Annex 31). As with the previous episodes, the enactment is directly related to matters of international law and to delimitation with other States. Thus Section 1(2) is consciously declaratory and dispositive in form (see paras. 237-238). The Act of 1976 constitutes express adoption of a median line boundary for the purposes of delimitation of fishing zones.

393. The obligatory character of such express declarations can be rested either on the principle of good faith or on the principle of consent in general international law.

394. The sources of international law are replete with references to the role of acts of recognition of the validity of a legal status quo, and such references occur particularly in the context of the recognition of boundaries. Indeed, in the literature it is acknowledged that acts of recognition may constitute roots of title: see, for example, Whiteman, *Digest of International Law*, Vol. 2 (Department of State Publication 7553, released December 1963), pp. 1082-4; Fitzmaurice, *British Year Book of International Law*, Vol. 32 (1955-56), pp. 58-62; Suy, *Les Actes Juridiques Unilatéraux en Droit International Public*, Paris, 1962, pp. 189-214; Rousseau, *Droit International Public*, I, Paris 1970, p. 426 (paragraph 344).

395. Recognition may take the form of express declarations on the part of a State: see the Judgment of the Court in the *Arbitral Award Case, I.C.J. Reports, 1960*, p. 192 at p. 213 (see below, para. 399). Or it may take the form of a pattern of international acts (see the Advisory Opinion of the Court concerning the *Western Sahara, I.C.J. Reports, 1975*, p. 12 at pp. 49-56, for acceptance of the principle).

396. In this context the Court has recognized the significance of legislation concerning the establishment of territorial rights or some form of delimitation. Thus in the *Fisheries Case,* the Court acknowledged the importance of Norwegian delimitation Decrees in generating rights and in creating a status quo opposable to other States in the absence of protest: see the Judgment, *I.C.J. Reports, 1951*, pp. 138-9.

397. Similarly, in the *Minquiers and Ecrehos Case* the Court gave importance to British legislation in respect of the Ecrehos:

"This legislative Act was a clear manifestation of British sovereignty over the Ecrehos at a time when a dispute as to such sovereignty had not yet arisen." (*I.C.J. Reports, 1953*, p.66.)

398. By the same logic a State which is confronted by the legislation of another State concerning delimitation can treat such legislation as recognition of a legal status quo which can be appropriately invoked to protect its legal rights.

3. Tacit Recognition of the Median Line Boundary Resulting from Danish Conduct

399. The Court has also applied the principle of recognition by conduct in relation to problems of boundary delimitation. Thus in the Judgment in the *Arbitral Award Case* the Court stated:

"In the judgment of the Court, Nicaragua, by express declaration and by conduct, recognised the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award." (*ibid.*)

400. In the *Temple Case* one of the distinct elements in the reasoning of the Court was the subsequent conduct of the Parties in relation to the line indicated on the Annex I Map. This conduct constituted a joint or coincident recognition of the alignment. As the Court stated the matter: "Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line" (*I.C.J. Reports 1962*, p. 6 at pp. 32-33).

401. Similar results will flow from the use of the concept of acquiescence, which the Chamber in the *Gulf of Maine Case* described as "equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent..." (*I.C.J. Reports 1984*, p. 246 at p. 305, para. 130).

402. In the respectful submission of the Government of Norway, the consistent pattern of Danish conduct, the evidence of which is set forth in the foregoing Chapter, constitutes a tacit recognition of, or acquiescence in, the median line boundary between Greenland and Jan Mayen, first in respect of continental shelf rights and, subsequently, in respect of fisheries.

4. In the Circumstances the Median Line Is Opposable to Denmark

403. Distinct from the categories of express recognition and acquiescence, there is the discrete issue of opposability. The literature of the law has not provided much intellectual elaboration of this concept but it has nevertheless found favour with tribunals. The idea behind opposability is that of good faith. The operation of opposability depends upon the existence of a status quo known to the claimant which the claimant appears to accept by avoiding protest or other inconsistent conduct.

404. The essence of the matter is a level of tacit or apparent recognition by conduct which leads to the status quo thus recognized becoming opposable to the claimant or proponent State. The principle was applied by the Court in the *Anglo-Norwegian Fisheries Case* thus:

> "The United Kingdom Government has argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis of an historical title enforceable against it. The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, *the United Kingdom could not have been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government*. Nor, knowing of it, could it have been under any misapprehensions as to the significance of its terms, which clearly described it as constituting the application of a system. The same observation applies *a fortiori* to the Decree of 1889 relating to the delimitation of Romsdal and Nordmøre which must have appeared to the United Kingdom as a reiterated manifestation of the Norwegian practice.
>
> .....
>
> The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.
>
> The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's

enforcement of her system against the United Kingdom." (*I.C.J. Reports 1951*, pp. 138-9; emphasis supplied).

405. Essentially similar elements appear in the Judgments in the *Arbitral Award Case*, and in the *Temple Case* (Merits). In the *Arbitral Award Case* the Court stated emphatically that "it is no longer open to Nicaragua to go back upon that recognition" (para. 399 above), and in the *Temple Case* the Court observed that "it is not now open to Thailand... to deny that she was ever a consenting party to [the settlement]." (*I.C.J. Reports 1962*, p. 32).

406. The evidence of this type of relation is particularly strong in the present case. No doubt the time sequence is shorter than in the earlier cases but this is more than compensated for by the diplomatic and geographical intimacy which characterized the relations of the two States. Of particular relevance are the background of specific treaty relations and the existence of parallel legislation on delimitation, legislation which was declaratory in terms and which has remained in force during the material period.

407. In the period between 1963 and 1979 Denmark never indicated any departure from its stable attitude in relation to the legal basis for delimitation of its continental shelf, nor did it at any time challenge the clearly stated Norwegian position, which was known to apply to the entire Kingdom, including Jan Mayen.

408. The evidence available – from a Danish source – establishes the precise elements of inconsistency and surprise caused by the sudden change in the Danish attitude. According to the Danish source the Norwegian Foreign Minister (in August 1979) was assuming "that in the case of Greenland the median line principle would be applied" (paras. 364-5). When this viewpoint was questioned, the Danish minutes record that "apparently this viewpoint took the Norwegian Foreign Minister by surprise." (*ibid.*).

409. Consequently, it is the Government of Denmark which sought to challenge the legal status quo and to do so at a juncture when it was no longer open to that Government to go back upon the long-existing recognition of a median line boundary in its relations with Norway.

5. In the Circumstances the Danish Claim to a "200-Mile Outer Limit" Boundary Between Greenland and Jan Mayen Is Not Opposable to Norway

410. The reasoning which applies to the first proposition relating to opposability set out in No. 4 above is equally applicable to this proposition. A claim, or any other claim going beyond the median line, which disregards the fundamental issue in a legal approach to delimitation of overlapping areas of jurisdiction, can be given credence in any set of political or geographical circumstances. But in any event, the claim that delimitation should be effected by the line representing the maximum limit of Denmark's entitlement to exercise jurisdiction cannot be opposable to Norway, in view of Denmark's previous conduct and the relationships established between the Parties.

6. Estoppel

411. The evidence reviewed above in the context of opposability also provides a firm basis for the application of the principle of estoppel. In particular, up to 1979, the Norwegian Government had every reason to believe, on the foundation of the pattern of Danish legislation, international practice and recorded attitudes, that relations with Denmark in the context of maritime delimitation were stable. Denmark was consistent in applying the median line both in relation to the continental shelf and in relation to other maritime zones of jurisdiction. Norway had at no time before 1979 the occasion to suppose that Denmark would not maintain its long-established legal views, and was fully justified in continuing to rely on the stability of Denmark's legal position.

C: GENERAL INTERNATIONAL LAW

CHAPTER V
INTRODUCTION: THE APPLICABLE PRINCIPLES

1. The Purpose

412. There is no intention of recapitulating the general statements of the ensemble of principles governing maritime delimitation in contemporary international law. The purpose of the present chapter is to focus upon certain aspects of the relevant principles which are inadequately portrayed in the Danish pleading or which are altogether neglected in that pleading.

413. The general issue of the significance of islands in maritime delimitation will be the subject of Chapter VI of this Part.

2. The Importance of Title

414. In the sources of the law it is stated again and again that the equitable criteria governing delimitation are primarily derived from the geography of coasts. Moreover, the possession of coasts is the basis of entitlement to appurtenant areas of seabed. This may be stated in the context of entitlement to areas of continental shelf, as in the Judgment of the Court in the *Tunisia-Libya Continental Shelf Case:*

> "73. It should first be recalled that exclusive rights over submarine areas belong to the coastal State. The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title. As the Court explained in the *North Sea Continental Shelf* cases the continental shelf is a legal concept in which the principle is applied that the land dominates the sea (*I.C.J. Reports 1969*, p. 51, para. 96). In the *Aegean Sea Continental Shelf Case* the Court emphasized that
> 'it is solely by virtue of the coastal State's sovereignty over the land that rights of exploration and exploitation in the continental shelf can attach to it, ipso jure, under international law. In short, continental shelf rights are legally both

an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State.' (*I.C.J. Reports 1978*, p. 36, para. 86).

As has been explained in connection with the concept of natural prolongation, the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it. Adjacency of the sea-bed to the territory of the coastal State has been the paramount criterion for determining the legal status of the submerged areas, as distinct from their delimitation, without regard to the various elements which have become significant for the extension of these areas in the process of the legal evolution of the rules of international law." (*I.C.J. Reports 1982*, p. 61).

415. The same proposition may be stated in the context of a Judgment which applies the 200 mile distance principle with the consequent exclusion of reference to geophysical features when the distance between the coasts of the Parties is less than 400 nautical miles: *Libya-Malta Continental Shelf Case*, *I.C.J. Reports 1985*, p. 35, para. 39. Or it may be stated in context where the parties have requested the delimitation of a single maritime boundary: Award of the Court of Arbitration, *Guinea-Guinea (Bissau) Maritime Delimitation Case, International Law Reports* (Ed. E. Lauterpacht), Vol. 77, pp. 676-7, paras. 91-98.

416. This reference to coastal geography as a starting point should not be taken to be a statement of the obvious. Together with the injunction that equity does not involve a "total refashioning of geography", the implication is that the process of delimitation should not involve a substantial departure from the political results of the possession of sovereignty in respect of the land territory. To do otherwise would be to place rights of sovereignty in respect of the land territory itself in question.

417. In this connection it is useful to recall some of the more fundamental elements of the Judgment in the *North Sea Continental Shelf Cases*. In the first place the Court rejected the German argument in favour of a system of apportionment (of the just and equitable share). The principal reasons which the Court gave for rejecting this thesis were as follows:

"More important is the fact that the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite

independent of it, - namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed..." (*I.C.J. Reports 1969*, p. 22, para. 19).

418. In the following paragraph the Judgment then draws the conclusion:

"It follows that even in such a situation as that of the North Sea, the notion of apportioning an as yet undelimited area, considered as a whole (which underlies the doctrine of the just and equitable share), is quite foreign to, and inconsistent with, the basic concept of continental shelf entitlement, according to which the process of delimitation is essentially one of drawing a boundary line between areas which already appertain to one or other of the States affected. The delimitation itself must indeed be equitably effected, but it cannot have as its object the awarding of an equitable share, or indeed of a share, as such, at all, – for the fundamental concept involved does not admit of there being anything undivided to share out. Evidently any dispute about boundaries must involve that there is a disputed marginal or fringe area, to which both parties are laying claim, so that any delimitation of it which does not leave it wholly to one of the parties will in practice divide it between them in certain shares, or operate as if such a division had been made." (*ibid.*, para. 20)

419. These passages point to two necessary conditions of the process of delimitation. The first is that the process should not result in a divorce between the basis of title and the result of a delimitation. The second condition is that the process of adjustment in accordance with equitable principles can only be on a limited scale since "evidently any dispute about boundaries must involve that there is a disputed marginal or fringe area..."

420. This view was strongly endorsed by the Court of Arbitration in the *Anglo-French Continental Shelf Case, Reports of*

International Arbitral Awards, XVIII, p. 3 at pp. 48-9 (para. 78); pp. 114-15 (para. 245) and the approach underlies the entire jurisprudence.

3. The Principle of Equal Division

421. The most recent decision of the Court gives appropriate emphasis to the link between the question of title to maritime areas and the choice of the criteria of delimitation.

> "The Court has little doubt which criterion and method it must employ at the outset in order to achieve a provisional position in the present dispute. The criterion is linked with the law relating to a State's legal title to the continental shelf. As the Court has found above, the law applicable to the present dispute, that is, to claims relating to continental shelves located less than 200 miles from the coasts of the States in question, is based not on geological or geomorphological criteria, but on a criterion of distance from the coast or, to use the traditional term, on the principle of adjacency as measured by distance. It therefore seems logical to the Court that the choice of the criterion and the method which it is to employ in the first place to arrive at a provisional result should be made in a manner consistent with the concepts underlying the attribution of legal title." (*Libya-Malta Continental Shelf Case, I.C.J. Reports 1985*, pp. 46-47, para. 61).

422. In the same context the Court gave expression to the principle of equal division of the disputed area as particularly appropriate for equitable delimitation between opposite coasts. In the words of the Court:

> "The consequence of the evolution of continental shelf law can be noted with regard to both verification of title and delimitation as between rival claims. On the basis of the law now applicable (and hence of the distance criterion), the validity of the titles of Libya and Malta to the sea-bed areas claimed by those States is clear enough. Questions arise only in the assessment of the impact of distance considerations on the actual delimiting. In this assessment, account must be taken of the fact that, according to the "fundamental norm" of the law of delimitation, an equitable result must be achieved on the basis of the application of equitable princi-

ples to the relevant circumstances. It is therefore necessary to examine the equities of the distance criterion and of the results to which its application may lead. The Court has itself noted that the equitable nature of the equidistance method is particularly pronounced in cases where delimitation has to be effected between States with opposite coasts. In the cases concerning the *North Sea Continental Shelf* it said that:

> 'The continental shelf area off, and dividing, opposite States [consists of] prolongations [which] meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved.' (*I.C.J. Reports 1969*, p. 36, para. 57.)

In the next paragraph it emphasized the appropriateness of a median line for delimitation between opposite coasts (*ibid.*, p. 37, para. 58). But it is in fact a delimitation exclusively between opposite coasts that the Court is, for the first time, asked to deal with. It is clear that, in these circumstances, the tracing of a median line between those coasts, by way of a provisional step in a process to be continued by other operations, is the most judicious manner of proceeding with a view to the eventual achievement of an equitable result." (*I.C.J. Reports 1985*, p. 47, para. 62).

423. The same basic approach has been adopted in decisions concerning single maritime boundaries. Thus the decision of the Chamber in the *Gulf of Maine Case* introduced the principle of equal division in the particular context of a search for criteria best suited for "multi-purpose delimitation". The relevant passages are as follows:

> "194. In reality, a delimitation by a single line, such as that which has to be carried out in the present case, i.e., a delimitation which has to apply at one and the same time to the continental shelf and to the superjacent water column can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of these two objects to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them. In that regard, moreover, it

can be foreseen that with the gradual adoption by the majority of maritime States of an exclusive economic zone and, consequently, an increasingly general demand for single delimitation, so as to avoid as far as possible the disadvantages inherent in a plurality of separate delimitations, preference will henceforth inevitably be given to criteria that, because of their more neutral character, are best suited for use in a multi-purpose delimitation.

195. To return to the immediate concerns of the Chamber, it is, accordingly, towards an application to the present case of criteria more especially derived from geography that it feels bound to turn. What is here understood by geography is of course mainly the geography of coasts, which has primarily a physical aspect, to which may be added, in the second place, a political aspect. Within this framework, it is inevitable that the Chamber's basic choice should favour a criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap." (*I.C.J. Reports 1984*, p. 327)

424. There is no need to elaborate on this summation of the role which the principle of equal division should play in achieving an equitable solution of a delimitation.

4. Abating the Effects of Incidental Special Features within the Appropriate Legal and Geographical Framework

425. The establishment of the *modus operandi* of delimitation by the Court in the *North Sea Continental Shelf Cases* involved three critical elements:

(a) The rejection of geometrical methods of delimitation unless the particular method was justified by the geographical circumstances.

(b) Such methods were objectionable in principle when they resulted in cutting off the coastal State from seabed areas naturally appurtenant to it: see the Judgment in the *North Sea Cases*, *I.C.J. Reports 1969*, pp. 17-18, para 8; the Judgment in the *Tunisia-Libya Continental Shelf Case, Ibid.*, 1982, pp. 62-3, para. 76 *in fine*; the Judgment of the Chamber in the *Gulf of Maine Case,*

ibid., 1984, pp. 298-9, para. 110; pp. 312-13, para. 157; p. 328, para. 196; p. 335, para. 219; the Award of the Tribunal in the *Guinea-Guinea (Bissau) Maritime Delimitation Case, International Law Reports*, Vol. 77, p. 681, para. 103.

(c) The abatement of the disproportionate effects of "incidental special features" (such as the presence of islets, rocks and minor coastal projections): see the Judgment in the *North Sea Cases, I.C.J. Reports 1969*, p. 36, para. 57; pp. 49-50, para. 91; the Award of the Tribunal in the *Anglo-French Continental Shelf Case, Reports of International Arbitral Awards, XVIII*, pp. 116-17, paras. 249-51.

426. These three elements are all different aspects of a single theme: the rejection of the thesis that equidistance is a legal principle and the affirmation that geometrical methods of delimitation may be productive of inequity. However, the *modus operandi* of equitable delimitation could not be operational without the addition of further elements. The discarding of geometrical methods necessitated calling in aid certain other elements without which the process of delimitation would degenerate into an unpredictable exercise.

427. Consequently, the Court in the *North Sea Cases* emphasized that the attainment of equity was "not a question of totally refashioning geography whatever the facts of the situation" (*I.C.J. Reports 1969*, pp. 49-50, para. 91). The same motivation attaches to the principle that the areas of continental shelf ascribed to one State must not encroach upon what is the natural prolongation of the territory of another State: see the Judgment in the *North Sea Cases, I.C.J. Reports 1969*, p. 31, para. 43; pp. 36-37, paras. 57-59; pp. 46-47, para. 85; and the Judgment in the *Libya-Malta Continental Shelf Case, ibid.*, 1985, pp. 39-40, para. 46.

428. These principles involve an affirmation that the actual geography - and therefore the political geography - still counts. The classical exposition appears in paragraph 91 of the Judgment in the *North Sea Cases*:

> "Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State

with a restricted coastline. Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy. But in the present case there are three States whose North Sea coastlines are in fact comparable in length and which, therefore, have been given broadly equal treatment by nature except that the configuration of one of the coastlines would, if the equidistance method is used, deny to one of these States treatment equal or comparable to that given the other two. Here indeed is a case where, in a theoretical situation of equality within the same order, an inequity is created. What is unacceptable in this instance is that a State should enjoy continental shelf rights considerably different from those of its neighbours merely because in the one case the coastline is roughly convex in form and in the other it is markedly concave, although those coastlines are comparable in length. It is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result." (*I.C.J. Reports 1969*, pp. 49-50).

429. This passage brings into play the final element of the *modus operandi* of delimitation: the assessment of the overall geographical (and therefore legal) framework. In the passage just quoted the key reference is to "a geographical situation of quasi-equality as between a number of States". Thus the tribunal will assess the situation with a view to abating the disproportionate effects of incidental features within a certain geographical and legal framework: see the Award of the Tribunal in the *Anglo-French Continental Shelf Case, Reports of International Arbitral Awards, XVIII*, pp. 58-9, para. 103; pp. 87-8, paras. 181-2; pp. 89-90, para. 187.

430. The Court, in its Judgment in the *Libya-Malta Continental Shelf Case*, referred to "the wider geographical context" and, in particular, "the position of the islands in a semi-enclosed sea" (*I.C.J. Reports 1985*, p. 42, para. 53; and see further *ibid.*, p. 50, para. 69; and pp. 51-2, paras. 72-3).

431. It may be noted that in the jurisprudence of international tribunals the process of delimitation has, nearly always, involved three stages:

(a) The characterization of the geographical setting and, if nec-

essary, the identification of separate "regions" for the purposes of delimitation.

(b) The carrying out of a provisional, or first stage or generally equitable, delimitation in the context of the overall geographical characteristics of the area.

(c) The refinement of this *prima facie* or generally equitable delimitation in order to avoid giving disproportionate effect to "incidental special features" such as "islets, rocks and minor coastal projections": see the Judgment of the Court in the *North Sea Cases, I.C.J. Reports 1969*, p. 36, para. 57; the Judgment of the Chamber in the *Gulf of Maine Case, ibid.*, 1984, pp. 327-31, paras. 195-206; and the Judgment of the Court in the *Libya-Malta Continental Shelf Case, ibid.*, 1985, pp. 46-47, paras 60-5; pp. 52-3, para. 73.

432. This process of adjustment or correction can only take place if the overall geographical and legal framework can be said to justify such adjustment on equitable grounds and without doing violence to the major features of the geographical context. As the Court stated in the *North Sea Cases*:

> "There can never be any question of completely refashioning nature..... Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy." (*I.C.J. Reports 1969*, pp. 49-50, para. 91.)

433. In certain geographical situations equality cannot be "reckoned within the same plane" except on the basis that the only relationship which counts is that of oppositeness between the relevant coasts. Moreover, it is well established that in the case of opposite coasts the normally equitable solution is the drawing of a median line: see the Judgment in the *North Sea Cases, I.C.J. Reports 1969*, pp. 36-7, paras. 57-8; p. 52, para. 99; p. 53, para. 101C; the Award of the Tribunal in the *Anglo-French Continental Shelf Case, Reports of International Arbitral Awards, XVIII*, pp. 52-3, para. 87; p. 56, para. 95; pp. 58-9, para. 103; p. 88, para. 182; pp. 111-12, para. 239; the Judgment of the Chamber in the *Gulf of Maine Case, I.C.J. Reports 1984*, pp. 300-1, para. 115; p. 331, para. 206; the Judgment of the Court in the *Libya-Malta Continental Shelf Case, ibid.*, 1985, p. 47, paras. 62-3.

434. This exposition of key elements in the legal regime of delimitation should be complemented by a principle affirmed by the Court in the *Temple Case* (Merits):

"In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality." *(I.C.J. Reports 1962*, p.34).

435. Essentially the same principle was applied by the Permanent Court in its Advisory Opinion on the *Interpretation of the Treaty of Lausanne, P.C.I.J., Series B, No. 12 (1925)*, pp. 19-20.

436. It is safe to assume that this principle applies with equal cogency to both land and maritime territories. The factor of stability of maritime boundaries is of major relevance for present purposes, given the eccentric character of the claim formulated in the Danish Memorial. For, if the proposal contained in the Memorial were to be given any level of legitimacy, this would cast doubt on the validity of numerous actual or pending delimitations, the articulation of which depends upon giving proper credit to island dependencies, many of which are relatively unpopulated or may be said to be "isolated" from other parts of the territory of the State concerned.

5. The Concept of the "Relevant Area"

437. The Danish Memorial (paras. 30-35) prescribes "the relevant area" and states that: "the area relevant to the delimitation dispute submitted to the Court is here determined solely on principles of geometry, cf. Map II". Apart from this description, the concept of the relevant area receives little or no attention in the Memorial and no attempt is made to provide a *legal* justification for the geometrical exercise illustrated in Map II (cf. paras. 371-2).

438. The Government of Norway considers it necessary to offer only a very few general observations on questions of principle. In the first place the judicial use of the concepts of relevant coasts and relevant areas is in practice confined to the application of the test of proportionality *ex post facto* to the delimitation already arrived at on the basis of equitable principles. Secondly, the construction of a relevant area is legally relevant only in so far as this points up and reflects the actual geographical configurations and coastal relationships.

