INTERNATIONAL COURT OF JUSTICE

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

REJOINDER SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF NORWAY

27 September 1991

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INTRODUCTION

1. This Rejoinder is being filed pursuant to the Order of the President of the Court of 21 June 1990, fixing 1 October 1991 as the time-limit for the filing of the Rejoinder of the Kingdom of Norway.

2. This Rejoinder will primarily address itself to a response to assertions made in the Danish Reply, submitted on 1 February 1991. It will seek to bring out and comment upon the issues that still divide the Parties. It is to be regretted that, as noted in the Danish Reply (p. 3, para. 1), there is not much common ground between the Parties. The Norwegian Government would have hoped that, after the exchange of the initial Pleadings, the Danish position in these proceedings would have come closer to the position which Denmark held at least since 1963, and which coincides with Norway's view on the law of maritime delimitation. Generally, the Norwegian Government refers to the presentations of its Counter-Memorial, and maintains the positions set out therein.

3. Denmark has chosen to file a unilateral application to the Court. In its amended submissions, it has unilaterally requested the Court

a) to adjudge and declare that Greenland (not Denmark) is entitled to a full 200-mile fishery zone;

b) to adjudge and declare that Greenland (not Denmark) is entitled to a full 200-mile continental shelf area vis-à-vis the island of Jan Mayen; and

c) "consequently", to draw a single line of delimitation and continental shelf area of Greenland (not Denmark) in the waters between Greenland and Jan Mayen at a distance of 200 nautical miles measured from Greenland's baseline, (which is now further specified).

4. With regard to the extent of its continental shelf rights, Norway relies on several distinct legal bases, all leading to the conclusion that the median line is the limit of Denmark's entitlement and therefore constitutes the boundary: the generally worded bilateral Agreement of 8 December 1965, the fact of both Parties being party to the Continental Shelf Convention of 1958, the consistent conduct of the Parties, as well as general international law. The Danish side requests Norway (Reply, p. 161, para.

441) to state which rule – in the singular – applies. The answer is that all these legal bases, separately as well as conjointly, refute the Danish claim.

5. As for the extent of the fishery zones, Norway relies on the consistent conduct of the Parties, as well as general international law, which both point to the median line as delimiting the Parties' entitlement to fishery zones.

6. The Danish claim that the Court should, "consequently", draw a single line of delimitation calls for comment. When Denmark requests the Court to draw a "single line of delimitation", the request must be understood as being restricted to the continental shelf and the fishery zones. The request cannot be held to relate to a "single maritime boundary" in the sense of a delimitation for all legal purposes. Likewise, the request cannot be held to disregard existing treaty relations in respect of some but not all legal relationships, or disregard the fact that under the general international law, the factors taken into regard to determine an equitable solution may lead to differing delimitations for instance in respect of the continental shelf and the water column resources.

7. Further, it is unclear whether Denmark requests the Court to effect a specific delimitation rather than determining the principles to be applied in performing such specific delimitation. This Rejoinder will revert to these questions in Chapter III of Part III (pp. 191–192, paras. 648–658).

8. Denmark now concedes that the Court should not consider any area which could involve the interests of Iceland. Norway has no objection to the redefinition of the disputed area, as described at pages 15-16, paragraphs 29-30 of the Reply, in so far as the interest of Iceland are concerned.

9. Notwithstanding the common position of the Parties in respect of Iceland's interests, Denmark continues to raise issues which appear irrelevant to the dispute now before the Court, including details of Norway's consideration of Kolbeinsey as a basepoint. These issues will be dealt with below (p. 10, paras. 24–26).

10. Norway must formally state that there is no renunciation on its part, as suggested in paragraph 29 of the Reply, of any claims to areas to the east of the median line between Jan Mayen and Greenland and south of 70°12'04"N. In the event of any

change in Iceland's determination of relevant basepoints, Norway's area of maritime jurisdiction would be adjusted correspondingly.

11. The Danish arguments with reference to Bear Island are not relevant to the present proceedings, for reasons which are set out in Chapter I of Part III of this Rejoinder (pp. 187–189, paras. 633–641).

PART I
THE FACTS

CHAPTER I
GENERAL

1. Human Settlement and Activities in the Region

12. The Norwegian Government found it natural to give a general account in the Counter-Memorial of the history and general activities in the area of Jan Mayen and the adjoining region. This survey included Map I, depicting human settlement in a broad Northeast Atlantic context, and traditional Norwegian hunting and fishing grounds. The Danish Reply contains a number of comments on Map I attached to the Norwegian Counter-Memorial, which call for a response.

13. The purpose of this map was primarily to illustrate that the pattern of population settlement in Norway has traditionally and persistently followed the coastline of the country. The sea has been a source of livelihood and a communication link. The use of a symbol for the relationship of population to area, broken down into relatively small units, is a common device in economic cartography. The criterion "Land use involving 10 people or more within a radius of 2 kilometres" has been taken from a similar representation in the Norwegian National Atlas, and is considered adequate when illustrating the distribution of the discontinuous settlements that prevail in the Nordic and Arctic regions.

14. It is regretted that some locations in Greenland were omitted in Map I. The addition to the map of four settlements in Northwest Greenland and two settlements in Southeast Greenland would not, however, alter the main picture. East Greenland is sparsely populated, particularly that part of it that faces Jan Mayen (see Chapter III, p. 17 ff.).

15. Denmark also contends that the seasonal settlements of the semi-nomadic part of the Greenland population should qualify for their own symbol on the map. The deliberate Danish policy of regrouping the aboriginal population in permanent settlements has drastically inhibited the traditional Inuit life-style based on a pattern of seasonal migration. The great majority of the population that can be described as "semi-nomadic" have their permanent dwellings in the settlements indicated on Map I. Providing a correct representation of the remaining semi-nomadic migrations would involve severe definition problems, as well as difficulties in presentation.

16. The Reply contends that the use of symbols to denote Norwegian hunting grounds is "similarly incorrect" (p. 34, para. 94). It is correctly observed that the presentation is not linked to any specific year or period. The purpose was to provide a pictorial illustration of the general areas of Norwegian activity in the harvesting of maritime resource in the general area. The point to be illustrated is that Norwegian fishermen, whalers, sealers and hunters have been active in this area at various times, at various locations, over a period of more than a century. The population of Norway has used the whole of the Northeast Atlantic for its livelihood. Norway is not a newcomer in the region, and Norway is not a "distant-water fishing nation" sending out its hi-tech fleets in the last few decades. That, and nothing more, was the objective of the illustrative symbols in Map I.

17. The specific Danish complaints in respect of the use of symbols to indicate Norwegian activities address two points: The first is to the effect that the Greenland Home Rule Authority has not authorized Norwegian whaling within the Greenland fishery zone since 1985. The second is that sealing has not been permitted since 1988. That is, of course, perfectly correct, but the purpose of the illustration would not have been met if it had been limited to depicting activities solely since 1988. The Norwegian Government, Norwegian fishermen, and, indeed, the Norwegian general public sympathize fully with the Home Rule Authority in its endeavours to maintain a traditional, honourable and environmentally sound and defensible harvest of whales and seals. Nevertheless, it would be entirely misleading if an illustration of traditional Norwegian maritime activities were to omit any reference to whaling and sealing in waters off Greenland.

2. The Status of Greenland in the Proceedings

18. The Danish Reply seeks to convey the impression, directly and indirectly, that the present proceedings relate to a dispute between Norway and Greenland, and that Greenland is a separate entity capable of exercising rights and answering to obligations under international law. This is most clearly stated in the Danish submissions (Reply, p. 177, para. 481), where the Court is requested to "... adjudge and declare that *Greenland is entitled* to a full 200-mile fishery zone and continental shelf area ...", and "to draw a single line of delimitation of *the fishery zone*

and continental shelf area of Greenland ..." (emphasis supplied). The suggestive language is multiplied throughout the Reply.[1]

19. The fact that Greenland has been given some degree of autonomy does not alter the formal and legal aspects of the status of the Kingdom of Denmark as a party to the present proceedings. Greenland remains an integral part of the Kingdom of Denmark. Boundaries for the continental shelf and of the fishery zones in the area between Jan Mayen and Greenland constitute boundaries between the Kingdom of Norway and the Kingdom of Denmark. Denmark has instituted the present proceedings against Norway in its own name, and not in the name of the Home Rule Authority; the two Kingdoms are the Parties in the case.

20. The present proceedings concern matters relating to distinctive regions of each of the two Kingdoms. That fact does not make these proceedings different from any other dispute between two independent, industrialized States sharing the same historical and cultural traditions and having comparable levels of social and economic development, means and resources.

3. The Jan Mayen Baselines

21. It has been noted that the Government of Denmark has arranged for the relevant part of the East Greenland baseline to be revised, and that new coordinates have been supplied (Danish Memorial, p. 9, n. 1, and Reply, p. 16, para. 31 and n. 3, and Annex 58).

22. The Norwegian Government has likewise conducted a hydrographic and geodetic survey of the basepoints of Jan Mayen. The baselines for the island were established by the Crown Prince Regent's Decree of 30 June 1955 (Annex 83). The coordinates given refer to European Datum 1950 (ED 50).

23. The new survey comprised an inspection of the basepoints, and their positioning by means of satellite instrumentation. On that basis, coordinates for the 17 basepoints defined in the Decree of 1955 have been recalculated in World Geodetic

[1]) At page 6 (para. 14), the phraseology is that "... Greenland is entitled ...". At page 12 (para. 33), the reference is to "... maritime areas that *Greenland claims* ...". At page 32 (para. 84), there is a suggestion of "... *Greenland's right* to an extension of the fishery zone to 200 miles ...". At page 45 (para. 119) it is – patently incorrectly – stated that "... in 1977 and 1980 ... *Greenland was a member* of the European Communities ...". (Emphasis supplied in all cases). A number of similar formulations occur *passim* in the Reply.

System 1984 (WGS84). A comparative table showing co-ordinates in both systems is found at Annex 83. The basepoints established in 1955 have not been changed, but the location of each point can now be stated in the same system as that of the East Greenland baselines.

4. The Southern Limit of the Disputed Area

24. The Danish Reply (p. 15, para. 27) has raised two specific questions regarding the basis for describing the disputed area so as to avoid any determination by the Court which might affect an unresolved dispute between Denmark and Iceland. Although these questions are not relevant to the present proceedings, responses are provided below:

25. There is no express agreement or specific understanding between Norway and Iceland providing for the recognition by Norway of Kolbeinsey as an Icelandic basepoint. Nor has there been any formal unilateral determination by Norway on the issue. The relevant Agreements between Norway and Iceland imply that, in the absence of any further specification, and of any particular statement of reservation on the part of Norway, the delimitations as between the economic zones and between the appurtenant parts of the continental shelf of the Parties must be determined on the basis of such basepoints and baselines as may from time to time be applied by Iceland in conformity with international law.

26. The sketch map in Annex 72 to the Counter-Memorial was produced specifically for the Counter-Memorial. It has not been published in any other context. The sketch map attached to Proposition No. 61 to the Storting for 1981 (Annex 57 to the Reply) was, as appears clearly from the accompanying text, drawn up by Dr. Finn Sollie (*to accompany an article in the publication Internasjonal Politikk*). As stated in the heading, the sketch map served only to illustrate the "cooperation area as defined in the Agreement". Indeed, the same sketch map was used in the Icelandic bill to the Allting on the ratification of the 1981 Agreement, presumably without any prejudice as to the Icelandic position on Kolbeinsey as a basepoint. The origins of the sketch map published by the United Nations Secretariat (Annex 56 to the Reply) are not known.

CHAPTER II
HISTORY OF THE DISPUTE

1. Introduction

27. It is worth noting that the Parties hold different views of the history of the dispute. The Danish account of the period of negotiations and contacts conveys the impression of a constant and frustrating failure to produce progress. That is not surprising, in relation to Danish ambitions for a conclusion exclusively on Denmark's own terms. On the other hand, Norway's impression is that Denmark was not inclined to conduct meaningful negotiations. In the outcome, Denmark maintained its claim to a full 200-mile continental shelf and fisheries zone.

28. A period of negotiations and contacts commenced in 1980. By 1987, this process had not brought about any substantial agreement. Discussions between the Parties then concentrated on alternatives for dispute resolution which might break the impasse caused by the inflexible Danish attitudes.

29. It is also noteworthy that Denmark instituted proceedings before the Court by unilateral application without advising Norway, in regard to a matter where the negotiation of a Special Agreement has overwhelmingly been the approach chosen by States which maintain normal friendly relations.

30. The Danish Memorial provided, and the Reply maintains, an inflated and overly dramatized account of an early discussion between the Parties regarding their attitudes to surveillance activities with regard to the disputed area. Likewise, the Danish presentation of the discussions concerning the possibility of settling the dispute through an arbitral procedure appears to be far removed from the Norwegian perception.

31. The Reply offers an explanation of the background for the decision of the Government of Denmark to proceed to the opening of the present proceedings by means of a unilateral application. The procedural consequences following from the chosen means of procedure are dealt with elsewhere in this Rejoinder (see Chapter III of Part III, pp. 191–192).

32. The negative Danish perception of the general progress of the negotiations and contacts between the Parties, and of the

handling of practical difficulties in the early stages, make it necessary for Norway to clarify certain issues of fact mentioned in the Danish Reply.

2. The So-called Incident

33. The Danish Reply (pp. 16-17, paras. 33-35) continues to maintain that the events of the latter part of August 1981 constituted an "incident" of a "serious character". Excerpts from a contemporary Danish account, on a day-by-day basis, of the Danish perceptions of that sequence of events are provided in Annex 59 to the Reply. It is suggested that this account corroborates the Norwegian evaluation of those events.

34. In the Memorial (p. 17, para. 54), Denmark describes the Norwegian Coast Guard missions with a certain dramatic flavour:

> "At the end of August ... a Norwegian coastguard ship was *sailing towards the disputed area with instructions to board* Danish fishing vessels and hand over written warnings ordering the vessels to stop fishing and leave the Norwegian fishery zone."

35. The misperception conveyed by the quotation above is partly corrected by the day-to-day account in Annex 59 to the Reply, but the Norwegian Government wishes to give a complete account of the actual situation in the Jan Mayen zone at that time.

36. From 1 July 1981, Norwegian fisheries surveillance vessels had been present on an almost continuous basis in Jan Mayen waters, notably to survey the fishing for capelin and blue whiting by vessels from several nations. The Norwegian Coast Guard vessel K/V *Heimdal* and the Coast Guard auxiliary vessel K/V *Møgsterfjord* were assisting the Norwegian purse seine fleet until the Norwegian capelin quota was completed on 16 August. Their presence in the fishing area was utterly pacific, and was associated with none of the characteristics of an "international incident" in the normal usage of that term. The despatch of the Coast Guard vessel K/V *Farm* on 25 August 1981 to relieve these two vessels did not imply any change in the pattern of operations of the Norwegian Coast Guard, and represented in fact a reduction in the number of Norwegian surveillance vessels present in the region.

37. After consultations with the Danish side on 26 August 1981 (referred to in the Reply, Annex 59), the Coast Guard vessel K/V *Farm* received instructions, on 27 August 1981, to show restraint upon arrival in the Jan Mayen fishery zone and not to follow standard procedures in relation to illegal fishing. With reference to ongoing negotiations with Denmark, K/V *Farm* was instructed, until further notice, *not* to board or inspect Danish or Faroese vessels fishing without a license in the Norwegian zone. Vessels were only to be instructed by radio to stop the fishing and leave the zone (a translation of the signal from the Ministry of Defence is presented in Annex 89). In the following days, several Danish and Faroese vessels expressly stated that they were ignoring these radio instructions from the Norwegian Coast Guard. How best to deal with this demonstrative action by fishermen was discussed with Danish officials on 28 August (referred to in the Reply, Annex 59). On 30 August 1981, after this bilateral discussion, Norwegian Coast Guard vessels were instructed to board Danish and Faroese vessels, and to issue written instructions to stop fishing and leave the area. An oral warning about the consequences of illegal fishing for the allocation of future permits to fish in Norwegian waters was to be given. No means of force were to be used. Conflict with the Danish Coast Guard was to be avoided (a translation of the orders from Naval Command Northern Norway is presented in Annex 91).

38. Denmark appears to have accepted this mild form of action, judging from a Danish press release issued in the evening of 30 August 1981 (a translation is reproduced in Annex 90). It states:

> "The temporary instruction to the Coast Guard vessel *Vædderen* is *not* to intervene if the Norwegians board Danish fishing vessels only to issue written warnings."

39. The Danish account in the Reply (Annex 59) correctly makes it clear that there was continuous contact between Government officials and between the Foreign Ministers throughout the period in question. The first personal meeting between the Foreign Ministers occurred on 1 September 1981, in conjunction with a regular meeting in Copenhagen of Nordic Foreign Ministers, not as a crisis measure.

40. The situation was never "critical" in the sense that there was any risk of serious confrontation.

41. This point is not a question of terminology. The choice of words in the Danish Memorial (p. 17, paras. 54-57) creates the impression that the Government of Norway was deliberately escalating the dispute to a level which involved a disproportionate use of Coast Guard resources, in a manner which might be taken to affect or alter the nature of the dispute. As set out in the *Counter-Memorial* (p. 75, paras. 267-269), the activities of Norwegian surveillance vessels did not have the purpose or the effect of producing an escalation of the dispute.

42. This view is corroborated by the contemporary documentation adduced as Annex 59 to the Danish Reply. It is further corroborated by a statement by the Local Government of the Faroe Islands, in a communication to the Norwegian Directorate of Fisheries on 21 September 1981:

> "The Faroe Islands *Landsstyri* [the executive body] is pleased to note that no serious incidents have as yet taken place, and hopes that the high-level contacts between the two governments will make it possible to continue to avoid such incidents."(Annex 91).

Several of the Danish fishing vessels operating in the disputed area at the time were from the Faroe Islands.

43. The contemporary Danish account shows that there was no lack of contact between the two Parties, and that their representatives on the ministerial level as well as on the level of officials were able to communicate in a manner which was well suited to prevent the occurrence of any dangerous situation. There was no physical conflict on the fishing grounds.

44. Norway therefore has difficulty in seeing the justification for the assertion in the Danish Reply (p. 17, para. 35), that "[t]he serious character of the incident proved the dangers created by the absence of a clear jurisdictional line in the disputed area ...".

3. Discussion of an Arbitral Procedure

45. The Danish Reply, at page 18 (para. 42), characterizes as "incorrect" the Norwegian account of the efforts of the Parties to provide for the settlement of the delimitation issue by arbitration (pp. 73-74, paras. 262-263 of the Counter-Memorial). At pages 19-21 (paras. 43-51) of the Reply, a Danish account is given, accompanied by a "Conclusion Résumé" at Annex 62.

46. The Danish account corroborates the Norwegian impression that the Danish officials would report fully to their Government, and that there might possibly be contacts with relevant Parliamentary bodies. As noted in the Danish "Conclusion Résumé", the Norwegian side had made it clear that it expected a further Danish reaction. As further noted, "These last statements were not commented upon by the Danish side". The Norwegian expectation of further contacts in the matter could therefore not have been "based on the Danish response", as phrased in the Reply. That expectation *did* in fact exist, based on the setting, the context, and the lack of comment from the Danish side. The Norwegian impression is reflected in the Minutes from the meeting on 21 June 1988, which appear in Annex 94. The circumstances give little support to the Danish contention that "For anyone present at the meeting it was clear that the time for further negotiations between the Parties on these issues had come to an end".

47. The Danish Reply asserts (p. 20, para. 49) that the contents of the Norwegian counter-proposal "... could only lead to the conclusion that it would not be possible to come to terms with Norway on the contents of a special agreement". This is a conclusion which is not based on the actual progress of the discussions.

48. The Parties had discussed various alternatives for an arbitral procedure. It is true that it was common ground that the Norwegian proposal would entail a procedure consisting of several steps. It remains Norway's conviction that the procedure would not have been a complicated one. It would have served to isolate the purely legal questions, and provided a judicial determination of those legal questions. (The "conclusion résumé" contained in Annex 62 to the Danish Reply contains a misinterpretation of the Norwegian proposal. The object of the Norwegian proposal was precisely to provide *binding* responses to the legal questions.) The Norwegian proposal aimed at combining a judicial procedure, giving conclusive decisions on purely legal issues, with the possibility of utilizing the legal decisions in further attempts to settle the delimitation matter through negotiations. It remains Norway's view that this would have constituted the most suitable procedure for settling delimitation disputes in a manner which corresponds to legal concerns as well as practical and political requirements.

49. Even though the Parties had not achieved agreement on arrangements for an arbitral procedure, this did not exclude

the possibility of agreeing on the terms under which a delimitation dispute could most usefully and most suitably have been brought before the International Court of Justice. It may reasonably be inferred that Denmark, after it had changed its mind on arbitration, was determined to commence proceedings before the Court by means of a unilateral application, and consciously avoided exploring the possibilities of a Special Agreement.

50. The Danish Reply makes it clear that Denmark chose not to seek a collaborative approach to the present litigation. Therefore, Denmark can have no complaint if Norway insists that the present proceedings must be dealt with by the Court strictly on the basis of the formal legal relationship between the Parties. There is no Special Agreement indicating a specially fashioned mandate for the Court. There is no explicit and specific elaboration of the judicial function.

CHAPTER III
GEOGRAPHY OF THE REGION

1. General Description of the Region

51. The physical geography of Northeastern Greenland and Jan Mayen is similar in many ways. It is thus surprising that Denmark uses extensive quotations from various sources to substantiate that Jan Mayen, like most other Arctic areas, is "desolate" and "isolated".

52. The vegetation of Northeast Greenland is as sparse as that of Jan Mayen; indeed the interior is covered by a massive ice cap. In the Greenland Atlas, submitted together with the Reply, the vegetation of the regions of Greenland facing Jan Mayen is described as "High-Arctic – no willow scrub or herb slopes – but heaths, fellfields, snow patches. 'Desert' in the interior." (p. 42).

53. The main settlement of the Northeast coast of Greenland – Ittoqqortoormitt/Scoresbysund – is described by the Greenland Atlas (p. 52) as being "very isolated". Ice conditions make Ittoqqortoormitt/Scoresbysund inaccessible from the sea during more than nine months of the year, and scheduled air transport is via Iceland.

54. Northeastern Greenland is sparsely populated. Only a few kilometres north of Ittoqqortoormitt/Scoresbysund, a national park of 972,000 square kilometres (including later extensions) was established in 1974. The national park covers the entire Northeastern and Northern coast of Greenland and a large section of the ice cap (see sketch map at p. 19). According to the Greenland Yearbook[2] (p. 94), the national park is inhabited only by the crew of the three manned meteorological and scientific stations (Station Nord, Danmarkshavn and Daneborg). These settlements are of the same character as the station on Jan Mayen. All visits to the area require a permit from the Greenland Home Rule Authority.

55. The Ittoqqortoormitt/Scoresbysund area was unpopulated until 1925[3]. The background for the establishment of this settlement is described along the following lines in a recent article in the magazine *Grønland*:

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[2]) *Årbog Grønland* 1988, Statsministeriet, Grønlandsafdelingen, København, 1989.

[3]) *Report of the Greenland Commission*, Part 6, Copenhagen 1950, pp. 7, 15.

"It was the dispute between Norway and Denmark over the sovereignty over Northeastern Greenland that was the direct cause of the establishment of Scoresbysund. In the agreement from 1924 between the two States, Norway promised to renounce the Scoresbysund area if an Eskimo settlement was established in the district. This was done in 1925, but upon a private initiative, since the Danish State was very cautious about adding more fuel to the conflict. A private committee headed by Einar Mikkelsen organised in 1924 the construction of a number of dwellings, and the following year 70 persons moved from Ammassalik, where the hunting resources were insufficient due to a rapidly growing population." (*Grønland*, No. 6 1989, p. 186).

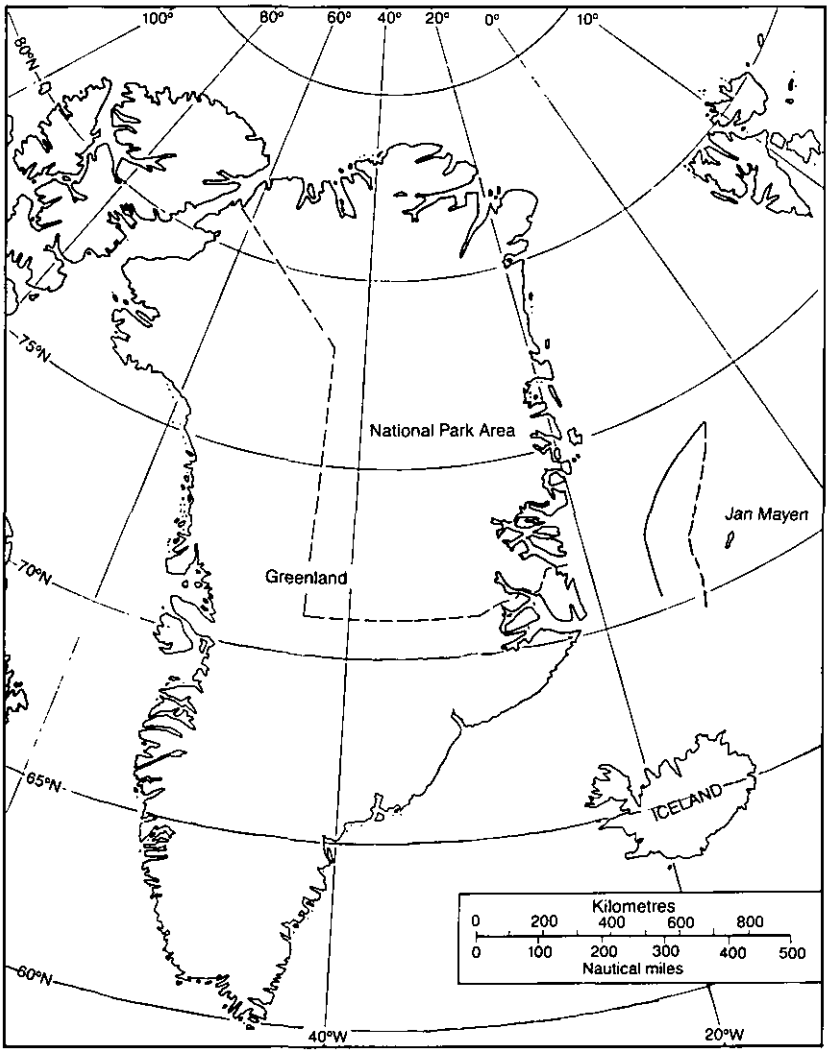
56. The Ittoqqortoormitt/Scoresbysund community is overwhelmingly dependent on outside supplies and public support. Since the end of the 1960s the local economy has suffered increasingly as a result of a deteriorating market for seal furs. It has not been possible to establish commercial fisheries in the area to compensate for the loss of income. Today catch activities represent only 5 per cent. of the local income[4], and the municipality is the poorest in Greenland. It is the port of registration for only one sea-going fishing vessel. At the end of the 1970s the Greenland Council even discussed the possibility of dismantling the whole community, but recent prospecting for oil has so far halted such a development. In 1990, however, the oil companies involved relinquished their concession.

57. The experience of more than 65 years illustrates that settlement in these areas of the Arctic is highly dependent on outside support, and may undergo drastic changes in short time spans, even in times of modern technology. There is no sharp distinction between those settlements which may be characterized as "permanent" or "natural", and those which are maintained for administrative, scientific or other specialized purposes. It is remarkable that Denmark should wish, in these circumstances, to place emphasis on population as a factor in maritime delimitation.

58. In the Danish Reply, at paragraph 81, an attempt is made to show a connection between alleged "Norwegian expansionist activities in the North Atlantic region" leading to proceedings in the *Eastern Greenland Case* (*P.C.I.J., Series A/B, No. 51*, p. 22), and the issues of the present proceedings. It is pointed out "in passing" that the Norwegian territorial occupation in East Green-

[4]) *Grønland*, Nr.6 1989, p.188, Det grønlandske Selskab, Charlottenlund.

Northeast Greenland National Park



Source: Kalaallit Nunaat Greenland Atlas, p. 28

land in 1931 concerned an area more or less inshore from Jan Mayen. That has a very natural explanation: this was the region in which there had been considerable Norwegian activity, on land in Greenland and on Jan Mayen, as well as in the maritime area between the two islands. At the same time, this was a part of Greenland in which neither Danes nor Greenlanders had been active to any noticeable degree. After the Judgment of the Permanent Court in the *Eastern Greenland Case* in 1933, the Norwegian activities continued onshore in Greenland under the

terms of the 1924 Convention concerning East Greenland ((Counter-Memorial, Annex 39), but now under Danish jurisdiction. As stated in the Norwegian Counter-Memorial at paragraph 87, arrangements for access for Norwegian hunters to East Greenland subsisted until 1967, and national treatment for Norwegian fishermen in Danish jurisdictional waters off East Greenland was carried on for a further decade. There can be nothing surprising or sinister in the fact that the territory disputed in 1931 is situated opposite Jan Mayen, and that the maritime area at present in dispute lies in the same region. On the contrary, the Danish observation underlines that there has been a continuous Norwegian interest in that particular region, recognized by both Parties, for a long span of time.

2. Greenland's Maritime Zone

59. The Danish Reply (p. 157, para. 430) points to the extensive maritime zone of Jan Mayen to the east, and links this consideration to a statement questioning the reason for "Jan Mayen extending its broad maritime zone west of the island at *the expense of* the maritime zone off the mainland of Greenland" (emphasis added).

60. The statement might leave a mistaken impression of the area of Greenland's zone. On the basis of approximate calculations, the total area of Greenland's zone, outside baselines and within agreed boundary lines and calculated median lines (excluding the disputed area in relation to Jan Mayen), amounts to 2,006,000 square kilometres. Greenland's internal waters, within baselines, cover a surface of approximately 220,000 square kilometres. The Greenland shelf and zone are eight times as large as the fishery zone of the Faroe Islands (around 260,000 square kilometres; there is a claim to a more extensive continental shelf area to the south). Greenland, with a population which is comparable in numbers to that of the Faroe Islands, can in no way be said to be disadvantaged in its zonal endowment, even if parts of the zone are ice-infested.

61. The disputed area is around 64,500 square kilometres. That is around 2.9 per cent. of the Greenland zone (excluding the disputed area). The disputed area constitutes 20.1 per cent. of the Jan Mayen shelf and zone, including the disputed area.

62. The Greenland zone and the Jan Mayen shelf and zone are shown on Map V, appended to this Rejoinder, with an

indication of the disputed area, and an illustration of the relative importance of the disputed area in relation to the maritime areas of both islands.

3. Geology and Geomorphology in the Area between Jan Mayen and Greenland

63. The Norwegian Counter-Memorial (at pp. 28-31, paras. 102-109) sought to describe the geological and geomorphological circumstances in the region between Jan Mayen and Greenland. There should have been no reasonable ground for misunderstanding in this connection.

64. However, in view of the tenor of the comments in the Reply (p. 28, para. 71), it is necessary to return to the subject of the geological and geomorphological characteristics of the region.

65. During the Tertiary era the Norwegian-Greenland Sea was created through the process of seafloor spreading – typical for the deep ocean floor. The mainlands of Norway and Greenland started splitting apart about 57 million years ago. Between Iceland and Jan Mayen a second spreading axis became active about 26 million years ago, splitting a micro-continent off the Greenland continental margin. This micro-continent constitutes the major part of the Jan Mayen Ridge, a prominent submarine topographic ridge extending southwards from Jan Mayen.

66. In the last 15 million years active spreading has only taken place along the Kolbeinsey Ridge, which trends northeasterly approximately midway between Jan Mayen and Greenland.

67. The exact extension of the Jan Mayen micro-continent is not fully known. To the south of the easily definable topographic ridge there is a set of morphologic ridges with less relief, indicating a continuation and fragmentation of the micro-continent. To the west of the main topographic ridge geophysical observations indicate the continuation of the micro-continent out to a distance of approximately 50 nautical miles west of the ridge itself. Nor has there been any certain delimitation of the micro-continent to the north. Most geophysicists assume that Jan Mayen itself is underlain by volcanics related to oceanic crust. The boundary between continental and oceanic crust on the Jan Mayen Ridge is thought to be situated slightly to the south of the island.

68. The depth of the oceanic area between Iceland, Jan Mayen and Greenland is anomalously shallow for an oceanic crustal area. Except for an elongated trough immediately west of the Jan Mayen Ridge, approximately 110 nautical miles long in a north-south direction and 35 nautical miles across at its broadest, and a few isolated deeps of insignificant extent, the water depth does not exceed 2,000 metres. The shallowness of the seabed is ascribed to those geologic processes acting below the crust which also created the volcanic islands of Jan Mayen and Iceland. Processes of this nature also account for the rough seabottom morphology often found around volcanic islands.

69. On this basis, two conclusions may be drawn. The seabed of most of the region between, on the one side, Jan Mayen and the Jan Mayen Ridge and, on the other side, Greenland and the relatively shallow seabed terrace immediately adjacent to the coast, consists of oceanic rock. The standard elements of terminology relating to the geomorphological aspects of the continental margin are not easily applicable in every respect or in all locations.

70. A third conclusion may be drawn from a study of the bathymetry of the region. The recent volcanic activity has created a generally irregular sea-bottom morphology. The only significant geomorphological feature in the area is the Kolbeinsey Ridge. It has the typical morphology of an active spreading ridge, a central rift and a set of elongated, non-continuous volcanic mountains elevated from the surrounding areas both to the northwest and to the southeast (see Map III attached to the Norwegian Counter-Memorial).

CHAPTER IV
ACTIVITIES IN THE REGION

1. General Remarks

71. A considerable proportion of Part I of the Danish Reply (pp. 28-79, paras. 72-203) is devoted to activities in the region. After introductory remarks and comments concerning Map I of the Norwegian Counter-Memorial, the bulk of the presentation relates to the Greenland economy and its fisheries industry, to the marine living resources off the East Coast of Greenland, and to marine scientific research in the region.

72. The introductory remarks on this section of the Reply (p. 29, para. 73) seek to establish an extremely narrow perspective. While detailed comment on those remarks more appropriately belongs in Part II of the present Rejoinder, the Government of Norway wishes to avoid any misunderstanding by stating its main views with reference to the Danish remarks at this stage:

73. While the coastal geography of Jan Mayen and Greenland should be determinative for the delimitation of the continental shelf areas appertaining to each of the two States and of their fisheries zones, it does not follow that there is any particular, artificially constructed "geographical area" as illustrated in Danish Map V. The coastlines on both sides are by themselves sufficient to establish the coastal projections of the two States, and to determine where these overlap. This is where the disputed area then occurs. No construct of a "geographical area" is required.

74. The Norwegian Government does not recognize that the present dispute is limited in time to "a certain period" after 1979 as "the only period when competing claims have been made to the maritime area in question". On the contrary, both Parties have since 1963 established the bases for "competing claims" in their respective legislation with regard to the continental shelf. It has been made patently clear that this legislation covered all parts of each Kingdom, thereby including the continental shelf areas appertaining to both islands within the scope of their respective shelf areas, as defined by parallel statutory instruments. It follows that at some time after 1963, and before 1979, claims to shelf areas must have overlapped.

75. The Norwegian Government cannot agree that perspectives on shelf or zonal delimitation should be limited by reference to the current availability or exploitability of any

particular resource. While it may be true that there appear to be few immediate prospects for hydrocarbon activities in the shelf areas between Jan Mayen and Greenland, it was pointed out in the Norwegian Counter-Memorial (at para. 67) that the presence of sub-sea rift zones may create an environment where polymetallic sulphides may occur. Future exploitation of such deposits is under discussion. Moreover, the responsibilities and jurisdiction of a coastal State with respect to its continental shelf also extend to matters relating to scientific research. While maintaining a favourable and supportive attitude towards such research by foreign nationals and institutions, Norway would not wish to withdraw from its responsibilities, or abdicate its jurisdiction in that regard.

76. Finally, Norway cannot agree that the issue be treated as a dispute between Greenland and Norway, with Greenland as something more than, or distinct from, a geographical region forming a part of the Kingdom of Denmark. Thus, paragraph 75 (p. 29) reads in part: "... activities are then alleged to be opposable to neighbouring *countries*, in the present case to Greenland." (emphasis supplied) and "... how could an expansive Norwegian maritime policy in the North Atlantic region in general be opposable to Greenland ...".

77. In the Norwegian Counter-Memorial, the chapter devoted to regional activities was entitled "Norway's Interest in the Jan Mayen Region" (Chapter III of Part I, pp. 33-52). The main purpose was to illustrate that for nearly one and a half centuries, Norwegian sealers, whalers, hunters and fishermen have been utilizing the waters in the Denmark Strait and in the area around Jan Mayen and off the coast of East Greenland, and harvesting the resources. It was also pointed out that these Norwegian activities extended to waters off the west coast of Greenland. In some measure, the land was also put to use, both with regard to East Greenland and to Jan Mayen.

78. The Norwegian Counter-Memorial sought to establish a broad picture, historical as well as current, of Norwegian activities in the Arctic, in order to bring out clearly that the area between Greenland and Jan Mayen is a region which has for a long time been part of the economic basis of several Norwegian coastal communities. It is a region where, over the last century, most of the activity has been Norwegian. That activity has comprised sealing, hunting, whaling and fishing. It is in fact a region which Norwegians have habitually regarded as a familiar area of operations for their maritime industry. Jan Mayen is *not* a

far-flung colonial dependency; it is constitutionally an integral part of the Kingdom of Norway. The absence of a permanent population has not meant that the island or the waters around it have not been utilized. The establishment of Norway's fishing zone around Jan Mayen in 1980 was not the *beginning* of Norwegian maritime activity in the area; it was a further, natural development of Norway's interests. The exercise of fisheries jurisdiction in a broad maritime belt was a new administrative tool for conserving and managing the resources of the region in a responsible and orderly manner.

79. The comments in the Reply (p. 32, para. 83) on the proportion of fish products in the total exports of Norway and Greenland respectively tend to establish a comparison directly between the Kingdom of Norway on the one hand, and Greenland as part of the Kingdom of Denmark on the other. In this context, reference is made to the Resolution of the First United Nations Conference on the Law of the Sea, adopted on 26 April 1958, concerning "Special Situations Relating to Coastal Fisheries".

80. The identification of Greenland as a *territory* to be given special regard in considering fisheries outside fishery zones of limited extent, is of historical interest only. After the adoption of the concept of broad fishing zones, it is more relevant to refer to Article 71 of the 1982 United Nations Convention on the Law of the Sea. This provision is specifically limited to covering the position of coastal *States* only. However, the net export values of attributable fish products for the Kingdom of Denmark as a whole amounted to 3.22 per cent. of total exports in 1986. The corresponding figure for Norway was 5.69 per cent. (of total exports including petroleum products). (Source: *Yearbook of Nordic Statistics*, 1987, Tables 118 and 129).

81. Pages 32-33, paragraphs 84-86 of the Reply describe the system under which the Home Government of Greenland disposes of the Greenland allotment of capelin under the tripartite Agreement of 1989. It appears to be common ground between the Parties that the Greenland fishing industry is at present not in a position to catch or process capelin, and that the Home Government's benefits from its management of its stock allotment derive from fees paid by foreign fishermen. It follows from the provisions of the tripartite Agreement that Norway is fully satisfied with the method employed by the Home Government.

82. It has not been possible to develop large-scale commercial fishing from settlements along the east coast of Greenland.

According to the Greenland Atlas, submitted by the Government of Denmark together with the Reply, "fast ice and drift ice prevent fishing for most of the year" from Ittoqqortoormitt/Scoresbysund (p. 52). This seems to be a permanent obstacle to any large-scale fishing based in Ittoqqortoormitt/Scoresbysund. In the Ammassalik area, 500 kilometres further south, the prawn fishery has been somewhat developed. However, out of a total of 453 registered modern Greenland fishing vessels of more than five gross register tons, only five had their home port in Ammassalik[5]. According to an article in the Magazine *Grønland*[6], there were some prospects of developing cod fishing from Ammassalik in the 1960s. A maximum catch of 6,000 tons was reached in 1966, but the catches then dropped drastically shortly thereafter. In 1986 the total catch reached 12 tons. The instability of the stock in this fringe area of the cod fishing grounds hampers any major investment, and only larger vessels can operate safely in these difficult waters.

83. It remains, in the Norwegian view, an important element for the understanding of both the social and the economic geography of the maritime area between Jan Mayen and Greenland that the distance between Jan Mayen and those home ports where most of the Norwegian purse seiners are based, is less than one half of the distance from the disputed area to that part of Greenland where the sea-going fishing fleet is based. This is not an academic geographical observation. There are important practical and financial implications. If Greenland fishing vessels at some point in the future were to engage in fishing in the disputed area, it would take them two to three times longer than Norwegian vessels to reach the fishing grounds from their bases. It would cost them two to three times as much in fuel, and two to three times as much time away from the fishing grounds if they should decide to land catches in West Greenland.

2. The Greenland Economy

84. The specific data on the general economic situation of Greenland, and on the fiscal situation of the Home Rule Authority (pp. 36-42, paras. 97-110 of the Reply) are without relevance for the consideration of any maritime delimitation.

[5]) *Årbog Grønland* 1988, p. 383, Table 38, Statsministeriet, Grønlandsafdelingen, København, 1989.

[6]) *Grønland* nr. 7-8 1988, p. 207, Det grønlandske Selskab, Charlottenlund.

85. To the extent that the Reply (e.g., at p. 52, paras. 333-334) seeks to underline the separate and autonomous character of Greenland, as opposed to the Kingdom as a whole, it might, however, be of interest to take note of Table III in the Reply, at page 41, setting out income and expenditure for the Home Rule Authority. The table does not specify the exact proportion of the contribution from the Central Government to the Greenland budget, but according to the Greenland Yearbook for 1989, page 71, about half of the total expenses were financed by Copenhagen. Greenland makes insignificant contributions to the Central Government budget. In the aforementioned Yearbook for Greenland 1989, page 157, it is stated that "it is not unrealistic to presume that around 40 to 50 per cent. of the Gross National Income directly or indirectly can be derived from this contribution" (from the Central Government). This reflects a situation that is common to most Arctic communities that are heavily dependent upon outside support.

86. Norway further wishes to point out that the relative role of fisheries in Greenland's economy may be somewhat reduced if the bleak prospects for future mining incomes in Greenland (described in para. 103 of the Reply) were to improve. It is true that the income may drop drastically in the short term, but, as mentioned in the Reply, extensive exploration surveys are being carried out in Greenland. Projects for gold and platinum mining are under consideration, and a comprehensive seismic survey programme has recently been launched. Greenland is currently reconsidering its regulations for exploration and exploitation of mineral resources, in order to attract further investment.

3. Fisheries in the Jan Mayen–Greenland Region

(a) General Comments

87. In the Danish Reply, a considerable section (pp. 42-78, paras. 111-199) is devoted to an expanded account of the Greenland economy and of its fisheries sector, various aspects of fisheries in the region, and the resource base for those fisheries. While fishing activities are not in any way determinative of the boundary issue, it may be useful for the Court to have an understanding of the resource availability and the operating conditions for the fishing industry working out of Greenland, and in waters off Greenland and Jan Mayen.

88. At the outset of the comments on Greenland and non-Greenland fishing in waters off or in the vicinity of Greenland, the Reply (p. 42, para. 112) acknowledges that the presentation in the Norwegian Counter-Memorial has succeeded in presenting a general survey of the traditional wide-ranging North Atlantic operations of the Norwegian fishing fleet. Those operations are of long standing and varied in nature. They not only cover fishing for several species, but also include sealing, whaling, and for a considerable period of time, land-based hunting operations. Norwegian maritime activities in the Jan Mayen-East Greenland region are of a different character, compared with the distant-water fisheries in the region (in which vessels from many participating countries have engaged only in the post-war period).

89. The comment, at the same reference, that most of the statistics provided in the Counter-Memorial concern fishing outside the disputed area is therefore entirely apposite. The intent and purpose was to provide a general background, not to present argument based on volumes of fishing or catch activities in the disputed area alone.

(b) The Relationship between Greenland and Non-Greenland Fishing

90. In Tables V and VI (at pp. 47-8), the Reply furnishes a picture of the relationship between Greenland and non-Greenland catches which does not appear to correspond to the allocation of quotas as set out for 1990 in Table VII (at p. 57). In 1989, foreign catches are stated to be 24 per cent. of the total catch (total tonnage, without correction for value conversion factors). For 1990, quotas to foreigners, mainly to the EC, amount to 41.4 per cent. of aggregate quotas.

91. This discrepancy does not necessarily reflect any change in basic Greenland management policy. But it may mean that quota allocations for the EC have been set at an unrealistically high level.

92. A comparison of 1989 catch statistics with quota figures set for 1990 supports this hypothesis. Thus, Table VI of the Reply (p. 48) gives total foreign catches as around 52,000 tons. EC quotas for 1990 (including transfers to Norway) amount to nearly 156,000 tons. None of the studies on expected fish stock abundance discussed within the Northwest Atlantic Fisheries Organization (NAFO) and the International Council for the Exploration

of the Sea (ICES) have predicted any such dramatic changes in the availability of fishable quantities within Greenland waters. Nor is any such increase confirmed by the preliminary catch figures for 1990 (see Table 7 at p. 32. The sketch map at p. 31 shows the limits of the ICES statistical areas).

93. There may be many good reasons for stipulating inflated quotas. A quota which is higher than realistic catch expectations may look good in a number of contexts, and may give a superficial impression of fairness and generosity on the part of the coastal State. Alternatively, inflated quotas may give an illusion of balanced benefits to both parties in a transaction. Whatever the underlying purpose of an inflated quota, it represents essentially a promise of a right to catch "paper fish".

94. Quotas for "paper fish" do not give a true picture of catch opportunities, nor of the real benefits accruing to any of the parties.

95. NAFO preliminary catch statistics for 1989 show a total catch off West Greenland of 173,000 tons, or 89 per cent. of West Greenland quotas set for 1990. That gives a basis for concluding that there is a reasonable expectation that these 1990 quotas are for "real fish". The total catch off West Greenland in 1989 was five times the catch taken off East Greenland in the same year, as set out in Table VII of the Danish Reply.

96. The non-Greenland component of the total catch conforms entirely to this pattern. The bulk of the non-Greenland fishing in the Greenland fishery zone takes place off the western coast. There is a reasonable relationship between catches and quotas for this region. Non-Greenland fishing in the East Greenland fishery zone is comparatively limited (cf. Table 7), and there is no realistic relationship between quotas and actual catches.

(c) Catches in the East Greenland Area

97. The Danish Reply seeks to create the impression that Greenland catches off the east coast constitute an essential element in the overall fisheries economy of Greenland. This is underlined and illustrated by reference to quotas established for fishing in the Greenland fisheries zone off the east coast (Reply, pp. 51-69, paras. 131-173).

98. The following tables, based on ICES statistics, show that there have been considerable variations in Greenland fish catches (exclusive of shrimp) off East Greenland during the 1980s. As will be seen from Table 7, Greenland catches off East Greenland peaked in the years 1986. Otherwise, fish catches have been small or insignificant. Table 8 shows that the bulk of the catches in the two best years were redfish, which does not appear to have been caught at all by Greenland vessels in the three most recent years.

99. Table 7 also gives approximate figures (extrapolated from Table VII in the Danish Reply) for catches taken within the East Greenland fishery zone after 1980. It will be seen that the Greenland zone proportion of total catches varies greatly, from 93.5 per cent. in 1983 to around one fifth in 1980 and 1985. This table also makes clear that Greenland catches (excluding shrimp) make up a very small proportion of total catches in the East Greenland fishery zone.

100. Table 7 is intended to focus attention on fishing by Norway and Denmark, specifying Greenland catches. Therefore, the column for "others" contains aggregate catch figures for a number of important participants. That calls for some comments. There was a major increase in catches by "others" in 1976. That year, the USSR accounted for the greatest catch volume: 101.7 thousand tons, mostly redfish. In the following four years, Iceland had large catches, mainly of capelin (Icelandic total catches per year (thousand tons): 1977: 71.1; 1978: 168.4; 1979: 114.5; 1980: 108.7). From 1981 to 1984, the Federal Republic of Germany had the largest catches (in thousand tons: 1981: 80.3; 1982: 59.2; 1983: 41.7; 1984: 25.1). By far the most important species caught was redfish. In 1985 and 1986, Iceland's capelin catches again were the largest element: 173.6 and 148.5 thousand tons respectively. In 1987, the USSR caught 68.5 thousand tons of redfish, and the Faroe Islands 69.2 thousand tons of capelin. In 1988, the USSR redfish catch was 55.3 thousand tons, and Iceland's capelin catch 45.6 thousand tons. In 1989 and 1990, the Federal Republic of Germany accounted for the largest catches, with 13.9 and 26.8 thousand tons, mainly cod and redfish.

101. This breakdown of catches by "others" again demonstrates the variability of the fishing patterns off East Greenland. Capelin and redfish represent the largest volumes; these species are mainly fished outside the East Greenland fishery zone. It is made clear that Norwegian catches in most years after 1979 are comparable in magnitude to those of the most important

"others". At the same time, Greenland and other Danish catches (not including Faroese) are also insignificant compared with various major components of catches by "others".

ICES Statistical Areas

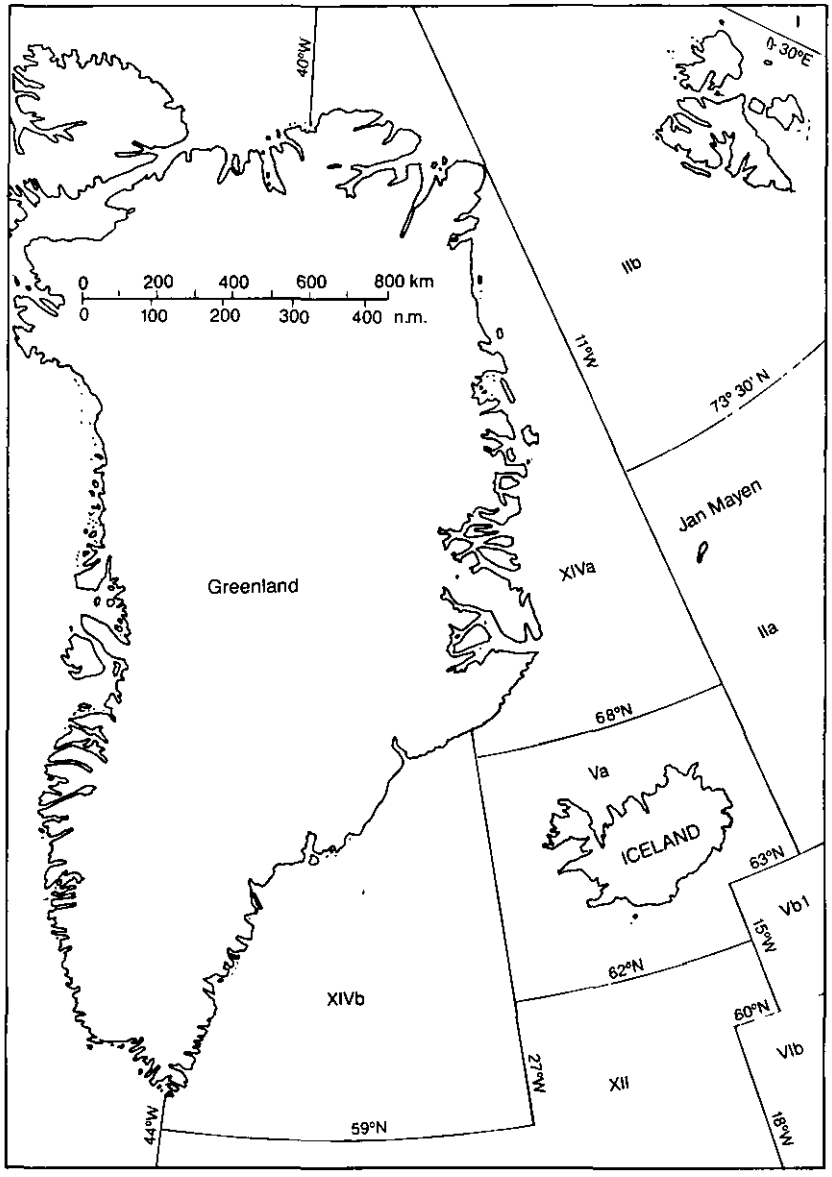


Table 7

Total Catches of Fish (in 1,000 tons) in the East Greenland Area, 1958-1990 (ICES Statistical Area XIV)

Year	Norway	Green-land	Den-mark[1]	Others	Total	Catch in the East Greenland Fishery Zone[2 3]
1958	1.9	0.9	–	35.6	38.4	
1959	–	0.6	–	51.6	52.2	
1960	–	1.6	–	64.2	65.8	
1961	–	1.2	–	46.1	47.3	
1962	–	0.9	–	45.7	46.6	
1963	–	0.9	–	62.6	63.5	
1964	–	1.1	–	80.5	81.6	
1965	–	0.9	–	57.7	58.6	
1966	–	0.9	–	79.3	80.2	
1967	–	0.8	–	58.8	59.6	
1968	–	0.6	–	39.8	40.4	
1969	–	0.6	–	49.6	50.2	
1970	–	0.5	–	40.0	40.5	
1971	–	0.6	–	67.2	67.8	
1972	–	0.3	–	48.4	48.7	
1973	–	0.3	–	32.9	33.2	
1974	–	0.1	–	49.6	49.7	
1975	2.3	0.2	–	50.5	53.0	
1976	0.4	0.5	–	149.2	150.1	
1977	0.9	1.9	–	96.9	99.7	..
1978	16.7	1.4	–	204.3	222.4	..
1979	77.8	2.8	–	156.7	237.3	..
1980	74.3	1.8	12.6	181.9	270.6	53.0
1981	0.5	0.9	17.2	138.2	156.8	80.0
1982	–	0.9	–	82.3	83.2	59.0
1983	–	0.5	–	42.3	42.8	40.0
1984	28.3	1.1	7.9	29.7	67.0	42.0
1985	189.2	5.8	16.2	300.3	511.5	106.0
1986	80.9	10.6	5.4	298.2	395.1	109.0
1987	75.1	2.4	–	165.3	242.8	90.0
1988	11.5	0.5	–	164.9	176.9	82.0
1989	46.4	4.0	–	43.2	93.6	50.0
1990	21.8	4.5	..	45.7	72.1	..

Source: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.
1988-1990: ICES, preliminary figures. Data for 1990 incomplete.
. . : Data not available.

[1]) Excluding Greenland and the Faroe Islands.
[2]) Source: Danish Reply, Table VII (p. 55). Extrapolation from bar chart diagram gives approximate figures only; figures include shrimp.
[3]) Greenland and non-Greenland vessels.

Table 8

Catches of Redfish (in 1,000 tons) in the East Greenland Area[1], 1977-1990 (ICES Statistical Area XIV)

Year	Norway	Green-land	Den-mark[2]	Others	Total
1977	0.1	–	–	14.3	14.4
1978	–	–	–	19.3	19.3
1979	–	–	–	15.9	15.9
1980	–	–	–	30.3	30.3
1981	–	–	–	36.4	36.4
1982	–	–	–	57.9	57.9
1983	–	–	–	29.1	29.1
1984	–	–	–	15.4	15.4
1985	–	5.5	–	54.5	60.0
1986	–	9.5	–	75.2	84.7
1987	–	0.7	–	80.6	81.3
1988	–	0.0	–	77.9	77.9
1989	–	0.0	–	16.8	16.8
1990	5.0	0.0	. .	18.2	23.2

Source: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.

1988-1990: ICES, preliminary figures. Data for 1990 incomplete.

. . : Data not available.

[1]) The redfish stock is mainly to be found outside the Greenland fisheries zone southeast of Greenland.

[2]) Excluding Greenland and the Faroe Islands.

102. On the other hand, Greenland shrimp catches off East Greenland appear to have undergone a steady improvement, cf. Table 9 below:

Table 9

Greenland Shrimp Catches (in 1,000 tons) in the East Greenland Area, 1980-1990 (ICES Statistical Area XIVa and XIVb)

Year	XIVa	XIVb
1980	–	0.1
1981	–	0.2
1982	–	1.1
1983	–	1.5
1984	–	1.9
1985	–	2.6
1986	–	5.8
1987	–	6.6
1988	–	7.6
1989	–	6.0
1990	–	6.2

Source: International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.

1988-1990: ICES, preliminary figures.

103. It should be noted that no Greenland shrimp catches have been recorded in ICES statistical area XIV a. That means that there have been no shrimp catches off East Greenland north of 68° N. The pattern for Greenland shrimp catches conforms with the commercial fishing pattern. As is shown in Table 5.4, page 7 in Appendix 5 (Corrected Reprint) to the Counter-Memorial, Greenlanders using modern fishing methods have not reported fish catches north of 68° N.

104. This is the background against which the allocation of East Greenland catch quotas to Greenland fishermen for 1990 of 68,980 tons must be judged. Apart from the shrimp quota of 9,000 tons, the quotas appear unrelated to past catch performance: less than 3,000 tons per annum before 1985, a peak of 10,000 tons in 1986, and between 500 and 4,500 tons in the years 1987-90. Except for the capelin quota, they are also without relevance to any evaluation of the fisheries potential for Greenland in the disputed area.

(d) Greenland Sealing and Whaling

105. In paragraph 176 of the Reply, Denmark complains that Norway "omits all reference to the hunt for seals and whales carried out by the Inuit inhabitants of the settlements of East Greenland." It is true that the communities in Ittoqqortoormitt/Scoresbysund and Ammassalik are involved in seal hunting, although it seems to be somewhat overstated to say that "All the settlements of East Greenland are essentially hunting communities depending primarily on sealing, and to a lesser degree on whaling and fishing for nourishment and generation of income" (Reply, para. 185), or that "sealing and whaling are the dominant sources of income to the inhabitants of the municipalities of Tasiilaq/Ammassalik and Ittoqqortoormitt/Scoresbysund" (Reply, para. 192). In Ittoqqortoormitt/Scoresbysund, for instance, hunting for seal and other mammals provided about 5 per cent. of the money income of households in 1985.[7] In any event the Greenland catches take place in inshore or nearshore waters, and were thus not included in Table 5 of the Counter-Memorial, which focuses on the immediate surroundings of the disputed area.

106. Norway also feels the need to refute the Danish allegation "that the massive Norwegian sealing efforts have not been without detrimental effects on the Inuit population of East Greenland." According to the Report by the Danish Greenland Commission dating from 1950, only 10 per cent. of the Norwegian sealing took place within the territorial waters of Greenland (under the 1924 East Greenland Convention, Counter-Memorial, Annex 39) and then generally far away from the Inuit hunting grounds. Thus the direct competition with the Greenland sealing was minimal. The most important motive for moving part of the Ammassalik population northwards to Ittoqqortoormitt/Scoresbysund in 1925 was in fact to counter any Norwegian sovereignty claims in the area (cf. pp. 17–18, para. 55).

107. As to Greenland whaling, Eastern Greenland waters are of minor importance compared with the Western Greenland whaling, as illustrated in the following table:

[7]) According to an article by Finn Breinholt Larsen in Grønland, No. 6 1989, Det Grønlandske Selskab, Charlottenlund.

Table 10

Greenland Catches of Whale
(1982-1989)

Year	West Greenland		East Greenland	
	Minke whale	Fin whale	Hump-back	Minke whale
1982	250	9	12	1
1983	209	7	14	9
1984	237	8	11	11
1985	22	9	9	14
1986	145	8	–	2
1987	85	9	–	4
1988	109	8	–	10
1989	60	23	–	12

Source: Årbog for Grønland 1989.

(e) The EC Interest in Greenland Quotas

108. In the Reply (pp. 57-58, para. 141), it is suggested that the overwhelming part of the total EC quota has been allocated in the East Greenland area, stated as 85 per cent. That is correct as far as tonnage figures are concerned. But it appears highly unlikely that EC fishermen will take any substantial amount of the quotas allocated, *except for* cod and shrimp. According to the Reply (Table VII, p. 55), total catches in East Greenland fishery zone in the years 1980-1989 averaged approximately 70,000 tons per annum. As shown in Table VIII (Reply, p. 57), the quotas for the East Greenland fishery zone in 1990 add up to 207,000 tons. That is three times as much as the average catch, and around *seven* times higher than the catch in 1989. Table 11 below illustrates the development of EC fisheries in East Greenland Waters (ICES Statistical Area XIV) since 1980.

Table 11

EC Catches of Fish and Shrimp (in 1,000 tons)
in the East Greenland Area, 1980-1990
(ICES Statistical Area XIV)

Year	Red-fish	Shrimp	Blue Whi-ting	Cod	Cape-lin	Green-land Hali-but	Other Species	Total
1980	30.2	0.7	8.7	3.2	12.6	2.1	8.5	66.0
1981	36.4	0.6	17.3	7.4	17.2	2.9	16.2	98.0
1982	37.1	1.4	0.8	8.9	–	2.4	10.1	60.7
1983	28.9	0.7	0.0	8.3	–	1.1	3.4	42.4
1984	14.1	0.9	0.0	7.0	7.9	0.8	3.1	33.9
1985	5.9	0.3	–	2.0	16.2	0.6	1.1	26.1
1986	5.6	0.5	–	4.1	5.4	0.7	0.7	17.0
1987	4.7	0.6	–	5.3	–	0.4	0.7	11.7
1988	5.7	0.4	–	12.0	–	0.6	0.9	19.6
1989	2.4	0.3	–	11.9	–	0.4	0.6	15.6
1990	. .	..	..	..	–	..	..	29.5

Source: International Council for the Exploration of the Sea. (ICES)
Bulletin Statistique des Pêches Maritimes.
1988-1990. ICES, preliminary figures. Data for 1990 incomplete.
. . : Data not available.

109. It will be seen that catches of redfish have declined considerably since 1982. There is nothing to indicate that Community fishing patterns are undergoing any dramatic change. Table VIII of the Reply (p. 57) gives the EC quotas for 1990 for redfish as 46.820 tons, for Greenland halibut as 3.550 tons for capelin as 30.000 tons and for blue whiting as 30.000 tons. When these figures are compared with recent catches, as set out in Table 11, it is clear that for stocks other than cod and shrimp, EC quotas may largely be taken to relate to "paper fish".

110. This conclusion has a bearing on assessing how the EC payment to Greenland for fishing rights relates to actual catches. The Reply argues that since the EC capelin quota for 1990 of 30.000 tons constitutes approximately one fourth of the total volume (by weight) of total EC quotas, the allocation of capelin fishing rights to the EC is of important financial value to Greenland ("... Greenland derives a substantial income...", Reply p. 58, para. 141). Recorded EC catches of capelin (all taken by Danish fishermen) in ICES Area XIV are shown in Table 12 below. It will be seen that these catches total only 59,300 tons since 1980, and that no catches at all have been taken since 1986.

If EC fishermen do not in fact fish capelin, it seems unlikely that capelin quotas in themselves represent a source of "substantial income".

Table 12

Reported EC Catches of Capelin (in 1,000 tons) in the East Greenland Area, 1980-1990 (ICES Statistical Area XIVa and XIVb)

Year	XIVa	XIVb	Total
1980	...	12.6	12.6
1981	17.2	–	17.2
1982	–	–	–
1983	–	–	–
1984	–	7.9	7.9
1985	...	16.2	16.2
1986	5.4[1]	–	5.4[1]
1987	–	–	–
1988	–	–	–
1989	–	–	–
1990	–	–	–

Source:International Council for the Exploration of the Sea (ICES), Bulletin Statistique des Pêches Maritimes.
1988-1990: ICES, preliminary figures.
. . : magnitude not available, data not available separately but included elsewhere.

111. Access rights for cod and shrimp are without doubt of importance, more so than indicated by quota tonnages in isolation. It is, however, difficult to relate "paper fish" quotas directly or indirectly to the consideration which is paid for the totality of EC quotas in the Greenland zone.

112. Therefore, when the EC ensures the payment of total fees of approximately USD 36 million per annum for all EC quotas (cf. Reply, p. 50, para. 127) during the current period, it is more natural to regard this payment as a remuneration for the right to fish the more valuable stocks of cod, shrimp and redfish, rather than to distribute this amount in relation to quota tonnages of lower-priced species which are not even exploited.

[1]) includes 1.3 thousand tons reported as Area XIV, without specifying sub-area.

113. On the other hand, even if EC fishermen do not utilize their capelin quotas in Greenland waters, that does not mean that it is impossible to ascribe a value to the access rights to the 66,000 tons of capelin accruing to Greenland under the tripartite agreement in 1990.

114. In contractual arrangements between the Norwegian Herring Sales Organization and the Royal Greenland Trawler Division covering fishing rights for capelin in 1990, a sliding scale fee of between 12 and 14 per cent. of landed price was stipulated, varying in relation to the price level actually obtained. Since prices remained in the low scale, calculations may be based on a fee of Danish kroner 72 (or USD 9.32) per metric ton. At this price, the real value to the Home Rule Authority of the allocation of 30,000 tons of capelin to the EC would amount to USD 280,000, or less than *one per cent.* (0.78) of the total amount of USD 36 million. The assessment in the Reply (para. 141) of the relative value of the EC capelin quota – which is not fished – is grossly overstated.

115. More generally, the figures presented by Denmark indicate that – apart from quotas for "paper fish" – the real Community interest in fishing off the East Greenland coast is at present limited, and that there is no Community interest linked to fishing in the disputed area.

(f) The Disposal of Greenland's Capelin Allotment

116. Under the terms of the tripartite arrangement, Greenland has been entitled to dispose of a portion of the total allowable catch of the capelin stock which moves through the waters encompassed by the fishing zones of Jan Mayen, Iceland and Greenland. Based on a share of 11 per cent. – equal to Norway's share – Greenland authorities had at their disposal 99,000 tons for the 1989-90 catch season, and 66,000 tons for 1990-91 catch season.

117. The account of administrative practices for licensing foreign fishing for capelin, given in the Reply at page 65 (para. 161), might leave the impression that only Faroese vessels are engaged in fishing on the Greenland quota. However, Norwegian vessels purchased fishing rights in 1989 and 1990 for 10,000 and 6,500 tons of capelin, respectively, on the basis of contractual arrangements between the Royal Greenland Trawler Division and the Norwegian Herring Sales Organization. The terms of those purchases included cash payment, limited hiring of Greenland

crew, and prescribed catch reporting and accounting routines to ensure that the full amount of contracted volumes was ascribed to the Royal Greenland contracts, irrespective of the location of any specific catch.

118. However, there is no indication that Norwegian vessels fishing capelin on the Greenland quota under this contract were in any sense *chartered* by Royal Greenland. The vessels remained under owner's instructions, and operated at owner's risk and account.

119. There is agreement among scientists from the three parties to the tripartite capelin arrangement that there is no connection between the pelagic stock of capelin and local stocks occurring in East Greenland fjords (Reply, pp. 61-62, para. 153).

4. Considerations for Future Management Policies

(a) The Interrelationship between Marine Resources in the East Greenland, Iceland and Jan Mayen Area

120. The most important exploited resources in the East Greenland fishery zone south of 68° N are localized stocks of shrimp and demersal fish. Seal and whale stocks migrate throughout a wide area.

121. Further north, in the waters between Jan Mayen and Greenland, the resource occurrences comprise species and stocks which move between the Jan Mayen, Greenland and Iceland zones, or waters beyond any coastal zone: capelin, blue whiting, harp and hooded seals, and various species of whales.

122. These pelagic or migratory stocks have an interest for all coastal States in the region. There is either a direct interest in the actual harvesting of each stock separately, or a complex and indirect interest, derived from the fact that these different species interact within the same ecological system.

123. Thus, the capelin stock which occurs in the waters between Jan Mayen and Greenland (and which may be exploited within these waters) also moves within the Iceland Economic Zone, and is available for exploitation during the summer to the north and west of Iceland, and in autumn and winter to the south of Iceland. Throughout its migration in Icelandic waters, capelin

also forms part of the nutritional base for Iceland's localized, stationary cod stocks, and probably to some extent also for East Greenland cod stocks.

124. At the same time, at a higher level of the marine food chain, seals and whales feed on the capelin stock. Seals feed in direct competition with fisheries, both on demersal fish and pelagic species (herring and capelin). They also compete with demersal fish stocks in feeding on pelagic species. Whales compete in the same manner, to the extent that they feed on pelagic fishstocks. The minke whale does so, and is probably the most numerous species of whales in the region. The Scientific Committee of the IWC assesses the size of the Central North Atlantic stock of minke whale to be 28,000 (1990). Fin whales probably constitute an even larger biomass. The East Greenland-Iceland stock of fin whales was estimated to be about 16,000 (1991). Fin whales feed profusely, but not exclusively, on pelagic fish. Whales also compete with exploited fish stocks in another way, as baleen whales take the bulk of their nutritional energy from small marine plankton organisms, i.e., krill and other small crustaceans and fish larvae.

(b) Multi-species Management

125. This complex ecological interrelationship between different marine species, and the impact of man's harvesting activities, are not yet fully understood. More empirical marine scientific investigation is needed before we can attempt to quantify the various elements in the interrelationship.

126. There is, however, growing recognition among both marine biologists and fisheries administrators that the approach to fisheries management must be changed. It is no longer sufficient to regard each species or stock in isolation, and decide upon harvest volumes, catch limitations and other conservation measures solely with a view to utilizing that particular species or stock as efficiently and prudently as possible (an approach based on considerations limited to the concept of "maximum sustainable yield" (MSY), widely applied in national administrations and in international fisheries commissions).

127. Work is in progress to develop procedures and techniques for a multispecies management approach, i.e. an approach that takes into account the effect which management and conservation measures and policies for one species or stock may have on other species or stocks.

128. This approach must deal not only with the reproductive capacity of, say, capelin and the harvesting needs of the capelin fisherman, so as to adjust the catch to ensure an optimum long-term exploitation of capelin. It must also reckon with the fact that capelin is an important food item for cod, and that a catch which is rational when regarded as a harvest of the capelin stock alone, which has a strong regenerative capability, may be excessive in relation to a management objective for the cod stock that feeds on it.

129. The stocks of fish and marine mammals which move through the zones of Jan Mayen, Greenland and Iceland, or any two of them, need to be subject to joint management procedures. This is required not only by the biological unity of each stock, but also because of the varying impact of management and conservation measures on the related interests of each of the parties. The fact that national management alone does not suffice is underscored by the implications of multispecies management for different and perhaps competing national interests.

130. The need for joint assessments and management decisions for the capelin stock by all three interested parties will remain even after the settlement of the delimitation issues between Jan Mayen and Greenland. In the Reply (p. 67, paras. 167-168), it is stated that ".... without an established delimitation of the maritime areas under consideration, no solid basis exists for coming to terms on a joint management of the relevant resources". Joint management is described as "a most useful and natural supplement to a maritime delimitation".

(c) Delimitation and Management

131. It must be pointed out that agreement or acceptance of lines of delimitation does not in any way substitute for broader agreement on joint management of any joint stock. There are no firm criteria for determining the "zonal attachment" of a joint stock, i.e. determining the proportion of the stock which may be ascribed to each coastal State by virtue of the dependence of the stock on the various zones, for feeding, breeding, or the occurrence of fishable concentrations.

132. The main inducement to agree on joint management measures lies in the capacity of each interested Party to harvest what it considers its share within its own jurisdictional waters, or on the high seas. Norway has a fleet of purse seiners with a

considerable harvesting capacity, and with great flexibility in its pattern of operations. This fleet utilizes the capelin stock in the Jan Mayen-Iceland-Greenland area seasonally as a part of a diversified resource base. Its operations within the undisputed Jan Mayen fishing zone can be adjusted to secure sufficient catches to make a convincing case for agreed joint management measures.

5. Greenland's Interest in Capelin

133. The Danish Reply (pp. 68-69, paras. 170-173) discusses the value to Greenland of its share of the capelin resource. As indicated in paragraph 114 (p. 39) above, the value of the capelin component of the total EC quota would be less than one per cent. of the amount provided as remuneration by the EC. The amounts fished under Norwegian or Faroese contracts would not materially affect this picture. The statement that capelin represented 1.6 per cent. of the 1988 value of catches landed in Greenland disregards the fact that a considerable proportion of the total catches in the Greenland zone are *not* landed in Greenland.

134. The exploitation of the capelin resource requires a specially equipped fleet, and access to processing plants. A shore-based processing industry requires a substantial and steady supply of raw material. Building and maintaining a specialized fleet of purse seiners would absorb considerable capital, and profitable operation would depend on access to a varied resource base throughout most of the year. It is difficult to see that the Greenland share alone of the capelin stock which moves in the zones of Iceland, Greenland and Jan Mayen could be a sufficient basis for a new specialized fleet or a new land-based processing industry.

6. The Norwegian Fishing, Sealing and Whaling Interest

(a) Norwegian Fishing in the Waters around Greenland

135. In Tables IV and V, the Danish Reply (pp. 45 and 47) conveys information on the relative shares of catches in the waters around Greenland of Greenland fishermen, Norwegians and others. The point is made that there has been a general decline in the tonnage of Norwegian catches since around 1970. This does not necessarily imply a corresponding reduction in the value of the catches. As is noted in the Reply (p. 51, para. 130), the relative

value of shrimp catches is greater than that of cod and other fish, which means that tonnage alone does not give a true picture of the value of the Norwegian catches in the Greenland zone in recent years.

136. As is noted in the Reply (pp. 50-51, paras. 128-130), Norwegian fishing within the Greenland fishery zone has in recent years chiefly been carried out under arrangements by which the EC transfers to Norway a portion of the quotas allotted to the EC. In return, the EC is granted access to fishing in the Norwegian Economic Zone, within the overall exchanges of quotas between Norway and the EC, on the basis of reciprocity. This reallocation of quotas is specifically recognized by the EC-Greenland Fishery Agreement (Reply, p. 50, para. 126), and indicates an acceptance of the need to harmonize fisheries management policies for extended zones of coastal State jurisdiction with the real fishing interests and requirements.

(b) Norwegian Fishing in the Jan Mayen - East Greenland Area

137. The Norwegian interest in utilizing the resources in the Greenland – Jan Mayen area has been changing. Originally confined to East Greenland and adjacent waters, it was extended to West Greenland waters as well. Since the late 1970s, it has again been concentrated in East Greenland waters and the Jan Mayen fishery zone, including the disputed area.

138. In the undisputed part of the Jan Mayen fishery zone a shrimp fishery, and in recent years also a scallop fishery, have been developed. An experimental longline fishery for Greenland halibut was conducted in late summer 1991.

139. Since 1978 the capelin fishery has been the most important Norwegian activity in the Jan Mayen area. The following table shows the zonal distribution of Norwegian catches of summer capelin.

Table 13

Norwegian Catches of Summer Capelin[1] (in 1,000 tons) in the Jan Mayen Area, 1978–90

Year	Jan Mayen zone	Disputed area	Green-land[2] zone	Iceland[3] zone	Total
1978	154	18	–	–	154
1979	123	84	–	–	123
1980	120	77	–	–	120
1981	90	1	–	–	90
1982	–	–	–	–	–
1983	–	–	–	–	–
1984	106	13	–	–	106
1985	193	183	–	–	193
1986	150	80	–	–	150
1987	82	74	–	–	82
1988	8	8	–	4	12
1989	0	0	–	52	53
1990	1	–	–	21	22
SUM	1,027	538	–	77	1,105
Per cent.	93	48,7	–	7	100

Source: Norwegian Directorate of Fisheries.

140. The table underscores the importance of the disputed area. Nearly 50 per cent. of total Norwegian catches in the period 1978-1990 stem from this area.

(c) Sealing and Whaling in the Jan Mayen - East Greenland Area

141. The commercial hunt carried out by Norwegians is required to comply with the principles of rational management, and thus has to be based on the best scientific advice. It remains a Norwegian policy to carry on controlled and closely regulated sealing and whaling.

[1]) Does not include winter capelin, which is caught exclusively in the Icelandic Zone.

[2]) Norwegian fishing for capelin in the Greenland Zone has been authorized since 1989.

[3]) Norwegian fishing in the Icelandic Zone has been authorized since 1988.