439. In this connection it is well accepted that the methods of delimitation are always subordinated to the equitable solution which is to be achieved: see the Judgment in the *Libya-Malta*

Continental Shelf Case I.C.J. Reports 1985, p. 38, para. 45. What is true of methods of delimitation – the equitable principles as applied in practice – is true *a fortiori* also of ancillary devices such as "relevant areas", construction lines, and the like.

6. The Relevance of State Practice

440. In the opinion of the Government of Norway the practice of States provides evidence of the norms of equity as applied in similar geographical situations: see the Judgment of the Court in the *Libya-Malta Continental Shelf Case*, *I.C.J. Reports 1985*, p. 38, para. 44; p. 45, para. 58. The relevant practice will be presented at pages 176-183, paragraphs 618-658 below.

441. In particular situations, the prior practice of the parties to a dispute, both *inter se* and generally, may indicate that the conduct of the parties forms a relevant circumstance for the purpose of reaching an equitable solution: see further paragraphs 528-560.

CHAPTER VI
THE SIGNIFICANCE OF ISLANDS IN MARITIME DELIMITATION

442. In presenting this examination of some of the more salient questions of law, the Government of Norway has preferred to proceed by way of an exposition of its own case in a positive framework rather than to refute every statement in the Danish Memorial. However, the exposition of the law concerning the "Status of Islands in Maritime Delimitations" (Danish Memorial, Part II, Chapter I, section 2, pp. 81-95) calls for a response.

443. A fundamental correction is to point out that the present case concerns the delimitation of maritime areas in relation to *two* island territories, each located at some distance from the administrative centres of the two Parties, not between one continental territory and an island.

1. The Status of Jan Mayen

444. The Danish Memorial accepts that Jan Mayen is an island (although it is sometimes rather deprecatingly characterized as "an oceanic volcanic island" (para. 203), as "a desolate island" (para. 206), and as "an isolated island" (para. 318)). However, in one passage of the Memorial (para. 272), a somewhat incongruous statement appears to reserve its position on the general question of the status of Jan Mayen as an island under international law.

445. This makes it necessary, as a matter of form, to affirm that Jan Mayen is an area of land territory to which Norway has unquestioned title and, further, that, even if the Convention on the Law of the Sea were applicable as between the parties as a treaty in force, the provisions of Article 121, paragraph 3, would not be applicable to Jan Mayen. Nor is there any rule of general international law under which an island of Jan Mayen's size and other characteristics would be put in any diminished or inferior status in respect of the legal entitlements or competences exercisable in relation thereto.

2. Misunderstandings as to the Law Presented in the Danish Memorial

(a) Islands as a Separate Legal Category

446. The relevant section of the Danish Memorial contains a series of substantial misunderstandings as to the role of islands in delimitation all of which stem from the erroneous premiss that "islands" form a discrete legal category.

447. The absence of provisions establishing a distinctive set of rules as to the role of islands in the context of delimitation in the Conventions of 1958 and 1982 is no accident. Both Conventions have, on the contrary, expressly stated that the same rules shall apply to islands and to mainlands. The judicial expositions of the equitable principles governing delimitation have consistently emphasized the importance of the geographical features of the area *taken as a whole* and as a framework within which the process of delimitation must take place. The various decisions, commencing with the *North Sea Continental Shelf Cases*, do not classify geographical features into separate categories such as "islands", "peninsulas", "long coasts", "short coasts", and so on.

448. The emphasis has always been on the overall geographical relationships in the particular case. The significance of an island or a peninsula must depend on its location in relation to other geographical features and also in relation to the political geography of the region. A simple example of this may be taken from the *Anglo-French Continental Shelf Case*. In the Decision of 30 June 1977 the Court of Arbitration adopted the "half-effect" method of abatement in respect of the Scilly Isles. The reasoning behind this determination did not depend on the question-begging proposition that the Scillies were islands but on the consideration of the issue "whether the geographical situation of the Scilly Isles in relation to the French coast has a distorting effect and is a cause of inequity as between the United Kingdom and the French Republic": *Reports of International Arbitral Awards*, XVIII, pp. 116-17, para. 250. In effect the Court treated the Scilly Isles as an extension of the mainland of the United Kingdom: *ibid.*, pp. 113-14, paras. 243-44; p. 117, para. 251.

(b) The Significance of the Geographical and Legal Framework

449. The relevant case law indicates the habit of international tribunals to establish, in so far as the circumstances allow, a geographical and legal framework within which the assessments

of equity and disproportionate effects may be carried out. In the *North Sea Cases* the framework was the semi-enclosed sea and the presence of three States with coastlines of comparable length. In the *Anglo-French Case* the framework was the English Channel and the opposite coasts of the two parties "in a relation of approximate equality": Decision of 30 June 1977, *Reports of International Arbitral Awards*, XVIII, pp. 87-8, para. 181; and see also pp. 58-9, para. 103.

450. In the *Libya-Malta Case* the Court had regard to "the general geographical context" as a relevant circumstance. The relevant passage of the Judgment is as follows:

> "In the present case, the Court has also to look beyond the area concerned in the case, and consider the general geographical context in which the delimitation will have to be effected. The Court observes that delimitation, although it relates only to the continental shelf appertaining to two States, is also a delimitation between a portion of the southern littoral and a portion of the northern littoral of the Central Mediterranean. If account is taken of that setting, the Maltese islands appear as a minor feature of the northern seaboard of the region in question, located substantially to the south of the general direction of that seaboard, and themselves comprising a very limited coastal segment. From the viewpoint of the general geography of the region, this southward location of the coast of the Maltese islands constitutes a geographical feature which should be taken into account as a pertinent circumstance; its influence on the delimitation line must be weighed in order to arrive at an equitable result." (*I.C.J. Reports 1985*, p. 50, para. 69).

451. Later on in the same Judgment the Court referred to "the general geographical context in which the islands of Malta appear as a relatively small feature in a semi-enclosed sea": *ibid.*, p. 52, para. 73 (and see also, p. 42, para. 53).

452. In each case the issues of equity are determined within the geographical framework or context and in accordance with the equitable principles governing delimitation. The precise geographical features can only be given appropriate significance within these normative systems. Consequently, a major group of islands like the Channel Islands may be given (for practical purposes) no effect (*Anglo-French Case, Reports of International Arbitral Awards*, XVIII, pp. 74-96, paras. 145-203) and a very small island like Seal Island may be given half-effect (Judgment of the

Chamber in the *Gulf of Maine Case, I.C.J. Reports 1984*, pp. 336-7, para. 222, referring to the transverse displacement of the "corrected median line").

453. It follows that the exposition in the *Danish Memorial* concerning the significance of islands is based upon a misunderstanding of the treatment of islands in the process of equitable delimitation.

(c) The Interpretation of the Case Law

454. The Danish Memorial (pp. 82-90) deploys passages from the Decision of 30 June 1977 in the case concerning the *Anglo-French Continental Shelf*, the decision of a Chamber in the *Gulf of Maine Case*, and the decisions of the Court in the *Tunisia-Libya* and *Libya-Malta Cases* to support a contention that

> "in deciding where the boundary line in relation to an extensive mainland should be drawn in order to achieve an equitable solution, only limited or no effect could be given to a small, uninhabited island." (Memorial, p. 90, para. 288).

455. The precise relevance of the case law will be indicated in the following Chapter. For present purposes it will be sufficient to point out that the Danish conclusion is deeply flawed and lacks any foundation either in law or in fact.

456. Moreover, the exposition offered in support of the conclusion offends law and fact in the following respects:

(i) The exposition is based upon the erroneous belief that "islands" form a discrete geographical and legal category in the law of maritime delimitation.

(ii) Consequently in drawing parallels with previous decisions the Danish Memorial underestimates the significance of the geographical and legal framework within which delimitation takes place.

(iii) The geographical comparisons offered are inept. To compare the large island of Jan Mayen (54 kilometres in length) with the Channel Islands is unhelpful, more especially when the geographical and legal framework is completely different.

(iv) The Danish Memorial ignores major aspects of the Award in the *Anglo-French Case* and of other decisions concerning delimitation. These decisions relate essentially to the political and legal

significance of geography. In this context the relationships of Jan Mayen within the North Atlantic system are in complete contrast with the relationships of the Channel Islands and the other island examples invoked in the Memorial.

(d) State Practice

457. The Danish Memorial (pp. 91-95, paras. 289-92), after a markedly brief account of examples of State practice, presents the conclusion that "State practice does not support the Norwegian claim that, according to international law, Jan Mayen is entitled to a median line *vis-à-vis* Greenland" (p. 94, para. 290).

458. The Respondent State will express its own position on the relevance of the State practice in paragraphs 618-658. At this stage it is necessary to draw the attention of the Court to the oddities of the "examples" recounted by Denmark. Examples (5) and (6) are cases in which islands were accorded full effect, as stated in the Danish Memorial (p. 93).

459. The case of Bjørnøya (Bear Island) (Example (7), p. 94) is not in point at all. As has been pointed out (pp. 65-6, paras. 230-231), the separation between the Fisheries Protection Zone around Svalbard and the Norwegian mainland Economic Zone is not a jurisdictional boundary. An administrative distinction has been made between two areas to which different rules apply. No *delimitation* in international law has been effected; indeed, none could be effected between areas under the jurisdiction of the same State.

460. For reasons set forth in the present Part of the Counter-Memorial (paras. 649-655), the remaining four examples (Danish Memorial, pp. 92-3) give no support for the Danish claim in the present proceedings.

CHAPTER VII
THE ELEMENTS OF AN EQUITABLE SOLUTION

1. The Geographical and Legal Framework

461. In this and the following Chapter of this Part, the elements of the equitable solution will be presented, in order of priority; the geographical and legal framework will be considered first.

(a) The Kingdom of Norway

462. The Kingdom of Norway appeared in its present constitutional form as a consequence of the dissolution of a union with Denmark in 1814, this being followed by a union with Sweden, dissolved in 1905. The Norwegian lands had by then been diminished compared with earlier periods of Norway's history. In the nineteenth century and the first decades of this century, Norway developed its traditional interests in the Arctic by way of traditional maritime industries and pioneering exploration and surveying activities.

463. The territories of the Kingdom of Norway presently include the following lands:
- The Norwegian mainland;
- The archipelago of Svalbard (Spitsbergen), Norwegian sovereignty recognized in 1920 by the Treaty of Spitsbergen;
- Jan Mayen, Norwegian sovereignty recognized in 1929.

464. The legitimate purpose underlying the acquisition of these territories in this century was essentially custodial and defensive. Custodial in the sense that modern conditions have always called for some form of organization and regulation of human activity which – as a rule – only States have been able to supply and uphold. Defensive, in the sense that if Norway did not establish itself as the territorial sovereign, with duties and responsibilities in addition to rights and privileges, other States could have put forward their pretensions, at the expense of established Norwegian interests.

(b) The Geographical Context

465. The sea areas between Greenland to the west, Scotland

to the southeast, and the Norwegian mainland and other territories to the east call for careful characterization. (The Court is respectfully referred to Maps I and IV at the end of this volume for the purpose of this demonstration.) These areas do not constitute a semi-enclosed sea or any approximation thereto.

466. The Danish Memorial states that "The general geographical context of the disputed area may be broadly described as the *oceanic expanse* constituted by the Greenland Sea and the Norwegian Sea" (p. 7, para. 8) (emphasis supplied). The longitudinal frame adopted by the makers of Maps I and IV attached to the Danish Memorial is misleading, as it tends to leave the impression that the eastern aspect of the oceanic expanse is occluded by coastal sectors, which it is not. The sector of the coasts of East Greenland to the north of Cape Brewster is in fact on the same latitude as the coasts of Novaya Zemlya, 1,200 miles to the east, and, further north, as are the coasts of Svalbard (Spitsbergen) some 300 miles across the Fram Strait.

467. The mainland coasts of Norway lie for the most part south of the latitudes occupied by the coast of Greenland north of Cape Brewster, and the shortest distance between Greenland and Norway is approximately 740 nautical miles. The coasts of mainland Norway lie at a marked tangent to the coasts of Greenland, at an average distance of more than 1,200 nautical miles, and in their more southern aspects do not face towards Greenland at all but towards the Shetlands, the Faroes, and Iceland.

468. The principal characteristic of the sea areas in this region is that they include three seas: the Norwegian Sea, the Greenland Sea and the Barents Sea. Moreover, these seas are linked with the Arctic and Atlantic Oceans, not by truly narrow seas but by expanses of sea which are straits of great breadth: the Fram Strait (300 nautical miles) and the Denmark Strait (250 nautical miles). To the south the links with the Atlantic Ocean to the east of Iceland are not even called straits. The areas form a unity but only in the loose sense that they are an oceanic region forming a portal between the Atlantic and Arctic Oceans. The absence of a toponymy expressly recognizing the oceanic character of the region is of no significance given the geographical realities.

469. The maritime context is extensive, and characterized by its openness. The region extends into other sea areas by broad connecting expanses of water; it does not close off any other area of sea.

470. Against this background, the essays in the Danish Memorial at drawing parallels with situations in which the geography is distinctly introverted and relates to well-defined regions and sub-regions, must be regarded as implausible. To compare (for example) the relationships within sectors of the English Channel, involving coasts between 70 and 80 miles apart, with the situation in the expanses between Greenland to the west and the Barents Sea to the east, lacks any geographical or political realism (cf. the Memorial, pp. 95-6, para. 295).

471. There is a major feature of the geographical context which remains to be drawn into the picture. To the northeast, east, and southeast of Jan Mayen there is an extensive sector of high seas lying beyond the limits of the jurisdiction of any State. Its existence is depicted on Map IV attached to the Danish Memorial, but the text gives no attention to it.

472. This high seas sector, which forms a significant aspect of the geographical context, points up the significance of Jan Mayen as a part of the Norwegian realm having an entirely independent entitlement to its appurtenant maritime areas. The situation stands in marked contrast to that of the Channel Islands in the *Anglo-French Case*, which the Tribunal described as being "not only 'on the wrong side' of the mid-Channel median line but wholly detached geographically from the United Kingdom": *Reports of International Arbitral Awards*, XVIII, p. 94, para. 199 *in fine*.

473. In the present case, there is no channel, no geographically introverted situation like that formed by the English Channel, and no geographical symmetry (opposite States having almost equal coastlines) (see the *Anglo-French Case, ibid.*). Even more significantly, in the present case there can be no question of location on the "wrong side" of a median line because there is no median line between Greenland and the mainland of Norway: the existence of a sector of high seas intervenes. The legal consequence is that the coasts of continental Norway and Greenland have no relation of adjacency for purposes of delimitation, and that "oppositeness" is without relevance.

(c) The Significance of Arctic Lands and Coasts

474. The Danish Memorial, in its descriptions of Jan Mayen, characterizes the island as "desolate" (p. 55, para. 206), "uninhabited" (p. 90, para. 288), having "no population in the proper sense of the word" (p. 97, para. 302), "having no settled population at all" (p. 110, para. 351), and so forth. The significance of Jan Mayen for Norway, and the significance of its appurtenant maritime areas and seabed for Norway, will be given proper definition in due course.

475. The climatic conditions inevitably make all aspects of modern life in Arctic regions difficult and the creation of an infrastructure is necessarily expensive. The population of the polar regions is sparse and many settlements and technical facilities are in some sense semi-permanent. To describe territories in these latitudes as "desolate" is to state the obvious.

476. For present purposes, it is necessary to emphasize that the perspective adopted in the Danish Memorial is entirely inappropriate to the conditions of Arctic lands and coasts. In these regions the characteristics attributed to Jan Mayen (which the Government of Norway will evaluate in due course) are common features of territories in these latitudes. Much of the east coast of Greenland is infested by perennial ice flows and lacks any population (paras. 44-46). It is strange indeed that the Applicant State should seek to attach importance to what are normal features of coasts in these latitudes.

477. In this type of environment coasts, and *a fortiori* ice-free islands, are more significant, area for area, than other land areas. Moreover, coasts and the coasts of islands, are the basis of entitlement to maritime areas and such entitlement cannot properly depend upon the accidents of current use or settlement. In these areas the strategic and economic significance of territory is a matter of potentiality, and may vary from one period to another.

2. The Configuration of Coasts

(a) The Principle

478. In the *Dispositif* of the Judgment in the *North Sea Cases,* one of the "factors to be taken into account" was stated to be "the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features" (*I.C.J. Reports*

1969, pp. 53-4, para. 101D(1)). Moreover in the Judgment of the Chamber in the *Gulf of Maine Case* emphasis was placed on the application of criteria "more especially derived from geography" (*I.C.J. Reports 1984*, p. 327, para. 195), and the Chamber made it clear that it was seeking criteria which were "best suited for use in a multi-purpose delimitation" (*ibid.*, para. 194).

479. The significance of geography in the achievement of an equitable solution is evident. There is, however, always a need to recall the logical connections of the discrete principles or factors referred to in particular quotations from judgments. These principles or factors are not non-legal or pre-legal but form part of a *set of legal principles* which themselves are instruments of the legal process of delimitation.

480. In this context the general geographical and legal context is predominant, and thus the relevance of geography is seen to be functional and contextual and not to be abstract.

(b) The Geographical Context of Jan Mayen

481. The Danish Memorial refers to the "general geographical context" as "the oceanic expanse constituted by the Greenland Sea and the Norwegian Sea" (p. 7, para. 8), and there is emphasis on its "isolation from the rest of Norway" (p. 95, para. 295). Jan Mayen lies within a stretch of sea so extensive as to encompass three named seas: the Greenland Sea, the Norwegian Sea, and, to the northeast, the Barents Sea. The distances between Greenland and the coasts of Norway vary between 750 and 1,750 nautical miles. Jan Mayen itself is 250 nautical miles from the nearest Greenland coast, 550 nautical miles from the nearest Norwegian coast, and 300 nautical miles from Iceland (see Sketch Map at p. xx).

482. The fact is that Jan Mayen is not particularly "isolated" from mainland Norway (flights take about two hours) and, in this gratuitously pejorative mode, it would be possible to describe many parts of northern Greenland as "isolated" from the administrative capital and the main economic centres in southwest Greenland.

483. The key factor for purposes of maritime delimitation is that the region is extrovert and the vast sea areas link up with other expanses in the Arctic and Atlantic Oceans. The region is characterized by openness and there are few, if any, features of

occlusion. In this context, the invention of a parallelogram by the Danish Memorial (p. 7, paras. 9-10) is more than a little fanciful. Moreover, the description of this construction is inadequate. Thus the eastern aspect of the oceanic expanse is not "bordered by the Arctic Ocean and Barents Sea" in any real sense. The reality is that each maritime expanse merges into the other. There is no geographical "border". To the north Svalbard (Spitsbergen) is the only land feature within the sea areas extending between the northeast coasts of Greenland and the northern aspect of Novaya Zemlya (a distance of some 1,200 nautical miles). To the south the expanses between southeast Greenland and the coasts of Norway are punctuated by Iceland and the Faroes, but there is no evidence of any element of geographical occlusion.

484. Jan Mayen thus occupies a position of geographical and geological independence. It forms part of no region or sub-region. Standing by itself on the Jan Mayen ridge, it forms a separate but integral part of the Kingdom of Norway.

(c) The Legal Consequences

485. The Government of Norway has indicated the significance of proceeding with a process of delimitation within an appropriate geographical and legal context. As the Court pointed out in the *North Sea Cases,* "equality is to be reckoned within the same plane" and the states in dispute must have been given "broadly equal treatment by nature" (*I.C.J. Reports 1969*, p. 50, para. 91). The geographical situation of Jan Mayen discloses no such system of quasi-equality.

486. Moreover, the coasts of Greenland and mainland Norway cannot provide a legal framework within which delimitation can be carried out and equitable "adjustments" effected. The coasts do not bear a legal relation to each other: they can only be said to be "opposite" in a descriptive and non-normative sense.

487. The reason for this is, quite simply, that the areas between Greenland and mainland Norway do not constitute a unit consisting of areas *prima facie* appurtenant to one or other of the Parties and which are to be divided between them. This condition, which is absent in the present case, is an absolute prerequisite for an application of equitable principles on the basis that the relevant coasts are those of Greenland and the Norwegian mainland rather than Greenland and Jan Mayen.

488. In the legal sense the coasts of Greenland and mainland Norway cannot be "opposite" or in any other sense conjointly relevant to an equitable delimitation. The respective claims of the Parties do not converge and there is no overlapping of the areas appertaining to them: cf. the Judgment in the *North Sea Cases, I.C.J. Reports 1969*, p. 49, para. 89; p. 52, para. 99; p. 53, para. 101 (C), (1) and (2); and the Decision of 30 June 1977 of the Tribunal in the *Anglo-French Case, Reports of International Arbitral Awards*, XVIII, pp. 87-8, paras. 181-3.

489. The absence of any basis for the interaction of the coasts of Greenland and mainland Norway is substantially the result of the combined operation of the distance principle and the normal basis of entitlement. The 200 mile zone based on the Norwegian mainland does not link up with the areas appurtenant to Jan Mayen and therefore there is no overlapping or convergence of claims as between the coasts of Greenland and the coasts of mainland Norway. Apart from the great distances involved, there is the existence of a major sector of high seas to the north, east, and southeast of Jan Mayen.

490. The consequence of these factors is that Jan Mayen is not in any sense an "incidental" or "special" feature in relation to the process of delimitation in these proceedings. The only convergence of entitlements is that which occurs between Jan Mayen and Greenland, and in that context Jan Mayen is in legal terms a major actor.

3. The Absence of Incidental Special Features Justifying Abatement

(a) The Danish Thesis

491. The core of the Danish case consists of two arguments:

(a) That, as between the coasts of mainland Norway and Greenland, Jan Mayen is a source of inequity because Jan Mayen is "on the wrong side" of a median line between Norway and Greenland and is detached from the Norwegian mainland (Memorial, pp. 95-6, para. 295).

(b) That, apart from the application of the test of proportionality to a delimitation achieved by other means, a difference in the length of the relevant coasts constituted a relevant factor (Memorial, pp. 103-10, paras. 320-45).

492. These arguments will be analyzed in this Chapter. The issue of proportionality will be considered subsequently.

(b) The Concept of Incidental Special Features

493. The first of the Danish arguments is based essentially on the view expressed in the Judgment in the *North Sea Continental Shelf Cases*:

> "It is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result." *(I.C.J. Reports 1969*, p. 50, para. 91).

494. In the geographical circumstances of this case, this argument is misconceived. In the first place the operation of abating the effects of "incidental special features" can only be used as an instrument of equity within the appropriate geographical, and therefore legal, framework. As the Respondent State has demonstrated, the coasts of Greenland and mainland Norway do not constitute such a framework: and, in this connection, it must be stated that the reference to "a median line" (between Greenland and mainland Norway) in the Memorial which relates to areas which are not appurtenant to either Party, but are high seas, has no basis in legal reasoning. As used in the Memorial, the phrase "a median line" lacks legal content.

495. The process of abatement and the avoidance of sources of distortion cannot take place in the abstract. Moreover, the sources of distortion envisaged are features which are *both* very small in scale *and*, within the appropriate framework, placed in such a way as to cause an influential displacement of the line which is the best candidate for an equitable solution within the overall geographical framework.

496. The relevant passages in the jurisprudence are unequivocal in their indication that an "incidental special feature" is a solecism within the general geographical context. Thus the Judgment in the *North Sea Cases* refers to "islets, rocks and minor coastal projections" (*I.C.J. Reports 1969*, p. 36, para. 57); the Judgment of the Chamber in the *Gulf of Maine Case* quotes this phrase (*ibid.*, 1984, p. 329, para. 201); and the passage in which it appears is quoted in the Judgment of the Court in the *Libya-Malta Case* (*ibid.*, 1985, p. 47, para. 62).

497. In the present case the legal framework is constituted by the juxtaposition of a large island, 54 kilometres in length, and the nearest coasts of Greenland, 250 nautical miles distant. Jan Mayen exists in a position of geographical isolation. It is geographically independent of Greenland as well as of mainland Norway.