142. Sealing in the Jan Mayen–East Greenland area has been an important Norwegian interest for nearly 150 years. The need for responsible government involvement in the regulation of the hunt was felt at an early stage. Such regulations were first laid down in 1876. An internationally agreed opening date for the West Ice seal hunt was established the same year. Since 1958 advice from the Sealing Commission for the North East Atlantic (and later from a bilateral scientific working group under the Joint Norwegian-Soviet Fisheries Commission) has provided the basis for the regulation of sealing in the West Ice. Since 1960, hunting for hooded seal in the Denmark Strait has been prohibited on conservation grounds. Acting upon a Norwegian proposal, the ICES in 1984 established a permanent working group on harp and hooded seals to provide stock assessments and management advice.

143. As stated in the Norwegian Counter-Memorial (pp. 35-37, paras. 120-123, and Appendix 5, Table 5.12), the waters in the vicinity of Jan Mayen have traditionally been important for Norwegian whaling, beginning in 1882. As was shown, the catch locations cover a wide area. The minke whale stock which is now hunted in the waters off Jan Mayen, East Greenland and Iceland is defined as a separate stock, termed the Central North Atlantic stock, by the International Whaling Commission.

144. Norwegian catches from this stock were reduced by decreasing quotas during the 1980s, until the Norwegian Government suspended commercial whaling from 1988. During the years 1982-1987, Norwegian whalers nevertheless caught an average of 85 whales per year. The average annual Greenland catch of minke whales off East Greenland in the same period was seven whales.

145. As in earlier days, fishing and hunting still constitute the main basis for settlement and employment in a large number of Norwegian coastal communities today. Norwegian hunting in the areas around Jan Mayen forms a natural part of overall Norwegian catch activities. As mentioned in the Norwegian Counter-Memorial and referred to in the Danish Reply, the disputed area constitutes an important hunting ground for Norwegian seal hunters.

146. The Norwegian seal hunt is a seasonal activity, and does not by itself provide a sufficient economic basis for the sealing vessels. Although these vessels are specially designed and reinforced for seal hunting, they are also employed in ordinary

fishing activities. However, sealing constitutes an important economic supplement to the overall fishing activities of these vessels.

147. Today it cannot be said, as asserted in the Danish Reply, that the Norwegian vessels by and large only utilize the skin of the seals. In fact, the blubber is fully utilized, and seal meat is increasingly used for human consumption. Whatever is not marketable as food is processed for animal fodder.

148. The reduction in Norwegian seal catches over the last decade is primarily due to the import ban on certain seal products imposed by the European Community as a result of campaigns against sealing by various organizations. Catches during the period 1980-1991 are therefore not representative.

149. For sealing, the location of the ice edge during the breeding and moulting season varies greatly. Recorded seal concentrations in waters between Jan Mayen and Greenland for a representative period are shown in sketch maps in Appendix 3 to the Counter-Memorial, at pages 222–223. A consistent pattern of harvest and management is dependent upon access to the breeding and moulting areas, irrespective of annual variations due to meteorological and hydrological causes. This establishes a point of mutual interest for Norway and Greenland.

7. Activities in the Disputed Area

150. On the basis of the discussion above, the pattern of catch operations in the disputed area can be briefly summarized as follows:

- there has been no Greenland fishing or sealing;
- there has been a limited EC fishery for capelin;
- there has been some Iceland and Faroese fishing for capelin;
- sealing by the USSR in the region has continued, and extends to the disputed area according to ice conditions;
- Norwegian capelin catches in the disputed area have for a long period been considerable, and amount to around one half of the total Norwegian take of this capelin stock since 1978;
- the disputed area is a major location for Norwegian sealing; whaling has also taken place in the disputed area.

8. Marine Research

151. The Norwegian Counter-Memorial gave a presentation of Norwegian marine scientific research and fisheries investigation activities in the Northwest Atlantic and in Greenland and Jan Mayen waters (Counter-Memorial, p. 50, para. 160, and Appendix 4, pp. 225 ff.). The Danish Reply (pp. 78-79, paras. 200-203, and Annex 65) provides information on Danish, Greenland and other oceanographical and fisheries-related research activities in East Greenland waters.

152. In the period 1960-1989, Norwegian field activity included research and survey cruises in Jan Mayen and Greenland waters alone totalling 2,428 vessel days for fish, shellfish, general and environmental marine studies, and marine mammal studies. That signifies an average of 81 vessel days per annum. Activities in marine mammal research and in fish and shrimp studies have increased significantly in recent years. The Norwegian Council for Fisheries Research has organized and funded a broad, interdisciplinary Marine Mammal Research Programme, which also covers these waters.

153. The Greenland Fisheries Research Institute has been devoting increased attention to waters off East Greenland. However, the preponderance of the Institute's research activities continues to take place in the waters off West Greenland. Even though Denmark – as well as Norway – has participated in a number of international research projects covering waters off East Greenland, the main effort in fisheries research in these waters has been directed at the capelin stock. Quite naturally, these inquiries have been conducted by Norway, Iceland and the Faroe Islands.

PART II
THE LAW

INTRODUCTION

154. As in the Counter-Memorial, Norway continues to rely on three separate, but mutually compatible sets of legal reasoning based upon:

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

(b) the effect of the conduct of the Parties;

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

155. Each of these lines of reasoning will support the conclusion that the median line has legal validity as the boundary separating the continental shelf areas of Norway and Denmark in the region between Jan Mayen and Greenland, and, at the same time, has validity for the delimitation of the adjoining fishery zones in the region. Conversely, these premises and arguments lead equally to the conclusion that there is no reason to *depart* from a median line as between the two coasts, either for the shelf or for fishery zones.

156. These lines of legal reasoning must be approached in a certain practical sequence. There is a certain chronological sequence involved, extending over a considerable period.

157. The three lines of reasoning are parallel and compatible, and lead to the same conclusion, and elements subsumed under one line of reasoning support contentions of another line of reasoning. The lines of reasoning are alternative, in the sense that they operate separately and independently, and the same solutions will derive from each of them. It is submitted that they operate in the alternative, in the sense that if one of them is chosen as determining the conclusions of the Court, there is no need to pursue any other line of reasoning.

158. The main features of these three lines of reasoning are:

(a) The Treaty Obligations of the Parties Inter Se

159. The bilateral Agreement of 1965 (Counter-Memorial, Annex 46) establishes the median line as the general boundary between all areas of continental shelf which fall to be delimited between Norway and Denmark. The remaining task is the demarcation of the boundary, i.e., setting out the specific turning points (and their geographical coordinates) of the median line.

160. The 1958 Convention on the Continental Shelf entered into force for Norway in 1971. It did not modify or supersede the 1965 Agreement. The 1965 Agreement must be regarded as an agreement pursuant to the Convention. It has *inter alia* the effect that the occurrence of any special circumstance has been denied by the Parties. The two instruments operate conjointly.

161. Even if the 1958 Convention were to be applied in isolation, it would follow from the provisions of Article 6, paragraph 1, that the boundary is the median line. There is no special circumstance present in the region which could justify a departure from the median line. There are no other coasts, and no incidental features, which could exercise a distorting influence on a median line boundary between the coasts of Jan Mayen and Greenland.

162. For the delimitation of the fishery zones in the area between Jan Mayen and Greenland, the treaty relationship between the Parties is not directly applicable. However, the prevalent practice in the North Atlantic/North Sea region has been either to establish the boundaries for fishery zones (or exclusive economic zones) along previously established continental shelf boundaries, or to abstain from determining separate boundaries for such zones (relying often in practice on the shelf boundaries as indicative, to avoid conflict between the enforcement agencies of States with adjoining zones). There is thus an immediate link between the continental shelf boundary and the delimitation of fishing zones.

(b) The Effect of the Conduct of the Parties

163. Denmark's conduct in respect of maritime delimitation has consistently confirmed that international law prescribes the median line as the boundary for the continental shelf and for other zones of maritime jurisdiction. In the most authoritative form, these statements are contained in Denmark's administrative and legislative instruments governing the extent of Denmark's continental shelf and of its fishery zone, dating from 1963 and 1976 respectively. These instruments identified the international claims of Denmark, and established with binding effect the legal position of the Danish State, foreign States and private persons. The instruments are unqualified in their references to the median line as the boundary, and do not provide for any exceptions or attenuations, except such departures from the median line as might be agreed with another State. Denmark has consistently and forcefully pursued the same positions in international fora.

164. On this basis, Denmark must be regarded as having expressly recognized the median line, or acquiesced in it, as constituting a boundary for the continental shelf and for the fishery zone in relation to Norway, including the region between Jan Mayen and Greenland.

165. The consistent pattern of Danish conduct, together with Denmark's knowledge of the corresponding positions of Norway in respect of maritime delimitation, have the consequence that Danish claims to shelf areas beyond the median line, or to fisheries jurisdiction beyond the median line, are not opposable to Norway. In the same manner, Denmark is precluded from pursuing these claims by the operation of the principle of estoppel.

(c) General International Law

166. The rules and principles of general international law governing maritime delimitation would also lead to the adoption of the median line as the boundary for the continental shelf and for the fishery zones. The main considerations of the Norwegian argument are the following:

167. The geographical framework of the area in which the delimitation is to be effected is an extensive, open maritime region. The region is linked to other sea areas by broad expanses of ocean. The coasts of Jan Mayen and East Greenland face each other over an open, uncluttered expanse of water, at a minimum distance of 254 nautical miles.

168. Jan Mayen occupies a position of geographical and geological independence. In relation to Greenland, Jan Mayen is the only body of land to have a bearing on any maritime boundary. There are no incidental special features in the geographical relationship between Jan Mayen and Greenland. Their coastlines present no peculiarities which would influence the delimitation operation or justify any abatement of the primary line of delimitation.

169. The conduct of the Parties, and their congruent views on the international law of maritime entitlement and delimitation, testify to their general acceptance of a common standard for determining what is equitable and what is not in maritime delimitation (the exception being the Danish position with regard to the object of the present proceedings). It should, however, be noted that the assessment of the equity of a continental shelf

boundary and of a fishery zone boundary need not in fact be congruent, even if the fundamental standard is common. The Parties have in all previous contexts agreed that landmass and population do not qualify as factors relevant to delimitation.

170. There is a considerable volume of State practice which indicates that in coastal relationships which are essentially similar to that existing between Jan Mayen and Greenland, full effect is given to offshore islands. Even minor features are given full effect when geographically isolated. In such instances, when two land territories are sufficiently separate, and identifiable as independent geographical features, State practice is preponderantly to the effect that the delimitation between their coasts is to be carried out on a level of equal consideration. The two features are to be considered on their own merits. State practice does not impose the inferiority of one feature to another, but accepts that in a coastal relationship between only two geographical features, these features command the delimitation by themselves.

171. Jan Mayen and the waters surrounding it are a part of a region in which Norwegian activities have traditionally been important, comprising sealing, whaling, hunting and fishing. With technological developments, the Norwegian interest linked to Jan Mayen has broadened, covering also potential mineral exploitation, environmental protection concerns, communications and navigational support, air and sea rescue services and the general protective interests of Norway in the area. The inhospitable natural conditions of the region are a common feature of all Arctic territories, and are comparable to the situation of the regions of Greenland (not covered by ice) lying opposite Jan Mayen.

CHAPTER II.

GREENLAND

Section 1. History and Constitutional Status

A. History

Immigration

92. The history of the Greenland people is characterized by seven waves of immigration, followed by a colonial period of some immigration.

93. Greenland and the main place names mentioned in this Chapter are shown on Map III, annexed to this volume.

94. The first immigration known to archaeologists took place about 2500 B.C. when a group of palaeo-Eskimo hunters set out from the easternmost part of North Canada across the narrow straits to the northernmost part and later the east coast of Greenland (Independence I culture).

95. In the second wave, which also started from Canada, presumably immediately after the first one, the immigrants were also palaeo-Eskimo hunters. Contrary to the first immigrants they spread south along the west coast (Saqqaq culture).

96. About 1000 B.C. a third group arrived from North Canada. Like the first immigrants they moved northeastward and then southward round the coast (Independence II culture).

97. Shortly thereafter yet another group of people, presumably of the same ethnic origin, entered Greenland by the same approaches but they went south across Melville Bay and down the west coast (Dorset culture).

98. About AD 900, still by the same routes from present-day Canada, came the vanguard of the people who were to take possession of Greenland in both east and west (Thule culture). They later named themselves *Kalaallit* and became the ancestors of the people inhabiting modern Greenland. In Greenlandic the country is called *Kalaallit Nunaat.*

99. In 985 a group of people from Iceland settled in the south-west part of Greenland. In order to attract more settlers from

Iceland, these Norse peasants of Viking culture named the country 'Greenland'. Thus, the south-west part of Greenland was a part of the European-Nordic cultural region throughout the Middle Ages. The Norsemen in Greenland had become extinct at the end of the 15th century.

100. The last immigration from Canada took place during the period about 1700 – 1900. The immigrants were polar Eskimos who now inhabit the Thule district.

101. In 1721 the King of Denmark sent an expedition to Greenland to re-establish connection with the Norsemen there, not knowing that they had become extinct. Unable to accomplish the task assigned to it, the expedition assumed Lutheran missionary work among the Eskimos in West Greenland and established a trading post in the district. This marked the advent of a colonial period which lasted until 1953.

The North-East Greenland Community

102. North-East Greenland, i.e., the area between what today is known as Peary Land and Scoresbysund, and which includes the area between the 70° and 76° N latitudes relevant to the present dispute, has been inhabited for several thousand years, presumably the longest continuous period of habitation in Greenland. Here remains of the Independence I culture have been found, e.g. in Peary Land dated to approximately 2500 B.C.
Remains of large settlements belonging to later cultures have now been found on Ile de France, around Dove Bay, and as far south as at Cape South in Scoresby Sound Fiord. The total number of former settlements that have been found in North-East Greenland is close to three hundred, leaving no doubt that the population of this area was at times relatively large.

103. North-East Greenland has thus been populated and its natural resources exploited over a time span of some 4500 years.

The Colonial Period

104. In the centuries following 1721, Denmark established altogether 16 settlement districts in Greenland. This process was peaceful and without any armed conflict between Denmark and the aboriginal population. Denmark did not exercise authority over the administration of wildlife resources (marine mammals, fish and birds), which since ancient times had been managed by the hunters

themselves by way of prescriptive rights which various settlements and families had gained with respect to specific hunting and fishing areas.

105. Culturally, a salient feature of the period was the effort to create a written language which could turn the West Greenland dialect of the principal Eskimo language into a usable tool in modern Greenland. Analphabetism was practically eliminated in the 19th century.

106. An important event took place when the Permanent Court of International Justice on 5 April 1933 passed judgment in the case concerning the *Legal Status of Eastern Greenland* (P.C.I.J. 1933 Series A/B, No. 53). The dispute arose out of the action of Norway in proclaiming on 10 July 1931 the occupation of a zone of Eastern Greenland between latitudes 71°30' and 75°40' N. Denmark responded by instituting proceedings with the Court asking it to declare the Norwegian proclamation invalid on the ground that the area to which it referred was subject to Danish sovereignty, which extended to the whole of Greenland. The Court held that there was sufficient evidence to establish Denmark's title to the whole of the country. The area which Norway had claimed was therefore not *terra nullius* capable of being acquired by her occupation.
The maritime area which is now in dispute lies off the coast of that part of Eastern Greenland which was the subject of the Court's ruling in 1933.

107. During the Second World War connections with Denmark, which was occupied by German troops, were temporarily cut off.

108. In 1946 the Danish Government listed Greenland as a non-self-governing territory with the United Nations under Article 73 of the Charter of the United Nations, thereby formally acknowledging Greenland's colonial status. In the period of 1946 – 1953 Denmark submitted annual reports to the United Nations on the administration of Greenland pursuant to Article 73 e of the Charter.

B. Constitutional Status

Greenland's Status Prior to the Enactment of the Revised Danish Constitution in 1953

109. Greenland was a Danish colony up to the enactment of a revised Danish Constitution in 1953. The constitutional separation of powers did not apply to Greenland prior to 1953, and Greenland

was ruled by the Danish Government mainly through administrative government orders. There were no Greenland representatives in the Danish Parliament, the *Rigsdag*.

110. The seat of the governmental administration of Greenland was in Copenhagen with local representatives in Greenland. From 1908 the Greenland population participated in the administration through the two popularly elected Provincial Councils, one for Northern, the other for Southern Greenland, (the *Landsråd).* In 1950 the two Provincial Councils were merged.

111. The Provincial Council was empowered by the *Rigsdag* to issue administrative orders and decisions in certain, specified spheres of the Greenland society. Additionally, the Provincial Council had an advisory role to the *Rigsdag;* bills affecting Greenland affairs were submitted to the Provincial Council for comments before being passed into law.

The Period from 5 June 1953 to 1 May 1979

112. In 1952, the popularly elected Provincial Council opted for Greenland's integration with equal rights into the Danish Realm in lieu of continued colonial status by approving a proposed constitutional revision extending the applicability of the constitution to Greenland. Underlying the decision of the Provincial Council was the belief that only freeing Greenland from its colonial status through integration into the Danish Realm could secure the Greenland population greater influence on domestic affairs.

113. On 5 June 1953 a revised Danish Constitution was passed. Section 1 of the Constitution provides that the Constitution shall apply to all parts of the Danish Realm.
Greenland's colonial status was thus ended through full integration into the Danish Realm. Greenland was given no special constitutional position within the Realm except that the Constitution secured the Greenland population two out of the 179 seats in the newly established single-chamber Danish Parliament, the *Folketing*. By virtue of its general scope of application the Constitution put the Greenland population on an equal footing with the Danes and the Faroese.
Parliamentary Acts passed by the *Folketing* now applied directly to Greenland unless expressly limited in geographical scope.

114. The advisory and executive competence of the Provincial Council was extended considerably in the following period, but con-

stitutionally, Greenland in effect enjoyed no higher or lower degree of self-government than other parts of Denmark, except for the Faroe Islands which gained Home Rule in 1948.

115. By Resolution 849, the General Assembly of the United Nations in 1954 approved the constitutional integration of Greenland into the Danish Realm and deleted Greenland from the list of non-self-governing territories.

116. Segments of the Greenland population were not satisfied with the way colonialism came to an end in Greenland. Denouncing integration into the Danish Realm they advocated increased autonomy with self-government for Greenland.
Aspirations for increased autonomy in Greenland ranging from the introduction of a Home Rule system similar to the Faroese to full political and economic self-determination through secession from the Danish Realm were voiced with growing intensity in the 1960s and 1970s.
Important political issues such as the Greenland demand for an extension of the fishery zone, Greenland's association with the European Communities, and granting of concessions for exploitation of the natural resources of Greenland spurred a political mobilization of the Greenland population in the 1970s. Coupled with a growing Greenland consciousness this political mobilization underscored the Greenland desire for wider participation in decision-making processes.
In the mid-1970s Greenland witnessed the birth of the first political movements from which the present political parties have developed, clearly distinguishable by their views on Greenland's association with the Danish Realm as well as their political colour.

Home Rule in Greenland

117. In 1972, the Provincial Council recommended to the Danish Government that the issue of granting the Provincial Council increased influence upon and joint responsibility for the development of Greenland be studied.

118. A Commission on Home Rule in Greenland composed of Greenland and Danish politicians was established by the Danish Government. On the basis of the recommendations and proposals of this Commission, the *Folketing* passed the Greenland Home Rule Act No. 557 of 29 November 1978 (Annex 18).

119. By a referendum held in Greenland on 17 January 1979 a large majority of the population of Greenland approved the coming into force of the Act; 70 per cent. of the votes cast favoured the introduction of Home Rule in Greenland which became effective as of 1 May 1979.

Home Rule Powers

120. Greenland Home Rule is an extensive type of self-government. By the Greenland Home Rule Act the Danish Parliament, the *Folketing*, has delegated legislative and executive powers to the Home Rule Authority, consisting of the popularly elected legislative Greenland Assembly, the *Landsting*, and the executive branch, the *Landsstyre*, elected by the *Landsting*. Presently, the *Landsting* has 27 members and the *Landsstyre* has 5 members.
The powers transferred by statute are in principle identical to the powers exercised by the central authorities of the Realm in other parts of Denmark. Consequently, the *Folketing* and the Danish Government refrain from enacting legislation and exercising administrative powers in the fields where these powers have been transferred to the Home Rule authorities.

121. The Home Rule Act provides that the Home Rule Authority may request that a number of fields specified in a Schedule annexed to the Act be transferred to Home Rule, cf. Section 4 of the Act. The list of functionally defined, transferable fields contained in the Schedule is not exhaustive; however, transfer of legislative and executive powers in fields other than those listed in the Schedule is subject to prior agreement between the Home Rule Authority and the central authorities of the Realm, cf. Section 7 of the Home Rule Act.

122. During the ten years that have elapsed since the establishment of Home Rule in 1979, the Home Rule Authority has almost exhausted the list in the Schedule and thus assumed authority in most aspects of life in Greenland. Out of the 17 fields listed in the Schedule, the more important ones in which transfer has taken place include *inter alia:* The organisation of the Home Rule system; taxation; regulation of trade, including fisheries and hunting; education; supply of commodities; transport and communications; social security; labour affairs; housing; environmental protection and conservation of nature.
The health service is the one field of major importance in the Schedule that has yet to be transferred to Home Rule. The survey in

Annex 19 may be consulted for further details regarding matters transferred to Greenland Home Rule and dates of transfer.

123. The number of Acts *(Landstingslove)* passed and Statutory Orders *(Landstingsforordninger)* issued by the *Landsting* since the introduction of Home Rule on 1 May 1979 until 31 December 1988 runs to about 200.

Procedures for the Transfer of Powers to Home Rule

124. Greenland Home Rule rests on the basic principle that legislative power and the power of the purse should not be divided. Consequently, Section 4(2) of the Home Rule Act provides that when the *Folketing* transfers a field to Home Rule, the Home Rule Authority must assume the inherent expenses. Conversely, the Home Rule Authority is the sole beneficiary of taxes and revenue generated in fields transferred to Home Rule.

125. Since Greenland self-financing is not yet possible in a number of capital-intensive fields an instrument has been created in the Home Rule Act to facilitate transfer of powers to Home Rule in fields requiring Danish subsidies.
According to Section 5(1) of the Act the *Folketing* may by statute effect a transfer of authority and the subsidies to be paid in such fields through vesting the Home Rule with the power to issue Statutory Orders within a subsidized field. The *Folketing* passes, upon consultation with the Home Rule Authority, an Enabling Act specifying the competence transferred to Home Rule and establishing a framework in the form of a few fundamental principles for each field while leaving it to the Home Rule authorities to decide the more detailed regulations and undertake the administration of the said field.
Whereas a legislative initiative in a field transferred under Section 4 of the Act takes the form of an Act passed by the *Landsting*, the Home Rule Authority confines itself to issuing Statutory Orders under Section 5.

126. The Danish subsidies to the Home Rule Authority are not earmarked for specific purposes but granted as a lump sum. Thus, the Home Rule Authority has virtually complete freedom to determine the order of priority for expenditure of the funds allocated by the *Folketing*. The Danish block grants are fixed by Acts of the *Folketing* for three-year periods, and the amount is provided for

annually in the Danish Budget. The 1989 block grant to the Greenland Home Rule Authority amounts to well over DKK 1,500 million, equivalent to approximately USD 194 million[7]).

Unity of the Realm and Constitutional Limits to Home Rule

127. The Home Rule Act has not altered Greenland's constitutional status as a part of the Danish Realm.

128. The constitutional principle of the national unity of the Realm, derived from Section 1 of the Danish Constitution and expressed in Section 1 of the Home Rule Act, sets certain limits to the scope of Greenland Home Rule: sovereignty continues to rest with the central authorities of the Realm; Greenland remains a part of the Danish Realm; only fields appertaining exclusively to Greenland may be transferred to Home Rule; the delegation of powers cannot be unlimited and must be precisely defined by statute; certain fields, the so-called affairs of State, may not be transferred to Home Rule. These exclusive affairs of State include *inter alia:* external relations, defence policy, financial and monetary policy, the administration of justice.

129. However, with respect to non-transferable and non-transferred fields, the Home Rule Authority has an important advisory function to the central authorities of the Realm. Proposed legislation exclusively addressing Greenland affairs must be submitted to the Home Rule Authority for comments prior to the introduction of the bill in the Danish *Folketing*, cf. Section 12(1) of the Home Rule Act. Where proposed legislation is "of particular importance to Greenland" the Home Rule Authority must be consulted before it is put into effect in Greenland, cf. Section 12(3) of the Home Rule Act.

Greenlandization

130. With the introduction of Home Rule an intensive process of "Greenlandization" commenced. The autonomy of Greenland was symbolized by the bringing into existence of an official Greenland flag and coat of arms. The Home Rule Authority has made and is making great efforts to preserve the Greenland culture and heritage. The language is of vital importance and Section 9 of the Home Rule Act proclaims Greenlandic to be the principal language in

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[7]) *Throughout the Memorial figures in Danish Kroner have been converted into US Dollars on the basis of the rate of exchange on 1 June 1989 when 100 US Dollars (USD) equalled Danish Kroner (DKK) 772.25.*

Greenland. In 1983 the university-level Inuit Institute was established in Nuuk, the capital of Greenland, where linguists are modernizing Greenlandic in order to meet the needs created by the development of Greenland.

131. The new Greenland consciousness has also found international forms of expression. Greenland representatives have often assumed a leading role in the cultural and political Fourth World conferences on issues relating to ethnic minorities. One example is the Inuit Circumpolar Conference, a pan-Eskimo non-governmental organization that acquired NGO status under the auspices of the United Nations in 1983.

132. In 1985 Greenland was admitted to the Nordic Council as a member of the Danish delegation. The Nordic Council is a parliamentary and governmental organ of co-operation among Denmark, Finland, Iceland, Norway, and Sweden.

Greenland and Danish Foreign Policy

133. The power to conduct foreign policy is a constitutional prerogative of the Danish Government, and no part of this prerogative may be transferred to Greenland Home Rule, cf. Section 11 of the Home Rule Act.
However, the Home Rule Act has created co-operative procedures serving to accommodate the interests of Greenland and to alleviate potential conflict of interests between Greenland and Denmark in matters of foreign policy by granting the Home Rule Authority a number of important functions of an advisory, representative and executive nature.

134. Extensive legislative and executive powers, territorially as well as functionally defined, have been transferred to Home Rule. Consequently, the co-operation of the Home Rule Authority will often be necessary to fulfil Denmark's international obligations. Accordingly, the Home Rule Act provides that the Danish Government must consult the Home Rule Authority before entering into treaties that particularly affect Greenland interests, cf. Section 13 of the Home Rule Act. This consultative procedure applies whether or not the treaty concerns a transferred field.

135. International treaties concluded by the Danish Government and customary international law bind the Home Rule Authority to the same extent as they do the Government of Denmark. In order to ensure that Denmark and Greenland comply with their in-

ternational obligations, the Danish Government may direct the Home Rule Authority to take the necessary steps to fulfil such obligations, cf. Section 10 of the Home Rule Act.

136. Legislative and administrative orders of the Home Rule Authority, e.g., concerning regulation of fisheries, may affect third State interests and the position of the Danish Government vis-à-vis other countries. Under the Act the Home Rule Authority is, therefore, under obligation to consult the central authorities of the Realm before introducing measures that might prejudice Denmark's interests, cf. Section 11(2) of the Home Rule Act.

137. The Home Rule Authority may send representatives to Danish diplomatic missions in order to safeguard important commercial interests of Greenland, cf. Section 16(1) of the Home Rule Act.

138. Although, in principle, treaty-making powers are vested exclusively in the Danish Government, the central authorities of the Realm may, upon request, authorize the Home Rule Authority to conduct, with the assistance of the Foreign Service, international negotiations on purely Greenland affairs, cf. Section 16(3) of the Act. The Home Rule Authority has notably availed itself of the right to conduct bilateral negotiations in connection with the conclusion of fishery agreements.

Greenland and the European Communities

139. Denmark's membership of the European Communities (EC) was effected by accession to the Treaties establishing the European Communities. Denmark's membership included Greenland as a part of the Danish Realm.

140. In the referendum held in October 1972 on Denmark's proposed membership of the EC approximately 70 per cent. of the votes cast in Greenland opposed Denmark's accession.

141. Greenland's capacity under international treaty law to unilaterally withdraw from the EC once Home Rule had been established was a matter of concern and debate during the preparations for Home Rule. Since the treaty-making power under Home Rule would remain with the Danish Government, Greenland's withdrawal from the EC would be contingent upon the co-operation of the central authorities of the Realm.
Prior to the introduction of Home Rule the Danish Prime Minister

declared that the Danish Government did not wish to force upon the Greenland Home Rule Authority any particular association with the EC.

142. The introduction of Home Rule in Greenland in 1979 did not *per se* alter Greenland's position within the EC. The legal acts of the EC continued to apply to Greenland and the special arrangements made with respect to Greenland's fishery rights remained valid. Similarly, Home Rule did not change the division of legislative and representative powers between the EC and the central authorities of the Realm.

143. In a referendum held in Greenland in 1982, a majority of the electorate opted for Greenland's withdrawal from the EC. The Danish Government subsequently reaffirmed its commitment to support Greenland's decision to withdraw.

144. The negotiations on Greenland's withdrawal from the EC and the subsequent agreements between the EEC and Denmark/Greenland commenced in 1982. On the basis of a Treaty amending, with regard to Greenland, the Treaties Establishing the European Communities (Annex 20), concluded on 13 March 1984 by the Member States, Greenland's withdrawal from the EC became effective from 1 February 1985.

145. Upon withdrawal Greenland was accorded Overseas Countries and Territories (OCT) status under Part four of the Treaty establishing the European Economic Community. The OCT status of Greenland is reflected in the Protocol on the Special Arrangement for Greenland linked to the 13 March 1984 Treaty on Greenland's withdrawal from the EC. Greenland produce falling under the common market scheme for fisheries produce may be imported to the EEC exempt from duty and quantitative restrictions. This favoured status is, however, explicitly contingent upon the conclusion of an agreement between the EEC and Denmark/Greenland granting EC Member States satisfactory access to the fishery zones of Greenland.
In accordance with the Protocol, a ten year Agreement on Fisheries was concluded on 13 March 1984 between the EEC, on the one hand, and the Government of Denmark and the Home Rule Authority of Greenland, on the other (Annex 21). Recognizing in its preamble the vital importance of the fishing industry to the economy of Greenland, the Agreement lays down the principles for EEC fishing in the fishery zones of Greenland, cf. paragraph 177.

Section 2. Population

146. As of 1 January 1989 the population of Greenland numbered 55,171[8]).
Four fifths of the people inhabiting Greenland are Inuit (Eskimos). The last fifth represents predominantly Danes, most of whom stay in Greenland for a comparatively short period carrying out work for which there is a shortage of qualified personnel in Greenland.

147. At the start of the 20th century the population of Greenland numbered about 12,000. This figure doubled during the first half of the century. Since 1950 the population has doubled in only 20 years. Especially in the 1960s the growth rate was remarkably high. In the period from 1950 to 1970, the Greenland society had to adapt itself to an annual population growth of 3.5 per cent. To meet this challenge substantial investments were required, especially in order to provide increased occupational opportunities. In 1988 the rate of population growth was 1.2 per cent., but it is not expected to remain at this reduced level. Forecasts in March 1989 suggest a rise in population to 61,000 in the year 2000. Due to this development the Greenland Home Rule Authority will still have to provide training and jobs for the increasing population within the working age group.

148. Eighty per cent. of the Greenland population live in the western part of Greenland, extending from Disko Bay in the north to Cape Farewell in the south. This is because the waters off this stretch of coast are heated by the North Atlantic Current and are thus practically ice-free all year round.
The remaining part of the Greenland population lives in the hunting regions of North-West Greenland (approximately 14 per cent.) and East Greenland (approximately 6 per cent.).
In East Greenland the population growth in the Ammassalik district at the start of this century generated a demand for renewed utilization of hunting regions which had previously been abandoned. This led to the foundation of the Scoresbysund settlement in 1925 by hunters moving in from the Ammassalik district.
As of 1 January 1989, 3,425 persons lived in East Greenland, 2,861 in the municipality of Tasiilaq (Ammassalik) and 564 in the municipality of Ittoqqortoormiit (Scoresbysund).

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[8]) *The size of the Greenland population may be compared with the populations of a number of independent States, e.g., Nauru (8,042 in 1983), Tuvalu (8,229 in 1985), St. Christopher and Nevis (47,000 in 1987), Kiribati (66,250 in 1987) and the Seychelles (67,000 in 1987). Some of these States are members of the United Nations. Source: Statesman's Year-Book, 1988.*

Section 3. Geography, Geology and Climate

A. Geography

149. Greenland covers an area of approximately 2,200,000 square kilometres of which about 1,858,000 square kilometres are covered by an ice cap. The remaining 342,000 square kilometres are ice-free land.

150. Greenland's northernmost point (excluding two tiny islands) is Cape Morris Jesup, which is situated at latitude 83°39'N, only 380 nautical miles from the North Pole. The southern tip, Cape Farewell, lies at 59°46'N, which is about the latitude of Oslo and Stockholm. Greenland thus extends from north to south over about 24 degrees of latitude, a distance of 2,670 kilometres.

151. Greenland's westernmost point is the westernmost of the Carey Islands, situated at 73°15'W. The easternmost point is Nordostrundingen, 11°21'W. At its widest, Greenland measures more than 1,300 kilometres from east to west.

152. The coastline of Greenland is estimated to be about 40,000 kilometres long, when one takes into account the shorelines of the hundreds of fiords, among them the Scoresby Sound Fiord complex, the world's largest network of fiords. Behind the rugged coast, which in many places is fringed by innumerable rocks and islands, there is a belt of ice-free land which is at its widest, about 300 kilometres, in the area west and north-west of Scoresbysund in East Greenland, while in West Greenland north of Sisimiut (Holsteinsborg) it reaches a width of 180 kilometres. Most of the coastal area of Greenland is mountainous; the highest point in Greenland is the 3,733 metres high summit of Mount Gunnbjørn, which lies between Ammassalik and Scoresbysund.

B. Geology

Geology of the Onshore Area

153. Greenland was once part of a vast megacontinent known as Laurasia, which included most of North America, Greenland, Europe north of the Alps, and Asia north of the Himalaya. The breakup of this megacontinent, which ultimately led to the formation of the North Atlantic Ocean, the Norwegian Sea, the Greenland Sea, the Labrador Sea, Davis Strait and Baffin Bay, began about 250 million years (m.y.) ago, and Greenland finally became a separate continental entity about 55 m.y. ago.

154. The rocks making up Greenland range in age from some of the oldest continental crustal rocks known to the recent deposits by glaciers and melt water rivers. The major part of Greenland belongs to a Precambrian shield or craton (a geologically old and stable area) built up of more than 2500 m.y. old crystalline rocks. To the north this craton is flanked by a belt of folded sedimentary rocks about 600-400 m.y. old, while the ice-free area of East Greenland stretching from Scoresbysund to Nordostrundingen is built up of an array of rocks from more than 2000 m.y. to about 475 m.y. old, all of which were folded and altered during a period of mountain building that ended about 450 m.y. ago. These folded rocks are overlain by thick sequences of sedimentary rocks laid down in the interval 390 – 75 m.y. ago. South of Scoresbysund extrusive basalt lavas about 55 m.y. in age cover all the older rocks.

155. The final event in the geological history of East Greenland was the development of the Inland Ice sheet, a consequence of the major climatic deterioration that set in about 2.5 m.y. ago. At the height of the last major glaciation the extent of the ice cap was much greater than today, and parts of the continental shelf were covered by ice.

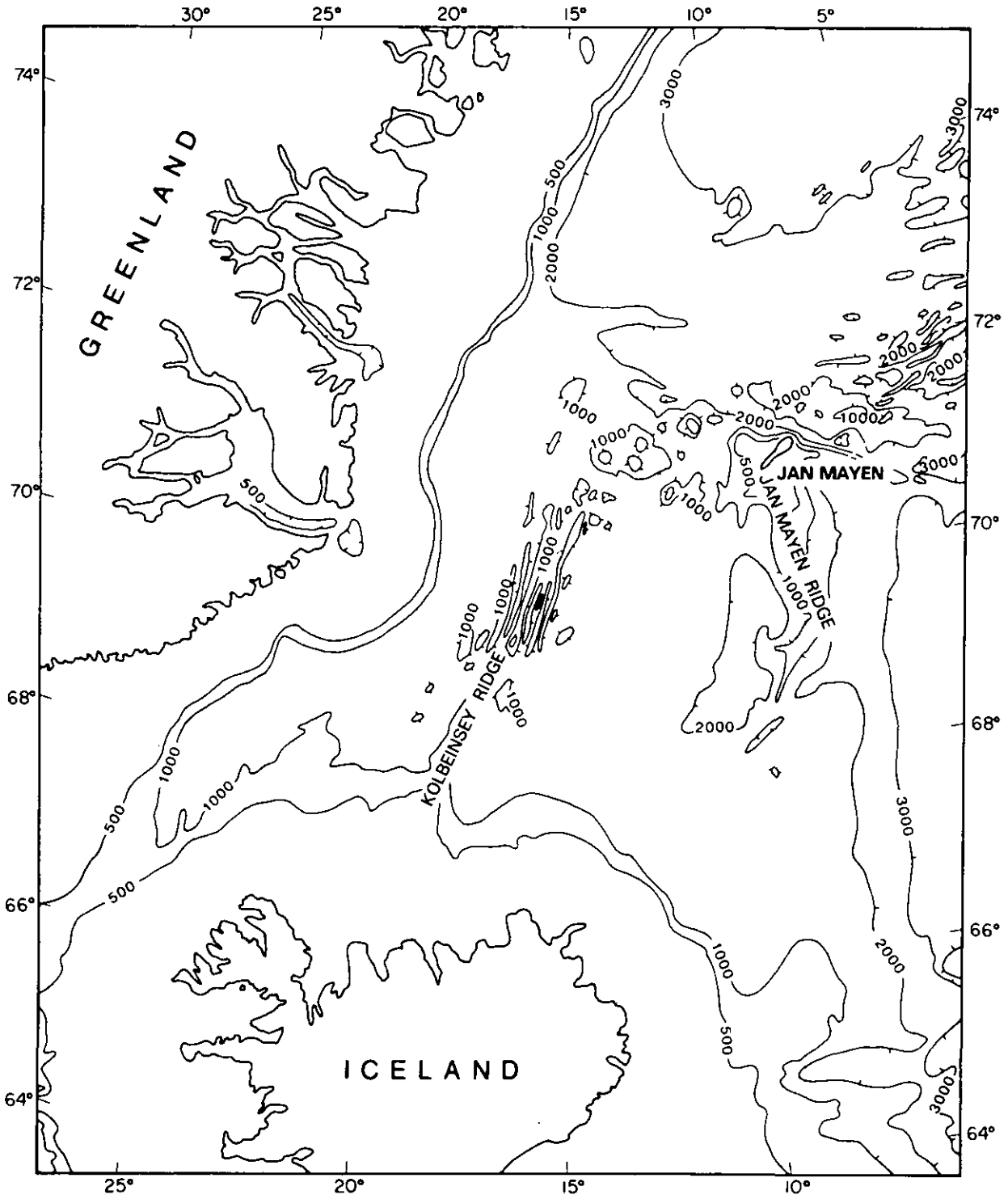
The East Greenland Shelf in the Relevant Area

156. The East Greenland shelf is a distinct offshore morphological feature throughout the relevant area, as may be seen from the figure on the opposite page.

157. The shelf break is approximately 55 nautical miles from the coast at 72N and approximately 100 nautical miles from the coast at 76N. As an estimate it can be said that the edge of the continental margin lies less than 200 nautical miles from the coast within the relevant area.

The Oceanic Area between Jan Mayen and Greenland

158. Jan Mayen is a volcanic island situated at the northern end of a submarine feature known as the Jan Mayen Ridge, cf. the figure on the opposite page. Water depths increase southwards along the Ridge from Jan Mayen and reach 1,000 metres at a point about 150 nautical miles south of the southwestern tip of the island. While one does not commonly talk of a continental shelf, with a shelf break and margin, in connection with small volcanic islands,



Simplified bathymetric map of the Greenland–Jan Mayen area. Depths in metres.

one may in the case of Jan Mayen and the Jan Mayen Ridge arbitrarily define a shelf with a shelf break at the 1,000 metre isobath. However, it should be noted that in the maritime area west of Jan Mayen and north of approximately 70° N, the sea floor topography is rough, and terms like continental rise, slope and shelf break are not applicable in this area. 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.

It is generally accepted in the scientific community that the Jan Mayen Ridge was split off the east side of Greenland when the axis of sea floor spreading in the southern part of the Norwegian-Greenland Sea shifted from a position in the Norwegian Sea to its present position along the submarine Kolbeinsey Ridge. This split-off started about 30 m.y. ago, and the ocean between Jan Mayen and East Greenland is floored by oceanic crust formed during the last approximately 25 m.y., cf. paragraph 203.

As is evident from the foregoing, there exists no common shelf between East Greenland and Jan Mayen.

C. Climate

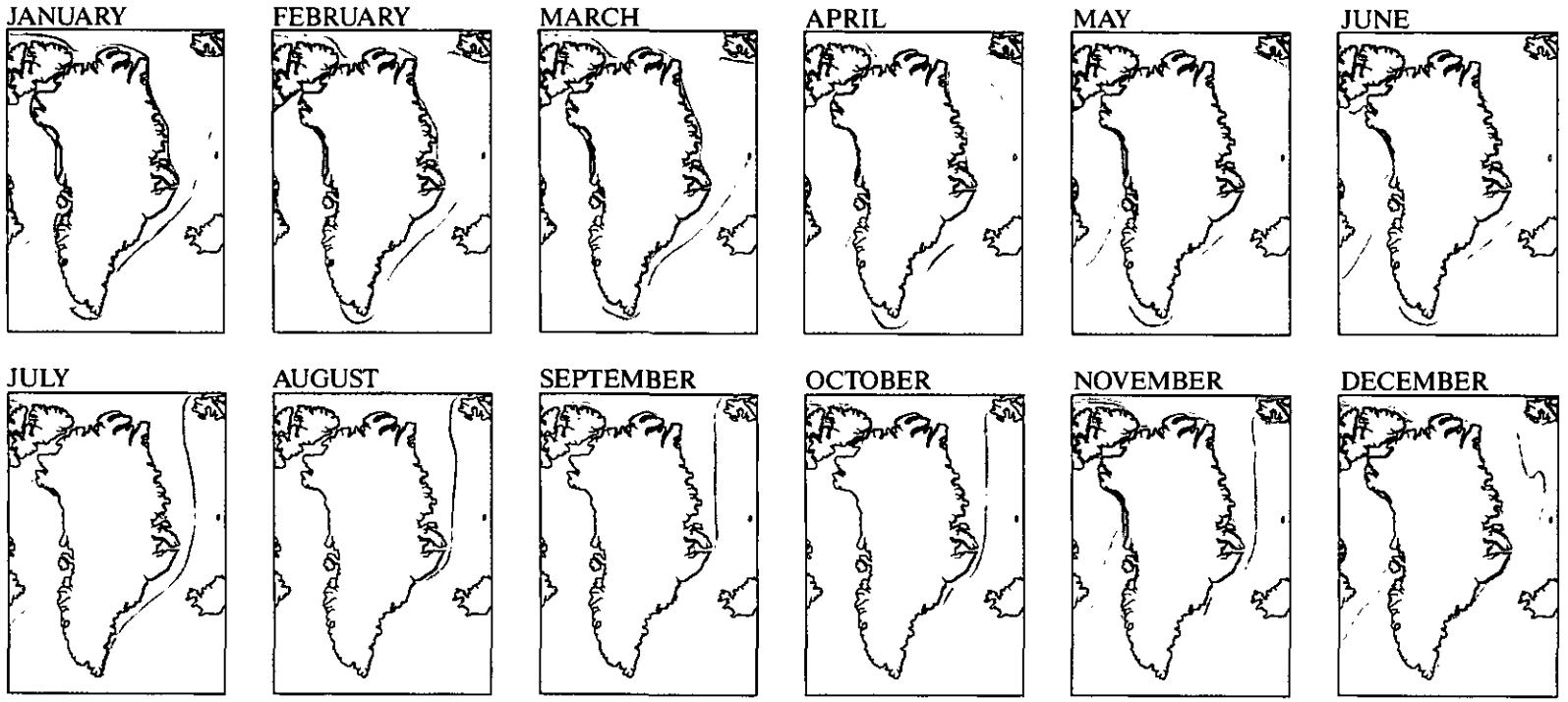
159. The whole of Greenland has an arctic climate but owing to the island's vast expanse there are great variations in humidity and temperature. The ice cap makes the climate arctic even in South Greenland where the annual mean temperature is around or below freezing point. Even in the warmest month the mean temperature does not rise above 10° C (50° F) which corresponds to the temperature of the timber line. Consequently there are no forests, but in the southernmost parts there are birch shrubs with scattered patches of Greenland rowan, and willow scrubs are seen up to 72N. With a few exceptions, growth of cultivated plants is not profitable. Grain, for example, cannot ripen. Another characteristic feature of an arctic climate is that the subsoil is frost-bound at a certain depth. The short summer leaves time for only the upper layers to thaw. This phenomenon, known as permafrost, gives rise to high costs of building and construction because instability of the upper layers of soil enhances the need for foundation.

160. One of the most important mechanisms regulating the climate and its variations is the exchange of heat between sea and atmosphere.

The permanent ocean current in Fram Strait which separates North-East Greenland from Svalbard is of vital importance for the entire energy balance in East Greenland regions. From the Arctic Ocean

SEA ICE

Normal distribution of sea ice



Great deviations from normal distribution may occur

Compact ice

Polar ice

West ice

Source: Kalaallit Nunaat Atlas Greenland

the ice-cold East Greenland Current runs south along the east coast of Greenland until it eventually meets the warm Irminger Current, which is a branch of the North Atlantic Current, and bends to the west, south of Iceland towards South-East Greenland. The two currents take the same course, the East Greenland Current as a cold surface current (the water is less salty and therefore lighter), and the Irminger Current as a warm undercurrent (the water is saltier and therefore heavier). Influenced by the rotation of the Earth the currents bend to the west round Cape Farewell and continue northwards along West Greenland while gradually mingling. Both sea and air temperatures are therefore higher in West Greenland than in East Greenland, and variations in the force of the two currents cause variations in temperature.

The southward flow of the cold East Greenland Current carries with it enormous quantities of ice, about 6 million tons per minute. The figure on the previous page shows the mean month-by-month distribution of compact ice and polar ice around the coasts of Greenland.

The figure illustrates how the waters off the northern segment of the east coast of Greenland are permanently covered by compact ice. Scoresbysund is practically unnavigable throughout the year and the important East Greenland settlement of Ammassalik is navigable only from July through October.

Compact ice and polar ice make coastal fishing off the east coast of Greenland north of Cape Brewster practically impossible for all 12 months of an average year. The ice pack extends so far seawards that it covers the disputed area for most of the year, allowing commercial fishing within the disputed area only in late summer and early autumn (July - September).

Section 4. Economic Structure and Exploitation of Resources

A. General Remarks

161. Geography, demography and climate are factors of importance to the economy of any developing area. In Greenland, the influence of these factors upon the economy has been of particular weight.

162. When looking at the Greenland economy it must be kept in mind that one of the most striking features in the history of the people of Greenland is the struggle for survival in this arctic region where a vast land area of approximately 2,200,000 square kilometres with a surrounding sea of about 2,000,000 square kilometres can hardly sustain a population of about 55,000 people. Every possible resource must be relied upon, and every kind of resource exploita-

tion requires a considerable amount of imagination because of the ice conditions on land as well as in the sea, cf. paragraph 164. The population of the north-west and eastern parts of Greenland has developed the so-called allu-hunting i.e., hunting at breathing holes, travelling from place to place on the ice-belt off the shores looking for breathing holes to which the seals are drawn.

163. Arctic weather conditions coupled with the enormous distances and the low population density have required large *per capita* investments in infrastructure and communications. These circumstances similarly account for a relatively high cost level of public services and a corresponding heavy burden on the expense budget of the Home Rule Authority.

164. Traditional as well as modern Greenland economy has relied on exploitation of natural resources as the principal means of survival and generation of income. The arctic climate excludes farming and most kinds of animal husbandry, and thus Greenland depends heavily on fish produce and to a lesser extent on mineral resources for its export earnings.

165. Table I below demonstrates how fish and fish products have accounted for approximately 80 per cent. of the total value of Greenland exports in the period 1985–1988.
This high percentage makes Greenland as dependent on fisheries as fishery-dependent Iceland and the Faroe Islands. Ore and minerals, primarily zinc and lead, made up between 12 and 18 per cent. of the total export value in the same period.

TABLE I Composition of Exports. Values in millions of USD (current prices)[9]*.*

Items	*1985*	*1986*	*1987*	*1988*
Fish and fish products	185	220	256	268
Ore and minerals	44	40	37	62
Other items	9	12	14	11
Total	238	272	307	341

Source: Q-Data, Nuuk, Statistiske Meddelelser, 1989:1

166. Export earnings, however, are not sufficient to finance Greenland's imports. Greenland has seen a continuous trade deficit for many years. Table II below depicts the balance of trade in selected years since 1970.

[9] *Throughout the Memorial figures in Danish Kroner have been converted into US Dollars on the basis of the rate of exchange on 1 June 1989 when 100 US Dollars (USD) equalled Danish Kroner (DKK) 772.25.*

TABLE II Greenland's Trade Balance. Selected years between 1970 and 1988. Values in millions of USD (current prices).

	1970	*1975*	*1980*	*1985*	*1986*	*1987*	*1988*
Exports.....	13	66	135	239	272	307	341
Imports	51	96	239	407	382	466	443
Trade deficit	38	30	104	168	110	159	102

Source: The Prime Minister's Department: Greenland Yearbook 1988, Copenhagen

Although the trade deficit has increased considerably since 1970 in absolute figures – with a downward trend since 1985, however – it should be noted that the growth rate of exports has by far exceeded that of imports; in 1970 the export value amounted to a mere fourth of the import value, whereas that figure had risen to approximately three fourths in 1988.

167. Since the export earnings of Greenland are not yet capable of sustaining the economy, Greenland has, to a very large extent, to rely on unrequited transfers from Denmark to finance imports and public expenditure[10]). In 1987, Danish unrequited transfers totalled approximately USD 343 million, a figure almost identical with the 1988 value of the entire exports of Greenland, cf. Table II above.

168. Table III below provides a general view of the economy of the public sector in Greenland in the year of 1987, listing the aggregate income and expenses of the Home Rule Authority, the income and expenses of the municipal sector in Greenland, and the Greenland-related expenses of the central authorities of the Realm.

[10]) *Unrequited transfers include direct payments to Greenland branches of the Central Authorities of the Realm, block grants to the Home Rule Authority, and subsidies to the Greenland municipalities. The direct payments cover public expenditure in areas not transferred to Home Rule, whereas the block grants finance the operations of the Home Rule Authority in transferred fields, cf. paragraphs 124 – 126. The Home Rule Authority enjoys complete freedom in allocating the block grants to specific purposes. With the gradual transfer to Home Rule, the Danish State's direct payments have decreased while block grants have increased.*

TABLE III 1987 income and expenditure of the Home Rule Authority, 1987 income and expenditure of the municipal sector in Greenland, and the 1987 Greenland-related expenditure of the central authorities of the Realm. Values in millions of USD (current prices).

			1987
A.	*The Home Rule Authority*		
1.	Total income		370
	Income tax and duties	105	
	Block grants	174	
	Other income	91	
2.	Total operating and capital expenditure		435
3.	Deficit		65
B.	*The municipal sector in Greenland*		
1.	Total income		215
	Municipal taxes	114	
	Block grants and direct payments	91	
	Other income	10	
2.	Total operating and capital expenditure		202
3.	Surplus		13
C.	*The central authorities of the Realm*		
1.	Total Greenland-related expenditure (unrequited transfers)		343
	Block grants to the Home Rule Authority and the municipal sector	186	
	Operating and capital expenditure in fields not transferred to Home Rule	157	

Source: Report on the Economic Development in Greenland in 1988, submitted by the Advisory Committee on the Economy of Greenland, the Prime Minister's Department, Copenhagen.

169. In addition to Danish disbursements the Home Rule Authority has secured the necessary funding for its operations through raising Danish-currency loans in mortgage banks in Denmark. In 1988, the *Landsstyre,* obtained foreign-currency loans in commercial banks abroad in the amount of USD 150 million.

170. Finally, the overall size of the economy of Greenland may be illustrated by Table IV below depicting Greenland's Gross Domestic Product, Gross National Product, and Gross National Income.

TABLE IV Gross National Income of Greenland. Selected years 1984, 1986, 1987. Current prices in millions of USD.

	1984	*1986*	*1987*
1. Gross Domestic Product	530	618	701
2. Indirect taxes	32	43	58
3. Subsidies	53	14	14
4. Gross National Product in market prices (1 + 2-3)	509	647	745
5. Wages, dividends, and interests to abroad (net)	37	52	52
6. Gross National Income in market prices (4-5)	472	595	693
7. Unrequited transfers from abroad	340	340	372
8. Gross National Income, disposable (6 + 7)	812	935	1,065

Source: Q-Data, Nuuk, Statistiske Meddelelser 1989: 2 and 1989:3

The relatively high Gross National Income figure belies the actual scarcity of financial resources in Greenland. Greenland's economy is still very much in a stage of development with unusually large capital-intensive investment requirements. The majority of these public and commercial investments, e.g. in housing, educational and health systems, supply of goods, public fisheries industry and fishing vessels, etc., are undertaken by the public sector that plays a predominant role in the economy of Greenland.

171. The cost level for investments in construction and engineering projects is considerably elevated in Greenland due to the complete dependence on imported materials, high transportation costs, and difficult climatic and environmental conditions.

172. Similarly, the maintenance of a satisfactory level of public services requires additional expenditure in Greenland, because a fairly small population lives scattered over extremely long stretches of coast in small villages and towns accessible only by ship or helicopter.

B. The Greenland Fisheries Sector.

173. During the 20th century Greenland fishing activities have developed from small-scale fishing from kayaks and other primitive boats into an industry utilizing modern equipment, including large sea-going trawlers and other highly specialized vessels.

Major investments have been made not only in order to build up an efficient fishing fleet but also to construct new, and improve existing, on-shore facilities such as fish-processing plants.

174. Today the Greenland fisheries sector employs about one fourth of the labour force and accounts for approximately 80 per cent. of the total export earnings, cf. paragraph 165. Merely to say that Greenland is dependent on the natural resources of the sea is not sufficiently emphatic. The fact is that the development of the fisheries sector is decisive for the development of the entire Greenland economy.

175. The fundamental prerequisite for the development of any fisheries sector is the existence of exploitable fish stocks. Fortunately, many lucrative fishing grounds are to be found in the seas surrounding Greenland. This fact has attracted many foreign fishing vessels for decades. In order to preserve the fish stock an annual total allowable catch (TAC) is established for each of the economically interesting species on the basis of marine biological advice.

176. Effective from 1 February 1985 legislative competence in fishery matters was transferred to the Greenland Home Rule Authority. The Home Rule allowed for such transfer of competence as early as 1979, but this competence was exercised by the EEC and could not be transferred to Greenland for independent exercise until after Greenland's withdrawal from the EC.

177. Simultaneously with the Treaty on Greenland's withdrawal from the EC, a ten-year Agreement on Fisheries was concluded between Denmark/Greenland and the EEC (Annex 21). The Agreement, dated 13 March 1984, envisages the conclusion of supplementary protocols. A Protocol of the same date regulates fishing by EEC vessels in Greenland waters, including what species may be fished, what catch possibilities are allotted to the EEC, and what financial compensation Greenland should receive from the EEC for fishing rights granted to the EEC. Under the five-year Protocol, expiring on 31 December 1989, Greenland has received annual payments from the EEC in the amount of USD 27.5 million.
In recognition of Greenland's economic dependence on fisheries the above-mentioned Agreement on Fisheries and supplementary protocols guarantee Greenland minimum quotas if biological circumstances for a given fishing year require TACs to be fixed below a certain level. In such cases the EEC quotas will be fixed at a level below the quantities fixed in the Protocol, without this reduction affecting the level of Greenland's annual remuneration, cf. Article 7 of the Agreement on Fisheries.

178. The Commercial Fisheries Act of the *Landsting*, No. 11 of 21 November 1984 (Annex 22) empowers the *Landsstyre* to establish annual TACs and quotas based upon marine biological advice. The TACs and the quotas for 1988 are contained in the Greenland Home Rule Executive Order No. 27 of 1 December 1987 (Annex 23). The Order reflects that the most valuable species (cod, shrimps and Greenland halibut) in the waters off West Greenland are largely reserved for Greenland fishermen. In East Greenland waters, non-Greenland fishing vessels (including those of the European Communities) have been granted larger quotas, but primarily for species that Greenland itself has not yet been able to exploit to any major extent.

179. Greenland's share of total catches in Greenland waters has shown an upward trend in recent years with the 1987 Greenland catch accounting for 85 per cent. of the total against only 62 per cent. in 1984.
The increasing capacity of the Greenland fishing fleet is illustrated in Table V below listing the total tonnage of the Greenland fishing vessels.

TABLE V Total tonnage of registered fishing vessels in Greenland of 20 GRT or more.

	1984	*1985*	*1986*	*1987*	*1988*
Tonnage	24,457	28,787	32,817	33,465	39,970

Source: The Danish Yearbook on Fisheries, 1984 – 1988.

The Fishing for Capelin

180. At present capelin is the only fish that is being commercially exploited in the disputed area. As the economic potential of the capelin fishing is substantial, the issue of the exploitation of the capelin stock has played an important role during the negotiations between Denmark and Norway concerning the maritime delimitation in the present case, cf. Part I, Section 2.

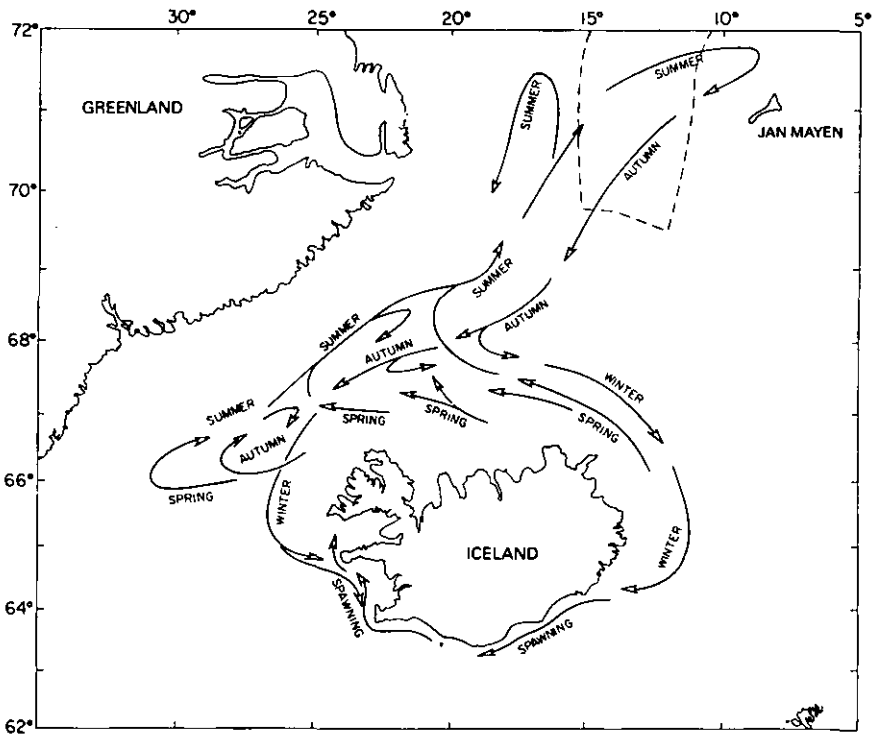
181. Capelin is a species which is used primarily for production of fishmeal and fish oil. However, the population of the small communities on the east coast of Greenland has a long tradition of using capelin for human as well as animal consumption, cf. Annex 24 on the role of capelin in the traditional Greenland society.

182. Capelin is a migratory fish with a life span of 3 – 4 years. The relevant capelin stock is found within the economic zone of Iceland and the fishery zones of Greenland and Jan Mayen, including

the disputed area. The migratory pattern of the capelin varies greatly with the climatic conditions but may in very general terms be described as follows:

The three-year-old capelin spawn off the south coast of Iceland in the months of March and April[11]). The young capelin remain primarily in Icelandic waters, the one-year-olds spending the months of May through August inside the Greenland fishery zone. In summer and autumn some of the two and three-year-old capelin expand their migratory range to include the waters between Greenland and Jan Mayen. These fish return to Icelandic waters in October where they stay until March when the majority spawn at the age of three years and die.

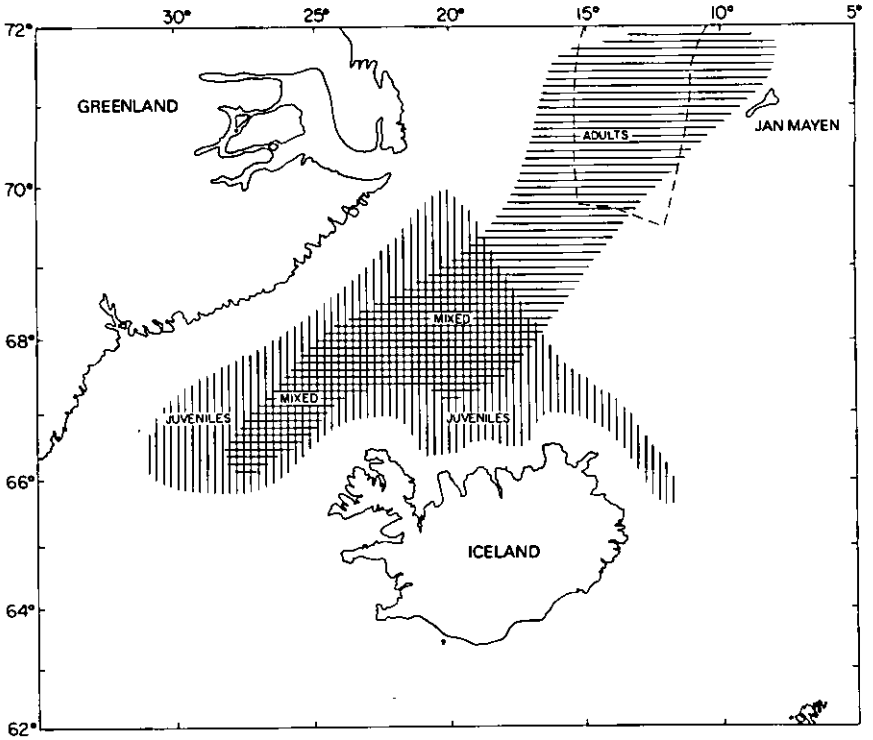
The migratory routes of two and three-year-old maturing capelin during the year is shown in the figure below.



[11]) *Capelin also spawn in the fiords of East Greenland, especially in the Ammassalik region ("Ammassalik" means capelin place in Greenlandic), but it remains uncertain to what extent there is a connection between the stocks.*

183. Capelin is considered to be commercially fishable at the age of 31 - 39 months. It is estimated that during the period from July to September over half the fishable stock is outside the Icelandic economic zone, part of this adult stock migrating to the disputed area between Greenland and Jan Mayen, cf. the figure below showing the typical geographical distribution of juvenile and adult capelin during feeding season.

Horizontal shading: adults Vertical shading: juveniles



184. Even though ice conditions prevent coastal fishing off East Greenland practically throughout the year and in the disputed area for a good part of the year, cf. paragraph 160, there is access to the disputed area during the months of July through September, making it one of the most important fishing grounds for summer capelin.

185. From the early 1960s through the mid-1970s capelin was fished commercially only off the coasts of Iceland, and purely by Icelandic fishermen. In the late 1970s Norwegian and Danish vessels commenced fishing capelin in the waters between Greenland and Jan Mayen.

186. Total annual and seasonal catches of capelin in the Iceland – Greenland / Jan Mayen area are shown in Annex 25. In 1987 the total catch of capelin amounted to about 1 million tonnes.

187. Catches of capelin in Greenland fishing territory off East Greenland from 1981 up to and including 1987, as reported to the Danish authorities, are listed in the table below which shows the combined Greenland, Faroese and EEC catches.

TABLE VI Combined Greenland, Faroese and EEC catches of capelin in tonnes.

	1981	*82**	*83**	*84*	*85*	*86*	*87*
Total	23,473	0	0	14,177	81,242	69,690	66,342

* *Catches not allowed because of the biological status of the stock.*

The Danish authorities are not in possession of reports on Norwegian or Icelandic capelin catches within the disputed area.

Goals set for development of Greenland's fishery sector

188. At present, exploitation of the fishing resources in Greenland waters is the only way in which Greenland in the foreseeable future can achieve a higher degree of economic independence. The Home Rule authorities aim at building up fishing and production capacities which will be adequate to meet that goal. Throughout the years the fisheries sector as a whole has suffered substantial losses and been dependent on considerable public subsidies. To reverse this trend the Home Rule authorities have focused on modernizing the production machinery, on gearing investment to availability of resources and, taught by history, on not relying solely on one species which has proved to be vulnerable to climatic changes.

189. The preliminary goals set for exploitation by Greenland alone of the resources within Greenland's fishing zone have been realized to a great extent. A further development of fisheries in Greenland waters requires continued technological development and exploitation of all potential resources in the form of either fishing from own vessels or selling fishing rights under agreements with other countries.

C. Activities Regarding Greenland's Non-Living Resources

190. Exploration for and exploitation of the non-living resources of Greenland have been carried out since the middle of the 19th century.

Many varieties of ore and minerals have been extracted at various locations in Greenland during the years, e.g., lead, zinc, coal and cryolite. However, the majority of the mining activities have now ceased, and today only one mine is in operation, namely the "Black Angel" lead and zinc mine in the municipality of Uummannaq. This mine has been almost exhausted, however, and the "Black Angel" is expected to close down in 1990.

191. Several attempts have been made to find new deposits of exploitable non-living resources in Greenland. Thus, exploratory activities are carried out for hard minerals as well as for hydrocarbons.

192. At present, on-shore exploration for hydrocarbons is being carried out in Jameson Land in East Greenland in an area of 10,000 square kilometres. Seismic surveys were initiated in Jameson Land in 1985.
With a view to providing a basis for decision-making concerning future oil exploration activities in parts of Greenland other than Jameson Land, it is planned during the next six years to carry out a reconnaissance survey of off-shore oil potential. This project covers collection, processing, interpretation, and sale of about 13,500 line kilometres of new seismic data collected on shelf areas off the west and east coasts of Greenland, 8,500 kilometres off North-East Greenland and 5,000 kilometres off West Greenland.
It is still too early to tell whether exploration activities in Greenland will result in the discovery of deposits of exploitable non-living resources which in the future may contribute to the development of the Greenland economy.

193. The exploration activities in Greenland are carried out partly by the public sector and partly by private enterprises on the basis of licences and concessions. The concessions were formerly granted solely by Danish authorities, but following the introduction of a new scheme for the administration of mineral resources in Greenland in 1979, granting of concessions and licences and all other substantial decisions regarding mineral resources in Greenland are contingent on agreement between the Danish Minister for Energy and the Greenland *Landsstyre*[12])

[12]) *For more details on the scheme for administration of mineral resources in Greenland, including the new agreement on distribution of public revenue between Greenland and Denmark, cf.: The Administration of Mineral Resources in Greenland (Annex 26) and Act No. 585 of 29 November 1979 on Mineral Resources, etc. in Greenland, as amended by Act No. 844 of 21 December 1988 (Annex 27).*

A: TREATY OBLIGATIONS OF THE PARTIES *INTER SE*

CHAPTER I
THE 1965 AGREEMENT BETWEEN NORWAY AND DENMARK

1. General

172. In the Danish Reply (p. 126, para. 337), the Norwegian line of argument is summarized briefly and adequately. In the following paragraphs of the Reply, attempts are made to show that Article 1 of the 1965 Agreement does not have that general and dispositive meaning which follows from its simple and straightforward wording. It should be noted, however, that the Reply does not seek to refute the contention that the language of Article 1 is clear and unequivocal in its content and general and unlimited in its application.

173. Instead, the Reply seeks to rely upon the rules of treaty interpretation, and emphasizes the *context* of the terms of a treaty in the light of its object and purpose.

174. It should be noted that part of this context is the Danish Royal Decree of 7 June 1963 concerning the continental shelf, with its absolute statement on median line delimitation. The context is characterized by Denmark's concurrent involvement in other boundary negotiations, leading up to the signature of Agreements with the United Kingdom and the Netherlands within less than four months. The views of Denmark on that context are clearly set out in pleadings before the Court in the *North Sea Cases*, (below, p. 69, para. 231, and p. 71, para. 237).

175. Denmark complains that Norway is attempting to "isolate" Article 1 of the 1965 Agreement, and appears to maintain that the general tenor of Article 1 must be read with, and in the light of, the more specific language of Article 2, setting out the precise coordinates for the establishment of the continental shelf boundary in the North Sea.

176. Article 1 of the Agreement is general in scope and provides for the delimitation of all areas of continental shelf which may fall to be delimited as between the Parties, whereas Article 2 fulfils the function of setting out the location of the boundary in

the North Sea by identifying its terminal points and the turning points by the geographical coordinates, in a process which has been described as "demarcation". The specificity of Article 2 related to the particular boundary then being delimited, but the generality of Article 1 was not limited or affected by it. In fact, if the scope of Article 1 is limited to the area expressed in Article 2, why was it necessary to have Article 1 at all?

2. Delimitation in Relation to Demarcation

177. In paragraph 339 of the Reply, it is stated flatly that "this is wrong". Relying on Basdevant's *Dictionnaire de la Terminologie du Droit International*, it is maintained that:

> "demarcation is a material and technical operation ... by means of boundary markers in the case of a land frontier and by lights and buoys in a maritime boundary."

178. In the seminal work on *International Boundaries – A Study of Boundary Functions and Problems* (New York, Columbia University Press, 1940), at page 32, the origin of the authority on which Denmark relies is given. It appears that A. Henry Mc Mahon, writing in 1935, found that it was annoying that the terms "delimitation" and "demarcation" often seemed to be used interchangeably. Instead, he arbitrarily suggested a distinction which corresponds to the differentiated meanings offered by Basdevant.

179. An alternative usage appears, however, to apply these terms to the process of international boundary drawing in a more sophisticated manner. The most recent edition of Nguyen Quoc Dinh's standard work[11] deals with boundary-making as a three-phase operation, involving the following distinctive elements:

> "L'opération complète de détermination de la ligne frontière se décompose en plusieurs phases. La première est celle de la *délimitation*, opération juridique et politique qui fixe l'étendue spatiale du ou des pouvoirs étatiques. La seconde est la *démarcation*, opération technique d'exécution qui reporte sur le sol les termes d'une délimitation établie. La troisième

[11]) with Patrick Daillier and Alain Pellet: *Droit International Public*, 3ème édition, Paris, Librairie Générale de Droit et de Jurisprudence, 1987, p. 429.

et ultime phase consiste dans *l'abornement*, opération qui matérialise la frontière sur le terrain par des repères convenus (bornes, piquets etc.)."

180. This three-phased conception of the boundary-drawing seems to be consistent with the current practice of the Secretary-General of the United Nations. In a recent report to the Security Council on the establishment of a Boundary Demarcation Commission to carry out certain tasks relating to the international boundary between Iraq and Kuwait[12], it is stated:

> "The terms of reference of the Commission will be to *demarcate in geographical coordinates* of latitude and longitude the international boundary *set out in the Agreed Minutes* between Kuwait and Iraq referred to above[13]. ...
>
> "The demarcation of the boundary ... will be accomplished by drawing upon the appropriate material, including ... (a) map ...
>
> "The *physical representation* of the boundary will be carried out through the erection of an appropriate number of boundary pillars or monuments." (emphasis supplied).

181. It is submitted that this usage is entirely consistent with the contention that Article 1 of the 1965 Agreement between Norway and Denmark had the primary function of effecting the first stage of *delimitation*. This provision states in unambiguous terms that "[t]he boundary ... shall be the median line ...". This normative statement must be held to apply wherever and whenever parts of the continental shelf appertaining to Norway and Denmark fall to be *delimited*. There is no geographical restriction linked to this provision, and the preamble of the Agreement is also broad and general.

182. Article 2 was designed to *demarcate* the median line within a specific geographical location, *i.e.* in the North Sea, by specifying the coordinates for the terminal and turning points for that median line. This demarcation would also incorporate such adjustments as may be desirable "to arrive at a practicable application of the principle referred to in Article 1 ...".

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[12]) *Report of the Secretary-General Regarding Paragraph 3 of Security Council Resolution 687 (1991)*, U.N. Doc. S/22558, 2 May 1991.

[13])Agreed Minutes in *United Nations Treaty Series, Vol. 485, No. 7063 p. 321, 1964.*

183. It should be noted that the technical difficulties which arise in boundary-making in sandy desert regions (to which the Secretary-General's Report refers) are not unlike those obtaining in maritime boundary-making.

184. It should also be noted that in certain circumstances, it is necessary to establish a "third phase" even for continental shelf boundaries. A "physical representation" may take the simple form of markings on an installation straddling a boundary (which is the case in the three unitized fields operated across the shelf boundary between Norway and the United Kingdom). In other circumstances, it may be desirable to provide a precise, physical representation of the boundary in the form of sub-sea markers (which may be supplemented with electronic identifiers).

185. Alternatively, finely specified descriptions of the actual location of a shelf boundary may be given by defining it in relation to one or more positioning systems, with or without reference to physical installations or markers. Such definitions will have a high degree of precision, and will assist greatly in determining the physical location of any point of the boundary within a margin of some decimetres. Such a description of the boundary would, however, be more detailed than would be considered necessary – or even useful – for the second-phase demarcation of a boundary. But a description of this level of precision might serve an administrative purpose in establishing the exact location of a boundary tri-point, or technical purposes in relation to an off-shore installation and its emplacement, or for the determination of the allocation of the respective shares of a resource deposit straddling a boundary.

186. In these contexts, a detailed description would correspond to the physical representation of the boundary in its physical environment.

187. Indeed, in 1965 there was every reason for both Parties to emphasize their attachment to the median line as the primary norm for continental shelf delimitation by setting out a general statement to the effect that:

> "[t]he boundary between those parts of the continental shelf over which Norway and Denmark respectively exercise sovereign rights shall be the median line ...".

188. In the same manner, the unqualified and unambiguous statement of a general norm for the delimitation of adjoining continental shelf areas served to establish certainty and predictability in the relations between the Parties.

189. The Norwegian Government remains confident in its view that Article 1 of the Agreement of 1965 sets out a general and dispositive norm governing the delimitation of all areas of continental shelf which would fall to be delimited as between Norway and Denmark. This norm reflects the common views – the *opinio juris* – of the Parties with regard to the tenor of the norms of general international law, corresponding exactly with the provisions of proclamatory instruments of both Parties defining their respective continental shelves and the extent of their claims. The 1965 Agreement makes no reference to any exceptions from the general norm, and contains no proviso allowing for a departure from it in the case of the continental shelf areas between Jan Mayen and Greenland.

190. The Danish Reply reiterates (at p. 28, para. 71) that "... there exists no common shelf between East Greenland and Jan Mayen". This contention is qualified as "a statement of geological fact". The contention is irrelevant. As a matter of law, a statement of geological science is in no way conclusive for the purpose of determining the extent of coastal State jurisdiction and exercise of sovereign rights with respect to the continental shelf and its resources.

191. The definition of the continental shelf for juridical purposes has never been a mechanical reflection of concepts, terminology or definitions applied within the science of geology. In the *Tunisia/Libya Case*, the Court noted that:

> "... at a very early stage in the development of the continental shelf as a concept of law, it acquired a more extensive connotation, so as eventually to embrace any sea-bed area possessing a particular relationship with the coastline of a neighbouring State, whether or not such an area presented the specific characteristics which a geographer would recognize as those of what he would classify as 'continental shelf'. This widening of the concept for legal purposes, evident particularly in the use of the criterion of exploitability for determining the seaward extent of shelf rights, is clearly apparent in the records of the International Law Commis-

sion and other *travaux préparatoires* of the 1958 Geneva Convention on the Continental Shelf." (*I.C.J. Reports 1982*, p. 45, para. 41).