(c) The Principle of Equal Division

498. The jurisprudence has consistently given expression to the principle of equal division. The classical statement appears in the Judgment in the *North Sea Cases*:

> "The continental shelf off, and dividing, opposite states, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections... such a line must effect an equal division of the particular area involved." (*I.C.J. Reports 1969*, p. 36, para. 57).

499. The principle of equal division reflects the basic conception of entitlement expressed with great clarity in a key passage from the same Judgment:

> "96. The doctrine of the continental shelf is a recent instance of encroachment on maritime expanses which, during the greater part of history, appertained to no-one. The contiguous zone and the continental shelf are in this respect concepts of the same kind. In both instances the principle is applied that the land dominates the sea; it is consequently necessary to examine closely the geographical configuration of the coast-lines of the countries whose continental shelves are to be delimited. This is one of the reasons why the Court does not consider that markedly pronounced configurations can be ignored; for, since the land is the legal source of the power which a State may exercise over territorial extensions to seaward, it must first be clearly established what features do in fact constitute such extensions. Above all is this the case when what is involved is no longer areas of sea, such as the contiguous zone, but stretches of submerged land; for the legal régime of the continental shelf is that of a soil and a subsoil, two words evocative of the land and not of the sea." *(I.C.J. Reports 1969, p. 51, para. 96).*

500. The process of abatement in order to achieve an equitable solution can only qualify the principle of equal division when the feature causing distortion is (a) located within the relevant geographical context created by the coasts of the Parties, and (b) the potential distortion affects areas which involve overlap or convergence of the appurtenant maritime areas.

501. This element of convergence in the case of opposite coasts is prominent in the jurisprudence: see the Judgment in the *North Sea Cases*, quoted above, paragraph 499; the Award of the Tribunal in the *Anglo-French Case, Reports of International Arbitral Awards*, XVIII, p. 91, para. 191; the Judgment of the Chamber in the *Gulf of Maine Case, I.C.J. Reports 1984*, p. 327, para. 195; and the Judgment of the Court in the *Libya-Malta Case, I.C.J. Reports 1985*, p. 47, para. 62.

502. In the circumstances of the present case the convergence or overlap can only be between the coastal frontages of Jan Mayen and Greenland. Jan Mayen is not an "incidental" feature but a principal element of the legal framework. The coasts of mainland Norway are as irrelevant for present purposes as the coasts of Norwegian territory in the Antarctic. The process of delimitation must relate to the actual geography; as the Tribunal in the *Anglo-French Case* said:

> "The Court considers that the method of delimitation which it adopts for the Atlantic region must be one that has relation to the coasts of the Parties actually abutting on the continental shelf of that region." *(Reports of International Arbitral Awards*, XVIII, p. 115, para. 248).

(d) The Relevant Area

503. The Danish Memorial (pp. 11-12, paras. 30-35) proposes an "area relevant to the delimitation dispute" (para. 30), which is depicted on Map II of the Memorial.

504. The construction of the "relevant area" is stated to be derived from the "disputed area", which consists in principle of the area formed by the Danish claim of 200 miles' distance from the pertinent basepoints and baselines and the Norwegian position of a median line boundary.

505. The Government of Norway considers the geometrical construction offered in the Memorial to be wholly irrelevant to

any delimitation in accordance with legal principles. The area defined bears no relation either to the geography of the region or to legal principle. The construction derives from the dimensions of a disputed area which is the casual product of the overlap between the median line and a spurious line (the outer limit of the Danish 200 mile claim) which bears no relation to equitable principles and thus can have no status even as a factor influencing a presumptive or provisional equitable delimitation.

506. The artificiality of the relevant area is increased further by the fact that, as the Danish Memorial says, it is "determined solely on principles of geometry" (p. 11, para. 30). The consequence is that the construction described as the "relevant area" fails to reflect the geographical relations of the coasts of Jan Mayen and Greenland.

(e) Lengths of Coasts

507. The Danish Memorial (p. 75, para. 254) quotes a passage from the Judgment of the Court in the *Libya-Malta Case* as follows:

> "... If the coasts of Malta and the coast of Libya from Ras Ajdir to Ras Zarruq are compared, it is evident that there is a considerable disparity between their lengths, to a degree which, in the view of the Court, constitutes a relevant circumstance which should be reflected in the drawing of the delimitation line..." (*I.C.J. Reports 1985*, p. 50, para. 68).

508. In its consideration of "the relevant factors in the present case" the Memorial offers the assertion that the comparability of coastal lengths is not merely a test of the equitable character of a delimitation already effected but is a factor to be taken into account in any event (p. 103, para. 322; and see also pp. 106-7, paras. 334-5).

509. The issue of proportionality as such will be examined in Chapter VIII below. For present purposes it will suffice to make two general points. First, the Court in the *Libya-Malta Case* was very insistent that proportionality should not be used so as to become an exclusive mode of delimitation. In the words of the Judgment:

> "...to use the ratio of coastal lengths as of itself determinative of the seaward reach and area of continental shelf

proper to each Party, is to go far beyond the use of proportionality as a test of equity, and as a corrective of the unjustifiable difference of treatment resulting from some method of drawing the boundary line. If such a use of proportionality were right, it is difficult indeed to see what room would be left for any other consideration; for it would be at once the principle of entitlement to continental shelf rights and also the method of putting that principle into operation. Its weakness as a basis of argument, however, is that the use of proportionality as a method in its own right is wanting of support in the practice of States, in the public expression of their views at (in particular) the Third United Nations Conference on the Law of the Sea, or in the jurisprudence. It is not possible for the Court to endorse a proposal at once so far-reaching and so novel." (*I.C.J. Reports 1985*, p. 45, para. 58).

510. The second point is no less important. The Court in the *Libya-Malta Case* was applying a variety of factors and the disparity in the lengths of the relevant coasts was only one of the relevant circumstances taken into account: see the Judgment, *ibid.*, p. 50, paras. 68-9; pp. 51-3, paras. 71-3. Moreover, the scale of the resulting "adjustment" of the equidistance line in the *Libya-Malta Case* is significant: the "adjustment" was of 18 miles within a distance between the relevant coasts of 183 miles, a factor of approximately ten per cent.

(f) Equity Does Not Involve Completely Refashioning Nature: The Jurisprudence

511. Under the heading, "Status of Islands in Maritime Delimitations" (p. 81), the Danish Memorial presents an account of the case law (pp. 82-90) which, it is claimed, is based on considerations which "support Denmark's view that, in deciding where the boundary line in relation to an extensive mainland should be drawn in order to achieve an equitable solution, only limited or no effect could be given to a small, uninhabited island". (p. 90, para. 288).

512. This proposition is deeply and multifariously flawed. The first flaw consists in its irrelevance: the jurisprudence surveyed provides no support for the form of delimitation claimed by Denmark, which involves an "outer limit of 200 miles zone" principle not found in any judicial examination of equitable principles or factors or in any other legal source.

513. The second flaw also concerns its irrelevance, but in another sense. The relevant judicial decisions involve a certain *modus operandi* based upon the creation of a geographical and legal framework within which the process of delimitation takes place and, in the case of opposite coasts, within which the principle of equal division is applied. According to this *modus operandi* incidental features are assessed within such a framework and the *prima facie* equitable delimitation is then subject to a process of "correction" (*Gulf of Maine Case, I.C.J. Reports 1984*, pp. 334-5, para. 218) or of "adjustment" (*Libya-Malta Case, ibid.*, 1985, p. 48, para. 65 *in fine*; p. 50, para. 68; pp. 51-3, paras. 71-3).

514. This procedure involves relatively mild forms of correction of provisional lines of delimitation and bears no similarity whatsoever to the type of delimitation now advanced by Denmark.

515. The jurisprudence not only insists on the limited scale of the process of correction but also constantly invokes the principle that equity does not involve completely refashioning nature. This principle was invoked by the Court of Arbitration in the *Anglo-French Continental Shelf Case* in five different passages: *Reports of International Arbitral Awards*, XVIII, p. 58, para. 101; pp. 92-3, para. 195; pp. 113-14, para. 244; pp. 114-15, para. 245; pp. 115-16, paras. 248-9. The Danish claim not only disregards this principle but oversteps the criteria of equity so far as to trespass deeply into the basic entitlement of Jan Mayen (as land territory) to appurtenant maritime areas.

516. The Danish Memorial places particular stress upon the Decision of the Court of Arbitration in the *Anglo-French Case* concerning the Channel Islands region (see the Memorial, pp. 82-5, paras. 278-81; pp. 95-6, para. 295). The assertion is made that: "The geographical situation is to a large extent parallel to the situation described in the *Channel Islands Case*, ..." (*ibid.*, para. 295).

517. This assertion does violence to logic. In the following sentence the Memorial states that "Jan Mayen is on the wrong side of a median line between Greenland and the Norwegian mainland..." As Norway has already pointed out, this bemusing observation is a legal absurdity. There is no such median line and such a delimitation is impossible not least because there is a large area of high seas between Jan Mayen and the Norwegian mainland.

518. The complete inappropriateness of the parallel claimed by Denmark stems from a failure to appreciate the significance of identifying the appropriate geographical and legal framework. In the case of the English Channel, this consisted of the coasts of the two mainlands opposite each other "in a relation of approximate equality": *Anglo-French Case*, decision of 30 June 1977, *Reports of International Arbitral Awards,* XVIII, pp. 87-8, para. 181. Moreover, as the context makes clear, *the entire region between the opposite coasts* was appurtenant to the one or the other of the Parties.

519. It was in this legal context that the Court of Arbitration adverted to the location of the Channel Islands "not only "on the wrong side" of the mid-Channel median line but wholly detached geographically from the United Kingdom": *Reports of International Arbitral Awards,* XVIII, p. 94, para. 199. The geographical detachment of the Channel Islands thus had legal significance but this was to be measured within the relevant legal framework.

520. The Norwegian Government considers that the Decision of the Court in the *Anglo-French Case* concerning the Channel Islands is of considerable relevance in this present dispute when its essence is properly appreciated. Given the relative closeness of the mainland coasts of the United Kingdom and France, and the presence of the Channel Islands "practically within the arms of a gulf on the French coast" (*ibid.*, p. 88, para. 183), the location of the British islands close to the French coast (distances of 6.6 and 8 nautical miles from the nearest points on the French coasts) was anomalous, and a potentially serious source of inequity (*ibid.*, p. 94, para. 199).

521. The logical implication emerging from the key passages in the *Anglo-French Case* is that, *mutatis mutandis*, Jan Mayen's location is not productive of inequity and, accordingly, any modification of its normal entitlement would instead produce inequity. Jan Mayen is an isolated and geographically independent feature 250 miles from Greenland and 550 miles from the mainland of Norway. In the thinking of the tribunal in the *Anglo-French Case*, the Channel Islands were, successively, part of the English Channel, as an area to be divided, and part of the Golfe breton-normand, as a sub-region also to be divided. Consequently, the "detachment" of Jan Mayen in the legal context of equitable delimitation is a legal basis for a full entitlement.

522. There is another aspect of the Decision in the *Anglo-French Case* which militates in favour of a full entitlement for Jan Mayen. The Court gave considerable weight to "the predominant interest of the French Republic in the southern areas of the English Channel": *Reports of International Arbitral Awards* XVIII, p. 90, para. 188. As will be explained subsequently, Norway has a substantial interest in the maritime areas appurtenant to Jan Mayen. Moreover, it is relevant that the Court in the *Anglo-French Case* allowed the maritime interest of the major riparian in the *immediate area* to outweigh the social economic and political significance of the Channel Islands as land territory.

523. The form in which the Danish Memorial invokes the case law is consistently flawed by false geographical parallels, by a mistaken focus on the category of "islands" as such instead of the overall geographical situation in each case, and by a failure to discern that none of the decisions involves a delimitation similar to the type espoused by the Applicant State.

524. The Danish view of the *Anglo-French Case* has been examined at length and it will suffice to take two other examples of the approach to the case law to be found in the Memorial. The Memorial refers to the *Gulf of Maine Case,* in which the Chamber gave half-effect to Seal Island: *I.C.J. Reports 1984*, pp. 336-7, para. 222. The Memorial states that "the fact remains that an island which is inhabited all the year round and which occupies a strategic position was given only half-effect" (p. 89). But the passage quoted by the Memorial makes it clear that it was the location that was significant and not the population.

525. In any case, Seal Island is a good example of an "incidental special feature" (two-and-a-half miles long) which is considered within a major geographical framework. The correct conclusion would seem to be that, if half-effect is given to such a feature close to the coast, it would be strange not to give full effect to a major feature standing in isolation 250 miles off shore.

526. The second example consists of the Memorial's invocation of the Judgment in the *Libya-Malta Case*. The Memorial (pp. 89-90, para. 287) makes two points. First, the Court is quoted (*I.C.J. Reports 1985*, p. 42, para. 53) to the effect that it was the wider geographical context which was significant and, secondly, there is the relation of Malta to "the general geography of the region" (*ibid.*, p. 50, para. 69). Once again, the passages quoted

place emphasis on the overall geographical relationships involved and the close relation of Malta to "the northern seaboard of the region in question" (*ibid.*).

527. The Memorial then draws a conclusion bearing a very uncertain relation to the quoted passages. The Memorial states that the Court "accorded limited effect to Malta" (which is a major exaggeration) and did so "in spite of the fact that Malta is an island State with a considerable population and economic life". Of course, the quoted passages say nothing about population and economic life, but the Danish Memorial has in its conclusion completely missed the point. The approach of the Court was related to the geographical framework and its consequences for an equitable solution. As in the case of the Channel Islands, the population and economic life of the territory concerned were of little or no significance *when it came to the equities of coastal relationships.*

4. The Conduct of the Parties

(a) The Principle

528. It is well established that the conduct of the Parties to a dispute may constitute a relevant circumstance to be taken into account in achieving an equitable solution: see, for example, the Judgment of the Court in the *Tunisia-Libya Continental Shelf Case*, *I.C.J. Reports 1982*, pp. 83-4, paras. 117-18. Such conduct may involve the conduct of the Parties *inter se* or it may take the form of the evidence of a general attitude toward the principles of delimitation, the evidence of which includes agreements concluded with third States.

(b) The Position of Norway

529. The position of Norway in these proceedings is that, until the dispute began to crystallize, the Danish Government had consistently adopted the formula according to which delimitation, apart from the agreement of the Parties, was based on the principle of equidistance (or the median line).

530. The Government of Norway considers that the conduct of Denmark is a relevant circumstance to be taken account of in reaching an equitable solution and, further, that the conduct of Denmark is also relevant as part of the evidence that, until the

beginning of the present dispute, the consistent attitude of *both* Parties had been based on the adoption of a median line boundary.

531. Norway also considers that the conduct of Denmark has other ramifications. The issues of recognition, acquiescence and estoppel have been examined in Chapters III and IV of this Part of the Counter-Memorial.

(c) The Evidence

National Legislation

532. From 1963 until the outset of the present dispute, the Parties have recognized in their national legislation that, in the absence of agreement, the boundary of the continental shelf in relation to other states abutting on the same shelf is the median line. This solution is provided for in the Danish Royal Decree of 7 June 1963 concerning the exercise of sovereignty over the continental shelf (Annex 29, Art. 2(2)).

533. The corresponding Norwegian legislation (Act No. 12 of 21 June 1963) (Annex 22), though in more general terms, was not incompatible with the Danish Royal Decree and Norway did not make any objection to the terms of the Danish legislation.

534. When Denmark adopted extended fisheries zone legislation in 1976, the median line solution was expressly adopted: see the Fishing Territory of the Kingdom of Denmark Act (Act No. 597 of 17 December 1976) (Annex 31), Section 1(2). The contemporaneous Norwegian Act No. 91 of 17 December 1976 relating to the economic zone of Norway (Annex 24) provided as follows:

> "The outer limit of the economic zone shall be drawn at a distance of 200 nautical miles... from the baselines applicable at any given time, but not beyond the median line in relation to other States." (Section 1).

535. Of particular relevance is the Danish Executive Order of 14 May 1980 concerning the "fishing territory in the waters surrounding Greenland" (Annex 38). This was adopted pursuant to Act No. 597 of 1976. Its provisions may for present purposes be summarized as follows:

(i) Between Canada and Greenland north of latitude 75°N, the boundary line is based upon two series of geodesic lines. This

is a negotiated alignment and is not a true median line. However, the line leaves approximately equal areas to each State (see the Agreement between Canada and Denmark signed on 17 December 1973 Section 1(2)).

(ii) In the Lincoln Sea the boundary line is stated to be a median line (Section 1(2)).

(iii) Between Iceland and Greenland the boundary line north of 67°N is stated to be a median line (Section 1(3)).

(iv) Between Svalbard and Greenland the boundary line is stated to be a median line (Section 1(4)).

(v) In respect of the position between Jan Mayen and Greenland the Executive Order provides as follows:

> "Where the Island of Jan Mayen lies opposite Greenland at a distance of less than 400 nautical miles, jurisdiction of fisheries shall not, until further notice, be exercised beyond the line which everywhere is equidistant from the nearest points of the baselines of the coasts concerned (median line)" (Section 1(4)).

536. This provision is of considerable significance. Even in regard to Jan Mayen, where the ambition was to extend Danish jurisdiction beyond the median line, the median line was still in fact respected: The interim regime was based on it.

537. The Norwegian Decree of 23 May 1980 (Annex 27) provides (in pertinent part) as follows:

> "1. Pursuant to Act No. 91 of 17 December 1976 relating to the economic zone of Norway, a fishery zone shall be established in the sea areas around Jan Mayen with effect from 29 May 1980.
>
> 2. The outer limit of the fishery zone shall be drawn at a distance of 200 nautical miles (one nautical mile = 1,852 metres) from the baselines determined for Jan Mayen, although not beyond the median line in relation to Greenland nor beyond the line constituting the outer limit of the economic zone of Iceland, as this limit is today laid down in the Icelandic Act of 1 June 1979 No. 41.
>
> 3. Where the fishery zone adjoins the zone off East Greenland, the delimitation line shall be drawn by agreement."

538. This legislation confirms the adherence of Norway to the median line in relation to Greenland and in other respects reflects the contents of the Agreement with Iceland which was shortly to be concluded, and was in fact signed on 28 May 1980. The background to this Agreement has been examined in Part I, paragraphs 248-253.

Agreements Between Norway and Denmark

539. There are three bilateral agreements. The first is the Agreement relating to the Delimitation of the Continental Shelf signed in Oslo on 8 December 1965 (Annex 46). The provisions of Article 1 are as follows:

> "The boundary between those parts of the continental shelf over which Norway and Denmark respectively exercise sovereign rights shall be the median line which at every point is equidistant from the nearest points of the baselines from which the breadth of the territorial Sea of each Contracting Party is measured."

540. A technical agreement concerning a tripoint with Sweden was concluded by an Exchange of Notes of 24 April 1968 (Annex 51). This Agreement involved the application of Article 3 of the previous instrument.

541. The third agreement was signed on 15 June 1979 and concerned the delimitation of the continental shelf in the waters between the Faroes and Norway and the line of demarcation between the fisheries zone off the Faroes and the Norwegian economic zone (Annex 69). Article 1 of the Agreement provides as follows:

> "The boundary between that part of the continental shelf in the area between the Faroe Islands and Norway over which the Kingdom of Denmark and the Kingdom of Norway respectively, exercise sovereignty shall, in so far as the exploration and exploitation of natural resources is concerned, be the median line, which is defined as the line equidistant at each of its points from the nearest points on the baselines from which the width of the Contracting Parties' territorial sea is measured."

542. Thus by 14 May 1980 (see paras. 535-6 above) the Government of Denmark had committed itself to the application of a median line in respect of four distinct sectors of maritime delimitation involving Norway, as follows:

(1) Between the mainlands;

(2) Faroes-mainland Norway;

(3) Greenland-Svalbard;

(4) Greenland-Jan Mayen (interim position).

Agreements Concluded by Denmark with Third States

543. The Government of Denmark has adopted a continental shelf delimitation expressly based upon equidistance in the following five agreements with third States:

(1) Protocol to the Agreement with the Federal Republic of Germany, signed on 9 June 1965 (Annex 45);

(2) Agreement with the United Kingdom, signed on 3 March 1966 (Annex 47);

(3) Agreement with the United Kingdom, signed on 25 November 1971 (Annex 54);

(4) Agreement with Canada, signed on 17 December 1973 (Annex 55);

(5) Agreement with Sweden, signed on 9 November 1984 (Annex 74).

544. Denmark has concluded two other delimitation agreements which are not based upon equidistance as such, but involve practical departures from it of fairly limited scale. The relevant agreements are as follows:

(1) Agreement with the Federal Republic of Germany, signed on 9 June 1965 (Annex 45);

(2) Agreement with the German Democratic Republic, signed on 14 September 1988 (Annex 77).

545. In all, taking the Agreements concluded by Denmark with Norway and those with third States, Denmark has expressly adopted a median line solution in respect of continental shelf areas in seven agreements involving five different treaty partners.

The Danish Position on Delimitation between Greenland and Iceland

546. To this picture must be added the significant evidence that Denmark's position concerning delimitation between Green-

land and Iceland is based on the median line. The Danish Memorial recognizes that this delimitation consists of an equidistance line.

547. It is stated that "the proposed southern border of the disputed area is placed to the north of both the *equidistance line between Iceland and Greenland* and the Icelandic 200-mile limit vis-à-vis Jan Mayen, leaving the interests of Iceland unaffected" (Memorial, p. 11, para. 29; emphasis supplied).

548. The significance of the recognition of the median line vis-à-vis Iceland is to be appreciated against the background of the Danish Executive Order of 14 May 1980 (para. 535 above). The provisions of that Order (Section 1 (3)) expressly adopted the median line as "the boundary line of the fishing territory in relation to Iceland". This provision is dispositive: in other words it constitutes the boundary. Whilst there is a proviso - "in the absence of a special agreement to the contrary" – this is merely a condition subsequent and thus forms a contingency which does not reduce the dispositive nature of the instrument.

Agreements Concluded by Norway with Third States

549. The Government of Norway has adopted a continental shelf delimitation expressly based upon equidistance in the following three agreements with third States:

(1) Agreement with the United Kingdom, signed on 10 March 1965 (Annex 44).

(2) Agreement with Sweden, signed on 24 July 1968 (Annex 52).

(3) Agreement with the United Kingdom (Protocol Supplementary to the 1965 Agreement), signed on 22 December 1978 (Annex 67).

550. Further, an Agreement with the USSR relating to the maritime boundary in the Varangerfjord, was signed on 15 February 1957 (Annex 41). This Agreement is in part based on an equidistance principle, and would cover also delimitation of the continental shelf within the Varangerfjord.

551. In addition Norway has concluded an agreement with Iceland on the continental shelf in the area between Iceland and Jan Mayen, signed on 22 October 1981 (Annex 72). As a consequence of this Agreement Norway accepted that the delimitation between Jan Mayen and Iceland should be drawn along the outer limit of the Icelandic economic zone.

552. Moreover, in the Royal Decree of 23 May 1980 (Annex 27) Norway had already provided that the fishery zone established round Jan Mayen did not extend beyond the outer limit of the Icelandic economic zone. This position was also reflected in the provisions of the Agreement between Norway and Iceland concerning Fishery and Continental Shelf Questions signed on 28 May 1980 (Annex 70).

553. The background to these arrangements with Iceland has been elaborated upon in Part I, paragraphs 248-253. The essential element is the decision by Norway to make concessions on political grounds.

Diplomatic Correspondence

554. The diplomatic correspondence confirms the view that until the beginning of the present dispute, Denmark had maintained its adherence to the median line as the equitable solution in the case of opposite coasts. The first informal expressions of doubts concerning the application of a median line as between Greenland and Jan Mayen occurred during 1979 (Annex 5; letter dated 3 July 1979).