The Court goes on to comment that:

> "... the definition [in Article 1 of the Convention on the Continental Shelf] of the outer limit of the shelf by reference to the possibility of exploitation of the sea-bed ... emphasizes the lack of identity between the legal concept of the continental shelf and the physical phenomenon known to geographers by that name." (*I.C.J. Reports 1982* p. 44-5, para. 42).

192. It should be recalled that the definition of the continental shelf in Danish legislation restates the double criteria of Article 1 of the 1958 Convention (Article 1 of Royal Decree of 7 June 1963, Counter-Memorial Annex 29). The Norwegian definition of the shelf was, until the Act of 22 March 1985 relating to Petroleum Activities, solely based on the criterion of exploitability (Royal Decree of 31 May 1963, Annex 21, and Act of 21 June 1963, Annex 22). There is thus no doubt that both States applied a definitional criterion which was divorced from geology, and which carried with it an automatic expansion of the area claimed for the exercise of coastal State sovereign rights, as technical capabilities for exploitation progressively developed.

193. The Norwegian Government was fully conscious of the effects of the "variable" or "movable" criterion for defining the national area of continental shelf. Thus, in 1974, the Norwegian Minister responsible for petroleum affairs made representations to the United States government agency responsible for deep subsea drilling operations carried out for scientific research purposes on the Vøring Plateau by the drillship *Glomar Challenger*. In a letter to the U.S. National Science Foundation dated 2 December 1974, the Minister for Industry stated that the Norwegian Government held the view that offshore areas in water depths from 1,206 metres to 1,439 metres, at a distance of between 130 and 162 nautical miles from land, were part of the Norwegian continental shelf. On that basis, it was found "highly regrettable" that drilling operations had taken place without the required permission (Annex 86).

194. On the basis of the views demonstrably held by Norway at that time, and expressed internationally in defence of Norwegian interests, it may safely be concluded that Norway at

the same time also held the view that the seabed between Jan Mayen and Greenland would be subject to the sovereign rights and jurisdiction of the two coastal States. Whether the nature of the subsoil rock was oceanic or continental was recognized to be irrelevant.

3. The 1979 Agreement on Delimitation between Norway and Denmark in the Faroe Islands Region

195. In paragraph 342 (p. 127) ff. of the Danish Reply, reference is made to the subsequent 1979 Agreement specifying the course of the continental shelf boundary and the EEZ/fisheries zone boundary in relation to the region between Norway and the Faroe Islands. The Reply quotes comments in the Norwegian Proposition to the Storting as an acknowledgement that the 1965 Agreement did not relate to any shelf areas beyond the southern part of the North Sea and the Skagerrak.

196. That assumption is not justified. The text of the Proposition (as quoted in the Reply) makes an initial statement that the 1965 Agreement concerned "the delimitation of the continental shelf between the two states". That corresponds entirely to the Norwegian position that this agreement was general in nature, and related to all areas of continental shelf falling to be delimited. The Proposition goes on to state that "the Agreement did not *cover* the delimitation of the continental shelf in the area between Norway and the Faroe Islands." (emphasis supplied). An explanation is offered: Norway did not at the time wish to open this part of the continental shelf to exploitation. That is the same reasoning which caused the 1965 Agreement between Norway and the United Kingdom (Counter-Memorial, Annex 44) to halt the dividing line, for the time being, at the latitude of 61°44'12"N. The context makes it clear that in presenting the 1979 Agreement to the Norwegian Parliament, the substantive connection with the earlier negotiation was clearly borne in mind.

197. It may well be that it would have been more elegant to record this further demarcation of shelf and zonal boundaries by the adoption of a Protocol to the 1965 Agreement (avoiding, for instance, the need to restate the substance of the existing unitization clause). But that does not detract from the fact that the 1979 Agreement follows exactly the pattern of the previous instrument, by positing the governing norm in Article 1, and setting out the specifics of the demarcation in Article 2. The additional element

was the wish of the Parties to provide for delimitation of the 200-mile economic zone and fishery zone. No controversy was perceived, but the new element transcended the scope of the 1965 Agreement.

198. At any rate, at the time when negotiations for the 1979 Agreement commenced, the task was seen as a simple and mainly technical operation. Only administrative conveniences appear to have played a part in choosing the form of an independent instrument. No other considerations were present. The technical calculations for the demarcation of the already established median line were carried out and accepted by both sides in less than six months.

199. Paragraph 344 of the Danish Reply refers to the fact that "for the time being", the Parties did not wish to establish the boundary beyond 200 nautical miles from their baselines. It is suggested that this implies an acknowledgement by Norway that the 1965 Agreement did not apply in this region. The simple explanation is of course that in 1979, there was still good reason to avoid action which might be seen to discount ongoing negotiations at the Third United Nations Conference on the Law of the Sea. At the same time, any extension of the bilateral boundary beyond a point 200 nautical miles distant from the coasts of each Party would require technical inquiries which it might, for the time being, be impractical to carry out. The statement in the third preambular paragraph of the 1979 Agreement that:

> "for the time being, [the Parties] will not establish the boundary farther north than to the point which lies 200 nautical miles from the nearest point on the baselines ..."

thus in no way implies a retreat from the statement of the 1965 Agreement, reiterated in Article 1 of the 1979 Agreement, that this boundary will be the median line whenever the Parties find it necessary to demarcate it.

4. Diplomatic Contacts and Legal Argument

200. The Government of Denmark complains (at p. 130, para. 350 of the Reply) that the 1965 Agreement was not put forward in argument by the Norwegian side in the course of the negotiations and contacts which took place between the Parties in the years between 1980 and 1988.

201. That might have been an apposite complaint had it related to pleadings before a judicial body. In relation to a diplomatic negotiation between two friendly Governments it is not. After 1983, in particular, the aim of the Norwegian Government was to seek a mutually acceptable practical solution. The practical issues related overwhelmingly to fisheries, as well as to sealing and whaling. Jurisdictional and resource questions specifically relating to the continental shelf were not prominent.

202. This context called for diplomatic techniques, not for strident advocacy. However, concerns of political expediency and diplomatic tactics are not pertinent at the present juncture, since Denmark has chosen to seek a judicial determination, rather than continuing the negotiation effort. Denmark has no valid complaint if Norway now invokes the legal effects of a prior treaty, with its clear and specific implications, even if Norway for political and diplomatic reasons did not draw upon that treaty as an element in negotiations.

CHAPTER II
THE 1958 CONVENTION ON THE CONTINENTAL SHELF

1. General

203. In the Danish Memorial, the 1958 Convention on the Continental Shelf is referred to at pages 59-64 (paras. 210-219). Initially, it is acknowledged that the Convention remains in force as between the two States (para. 210).

204. After citing various Judgments of the Court (and that of the Anglo-French Court of Arbitration), it is stated (p. 63, para. 218) that:

> "[o]ne cannot, however, claim that Article 6 expresses a rule of customary international law governing all maritime delimitations today, such as for instance delimitation of fishery zones."

205. After having quoted the Chamber of the Court in the *Gulf of Maine Case* (*I.C.J. Reports 1984*, p. 303, para. 125), the Memorial concludes, however, that:

> "[i]n the present case concerning a single line of delimitation both for a fishery zone and a continental shelf area, it is the contention of the Government of Denmark that the applicable principles and rules are those having found expression in the 1982 United Nations Convention on the Law of the Sea." (Memorial, para. 219).

206. In its Counter-Memorial, the Norwegian Government contended that in respect of the continental shelf between Greenland and Jan Mayen, Denmark continues to be bound by its obligations under the 1958 Convention on the Continental Shelf (pp. 84-86, paras. 293-301).

207. In its Reply (p. 163, paras. 447-448), Denmark now admits, in a somewhat subsidiary manner, that delimitation is not necessarily to be considered under the exclusive perspective of a single maritime boundary ("It could also have been considered to develop the legal argument in respect of the continental shelf and the fishery zone respectively"). On that basis, it is confirmed that the 1958 Convention is in force between the two Parties, and acknowledged that "the equidistance/special circumstances rule contained in Article 6 ... would be the governing norm deciding *the boundary line for the shelf*".

208. This acknowledgement dispels the illusion that the legal relationship between the Parties in relation to the delimitation of the continental shelf is based exclusively on customary law. The 1958 Convention is directly applicable to the delimitation of the continental shelf between the Parties.

209. The acknowledgement also serves to recall that the present proceedings are not based on any procedural arrangement which might affect the competence of the Court, or extend or restrict the sources of law to which it should have recourse, or otherwise specifying the functions of the Court.

210. In the *Gulf of Maine Case*, the Chamber expressed that it:

> "therefore takes the view that if a question as to the delimitation of the continental shelf only had arisen ... there would be no doubt as to the mandatory application of the method prescribed in Article 6 of the Convention, always subject, ... to ... recourse ... to another method or combination of methods where special circumstances so require." *(I.C.J. Reports 1984*, p. 59, para. 118).

211. The Chamber concluded, however, that its function was not to provide a delimitation of the continental shelf alone. The Chamber accepted the fact that the Parties, in their Special Agreement, had defined the judicial function in a manner which required the drawing of a single delimitation line for both the shelf and the superjacent fishery zone (*ibid.*, para. 119). This conclusion inspired the Chamber to concentrate its consideration on those legally relevant factors which were equally applicable to both the shelf and the fishery zone.

212. In the present proceedings, there is no Special Agreement, and one Party alone has requested the Court to determine a "single maritime boundary". In this connection, it may be useful to recall the comment of the Chamber in the *Gulf of Maine Case* to the effect that:

> "even the 1982 United Nations Convention on the Law of the Sea, which is not yet in force ... still does not provide for the delimitation of both objects by a single line ..." *(I.C.J. Reports 1984*, p. 49, para 84).

2. The Relationship between the 1965 Agreement and the 1958 Convention

213. In assessing the import of the 1958 Convention on the Continental Shelf, by which the Parties are bound, the first consideration is whether the Parties have acted in a manner which could have modified or affected the operation of the provisions of the Convention.

214. The 1965 Agreement was negotiated in full knowledge of the 1958 Convention. Both Parties had modelled their domestic legislation and their international policy on the Convention, which both regarded as an expression of codified customary international law. The Convention had entered into force (on 10 June 1964) before the conclusion of the 1965 Agreement. Although Norway, for reasons which had nothing to do with delimitation, did not adhere to the 1958 Convention until 1971, the 1965 Agreement is in conformity with the Convention. The conclusion of that Agreement conforms with the primary norm for the delimitation of the continental shelf as set out in Article 6, paragraphs 1 and 2, namely that the boundary shall be determined by agreement between the Parties. The 1965 Agreement is an instance of *application* of the principles of the 1958 Convention, even though it was not at the time formally in force for Norway. That temporal coincidence could not have the legal effect that the 1958 Convention as *lex posterior* should override the 1965 Agreement, as suggested in the Danish Reply, at page 129 (para. 345).

215. On the contrary, as the specific instrument, in application of the pre-existing general Convention of 1958, the 1965 bilateral Agreement must be seen as governing the relationship between the Parties. Article 1 of the Agreement must be read as a confirmation that the Parties recognize that there are no special circumstances which could affect continental shelf delimitations between them.

216. As stated in the Counter-Memorial (p. 86, para. 300), it is the view of the Norwegian Government that the provisions of Article 6 of the 1958 Convention are to be applied in the light of the 1965 Agreement, and thus the two treaty obligations operate *conjointly*. Invocation of the occurrence of a special circumstance has been precluded by the generality of Article 1 of the 1965 Agreement.

217. It is the contention of the Norwegian Government that the 1958 Convention applies to the delimitation of the continental

shelf as between the Parties in the region between Jan Mayen and Greenland, in the light of the 1965 Agreement. The Agreement, read with the Convention, constitutes a recognition that no special circumstance exists in areas in which the continental shelf would fall to be delimited as between the Parties. Alternatively, the Agreement implies that the Parties have renounced the proviso of Article 6, paragraph 1 of the Convention, relating to special circumstances, or have otherwise determined that it is not operational.

218. The conclusion, as stated in the Norwegian Counter-Memorial (p. 86, para. 301), is that the median line constitutes the boundary, and that Denmark is bound by the Convention not to exercise any jurisdiction with regard to any part of the continental shelf to the east of the median line.

3. If the 1958 Convention were Exclusively Applicable

219. Alternatively, if the implications of the 1958 Convention for the delimitation of the continental shelf between the Parties were to be contemplated in isolation from the 1965 Agreement, the legal effects would be considerably different from what is suggested in the Danish Reply at page 163 (para. 448).

220. In the uncomplicated coastal geography of Jan Mayen and Greenland, with no intruding or distorting extraneous features, there are no "special circumstances" within the meaning of the 1958 Convention. Denmark has nonetheless suggested the existence of special circumstances.

221. Within the scope of Article 6, paragraph 1 of the 1958 Convention, the first step in an examination of the Danish claims would be to determine whether any geographical situation, or any factor invoked in support, would in fact correspond to a "special circumstance" within the meaning of the Convention. The next step would be to assess whether the impact of any single such circumstance, or of an aggregation of such circumstances, might be of a nature to "justify" a departure from the median line.

(a) Denmark's Invocation of "Special Circumstances" in the Reply

222. Neither the Danish Memorial nor the Reply provides any substantial attempt at identifying those conditions which

Denmark considers as constituting "special circumstances" within the meaning of the 1958 Convention. There is no reasoned attempt to substantiate the position that any particular condition has such an effect on the drawing of a median line that "another boundary line is justified".

223. Instead, the Government of Denmark is content to make some vague allegations about the legal contents of the special circumstance clause.

224. At pages 163-164 (para. 448) of the Reply it is stated that:

> "[o]n the basis of the 1958 Convention the Government of Denmark could plead along the same lines as in the Memorial and this Reply in support of a contention that the island of Jan Mayen, *par excellence*, falls within the concept of 'special circumstances' and should be given no effect on Greenland's 200-mile continental shelf area." (italics in original).

225. This assertion statement amounts to saying that Jan Mayen is a special circumstance unto itself. But the language of Article 6, paragraph 1 of the Convention would appear to require that any alleged special circumstance, and its effect, must be considered *in relatio* to a median line boundary, as drawn *without regard* to the feature or condition cited as a special circumstance.

226. There is, in the system of the 1958 Convention, no such thing as a self-defining special circumstance *per se*. It must be demonstrable that the feature or condition has an untoward effect on the drawing of a median line. For a special circumstance to taken into consideration, it is a further requirement that this untoward effect be of sufficient impact on the total picture of the delimitation to be effected, so as to offend against a certain minimum standard of what is considered equitable.

227. The suggestion that Jan Mayen *as such and of itself* should be considered as a special circumstance, and that the consequence of that consideration should be to disregard the island entirely for the purpose of delimitation, is self-defeating. It is incompatible with the statement in the Reply (p. 152, para. 414) to the effect that "[t]he Government of Denmark does not, however, question Jan Mayen's status as an island under interna-

tional law ...", referring further to the fact that Denmark did not object to the establishment of Jan Mayen's fishery zone "to the east towards the open sea."

228. Where the practice of the Court has rejected a factor or situation as not constituting a *relevant* circumstance in cases where Article 6, paragraph 1, of the 1958 Convention did not apply, these holdings must *a fortiori* exclude such factors or situations as *special circumstances* within the scope of that provision.

229. A further indication of the Danish misinterpretation of the concept of special circumstances may be found at page 83 (para. 205), where a passage from the Report of the International Law Commission to the General Assembly in 1956 is quoted without further comment.

(b) The Danish Interpretation of "Special Circumstances" in the North Sea Cases

230. If the Government of Denmark is rather vague in the present pleadings, it has made its views on Article 6 of the 1958 Convention very clear on a previous occasion. In its pleadings before the Court in the *North Sea Continental Shelf Cases*, a very extensive account was given of the legal contents of the equidistance/special circumstances formula. This view contradicts the present position of Denmark.

231. In its Counter-Memorial in the *North Sea Continental Shelf Cases*, Denmark strongly argues against the Federal Republic who:

> "seems to assume that this clause opens up a general liberty to depart from the rule of equidistance whenever a State finds that the application of the general rule does not give a result that satisfies its aspirations". (*I.C.J. Pleadings, North Sea Continental Shelf*, Vol. I, p. 214, para. 156.)

232. As opposed to this broad view Denmark gives a strictly legal and limited interpretation of the "special circumstances" clause:

> "The special circumstance clause was, however, formulated and intended to be applied as a rule of law. It admits the possibility of a modification of the general rule on the basis of geographical configuration only in the cases where a

particular coastline, *by reason of some exceptional feature*, gives the State concerned an extent of continental shelf *abnormally large in relation to the general configuration of its coast*. Then a correction is allowed by the clause in favour of an adjacent State whose continental shelf is *correspondingly made abnormally small in relation to the general configuration of its coast by that same exceptional feature*...The clause neither contemplates nor admits a State's being deprived of areas of continental shelf which are naturally appurtenant to its coast and entirely normal in relation to the general configuration of its coast; for to allow that would be to do inequity and injustice to the State so deprived." (*I.C.J Pleadings, North Sea Continental Shelf*, Vol. I, p. 214, para. 156.)

233. In the oral pleadings the Danish agent rejected the view that there was any room for the concepts of the just and equitable share and the coastal frontage within the equidistance/special circumstances formula. He stated that if the concept of the just and equitable share could be based on the special circumstances clause

> "it would mean that the equidistance rule would be virtually without effect, as every conceivable equidistance boundary, according to the Federal Republic, should be put to the test of the just and equitable share and, if it did not pass the test, should be replaced by another boundary line." (*I.C.J. Pleadings, North Sea Continental Shelf*, Vol. II, p. 144).

234. In relation to the concept of coastal frontages, the Danish agent further stated that the interpretation of the Federal Republic

> "would mean a complete negation of the main rule of equidistance because this rule has nothing to do with proportionality according to coastal frontages, a concept completely unknown during the work in the International Law Commission and the Geneva Conference." (*I.C.J. Pleading, North Sea Continental Shelf*, Vol. II, p. 145).

235. This is quite different from present Danish allegations about the equidistance/special circumstances formula being "an expression of equity" (Reply, para. 448), and about the extensive Danish list of "relevant factors" being applicable also in relation to Article 6 of the Geneva Convention.

236. The attempt in the Reply to interpret the equidistance/special circumstances formula in relation to islands is also quite different from the view taken in 1969. At page 83 (para. 205), Denmark quotes the aforementioned passage from the Report of the International Law Commission to the General Assembly in 1956 which appears in the Commentary to Article 72 (as it then was). The passage reads as follows:

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

237. In the *North Sea Continental Shelf Cases*, Denmark gave a detailed interpretation of this statement from the International Law Commission. After having rejected this commentary as a foundation for an interpretation of special circumstances in a broad sense, the Common Rejoinder of Denmark and the Netherlands interprets the ILC Commentary along the following lines:

> "The commentary states that a modification of the *strict* application of the equidistance principle may often be required and since there are a great number of *small, insignificant* islands throughout the world – *also* situated in such a way that they might influence the delimitation of the continental shelf – it is obvious that the interpretation laid down here [the more strict interpretation of Denmark and the Netherlands – reflected in the quotation in para. 232] will *frequently* make the clause applicable." (*I.C.J. Pleadings, North Sea Continental Shelf*, Vol. I, p. 527, para. 126; emphasis supplied).

238. In an individual observation of the Danish Government in the Common Rejoinder, Denmark exemplifies what kind of "small insignificant islands", that are in a particular geographic position, may be considered as a special circumstance. Denmark refers specifically to "an uninhabited sand reef" situated on the common shelf of a "State A and a State B (that) are fronting each other." (*I.C.J. Pleadings, North Sea Continental Shelf*, Vol. I, p. 532, para. 142). In other words, the island is not considered to be a special circumstance unto itself, but can only be taken into consideration in relation to a median line boundary drawn between other coasts – the coasts of State A and State B.

239. An explanation which may be offered for this change in attitude is, of course, that the Court did not find for Denmark in 1969. Such an explanation would miss the point of the Court's position entirely. In the *North Sea Cases*, the Court found that the 1958 Convention was not opposable to Germany, which was not a party, and that the Convention was neither "declaratory of a mandatory rule of customary international law" from its inception, nor has "its subsequent effect been constitutive of such a rule" (*I.C.J. Reports 1969*, p. 45, para. 81). Quite simply, the Court did not find reason to address the concept of "special circumstances" as a matter of interpretation of Article 6 of the 1958 Convention, because that Convention was not material to the case.

240. But the Convention is clearly material in the present case. It remains obligatory as between the parties thereto, among them Norway and Denmark. Denmark's views on the drafting intent and interpretation of Article 6 remain valuable and valid.

(c) The Operation of the 1958 Convention

241. As long as Denmark recognizes that Jan Mayen generates a continental shelf, that means that the 1958 Convention provides certain norms for a delimitation. The first norm is that the Parties are free to negotiate a boundary, taking into account such legal and political considerations as they see fit. The Parties are called upon to negotiate meaningfully.

242. Article 6 of the 1958 Convention lays down a specific norm to be applied *in law* in the event of a failure to agree. This substantive norm prescribes the median or equidistant line. The median line, which applies as between opposite coasts, could only be modified by the presence of any special circumstance, of a nature to justify such a modification.

243. Article 6 of the 1958 Convention does not specify either the substantive or procedural alternatives in the event of the existence of any relevant special circumstance of that qualified character. Jurisprudence has not up to now dealt with this particular question as between parties to the 1958 Convention which had not made specific provision for judicial settlement through a Special Agreement.

244. In the present proceedings, the terms of the 1958 Convention only allow for an investigation as to whether, within

the geographical situation obtaining in the region between Jan Mayen and Greenland, there is present any *specific circumstance*, additional to the very existence of Jan Mayen itself, which would in law have the effect of modifying the median line.

245. That, and nothing more, is what is required under the provisions of Article 6, paragraph 1 of the 1958 Convention, if it is to be regarded in isolation.

246. Denmark has not adduced relevant evidence, or sufficient argument to enable the Court to arrive at any other conclusion than that there is no special circumstance present in the region between Jan Mayen and Greenland to justify another boundary line than the median line.

4. Summary of Norway's Views on the 1958 Convention

247. In the foregoing, various aspects of the application of the 1958 Convention on the Continental Shelf have been addressed, mainly in the context of the comments presented in the Danish Reply. Since the Reply discloses that the Government of Denmark does not seem to appreciate fully the role which the 1958 Convention has in the legal relationship between the Parties, it may be useful to set out, in compressed form, a more structured exposition of the views of the Norwegian Government in that respect.

248. The implications of the fact that the 1958 Convention on the Continental Shelf is a treaty in force between the Parties – now acknowledged by Denmark – are several.

249. The foremost implication – so obvious as to be almost overlooked – is that the delimitation of the continental shelf between Jan Mayen and Greenland is governed by the provisions of Article 6 of the 1958 Convention (insofar as it is not regarded as determined by the 1965 bilateral Agreement).

250. The coasts of those two territories are opposite each other, which subsumes the situation under paragraph 1 of Article 6. The primary norm is then that "the boundary of the continental shelf appertaining to such States *shall be determined by agreement between them.*" (emphasis supplied).

251. The Parties must observe the technical requirements of paragraph 3 of Article 6 (in so far as they may be practicable).

And the Parties must respect the rights of third States with regard to their interest in those areas of continental shelf which may be affected by the delimitation which the Parties would like to establish.

252. Otherwise, the Parties are free to establish a boundary by whatever criteria they see fit. They are not bound by any restrictions with regard to the considerations which are allowed to influence the determination of the boundary. There is no injunction or restraint with respect to the evaluation of the *quality* of the boundary arrived at in the process of negotiation.

253. Moreover, the Parties may agree not to delimit their respective shelf areas, and may or may not define common rules governing activities in any part of their shelf areas, or throughout them. They may agree upon interim arrangements. If they so wish, they may also agree upon procedures for dealing with the issues raised by failure to agree on any of the aspects of an agreed approach to the delimitation process.

254. Such agreement may extend to the submission of the matter for judicial or arbitral decision. If so, the agreement may be more or less precise or detailed in specifying the function of the Court or Arbitral Tribunal. The Parties may in so doing request the Court or Tribunal to determine the boundary.

255. It is Norway's position that Norway and Denmark have agreed on the delimitation of all their continental shelf boundaries, in conformity with the primary delimitation norm of the 1958 Convention. Denmark contends that this is not the case. The consequence of the Danish contention must be that the alternative delimitation norm of that Convention applies. That is Norway's alternative position. At the same time, there is no agreement between the Parties establishing any particular settlement procedure.

256. Article 6, paragraph 1 of the 1958 Convention furnishes a clear provision for the situation obtaining where the Parties fail to agree on a boundary (or any aspect of delimitation obviating the need for a boundary, or on any settlement procedure): "In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, ...".

257. Denmark has now brought the matter before the Court, and has requested the Court to determine the boundary between the continental shelf of Jan Mayen and that of Greenland.

258. Under the terms of the 1958 Convention, this means that the Court will have to examine the question of whether or not there would be present in the region any special circumstance, and, if so, whether such a circumstance justifies another boundary than the median line.

259. The coasts of Jan Mayen and Greenland are opposite coasts, and the question must therefore be addressed on the basis of paragraph 1 of Article 6. It is not a matter of evaluating "the application of the principle of equidistance", which is the operative language of paragraph 2. The question is more straightforward: unless there is present a special circumstance which justifies another boundary, the median line *is* the boundary for the continental shelf.

260. The function of the Court in the present matter, under the terms of the 1958 Convention, must therefore be a different one from what the Court has encountered in previous maritime delimitation cases, both in terms of the operative conclusions of the Judgment, and with regard to the sources of law which can be considered relevant.

261. It is the principal view of the Norwegian Government that the 1958 Convention must be held to apply conjointly with the 1965 bilateral Agreement, as well as other transactions between the Parties, in relation to the delimitation of the continental shelf between Jan Mayen and Greenland.

262. In the event that the 1958 Convention were to be considered in isolation, it is the view of the Norwegian Government that the substantive delimitation norm of the Convention should be applied in its simplest form, that is according to its straightforward wording, unaffected by elements of interpretation which have been established in contexts where States are not mutually bound by the Convention.

263. The Danish Reply has acknowledged (albeit in a somewhat subsidiary fashion) that the delimitation of the continental shelf in the area could have been considered separately (cf. p. 64, para. 207 above). Otherwise, the Reply is strangely silent on the question of the continued applicability of the 1958 Convention.

264. At pages 161-162 (paras. 443-444) of the Reply, however, an effort is made to juxtapose the norm contained in Article 6 of the 1958 Convention on the Continental Shelf, and the provisions of Article 83 (and correspondingly in Article 74) of the 1982 Convention on the Law of the Sea. In its discussion of the provisions of the new instrument, it is stated that the general rule of equity which is embodied "... fails to give guidance on the exact contents of that rule." (p. 162, para. 443).

265. Article 83 contains a reference to "the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice". It is submitted that this reference provides a much more positive and helpful framework for the delimitation process than that which is suggested by the Reply. It is made clear that previously agreed delimitations are not superseded. Consequently, for States party to the 1958 Convention, a *renvoi* to the substantive norms is contained in Article 6. As stated by Professor Caflisch, the *renvoi* formula "... in essence preserves the *status quo* ..." (in R. Bernhardt (Ed.): *Encyclopedia of Public International Law*, vol. 11, p. 217).

266. Thus, for parties to the 1958 Convention, the situation is clear enough. The application of the provisions of the 1958 Convention follows directly from the language of the 1982 Convention; the injunction "... to achieve an equitable solution" set out in Article 83, paragraph 1 of the 1982 Convention is already safeguarded by the 1958 Convention. There is no contradiction between the two instruments; they rely on each other.

C: GENERAL INTERNATIONAL LAW

CHAPTER V
THE GENERAL CHARACTER OF THE DANISH REPLY

1. The Outer Limit of the 200-mile Zone Principle

365. Like its predecessor, the Danish Memorial, the Danish Reply purports to rely exclusively upon general international law. However, as before, the actual mode of reliance upon general international law is characterized by an eccentricity which inhibits the appropriate development of the pleadings.

366. The solution proposed by Denmark is premised upon a principle which is unrelated to delimitation according to equitable principles and is completely unrelated to the relevant jurisprudence of international tribunals. The principle is that of the 200-mile outer limit of a fishery zone and/or continental shelf measured from Greenland's baseline. In its Reply (p. 152, para. 414) in response to the Counter-Memorial, Denmark complains that "nowhere in the Memorial" has Denmark "used the expression quoted by Norway: 'outer limit of 200 miles zone principle' ". That is true and the quotation marks were intended to highlight the "principle". (If this had involved a quotation, then a reference would have been provided).

367. The fact remains that the 200-mile outer limit criterion is invoked as the basis of delimitation and therefore (it can be presumed) as a legal principle. This is clear from the relevant passages in the Danish Reply. Thus in the passage in which Denmark complains of the Norwegian use of the term "principle", the Danish Government states that: "The Danish contention is that an *equitable boundary line* in the waters between Greenland and Jan Mayen 'should be drawn along the outer limit' of Greenland's fishery zone ..." (Reply, p. 152, para. 414; emphasis supplied).

368. No attempt is made by Denmark to explain why tribunals have not referred to such a criterion and why it is not to be found in the literature.

2. The Danish Conception of Entitlement

369. The resort to an eccentric criterion inevitably draws in its train various elements of confusion. The first example involves a major contradiction in the Danish argument. For the Danish Reply confuses the forms of a delimitation argument with the substance of various assertions that "Greenland's 200-mile zone" has a higher status and is *in essence* not susceptible to a process of delimitation.

370. This position is evident in the following passages in the Reply:

(a) "In the view of the Danish Government an equitable solution in this area would not allow Jan Mayen *to encroach upon* Greenland's 200-mile fishery zone and corresponding shelf area". (p. 4, para. 7, emphasis supplied).

(b) "Denmark does not, for its part, question Jan Mayen's status as an island under international law, but it is the Danish submission that the small size and unpopulated character of Jan Mayen *does not entitle the island to a maritime zone which impinges upon Greenland's 200-mile zone*". (p. 5, para. 10, emphasis supplied).

(c) "The Government of Denmark has asked the Court to declare that Greenland *is entitled to a full 200-mile fishery zone and continental shelf area vis-a-vis the island of Jan Mayen.* It is Denmark's contention that international law supports the claim to a 200-mile fishery zone and a 200-mile continental shelf area". (p. 6, para. 14, emphasis supplied).

(d) "The examples do not support the Norwegian claim that Jan Mayen should be allowed *to impinge upon* Greenland's full 200-mile fishery zone and continental shelf area". (p. 86, para. 215, emphasis supplied).

(e) "These facts must weigh heavily in favour of not allowing the island of Jan Mayen *to infringe upon* Greenland's 200-mile fishery zone and corresponding continental shelf area". (p. 120, para. 327, emphasis supplied).

(f) "Denmark bases its legal position in the present maritime *delimitation* dispute on the premise that an island with the characteristics of Jan Mayen may have title to a zone, but as regards the extent of that zone cannot generate a maritime zone *which impinges on that of Greenland.* A claim of that kind by Norway could not produce an equitable solution as required by the governing international norm for deciding

maritime delimitation issues. *Consequently, the delimitation in this case must respect Greenland's 200-mile zone*, notwithstanding that Denmark/Greenland, for its part, does not question Jan Mayen's entitlement to a territorial sea of 12 miles *and* an additional maritime zone of no less than 32 miles up to the 200-mile limit measured from Greenland's baseline". (p. 153, para. 415, second and third emphases supplied).

(g) "Applying these factors with a view to an equitable solution constitutes the governing rule of the present dispute and leads Denmark to submit that the island of Jan Mayen *cannot be accorded an effect in the delimitation which would reduce* Greenland's 200-mile fishery zone and corresponding continental shelf". (p. 163, para. 445, emphasis supplied).

(h) "448. As the 1958 Geneva Convention on the Continental Shelf is in force between the two Parties (the Memorial, p. 59, para. 210), the equidistance/special circumstances rule contained in Article 6 of the Convention would be the governing norm deciding the boundary line for the shelf. On the basis of the 1958 Convention the Government of Denmark could plead along the same lines as in the Memorial and this Reply in support of a contention that the island of Jan Mayen, par excellence, falls within the concept of 'special circumstances' *and should be given no effect on Greenland's 200-mile continental shelf area.* As the equidistance/special circumstances rule can be seen as an expression of equity, see the Memorial, page 63, paragraph 218, the same pleading could be advanced to the effect that the relevant factors supporting a rule of equity in the present case lead to a solution *whereby Jan Mayen would not be allowed to impinge upon Greenland's 200-mile continental shelf.*

449. As to the fishery zones the governing norm of delimitation is that which leads to an equitable solution, cf. Article 83 of the 1982 Convention on the Law of the Sea. The pleading developed in the Memorial and this Reply with particular emphasis on the factor relating to the importance to Greenland of the fishery resource could also be developed in support of the contention *that the boundary line must respect Greenland's 200-mile fishery zone.* ..." (pp. 163-164, paras. 448-449; emphasis supplied).

(i) "To conclude this first consideration, it would seem to follow from the very nature of the island of Jan Mayen –

seen in relation to the delimitation dispute in question, which is concerned with broad maritime zones of an economic character – that the method of drawing a line of delimitation would have to be based on the premise *that the island of Jan Mayen could not be accorded a maritime zone which would impinge upon Greenland's right to a 200-mile fishery zone and a corresponding continental shelf area.*" (p. 168, para. 462, emphasis supplied).

371. In these passages, which occur in key sections of the Reply, it is clear that the Danish Government has moved beyond considerations of delimitation in accordance with legal principle. The starting point of such thinking is not delimitation but entitlement. Moreover, the conception of entitlement presented by Denmark is incompatible with a legal framework.

372. There is a broad range of State practice to evidence a general *opinio juris* that islands have an entitlement to extend their zone generation capacity fully, until overlapping areas of extension are created and a delimitation is called for. States which have taken part in the shaping of this State practice range from those having superpower status to island states with very small populations and very restricted land area. Some of the territories concerned have had various forms of non-self-governing status; others have been independent States. There is no known instance of a State objecting to this practice. Map VII attached to this Rejoinder shows the extent of zones of maritime jurisdiction claimed and recognized for islands in a central part of the Pacific Ocean.

373. The Danish thesis that the outer limit of the 200-mile zone has a status analogous to *jus cogens* and is not subject to the normal process of delimitation is accompanied by the claim that state practice can be found to support the Danish thesis. Denmark in fact only invokes two items which are supposed to form precedents: Bear Island and the Norwegian Agreement with Iceland of 28 May 1980. As to the former, see Chapter I of Part III (pp. 187–189, paras 633–641). The question of State practice will be examined fully in Chapter VIII below (pp. 139 ff.). For present purposes three observations are called for.

374. In the first place, it is clear that there is no general practice of states to support the Danish contentions. Secondly, the Norwegian Agreement with Iceland of 28 May 1980 was approved by the Storting explicitly on the basis that no precedent was being created in relation to other delimitations (see the Counter-

Memorial, pp. 107-108, paras. 368-370), and this is accepted by the Danish Government in the Reply. (p. 118, para. 319). Thirdly, the position adopted by Denmark in its pleadings is impossible to reconcile with its previous pattern of conduct and especially with the provisions of the Danish Executive Order of 14 May 1980 (Counter-Memorial, Annex 38). In relation to Jan Mayen the Order provides:

> "Where the island of Jan Mayen lies opposite Greenland at a distance of less than 400 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)."

375. The position of Denmark according to which Norway is not entitled "to encroach upon" Greenland's 200-mile fishery zone and shelf area (see para. 370(a) above) necessarily involves a refusal to give effect to Norway's entitlement in respect of Jan Mayen. The passages from the Danish Reply set forth above (para. 370) fully justify the concerns on the question of entitlement expressed by Norway in the Counter-Memorial (pp. 185-186, paras. 661-662). Denmark's case is not only based upon the *petitio principii* that Denmark's "entitlement" must be respected but that Norway's need not be. It bears no relation to any principle of international law.

376. The assertions by Denmark that title and delimitation are distinct (Reply, p. 5, para. 9; pp. 150-151, para. 410) are beside the point. The Danish insistence that the basis of "delimitation" is the full extent of the Danish maritime zone (see Reply, p. 153, para. 415) involves a reliance upon title. No balancing up of relevant factors in accordance with equitable principles is envisaged: only a legal prevalence of Greenland's 200-mile zone.

377. In this same context the statements in the Reply to the effect that Denmark recognizes the status of Jan Mayen as an island for purposes of international law (p. 5, para. 10; p. 152, para. 414) are paradoxical. If Jan Mayen is an island then its entitlement is of the same class as that of any other coast and there is no principle known to the law according to which the fishery zone or exclusive economic zone of another State could produce an automatic and mandatory reduction of the normal entitlement of Jan Mayen.

378. The eccentric result of the Danish argumentation is a peremptory refusal to recognize the entitlement of Jan Mayen in accordance with the law.

3. The Role of Geography in Delimitation

379. Like the Danish Memorial, the Reply has a tendency to misuse categories and thus to misrepresent the law. The Reply continues to insist, in an unhelpfully academic style, that "islands" as such form a "separate legal category" (p. 83, para. 204). The State practice and the well-developed jurisprudence establish beyond any doubt that it is the geography of coasts, including their relationships, from which the respective entitlements flow, and which govern delimitation in accordance with equitable principles. The involvement of islands as such provides no useful signals precisely because the category is too diverse and incoherent.

380. The role of geography in delimitation was the subject of serious confusion in the Danish Memorial. In particular, the Memorial insisted that the coasts of Norway and Greenland were "opposite" coasts comparable to those of the United Kingdom and France involved in the *Anglo-French Case*: see the Memorial, (pp. 95-96, para. 295). The ineptitude of this characterization was pointed out in the Counter-Memorial (p. 141, paras. 470-473). The Norwegian Government pointed out that:

> "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." (p. 141, para. 473).