555. Danish minutes dated 31 August 1979 (Annex 8) makes it clear that at that stage no definitive objection had been made. In the words of the Minute:

> "It could not be taken for granted that the delimitation between Jan Mayen and Greenland could also be determined by application of the median line principle."

556. The provisions of the Danish Executive Decree of 14 May 1980 (Annex 38), in so far as they concern Jan Mayen (see paras. 535-6 above), indicated that in respect of fisheries the median line was accepted as a provisional delimitation. That this was the understanding of the Norwegian Government is clear from the terms of the Norwegian Note dated 4 June 1980 (Annex 10). In this Note Norway took the opportunity to state that "the general principles of international law imply that a State cannot extend its fishing zone beyond the median line in relation to a foreign State except upon agreement with that State".

557. In its reply dated 9 June 1980 (Annex 12), the Danish Government argued that "Jan Mayen, in terms of international law, falls within the concept of 'special circumstances' ", and reserved its position.

(d) Conclusion

558. This very clearly marked pattern of evidence justifies the conclusion that until 1980 the conjoint opinion of the parties was to the effect that as between opposite coasts the equitable solution would be in principle based upon equidistance. The general attitude of the Parties, both in their dealings with each other and in their transactions with third States, was characterized by a particular approach to the achievement of equity.

559. The Danish thesis is that the conduct of Norway which is relevant consists *exclusively* of the Agreements with Iceland in the years 1980 and 1982 and the line defining the separation between the Fisheries Protection Zone around Svalbard and the Norwegian mainland economic zone (Memorial, pp. 101-2, paras. 314-19). These items add up to very little. The arrangements with Iceland were exceptional and were the product of generous political concessions by Norway (see above, para. 538). The references to Bear Island are not, as has been demonstrated (para. 459), germane to the issue, as the administrative distinction in this case does not constitute a delimitation.

560. At one point the Danish Memorial (p. 118, paras. 367-8) invokes "the element of predictability" as a significant aspect of the concept of equity. In this respect the Memorial adopts a curious inversion of reality. The Norwegian agreements with Iceland – essentially a single transaction – are presented as the norm, rather than the many items relating to an equidistance solution. Moreover, the concession made in favour of Iceland produced a boundary which reflects no norm of equitable delimitation, whereas (for example) the Danish agreements with the United Kingdom and Norway in relation to the Faroes, like the vast majority of the agreements concluded by Denmark and Norway, adopt a method of delimitation which is well-recognized in the law and familiar in diplomacy. The political bargain struck between Norway and Iceland was exceptional and it is the median line as between opposite coasts which is in accord with the element of predictability.

5. Security Considerations and the Coastal State's Protective Interest

561. In the *Libya-Malta Continental Shelf Case*, the Court adverted to security considerations, in the context of the contention by Malta that such considerations would confirm the equidistance method of delimitation, which gives each party a comparable lateral control from its coasts. In the words of the Judgment:

> "Malta contends that the 'equitable consideration' of security and defence interests confirms the equidistance method of delimitation, which gives each party a comparable lateral control from its coasts. Security considerations are of course not unrelated to the legal concept of the continental shelf. They were referred to when this concept first emerged, particularly in the Truman Proclamation. However, in the present case neither Party has raised the question whether the law at present attributes to the coastal State particular competences in the military field over its continental shelf, including competence over the placing of military devices. In any event, the delimitation which will result from the application of the present Judgment is, as will be seen below, not so near to the coast of either Party as to make questions of security a particular consideration in the present case." (*I.C.J. Reports 1985*, p. 42, para. 51).

562. Strategic interests, and security interests in the technical sense of bearing directly upon military dispositions, are not materially influenced by the manner in which a continental shelf or fisheries zone delimitation is effected. All high seas rights which are disassociated from the exploration and exploitation of resources, or from the other competences which are recognized as falling to the coastal State within extended zones of jurisdiction, are maintained fully in the water column superjacent to the continental shelf, or within such zones. The exercise of high seas rights which are relevant in a security or defence context remains subject to that equitable and mutual balancing of interests between States which obtains with respect to the high seas beyond zones of maritime jurisdiction. In this sense, strategic and military considerations are therefore in general not to be taken into account as relevant circumstances in regard to delimitation.

563. However, this does not mean that a more general concept of security – encompassing all elements of coastal State protective interest in general – is devoid of importance in relation to the delimitation of maritime areas of jurisdiction.

564. The Truman Proclamation referred specifically, in its preamble, to the fact that "the effectiveness of measures to utilize or conserve these resources [of the subsoil and sea-bed of the continental shelf] would be contingent upon cooperation and protection from the shore", and that "self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources". The protective interest, as stated, is related directly to the resource interest connected with the continental shelf, and to the safeguarding of those other interests which might be affected by the exploitation of those resources, *e.g.*, the need to avoid pollution of shorelines and beaches.

565. The interest of each coastal State in safeguarding these protective concerns is equal in quality and in intensity. The land, internal waters and the territorial sea constitute the prime object of protection. The physical possibility of conducting and controlling resource exploitation in a manner which safeguards these interests, and of taking other protective measures effectively and timely, are clearly related to the distance from land-based control or support bases to the area of activity. In this sense, the protective interest of a coastal State must constitute a factor which would legitimately be a relevant circumstance influencing the course of delimitation. The drawing of a boundary closer to one State than to another would imply an inequitable displacement of the possibility of the former State to protect interests which require protection. In this connection, it should be borne in mind that in particular the exploitation of seabed resources always entails an element of risk. The extravagant claim of Denmark would create a situation in which Denmark would take decisions directly affecting such risk elements with respect to areas located very close to the shores of Jan Mayen, and much more comfortably – four times more – removed from the coast of Greenland.

566. In the light of the considerations of the coastal State's protective interest, the creation of such an imbalance in the relative security position of the two Parties would clearly be inequitable, and lack any basis in the existing law of maritime delimitation. The Court itself must have reasoned in the same way in the *Libya-Malta Continental Shelf Case* when it found that

"the delimitation which will result from the application of the present Judgment is ... not so near to the coast of either Party as to make questions of security a particular consideration ..." (*I.C.J. Reports 1985,* p. 42, para. 51).

6. The Substantial Interest of Norway in the Jan Mayen Maritime Region

(a) Introduction

567. It may be recalled that in its Decision of 30 June 1977 the Court of Arbitration in the *Anglo-French Case* adverted to the respective "navigational, defence and security interests" of the Parties in the region. Having done so, the Court stated that such considerations "tend to evidence the predominant interest of the French Republic in the Southern areas of the English Channel, a predominance which is also strongly indicated by its position as a riparian State along the whole of the Channel's south coast": *Reports of International Arbitral Awards*, XVIII, p. 90, para. 188 *in fine.*

568. The consequence of the conclusion reached by the Court of Arbitration was the enclaving of the Channel Islands in favour of France. It was thus the sector of French coast on the southern side of the English Channel which determined the nature and strength of the interests *in the maritime areas concerned.* In the present proceedings there is no geographical complication comparable to the presence of the Channel Islands within a gulf of the French coast, and the relevant elements consist of the long island of Jan Mayen, the sea areas associated with it, and the long-established and substantial interest of Norway in those areas.

569. In this context two factors are operative. First, there is a symbiotic relationship between the land territory and the interests of the coastal State in the maritime areas. Secondly, within this relationship, the interests in the maritime areas have an importance as great as that of the interests associated with the land territory itself.

(b) Norway's Interest in the Maritime Region

570. Norway's interest in the maritime areas appurtenant to Jan Mayen contains the following major elements:

(1) Long-established exploitation patterns in respect of sealing and whaling;

(2) Fisheries;

(3) Navigational and protection interests;

(4) Resource potential; and

(5) Marine research and development.

571. These factors are in each case pertinent either to the institution of the continental shelf, or to the resource interest in the water column, or to both. Consequently, they clearly qualify as relevant circumstances for the purpose of applying equitable principles to the issue of delimitation. Each factor is directly related to the type of legal interest represented by the shelf or fisheries zones as legal institutions: see the Judgment of the Court in the *Libya-Malta Case*, *I.C.J. Reports 1985*, p. 40, para. 48).

(c) The Elements Forming Norway's Interest

(1) Long-established Exploitation Patterns

572. The waters between Jan Mayen and Greenland have long been the scene of Norwegian whaling, sealing and fishing. The various fisheries will be described below. In historical perspective the fisheries form a part, but an important part, of a long-established pattern of exploitation of the natural resources of the waters around Jan Mayen.

The Importance of Whaling to Norway

573. Since the 1880s small-type whaling has been an industry in its own right. This kind of whaling involves the equipping of fishing boats with small harpoon guns. From the 1960s, a minke whale fishery was conducted along the coast of East Greenland and in the areas west and south of Jan Mayen.

574. Commercial whaling is for the time being suspended in view of a complex set of circumstance unrelated to the present proceedings. Whale stocks interact with other species – those which are harvested and those which form an indispensable part of the various marine food chains. The proper and rational management of whales, both for the intrinsic value of the harvest, and as a means of conducting ecological, multispecies management programmes, remains essential for coastal nations in this region.

575. The history and development of whaling activities in the Jan Mayen area are more fully described in Part I, paragraphs 120-123.

The Importance of Sealing to Norway

576. In the modern era regular sealing activities began in the Jan Mayen area (the West Ice) in 1846. After peaking in 1874 the level of the industry has varied, but sealing activities have always persisted and have remained significant until the present day. From 1970 to 1979 the annual yield from Norwegian sealing in the West Ice averaged some 35,000 animals at a first-hand value of approximately NOK 21 million (equivalent to USD 3.2 million) (see Appendix 3, Table 3.2).

577. The sealing industry is concentrated in two areas in Norway: the Sunnmøre region and the Tromsø region. In both these regions sealing has by tradition been an important occupation and source of income during a part of the year when it is difficult to make a living by other means.

578. The history and development of sealing activities in the Jan Mayen area are described more fully in Appendix 3.

(2) Fisheries

The Importance of Fisheries to Norway

579. Norway has had a persistent interest in the fisheries of the seas around Jan Mayen. The comparatively small area around Jan Mayen has a substantial significance in the total Norwegian fisheries in the Barents Sea, the North Sea and the Norwegian Sea. This has involved different stocks in different periods, according to the incidence of particular stocks and the changes in distribution. The different fishing activities in the Jan Mayen area account for more than 8 per cent. of the total quantity of Norwegian catches. The capelin fisheries in the Jan Mayen area are very important for the employment of the purse seine fleet. The shrimp fisheries off Jan Mayen and Greenland are integrated in the operational pattern of other Norwegian shrimp fisheries. The activities in the Jan Mayen area have a greater significance than the indirect value. They contribute to the fragile economy of Norwegian coastal communities, which are particularly dependent on the utilization of marine living resources for maintaining employment opportunities.

580. In Part I, paragraphs 119-146, an account is given of the significance of the fisheries in the Jan Mayen region: Herring, blue whiting, shrimp, Iceland scallop, and capelin.

The Fisheries Interest as Pictured in the Danish Memorial

581. The Danish Memorial (p. 43, paras. 164-5; pp. 46-51, paras. 173-89) places emphasis on the importance of fisheries for Greenland. It also states (p. 50, para. 185): "In the late 1970s Norwegian and Danish vessels commenced fishing capelin in the waters between Greenland and Jan Mayen". It is to be noted that neither in this passage nor elsewhere is it suggested by Denmark that fishing boats *from Greenland* fish now, or have ever fished, in the areas near Jan Mayen.

582. The rather general statements on catches of capelin to be found in the Danish Memorial (see p. 51, para. 186) do not focus on the fishing areas between the opposite coasts of Jan Mayen and Greenland.

583. The significant point is that, of the total Danish fishing effort in the North Atlantic, only a very small fraction relates to waters in the sea areas presently in dispute. The figures provided in the Memorial do not attempt to deal with this issue. A general estimate based on data available to the Norwegian Government is that less than 3 per cent. of the total quantity of fish landed by Denmark (including the Faroe Islands and Greenland) is taken in the area between Jan Mayen and Greenland, amounting to approximately 0.8 per cent. of the total first-hand value of Danish catches. In comparison, the equivalent estimate of the importance of the area north of 68° N for Norway shows a share of up to 8.6 per cent. of the quantity, and 3.5 per cent. of the first-hand value of total Norwegian catches landed (estimates based on data for 1986).

584. In the same context, it appears from the data available that income derived from the licensing of capelin fishing off the East Greenland coast north of 68° N constitutes less than one per cent. of the value of fisheries in the whole Greenland zone. The Danish Memorial offers no evidence of the dependence of Greenland fisheries on the area in dispute. In fact Greenland fishing takes place in many areas west and southeast of Greenland, but not in the disputed area. The key passages of the Danish Memorial do not provide much illumination in this respect (pp. 46-51, paras. 173-89).

585. The evidence available indicates that no boats currently fish out of Ittoqqortoormiit (Scoresbysund), and a total of five vessels were registered at Tasiilap, much further south in the Denmark Strait: see the figures for 1988 in the 1989 edition of the *Yearbook* for Greenland, Table 41 (p. 372). Purchases of fishery products from the trading district of Ittoqqortoormiit in 1985 were non-existent: see the tables in the same *Yearbook*, pp. 374, 378.

(3) The Navigational and Protection Interests

586. The existence of major communications and rescue facilities on Jan Mayen provides the means of protecting and assisting fishing vessels and others who may in the future be engaged in exploitation of the region's natural resources. It may be recalled that security considerations, in the form of the ability to provide "cooperation and protection from the shore" in the context of resource utilization, were a key feature of the Truman Proclamation.

587. Jan Mayen plays host to a station which forms part of the LORAN C radio positioning system. The station is run by the Norwegian Defence Communication and Data Services Administration ("NODECA"), in cooperation with an agreement with the US Coast Guard, as are other comparable stations in this world-wide network. The station forms part of the Norwegian Sea chain of stations.

588. The system, established originally for military purposes, has increasingly significant civil application. Navigation signals are available to other users, including commercial vessels, fisheries vessels and so forth. The trend is to maintain and develop the LORAN C system to satisfy the increased demand from civilian and commercial interests. The various Norwegian fishing fleets operating in the waters round Jan Mayen depend for certain vital services upon the facilities associated with the Island. For example, the summer capelin fishing involves more than 100 boats employing more than 1,000 men. In addition, shrimp fishing continues in the area the whole year round.

589. In consequence, Jan Mayen is of great importance to the safety of the fishing fleet, and sick and injured personnel are evacuated by means of the Island Airport, this process involving five or six ambulance flights each year.

590. In this respect, the interest of Norway in the island is directly connected with the exploitation of the resources of the maritime areas appurtenant to the island. This factor also operates in respect of the future exploitation of any mineral resources based upon the continental shelf areas to which Norway is entitled.

(4) Resource Potential

591. In the *Dispositif* of the Judgment in the *North Sea Cases,* the "factors to be taken into account" include "(2) so far as known or readily ascertainable, the ... natural resources, of the continental shelf areas involved;...." (*I.C.J. Reports 1969*, pp. 53-4, para. 101(D)). This principle was referred to by the Court in the *Libya-Malta Case*, indicating that such resource deposits "might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation." (*ibid.*, 1985, p. 41, para.50). It would be a practical extension of that line of reasoning to take into account substantial indications of resource *potential* as well.

592. The possibility is present that there may be deposits of polymetallic sulphides on the seabed in the area between Jan Mayen and Greenland. The natural conditions are there, but closer investigation of the seabed in the area has begun only recently.

593. The continental shelf along the Jan Mayen ridge has been the object of initial investigations. No such investigations have as yet covered the shelf areas to the west of Jan Mayen, and the material is therefore lacking for even a preliminary assessment of the hydrocarbon potential of this part of the Jan Mayen continental shelf. It is to be noted that there appears to be an increasing commercial interest in prospecting in the northeast part of the Greenland continental shelf. Any hydrocarbon development on the continental shelf of Jan Mayen would obviously be of the greatest interest to Norway, which already has an offshore petroleum industry of appreciable dimensions.

(5) Marine Research and Development

594. Norway can take some pride in its scientific research efforts on Jan Mayen and in the region around the island over an extended period of time. Those efforts have formed part of a broad pattern of scientific investigations which have been directed

towards all the oceanic and Arctic terrestrial regions within Norway's scope of interest. Norway's broad range of concerns – maritime, industrial and environmental – indicate that the scientific study of natural and physical condition on and around Jan Mayen will remain of high importance.

(d) Conclusion

595. In the *Anglo-French Case* the Court of Arbitration referred to "the predominant interest" of the French Republic as a riparian State (see above, paras. 567-8). In the present case the Government of Norway does not claim a "predominant interest" in the waters between Greenland and Jan Mayen. To do so would be to emulate the monopolistic claim of Denmark in these proceedings to most of the maritime jurisdiction and natural resources in the disputed area.

596. The purpose of the demonstration of the existence of a substantial interest in the maritime areas adjacent to and to the west of Jan Mayen is to establish the matrix of relevant circumstances which militate in favour of the median line boundary as a moderate application of equity in these proceedings. In other words, taking these relevant circumstances into account, and having regard to the practical interaction of the factors invoked in this Chapter, the median line boundary is clearly seen to be the legitimate expression of equity both in relation to delimitation of continental shelf areas and in relation to its delimitation of fishery zones.

7. The Relevance of Geology and Geomorphology

(a) The Principle

597. The Danish Memorial (p. 76, para. 256) states that "where a delimitation dispute relates to an area, the extent of which is less than 200 nautical miles from the coast of either Party, geological considerations *would seem to be irrelevant*" (emphasis supplied). The proposition is based upon the pertinent paragraph in the Judgment of the Court in the *Libya-Malta Case* (*I.C.J. Reports 1985*, p. 35, para. 39), which is in fact much more definite than the wording of the proposition as formulated by the Danish Government ("would seem to be irrelevant").

598. The reader of the Memorial readily detects a certain frustration in the passage just quoted, which appears in Part II

dealing with "The Law". This comes as no surprise when the relevant factual passages, offered in Part I (pp. 37-40, paras. 153-8), are recalled.

599. The extent of the areas of maritime jurisdiction of the Parties may not be more relevant to the issue of delimitation than the extent of the land area. But it may be noted that, as far as can be estimated, the area of Greenland's fisheries zone, within 200 nautical miles from baselines or within median lines as against opposite coasts, is slightly over 2,000,000 square kilometres. As it can be said that Greenland is a large island, it is also manifest that Greenland disposes of an extensive maritime area (see Map IV at the end of this Volume). For the Kingdom of Denmark as a whole, another 300,000 square kilometres must be added (estimated on the same basis, and excluding claims to continental shelf areas beyond 200 nautical miles or median lines).

(b) The Facts

600. The geology and geomorphology of the area between Jan Mayen and Greenland have been described earlier in the present Counter-Memorial (paras. 120-9), and this material forms the background for a brief assessment of the passages contained in the Danish Memorial.

601. These passages are, in form at least, descriptive, but in the result they produce highly tendentious evaluations of the geology of the relevant area. In the first place, the Memorial makes a wholly artificial and unjustified characterization of the shelf margin in the area west of Jan Mayen. In the words of the Memorial:

> "As for the shelf margin to the west of the Ridge and south of 70° N., this is within 50 nautical miles of the axis of the Ridge, i.e., more than 200 nautical miles from the east coast of Greenland." (p. 40, para. 158).

602. The evidence does not justify this interpretation of the data, which involves an arbitrary approach to the evidence and has an obvious motive in seeking to provide support for the eccentric "principle" – the 200 mile outer limit – on which the Danish claim rests in the present case.

603. Neither the geology of the region nor the bathymetry support the detection of the location of a "continental margin"

more than 200 nautical miles from the coast of Greenland. The best available data shows a series of tablelands, south of the Jan Mayen fracture zone, extending westwards from the Jan Mayen micro-continent: see GEBCO sheet No. 5.04, 5th ed. April 1978 (reprinted March 1984); and sheet entitled "Bathymetry of the Norwegian-Greenland and Western Barents Seas", US Naval Research Laboratory, Acoustics Division, Environmental Sciences Group (Washington, 1977).

604. The bathymetry contradicts the Danish Memorial. The Jan Mayen continental shelf is not cut off to the south, as suggested; it continues up to the distinctive elevation of the Kolbeinsey Ridge. The Ridge defines the most marked axis of declivity in the area.

(c) Conclusion

605. The evidence of the bathymetry also contradicts the assertion of the Danish Government that "there exists no common shelf between East Greenland and Jan Mayen" (Memorial, p. 40, para. 158). The existence of a degree of variation in the topography of the seabed does not place the relevant seabed areas outside a legal classification as shelf areas. This conclusion follows from the opinion of the Court expressed in its Judgment in the *Libya-Malta Case*:

> "The Court however considers that since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding sea-bed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims. This is especially clear where verification of the validity of title is concerned, since, at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question, title depends solely on the distance from the coasts of the claimant States of any areas of sea-bed claimed by way of continental shelf, and the geological or geomorphological characteristics of those areas are completely immaterial." (*I.C.J. Reports 1985*, p. 35, para. 39).

8. The Relevance of Area and Population

(a) Area

606. The Danish Memorial invokes the differences in area of Jan Mayen and Greenland in two contexts: first, as an aspect of "the geographical factor" (p. 96, para. 296; p. 97, para. 301); and, secondly, as an aspect of "the proportionality factor" (p. 110, para. 350; p. 111, para. 355). These assertions are flatly contradicted both by the basic principles of entitlement to continental shelf and by the jurisprudence.

607. In its Judgment in the *Libya-Malta Case* the Court spelled out the requirement that, to qualify as a "relevant circumstance", a consideration must be of the type that is "pertinent to the institution of the continental shelf as it has developed within the law": *I.C.J. Reports 1985*, p. 40, para. 48. Consequently, the Court rejected a Libyan argument that landmass provided a legal basis for entitlement. In the words of the Court:

> "Landmass has never been regarded as a basis of entitlement to continental shelf rights, and such a proposition finds no support in the practice of States, in the jurisprudence, in doctrine, or indeed in the work of the Third United Nations Conference on the Law of the Sea. It would radically change the part played by the relationship between coast and continental shelf. The capacity to engender continental shelf rights derives not from the landmass, but from sovereignty over the landmass; and it is by means of the maritime front of this landmass, in other words by its coastal opening, that this territorial sovereignty brings its continental shelf rights into effect. What distinguishes a coastal State with continental shelf rights from a landlocked State which has none, is certainly not the landmass, which both possess, but the existence of a maritime front in one State and its absence in the other. The juridical link between the State's territorial sovereignty and its rights to certain adjacent maritime expanses is established by means of its coast. The concept of adjacency measured by distance is based entirely on that of the coastline, and not on that of the landmass." (*I.C.J. Reports 1985*, p. 41, para. 49).

608. This emphatic view was to be confirmed by the Award of the Court of Arbitration in the *Guinea-Guinea (Bissau) Maritime Delimitation Case*. The relevant passage is as follows:

"As for proportionality with relation to the land mass of each State, the Tribunal considers that this does not constitute a relevant factor in this case. The rights which a State may claim to have over the sea are not related to the extent of the territory behind its coasts, but to the coasts themselves and to the manner in which they border this territory. A State with a fairly small land area may well be justified in claiming a much more extensive maritime territory than a larger country. Everything depends on their respective maritime façades and their formations." (*International Law Reports*, Vol. 77, p. 688, para. 119).

609. This reasoning applies with equal cogency both to continental shelf entitlement and to entitlement to rights over an exclusive economic zone (or a fishery zone).

610. The extent of the areas of maritime jurisdiction of the Parties may not be more relevant to the issue of delimitation than the extent of the land area. But it may be noted that, as far as can be estimated, the area of Greenland's fishery zone, within 200 nautical miles from baselines or within median lines as against opposite coasts, is slightly over 2,000,000 square kilometres. As it can be said that Greenland is a large island, it is also manifest that Greenland disposes of an extensive maritime area. For the Kingdom of Denmark as a whole, another 300,000 square kilometres must be added (estimated on the same basis, and excluding claims to continental shelf areas beyond 200 nautical miles or median lines).