381. It is unfortunate that this confusion has not been avoided in the Danish Reply. It is true that the Reply contains some evidence of contrition, and accordingly the following statement appears:

"The delimitation dispute, however, concerns the maritime zone between Greenland and Jan Mayen and not the sea between Greenland and the Norwegian mainland. Norway, therefore, is not a coastal state in relation to the present delimitation dispute". (Reply, p. 159, para. 436 *in fine*).

382. However, this contrition is only partial and Jan Mayen is now presented as a "detached" island (Reply, p. 85, para. 211; p. 109, para. 299). This question-begging description tempts the Danish Government into replaying the *Anglo-French Case* in the following passage:

"Jan Mayen is not a 'geographically independent feature' as maintained by Norway. The very existence of the present dispute contradicts the notion of Jan Mayen as an independent feature. The fact that the distance from Greenland to Jan Mayen is about 250 nautical miles does not entitle a barren, uninhabited island far away from the mainland of Norway to full effect in a maritime delimitation opposite the mainland of Greenland. State practice and case law, in particular the Channel Islands Award suggest that the enclave solution is the one appropriate in the case of distorting islands which are mid-way islands or 'wholly detached' from their mainland. If Jan Mayen were closer to Greenland enclaving would be the logical solution; in other terms, full recognition of 200 miles for Greenland and an enclave of 12-mile territorial sea for the island. Fortunately for Norway, the relative long distance between Greenland and Jan Mayen obviates the need for enclaving and allows to Jan Mayen a much larger area." (pp. 156-157, para. 429).

383. This passage of the Danish Reply conjures up an artificial geographical framework in which the distance of Jan Mayen from Norway is claimed to be relevant, and where it is suggested that the delimitation area consists of the North Atlantic as a whole. In the normal context of legal principle, delimitation is related to real geography and to the area within which the actual coastal relationships are meaningful. The quoted passage epitomises the wishful thinking behind the Danish arguments concerning the geographical framework of the case – and, by the same token, the legal framework which governs it.

384. In any case, this passage (Reply, para. 429) is incompatible with the contents of paragraph 436 of the Reply (quoted above, para. 381). The latter clearly states that Norway "is not a coastal State in relation to the present delimitation dispute". In

which case it is contradictory to assert that (Reply, para. 429) Jan Mayen is "wholly detached" from "[its] mainland". Of course, this is a consequence of the wishful thinking of Denmark, according to which Jan Mayen is given the role of the Channel Islands in the *Anglo-French Case*. The fact is that in the *Anglo-French Case* the geographical framework was essentially different and the Channel Islands were "wholly detached" not only in relation to the mainland of the United Kingdom but within the specific framework involving a situation of quasi-equality and a continuous area of continental shelf divided by a primary boundary in the form of a median line (see further below, Chapter VII, at pp. 137–139, paras. 455–461).

385. The element of wishful thinking is given greater emphasis by the reference to enclaving in paragraph 429 of the Reply on the contingency: "If Jan Mayen were closer to Greenland enclaving would be the logical solution ...". Not only is the contingency whimsical, but the hypothesis is completely baseless because it assumes a legal comparability with the *Anglo-French Case*.

CHAPTER VI
THE INEQUITABLE CHARACTER OF THE DANISH CRITERIA

1. The Alleged Inconsequence of Jan Mayen as Land Territory

386. The Danish claim involves the application of *two* criteria, of which the second is the corollary of the first. The first criterion is stated in different ways but always amounts to the same thing: the asserted inconsequence of Jan Mayen as land territory. The second criterion is that of the full entitlement of Denmark based upon a 200-mile zone which is resistant to any process of delimitation in accordance with international law.

387. The following passages in the Reply contain the relevant message:

(a) "Denmark does not, for its part, question Jan Mayen's status as an island in international law, but it is the Danish submission that the small size and unpopulated character of Jan Mayen does not entitle the island to a maritime zone which impinges upon Greenland's 200-mile zone". (p. 5, para. 10).

(b) "The Jan Mayen fishery zone ... has an expanse of some 255,000 square kilometres, even if full respect is accorded to Greenland's 200-mile zone. This should be related to the size of Jan Mayen, which is only about 380 square kilometres. Such a maritime area may be considered exorbitant compared to the land area on which it is based". (p. 114, para. 308).

(c) "The fundamental norm governing maritime delimitation is to achieve an equitable solution, see the 1982 Convention on the Law of the Sea, Articles 74 and 83, and the *Gulf of Maine* case, *I.C.J. Reports 1984*, pages 299-300, paragraph 112. It follows that Jan Mayen's entitlement to a fishery zone and a continental shelf does not automatically endow Jan Mayen with an equal position in a delimitation dispute vis-à-vis an island State (Iceland) or a mainland (Greenland) – not even as a starting point. The entitlement towards the open sea cannot be compared to an entitlement which, if accepted, would encroach upon the legitimate rights of other States". (p. 121, para. 328).

(d) "The only delimitation situations which have deviated from the median line do so because a median line would not render an equitable result, see e.g., the boundary line between Iceland and Jan Mayen and that between the Norwegian mainland and Bear Island. In neither of these situations are human societies in jeopardy – as far as these two desolated islands are concerned – and therefore these islands have not been allowed to encroach upon the 200-mile economic zone established by Iceland and mainland Norway, respectively. Denmark fully agrees with the attitude adopted by Iceland and Norway. International law has been created and developed to serve the needs of human societies, not to accommodate landscapes". (p. 123, para. 333).

(e) "The fact that the distance from Greenland to Jan Mayen is about 250 nautical miles does not entitle a barren, uninhabited island far away from the mainland of Norway to full effect in a maritime delimitation opposite the mainland of Greenland". (pp. 156-157, para. 429).

(f) "Article 121 does not, however, address the question of the effect of an island in a delimitation situation. It would be in line with the reasoning underlying Article 121 (3), as indeed with the basic philosophy behind the new order governing the regime of the sea-bed outside national jurisdiction as contained in the 1982 Convention on the Law of the Sea, to adopt an approach towards delimitation consistent with the one adopted for the singling out of rocks for special treatment as regards entitlement. Otherwise small islands without population would be given a role in international maritime law which is completely out of proportion to the other basic concept contained in the 1982 Convention, namely that of allowing coastal States broad maritime zones. That concept has as its rationale the support of the living conditions of the coastal State population and as far as Greenland is concerned its overwhelming dependency on fishery has been described in Part I under E. and F. It has never been intended that the concept of the new broad maritime zones should turn into a device which could supply a mainland in possession of a far-away island without a natural population with disproportionate maritime zones. Only where a detached island can claim a status more or less similar to that of the mainland it confronts, i.e., a living community which depends for its survival on its surrounding sea, would it be reasonable to regard that island as equal in principle to an opposite-lying mainland. But that is not the case as far as the present dispute is concerned. Though Jan

> Mayen is not a mere rock, it is certainly not the type of island one would expect to be entitled to broad maritime zones at the expense of an opposite-lying mainland". (pp. 167-168, para. 461).

388. These passages convey essentially the same message: that Jan Mayen is an island but does not have a normal entitlement. Thus the last passage quoted: ".. it is certainly not the type of island one would expect to be entitled to broad maritime zones *at the expense* of an opposite-lying mainland". The corollary given to this concept of the inconsequence of Jan Mayen is stated in the very next paragraph of the Reply:

> "To conclude this first consideration, it would seem to follow from the very nature of the island of Jan Mayen – seen in relation to the delimitation dispute in question, which is concerned with broad maritime zones of an economic character – that the method of drawing a line of delimitation would have to be based on the premise that the island of Jan Mayen could not be accorded a maritime zone which would impinge upon Greenland's right to a 200-mile fishery zone and a corresponding continental shelf area". (p. 168, para. 462).

389. The passages from the Reply (in para. 387 above) involve the following elements of confusion:

(a) The issue of delimitation is in essence replaced by the issue of entitlement.

(b) The acceptance that Jan Mayen has the status of an island in international law (see para. 387 (a) above) is contradicted by the persistent assertions that Jan Mayen is not entitled "to impinge" upon the entitlements of Denmark.

2. The Erroneous Characterization of the Legal and Geographical Framework

390. These elements of confusion are aligned with a completely erroneous characterization of the legal and geographical framework. Emphasis is given to the distance of Jan Mayen from Norway (para. 387(e) above) and Jan Mayen is described as a "detached island" (para. 387(f) above). And the "mainland" of Greenland is opposed to the "mainland" of Norway, in relation to which Jan Mayen is "far away" and "detached".

391. In these passages both the concepts and the terminology necessarily involve a reversion to the discredited analysis according to which the coasts of Greenland and Norway constitute the relevant opposite coasts. The Danish Reply has, in some places at least, recognized that "the coasts of continental Norway and Greenland have no relation of adjacency for purposes of delimitation, and [that] 'oppositeness' is without relevance" (p. 141, para. 473). This notwithstanding, in the two passages referred to above (para. 387(e) and (f)) the Government of Denmark insists that the relevant oppositeness is between Norway and Greenland and that therefore Jan Mayen simply does not qualify as an opposite land territory vis-à-vis Greenland.

392. The outcome of this type of analysis is a total departure from legal considerations relating to delimitation. Geographical relationships can only be classified within a framework which reflects two criteria. The first is that the delimitation should be assessed in the context of the geographical area "directly concerned" in the delimitation: see the Judgment of the Chamber in the *Gulf of Maine Case*, (*I.C.J. Reports 1984*, p. 268, para. 28; pp. 272-273, para. 41). The second criterion is related to the first: the geography of coasts determines the location of those areas "where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap" (*ibid.*, p. 85, para. 195).

393. The Danish analysis, which presents Jan Mayen as a "detached" island and as a non-mainland not "opposite" the "mainland" of Greenland, has no basis in the relevant principles and rules governing delimitation. This analysis constitutes a further episode of the exotic reasoning which characterized the Memorial. Geography, according to Denmark, is not so much to be refashioned but rather to be rejected altogether.

394. In summary, the Danish Reply seeks to deny that Jan Mayen has any entitlement of its own and in so doing uses a *modus operandi* which cannot be reconciled with the legal principles and rules governing delimitation.

395. The eccentricity of the reasoning is enlarged by the insistence that *ab initio* Jan Mayen does not qualify as an opposite coast in relation to Greenland, and by the attempt to portray Jan Mayen as an ancillary feature of the mainland of Norway. Phrases such as "detached", "mainland", and "opposite" can only have an appropriate legal significance within the context of the geographical area "directly concerned" in the delimitation.

3. Further Departures from Legal Principle

396. The extent to which the Danish position is divorced from legal principle is indicated by other considerations. The reasoning of the Danish Government is based upon a dogma, that is to say, the legal priority of a 200-mile zone in relation to a "detached island". On this basis no process of delimitation is possible. Any coastal State less than 400 nautical miles from Jan Mayen would, on this basis, receive a section of the disputed area 200 nautical miles broad irrespective of the precise geographical circumstances and other relevant factors.

397. Indeed, it is the Danish position that Denmark should be the beneficiary of exactly the same delimitation as Iceland (this on the theory that the delimitation between Iceland and Jan Mayen was in accordance with the general principles (equitable principles) forming part of general international law). In fact the delimitation between Iceland and Jan Mayen was dissimilar to any previous delimitation and was based upon political agreement.

398. Further evidence of the artificiality of the Danish position is to be found in paragraph 429 of the Reply. This imaginative exercise reads as follows:

> "State practice and case law, in particular the *Channel Islands* Award suggest that the enclave solution is the one appropriate in the case of distorting islands which are mid-way or wholly detached from their mainland. If Jan Mayen were closer to Greenland enclaving would be the logical solution; in other terms, full recognition of 200 miles for Greenland and an enclave of 12-mile territorial sea for the island."

399. This paragraph is misleading at two levels. First, there is the gratuitous geographical hypothesis: "If Jan Mayen were closer to Greenland ..." Secondly, there is, once again, a substantial misconstruction of the geographical and legal framework of the delimitation. Norway is not, in delimitation terms, a "mainland" and consequently Jan Mayen is not a "wholly detached" island in relation to a *relevant* mainland. Nor is the geographical situation similar to that obtaining in the *Anglo-French Case* (see further Chapter VII, pp. 137–139).

400. Elsewhere in the Reply (pp. 97-99, paras. 269-275) attention is given to examples in practice of the enclaving of

islands. Six examples are given, none of which bears any similarity to the situation of Jan Mayen *even* "if Jan Mayen were closer to Greenland" (cf. Reply, para. 429, quoted in paragraph 398 above).

401. The interest shown by the Danish Government in the practice of enclaving and the examples introduced provide further evidence of wishful thinking. In each of the six examples offered in the Reply, the framework of the delimitation area was established by the opposite or adjacent mainland or long coasts of the delimiting States. In each case the primary delimitation was based upon equidistance and the islands involved were incidental features in the context of the geographical framework directly relating to the delimitation area. The six examples can be characterized in this mode one by one.

(1) Italy-Yugoslavia, 1968 (Reply, Annex 73).

402. The delimitation is an equidistance line between the long coast mainlands of Italy and Yugoslavia; for the latter the mainland consists of the major Yugoslav islands. The Yugoslav islands of Pelagruz and Kajola, situated near the median line, were given a 12-mile semi-enclave. The geographical framework consisted of the more or less parallel mainlands formed by the Italian coast and the major Yugoslav islands.

(2) Italy-Tunisia, 1971 (Reply, Annex 74).

403. The delimitation is again an equidistance line related to two opposite mainlands which are directly related to the delimitation area. The islands of Lampedusa, Pantelleria, Lampione and Linosa are situated near to the equidistance line and, in order to avoid the delimitation as a whole becoming distorted in favour of Italy, these islands were given special treatment. This treatment was related to a geographical framework of which the principal features were the opposite facing mainlands of Italy and Tunisia.

(3) Iran-Saudi Arabia, 1968 (Reply, Annex 68).

404. This delimitation involves an insignificant variant of the situation obtaining in the two previous examples. The geographical framework was the long coast mainlands of Iran and Saudi Arabia, both of which abutted directly upon the delimitation area.

(4) Abu Dhabi-Qatar, 1969 (Reply, Annex 75).

405. This delimitation involves another variant of the situation in which a primary delimitation based upon equidistance is not allowed to be distorted by the presence of an island in the vicinity of the primary delimitation. In fact the relevant Agreement involves the allocation of sovereignty in respect of certain islands, including Dayyinah.

(5) Iran-United Arab Emirates, 1974 (Reply, Annex 76).

406. This case is broadly similar to the others previously noted, the geographical framework consisting of two long coast mainlands.

(6) Australia-Papua New Guinea, 1978 (Reply, Annex 77).

407. This delimitation, in spite of its unusual features, is yet another variant of the geographical framework consisting of opposite-facing mainlands. The description of this delimitation in the Reply (pp. 98-99, para. 275) is imprecise. There it is stated that the Australian islands of Boigu and Sabai were given "a territorial sea of 3 miles *only* facing the mainland coast" (emphasis supplied). This is misleading: in fact the delimitation (for fisheries purposes) in relation to Papua New Guinea gives full effect to the two Australian islands. Moreover, whilst it is true that the "maritime boundary" is a median line, the fisheries delimitation favours Australia and is hinged upon these two islands. It is thus formally correct to state, as the Reply does, that "on the seaward side they were, in effect, ignored for purposes of the maritime boundary", but the fact remains that they were recognized as having a critical significance for purposes of fisheries jurisdiction.

408. The conclusion must be that the six examples of State practice invoked by Denmark provide no support whatsoever to the Danish position. All six examples are related to geographical situations where there are critical differences from the geographical framework obtaining in the present case. In any case, the Australia - Papua New Guinea example involves according considerable significance to islands in the context of establishing a fisheries jurisdiction boundary line.

409. The Danish Reply (p. 99, para. 276) also refers to the Award in the *Sharjah-Dubai Continental Shelf Arbitration* (1981).

The Award has not been published. However, the position of Abu Musa bears no geographical or legal similarity to that of Jan Mayen according to information available.

410. The irrelevance of the practice invoked by Denmark arises from the persistent attempts to rely upon the *Anglo-French Case* in spite of its being conspicuously inapposite. Thus paragraphs 275 and 276 of the Reply (which conclude the "enclaving of islands" section) contain entirely pointless references to the *Anglo-French Case* and the treatment of the Channel Islands in the Award.

4. Conclusion

411. In conclusion, the inequitable nature of the criteria of delimitation proposed by Denmark is established by the following considerations:

(a) The persistent tendency to deny that Jan Mayen has a normal entitlement as a land territory.

(b) The endemic confusion of the issue of entitlement and the issue of delimitation.

(c) The insistence on the eccentric criterion consisting of the outer limit of a 200-mile zone.

(d) The substantial failure to identify the relevant geographical framework and the consequent misuse of terms such as "mainland", "detached island", and "opposite".

(e) The visualization of Greenland as a mainland and of Jan Mayen as a small island detached from its mainland coast.

(f) The failure to recognize that Jan Mayen and Greenland are the only features relevant to the dispute.

(g) The assertion that Denmark should be the beneficiary of the same delimitation as Iceland.

(h) The repeated attempts to compare the delimitation area with the geographical and legal framework of the *Anglo-French Case*, with particular reference to the Channel Islands region.

CHAPTER VII
THE SIGNIFICANCE OF ISLANDS IN MARITIME DELIMITATION

1. The Danish Position

412. The Danish position on the significance of islands continues to be both abstract and categorical. In the contention of the Danish Government "islands" form a discrete legal category. In the face of Norway's rejection of this view, the Reply reaffirms the position:

> "In the view of the Government of Denmark this assertion is not warranted. Ever since the question of maritime delimitation between States first emerged in the preparations leading to the First United Nations Conference on the Law of the Sea in 1958, islands have been given special attention" (p. 83, para. 204).

413. In the Reply Denmark purports to rely on the preparatory work of the First and Third United Nations Conferences, on the literature of the subject, on the case law, and on State practice, in order to give credibility to a misleading construction of the legal position. In the present chapter the legal materials will be examined apart from the materials of State practice which will be examined in Chapter VIII below (pp. 140–157).

2. Preparatory Work of the First United Nations Conference on the Law of the Sea

414. The Reply (p. 83, para. 205) quotes a passage from the Report of the International Law Commission to the General Assembly in 1956 which appears in the "Commentary" to Article 72 (as it then was). The passage reads as follows:

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

415. This passage is offered to support the assertion that in the preparations for the 1958 Conference "islands have been given special attention" (Reply, p. 83, para. 204). The documentary record does not support this bold assertion.

416. The "Commentary" quoted by Denmark links the issue of delimitation of the continental shelf with the delimitation of the territorial sea and thus the previous sentence reads as follows:

> "For the determination of the limits of the continental shelf the Commission adopted the same principle as for the articles 12 and 14 concerning the delimitation of the territorial sea."

417. When the preparatory work is followed back it can be seen that islands did not receive "special attention".

418. In the first place they do not figure either in the "Commentary" appended to draft Article 12 (*Yearbook*, ILC, 1956, II, p. 271) or in the "Commentary" appended to draft Article 14 (*ibid.*, p. 272). The relevant parts of the Report of the International Law Commission of 1955 contain no additions to the Report of 1954 (*Yearbook*, ILC, 1955, II, p. 38, which relates to the corresponding draft articles 14 and 15).

419. The Report of the International Law Commission of 1954 contains no reference of any kind to islands in the "Comments" appended to the relevant draft Articles 15 and 16 (*Yearbook*, ILC, 1954, II, pp. 157-158). The "Comment" appended to draft Article 15 (Delimitation of the territorial sea of two States the coasts of which are opposite each other) stresses the identity of the principles to be applied to the delimitation of the continental shelf.

420. The Commission at this time had in front of it the third report of Mr. François, the Special Rapporteur. The relevant draft articles proposed were as follows:

> *"Article 16*
>
> *Délimitation de la mer territoriale de deux Etats dont les côtes sont situées en face l'une de l'autre*
>
> 1. La frontière internationale entre deux Etats dont les côtes sont situées en face l'une de l'autre à une distance de moins

de 2 T milles (T étant la largeur de la mer territoriale) est, en règle générale, la ligne médiane dont chaque point est équidistant des lignes de base des Etats en question. Toute île sera prise en considération lors de l'établissement de cette ligne, à moins que les Etats adjacents n'en aient décidé autrement d'un commun accord. De même, les fonds affleurants à basse mer, situés à moins de T milles d'un seul Etat, seront pris en considération; par contre, ceux situées à moins de T milles de l'un et l'autre Etat n'entreront pas en ligne de compte lors de l'établissement de la ligne médiane.

2. Exceptionnellement, les intérêts de navigation ou de pêche pourront justifier un autre tracé de la frontière, à fixer d'un commun accord entre les parties intéressées.

3. La ligne sera tracée sur les cartes en service à grande échelle.

Article 17

Délimitation de la mer territoriale de deux Etats adjacents

La ligne de frontière à travers la mer territoriale de deux Etats adjacents, là où elle n'a pas encore été fixée d'une autre manière, sera tracée selon le principe d'équidistance des lignes de côte respectives. La méthode, suivant laquelle ce principe sera appliqué, fera, dans chaque cas spécial, l'objet d'un accord entre les parties."(*Yearbook*, ILC, 1954, II, p. 6)[16].

[16]) Unofficial translation:

Article 16

Delimitation of the territorial sea of two States the coasts of which are opposite

1. The international boundary between two States the coasts of which are opposite at a distance of less than 2 T nautical miles (T being the breadth of the territorial sea) is, in general, the median line every point of which is equidistant from the baselines of the States concerned. Every island shall be taken into consideration in the establishment of this line, unless the adjoining States have decided otherwise by mutual agreement. Equally, low tide elevations situated less than T nautical miles from one of the States only, shall be taken into consideration; on the other hand, those situated less han T nautical miles from both States shall not be taken into account in the establishment of the median line.

2. Exceptionally, navigation or fisheries interests may justify another drawing of the boundary, to be determined by mutual agreement between the interested parties.

3. The line shall be marked on large-scale official charts.

421. These draft articles do not indicate that "islands have been given special attention" as asserted in the Danish Reply. Nor was the Danish Government concerned about islands when it responded to the Secretary-General's request of 1952 concerning delimitation of the territorial waters of two adjacent States. The Danish reply (in a *note verbale* dated 26 March 1953) was as follows:

> "The Permanent Delegate of Denmark to the United Nations presents his compliments and has the honour to inform the Secretary-General of the United Nations – in accordance with the Secretary-General's request in note No. LEG 292/2/06 of November 13, 1952 concerning the question of delimitation of the territorial waters of two adjacent States – that the question as far as Denmark is concerned has been solved through declarations concluded with Germany and Sweden. Two copies of each of these declarations published on December 21, 1923 and February 22, 1932 respectively as well as maps of the 'Sund', 'Flensborg fjord' and 'Lister dyb' are annexed [*not reproduced in this document*].
>
> It will be seen from these documents and maps that in principle the median line has been followed – exceptions having only been made in cases where the interests of the States concerned with regard to navigation and fishing have warranted another basis of delimitation." (As reproduced in Doc A/CN.4/71; *Yearbook*, ILC, 1953, II, p. 79 at p. 82).

422. In this context it may be remarked that the Norwegian reply to the Secretary-General's request likewise makes no mention of islands (*ibid.*, pp. 83-84).

423. The line of drafts and the observations of Governments can be traced further back. In its Commentary to draft article 7 concerning shelf delimitation contained in its Report of 1953 the International Law Commission explained the phrase "unless another boundary is justified by special circumstances" (*Yearbook*, ILC, 1953, II, pp. 213, 216). In particular, the Commission stated: "As in the case of the boundaries of coastal waters,

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Article 17

Delimitation of the territoral sea of two adjacent States

The boundary line across the territoral sea of two adjacent States shall, where it has not yet been determined in any other manner, be drawn according to the principle of equidistance from the respective coastlines. The method for applying this principle shall, in every special case, be the subject of an agreement between the parties.

provision must be made for departures necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels." (*ibid.*, p. 216, para. 82).

424. Two observations are called for. First, this last reference to islands occurs only twice in four years of the Commission's records. Secondly, the context makes it clear that it was islands close to coasts which were envisaged, *as in the case of the delimitation of territorial waters.* Thus the beginning of the relevant commentary by the Commission is as follows:

> "In the matter of the delimitation of the boundaries of the continental shelf the Commission was in the position to derive some guidance from proposals made by the Committee of Experts on the delimitation of territorial waters." (*Yearbook*, ILC, 1953, II, p. 216, para. 81).

425. The reference is to the Report of the Committee of Experts annexed to the Second Report of Mr. François, the Special Rapporteur. The relevant passages of this Report are as follows:

> *"VI*
>
> Comment faut-il déterminer la frontière internationale entre deux pays dont les côtes se trouvent vis-à-vis l'une de l'autre à une distance de moins de 2 T milles?
>
> La frontière entre deux Etats dont les côtes sont situées en face l'une de l'autre à une distance de moins de 2 T milles devrait être comme règle générale la ligne médiane dont chaque point est équidistant des deux côtes. Toute île doit être prise en considération lors de l'établissement de cette ligne, à moins que les Etats adjacents n'en aient décidé autrement d'un commun accord. De même, les fonds affleurants à basse mer, situés à moins de T milles d'un seul Etat, devraient être pris en considération; par contre, les fonds de ce genre qui ne sont pas soumis à une souveraineté déterminée et qui se trouvent à moins de T milles de l'un et l'autre Etat ne devraient pas entrer en ligne de compte lors de l'établissement de la ligne médiane. Il peut toutefois y avoir des raisons spéciales, telles que des intérêts de navigation ou de pêche, écartant la frontière de la ligne médiane. La ligne devrait être tracée sur les cartes en service à grande échelle, surtout lorsqu'une partie quelconque de l'étendue d'eau est étroite et relativement tortueuse.

VII

Comment faut-il déterminer la délimitation des mers territoriales de deux Etats adjacents? Est-ce que cela peut se faire par:

A. Le prolongement de la frontière de terre?

B. Une ligne perpendiculaire à la côte à l'endroit où la frontiére entre les deux territoires atteint la mer?

C. Le tracé d'une ligne perpendiculaire partant du point mentionné sous B suivant la direction générale de la ligne de côte?

D. Une ligne médiane? Si oui, comment faut-il tracer cette ligne?

Dans quelle mesure faut-il tenir compte de la présence des îles, des sèches, ainsi que des chenaux navigables?

1. Après une discussion approfondie le Comité a déclaré que la frontière (latérale) entre les mers territoriales respectives de deux Etats adjacents, là où elle n'a pas déjà été fixée d'une autre manière, devrait être tracée selon le principe d'équidistance de la côte de part et d'autre de l'aboutissement de la frontière.

2. Dans certain cas, cette méthode ne permettra pas d'aboutir à une solution équitable, laquelle devra alors être recherchée dans des négociations." (*Yearbook*, ILC, 1953, II, p. 75 at pp. 77-79)[17].

[17]) Unofficial translation:

VI

How is the boundary to be determined between two countries the coasts of which are situated vis-à-vis each other at a distance of less than 2 T nautical miles?

The boundary between two States the coasts of which are situated opposite each other at a distance of less than 2 T nautical miles should as a general rule be the median line every point of which is equidistant to the two coasts. Every island should be taken into consideration in the establishment of this line, unless the adjoining States have decided otherwise by mutual agreement. Equally, low tide elevations situated less than T nautical miles from one of the States only should be taken into consideration; on the other hand, elevations of this kind which are less than T nautical miles from both States should not be taken into account in establishing the median line. There may sometimes be special reasons, such as navigation or fisheries interests, for shifting the boundary from the median line. The line should be marked on large-scale official charts, especially when the body of water is narrow and relatively complex.

426. This Report of the Committee of Experts (A/CN.4.61/Add. 1) was a key document, as the Commission recognises in its Report of 1953 (see para. 13 above), and also in its Report of 1956 (*Yearbook*, ILC, 1956, II, p. 271; Commentary upon Article 12, para. 2). It is the substantial source of the "special circumstances" solution and it does not support the view that "islands have been given special attention".

427. By way of conclusion the Government of Norway finds it necessary to stress two elements which are a persistent influence in the documentary record. The Commission was concerned to maintain flexibility and this is evident in the Reports of 1953 (*Yearbook*, ILC, 1953, II, p. 216, para. 82) and 1956 (*ibid.*, 1956, II, p. 300, Commentary upon Article 72, para. 1). As a consequence, Article 6 of the Continental Shelf Convention of 1958 refers only to "special circumstances" and makes no mention of "islands". The draft Article 72 proposed by the International Law Commission was adopted as Article 6 of the Convention without difficulty at the United Nations Conference on the Law of the Sea (*Official Records, Vol.VI, Summary of Records and Annexes*, pp. 91-98).

428. Secondly, the Commission considered continental shelf delimitation and territorial sea delimitation in close association. The connection thus established strongly indicates that the real focus on the effect of islands on delimitation was in the context of establishing the median or equidistant line in inshore or closed waters. In this context, the influence of an island, as an incidental

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VII

How is the delimitation of the territorial sea of two adjacent States to be determined? Could this be done by:

A. The prolongation of the land boundary?

B. A line perpendicular to the coast at the place where the boundary between the two territories reaches the sea?

C. The drawing of a line perpendicular to the general direction of the coasts from the point mentioned under B?

D. A median line? If so, how should this line be drawn?

To which extent is the presence of islands, drying shoals as well as navigable channels to be taken into account?

1. After an extensive discussion the Committee declared that the (lateral) boundary between the respective territorial seas of two adjacent States, where it has not been determined in any other manner, should be drawn according to the principle of equidistance from both coasts at the terminus of the frontier.
2. In certain cases, this method will not allow the achievement of an equitable solution, which should then be sought in negotiations.

feature, could easily be seen as disproportionate. The concerns of the Commission did not concentrate on the different perspectives which present themselves in drawing continental shelf boundaries, within much more spacious geographical frames of reference. Islands could be perceived as creating distortions, and thus as a source of difficulty, in inshore delimitations. The logical conclusion on the basis of the Commission's preparatory work is quite simply that the Commission saw no difficulty arising from the role of islands in "long distance", opposite coast delimitations. In the *Gulf of Maine Case*, the Chamber was clearly aware of the fundamental distinction between " 'long distance' delimitation" and inshore situations (*I.C.J. Reports 1984*, p. 314, paras. 160-161). The thrust of the Commission's deliberation over years is clearly that the principle of equidistance was accepted as predominant.

3. Preparatory Work of the Third United Nations Conference on the Law of the Sea

429. The Danish Reply (pp. 83-84, para. 207) invokes the records of the Third United Nations Conference in support of its position that "islands" form a discrete legal category. However, the only document actually cited is the proposal dated 27 August 1974 by a group of African States concerning "draft articles on the regime of islands" (Reply, Annex 66; A.CONF.62/C.2/L.62/Rev. 1).

430. The significance of this and other proposals which refer to islands can only be appreciated effectively within the general context of the debate on delimitation. In the Second Committee there were various proposals on continental shelf or exclusive economic zone delimitation, of which six made no reference to islands as such (see UNCLOS, *Off. Recs.*, III, pp. 190 (Netherlands), 202, 211 (Greece), 211 (Japan), 220 (Ireland), 240 (African States)). On the other hand seven proposals on delimitation (including the proposal referred to by Denmark) *expressly* refer to islands (UNCLOS, *Off. Recs.*, III, pp. 201, 213 (Turkey), 195, 228 (Romania), 205 (Kenya and Tunisia), 232 (African States), 237 (France)). It is to be recalled that Turkey did not sign the Law of the Sea Convention, and that Romania signed but has not ratified the Convention.

431. In the course of the debates in the Second Committee of the Third United Nations Conference the Danish delegation

adopted the position that delimitation should be based upon Article 6 of the 1958 Geneva Convention on the Continental Shelf. Thus at the 20th Meeting the Danish representative, Mr. Kiær, expressed the following views:

> "22. In narrow waters where two or more States shared the same continental shelf and were opposite or adjacent to each other, the question of delimitation presented difficult problems. The point of departure for discussing them should be article 6 of the 1958 Geneva Convention on the Continental Shelf, which provided that the delimitation should be determined by agreement: in the absence of agreement, unless another solution was justified by special circumstances, the boundary should be determined by the median line. Where the same continental shelf was adjacent to the coastal States bordering each other, the rule in article 6, paragraph 2 of the Convention was very similar to the rule in the case of States opposite each other: the delimitation should be determined by agreement and, as a residual rule, the Convention established the principle of equidistance.
>
> 23. In his delegation's view, the principle of equidistance, based as it was on law and practice, had won general recognition for very good reasons. Without that rule, there would be no objective criteria on which to base a delimitation: everything would be open to negotiation and ad hoc solutions. That would be a negation of the rule of law and could lead to an increasing number of disputes among States.
>
> 24. On the question of the continental shelf of islands, the basis for the Committee's deliberations should also be the 1958 Geneva Convention on the Continental Shelf. In article 1, paragraph (b) of that Convention, the continental shelf of islands was defined in the same way as for other territories. International law concerning the delimitation of the continental shelf was, as a general rule, the same for islands as for the State as a whole. An oceanic island would have a full sea-bed area, and for an island situated closer to another country, the delimitation of the continental shelf would be based on the principle of equidistance in accordance with article 6, paragraph 1 of the Geneva Convention." (*Summary Records*, 20th Meeting, 30 July 1974).

432. In paragraph 24 the Danish representative adopted the position that islands do not constitute a special category within

the norms governing delimitation. As Mr. Kiær says: "the continental shelf of islands was defined in the same way as for other territories". This position was reaffirmed by the Danish delegation during the 39th Meeting of the Second Committee:

> "4. The delimitation of island ocean space or sea-bed in the case of adjacent or opposite States should continue to be based, generally speaking, on the clear-cut equidistance principle. His delegation therefore supported the provisions on that subject contained in documents A/CONF.62/C.2/L.25 and 31." (*Summary Records*, 39th Meeting, 14 August 1974).

433. In this passage the Danish representative referred to two proposals for draft articles. The first is a Greek proposal the pertinent provision of which (Article 6) avoids distinguishing between islands and other baselines (Doc. A/CONF.62/C.2/L.25). (UNCLOS, *Off. Recs.*, III, p. 202). The second proposal supported by Denmark was a Japanese proposal the text of which reads (in its first revision):

> "1. The coastal State exercises sovereign rights over the continental shelf (the coastal sea-bed area) for the purpose of exploring it and exploiting its mineral resources.
>
> 2. The outer limit of the continental shelf (the coastal sea-bed area) shall not exceed a maximum distance of 200 nautical miles from the baseline for measuring the breadth of the territorial sea as set out in ...
>
> 3. (a) Where the coasts of two or more States are adjacent or opposite to each other, the delimitation of the boundary of the continental shelf (the coastal sea-bed area) appertaining to such States shall be determined by agreement between them, taking into account the principle of equidistance.
>
> (b) Failing such agreement, no State is entitled to extend its sovereign rights over the continental shelf (the coastal sea-bed area) beyond the median line, every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the territorial sea of each State is measured.
>
> 4. Nothing provided herein shall prejudice the existing agreements between the coastal States concerned relating to the delimitation of the boundary of their respective conti-

nental shelf (coastal sea-bed area)." (Doc. A/CONF.62/C.2/L.31/Rev. 1) (UNCLOS, *Off. Recs.*, III, p. 211).

434. The position of Denmark remained unchanged in subsequent sessions of the Third United Nations Conference. In particular, statements by the Danish delegation in Negotiating Group 7 during 1978 indicate continued adherence to the median line principle and no reference to islands as a discrete legal category: see the Counter-Memorial, pages 99-103 (paras. 345-353).

435. The preparatory work of the Third Conference does not, it is submitted, disclose that "special attention" was devoted to islands in the context of delimitation. Even those proposals on delimitation which expressly refer to islands do so in the normal context of delimitation in accordance with equitable principles. The proposal given prominence in the Reply involved 14 African States. In fact on the day before (26 August 1974) 18 African States, including 9 of the States involved in the proposal of 27 August 1974, had produced draft articles on the exclusive economic zone, the delimitation provisions of which make no reference to islands (see Doc. A/CONF. 62/C.2/L.82, UNCLOS, *Off. Recs.*, III, p. 240). The relevant provision of this proposal (Article 8) is as follows:

> "1. The delimitation of the exclusive economic zone between adjacent or opposite States shall be done by agreements between them on the basis of principles of equity, the median line not being the only method of delimitation.
>
> 2. For this purpose, special account shall be taken of geological and geomorphological factors as well as other special circumstances which prevail."

436. The conclusion warranted by the documentary materials is, quite simply, that the different currents of opinion were compatible with the application of equitable principles relating to delimitation and no categorical significance was accorded to islands in the context of delimitation. The general language of Articles 74 and 83 of the Law of the Sea Convention provides confirmation of this, if such confirmation were needed.

4. DOCTRINE

437. The Danish Reply invokes the literature on maritime delimitation to support the generalized thesis that islands always call for "special attention". Unfortunately the mode of invoking doctrine is perfunctory and consists of two inconclusive quotations from the writings of Professor Weil and Dr. Jayewardene (Reply, pp. 84-85, paras. 209-210). In order to set the record straight it is necessary to examine a sufficient sample of doctrinal opinion relating to the period 1979 to 1991.

438. On closer acquaintance with the literature, the writers will be found to stress the importance of taking into consideration the overall geographical circumstances and not just the involvement of one or more islands. Thus the work of Dr. Clive R. Symmons expresses the following view in the conclusions:

> "A detailed spelling out of the effect of insular formations on such delimitations may, therefore, cause inequity in its own turn by failing to take due account of all the variable circumstances.
>
> For this reason, the attempts to extrapolate supposedly *objective formulae* from existing State practice have limited value when they are proffered as solutions for the future; for their very rigidity inevitably fails to take into account all the circumstances which may be perceived to be relevant in a given situation or to cater for the manifold possibilities of the *resultant treatment* of an insular formation which such particular circumstances may be seen to warrant in solving insular basepoint problems. The recent Franco-British arbitration proceedings have shown this only too clearly, where time and again the Court was to emphasize the necessity of considering *all* the geographical circumstances of the case." (*The Maritime Zones of Islands in International Law*, The Hague, 1979, pp. 207-208; emphasis in the original).