(b) Population

611. In the same vein the Danish Memorial invokes the question of population, as in the following passage:

"Greenland has approximately 55,000 *inhabitants*, six per cent. of them living on the east coast. Greenland has been inhabited for several thousand years. Jan Mayen has no settled population at all and has never had any." (Danish Memorial, p. 110, para. 351; emphasis in the original).

612. As a matter of law, the comparative population figures are as irrelevant as the argument based on relative landmass. Population is not a factor related to the shelf or other entitlements of the coastal State, any more than it is an element in title to the land territory itself.

613. In this connection the Danish Memorial (p. 98, para. 303) invokes the decision of 30 June 1977 in the *Anglo-French Case* (the passages relied on by Denmark are set out at pp. 82-4, paras. 278-9). In fact the passages quoted refer to population simply as an aspect of the general description of the importance of the Channel Islands.

614. The striking fact is that the Court of Arbitration gave very little, if any, entitlement to the Channel Islands in spite of what it had said about "the size and importance of the Channel Islands" (*Reports of International Arbitral Awards* p. 89, para. 187). The Court also made it clear that it was the location of the Channel Islands within the overall geographical and legal framework which was "the primary element in the present problem": *ibid.* pp. 89-90, para. 187; p. 93, para. 196; p. 94, para. 199. The brutal fact is that "the size and importance", and the population, of the Channel Islands did not count for very much.

615. In any case the factual data provided by the Danish Memorial are unconvincing. A very small proportion of the population of Greenland lives within the Arctic Circle, at the same latitudes as Jan Mayen. Moreover, the comparison of the population figures is less impressive when the densities are considered. The figure for Jan Mayen (population of 25) works out at one person per 15 square kilometres compared with the figure for Greenland of one person per 40 square kilometres.

616. This comparison is even less impressive when it is recalled that only 6 per cent. of the population of Greenland lives in East Greenland (according to the Danish Memorial, p. 36, para. 148). From the Danish *Statistical Yearbook* it appears that the total population of East Greenland on 1 January 1989 was 3,425, of whom 564 lived in the municipality of Scoresbysund (*Statistical Yearbook*, Vol. 93 (1989), Copenhagen, 1989, p. 418).

(c) Conclusion

617. It is generally recognized that considerations of landmass and population do not qualify as relevant circumstances for the purpose of applying equitable principles in order to achieve an equitable solution. Such considerations do not bear upon the entitlement of the coastal State which derives from its coastline, and not from the landmass or the demographic conditions of the landmass.

9. The Practice of Other States in Similar Geographical Situations

(a) The Principle

618. In response to the proposition (from one of the Parties) that the practice of States provides "significant and reliable evidence of normal standards of equity", the Court in its Judgment in the *Libya-Malta Case* observed: "The Court for its part has no doubt about the importance of State practice in this matter": *I.C.J. Reports 1985*, p. 38, para. 44. Accordingly, the Norwegian Government will identify a substantial sample of geographical situations which are comparable to the relationship between Greenland and Jan Mayen and which have been the subject of international agreement.

(b) Normal Standards of Equity in Comparable Cases

619. For reasons of convenience, the examples of the practice of States will be presented in chronological order, on the basis of the date of signature of the instruments.

(1) The United Kingdom-Norway (Phase 1) (1965)

620. The Governments of Norway and the United Kingdom signed an agreement delimiting the continental shelf boundary between the two States on 10 March 1965 (Annex 44). Article 1 of the Agreement provides that the dividing line "shall be based, with certain minor divergencies for administrative convenience, on a line, every point of which is equidistant from the nearest points of the baselines from which the territorial sea of each country is measured".

621. Thus the principle of equidistance was employed for the entire alignment of 359 nautical miles. Full effect was given to the Shetland Islands. The final three sectors of the boundary, totalling 150 nautical miles, used four basepoints on the eastern side of the Shetland group. The distance between the relevant coasts in these three northernmost sectors ranges from approximately 164 to 196 nautical miles.

622. The length of the Shetland Islands is approximately 113 kilometres and the greatest breadth is 58 kilometres The total area is 1,427 square kilometres.

(2) Japan-Republic of Korea

623. Japan and Republic of Korea signed a continental shelf boundary Agreement on 30 January 1974 (Annex 56). The boundary thus established gives full effect to the Japanese islands of Tsushima, situated about 27 nautical miles from the nearest Japanese island of Kyushu.

624. The Tsushima islands are approximately 70 kilometres in length and 16 kilometres in width. According to the US Department of State publication *Limits in the Seas:* "The majority of the turning points are very close to being equidistant from one point on each country's baseline" (*Limits in the Seas*, No. 75, p. 6).

(3) India-Indonesia (Phase 1) (1974)

625. India and Indonesia signed a continental shelf Agreement on 8 August 1974 (Annex 57). The Agreement established three straight line sectors as the boundary between Great Nicobar (India) and Sumatra, a total distance of 47.9 nautical miles. The alignment represents a modified median line and the consequence is that the Indian island of Great Nicobar is given full effect.

626. The relevant basepoints are between approximately 80 and 100 nautical miles apart. Great Nicobar is 54 kilometres long from north to south.

(4) Panama-Columbia (1976)

627. On 20 November 1976, Panama and Colombia signed an agreement delimiting maritime boundaries in the Caribbean Sea and the Pacific Ocean (Annex 58). Article 1 of the Agreement expressly adopts the principle of equidistance.

628. Whilst the median line in the Caribbean is constructed as a step-like configuration for the sake of convenience, the principle of equidistance has been applied throughout with only minor deviations. The result is that the very small islands and cays on which Colombian entitlement is based have been given full effect. The island cays involved include Roncador Cay, Cayos del Este Sudeste and Cayos de Albuquerque.

(5) India – The Maldives (1976)

629. The Governments of the Republic of India and the Republic of the Maldives signed a maritime boundary Agreement on 28 December 1976 (Annex 59). According to *Limits in the Seas,* "the boundary closely approximates an equidistance line" (p.7).

630. The delimitation has two principal features. In the first place, as between the mainland of India and the Maldive Islands. In general the Maldives are given full effect. However, the east-west trending segment of the delimitation involves allowing the modest and isolated Indian island of Minicoy full effect as against the northernmost atoll of the Maldives. Minicoy is located 110 nautical miles from the nearest of the Laccadive Islands (which are Indian) and 210 nautical miles from the Indian mainland. Overall, the arrangements provide no evidence of discrimination against offshore islands. The Maldives are some 230 nautical miles from the coast of India.

(6) India-Indonesia (Phase 2) (1977)

631. The delimitation of 1974 between Great Nicobar and Sumatra (see No. (3), paras. 625-6 above) was confirmed and extended by an Agreement signed on 14 January 1977 (Annex 60). This arrangement extended the boundary of 1974 between the two countries in the Andaman Sea and the Indian Ocean in areas not covered by the previous Agreement.

(7) Costa Rica-Colombia (1977)

632. Colombia and Costa Rica signed an Agreement relating to their maritime boundary on 17 March 1977. The Agreement has not yet been ratified (Annex 61). Although the Agreement does not adhere to any particular principle of delimitation, the actual boundary established gives more or less full effect to the small islands and cays in the Caribbean which form the basis of Colombian entitlement. The alignment is related predominantly to the Cayos de Albuquerque so far as Colombian-claimed territory is concerned.

(8) United States – Venezuela (1978)

633. Venezuela and the United States signed a maritime boundary Agreement on 28 March 1978 (Annex 63). The alignment consists of a series of geodetic lines, 298.7 nautical miles in

length. Whilst the provisions of the Agreement make no express reference to equidistance, the resulting line of division evidently gives full effect to the fringe of small islands off the coast of the Venezuelan mainland (including the Netherlands Antilles) and, in the eastern sectors, it produces a median line between the United States possession of St. Croix and Isla Aves of Venezuela.

634. The treatment of Isla Aves is particularly striking. This feature is less than half a hectare in area and has a height of only 3 metres. In storm conditions the island is swept by waves and, consequently, the research station, which is the only habitation, is on an offshore platform constructed close to the beach and connected with it by a walkway. The island is 300 nautical miles from the Venezuelan mainland.

(9) The Netherlands - Venezuela (1978)

635. Venezuela and the Netherlands signed a maritime boundary Agreement on 31 March 1978 (Annex 64). The alignment is not expressly based on any particular principle of delimitation and consists of a series of geodetic lines. Sector B of the boundary lies between the Leeward Islands of the Netherlands Antilles (Aruba, Bonaire, Curacao) and the coast of Venezuela. In the result the delimitation gives full effect to offshore islands.

(10) United States – Mexico (1978)

636. The United States and Mexico signed a maritime boundary Agreement on 4 May 1978. The Agreement has not yet been ratified (Annex 65). The Agreement does not refer to any particular method of delimitation and establishes a series of geodetic lines. In doing so full effect is given to three very small insular features some distance off the coast of Yucatan: Arenas Cay, Isla Desterrada, and Arrecife Alacran.

(11) India – Thailand (1978)

637. India and Thailand signed a continental shelf boundary Agreement on 22 June 1978 (Annex 66). The resulting delimitation accords almost full effect to the Nicobar Islands, the qualification arising from the fact that certain small islands offshore Thailand appear to have been employed as basepoints.

(12) The United Kingdom – Norway (Phase 2) (1978)

638. On 22 December 1978 Norway and the United Kingdom signed a Protocol Supplementary to the Continental Shelf Boundary Agreement of 10 March 1965 (Annex 67). This agreement continues the boundary further north, thus confirming the full weight accorded to the Shetland Islands. The preamble to the Protocol reiterates the provisions of Article 1 of the Agreement of 10 March 1965, which adopted the method of delimitation on the basis of equidistance.

(13) Dominican Republic – Venezuela (1979)

639. The Dominican Republic and Venezuela signed a maritime boundary Agreement on 3 March 1979 (Annex 68).

640. The alignment described in the Agreement is an equidistant line between the Dominican Republic and the Netherlands Antilles islands of Aruba, Curacao and Bonaire, which are, respectively, 15 nautical miles, 35 nautical miles and 48 nautical miles from the Venezuelan mainland. The lengths of these three islands are, respectively, 30 kilometres, 60 kilometres, and 35 kilometres. The Agreement, like the United States-Venezuela Agreement of 1978 (see No.8, paras. 633-4 above), gives full effect to the islands of the Netherlands Antilles.

(14) Denmark – Norway (1979)

641. On 15 June 1979 Norway and Denmark signed an Agreement demarcating the continental shelf boundary between the Faroes and Norway, and applying it for other jurisdictional zones (Annex 69, see further [XX] above). This delimitation gave full effect to the Faroe Islands. These islands are 308 nautical miles from the mainland of Norway. They stretch 60 miles from north to south.

(15) Venezuela – France (1980)

642. Venezuela and France signed a maritime boundary Agreement on 17 July 1980 (Annex 71).

643. The delimitation is between Isla Aves, a very small feature belonging to Venezuela (see No. 8, paras. 633-4 above), and the French possessions of Guadeloupe and Martinique respectively. It is based on two sectors of the same meridian

(Article 1). Whilst Isla Aves is not in the result given full effect in all respects, the delimitation treats the small Venezuelan island and the very large French islands on a basis of parity.

(16) France – Australia (1982)

644. The Governments of France and Australia signed a maritime boundary Agreement on 4 January 1982 (Annex 73).

645. Article 2 of this Agreement establishes a boundary between the French possessions of the Kerguelen Islands, on the one hand, and the Australian Heard and McDonald Islands, on the other. These possessions are approximately 200 nautical miles apart. The Kerguelens have an area of about 7,000 square kilometres and the Australian islands about 378 square kilometres. The equidistance line delimitation agreed upon gives equal effect to the relatively small Australian islands.

(17) India – Myanmar (Burma) (1986)

646. India and Myanmar (formerly Burma) signed a maritime boundary agreement on 23 December 1986 (Annex 75).

647. The Agreement establishes a maritime boundary between the Andaman and Nicobar Islands, dependencies of India, and the coasts of Myanmar. The Andaman Islands lie about 540 nautical miles from the mainland of India, and the Nicobar Islands (lying some 80 nautical miles further south) are even farther from India. The two chains of islands lie approximately 300 nautical miles west of the Burmese coast.

648. The delimitation established clearly accords full weight to the Andaman and Nicobar groups in relation to Myanmar in spite of the remoteness of the mainland of India. In essence the Andaman Islands are treated as mainland for the purpose of creating an equidistance line. Within this context the very small Indian islands of Narcondam and Barren Island, lying 70 and 44 nautical miles respectively east of the main Andaman chain, have been given half effect.

(c) The Practice Contradicts the Danish Claims

649. The practice provides no support for the type of claim formulated by Denmark in its Memorial. The evidence contradicts

the existence of any equitable standard based upon an "outer limit of the 200-mile zone" principle. But not only does it negate the existence of such a formula as such as a *modus operandi*, it also shows that isolated islands and groups of islands are normally given full effect.

650. In this context the Danish Memorial (pp. 117-18, paras. 365-66) alleges that State practice supports the Danish method of delimitation, but then only refers to the arrangements between Norway and Iceland which, as has been indicated earlier, depended upon concessions based upon special considerations of a political character. Elsewhere in the Memorial (pp. 91-94, paras. 289-90), seven other items of practice are invoked by the Applicant State. For various reasons none of these items of practice support the Danish claims in these proceedings.

651. There is only one item which involves the outcome contended for by Denmark and that is the delimitation between Norway and Iceland. This delimitation is quite exceptional by any standard of comparison and stands entirely by itself. The case of Bjørnøya (Bear Island, p. 94) is irrelevant because it does not involve a delimitation in international law. It is a matter of an administrative distinction between two areas to which different rules apply (see paras. 230-1).

652. Cases (5) and (6) offered by the Danish Memorial (Faroe Islands-Norway and Denmark-Sweden) involve the giving of full effect to islands in relation to a mainland, as the Memorial recognizes (pp. 93-4).

653. The residue of the practice invoked by Denmark consists of three delimitations in the Baltic Sea. Two of these delimitations involve alignments affected by the Swedish island of Gotland (delimitations with the Union of Soviet Socialist Republics and Poland) (Annexes 76 and 78), and the third involves an alignment affected by the Danish island of Bornholm (delimitation with the German Democratic Republic) (Annex 77).

654. The geographical relationships of the riparian States within the Baltic are so very different from those of States bordering the oceanic expanses to the east of Greenland that it is difficult to see any marked element of comparability which could be said to give relevance, however limited, to these Baltic delimitations.

655. However, there is one aspect of these cases which is of interest for present purposes. In each delimitation the offshore

island is treated to *a very considerable extent as if it were mainland.* This is particularly true of Bornholm, since the deviation of the alignment from the median line is limited in extent. According to this analysis, these examples of State practice militate in favour of giving full effect to an island like Jan Mayen, more especially because the "treatment as mainland" factor must be even more influential in the case of an isolated island 250 nautical miles from the other mainland coast.

(d) Conclusion

656. In the submission of the Government of Norway, the substantial sample of State practice set forth above provides cogent evidence that in comparable geographical situations, involving essentially similar coastal relationships, the normal standard of equity involves giving full effect to major offshore islands. Moreover in the practice even minor features are given full effect when they are geographically isolated *and consequently are treated essentially as mainland.*

657. The relevant practice extends from 1965 to 1986 and therefore cannot be said to reflect a view of the law which is other than contemporary. Moreover, the practice encompasses both shelf delimitations and other maritime delimitations. The pattern also includes delimitations within a variety of regions: the Caribbean (6), the Gulf of Mexico (1), Asia (6), and Europe (3). Three of the delimitations involve one or both of the Parties to these proceedings.

658. The Danish Memorial (p. 118, para. 367) states that "The concept of equity contains . . . an element of predictability" and earlier in this Part of the present Counter-Memorial (paras. 434-6) the factor of the stability of boundaries is affirmed. Given the extravagant nature of the Danish claim and the actual pattern of the State practice, it is clear that it is the solution proposed by Denmark which is bound to promote unpredictability and confusion in the relations of States if it were to be given legitimacy.

CHAPTER VIII
CONCLUSIONS ON THE EQUITABLE SOLUTION

1. The Elements of an Equitable Solution under General International Law

659. It has been shown above that there exists a treaty relationship between the Parties in respect of the delimitation of the parts of the continental shelf appertaining to each of them (Chapters I and II of this Part). It has further been shown that the conduct of the Parties by a process of express recognition, tacit recognition or acquiescence has led to the establishment of a legal status quo in respect of maritime delimitation, and that this conduct has, moreover, created a situation in which the principles of opposability and estoppel affect the delimitation issues (Chapters III and VI of this Part). It is the contention of the Government of Norway that, on the basis of these considerations, the median line is a boundary in place, and one which follows from those specific elements of law referred to above. The median line, as the boundary for the continental shelf and for the fishery zones, is at the same time an *equitable* solution under the test of general international law.

660. That will be shown in the following conclusions on the application of those elements which are operative under general international law to indicate the equitable solution. These conclusions are presented without prejudice to any of the two foregoing sets of argument and conclusions.

(a) The Delimitation Should Reflect the Substance of Entitlement

661. In the light of the considerations advanced earlier in this Part, the elements in the equitable solution appropriate to the circumstances of this case can now be articulated. There can be no doubt that the primary element is that the delimitation should reflect the substance of entitlement. A delimitation which departs from the geographical realities will fail to give full faith and credit to the maritime entitlement of the State concerned and, especially in the case of islands, will also derogate from the title to the land territory itself, since the first flows from the second.

662. The Danish claims are characterized by extremism, and so much so that at one point in the Memorial (pp. 119-20, para.

372) a line is proposed which goes *beyond* the 200-mile limit. The nature of the claims (in either version) must involve a serious reduction of the entitlement of Jan Mayen as a territory subject to Norwegian sovereignty. Such exaggerated and monopolistic claims are not simply "inequitable" but in legal terms invalid.

(b) Between Opposite Coasts the Presumption Is that the Median Line Is the Appropriate Means of Achieving an Equitable Result

663. Both in the context of continental shelf delimitation and the delimitation of adjacent fisheries zones, the presumption is that the median line is the appropriate means of achieving an equitable result as between states with opposite coasts. The jurisprudence points to the double-sided nature of this principle. In the first place, the method is a logical consequence of the geography of coasts as a major relevant circumstance and, secondly, the criterion of equal division is both equitable and convenient, because it is uncomplicated. As the Chamber stated in the *Gulf of Maine Case*, the equal division of areas where the maritime projections of the States concerned converge is "a criterion long held to be as equitable as it is simple" (*I.C.J. Reports 1984*, p. 327, para. 195).

(c) The General Geographical Context Has the Consequence that Jan Mayen Be Accorded Full Effect as a Geographically Independent Feature

664. The general geographical context within which the relation of Greenland and Jan Mayen is to be assessed consists of the oceanic expanse between Greenland and Novaya Zemlya and north of the Arctic Circle. This geographical context is characterized by openness. The sea areas are extrovert and form extensive portals to other oceanic expanses.

665. The context thus lacks any of the characteristics of a semi-enclosed sea. Jan Mayen stands in isolation 250 nautical miles east of Greenland. It is geographically independent and cannot be said to be associated with any other coasts. Jan Mayen is juxtaposed to Greenland and Greenland is juxtaposed to Jan Mayen. There is no legal or geographical basis for discrimination between their respective coasts. Each coast has equal generative value.

666. This general datum produces two corollaries. First, the only relevant coasts are those of Greenland and Jan Mayen. There

is no legal relationship between the coasts of Norway itself and the coasts of Greenland. In particular, there is no convergence between the entitlements of Norway and Greenland, and to the east, north and southeast of Jan Mayen there is a large area of high seas. Secondly, the lengths of the respective coasts can have no relevance within the geographical context described above, which involves the juxtaposition of two entities at a considerable distance from each other and not forming part of any introverted geographical framework.

(d) There Is No Geographical Feature Causing Disproportionate Effects and Justifying Abatement

667. In the circumstances of the present case there is no geographical feature which could be said to be an "incidental special feature" causing disproportionate effects. The question of classification of what is "incidental" is to be determined in relation to the geographical and legal context. Abatement can only be legally justified when there is a system of "equality on the same plane" in relation to which a particular feature constitutes a solecism. No such system can be reasonably identified in the present case.

668. The errors in the reasoning of the Danish Memorial are clearly indicated by the eccentric claims to which the reasoning gives birth. The delimitation proposed is a prime example of a breach of the principle of non-encroachment and produces a result which, instead of enhancing equity, brings about a major departure from the realities of the geographical situation.

(e) The Principle of Non-Encroachment

669. The delimitation proposed by Denmark is a prime example of a breach of the principle of non-encroachment. The Court adverted to that principle in the *Libya-Malta Case* (*I.C.J. Reports 1985*, p. 39, para. 46), in the context of listing equitable principles. The Court first mentioned the principle that there is to be "no question of refashioning geography, or compensating for the inequalities of nature". It then stated:

> "the related principle of non-encroachment by one party on the natural prolongation of the other, which is no more than the negative expression of the positive rule that the coastal

State enjoys sovereign rights over the continental shelf off its coasts to the full extent authorized by international law in the relevant circumstances" (*loc. cit.*).

670. The Danish claims would result in a delimitation which in those precise terms would in fact create an encroachment on the area of continental shelf which in the relevant circumstances is appurtenant to Norway. That would be an encroachment which would not only be a major departure from the realities of the geographical situation, but one which would exceed the limits established by Danish legislation in its definition of Denmark's continental shelf.

(f) Norway Has a Substantial Interest in the Maritime Areas around Jan Mayen

671. One of the circumstances of major relevance is the existence of a substantial Norwegian interest both in the Greenland and Norwegian Seas as a whole and in the maritime areas appurtenant to Jan Mayen. This substantial interest consists of a number of interacting elements, involving the specific interests themselves and the nature of the disposition of Norwegian territory in the region as a whole.

672. A significant element in this complex of interests is the existence and location of Jan Mayen and its maritime entitlements, which represent a considerable Norwegian asset. It should be no part of a procedure of "equitable delimitation" to assist in the Danish attempt substantially to reduce the status and entitlements of Jan Mayen.

673. The interests of Norway in the areas around Jan Mayen, and in the island as such in respect of the appurtenant maritime areas, have been identified in Chapters III of Part I and in paragraphs 567-596 above. Those interests tend to form a natural grouping, since the communications and rescue facilities based on Jan Mayen are of obvious importance for the exploitation of natural resources in the water column and sea bed, and the protection of those engaged in such activities.

674. In the Danish Memorial there are several passages devoted to the significance of fisheries, but the statements made and the data supplied do not focus very much upon the maritime areas between Greenland and Jan Mayen. In any event no legal

justification is offered for a claim which would result in a virtual monopoly of all natural resources, both present and future, of the relevant maritime areas.

(g) The Factors of Area and Population Provide No Support for the Danish Claim

675. As a matter of legal principle, considerations as to relative landmass and comparative populations are irrelevant to the procedure of equitable delimitation. Moreover, in the conditions prevailing within the Arctic Circle, the tendency in the Memorial to make play with adjectives such as "desolate" and "uninhabited" is utterly misplaced. In this type of environment ice-free islands in favourable locations are more significant, area for area, than other types of territory.

(h) The Median Line Solution Reflects the Normal Standards of Equity as Evidenced by State Practice in Comparable Geographical Situations

676. The relevant State practice has been reviewed in paragraphs 618-658 above. The practice shows that isolated islands and groups of islands are normally given full effect.

2. Other Delimitations in the Same Region

677. It is generally accepted that a factor to be taken into account in reaching an equitable result is "the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region": see the Judgment in the *North Sea Cases, I.C.J. Reports 1969*, pp. 54-55, para. 101 (D(3)).