439. An acknowledged authority on the law of the sea is the work of Professor Daniel O'Connell, edited by Professor Ivan Shearer, of which an extended section is devoted to islands (Vol. II, pp. 714-723) in Chapter 18 on delimitation of the continental shelf and exclusive economic zone. With reference to the background of the Continental Shelf Convention of 1958, O'Connell states the following:

"It must be concluded from this drafting history that islands are not in themselves 'special circumstances', although their characteristics may contribute to their being treated as such in some cases. Their location cannot be a 'special circumstance' whereby they might be deprived of what, in other circumstances, would be undeniably attributable to them, but it might amount to such if the lines of equidistance they subtend when related to a neighbouring shore are such that a restoration of the equally inherent rights of neighbouring States requires a departure from such lines. Proximity of an island to one coast rather than another is irrelevant in itself, because proximity is not adjacency. But it may be relevant if it deflects a boundary so as to defeat rights of apportionment which accrue pursuant to 'natural prolongation'. The minor role to be ascribed to islands in this respect was brought out by the one remark made about them by the Court in the *North Sea Continental Shelf Case*. The Court said that a median line must divide the area equally between States, ignoring 'islets or rocks' and minor coastal projections, whose disproportionately distorting effects could be eliminated by 'other means'. That affords no support for any view that islands can be denied continental shelf rights merely on the basis of location." (p. 718; footnotes omitted).

440. In a monograph published in 1984 Dr. Haritini Dipla is careful to emphasize the variety of solutions applicable to cases of delimitation involving islands (*Le Régime Juridique des îles dans le droit international de la mer*, Paris, 1984, pp. 229-231).

441. A more recent authority is the work of Professor P. Weil, *Perspectives du Droit de la Délimitation Maritime* (Paris, 1988), published also in English translation under the title *The Law of Maritime Delimitation – Reflections* (Cambridge, 1989). Under the rubric of "islands" the English edition contains the following passages:

"Although the 1958 and 1982 Conventions do not provide any special rule on the subject, it has always been accepted, in State practice as in legal theory, that the effect given to islands by international law for delimitation purposes differs from one island to another. Reference is often made, on this point, to Commander Kennedy's intervention at the 1958 Geneva Conference. After noting, as mentioned previously, that 'among the special circumstances which might exist there was, for example, the presence of a small or large island in the area to be apportioned', the United Kingdom

representative suggested that 'for purposes of drawing a boundary, islands should be treated on their merits'. The 'merits' to be taken into consideration are various: the size of the island, its population, its economy, its position on the 'good' or 'bad' side of the median line or nearer to or further form one of the coasts. Depending on the circumstances, the island will be given full or partial effect. In certain cases it will be ignored. In others it will be enclaved, which means that the delimitation will be carried out between the mainlands as if the island did not exist, and it will be given its own maritime space around its coasts. These various approaches have been dealt with extensively in the literature, and there are many examples in State practice.

The courts apply the theory of special geographical features to islands. If the island appears as an integral part of the general coastal configuration, it is treated for the purposes of delimitation on the same footing as the mainland and given full effect. If, on the other hand, it seems to be an aberrant geographical feature in relation to the general configuration or an insignificant feature, it is given partial effect or ignored ..." (pp. 229-230)[18].

442. These passages do not support the view that the role of islands in delimitation is always simple and straightforward, and mechanically points towards the same result. That is candidly acknowledged in the Reply (p. 84, para. 209), referring to Weil (English edition, p. 233) as an authority for characterising the rôle of islands as presenting "a kaleidoscopic picture, scarcely explained in case law ...".

443. The Reply (pp. 84-85, para. 210) also offers a quotation from the work of Dr. Hiran W. Jayewardene, *The Regime of Islands in International Law* (Dordrecht, 1990). The relevant passage is as follows:

[18]) The statement by Commander Kennedy appears in U. N. Conference on the Law of the Sea, *Official Records*, Vol. VI, p. 93, para. 3. The full text of the passage quoted is as follows: "Among the special circumstances which might exist there was, for example, the presence of a small or large island in the area to be apportioned; he suggested that, for the purposes of drawing a boundary, islands should be treated on their merits, very small islands or sand cays on a continuous continental shelf and outside the belts of territorial sea being neglected as base points for measurement and having only their own appropriate territorial sea. Other types of special circumstances were the possession by one of the two States concerned of special mineral exploration rights, or the presence of a navigable channel; in all such cases, a deviation from the median line would be justified, but the median line would still provide the best starting point for negotiations."

"In State practice, islands have constantly emerged as natural features warranting special solutions. *In the case of rivers and lakes in particular, emergence of islands and similar natural phenomena give rise to issues of considerable legal complexity.* In the maritime limits sphere, islands have recently emerged as one of the most troublesome features. A wide body of State practice has developed, but considerable refinement of legal technique is required. (p. 192) (words not included in the quotation in the Reply have been italicised).

444. In fact, in the text of Chapter 8 of this work it is revealed that the author is of the view that islands form "a category of features which *could* fall within the special circumstances proviso" (p. 307, emphasis supplied). Thus Dr. Jayewardene is less than categorical in his views. The author also refers to the *North Sea Cases* (*I.C.J. Reports 1969*, para. 57) and states that "[t]he Judgment of the Court also offers further confirmation of the view that islands *could* constitute special circumstances" (pp. 307-308, emphasis supplied). Once again, the expression of view is qualified in form. However, the author is incorrect in claiming that the Judgment in the *North Sea Cases* supports the view "that islands could constitute special circumstances". The relevant passage contains no such proposition, and refers only to "the presence of islets, rocks and minor coastal projections".

5. The Decisions of International Tribunals

445. In the Counter-Memorial the Government of Norway gave a detailed account of the relevant decisions of international tribunals (pp. 134-137, paras. 446-456; pp. 142-154, paras. 478-527). The outcome was to demonstrate the misunderstandings of the law presented in the Danish Memorial (pp. 81-90, paras. 274-288).

446. In particular, Norway found it necessary to make the following points:

(a) The significance of a particular feature, such as an island, must depend on its location in relation to other geographical features and the geographical features of the area *taken as a whole.*

(b) The comparison between Jan Mayen and the role of the Channel Islands in the *Anglo-French Case* is completely inappropriate.

(c) International tribunals do not draw conclusions on the basis of a simple classification of features such as "islands", "long coasts", and so forth.

447. The Danish Reply fails to mount a serious refutation of the relevant parts of the Counter-Memorial. The Reply confines its response to two paragraphs, in the first of which it is pointed out that the International Court "has attributed less than full effect to several islands in its Judgments...." (p. 97, para. 268). The paragraph appears in a section of the Reply (pp. 96-97) devoted to a listing of delimitations in which islands have been given "partial effect" and this perpetuates the abstract, categorical, and question-begging methodology of the Memorial.

448. The second paragraph (Reply, p. 99, para. 276) forms part of a similar academic catalogue under the heading "enclaving of islands". There is here a reference to the unpublished award in the *Sharjah-Dubai Arbitration*, in which it would seem that the geographical framework was in no way comparable to the present case.

6. Considerations of Principle

449. The relevance of State practice will be examined, in the light of its treatment in the Reply, in the chapter which follows. For the present it is necessary to indicate certain major flaws in the way in which the Danish Government evaluates and presents the materials of State practice.

450. The first major flaw is to insist upon the relevance of delimitations involving the presence of islands between opposite long coasts abutting upon the same continental shelf area. In such a situation a two-stage process comes into play: first, the creation of a primary delimitation on the basis of equidistance; and, secondly, the need to establish whether this primary delimitation should be adjusted to take account of offshore islands and islands in the vicinity of the median line. The present case bears no legal resemblance to this type of scenario.

451. The second major flaw is to fail to see that islands are generally given full effect when they are constitutive elements of the geographical framework; that is, when an island abuts *directly* upon the area in which a delimitation is to be carried out, and thus in itself in terms of coastal geography denotes a region or

sub-region of maritime areas. Moreover, in this setting it is the geographical significance of the island or islands rather than the population or economic importance which counts.

452. The following are examples of situations of this type:

(a) The existence of a frontage of major islands (the Yugoslav coastal front in the delimitation between Italy and Yugoslavia).

(b) Islands forming a continuation of a mainland or of an island group consisting of a core of larger islands (Bahrain-Saudi Arabia; Norway-United Kingdom).

(c) A string of islands parallel to a long coast (Australia-Indonesia (Timor and Arafura Seas)).

453. This analysis will be developed further in the chapter which follows. For present purposes it suffices to indicate the importance attaching to islands which have a role in establishing a framework of coastal relations and in pointing out a region or sub-region of convergence. This role is unrelated to the economic importance of the islands concerned.

454. Conversely, islands which do not play such a role are given special treatment. Thus, for example, the islands between Italy and Tunisia were semi-enclaved. For this reason this delimitation is invoked in the Reply (p. 98, para. 271), along with others, as an example of reducing the effect of islands "causing inequity" (Reply, p. 97, para. 269). This and similar examples are completely beside the point. The islands concerned are incidental features in geographical terms and, *given their location*, are accorded an effect which is *relatively speaking* significant rather than insignificant.

7. The Decision of the Court of Arbitration in the *Anglo-French Case*

455. The confusion inherent in the thinking behind both the Memorial and the Reply is highlighted by the frequent invocation of the decision in the *Anglo-French Case*, the methodology and conclusions of which are inimical to the outcome for which the Danish Government is striving in these proceedings.

456. The methodology of the Court of Arbitration involved the establishment of various geographical regions which provided

the legal framework for delimitation. These regions were the English Channel region, the Atlantic region, and the Channel Islands region (see the *Decision* (of 30 June 1977), paras. 87-88, 103, 181-183, 187-188, 199, 201, 204 and 237-248).

457. The legal framework employed for purposes of delimitation consisted of the major geographical features of each region and, in particular, the coasts of the Parties "actually abutting on the continental shelf of" the particular region (cf. the *Decision*, para. 248). On the basis of this creation of a framework for the application of legal principles, the Court first of all decided that the general geographical framework produced a "primary boundary" which took the form of a mid-Channel median line (*Decision*, para. 201).

458. The geographical framework of decision in the *Anglo-French Case* did not consist of islands and no island had a role in establishing the "primary boundary". Consequently the *Decision* has no relevance to the situation in which an island is both politically and geographically an independent feature forming part of the framework of decision.

459. For the rest, the *Anglo-French Case* provides useful examples of the diversity of the significance attaching to islands which do not form part of the geographical and therefore legal framework of decision. Thus the Scilly Islands were given half effect *not because of their size* but because of "the distorting effect on the course of the boundary of the more westerly position of the Scillies" compared with Ushant (*Decision*, para. 248). In contrast the French island of Ushant was given full effect (*Decision*, paras. 248-254).

460. The treatment of the Channel Islands fell within the overall pattern. (*Decision*, para. 187). They were disadvantaged in relation to the "primary boundary" and thus were "on the wrong side" of the mid-Channel median line. (*Decision*, para. 199). In addition, within the framework formed by the English Channel, the Channel Islands were "wholly detached geographically from the United Kingdom" (*ibid*). However, they were not accorded the six-mile zone contended for by France but a twelve-mile zone which involved the recognition of the 12-mile fishery zone of the Channel Islands (*Decision*, paras. 187, 202).

461. Moreover, a part of the legal framework of decision consisted of "the limits of the territorial seas and coastal fisheries of the French Republic and the United Kingdom in the Channel

Islands region". (*Decision*, para. 187). In this context, it may be noted that the assumption was one of the equality of the two Parties in respect of fisheries, both States having established 12-mile fishery zones.

CHAPTER VIII
THE PRACTICE OF OTHER STATES IN SIMILAR GEOGRAPHICAL SITUATIONS

1. The Attitude of Denmark to State Practice

462. The attitude of the Danish Government to State practice in these proceedings continues to be essentially one of aloofness. The presentation of State practice in the Memorial (pp. 91-95, paras. 289-292) was brief and half-hearted. This tendency to marginalize State practice continues in the text of the Reply. State practice is now reduced to three types of offering. First, the considerable material presented in the Norwegian Counter-Memorial is subjected to criticism (Reply, pp. 86-95). Secondly, there is an entirely academic section devoted to "other islands accorded partial or no effect" (Reply, pp. 96-99), which blithely ignores the necessity of seeking comparable geographical situations in order to assist the Court.

463. Thirdly, the Reply (pp. 100-108) invokes the case of Bear Island which is of no relevance (see Chapter I of Part III, pp. 187–189).

464. In all this the Danish Government is remarkably reluctant to face up to the considerable mass of State practice which is presently available and, in general, is content to produce unhelpful catalogues of situations in which islands have been given less than full effect, no account being taken of legal relevance.

2. Which State Practice is Relevant?

465. The shyness of the Reply concerning comparable State practice is defended by reference to the principle that practice not relating to "the actual area of delimitation" is less relevant or is not relevant at all. (Reply, p. 122, para. 330). This position provides another example of the abstract and artificial approach to legal problems which characterize the Danish pleadings.

466. This position put forward in the Reply is illogical from two points of view. In the first place, to exclude practice, however comparable and relevant it may be, on the ground that it relates to another region of the world is contrary to legal principle. It is

the configuration of coasts which is of primary legal relevance and that is a question unrelated to macrogeographical regions. Secondly, and conversely, it does not follow that delimitations relating to "the actual area of delimitation" are comparable and relevant since coastal relationships and relevant circumstances may vary even within a region.

467. In the present context, it is necessary to point out that, if practice in the North Atlantic region is adverted to, then the norm of delimitation is the median line, as the Reply recognises, referring to Canada-Greenland, Greenland-Iceland, Iceland-Faroe Islands, Faroe Islands-Norway, and Shetland Islands-Norway (Reply, pp. 122-123, para. 331). The only case of delimitation not based on a median line is that of Jan Mayen-Iceland. Why, then, does Denmark prefer the exception to the regional norm?

3. State Practice Relied on in the Counter-Memorial

468. The principal focus of the section of the Reply devoted to State practice is upon the substantial sample produced in the Counter-Memorial of geographical situations which are comparable to the relationship between Greenland and Jan Mayen and which have been the subject of international agreement. The Danish Reply (p. 86, para. 215) denies the comparability of the examples presented in the Counter-Memorial (pp. 176-181, paras. 618-648) and this comprehensive denial calls for a response.

(1) Norway-United Kingdom (Phase 1) (1965)

469. The Reply (pp. 86-87, para. 216) complains that Norway "fails to acknowledge the fact that the Shetland Islands notoriously have a sizeable indigenous population of their own". This criticism lacks validity on several grounds. First, it assumes that population is a standard determinant of significance for purposes of delimitation. A considerable population did not prevent the enclaving of the Channel Islands (130,000 in 1977), whilst Seal Island (a small population) was accorded half-effect which was by no means an insignificant outcome given that this involved a transverse displacement of the central segment of the Gulf of Maine delimitation (which would also determine the incidence of the all-important third segment: see *Gulf of Maine Case, I.C.J. Reports 1984*, p. 336, para. 222). Both in the case of the Channel Islands and in the case of Seal Island the primary factor was location.

470. There is no proof that, even if the Shetland Islands were uninhabited, the delimitation would have been affected. In any case, of the 104 islands in the group only 14 are inhabited.

(2) Japan-Republic of Korea (1974)

471. The Reply (p. 87, para. 218) makes two complaints. The first is that the Counter-Memorial "ignores the fact that the Tsushima Islands are large islands of about 708 square kilometres". This cannot affect comparability. The Tsushima Islands are some 70 kilometres in length; Jan Mayen is 53.6 kilometres long. It is not established that area, as opposed to location, is relevant to delimitation: and in the *Libya-Malta Case* the Court observed:

> "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).

472. In any case, and for the record, Jan Mayen has an area of 380 square kilometres.

473. The Reply also points out that the Tsushima islands have a population of 47,000 but makes no attempt to prove that this fact, rather than location, was the determining factor in the delimitation.

(3) India-Indonesia (Phase 1) (1974)

474. In this delimitation the Indian island of Great Nicobar was given full effect. The delimitation is described in the Reply (p. 87, para. 220) as a "modified" equidistance line. However, the line is "modified" only in the sense that it is not technically a "true" equidistance line (see the US Dept. of State, *Limits in the Seas*, No. 62, p. 3). Consequently, the statement that Great Nicobar was given full effect remains unqualified.

475. The Reply goes on to challenge the comparability of this item with the factors operating in the present case. The reasons for the alleged lack of comparability are "because both the opposite coasts consisted of narrow ends of linear island chains, and secondly, because there was not a great disparity between the lengths of the relevant coasts, the coastal front on the Indian side being about 16 miles, and on the Indonesian side about 20 miles in length."

476. These assertions involve an artificially narrow appreciation of the length of the relevant coastal fronts. In the Danish conception these are confined to the sections of coasts between basepoints which generate the equidistance line. Such an approach is not in accordance with the principle that the relevant coasts are those which abut directly upon the continental shelf area in dispute: see the Decision in the *Anglo-French Case*, para. 248. The coasts of Great Nicobar which satisfy this condition consist of the whole east coast of Great Nicobar, a distance of 29 nautical miles. If the island fronts are taken, ignoring the gap between Little Nicobar and Nancowry, the distance is 82 miles. On the Indonesian side the relevant fronts total 325 miles (Kepulan Kokos on the west coast of Sumatra to Northwest Island and to Ujong Jambo Aje on the east coast).

477. There is no substantial basis for doubting the comparability of the Great Nicobar delimitations (see also Phase 2 below, para. 481). The Reply (p. 87, para. 221) also alleges that the size of Great Nicobar was relevant, an assertion which is unprovable and in any case contrary to legal principle (see above, para. 471).

(4) Colombia-Panama (1976)

478. The criticism of the Norwegian presentation contained in the Reply (p. 88, para. 224) is essentially an obfuscation, in view of the fact that in the Caribbean delimitation the principle of

equidistance was substantially applied. In this connection it is interesting to see the full text of the passage from the Canadian Annexes quoted in part in the Reply:

> "The assumption by the United States that a boundary has been delimited in accordance with the equidistance method only if it results in an equidistance line is further illustrated by the inclusion of the Colombia-Panama boundary in the Caribbean Sea in the United States list of boundaries that incorporate equidistance lines only in part. This boundary, in fact, provides an interesting example of the way in which the equidistance method can be modified. The step-like configuration of the boundary beyond turning point G follows parallels of latitude and meridians of longitude in a way that is intimately related to and derived from an equidistance line. The boundary provided for an equal exchange of areas in relation to a modified equidistance line drawn to give half-effect to the Colombian Albuquerque and Southeast Cays, and full effect to the islands of San Andreas and Providencia, while disregarding Roncador, whose sovereignty is unresolved. The line is, in effect, a modified equidistance boundary." (*Gulf of Maine Case*, Annexes to the Reply submitted by Canada, Vol. 1, State Practice, p. 12, para. 11).

(5) India-The Maldives (1976)

479. In the submission of the Norwegian Government the considerations advanced in the Reply (pp. 88-89, paras. 227-228) leave intact the statement of the Counter-Memorial to the effect that: "Overall, the arrangements provide no evidence of discrimination against offshore islands".

480. The Reply asserts, without supporting evidence, that "Apparently, Minicoy was seen by India, not as an isolated island but as the most southerly island in the Laccadive Islands ..." (p. 89, para. 228). In any event, even if this were the case, this would not make Minicoy larger or less isolated. Moreover, the fact that Minicoy is populated does not rebut the presumption that geographical factors were operating.

(6) India-Indonesia (Phase 2) (1977)

481. The analysis offered above in relation to Phase 1 (paras. 474-477) applies here also. In the analysis of this delimitation by the Geographer of the Department of State the following appears:

> "The two countries have agreed to create a maritime boundary using the equidistant methodology. As shown in Table 1 each turning/terminal point is essentially the same distance from the respective baseline. The letters given to the turning points in the Andaman Sea segment (K,N, and O) suggest that the countries may have simplified the equidistant line by discarding some turning points (i.e., L and M). It also appears that all islands and rocks have been given full and equal weight in the equidistant calculation." (*Limits in the Seas*, No. 93, 17 August 1981, p. 3).

(7) Colombia-Costa Rica (1977)

482. The Reply (pp. 89-90, paras. 231-234) makes no attempt to dispute the comparability of this delimitation, whilst providing a certain amount of somewhat speculative political history. The fact remains that the negotiators of the Agreement found that the solution adopted corresponded to the geographical situation.

(8) United States-Venezuela (1978)

483. The Reply (pp. 90-91, paras. 235-238) exhibits an obscurely expressed unease about the role of Aves Island in this delimitation. The incontrovertible fact remains that Aves Island was given full weight.

(9) The Netherlands-Venezuela (1978)

484. The criticism offered in the Danish Reply (pp. 91-92, paras. 239-243) is difficult to follow. The fact remains that the sector of the delimitation involving the Dutch islands of Aruba, Bonaire and Curacao (that is, presenting opposite coasts) is almost an equidistance line (as the Reply (para. 242) concedes).

485. The Reply asserts (para. 241) that the Agreement of 1978 "is not an equidistance agreement". This is, with respect, beside the point if *in effect* more or less full weight was accorded

to the offshore islands. The Danish argument amounts to saying that the delimitation is not based upon pure equidistance. The Geographer of the Department of State remarks:

> "Although several of the boundary points are on or near an equidistant line, this boundary is not based on the equidistance method. Under a strict application of equidistance, the Netherlands would have received a larger maritime area." (*Limits in the Seas*, No. 105, p. 5).

(10) Mexico-United States (1978)

486. The position of the Reply (p. 92, paras. 244-245) is confused. The fact is that in the Caribbean full effect was given to three small features. The Reply (para. 245) complains that the Counter-Memorial did not refer to the Pacific sector of the delimitation. However, in that sector also islands were given full effect. Consequently, the reference to a "trade-off" in the Reply is difficult to understand.

(11) India-Thailand (1978)

487. The text of the Reply (pp. 92-93, paras. 246-248) appears to confirm the fact that the Nicobar Islands were given full effect in this delimitation. The fact that full effect was also given to "the relevant Thai islands" does not reduce the comparability of the case. The Nicobars have been given full weight in spite of their distance from India.

488. There is also an obscure reference in the Reply (para. 248) to the fact that the line between points 1 and 2 is effectively a continuation of phase two of the India-Indonesia boundary in order to establish a tripoint. This cannot detract from the fact that the delimitation consists of a line of equidistance.

(12) Norway-United Kingdom (Phase 2) (1978)

489. The relevant commentary has been set forth above (paras. 469-470).

(13) Dominican Republic-Venezuela (1979)

490. The treatment of this material in the Reply (pp. 93-94, paras. 250-251) involves a complete obfuscation of the real issue.

The fact that the Netherlands Antilles Islands were adopted by third parties as a significant part of the legal framework of delimitation does not involve downgrading the offshore islands. In effect these islands were treated as if they were Venezuelan islands *having full effect.*

(14) Norway-Denmark (1979)

491. The Reply (p. 94, para. 252) seeks to deny the comparability of this delimitation by reference to the population of the Faroe Islands, their independent economy, and the fact that they enjoy an independent political status. As on other occasions no evidence is offered to support the assertion that factors other than coastal configuration played a role. Not surprisingly: there is no evidence. As stated in the foregoing (pp. 61-62, paras. 195-199) this delimitation followed upon a governing delimitation agreement between the Parties, prescribing the median line as the shelf boundary. The median line was applied as a matter of course both for the shelf between the Norwegian mainland and the Faroe Islands, and for 200-mile zones. This followed the applicable national laws of both Parties. On the Norwegian side, there was no consideration of any other line of delimitation, and indeed, on the basis of Norwegian law and Norwegian approaches to maritime delimitation, any such thought would have been out of the question.

(15) France-Venezuela (1980)

492. The observations in the Reply (p. 94, paras. 253-254) fail to obscure the central fact that in general the small Isla Aves and the much larger French islands had been treated on a basis of parity. This remains true even if the alignment is not itself an equidistance line. In the result Venezuela has been given almost 100 per cent of the areas which would have accrued from equidistance as such in relation to Martinique and approximately 80 per cent of such areas in relation to Guadeloupe.

(16) Australia-France (1982)

493. The Reply (p. 95, paras. 256-257) rejects the comparability of this delimitation on the basis that the boundary "is essentially a median line between two sets of broadly comparable islands, with each set of islands being backed by long coastlines ...". This assertion fails to correspond with the facts relating to the

delimitation in the Indian Ocean: the reference in paragraph 256 to the delimitation in the Coral Sea "with each set of islands being backed by long coastlines" is otiose.

494. The delimitation in the Indian Ocean involves the Kerguelen Islands which are a major feature with a frontage of over 70 miles. In comparison the two opposite facing islands of Heard and McDonald have very limited coasts abutting upon the delimitation area. The delimitation of these two groups 200 miles apart gives full effect to the very minor Australian islands, a result which Denmark does not seek to controvert.

(17) India-Myanmar (Burma) (1986)

495. As on previous occasions the Reply (p. 95, para. 259) introduces references to area, population, and economic activity without seeking to establish the actual relevance, if any, of such factors to the particular delimitation.

Comment

496. The survey now completed seeks to provide a balanced impression of the relevant State practice, and is concerned to correct the errors to be found in the commentary produced in the Reply. It remains to point out that none of the examples of geographically comparable practice provides even minimal support for the type of delimitation proposed by Denmark in the present case.

4. The Danish Approach

497. At this point it is appropriate respectfully to remind the Court that the perspective within which the Danish Government evaluates the State practice presented on behalf of Norway is deeply flawed. The most general flaw is the insistence that all State practice involving islands has a categorical reference. The other major flaws flow from this lack of sensitivity to the geographical and legal framework within which the process of delimitation must take place.

498. The most significant error in the Danish analysis is to fail to see that, when islands are by themselves part of the geographical framework, they are generally given full effect.

5. The Correct Procedure of Delimitation

499. The focus of the Danish arguments, like some of the literature, is upon the category of "islands" as geographical features. This type of approach ignores the procedure of delimitation adopted in the practice of international tribunals. Tribunals approach the geographical circumstances and coastal relationships *as a whole*. In terms of the history of the dispute and the major geographical features of the region a legal and geographical framework is determined within which the process of delimitation will be carried out.

500. The features which count for the purpose of determining the legal framework are the coasts actually abutting upon the continental shelf of the region (see the Decision of the Court of Arbitration in the *Anglo-French Case*, paras. 246, 248). The criterion appears to be essentially the same in the case of multi-purpose delimitation. The Chamber of the Court in the *Gulf of Maine Case* referred to "the geographical area directly concerned in this delimitation" (*I.C.J. Reports 1984*, p. 268, para. 28). The Chamber also stated that: "The involvement of coasts other than those directly surrounding the Gulf does not and may not have the effect of extending the delimitation area to maritime areas which have in fact nothing to do with it" (*ibid.*, p. 272, para. 41).

501. No doubt the identification of the geographical framework involves a degree of appreciation. It is certain that this process is not the same as the selection of "relevant coasts" for the purposes of applying a proportionality test. Otherwise, the determination of the geographical framework is inevitably a craft based upon experience and good sense. The relevant experience consists of State practice and jurisprudence of international tribunals.

502. The experience reveals a critical distinction in the determination of the role of islands. Islands are given full effect when they form part of the geographical framework and thus constitute features which abut directly upon the area in dispute and which consequently mark out a maritime region. In contrast, islands which are incidental to such a geographical framework are given special treatment commensurate with their different role. The examples of "enclaving" and various other modes of giving less than full effect to islands are in all cases related to islands which do not form part of the geographical and legal framework within which delimitation takes place.

503. In the present dispute Jan Mayen has a role in establishing the geographical framework of delimitation and, in the current usage, is to be given "full effect". This conclusion is confirmed by reference to those special situations in which islands in practice have qualified for special treatment.

504. Islands which have qualified for special treatment in delimitation practice usually fall into one of the following categories:

(a) Islands Located Near the Primary Boundary

505. Many examples of special treatment involve islands located near the line of the primary boundary resulting from the principal geographical features of the region. Thus islands near the median line may be given special treatment (Italy-Tunisia) or in an appropriate case treated as cancelling out each other's effects (Iran-Saudi Arabia).

(b) Islands Located in Such a Way as to Cause Distortion of the Primary Boundary

506. When an island is located in such a way that allowing it to have full effect would cause an unreasonable distortion of the primary boundary dictated by the applicable geographical framework, then such an island will be given special treatment. This is exemplified in the case of continental shelf delimitation by the treatment of the Scilly Islands in the Decision of the Court of Arbitration in the *Anglo-French Case* (paras. 248-251). In the context of multi-purpose delimitation the practice is well illustrated by the treatment of Seal Island by the Chamber of the Court in the *Gulf of Maine Case* (*I.C.J. Reports 1984*, p. 336, para. 222).

507. The treatment of the Channel Islands in the *Anglo-French Case* is also essentially an example of this class of delimitation, because it was essentially their location in relation to the primary boundary which occasioned their disadvantage (see the *Decision*, paras. 187-201).

(c) Islands of State C Producing Local Frontages within a Delimitation Area Framed by the Opposite Facing Coasts of States A and B

508. This situation obtains in the Caribbean where the Netherlands Antilles consists of an island chain of Dutch islands (Aruba, Curaçao and Bonaire) lying off Venezuela. In this situation the delimitations between Venezuela and, in their role as opposite States, the United States and the Dominican Republic, respectively, employed the northern face of the Netherlands Antilles as the relevant coasts. Thus the islands of the Netherlands Antilles were given full effect for the purpose of delimitations between third States (see the Counter-Memorial, pp. 178-179, paras. 633-634; p. 180, paras. 639-640).

509. Whatever the complexities of the position in the Caribbean, the solutions adopted do not suggest that offshore islands of a differing sovereignty are to be given short shrift.

(d) Islands Situated Near to a Coast and being under the Same Sovereignty

510. Islands which are situated close to a coast and sharing the same title to sovereignty may be ignored or given less than full effect. In some cases the island is so closely associated with the coast that there is no case for giving the feature an independent effect. Thus, if the geographical framework is taken to include the general direction of the pertinent coast, a relatively small discordant feature will be ignored, as Jerba was in the *Tunisia-Libya Case* (*I.C.J. Reports 1982*, p. 85, para. 120).

511. Similarly, islands which are situated close to the coast will be given less than "full effect". The reasons for this result will depend on a variety of factors: see the *Tunisia-Libya Case* (*ibid.*, p. 89 para. 129) (relating to the Kerkennah Islands); and the delimitation between Iran and Saudi Arabia (relating to the Iranian island of Kharg). Such islands do not form part of the geographical framework and, given their location, are given appropriate weight.

512. It can be stated with confidence that the situation of Jan Mayen does not bear any similarity to the islands within the four categories accorded special treatment in practice. Jan Mayen is an independent feature geographically speaking and is a major

determinant of the delimitation area. Consequently, it cannot be located "near the primary boundary"; and it cannot cause a distortion of the primary boundary.

513. In the same context Jan Mayen does not fall within the third category of cases of special treatment. Jan Mayen is not situated in a delimitation area between the coasts of opposite States and so no question of a "screening effect" can arise. Nor can Jan Mayen be classified as an island situated near to a coast and under the same sovereignty.

6. Conclusion: The Role of Jan Mayen

514. As a matter of principle Jan Mayen is an independent geographical feature with a substantial frontage opposite Greenland. These two opposite-facing frontages form the basis for a primary boundary which is the median line, an alignment recognized and confirmed by the conduct of the Parties. Jan Mayen thus constitutes a part of the geographical framework within which delimitation is assessed.

515. The question which remains is whether there is any justification for the "correction" or "modification" of the primary boundary in accordance with equitable principles. There is in fact no basis recognized by the law that would justify such "correction" or "modification", and this conclusion will be amplified in Chapter XII below (pp. 169–184).

516. The equitable standards indicated by the State practice establish that an island in the position of Jan Mayen should be treated as normal land territory and should therefore be given "full effect".

517. The application of equitable principles involves reference primarily to geographical factors and the configuration of coasts. It is location, which is a matter also of configuration of coasts, which is the predominant consideration. It follows that area is not relevant and the tendency of the Danish Government to insist on area is eccentric and not in accord with legal principle. In its Judgment in the *Libya-Malta Case* the Court firmly rejected the relevance of landmass to the generation of continental shelf rights: (*I.C.J. Reports 1985*, pp. 40-41, para. 49).

518. In the same context the Award of the Court of Arbitration in the *Guinea - Guinea-Bissau Case* expressed the following view:

> "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 facades and their formations." (*Award, International Law Reports* (Ed. E. Lauterpacht), Vol.77, p. 688, para. 119).

519. It is to be noted that in the *Guinea – Guinea-Bissau Case* the Award made reference to land mass only in the context of reference to "additional circumstances" as a means of checking the equity of the result based upon the more important relevant circumstances (see the *Award, ibid.*, pp. 685-690, paras. 112, 125).

520. The significance of location and coastal configuration also dictates the essential irrelevance of population and economic activity for maritime delimitation purposes. This is particularly the case in relation to islands and other features which constitute the geographical framework of the delimitation area. International tribunals show no interest in the degree to which such "framework" features are populated or are associated with economic activity. That has been fully confirmed in the practice of international tribunals.

521. It is nevertheless a recurrent theme that population and economic importance may be regarded as relevant in relation to islands. Apart from any misunderstandings in this respect which might derive from a wishfully broad interpretation of Article 121, paragraph 3, of the 1982 Law of the Sea Convention, certain comments in the *Anglo-French Case* and in the *Gulf of Maine Case* could mistakenly be read as supporting this contention.

522. In the *Anglo-French Case*, the Court of Arbitration made reference to "the equitable considerations invoked by the United Kingdom as carrying a certain weight" (*Decision*, para. 198). Those considerations covered a series of unrelated factors. In the paraphrase of the Court, they included "the particular character of the Channel Islands as not rocks or islets but

populous islands of a certain political and economic importance", and "the close ties between the islands and the United Kingdom and the latter's responsibility for their defence and security". These factors were claimed as a reason for linking the island shelf to that of the United Kingdom. The other considerations invoked by the United Kingdom were directly related to the geography of the region, and to the view that the drawing of a median line to the west and north of the islands would not cause any "disproportion or exaggeration".

523. In according "a certain weight" to the argument of the United Kingdom, the Court of Arbitration addressed all these considerations as a whole. The only effect deriving from these considerations was to invalidate the French proposal to reduce the entitlement of the Channel Islands to a six-mile enclave (*Decision*, para. 198).

524. In the *Gulf of Maine Case*, the Chamber discussed the presence off Nova Scotia of Seal Island as "one aspect which, though minor, might have some influence ...". In the words of the Judgment:

> "The Chamber considers that Seal Island (together with its smaller neighbour, Mud Island), by reason of its *dimensions* and, more particularly, of its *geographical position*, cannot be disregarded for the present purpose. According to the information available to the Chamber it is some two-and-a-half miles long, rises to a height of some 50 feet above sea level, and is inhabited all the year round. It is *still more pertinent* to observe that as a result of its *situation* off Cape Sable, only some nine miles inside the closing line of the Gulf, the island *occupies a commanding position* in the entry to the Gulf." (*I.C.J. Reports 1984*, pp. 336-337, para. 222; emphasis added).

525. It will be seen that the reference to population is incidental to a general description of the island. It was a reasoning exclusively based upon the *geographical relationship* of Seal Island to other geographical features in the region which led the Chamber to find it "appropriate" to give the island half effect (in the calculation of the ratio of coastline lengths by which a true median line would be adjusted, *ibid.*, and Technical Report, *ibid.*, p. 350, paras. 12-13).

526. It should be noted that the incidental references to island populations in both these instances were made in a context where the island or islands did not form part of the legal framework of the delimitation.

527. It is necessary to underline that the categories of "population" or "economic activity" are not terms of art. If, for the sake of argument, it is assumed that non-geographical factors are relevant to a particular delimitation, such factors cannot be put into compartments.

528. In the *Anglo-French Case* the Court of Arbitration treated navigational, defence and security considerations as "equitable considerations" to be given a certain weight. At the same time the Court made it clear that such considerations were subordinate to the geographical circumstances of the region constituted by the opposite coasts of the English Channel. Furthermore, the Court also indicated that geography more or less determined the existence of the predominant interests of the parties in particular areas of the English Channel.

529. The relevant passage in the *Decision* of the Court of Arbitration is as follows:

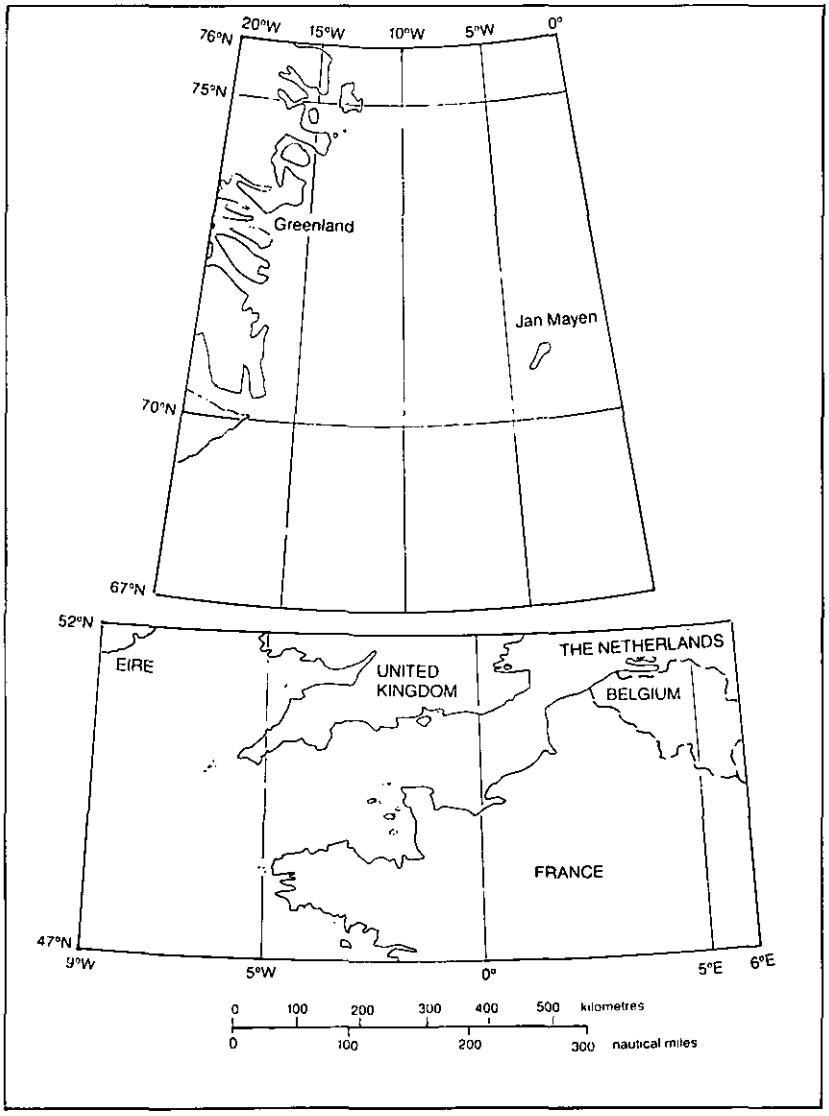
> "Other elements in the framework are the various equitable considerations invoked by the Parties regarding their respective navigational defence and security interests in the region. These considerations may be, and have been, urged by both Parties as supporting the solutions which they advocate: by the French Republic in favour of a continuous link between the eastern and western parts of its continental shelf in the Channel; and by the United Kingdom in favour of a continuous link between the continental shelf and the Channel Islands and that of the mainland. Moreover, the weight of such considerations in this region is, in any event, somewhat diminished by the very particular character of the English Channel as a major route of international maritime navigation serving ports outside the territories of either of the Parties. Consequently, they cannot be regarded by the Court as exercising a decisive influence on the delimitation of the boundary in the present case. They may support and strengthen, but they cannot negative, any conclusions that are already indicated by the geographical, political and legal circumstances of the region which the Court has identified. As to the conclusion to be drawn from those considerations in connection with the delimitation of the continental shelf,

the Court thinks it sufficient to say that, in its view, they 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." (*Decision*, para. 188).