678. In the present case it is evident that the geographical scope of the decision must be limited in order to avoid impinging upon the rights of Iceland.

3. The Test of Proportionality as a Check on the Equitable Character of the Delimitation

679. The Court has affirmed the role of proportionality as "a test of the equitableness of the result of a delimitation", which is to be applied "once the Court has indicated the method of

delimitation which results from the applicable principles and rules of international law": see the Judgment of the Court in the *Libya-Malta case*, *I.C.J. Reports 1985*, p. 46, para. 59.

680. Thus proportionality (in the form of a factor based on the ratio of the lengths of the respective coasts) is not an independent principle of delimitation, but a test of the equitableness *of a result arrived at by other means*: *ibid.*, pp. 43-46, paras. 55-58. In the *Libya-Malta Case* the Court was very explicit in its refusal to recognize coastal length as "a principle of entitlement... and... method of putting that principle into operation": *ibid.*, p. 45, para. 58.

681. In the context of the delimitation of a single maritime boundary, the Chamber in the *Gulf of Maine Case* adopted the same position on the key questions of principle. In the words of the Judgment:-

> "... the Chamber remains aware of the fact that to take into account the extent of the respective coasts of the Parties concerned does not in itself constitute either a criterion serving as a direct basis for a delimitation, or a method that can be used to implement such delimitation. The Chamber recognizes that this concept is put forward mainly as a means of checking whether a provisional delimitation established initially on the basis of other criteria, and by the use of a method which has nothing to do with that concept, can or cannot be considered satisfactory in relation to certain geographical features of the specific case, and whether it is reasonable or otherwise to correct it accordingly. The Chamber's views on this subject may be summed up by observing that a maritime delimitation can certainly not be established by a direct division of the area in dispute proportional to the respective lengths of the coasts belonging to the parties in the relevant area...." (*I.C.J. Reports 1984*, p. 323, para. 185).

682. In the context of the present proceedings, the test of proportionality is in principle to be applied to the median line boundary. At the outset it may be noted that it is not the practice for international tribunals to resort to the use of mathematical ratios of the lengths of coasts. Moreover, in its Judgment in the *Libya-Malta Case* the Court pointed to the practical difficulties which may stand in the way of resorting to a comparison of such mathematical ratios, and, in particular, the difficulties in identifying the relevant coasts and the relevant area: *I.C.J. Reports 1985*, p. 53, para. 74. The Court therefore found it appropriate "to

make a broad assessment of the equitableness of the result, without seeking to define the equities in arithmetical terms": *ibid.*, pp. 54-55, para. 75.

683. In the circumstances of the present dispute, proportionality rather than disproportionality results from the adoption of a median line. The median line alone can reflect the casual juxtaposition of the two opposite coasts, 250 nautical miles apart. The median line alone can reflect the substantial interest of Norway in the maritime areas which form part of its entitlement by virtue of its sovereignty over the large, isolated island of Jan Mayen.

684. The use of a comparison of coastal lengths in the present case would result in an arbitrary refusal to give full weight to the relevant circumstances which form part of the process of evolving an equitable solution. The importance of security considerations, of whaling, sealing and fisheries, of the resource potential of the seabed areas, and of the conduct of the parties, cannot be subject to the irrational veto which must necessarily result if disparities in the lengths of coasts were to be given a major role in the process of delimitation.

685. In the case of an isolated island like Jan Mayen, to reduce the normal entitlements to maritime areas (based on equidistance) by giving dispositive significance to the fact that 250 miles to the west there is a large landmass, the two entities not co-existing within any coherent framework, would be contrary to common sense, and constitute a threat to legal stability.

686. In the present case the selection of relevant coasts and the construction of a relevant area would involve an unacceptably arbitrary procedure. The geographical relationships involved are simple and not susceptible to manipulation.

687. The claim presented in the Danish Memorial is of considerable interest because it provides a graphic example of the results of using "proportionality" whilst ignoring the constraints formulated in the jurisprudence. Following an unconvincing account of the legal principles relating to proportionality (pp. 102-9, paras. 320-40), the Memorial applies "the proportionality factor" essentially as an independent basis of delimitation.

688. The key passages in the Memorial (see, in particular, pp. 109-11, paras. 342-56; pp. 118-21, paras. 368-77) involve a series of substantial breaches of the principles of equitable delimitation which may be formulated as follows:

(a) "The factor of proportionality" is employed as an independent basis of delimitation: this is particularly evident in the passages dealing with the method of delimitation (see pp. 119-21, paras. 371-77).

(b) The other factors alleged to be relevant to an equitable solution are treated as confirmatory of the "proportionality" argument rather than the factor of proportionality being used as a test of the delimitation arrived at in accordance with the equitable principles. This aspect of the reasoning is evident in two distinct sections of the Memorial (see pp. 110-11, paras. 346-55; and pp. 119-21, paras. 372-73).

(c) "The factor of proportionality" is employed in an attempt to legitimate an alignment based on a "200 mile outer limit criterion" which forms no part of the *corpus* of methods of equitable delimitation, which is *prima facie* inequitable (involving a radical departure from the principle of equal division), and which inevitably involves a radical departure also from the principle of non-encroachment.

4. The Conduct of the Parties

689. The delimitation of the areas in dispute by means of a median line is also justified by the consistent conduct of the Parties prior to the period when the dispute crystallized. The conduct of the Parties is important in several ways. Their mutual treaty relationship is one element of conduct. The actions of the Parties, and their exchanges in respect of delimitation matters, have contributed to the process under which recognition, acceptance, acquiescence etc. have produced legal effects.

690. For the application of the elements of general international law, the conduct of the Parties has three forms of relevance. In the first place, it is a relevant circumstance which is allied with other circumstances or factors in establishing the equitable character of the median line both as a method of delimitation and as an equitable solution.

691. Secondly, the conduct of the Parties provides an autonomous criterion of equity, since the criterion involves ex-

press acceptance of the equitable nature of the median line in the relations of the Parties in the context of maritime delimitation. Moreover, the conduct of the Parties also constitutes an entirely separate legal basis, that of acquiescence (or recognition), for the validity of delimitation of the maritime areas between Jan Mayen and Greenland in accordance with equidistance. (The issue of acquiescence or recognition has been examined in Chapters III and IV of this Part of the Counter-Memorial).

692. Thirdly, the conduct of the Parties confirms the inequitable and eccentric character of the method of delimitation proposed in the Danish Memorial. The "200 mile outer limit criterion" proposed by Denmark is eccentric in terms of general principle and also in terms of Denmark's own conduct. The claims appear entirely without foundation and were not foreshadowed by the conduct of Denmark prior to the development of the present dispute.

693. The opportunism of Denmark's claim is highlighted by its explicit acceptance of the principle of equidistance in relation to the Faroe Islands in 1979 in a geographical context of opposite coasts (see paras. 183 and 285-9). This arrangement was consistent with the general pattern of conduct of Norway and Denmark both *inter se* and with respect to third States. And yet, according to the Memorial, the key item of practice is the Norwegian delimitation with Iceland. Thus the one instance of *departure* from the pattern is picked out by Denmark as the one which has normative significance.

5. Conclusion

694. The Government of Norway submits that the equitable solution in the present case can only be effected by means of a median line.

695. In concluding its presentation of the elements of an equitable solution, the Government of Norway would respectfully draw the attention of the Court to a prominent difference between the delimitations contended for. The delimitations which will be the subject of Norway's submissions reflect legal principle. In contrast, the Danish claims are eccentric, appear to be invented to serve tactical needs, are fundamentally opposed to normal principles of entitlement to maritime areas, are a departure from the usual practice of the Parties in the context of maritime

delimitation, and, in terms of access to natural resources, are monopolistic since the area of convergence would be entirely appropriated by the Applicant State.

D: SUMMARY OF PRINCIPAL CONCLUSIONS. PROCEDURAL ISSUES

1. The Norwegian Interests

696. Norway's interests in the maritime areas around Jan Mayen are represented by the entitlement in respect of the appurtenant continental shelf, and by the 200 mile fisheries zone established by the Royal Decree of 23 May 1980. Norway has the right to establish an exclusive economic zone in the area. These entitlements exist by virtue of general international law.

697. When the dispute crystallized, it was associated with the capelin fishery. That is an important matter. However, the Danish claims set the question of delimitation at large, and a complex of significant interests has been raised.

698. This complex of interests includes the long-established patterns for the harvesting of other living resources, a protective element and an interest in the resource potential of the seabed. The interests of Norway in the region are not confined to the question of fisheries, but comprise all those interests which are linked to Norway's sovereignty over Jan Mayen.

2. The Nature of the Danish Claims

699. The Danish claims in this case are unacceptable. In the first place the Court is asked "to adjudge and declare that Greenland is entitled to a full 200 mile fishery zone and continental shelf vis-à-vis the island of Jan Mayen..." In form, the primary issues are issues of entitlement, while the real issue is that of delimitation. The dispute flows from the existence of overlapping areas of appurtenant maritime entitlements.

700. Secondly, the delimitation contended for by Denmark – in effect, the outer limit of the Danish continental shelf and fishing zone of 200 miles – has no basis in international law. It would appropriate the entire zone of convergence for the Applicant State. These claims apparently stem from the Danish reaction to the Norwegian concessions granted to Iceland (Danish Memorial p. 15, para. 47). The Danish claims seek to rely on an outcome of negotiations between Norway and Iceland which belongs exclusively within the political domain. The Memorial cites a

statement by the Danish Minister that "Greenland must not be treated less favourably than Iceland in relation to Jan Mayen" (loc. cit.). This statement has no legal basis.

3. General Conclusions

701. The foregoing considerations of fact and law lead to the following principal conclusions in relation to the question of delimitation:

(1) In respect of the *continental shelf* there is a median line boundary in place. The precise articulation of the alignment remains to be agreed. This continental shelf boundary is based upon

– the treaty obligations of the parties *inter se*; and/or

– the express recognition and adoption of the boundary by Denmark; and/or

– the tacit recognition of, or acquiescence in, the boundary by Denmark; and/or

– the opposability of the boundary to Denmark; and/or

– the operation of estoppel; and/or

– the operation of the pertinent equitable principles and relevant circumstances forming part of general international law.

(2) In respect of the delimitation of adjoining *fisheries zones* between Greenland and Jan Mayen, the median line constitutes the boundary in accordance with international law. The precise articulation of the alignment remains to be agreed. The median line in respect of fisheries jurisdiction is based upon

– the express recognition and adoption of the boundary by Denmark; and/or

– the tacit recognition of, or acquiescence in, the boundary by Denmark; and/or

– the opposability of the boundary to Denmark; and/or

– the operation of estoppel; and/or

– the operation of the pertinent equitable principles and relevant circumstances forming part of international law.

(3) The conduct of the Parties forms a prominent part of the considerations of fact and law. The bilateral Agreement of 1965

on delimitation of the continental shelf remains in force. The continuing relevance of Article 6 of the Continental Shelf Convention of 1958, as applied in the light of the continental shelf Agreement of 1965 and of the general pattern of the relations between the Parties, provides a powerful complement to the elements of recognition, acquiescence, estoppel and opposability.

(4) All these elements are reflections of the fundamental principle of good faith in international relations. As the record shows, it was the Government of Denmark which challenged a well-established status quo based upon the long-existing recognition of the median line as the basis of delimitation.

4. Procedural Issues

702. The Applicant State requests the Court "consequently to draw a single line of delimitation of the fishing zone and continental shelf area of Greenland at a distance of 200 nautical miles measured from Greenland's baseline" (Danish Memorial, p. 125, para. 379).

703. To the extent that the claim for a single line is a claim for a delimitation of a different nature as compared with other delimitations, Norway is bound to point out that no agreement exists between the two Parties, either on a procedural level or with regard to the substance of such a claim. Without the agreement of the Parties, such a claim would not be admissible.

704. Further, the Norwegian Government submits that in these proceedings the judicial function is limited in one particular respect. In the opinion of the Norwegian Government there are substantive considerations both of law and of judicial convenience in favour of the view that the Court should confine itself to a recognition of the legality of the median line boundaries requested in the submissions which follow below, and not proceed to the precise articulation of those boundaries. In the circumstances the Norwegian Government respectfully submits that the adjudication should result in a judgment which is declaratory as to the bases of delimitation, and which leaves the precise articulation (or demarcation) of the alignment to negotiation between the Parties.

5. Reservation concerning Danish Baselines

705. The Government of Norway formally reserves its position in relation to the reformulation of Greenland basepoints and baselines referred to in the Danish Memorial (p. 9, in the footnote to para. 22).

6. The Interests of Third States

706. The Government of Norway states that its requests to the Court (as formulated in the submissions which follow) are without prejudice to the determination of any tripoint.

7. Reservation as to the Assertions of Fact

707. Any assertions of fact or inferences therefrom contained in the Danish Memorial which are not the subject of express contradiction or qualification in the present Counter-Memorial are not by that fact alone to be taken as accepted by the Government of Norway.

PART III
SUBMISSIONS

Having regard to the considerations set forth in this Counter-Memorial and, in particular, the evidence relating to the relations of the Parties at the material times,

May it please the Court to adjudge and declare that:

(1) The median line constitutes the boundary for the purpose of delimitation of the relevant areas of the continental shelf between Norway and Denmark in the region between Jan Mayen and Greenland;

(2) The median line constitutes the boundary for the purpose of delimitation of the relevant areas of the fisheries zones between Norway and Denmark in the region between Jan Mayen and Greenland;

(3) The Danish claims are without foundation and invalid, and that the Submissions contained in the Danish Memorial are rejected.

Oslo, 11 May 1990

Bjørn Haug
(signed)

Per Tresselt
(signed)

Agents of the Government of the Kingdom of Norway

APPENDIX 1

A NOTE ON THE ADMINISTRATION OF JAN MAYEN

The island of Jan Mayen was placed under Norwegian sovereignty by the Royal Decree of 8 May 1930: "The Island of Jan Mayen is hereby placed under Norwegian sovereignty." At that time the State took over Jan Mayen from the Norwegian Meteorological Institute, which had established property rights to the island in 1926.

1. The Act relating to Jan Mayen

Section 1 of Act No. 2 of 27 February 1930 (Annex 18) relating to Jan Mayen reads as follows: "The island of Jan Mayen is part of the Kingdom of Norway."

From the point of view of domestic law, Jan Mayen is in a special position in relation to mainland Norway, in that Section 2 of the Act lays down specific provisions concerning the application of Norwegian legislation on the island. Norwegian civil and criminal law and legislation relating to the administration of justice apply automatically, whereas the extent to which other legislation shall apply is to be "prescribed by the King". This means that statutes and regulations pertaining to public law – which are not criminal law or procedural rules – do not apply on Jan Mayen unless it is specifically laid down that they shall do so.

The main reason for this is a practical one. Much of the legislation applicable on the mainland is unsuitable for Jan Mayen because of geographical, ecological and social differences. Nor is there any particular need for detailed administrative legislation on the island. Another factor is Jan Mayen's administrative status. Jan Mayen is part of Norway, but it is not a separate county, municipality or electoral district. Thus it would be difficult to apply administrative legislation designed for the mainland insofar as such legislation delegates authority to local bodies.

2. Comparison between Jan Mayen and Other Areas

The administrative and legal arrangements for Jan Mayen are similar to those set out in the Act relating to dependencies and the

Act relating to Svalbard. It is, however, important to point out that the legal status of Jan Mayen differs from that of Svalbard and the dependencies. Jan Mayen is part of the Realm in terms of Article 1 of the Constitution, which means that it does *not* have the status of a dependency. The essential difference between Svalbard and Jan Mayen is that Norwegian sovereignty over Svalbard has its origin in the Spitsbergen Treaty.

There is also a difference between Jan Mayen and Svalbard as regards the need for legislation. Therefore, a number of statutes have been made applicable to Svalbard, but not to Jan Mayen. Examples are the Public Administration Act (cf. Section 4, third paragraph), the Freedom of Information Act (cf. Section 1, second paragraph), and the Act relating to the protection of animals (cf. Section 33).

3. Regulations for Jan Mayen

Separate regulations for Jan Mayen have been laid down when there has been a specific need for them. This applies particularly to regulations relating to fishing and hunting, which were traditionally the only economic activities on the island. Hunting and trapping on Jan Mayen were made subject to the permission of the Ministry of Trade by the Royal Decree of 6 June 1930, issued pursuant to the Act relating to Jan Mayen. The Ministry prescribed quotas. The Arctic fox was completely protected from 1930 to 1935.

On 30 June 1955 a Royal Decree (No. 3471) was issued concerning the entry into force of legislation relating to a Norwegian fishery zone off Jan Mayen. At that time, a provisional fishery limit of 4 nautical miles beyond the baselines at Jan Mayen was prescribed.

Norway established an economic zone of 200 nautical miles by Act No. 91 of 17 December 1976 (Annex 25). According to Section 1 of the Act, the zone applies to the seas adjacent to the "Kingdom of Norway". Thus the zone also comprises the sea areas off Jan Mayen, as was explicitly stated in the *travaux préparatoires*. Pursuant to the Act relating to an economic zone, a 200-mile fishery zone was established around Jan Mayen by the Royal Decree of 23 May 1980 (Annex 28).

Due both to difficult logistic conditions and to the military activity on the island, it was considered desirable to regulate the

admission of foreign nationals to Jan Mayen. Pursuant to the Act relating to Jan Mayen, separate aliens regulations were laid down for Jan Mayen by Royal Decree No. 1 of 1 June 1962. As the former Aliens Act was not made applicable to Jan Mayen, the regulations include separate provisions concerning passport requirements, etc. However, there are substantive differences as well in that the aliens regulations for Jan Mayen are far more stringent than those that apply to the mainland. For example, nationals of the other Nordic countries are required to obtain special permission to visit the island. As the new Immigration Act has been made applicable to Jan Mayen, some of the provisions of the regulations are now superfluous. The special provisions laid down pursuant to the Act relating to Jan Mayen will, however, continue to apply, which means that the rules regarding the admission of foreign nationals are still more stringent as regards Jan Mayen than as regards mainland Norway.

4. The Application of Norwegian Legislation on Jan Mayen

It is important to note that, basically, Norwegian legislation applies to Jan Mayen. Norwegian civil law and criminal law and the Norwegian legislation relating to the administration of justice apply automatically to Jan Mayen. New legislation and statutory amendments in these fields will also apply automatically to Jan Mayen. It is only in respect of "other statutes", cf. Section 2, second paragraph, of the Act relating to Jan Mayen, that it shall be prescribed whether a given Act shall apply to Jan Mayen. This applies in other words to legislation pertaining to public law other than penal and procedural law, i.e. what is known as administrative law.

The question whether or not an Act applies to Jan Mayen may be complex because it is not always easy to determine whether an Act or parts of an Act are civil or public law. To avoid uncertainty on this point, it has become usual in recent years to authorize the King to provide by regulations the extent to which statutes shall apply to Jan Mayen and Svalbard. In 1986 the Ministry of Justice published a collection of statutes, regulations and provisions relating to Jan Mayen.

5. Administration

Regulations relating to the administration of Jan Mayen were laid down on 21 November 1980.

The Governor of Svalbard

The Governor of Svalbard will serve as Governor of Jan Mayen "until further notice". The duties as chief of police, notary public and assistant judge have been excepted, and few of the Governor's other functions on Svalbard are pertinent to Jan Mayen. The Governor of Svalbard administers certain rules and regulations which apply to both Svalbard and Jan Mayen, such as alcohol regulations no. 2 of 24 June 1974, regulations no. 8792 relating to the preservation of cultural values, and conservation regulations. This arrangement is not very practical, however, because of the distance between Svalbard and Jan Mayen and the state of communications between them.

Police Authority

For police purposes, Jan Mayen comes under the chief of police in Bodø. Although the officer-in-charge of the NODECA[1] station on Jan Mayen has police authority (cf. Instructions No. 3341 of 1 June 1962), the island comes directly under the chief of police in Bodø for police purposes. The exercise of police authority on Jan Mayen is particularly concerned with aliens control. Foreign nationals wishing to go ashore on Jan Mayen are required to obtain special permission. Such permission is granted by the officer-in-charge of the NODECA station, the chief of police in Bodø or the Ministry of Justice, depending on the duration of the stay. Fishing vessels, pleasure craft and cruise ships call regularly at Jan Mayen. Exact figures concerning the frequency of these visits may be obtained from the chief of police in Bodø. The officer-in-charge of the NODECA station submits quarterly reports on police activities and other matters of interest to the police.

Judicial Authority

Although Jan Mayen is a separate jurisdiction, the proceedings that come under the District/City Court have been assigned to the Office of the Recorder in Bodø. The High Court for Nordland serves as High Court for Jan Mayen. Offences committed on Jan

[1]) Norwegian Defence Communications and Data Service Administration.

Mayen which have been tried by the courts include a violation of Section 22, first paragraph, of the Road Traffic Act (drunken driving), and criminal negligence in connection with a fatal accident. The latter is reported in Norsk Rettstidende for 1989, p. 715.

Previous Administrative Arrangement

The administrative regulations of 1980 replaced corresponding regulations of 11 July 1930. According to the previous arrangement, the police authority was vested in the chief of police in Tromsø, and the competent judicial authority was the Office of the Recorder in Tromsø and the Troms judicial district.

APPENDIX 2

THE ACTIVITIES OF THE NORWEGIAN METEOROLOGICAL INSTITUTE ON JAN MAYEN

1. Background and Annexation

The work done by Norwegian meteorologists during and after the First World War constituted an international pioneer effort, and the so-called Bergen School is considered the founder of modern meteorology. Regional weather forecasting bureaus for West and North Norway were established during this period, and their primary responsibility was to give storm and gale warnings.

At an early stage it became clear that weather observations from the area between Iceland and Svalbard would be of particular importance. Technological advances made it possible to communicate by telegraph over greater distances. Therefore, around the time of the First World War, persistent efforts were made to establish a meteorological station on Jan Mayen. Among other things, attempts were made to find a multilateral European cooperative approach to setting up an international meteorological station on Jan Mayen.

Jan Mayen remained a no-man's-land until 1921, when the Norwegian Hagebart Ekerold occupied land on the island as a private individual. Conversations with meteorologists in Norway had convinced him that Jan Mayen would be extremely useful for weather forecasting and storm warnings in Norway. Apart from his interest in hunting, his primary motive for occupying a tract of the island was to establish a telegraphic meteorological station there. By agreement with the Norwegian authorities, on 16 January 1922 Ekerold claimed parts of Jan Mayen on behalf of the Norwegian Meteorological Institute ("NMI"). An official Norwegian meteorological station was established in 1922, including a radio station.

In the spring of 1926, the entire island of Jan Mayen was claimed as property for the Norwegian Meteorological Institute, with the approval of Norwegian authorities. By Royal Decree of 8 May 1929, the island was placed under Norwegian sovereignty.

With the exception of a six-month period during the war, the Norwegian meteorological station on Jan Mayen has been in continuous operation since it was established. The NMI, with a staff of ten people, was alone on Jan Mayen until 1959-60, when the Norwegian Defence Communications Administration (now the Norwegian Defence Communications and Data Service Administration, "NODECA") established itself on the island. In addition to its meteorological activities and attendant radio communication, the station has also served as a coastal radio station. This function became increasingly important, particularly for telegraphic exchanges with the Norwegian Arctic Ocean fishing fleet and for broadcasting weather forecasts during the fishing and hunting season.

The coastal radio service expanded until it achieved formal status, with a twenty-four-hour service. The NMI felt, therefore, that official telecommunications to and from Jan Mayen were no longer its responsibility. Thus, as from 21 November 1984, the NMI was released from the responsibility for operating the coastal radio station on Jan Mayen, which was then taken over by NODECA.

2. Present-day Activities

The meteorological station is located at Helenesanden, three kilometres from the NODECA station. It has a staff of five, whose meteorological duties consist in making radiosonde observations twice a day (at 00 and 1200 hours UTC), and surface observations (SYNOP) every third hour (at 00, 0300, 0600 hours UTC etc.).

The radiosonde observations are made by releasing balloons carrying a radiosonde into the atmosphere to an altitude of approx. 25-30,000 metres. These observations provide information about wind, temperature and humidity at a series of pressure levels in the atmosphere. The balloons are filled with hydrogen, which is produced at the station. A complete radiosonde takes about two hours.

The meteorological surface observations consist in recording wind force and direction, visibility, weather conditions, clouds (type, amount, height), atmospheric pressure, pressure tendency (i.e. changes in atmospheric pressure), temperature, humidity, precipitation and sea temperature. All the observations are immediately coded and sent by telex to the NMI.

To facilitate aircraft landing on Jan Mayen, half-hourly or hourly surface observations (METARs) are also made, specially designed to meet air operational requirements.

The NMI also owns a reference station, which is partly run by the NODECA station on Jan Mayen. This is used for satellite orbit measurements and determination of the position of free-floating automatic weather stations in the Norwegian Sea, which communicate via US polar orbit satellites. The reference station has been in operation for five years.

The great importance of the station on Jan Mayen lies in the island's location, far from other meteorological observation stations on Iceland, Greenland and Svalbard. This is an area for which there is very little data, and no regular sea or air traffic. Therefore, there are few means of obtaining meteorological observations from this sea area. As cyclones often form in the area, the meteorological observations from Jan Mayen, especially the atmospheric observations, are essential for charting the atmosphere and making weather forecasts for Norway and the sea areas for which Norway has forecasting responsibility.

Jan Mayen is one of the NMI's basic stations, i.e. stations selected for their meteorologically strategic location, high degree of regularity, and high quality of observation. As a basic station, it is part of the international meteorological telecommunications network. The station's identification number is 01001. Both the radiosonde observations and the surface observations from Jan Mayen are used in the regional and global weather analyses and prognoses prepared at the regional meteorological centres (inter alia in England, West Germany and France) and the three World Meteorological Centres in Washington, Moscow and Melbourne. Prognoses from these centres are transmitted to the various national meteorological institutes. This cooperation is part of the work of the World Meteorological Organization, which is one of the specialized agencies of the United Nations.

The meteorological observations from Jan Mayen are not only essential to the daily weather observations and the preparation of weather forecasts for several days at a time; the station is also extremely important as regards climate research. As the Arctic regions will be playing a major role in research into and identification of prospective climatic changes, the long series of observations made from Jan Mayen since the beginning of the 1920s are of great importance in this context.

Due to their isolated position, far from any sources of pollution that might affect the measurements, Jan Mayen and the other Arctic stations will also be of great significance for charting environmental and climatic changes.

APPENDIX 3

NORWEGIAN SEALING IN THE WEST ICE AND THE DENMARK STRAIT

1. The West Ice

Norwegian sealing has been going on in the West Ice ever since the middle of the last century. The main species taken have been the hooded seal *(Cystophora cristata)* and the harp seal *(Phoca groenlandica)*, which assemble on the drift ice off Jan Mayen for whelping and mating in the month of March. Sealing is carried out along the edge of the ice and inside the drift-ice area from approx. 68°N to 74°N and east of 20°W[1] in March, April and the beginning of May.

Since sealing vessels were not required to keep a catch log until 1989, there is no exact information as to where the sealing operations were carried out in the various years. However, a series of sketches included at the end of this Appendix, based on observations of seal concentrations made each season since 1973, gives some indication of where the sealing operations took place. These maps show that the seal concentrations vary according to the extent of the drift ice, and that in certain years, part or all of the sealing operations have been carried out west of the median line between Jan Mayen and Greenland (on the basis of informal arrangements between the competent authorities).

Although the sealing operations in the East Ice were the main focus of interest in the 1920s, hunting operations began to shift towards the West Ice in the mid-1930s, due to difficult ice conditions and poor catches in the White Sea. From the mid-1950s sealing operations became concentrated even farther to the west towards the hunting grounds off Newfoundland.

Participation, Catches and First-hand Value

The following table, which is based on Table 3.3 at the end of this

[1]) The Agreement of 22 November 1957 between Norway and the USSR (Annex 41) employs a slightly different definition. This has been applied for the purposes of that Agreement, but does not alter the historical scope and extent of Norwegian sealing activities.

Appendix, shows the average annual catch during various periods from 1850 to 1989.

Table 3.1

Average Annual Norwegian Participation and Catches in West Ice Sealing, 1850–1989.

Period	No. of expeditions[2]	Total catches
1850–55	5.3	19,780
1856–59	No figures available	
1860–69	17.1	56,129
1870–74	26.0	87,749
1875–81	No figures available	
1882–89	19.0	72,386
1890–99	17.6	65,604
1900–09	15.3	29,614
1910–19	34.5	51,922
1920–29	27.2	57,894
1930–40	37.0	58,960
1946–49	31.8	71,395
1950–59	42.9	77,792
1960–69	34.3	55,831
1970–79	15.3	35,562
1980–89[3]	4.3	11,274

The table shows that both participation and catches were at a peak in the 1870s and the 1950s. The West Ice was the most important hunting ground right after the Second World War, which was when the sealing fleet was being built up. The average annual catch increased from just under 60,000 animals during the period prior to the War, to some 71,000 animals during the four-year period 1946–49, and to nearly 78,000 animals in the period 1950–59. During the three subsequent ten-year periods, the average catch declined.

Taking the entire period as a whole, the best sealing seasons were in 1873, 1883, 1893, 1950 and 1951, when the total catches exceeded 100,000 animals.

The first-hand value of the seal catch is the total revenues from skins and blubber. Compared with other hunting grounds, the catches in the West Ice provided a higher yield in relation to catch

[2]) The number of expeditions shown in the table cannot be automatically equated with the number of participating vessels, as some of the vessels made two trips to the hunting grounds, particularly in recent years. This was extremely rare previously, however, and applies only to a very few vessels.

[3]) Preliminary figures 1989.

volume. This was due to the fact that the greater part of the Norwegian catch of hooded seals (blueback) was taken in the West Ice, and the skins of this species have generally been more valuable than those of the harp seal. The following table shows the nominal average annual first-hand value, both in total and per vessel, during various periods. The value has also been calculated in 1989 kroner in order to illustrate the extent and significance in terms of the current value of the krone. The conversion has been done using the consumer price index.

Table 3.2

Average Annual First-hand Value and First-hand Value per Vessel of Norwegian Seal Catches in the West Ice, 1930-1988. (All prices in 1,000.)

	Nominal prices		1989 kroner		USD[6]	
Period	First-hand value	First-hand value per vessel	First hand value	First-hand value per vessel	First-hand value	First-hand value per vessel
1930–40	921	23,1	17,499	439	2,680	67
1945–49	4,804	151,1	53,980	1,697	8,283	260
1950–59	6,429	149,9	51,671	1,193	7,913	183
1960–69	8,975	261,7	48,097	1,402	7,366	215
1970–79	7,035	459,8	21,496	1,405	3,292	215
1980–88	1,702	395,8	2,331	542	357	83

Measured in 1989 kroner, the total catch value reached a peak in the 1950s and 1960s. The value per vessel was greatest in the 1960s, and it remained high in the 1970s.

A sealing expedition to the West Ice generally lasts one to two months. This means that the vessels must be engaged in other activities for the rest of the year. Sealing operations are usually combined with fishing for winter herring with purse seines or gill nets, and vessels are occasionally sent on expeditions to the polar regions. According to a study conducted in 1975, the vessels participating in sealing operations received an average of 46 per cent of their gross income from sealing.

There is reason to presume that the relative income from sealing was high in all the periods, not least because of the great risk of shipwreck involved in sealing. For example, a total of 115 vessels were shipwrecked from 1925 to 1939, and 28 from 1946 to 1970.

[4]) The catch value has been calculated on the basis of the years 1935–1940.

[6]) Converted at a rate of NOK 6.53 to 1 USD.

The crew

One characteristic of seal hunting is that it is based in areas in which there are longstanding sealing traditions. The reason for this is that sealing is so unique as regards working conditions, technique and experience that the sealers generally come from families that have worked in the ice for generations. Until the 1890s most expeditions were sent from ports along the Oslo Fjord. Since then the crew and vessels have come for the most part from a few places in Sunnmøre and from Troms.

The number of sealers participating in the West Ice each year, calculated on the basis of the average crew per vessel, fluctuated between 500 and 900 during the years preceding the Second World War. The figure was somewhat lower in the years immediately following 1945, after which it increased to the pre-war level in the early 1950s. The number of sealers engaged in the West Ice began to decrease gradually in 1960, and has varied between 10 and 40 men in the last few years.

Most of the crew on board the sealing vessels were fishermen, but a number of farmers and people of other occupations took advantage of the opportunity to supplement their incomes. Studies made in the 1970s on the basis of tax statements, and information from the shipowners show that, on the average, the sealers derived approx. 50 per cent of their annual income from sealing. These studies also show that, on an annual basis, the income from sealing accounted for a greater share of the total income of the crew than of the vessels, because of the cost of repairing damage done to the hull by ice. Thus, sealing was of considerable economic significance for the communities in which the sealers had their homes.

2. The Denmark Strait

Up to 1961, Norwegian vessels were also involved in sealing operations in the Denmark Strait, i.e., along the edge of the ice between Greenland and Iceland south of the West Ice area. These sealing operations were combined with long-line fishing for Greenland shark. Table 3.5 at the end of this Appendix shows the catches in the Denmark Strait since 1945. There are no catch statistics available for this area prior to 1945.

Table 3.3

Norwegian Participation and Catches in the West Ice Sealing from 1847 to 1989.

Year	No. of vessels[6]	Total No. of animals	Catch value NOK[7]
1847	3	–	–
1848	1	–	–
1849	1	–	–
1850	1	–	–
1851	1	5,500	–
1852	3	12,600	–
1853	5	22,000	–
1854	9	28,600	–
1855	13	30,200	–
1856	–	–	–
1857	–	–	–
1858	–	–	–
1859	–	–	–
1860	21	67,813	–
1861	20	35,159	–
1862	16	46,454	–
1863	19	46,091	–
1864	16	48,087	–
1865	16	60,482	–
1866	16	47,682	–
1867	15	83,223	–
1868	15	63,757	–
1869	15	62,540	–
1870	18	85,765	–
1871	19	82,194	–
1872	26	59,451	–
1873	32	120,771	–
1874	35	90,565	–
1875	–	–	–
1876	–	–	–
1877	–	–	–
1878	–	–	–
1879	–	–	–
1880	–	–	–
1881	–	–	–
1882	15	78,973	–

[6]) As from 1955, number of expeditions.

[7]) Nominal prices

Year	No. of vessels[6]	Total No. of animals	Catch value NOK[7]
1883	14	106,000	–
1884	16	88,190	–
1885	18	58,028	–
1886	19	42,723	–
1887	24	52,452	–
1888	23	81,424	–
1889	23	71,300	–
1890	25	49,743	–
1891	26	66,752	–
1892	23	98,786	–
1893	18	104,647	–
1894	14	80,645	–
1895	17	46,393	–
1896	18	79,649	–
1897	13	58,583	–
1898	13	38,620	–
1899	9	32,226	–
1900	9	47,000	–
1901	10	14,500	–
1902	8	47,000	–
1903	12	41,500	–
1904	10	32,000	–
1905	14	19,170	–
1906	17	16,551	–
1907	20	17,979	–
1908	20	30,695	–
1909	24	29,750	–
1910	27	42,687	–
1911	–	28,900	–
1912	26	38,300	–
1913	27	20,000	–
1914	31	64,000	–
1915	33	56,000	–
1916	–	–	–
1917	63	87,000	–
1918	–	–	–
1919	–	78,493	–
1920	56	71,424	–
1921	14	17,750	–
1922	23	50,000	–
1923	–	71,362	–
1924	–	67,245	–
1925	–	66,343	–
1926	–	82,929	–

Year	No. of vessels[6]	Total No. of animals	Catch value NOK[7]
1927	–	–	–
1928	17	35,371	–
1929	26	58,627	–
1930	37	52,841	–
1931	19	35,534	–
1932	33	69,108	–
1933	39	60,599	–
1934	37	70,893	–
1935	31	57,703	792,000
1936	38	77,898	1,047,000
1937	54	83,321	1,445,000
1938	44	54,281	733,000
1939	34	36,688	613,000
1940	29	49,705	896,000
1946	16	27,772	1,385,000
1947	28	73,747	5,846,000
1948	39	93,074	6,082,000
1949	42	90,989	5,902,000
1950	38	100,943	6,181.000
1951	49	138,042	12,279,000
1952	53	82,792	4,335,000
1953	35	57,607	3,367,000
1954	41	95,120	7,432,000
1955	44	60,244	4,765,000
1956	43	56,677	5,120,000
1957	37	37,840	3,780,000
1958	42	90,664	9,533,000
1959	45	57,937	7,493,000
1960	44	62,942	8,582,000
1961	40	92,529	10,717,000
1962	42	74,575	8,403,000
1963	43	37,286	7,542,000
1964	36	34,937	10,716,000
1965	38	63,174	13,054,000
1966	32	66,034	12,115,000
1967	25	62,901	9,875,000
1968	23	35,313	3,862,000
1969	20	28,623	4,976,000
1970	19	55,806	10,777,000
1971	18	41,391	8,527,000
1972	20	35,398	6,392,000
1973	16	38,310	7,542,000
1974	16	41,099	9,062,000
1975	15	30,780	7,390,000

Year	No. of vessels[6]	Total No. of animals	Catch value NOK[7]
1976	15	19,128	2,975,000
1977	13	30,221	5,512,000
1978	11	30,525	5,675,000
1979	10	32,963	6,499,000
1980	9	19,624	4,256,000
1981	7	23,521	4,750,000
1982	6	23,155	4,212,000
1983	2	3,404	326,000
1984	2	2,560	316,000
1985	1	895	62,000
1986	2	2,912	315,000
1987[8]	5	19,238	1,643,000
1988[8]	6	12,897	1,138,000
1989[8]	3	4,533	–

Source: Figures until 1926: Based on Thor Iversen's tabulations.
Figures after 1926: The Norwegian Directorate of Fisheries.

Table 3.4

Average Annual Soviet and Norwegian Catches of Seal in the West Ice 1958–1989

Norwegian catches		Soviet catches	
Period	Catches	Period	Catches
1960–69	55,831	1958–66	7,946
1970–79	37,523	1975–79	3,504
1980–89	9,311	1980–89	4,378

Source: International Council for the Exploration of the Sea (ICES): Advisory Committee on Fishery Management (ACFM) Report to the October 1989 Meeting.

[8] Preliminary figures.

Table 3.5.

Norwegian Seal Catches in the Denmark Strait, 1945–1960

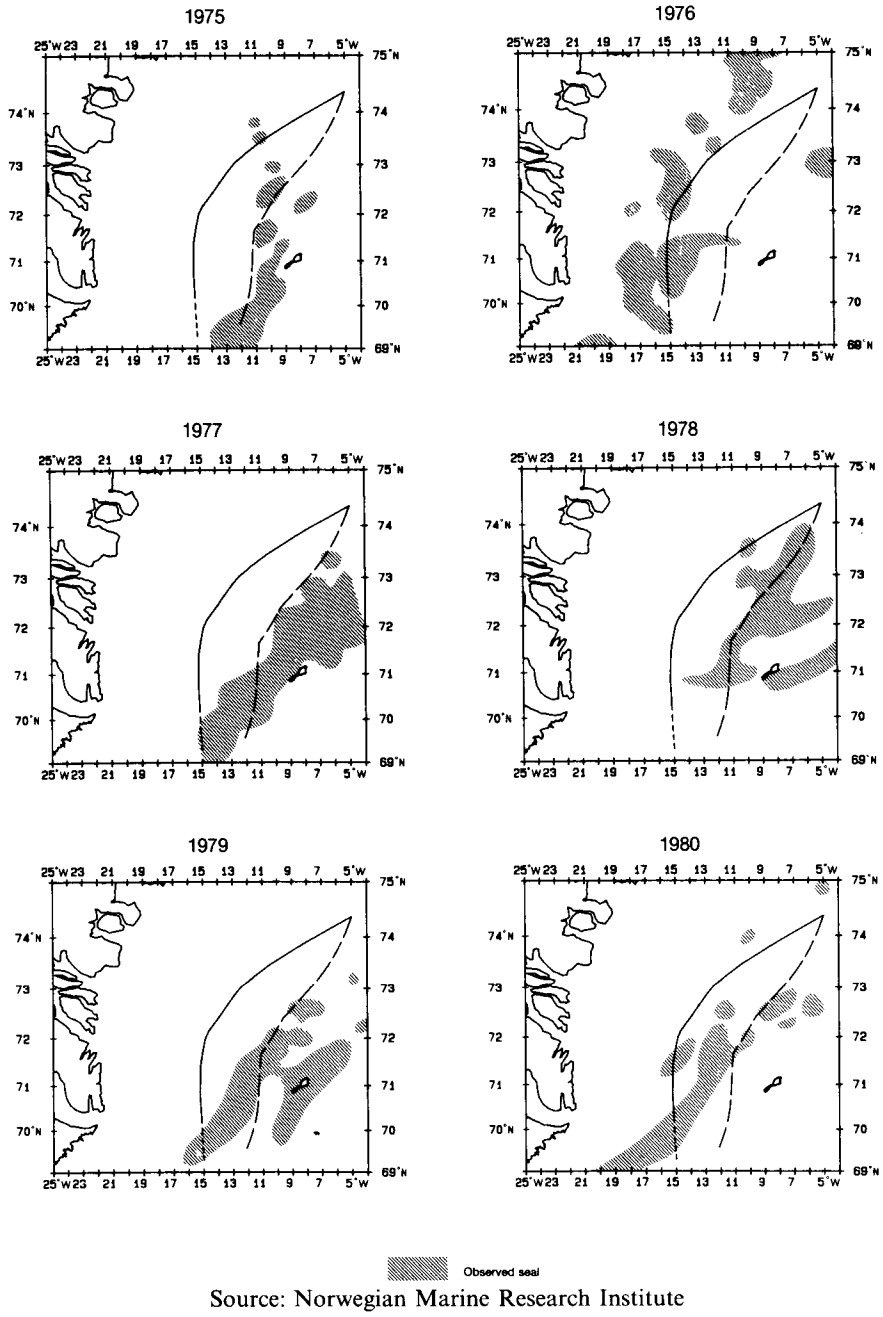
Year	No. of. vessels[9]	Total No. of animals	Catch value NOK[10]
1945	9	3,275	123,560
1946	12	18,366	819,700
1947	20	16,361	1,565,300
1948	19	17,457	976,000
1949	20	1,903	55,000
1950	13	17,748	672,000
1951	25	45,934	2,896,000
1952	13	16,915	736,000
1953	18	2,907	146,000
1954	12	18,292	1,022,000
1955	11	10,231	590,000
1956	14	12,846	797,000
1957	12	21,425	1,404,000
1958	12	15,196	637,000
1959	7	6,481	480,000
1960	8	7,934	640,000

Source: The Norwegian Directorate of Fisheries.

[9] See footnote 2, p. 214.

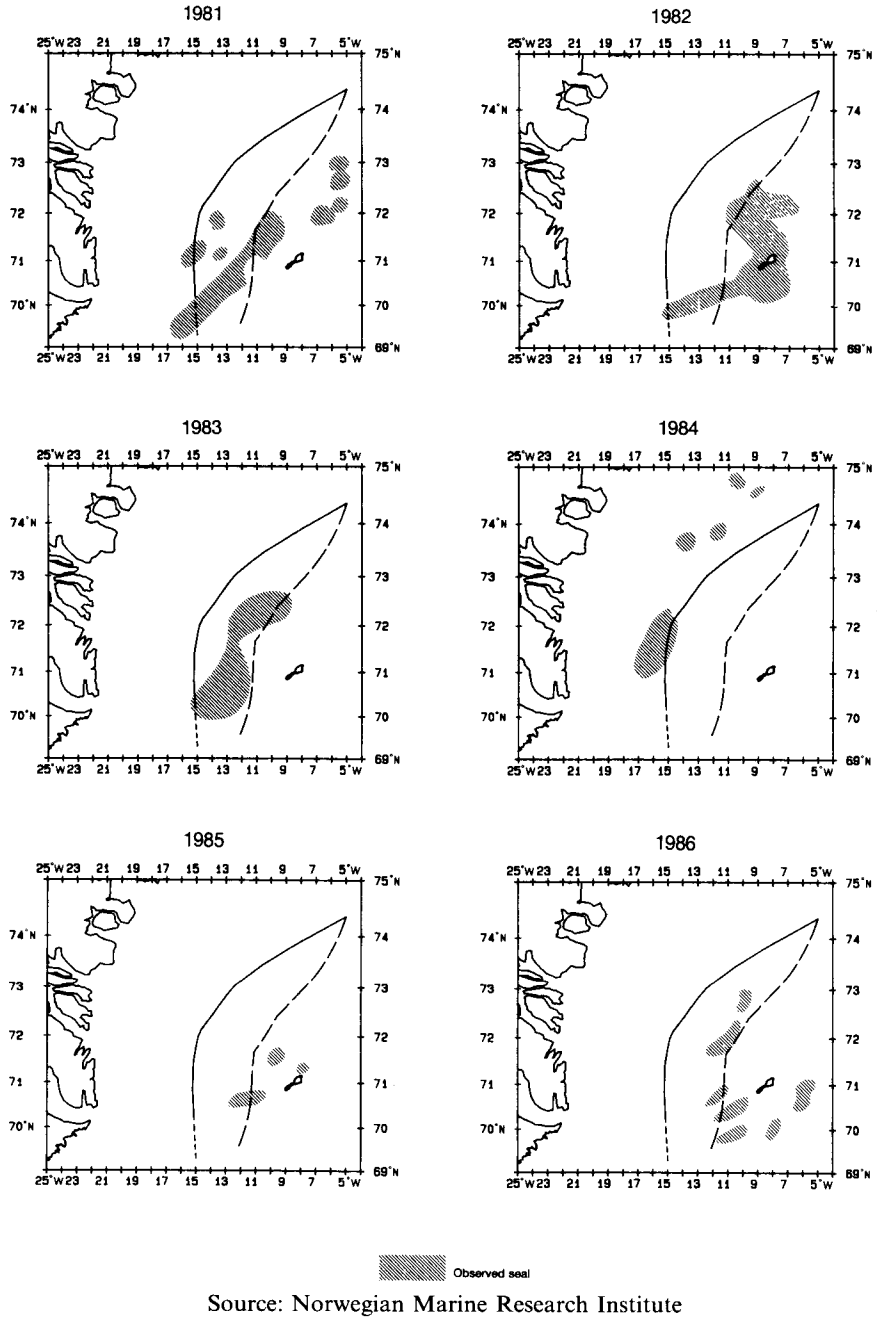
[10] Nominal prices

Seal Occurrences in the Jan Mayen Area



Source: Norwegian Marine Research Institute

Seal Occurrences in the Jan Mayen Area



Source: Norwegian Marine Research Institute

APPENDIX 4

NORWEGIAN PARTICIPATION IN MARINE RESEARCH IN THE REGIONS AROUND EAST GREENLAND/JAN MAYEN, WEST GREENLAND AND NEWFOUNDLAND/LABRADOR, 1950-1989

Table 4.1 is a survey of field studies in connection with Norwegian research in the above-mentioned regions, conducted by the Directorate of Fisheries, Institute of Marine Research. The University of Bergen has also conducted sporadic environmental investigations in the northwestern part of the Norwegian Sea (Jan Mayen–East Greenland).

1. Definition of the Region

The East Greenland–Jan Mayen region comprises the entire East Greenland area from Kap Farvel northward through the Denmark Strait to approx. 76°N, and includes the Jan Mayen area. Studies carried out along the edge of the ice north of 76°N are also included, but very little of the activity was carried out in this region.

West Greenland comprises the entire region north of Kap Farvel off the coast of West Greenland. The northern edge is in the vicinity of Disco. The studies conducted in the Davis Strait–Baffin Bay (halibut) have been included.

Newfoundland-Labrador comprises the region from the Gulf of St. Lawrence around Newfoundland, the Newfoundland Banks and the sea area to the northwest along the north coast of Canada (the Davis Strait).

2. Research Categories

The research is divided into two main categories: The environment – fish – shrimp, and marine mammals.

The Environment – Fish – Shrimp

These fishery studies involved the charting and sampling of fish and shrimp stocks. On several of the expeditions, fish were also tagged. The state of the marine environment was also observed at

the same time. In those cases where research vessels (RV) were used, extensive series of observations were made of temperature and salinity and, in some years, of a number of other variables as well, such as oxygen and nutritive salts. When chartered vessels (CV) were used, only temperature findings were noted. Observers (O) on board commercial vessels took samples of the catches to determine their composition as regards species, size and age.

In the 1950s and 1960s, these studies were based on Norway's extensive fishery interests, particularly in the West Greenland area as regards cod, and in the Jan Mayen area as regards herring. In the 1960s and 1970s, a number of expeditions were also made to the Newfoundland region, to find fishing grounds for Norwegian fishermen. The increased activity off East Greenland–Jan Mayen in the 1980s was partly a result of the "Jan Mayen Capelin" (a more detailed account of the Norwegian research cruises on the capelin is given in Table 4.2) and partly in order to chart the distribution of blue whiting and shrimp stocks.

Marine Mammals

The research connected with East Greenland–Jan Mayen primarily involved studies of the harp seal and the hooded seal in the Greenland Sea and the Denmark Strait. The auxiliary vessel in the Greenland Sea which was employed approx. two months a year during the period 1953–1981 has been included. The seal research involved taking samples to determine composition as to age and sexual maturity, as well as other biological observations. The incidence of parasites was also charted for a number of years. The studies were conducted from auxiliary vessels (CV) and by observers (O) on board fishing boats. Comparable material was collected off Newfoundland by observers on board fishing boats.

During the 1970s, studies were made of the minke whale off West Greenland, and during the last five years (1985-89), much of the activity off East Greenland–Jan Mayen was also devoted to whale research. This accounted for part of the significant increase in whale research noted during this five-year period.

3. Sources

The data have been taken from annual reports and annual cruise plans from the Institute of Marine Research, and the figures on which Table 4.1 is based are from each individual expedition. In cases where the expedition covered significantly larger areas than

those of relevance for the present matter, e.g. the summer expeditions in the Norwegian Sea to find herring in the 1950s, the proportion of the activity that took place in the relevant region is specified.

4. Costs

The approximate cost per day in Norwegian crowns (NOK) was as follows:

Research vessel (RV)	USD 9,180 per day
Chartered vessel (CV)	USD 4,590 per day
Observer (O)	USD 310 per day

The figures for the vessels include all costs, including the cost of observers. The figure for observers also includes all expenses. For example, the following costs were incurred during the five-year period 1985-89 in the East Greenland-Jan Mayen area:

RV:	9,180 x 193	= USD 1,771,740[1]
CV:	4,590 x (120 + 115)	= USD 1,078,650
O:	310 x (156 + 195)	= USD 108,810
		USD 2,959,200

Or approximately USD 590,000 per year.

[1] Converted at a rate of USD 1 = NOK 6.53

Table 4.1

Norwegian Marine Research in the Northwest Atlantic
from 1950 to 1989.
(Cruises and field studies)
(Number of days over 5 year periods)

Period	Jan Mayen/East-Greenland					West-Greenland					Newfoundland/Labrador				
	Env./fish/ shrimp			Marine mammals		Env./fish/ shrimp			Marine mammals		Env./fish/ shrimp			Marine mammals	
	RV	CV	O	CV	O	RV	CV	O	CV	O	RV	CV	O	CV	O
1950-54	114	–	–	120	151	–	292	–	–	–	–	–	–	–	137
1955–59	47	–	–	300	50	66	331	–	–	–	–	–	–	–	–
1960–64	185	28	–	300	325	230	–	–	–	–	50	67	–	–	81
1965–69	73	–	–	300	271	233	–	–	–	–	52	48	–	–	231
1970–74	51	12	–	300	270	53	43	–	–	305	92	–	–	–	240
1975–79	91	–	162	300	282	–	–	144	–	29	–	–	–	–	136
1980–84	219	21	122	120	250	–	–	113	–	–	–	–	–	–	35
1985–89	193	120	156	115	195	–	–	–	–	–	–	–	–	–	–

Source: The Norwegian Directorate of Fisheries.

Table 4.2

Norwegian Research Cruises in connection with the Capelin Stock in the Area Jan Mayen – Iceland – Greenland, 1979–1989

1979
Vessel: "G.O. Sars"
Period: 16 July – 12 August
Area: Jan Mayen – Iceland – Greenland

Vessel: "Michael Sars"
Period: 25 September – 5 October
Area: Jan Mayen – Iceland – Greenland

1980
Vessel: "G.O. Sars"
Period: 11 November – 22 November
Area: Jan Mayen – Iceland – Greenland

1981
Vessel: "G.O. Sars"
Period: 14 October – 23 October
Area: Jan Mayen – Greenland

1982
Vessel: "Michael Sars"
Period: 8 August – 13 August
Area: Jan Mayen fishery zone

1983
Vessel: "G.O. Sars"
Period: 7 August – 14 August
Area: Jan Mayen – Iceland – Greenland

Vessel: "G.O. Sars"
Period: 5 October – 22 October
Area: Jan Mayen – Iceland – Greenland (in cooperation with Icelandic vessels).

1985
Vessel: "Eldjarn"
Period: 29 July – 18 August
Area: Jan Mayen – Iceland – Greenland (in cooperation with Icelandic vessels).

1986
Vessel: "Eldjarn"
Period: 29 July – 19 August
Area: Jan Mayen – Iceland – Greenland

1987
Vessel: "G.O. Sars"
Period: 28 July – 13 August
Area: Jan Mayen – Iceland – Greenland

1988
Vessel: "G.O. Sars"
Period: 23 July – 21 August
Area: Jan Mayen – Iceland – Greenland

1989
Vessel: "G.O. Sars"
Period: 25 July – 8 August
Area: Jan Mayen – Iceland – Greenland

Source: The Norwegian Directorate of Fisheries.

APPENDIX 5

EXPLOITATION OF LIVING RESSOURCES IN THE JAN MAYEN–GREENLAND AREA: TABLES

For ease of reference, statistical tables relating to the exploitation of living resources in the Jan Mayen–Greenland area have been assembled in this Appendix. The tables cover various whaling, sealing and fishing operations, and attempt to provide a measure of detail which would be cumbersome to present in the body of these pleadings. Some of the tables which have been included in the text of this Counter-Memorial are reproduced here, accompanied by explanatory material which, for simplicity of presentation, has not been appended to the tables in the text.

Table 5.1

Total Catches[1] of Fish (in 1,000 tons) in the East and West Greenland Areas, 1932–1957[2]

Year	Norway	Greenland	Denmark[3]	Others[4]	Total[5]
1932	0.6	10.7	–	39.8	51.1
1933	0.5	10.0	–	28.3	38.8
1934	0.9	7.3	3.0	75.3	86.5
1935	0.8	6.6	–	70.5	77.9
1936	2.6	6.2	0.2	84.9	93.9
1937	2.3	6.4	0.1	94.8	103.6
1938	5.6	4.6	0.1	97.8	108.1
1939	11.7	6.2	–	25.3	43.2
1945	–	12.3	–	–	12.3
1946	0.1	13.2	–	0.1	13.4
1947	1.9	15.0	–	12.1	29.0
1948	0.6	15.8	2.0	9.2	27.6
1949	10.9	14.0	3.8	14.8	43.5
1950	16.7	17.3	5.3	2.9	42.2
1951	36.2	18.7	5.4	49.1	109.4
1952	24.0	19.8	–	150.6	194.4
1953	36.5	23.3	–	285.5	345.3
1954	48.6	22.4	–	290.6	361.6
1955	48.6	25.8	–	407.3	481.7
1956	44.7	26.3	–	324.7	395.7
1957	22.7	31.0	–	304.2	357.9

Source: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.

[1]) In this period, the catches consisted mainly of cod taken off the coast of West Greenland.

[2]) From 1958 on there are separate statistics for East and West Greenland, see Tables 5.2 and 5.7.

[3]) Excluding Greenland and the Faroes.

[4]) Including France, Germany/FRG, Portugal, Spain, Great Britain and the Faroes.

[5]) Total catches of the countries included in this table.

Table 5.2

Total catches of Fish (in 1,000 tons) in the East Greenland Area, 1958–1986[6]

Year	Norway	Greenland[6]	Denmark[7]	Others[8]	Total[9]
1958	1.9	0.9	–	35.5	38.3
1959	–	–	–	51.4	51.4
1960	–	1.7	–	63.8	65.5
1961	43.8	1.2	–	46.1	91.1
1962	–	0.9	–	51.6	52.5
1963	–	0.9	–	56.5	57.4
1964	–	1.1	–	80.4	81.5
1965	–	0.9	–	51.6	52.5
1966	–	0.9	–	78.9	79.8
1967	–	0.8	–	56.9	57.7
1968	–	0.6	–	39.7	40.3
1969	–	0.6	–	49.5	51.1
1970	–	0.5	–	37.6	38.1
1971	–	0.6	–	50.8	51.4
1972	–	0.2	–	39.1	39.3
1973	–	0.2	–	31.1	31.3
1974	–	–	–	46.0	46.0
1975	2.3	0.2	–	32.4	34.9
1976	0.4	0.5	–	172.7	173.6
1977	0.9	1.8	–	23.4	26.1
1978	165.4	1.4	–	204.1	370.9
1979	77.8	2.8	–	156.8	237.4
1980	74.6	1.8	12.6	181.8	270.8
1981	0.5	1.0	17.2	138.2	156.9
1982	–	0.9	0.1	59.2	60.2
1983	–	0.5	–	42.2	42.7
1984	28.3	1.1	7.8	30.1	67.3
1985	189.1	5.8	16.2	98.5	309.6
1986	86.9	–	5.9	243.6	336.4

Source: International Council for the Exploration of the Sea (ICES). Bulletin Statistique des Pêches Maritimes.

[6]) From 1977 only catches within the Greenland fisheries zone are included. Redfish that is mainly taken outside the Greenland zone is thus not included in the table. Figures of the redfish catches are presented in Table 5.3.

[7]) Excluding Greenland and the Faroes.

[8]) Including France, the FRG, Iceland, the Faroes, Portugal, Spain, the United Kingdom, the GDR, Poland and the Soviet Union.

[9]) Total catches of the countries included in this table.

Table 5.3

Catches of Redfish (in 1,000 tons) in the East Greenland Area, [10] 1977–1986

Year	Norway	Greenland	Denmark[11]	Others[12]
1977	0.1	–	–	14.2
1978	–	–	–	19.3
1979	–	–	–	15.9
1980	–	–	–	30.2
1981	–	–	–	36.4
1982	–	–	0.1	37.7
1983	–	–	–	29.1
1984	0.1	0.1	–	14.3
1985	–	5.5	–	11.4
1986	–	9.5	–	14.3

Source: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.

Table 5.4

Total Catches of Fish (in 1,000 tons) in the Northeast Greenland Area North of 68°N[13], 1978–1986

Years	Norway	Greenland[14]	Denmark[15]	Iceland	Others[16]
1978	165.4	–	–	154.5	0.7
1979	77.8	–	–	114.6	–
1980	74.6	–	–	108.5	20.6
1981	0.5	–	17.2	44.1	13.4
1982	–	–	–	–	0.5
1983	–	–	–	–	–
1984	27.4	–	–	–	3.8
1985	189.1	–	–	173.6	5.8
1986	86.9	–	5.9	148.5	85.5

Source: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.

[10]) The redfish stock is mainly to be found outside the Greenland fisheries zone southeast of Greenland.

[11]) Excluding Greenland and the Faroes.

[12]) Includes the FRG, the Faroes, Iceland, the United Kingdom, the USSR, Poland, the GDR and France.

[13]) From 1978 on the ICES statistics have been divided into an area north of 68°N (area XIVa) and an area south of this latitude (XIVb).

[14]) Figures do not include catches taken by the indigenous population.

[15]) Excluding Greenland and the Faroes.

[16]) Including the GDR, the FRG, the USSR, Poland and the UK.

Table 5.5

Total Catch[17] Activities in the Northeast Greenland Area and in the Jan Mayen Area North of 68°N, 1978–1986.

Year	Norway				Denmark		Ice-land	Faroes		USSR
	Seal	Minke Whale	Cape-lin	Shrimp	Cape-lin	Shrimp	Cape-lin	Cape-lin	Shrimp	Seal
1978	30.5	–	154.1	0.1	–	–	154.6	0.8	–	5.0
1979	33.0	–	126.0	1.1	–	–	114.6	–	–	6.7
1980	19.6	13	118.6	3.2	–	–	108.5	20.6	–	5.0
1981	23.5	1	91.4	2.6	17.2	0.6	44.1	13.3	–	4.0
1982	23.2	–	–	2.0	–	–	–	–	–	4.4
1983	3.4	23	–	1.8	–	–	–	–	0.3	4.8
1984	2.6	90	104.6	3.7	–	0.4	–	3.4	–	–
1985	0.9	55	188.7	4.3	–	0.3	173.6	–	–	1.8
1986	2.9	54	149.7	4.0	5.4	0.4	148.4	65.5	–	6.6

Sources:
Capelin: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.
Sealing: The Report of the Advisory Committee on Fishery Management (ACFM) to the International Council for the Exploration of the Sea (ICES) Meeting October 1989.
Whale: The Norwegian Directorate of Fisheries.
Shrimp: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.

[17]) All catches in 1,000 except minke whale.

Table 5.6

Total Annual Catch of Capelin (in 1,000 tons) in the Jan Mayen – Iceland – East Greenland Area, 1964–1988[18]

Year	Winter season[19]			Summer/autumn season				Total
	Iceland	Faroes	Norway	Iceland	Norway	Faroes	EEC	
1964	8.6	–	–	–	–	–	–	8.6
1965	49.7	–	–	–	–	–	–	49.7
1966	124.5	–	–	–	–	–	–	124.5
1967	97.2	–	–	–	–	–	–	97.2
1968	78.1	–	–	–	–	–	–	78.1
1969	170.6	–	–	–	–	–	–	170.6
1970	190.8	–	–	–	–	–	–	190.8
1971	182.9	–	–	–	–	–	–	182.9
1972	276.5	–	–	–	–	–	–	276.5
1973	440.9	–	–	–	–	–	–	440.9
1974	461.9	–	–	–	–	–	–	461.9
1975	457.6	–	–	3.1	–	–	–	460.7
1976	338.7	–	–	114.4	–	–	–	453.1
1977	549.2	25.0	–	259.7	–	–	–	833.9
1978	468.4	38.4	–	497.5	154.1	–	–	1.158.4
1979	521.7	17.5	–	441.9	126.0	2.5	–	1.109.6
1980	392.0	–	–	367.2	118.6	24.4	14.3	916.5
1981	156.0	–	–	484.6	91.4	16.2	20.8	769.0
1982	13.0	–	–	–	–	–	–	13.0
1983	–	–	–	133.3	–	–	–	133.3
1984	439.6	–	–	425.2	104.6	10.2	8.5	988.1
1985	348.5	–	–	644.8	188.7	– 81.4	–	1.263.4
1986	342.0	–	49.9	552.3	149.7	64.4	5.3	1.163.6
1987	500.6	–	59.9	16.0	82.0	66.3	–	1.019.5
1988	600.6	–	57.3	25.0	11.5	47.0	–	741.4

Source: The Report of the Advisory Committee on Fisheries Management (ACFM) to the Northeast Atlantic Fisheries Commission (NEAFC) May Meeting 1989.

[18]) 1987 and 1988 figures for the summer and autumn season only include catches until 24 October.

[19]) All catches in the Icelandic zone.

Table 5.7

Total Catches of Fish (in 1,000 tons) in the West Greenland Area, 1958–1986

Year	Norway	Greenland	Denmark[20]	Others[21]	Total[22]
1958	36.4	31.6	–	275.9	343.9
1959	27.4	32.9	–	199.7	260.0
1960	32.2	32.5	–	230.0	294.7
1961	–	38.1	–	326.2	364.3
1962	32.1	39.0	–	438.9	510.0
1963	32.2	29.1	–	349.1	410.4
1964	35.0	33.4	–	318.5	386.9
1965	32.2	39.7	–	313.7	385.6
1966	38.9	43.4	–	309.6	391.9
1967	53.4	43.7	–	355.2	452.3
1968	39.8	33.1	–	304.3	377.2
1969	18.7	38.0	0.4	168.2	225.3
1970	6.5	37.3	–	96.2	140.0
1971	7.8	36.9	–	101.1	145.8
1972	33.1	41.1	–	62.6	136.8
1973	19.0	41.3	–	42.7	103.0
1974	9.9	50.9	–	47.7	108.5
1975	12.4	47.7	1.5	80.6	142.2
1976	14.9	44.1	2.7	68.1	129.8
1977	9.4	58.0	5.8	75.1	148.3
1978	9,3	66.8	3.4	48.8	128.3
1979	4.6	80.2	1.3	77.6	163.7
1980	3.0	101.1	0.8	19.7	124.6
1981	1.0	106.3	0.9	8.4	116.6
1982	–	103.5	–	19.6	123.1
1983	0.4	97.3	–	22.6	120.3
1984	0.1	83.2	–	14.9	98.2
1985	0.1	85.1	0.1	4.5	89.8
1986	0.1	86,5	0,1	0.1	86.8

Sources:
From 1958–1964: International Council for the Exploration of the Sea (ICES). Bulletin Statistique des Pêches Maritimes (area XV).
From 1965–1978: International Commission for the Northwest Atlantic Fisheries (ICNAF). Statistical Bulletin (Area 1a-f)
From 1979–1986: Northwest Atlantic Fisheries Organization (NAFO). Statistical Bulletin (Area NAFO1).

[20]) Excluding Greenland and the Faroes.

[21]) Including the Faroes, France, the FRG, Iceland, Portugal, Spain, Japan, the USSR, the United Kingdom, Poland and the GDR.

[22]) Total catches of the countries included in the table.

Table 5.8

Catches of Cod (in 1,000 tons) in the West Greenland Area, 1952–1978

Year	Norway	Greenland	Denmark[23]	Others[24]	Total[25]
1952	22.7	16.7	–	212.8	252.2
1953	31.5	22.6	–	151.3	205.4
1954	49.3	–[26]	–	202.6	302.0
1955	44.2	19.8	–	235.8	299.8
1956	41.0	21.0	–	259.1	321.1
1957	19.9	24.6	–	201.4	245.9
1958	36.4	25.8	–	255.6	317.8
1959	26.6	27.5	–	179.0	233.1
1960	31.7	27.0	–	181.9	240.6
1961	43.4	33.9	–	268.0	345.3
1962	31.9	35.3	–	382.7	449.9
1963	32.0	23.1	–	349.7	404.8
1964	34.5	22.0	–	276.6	333.1
1965	32.0	24.3	–	289.9	346.2
1966	38.7	29.0	–	288.3	356.0
1967	53.1	27.5	–	338.6	419.2
1968	39.2	20.7	–	291.5	351.4
1969	18.0	23.6	–	161.8	203.4
1970	6.2	20.0	–	83.8	110.0
1971	6.2	19.4	–	92.1	117.7
1972	31.5	23.4	–	54.3	109.2
1973	15.5	17.7	–	29.3	62.5
1974	3.5	19.9	–	23.6	47.0
1975	3.1	19.3	–	25.0	47.4
1976	2.8	16.2	–	13.6	32.6
1977	1.6	24.2	–	12.7	38.5
1978	–	37.4	–	1.0	38.4

Source: International Commission for the Northwest Atlantic Fisheries (ICNAF), Statistical Bulletin.

[23]) Excluding Greenland and the Faroes.

[24]) Including the Faroes, France, Iceland, Portugal, Spain, the United Kingdom, the FRG and the USSR.

[25]) Total cod catches of the countries included in the table.

[26]) Figures not available. The Faroes and Greenland had a total catch of 50,100 tons.

Table 5.9

Average Annual Catches of Cod (in 1,000 tons) in the West Greenland Area, 1952–1978

Period	Norway	Greenland	Denmark[27]	Other[28]
1952–59	34.0	19.8[29]	–	212.2
1960–69	35.5	26.6	–	282.8
1970–78	7.8	21.9	–	37.3

Source: International Commission for the Northwest Atlantic Fisheries (ICNAF), Statistical Bulletin.

Table 5.10

Norwegian Average Annual Catches of Herring (in 1000 tons), 1930–1969

Period	Total Catch	No. of Vessels	Share of Catch off Jan Mayen[30]
1930–34	21.000	–	–
1935–39	21.000	184	–
1945–49	18.000	193	–
1950–54	20.000	206	–
1955–59	37.000	217	2.500
1960–64	105.000	216	4.100
1965–69	33.000	78	3.400

Source: The Norwegian Directorate of Fisheries.

[27]) Excluding Greenland and the Faroes.

[28]) Including the Faroes, France, Iceland, Portugal, Spain, the United Kingdom, the FRG and the USSR.

[29]) Separate figures for Greenland in 1954 not available.

[30]) Until 1955 the catches in the area off Jan Mayen were not accounted for separately.

Table 5.11

Norwegian Shrimp Catches in tons off Jan Mayen and Greenland, 1971–1989

Year	Jan Mayen	East Greenland	West Greenland
1971	–	–	148
1972	–	–	1,386
1973	–	–	3,000
1974	–	–	5,917
1975	100	–	8,678
1976	350	–	11,658
1977	109	24	7,505
1978	70	–	7,966
1979	864	267	4,571
1980	593	2,558	2,555
1981	615	2,016	1,056
1982	147	1,899	827
1983	260	1,563	482
1984	1,575	2,135	322
1985	2,248	2,024	459
1986	2,030	1,993	442
1987	1,635	2,021	435
1988	1,093	2,048	439
1989	500	2,000	450

Source: The Norwegian Directorate of Fisheries.

Table 5.12

Norwegian Minke Whale Catches in the Central North Atlantic Area (Jan Mayen, Iceland and the Denmark Strait), 1939–1987

Year	Total Catches	No. of Vessels
1939	1	1
1940	–	–
1946	–	–
1947	12	2
1948	66	6
1949	78	7
1950	–	–
1951	–	–
1952	2	1
1953	–	–
1954	–	–
1955	20	6
1956	5	3
1957	10	4
1958	2	2
1959	32	4
1960	40	7
1961	139	11
1962	245	25
1963	168	19
1964	272	20
1965	349	26
1966	250	14
1967	416	16
1968	725	22
1969	210	13
1970	288	20
1971	134	12
1972	236	10
1973	269	13
1974	162	12
1975	239	13
1976	88	5
1977	–	1
1978	131	9
1979	120	10
1980	120	8
1981	45	1
1982	108	7
1983	104	9
1984	104	4
1985	85	5
1986	54	3
1987	50	4

Source: Norwegian Directorate of Fisheries.

LIST OF TABLES

TABLES INCLUDED IN THE COUNTER-MEMORIAL

TABLES IN APPENDICES

MAPS AND FIGURES IN VOLUME I

Maps attached to Volume I

Map of Jan Mayen in Scale 1:100.000

Sketch Maps and Figures included in Volume I

INDEX OF ANNEXES

VOLUME II

1. Official Documents

2. Norwegian Legislation

3. Danish Legislation

4. International Agreements

5. Miscellaneous

INDEX OF ANNEXES
IN CHRONOLOGICAL ORDER

VOLUME II