530. This passage gives full expression to a consideration which is foreign to the Danish pleadings, that is to say, that the significance of sea areas as such is a measure of the delimitation within the region. Moreover, it is also pointed out that the status of riparian State is itself an interest to be given appropriate value.

531. It may be of some interest to compare directly the geography which dictated the solution in the *Anglo-French Case*, and that which obtains in the region between Jan Mayen and Greenland. The sketch maps at page 157 show both situations, on the same scale. The configuration of the coasts of France and the United Kingdom, with their island appendages, and the cramped and close relationship between these coasts, is clearly apparent. The open and spacious sea area which separates Jan Mayen and Greenland, and the uncomplicated relationship of oppositeness of their coasts clearly distinguish the two situations.

Geographical Situation of Jan Mayen and Greenland
Compared with the Channel Region



CHAPTER IX
THE SUBSTANTIAL INTEREST OF NORWAY IN THE JAN MAYEN MARITIME REGION

1. The Purpose

532. The purpose is twofold. First, in view of the nature of the Danish response to the relevant section in the Counter-Memorial (paras. 567-596), the argument in the latter is confirmed both as to the law and as to the facts.

533. The nature of the response in the Reply (pp. 158-159, para. 436) is to make a concession to the effect that the Applicant State does "not deny that Norway has indeed shown an interest in exploiting different hunting and fishing grounds far away from its own shores". The concession is, of course, accompanied by a denial that such an interest is legally relevant. It is necessary for the Norwegian Government to examine the bases of this denial, and that examination is the second purpose of the present chapter.

2. The Relevance of the Norwegian Interest

534. The reasons offered in the Reply for denying the legal relevance of Norway's interest in the region are varied. The description of Norway's fishery policy as "expansionist" can only be described as fanciful. The historical reference to the origins of the concept of the exclusive economic zone is question-begging and is an indirect expression of the Danish conception that Jan Mayen does not have a normal entitlement to maritime zones.

535. The passage concerned is as follows:

> "Indeed, a major factor in the international efforts to establish 200-mile exclusive economic zones in favour of coastal States was precisely the need generally felt by the international community to have these States, and among them especially the developing countries, protected against exploitation of the resources in their adjacent waters by long-range fishing fleets from highly developed and industrialised countries – a situation which corresponds well to Norway's activities close to the shores of Greenland" (Reply, p. 159, para. 436).

536. On further examination this appears to be a presentation of the unequal access to resources thesis which the Court rejected in the *Libya-Malta Case (I.C.J. Reports 1985*, p. 41, para. 50), and which did not find favour with the Court of Arbitration which decided the *Guinea – Guinea-Bissau Case* (see the Award, *International Law Reports* (Ed. E. Lauterpacht), Vol. 77, p. 689, para. 123). Such an argument is in any case inappropriate. First, of all, it is inappropriate because Greenland has close ties with the fisheries operations of the EEC. Secondly, Greenland as a separate geographical unit has extensive access to fisheries resources, together with sealing and whaling (see in particular pp. 27-40, paras. 87-119, above).

537. In parenthesis, it may be pointed out that it is Denmark which is claiming a virtual monopoly of the resources in the region between Greenland and Jan Mayen.

538. The Reply (para. 436 *in fine*) observes that "Norway, therefore, is not a coastal State in relation to the present delimitation dispute". This is certainly true in respect of the mainland of Norway but it is not true in relation to the coastal frontages of Jan Mayen. Moreover, the Reply insinuates that Norway can have no "substantial interests" in respect of Jan Mayen because the island has no permanent population. This proposition is based on a faulty legal premise: that no legitimate interest can exist in such an area. In any event Norway has in the Counter-Memorial carefully indicated the nature of its interest in the Jan Mayen region and in the Reply Denmark has conceded the substance (whilst insisting on its irrelevance).

539. In the Counter-Memorial (p. 164, paras. 567-569) the Norwegian Government indicated a factor of considerable legal importance concerning which the Reply has chosen to remain silent. This factor is the symbiotic relationship between the land territory of the coastal State and its interests in the maritime areas. The interest of Norway in the maritime areas of the region is enhanced by virtue of its sovereignty over Jan Mayen; and Norway's sovereignty over Jan Mayen is enhanced by its interest in the maritime areas adjacent to Jan Mayen.

540. In the final analysis, the existence of Norwegian territory in the region provides the entitlement to appurtenant maritime areas and a substantial legal interest is to be presumed. It is sovereignty over land territory and location which form the

primary evidence of legal interest. In the jurisprudence of the Court, emphasis has always been placed upon the role of the coast of each of the Parties which:

> "constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position". (Judgment of the Court in the *Tunisia-Libya Case, I.C.J. Reports 1982*, p. 61, para. 74; and see also the *Libya-Malta Case, I.C.J. Reports 1985*, p. 40, para. 47).

CHAPTER X
SECURITY CONSIDERATIONS AND THE COASTAL STATE'S PROTECTIVE INTERESTS

541. The Danish Government appears to accept the Norwegian position as to the relevance of security considerations as such: see the Counter-Memorial, page 162 (paras. 561-562), and compare the Reply, page 159 (para. 437).

542. However, the Counter-Memorial presented two other issues in this connection about which the Reply has nothing to say. First, the Norwegian Government expressed its concern for the protective interest which a coastal state has in relation to maritime areas and their resources. (Counter-Memorial, p. 163, paras. 563-565). The practical ramifications of this, and the system of support and assistance for fishing vessels in the region, were also set forth in detail (*ibid.*, p. 168, paras. 586-589). As it was pointed out, this interest of Norway is directly connected with the exploitation of the resources of the maritime areas appurtenant to the island (*ibid.*, p. 169, para. 590). This type of interest, together with an interest in future exploitation of mineral resources in the shelf, cannot be accommodated by reliance upon a territorial sea and contiguous zone. (cf. the Reply, p. 159, para. 437).

543. The second issue ignored in the Reply is the fundamental consideration that a delimitation should not create an imbalance in the relative security position of the two Parties, as this would clearly be inequitable. (Counter-Memorial, p. 163, paras. 565-566). A notable feature of the jurisprudence is that, whilst courts are unwilling to allow considerations of security to intrude upon the major task of establishing a primary boundary in accordance with geographical criteria, they are concerned to avoid creating conditions of imbalance.

544. There can be little doubt that this was a factor in the decision of the Court of Arbitration in the *Anglo-French Case* to enclave the Channel Islands, because to do otherwise would have failed to recognize "the predominant interest of the French Republic in the southern areas of the English Channel": see the *Decision* (para. 188; cf. also paras. 197-198).

545. A similar concern for balance in this context is evident in the Award in the *Guinea – Guinea-Bissau Case*:

"To the economic circumstances, the Parties linked a circumstance concerned with security. This is not without interest, but it must be emphasised that neither the exclusive economic zone nor the continental shelf are zones of sovereignty. However, the implications that this circumstance might have had were avoided by the fact that, in its proposed solution, the Tribunal has taken care to ensure that each State controls the maritime territories situated opposite its coasts and in their vicinity. The Tribunal has constantly been guided by its concern to find an equitable solution. Its prime objective has been to avoid that either Party, for one reason or another, should see rights exercised opposite its coast or in the immediate vicinity thereof, which could prevent the exercise of its own right to development or compromise its security." (*International Law Reports* (Ed. E. Lauterpacht), Vol. 77, p. 689, para. 124)

546. It is evident that the claims formulated by Denmark in these proceedings are incompatible with any such conceptions of avoiding imbalance in matters of protection and security, and are essentially inequitable. Moreover, in this context, the conditions prevailing in the North Atlantic, the distance between Jan Mayen and mainland Norway, and the existence of patterns of economic and associated activities in the adjacent maritime areas, are circumstances which cannot be taken to diminish the significance of the protective interest of Norway.

CHAPTER XI
CERTAIN IRRELEVANT FACTORS INVOKED BY DENMARK

1. The Purpose

547. In a casual and disjointed fashion the Reply invokes a number of factors to support the "200-mile outer limit" claim which are legally irrelevant. The purpose of the present chapter is to examine these factors.

2. Area

548. From time to time the Reply invokes area as a factor in delimitation: see the passages at page 5, paragraph 10, and p. 114, para. 308; the various references to area in the sections devoted to State practice (pp. 87, para. 218; p. 87, para. 221; p. 95, para. 259; p. 96, paras. 261-262); and certain other references (for example, at p. 165, para. 453).

549. These references to area are not supported by any authority and the Danish Government makes no attempt to refute the legal authorities set forth in the Counter-Memorial (pp. 173-174, paras. 606-610) which indicate the irrelevance of land mass. The Court is respectfully referred to the passages in the Counter-Memorial.

550. The relevance of area is also contradicted by State practice and, in particular, by the delimitation between Denmark and Norway in respect of the Faroes (Counter-Memorial, Annex 69). The total land area of the Faroes is 1,399 square kilometres (540 square miles). The major discrepancy between this and the area of the adjacent parts of mainland Norway was clearly of no relevance to the delimitation.

3. Population

551. The Reply contains persistent references to the factor of population: see the passages at pages 156-157 (para. 429), 158 (para. 435), 159 (para. 436), 163 (para. 445), 165 (paras. 452-453),

169 (para. 463). As in the case of the references to "area", so here there is no attempt to provide authority for the relevance of population.

552. As a matter of legal principle, the factor of comparative population is as irrelevant as the argument relating to landmass. Population is not a factor relating to the title of a coastal state to shelf areas. In the case of fishery conservation zones and exclusive economic zones the basis of title is related to the possession of a coast and the elements of protection and management of resources inherent in control of a coast and the adjacent maritime areas.

553. Thus population is completely unrelated to the basis of entitlement of the coastal state. The population factor, like the landmass, is not linked juridically with the concepts of coastline and of adjacency measured by distance: see the Judgment in the *Libya-Malta Case* (*I.C.J. Reports* pp. 40-41, para. 49). This consideration applies with more rather than less force in the case of long-distance delimitation involving the distance principle and claims to zones up to 200 miles from the baselines.

554. The operation of a population factor in the context of delimitation is also ruled out by its lack of reliability. In the *Tunisia-Libya Case* the Court rejected economic considerations precisely because of their unpredictability. In the words of the Judgment:

> "The Court is, however, of the view that these economic considerations cannot be taken into account for the delimitation of the continental shelf areas appertaining to each Party. They are virtually extraneous factors since they are variables which unpredictable national fortune or calamity, as the case may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource." (*I.C.J. Reports 1982*, p. 77, para. 107).

555. In the *Libya-Malta Case* the Court set aside economic considerations on the basis that they are unrelated to the basis of entitlement. In the words of the Judgment:

> "The Court does not however consider that a delimitation should be influenced by the relative economic position of the two States in question, in such a way that the area of

continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources. Such considerations are totally unrelated to the underlying intention of the applicable rules of international law. It is clear that neither the rules determining the validity of legal entitlement to the continental shelf, nor those concerning delimitation between neighbouring countries, leave room for any considerations of economic development of the States in question." (*I.C.J. Reports 1985*, p. 41, para. 50).

556. In the practice of international tribunals, the elements of population and economic importance have not been treated as relevant in relation to maritime delimitation. In terms of geographical description, these elements may have been mentioned, but tribunals have not in fact given them any importance in the actual determination of boundaries. In this respect, islands have not been treated differently from mainland features: see paragraphs 520-526 above.

557. There is, moreover, no evidence in the practice of states that population has any significance either in determining the overall design of the particular delimitation or in the selection of basepoints. This proposition can be tested by reference to the practice of the Parties to these proceedings. The United Kingdom and Norway have concluded two delimitation agreements (in 1965 and 1978) concerning the continental shelf areas between the Shetland Islands and Norway: see the Counter-Memorial, Annexes 44 and 67.

558. These related delimitations are based upon geographical considerations and result in equidistance lines. The northernmost 20 miles of the 1965 boundary, and the whole of the 1978 boundary, are controlled by two outlying features of the Shetland group (Outer Flaess and Out Stack). Out Stack is an isolated and uninhabited rock. Outer Flaess is a rock near the inhabited island of Unst. The population of Unst is approximately 1100 (but many of these people are employees of the Royal Air Force). There is not the slightest indication either in the text of the delimitation agreements or in the characteristics of the resulting boundaries that population had any relevance.

559. The same is true of the continental shelf delimitation concluded between Norway and Denmark relating to the areas between the Faroes and Norway in 1979 (Counter-Memorial, Annex 69).

560. In any case, as Norway has pointed out in the Counter-Memorial, the comparisons between Jan Mayen and Greenland do not produce indications which are unfavourable to Norway. A very small proportion of the population of Greenland lives within the Arctic Circle (at the same latitudes as Jan Mayen). Moreover, the vast area of Greenland produces a low density of one person per 40 square kilometres. The Jan Mayen density is one person per 15 square kilometres. Only 6 per cent. of the population of Greenland lives in East Greenland (see the references in the Counter-Memorial, p. 175, para. 616).

4. Constitutional Status

561. In the same mode as "area" and "population", the Reply invokes "constitutional status" as a relevant factor in various passages: see pages 158 (para. 435), 163 (para. 445), 165 (para. 453), and 169 (para. 463). These references are all casual and no attempt is made to justify the assumption that "the constitutional status of the respective territories" is relevant to delimitation.

562. There is no evidence in the State practice to justify such an assumption. Moreover, a perusal of significant monographs on maritime delimitation published in recent years fails to uncover references to "constitutional status" as a relevant circumstance or factor: see, for example, Evans, *Relevant Circumstances in Maritime Delimitation*, Oxford, 1989; and Weil, *The Law of Maritime Delimitation – Reflections*, Cambridge, 1989.

563. In any event, the foreign relations of Greenland remain under the direct control of the Danish Government: see the Memorial (pp. 33-34, paras. 133-138). Consequently, Greenland is for present purposes Danish territory and the legislation of Denmark concerning both the Continental shelf and fisheries consists of Decrees, Acts, and Executive Orders in the usual form.

564. As the Court indicated in the *Libya-Malta Case*, it is not the political status of an island which is pertinent but whether or not the island concerned:

> "formed a part of the territory of one of the surrounding countries. This aspect of the matter is related not solely to the circumstances of Malta being a group of islands, and an independent State, but also to the position of the islands in

the wider geographical context, particularly their position in a semi-enclosed sea." (*I.C.J. Reports 1985*, p. 42, para. 53).

As will be seen, the Court's consideration concentrated on the "surrounding" geography, the "wider geographical context", and the position of Malta in a semi-enclosed sea.

5. Cultural Heritage

565. The Reply contains two passing references to "cultural heritage" as a relevant factor: see pages 163 (para. 445), and 169 (para. 463). No elucidation is provided and such a consideration is absent from State practice and from the literature concerning maritime delimitation. The concept of "cultural heritage" does not figure in the list of "the relevant factors in the present case" contained in the Memorial (pp. 95-111, paras. 294-356).

6. The Ice Condition along Greenland's Coast

566. The Reply (pp. 169-170, para. 465) refers to the "ice condition along Greenland's east coast" as a "factor operating in favour of the 200-mile line measured from the actual baselines of Greenland". The reason given for this assertion is the fact that "throughout the year only part of Greenland's 200-mile fishery zone is accessible by boat or ship".

567. The argument is flawed in two respects. In the first place it is question-begging: the Danish 200-mile fishery zone is a part of the delimitation area and overlaps the boundaries claimed by Norway. The extent of the zone is thus in issue and the zone is not itself a quantity to be weighed in a balancing of equities.

568. Secondly, there is no evidence that the application of equitable principles could involve giving such weight to navigational interests that the boundary line related to geographical and legal circumstances would be displaced. In so far as the jurisprudence provides any indications on this subject, the evidence suggests that such interests may be invoked in order to confirm the primary boundary emerging from the geographical framework: see the Decision of the Court of Arbitration in the *Anglo-French Case* (para. 188).

569. The Danish argument concerning accessibility by boats and ships in the waters off eastern Greenland is contradictory. The ice condition is invoked as a factor supporting a monopolistic claim. The inference must be that Greenland is disadvantaged by the fact that the masses of ice in the waters off East Greenland create problems which must be compensated for in delimitation. That approach is entirely alien to the law. But it is doubly ironical if this argument is put forward at the same time as Denmark insists that Jan Mayen by virtue of its desolate nature, its isolation and alleged difficulty in communications is thereby *disqualified* to an equal entitlement and an evenhanded delimitation.

CHAPTER XII
THE ELEMENTS OF AN EQUITABLE SOLUTION

1. The Purpose

570. In this Chapter the Norwegian Government will present the elements of an equitable solution seen against the background of the Memorial, Counter-Memorial, and Reply.

2. The Legal and Geographical Framework

571. It is axiomatic that delimitation is effected within a certain legal and geographical framework. The determination of this framework has three elements. The first involves a reference to the history of the dispute and the overlapping claims of the Parties.

572. The second element involves reference to the principal geographical features of the area to which the conflicting claims of the Parties relate. Thus the selection is not an abstract geographical exercise but a question of geographical areas related to the dispute. Thus in the *North Sea Cases*, it was the southern sectors of the North Sea which were the areas in which the claims of the Parties converged: see the Judgment, *I.C.J. Reports 1969*, pages 49-50, paragraphs 89, 91. Similarly, the Chamber of the Court in the *Gulf of Maine Case* took considerable care in deciding which was "the geographical area directly concerned in this delimitation" (*I.C.J. Reports 1984*, p. 268, para. 28 (and see also at p. 273, para. 41)).

573. The third element is closely related to the second and consists of the determination of the coastal frontages which are the critical features in view of the general configuration of the coasts of the Parties. Thus, in the case of the Atlantic region, the Court of Arbitration in the *Anglo-French Case* stated 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". (*Decision*, para. 248). As the Court stated in its Judgment in the *Libya-Malta Case*:

> "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).

574. The geographical framework in the present dispute, assessed in the light of these legal considerations, consists of the opposite-facing frontages of Greenland and Jan Mayen, the latter having a frontage 53.6 kilometres in length. Both the eastern coast of Greenland and Jan Mayen are features which stand independently and do not form part of an external geographical framework.

575. Jan Mayen is located 250 nautical miles from Greenland and its eastern and northern coast front upon extensive areas of high seas: see Map IV appended to the Counter-Memorial. There are no other geographical features involved. These facts constitute significant elements in the framework of delimitation.

3. The Primary Boundary and the Principle of Equal Division

576. On the basis of the legal and geographical framework it is normal for international tribunals to carry out the process of delimitation in two stages. The first stage involves establishing a provisional or primary boundary which may be subject to modification in the light of certain relevant circumstances. This *modus operandi* was applied by the Chamber in the *Gulf of Maine Case (I.C.J. Reports 1984*, pp. 327-328, paras. 195, 197). It was also employed by the Court in the *Libya-Malta Case (I.C.J. Reports 1985*, pp. 46-47, paras. 60-61).

577. Title to seabed areas and the water column depends on sovereignty over coasts, and the concept of adjacency thus requires translation into a distance criterion. In the *Gulf of Maine Case* the Chamber of the Court gave clear expression to the principle of equal division (Counter-Memorial, pp. 124-126, paras. 421-424). In relation to the geography of coasts the Chamber expressed its position thus:

> "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 would 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, para. 195).

578. The Reply (pp. 153-154, para. 417) asserts that "No principle of equal division is pronounced by the Chamber". This is an artificial reaction to a passage in the Counter-Memorial (pp. 125-126, para. 423) quoting the Chamber which expressly refers to the "criterion" of equal division. Moreover, the Judgment of the Chamber contains a considerable number of passages which obviously have not come to the attention of the Danish Government.

579. Two other relevant passages from the Judgment may be quoted:

> "This method is inspired by and derives from a particular equitable criterion: namely, that the equitable solution, at least prima facie, is an equal division of the areas of overlap of the continental shelves of the two litigant States. The applicability of this method is, however, subject to the condition that there are no special circumstances in the case which would make that criterion inequitable, by showing such division to be unreasonable and so entailing recourse to a different method or methods or, at the very least, appropriate correction of the effect produced by the application of the first method". (*I.C.J. Reports 1984*, pp. 300-301, para. 115).

> "There has been no systematic definition of the equitable criteria that may be taken into consideration for an international maritime delimitation, and this would in any event be difficult *a priori*, because of their highly variable adaptability to different concrete situations. Codification efforts have left this field untouched. Such criteria have however been mentioned in the arguments advanced by the parties in cases concerning the determination of continental shelf boundaries, and in the judicial or arbitral decision in those cases. There is, for example, the criterion expressed by the classic formula that the land dominates the sea; the criterion advocating, in cases where no special circumstances require correction thereof, the equal division of the areas of overlap of the maritime and submarine zones appertaining to the respective coasts of neighbouring States ...." (*ibid.*, pp. 312-313, para. 157).

580. In addition, apart from paragraphs 115, 157 and 195, already quoted, there are a further seven passages in which the criterion of equal division features prominently (*I.C.J. Reports 1984*, p. 328, para. 197; pp. 329-330, para. 201; pp. 331-332, para. 209; p.332, para. 210; pp. 332-333, para. 212; p. 333, para. 213; p. 334, para. 217).

581. The Reply (p. 154, para. 418) also complains that "one looks in vain in international legal sources to find a 'principle of equal division'..". In response to this comment it has to be said that any detailed account of maritime delimitation would be at fault if no reference were made to the principle of equal division. It is, therefore, not surprising to find several passages in Professor Weil's monograph which give significance to the criterion of equal division: see Weil, *The Law of Maritime Delimitation – Reflections*, Cambridge, 1989, pp. 57-58, 195. With reference to the decision in the *Gulf of Maine Case* Professor Weil analyses the position as follows:

> "As a result, the Chamber begins by drawing a median line; then, finding in a 'second stage' that this provisional line might 'produce an unreasonable effect if uncorrected', engages in the 'specific task of correction', which, by taking into account the position of the land boundary and the comparative length of the two coastal fronts, will result in a 'corrected median line'. Even for those segments where it refused to take equidistance as the point of departure, the Chamber adopts a two-stage process, but in a slightly different form. The first stage consists in the equal division of the areas of overlap. This 'basic criterion', however, may in certain geographical conditions prove inequitable and will then, at a second stage, have to be 'adjusted or flexibly applied' in order to make it 'genuinely equitable ... in relation to the varying requirements of a reality that takes many shapes and forms'. This is why, in certain cases, the starting point of an equal division of zones of overlap must be 'combined' with 'appropriate auxiliary criteria'. The originality of this approach lies in the fact that the two stages are defined less by relation to a method than to an equitable principle: the first stage, in particular, is characterised more by the equitable principle of the equal division of zones of overlap than by use of the equidistance method." (*ibid.*, p. 195; footnotes omitted).

582. The *modus operandi* adopted by the Chamber in the *Gulf of Maine Case* related to a multi-purpose delimitation. In the

Libya-Malta Case essentially the same two-stage approach was adopted in the context of continental shelf delimitation (*I.C.J. Reports 1985*, p. 47, paras. 62-63).

583. The jurisprudence emphasises that in the context of delimitation of areas between opposite States the equitable boundary will normally be on the basis of a median line. Thus the Judgment in the *North Sea Cases* stated that:

> "Before going further it will be convenient to deal briefly with two subsidiary matters. Most of the difficulties felt in the International Law Commission related, as here, to the case of the lateral boundary between adjacent States. Less difficulty was felt over that of the median line boundary between opposite States, although it too is an equidistance line. For this there seems to the Court to be good reason. The continental shelf area 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, 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).

584. This position was to be restated in several contexts by the Court of Arbitration in the *Anglo-French Case* (*Reports of International Arbitral Awards*, Vol. 18, pp. 51-53, paras. 85-87; p. 56, para. 95; pp. 58-59, para. 103; p. 88, para. 182; pp. 94-95, para. 201; pp. 110-111, para. 237; pp. 111-112, para. 239). The principle was adopted by the Chamber in the *Gulf of Maine Case* in relation to a multi-purpose delimitation: (*I.C.J. Reports 1984*, pp. 329-333, paras. 201-213; pp. 333-334, para. 216). In the *Libya-Malta Case* the Court formulated the principle once again, this time in relation to the delimitation of shelf areas: (*I.C.J. Reports 1985*, p. 47, paras. 62-63). The Court quoted the passage from the Judgment in the *North Sea Cases* quoted in the preceding paragraph.

585. The coasts of Greenland and Jan Mayen are opposite coasts and as a consequence of the geography of the coasts the delimitation should be a median line. As the Chamber in the *Gulf of Maine Case* emphasises, it is geography which prescribes the principle of division (*I.C.J. Reports 1984*, p. 331, para. 206; pp. 333-334, para. 216). There is no other geographical feature present which would require any adjustment of the median line.

4. There are No Causes of Distortion Requiring Modification of the Median Line Boundary

586. The judicial authorities quoted above (paras. 583-584) state that the median line delimitation between opposite coasts will be subject to "correction" (*Gulf of Maine Case, I.C.J. Reports 1984*, pp. 334-335, paras. 217-218) or "adjustment" (*Libya-Malta Case, ibid., 1985*, pp. 50, para. 68; 51-53, paras. 71-73) in order to take account of other geographical factors which constitute sources of inequity.

587. It may be noted that any such process of correction or adjustment is required to be essentially compatible with the legal and geographical framework and is therefore limited in extent.

588. Such modifications in the primary boundary based on a median line can only be compatible with equitable principles in three types of situation, and the case of Jan Mayen does not fit into any of these special cases, which will now be examined.

(a) Incidental Special Features within a Geographical Situation of Quasi-equality

589. The passage from the Judgment in the *North Sea Cases (I.C.J. Reports 1969*, pp. 49-50, para. 91) (Counter-Memorial, pp. 127-128, para. 428) states very clearly that the abating of the effects of an "incidental special feature" can take place only if there is "a geographical situation of quasi-equality as between a number of States". Thus there could be no question "of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline". The Court explains further: "Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy".

590. In accordance with this approach international tribunals have, when the facts allowed, determined the existence of geographical situations of quasi-equality. In the *North Sea Cases* the quasi-equality took the form of "three States whose North Sea coastlines are in fact comparable in length and which, therefore, have been given broadly equal treatment by nature ..." (*I.C.J. Reports 1969*, pp. 49-50, para. 91). In the *Anglo-French Case* the coasts of the mainlands of the Parties faced each other "in a relation of approximate equality" (*Reports of International Arbitral Awards*, Vol. 18, pp. 87-88, paras. 181-182; see also p. 94, para. 199). In the *Gulf of Maine Case* the Chamber placed

emphasis on the geographical coherence of the interior of the Gulf of Maine and the quasi-parallelism between the opposite coasts of Massachusetts and Nova Scotia (*I.C.J. Reports 1984*, pp. 333-334, paras. 215-217).

591. In the geographical circumstances of the present case there is no "geographical situation of quasi-equality as between a number of States". Jan Mayen is an independent feature 250 nautical miles east of Greenland. There is no geographical norm of quasi-equality, but merely a relationship of juxtaposition and distance. There is geography but there are no "incidental special features". Jan Mayen is part of the legal framework and cannot be in any sense "incidental", especially unto itself.

592. Given that "equality is to be reckoned within the same plane", there is no equitable basis for "adjustment" of the median line boundary in the present case. Incidentally, it may be noted that the Reply (p. 155, para. 420) recognises that "no quasi-equality exists in geographical terms" in the present case. However, the Norwegian Government considers that this admission is probably based upon a misreading of the Judgment in the *North Sea Cases*, and is therefore reluctant to rely upon it.

593. Jan Mayen and Greenland are two islands whose relative locations are characterized by a relationship of pure juxtaposition and distance. There is no complicated geography; there are no external "incidental special features". Jan Mayen constitutes one of the two main features which define the geographical framework.

(b) The General Geographical Context

594. In the *Libya-Malta Case* the Court gave a certain weight to the position of Malta as a group of islands "in the wider geographical context, particularly their position in a semi-enclosed sea" (*I.C.J. Reports 1985*, p. 42, para. 53). This consideration was later elucidated in the following passage from the Judgment:

> "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 coasts 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).

595. The same Judgment referred once again to "the general geographical context in which the islands of Malta appear as a relatively small feature in a semi-enclosed sea" (*I.C.J. Reports 1985*, p. 52, para. 73). As in the previous passage quoted, the emphasis is upon the introverted geographical and political framework constituted by the northern and southern littorals of the Central Mediterranean *as a region.*

596. The situation of Jan Mayen stands in complete contrast. The general geographical context is characterized by openness and the sea areas are unconfined. Moreover, there is no enclosed or semi-enclosed sea area of which the extensive maritime areas between Greenland and Jan Mayen form part. There is, in particular, no equivalent to the Italian littoral.

(c) Small Islands Close to the Median Line

597. The final category of situations in which equitable principles call for some modification of the primary delimitation constituted by a median line consists of cases in which islands not forming part of the geographical framework lie near the median or are otherwise located in such a way as to cause distortion of the primary boundary. Such islands qualify for special treatment and the relevant categories have been examined in Chapter VIII above (pp. 150-151, paras. 504-511).

598. The legal sources envisage modification resulting from minor features within some larger framework. The relevant passages in the *North Sea Cases* refer to "the presence of islets, rocks and minor coastal projections" and to "an incidental special feature" (*I.C.J. Reports 1969*, p. 36, para. 57; pp. 49-50, para. 91; respectively). The operative provisions of the Judgment list, as the

first of relevant factors, "the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features" (*ibid.*, pp. 53-54, para. 101 (D)).

599. Jan Mayen does not fall within any of these categories involving modification of a median line, *inter alia*, because it constitutes a part of the geographical framework of the delimitation. It cannot be regarded as incidental to any other mainland feature or coast. Moreover, political circumstances are relevant: see the Decision in the *Anglo-French Case* (*Reports of International Arbitral Awards*, Vol. 18, p. 90, para. 188). The location of Jan Mayen does not involve the creation of an intrusion into an area surrounded by the coasts of Greenland, similar to the position of the Channel Islands close to the French coast and within the Golfe Breton-Normand. The areas of overlapping claims in the present case are, so to speak, geographically neutral. Jan Mayen has no connection with the coasts of Greenland apart from the fact of its position 250 nautical miles distant from Greenland.

5. Confirmation of the Median Line by Other Relevant Factors

600. In the circumstances of the present dispute the equitable character of the median line boundary is confirmed by other relevant circumstances or factors:

(a) The substantial interest of Norway in the Jan Mayen maritime region; and

(b) The protective interest of Norway in relation to maritime areas, their resources, and associated activities.

601. It is evident that considerations of this type militate against any cause of imbalance. This must be a particularly cogent factor in relation to the exploitation of resources and access to natural resources both in the present and in the future. Equality remains the ruling concept in maritime delimitation aimed at achieving an equitable result.

602. The equitable nature of the median line is also confirmed by the conduct of the Parties, the role of which as an element of the equitable solution was elucidated in the Counter-Memorial (pp. 154-161, paras. 528-560).

6. Confirmation of the Median Line by Evidence of the Normal Standards of Equity in Comparable Cases

603. Norway has demonstrated that in comparable geographical situations, involving essentially similar coastal relationships, the normal standard of equity involves giving full effect to major offshore islands facing opposite coasts under the sovereignty of another State: see the Counter-Memorial, pages 176-183, paragraphs 618-658.

604. The practice establishes decisively that islands which form part of a framework of delimitation are given "full effect" (in the jargon). That is to say they are given full faith and credit as land territory of the particular coastal State. This aspect of the matter has been examined in Chapter VIII above, pages 149-152, paragraphs 502-513, where it was shown that only islands not forming part of the geographical framework are given special treatment.

605. The State practice also includes five delimitations involving geographical and political circumstances directly comparable to the relationship of Jan Mayen and Greenland. These cases relate to relationships between a long coast and a single island at a substantial distance from that coast. Three of them have been discussed in the foregoing: India-Indonesia (both phases, paras. 474-477 and 481); Japan-Republic of Korea (paras. 471-473); Australia-France (paras. 493-494). In addition, the delimitations between Bahrein and Iran (1971) and Italy and Spain (1974) apply the principle of equidistance between a long coast and a single island at a substantial distance.

606. In general the State practice confirms that the critical factors in delimitation are coastal configuration and relationships, that is to say, *location*, rather than area, population, or the economic significance of the land territory.

7. The Absence of Disproportionality

607. It is a commonplace that international tribunals refer to the factor of proportionality as an *ex post facto* test of the equitable character of a delimitation resulting from the applicable principles and rules of international law. The position in respect of the present dispute has been carefully examined in the Counter-Memorial (pp. 189-192, paras. 679-688). The Reply adds nothing

to the treatment of the subject in the Memorial (see the Reply, p. 163, paras. 445-446). Consequently, the Norwegian Government respectfully asks the Court to refer in general to the relevant passages in the Counter-Memorial.

608. In conclusion it may be noted that the Reply makes no effort to rectify the cardinal error propounded in the Memorial, according to which proportionality is presented as an independent method of delimitation. The decisions of international tribunals have been consistent in rejecting this view: see the Decision of the Court of Arbitration in the *Anglo-French Case, (Reports of International Arbitral Awards)*; Vol. 18, p. 58, para. 101; the Judgment of the Chamber in the *Gulf of Maine Case (I.C.J. Reports 1984*, p. 323, para. 185); and the Judgment of the Court in the *Libya-Malta Case* (*ibid.*, 1985, pp. 45-46, para. 58).

8. Criteria Suited for Use in a Multi-purpose Delimitation

609. It will be helpful to point out the link which the Chamber in the *Gulf of Maine Case* discerned between the requirements of multi-purpose delimitation and the criterion of the equal division of areas of convergence. The relevant passages in the Judgment are to be found at paragraphs 191 to 203. The essential reasoning is caught in particular in the following passages:

> "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).

610. The *Gulf of Maine Case* had its origins in a Special Agreement, specifically requesting a single maritime boundary. However, the statements quoted concern issues of general principle. Although the Chamber gives particular stress to the connection between multi-purpose delimitation and the criterion of equal division, the statements are equally valid for a shelf or fishery zone delimitation.

9. The Absence of Prejudice to the Claims of Adjacent States in the Same Region

611. It is generally recognized that an equitable delimitation should take into account, in the sense of not prejudicing, the claims of third States whose coasts abut upon the same maritime areas. The legal position maintained by the Government of Norway does not involve prejudice to the rights of any third State.

10. The Disputed Area and the Relevant Area

612. The artificiality of the figure described in the Memorial as the "area relevant to the delimitation dispute" has been explained in the Counter-Memorial (pp. 148-149, paras. 503-506). The Reply (pp. 11-16, paras. 19-32) does not show any substantial change in the thinking of the Danish Government. The disputed area is defined by the simple overlap of the median line boundary and the extravagant Danish proposal of the 200 mile outer limit of Greenland's fishery zone and continental shelf. That result follows from the fact that Norway by its own legislation, and by its

interpretation of the rules of international law, is precluded from claiming sovereign rights beyond the median line, for the water column as well as for the shelf. It follows that the disputed area is one-sided; it distorts the picture which appears if the full shelf and zonal generation potential of Jan Mayen is taken into consideration; and it is artificial, because it disregards important elements of the geography.

613. The Danish Reply is accompanied by Map VI, which depicts the construction of a line 200 nautical miles from Greenland. That map adequately illustrates the shelf and zonal generation potential of Greenland, if Jan Mayen had not been located where it was. Map VI, appended to the present Rejoinder, includes the corresponding and countervailing potential of Jan Mayen. This map shows that there is a broad area of *overlap* of the areas of shelf and zone. Although Norway does not, and cannot, pursue a claim beyond the median line, it may be useful to have a clear picture of that potential area of overlap of claims.

614. The use of the loose terms "delimitation area" or "relevant area" has no independent significance in legal terms. What matters in a legal evaluation are the actual geographical configurations and coastal relationships. The terms "delimitation area" or "relevant area" serve to identify the regional circumscription of those coasts and their configurations which influence the delimitation. The practical effect of identifying the "relevant area" is firstly to indicate the region within which the boundary will have its course. It is secondly to *exclude* from further consideration the geography which lies *outside* this area.

615. In the case of opposite coasts, the relevant area should illustrate the essential relationship, which is one of frontal opposition. There is no point in defining a surface area, for the purpose of assessing or measuring its acreage. The surface area as such does not bring the delimitation process further; it does not make it easier to determine an equitable delimitation.

616. The Danish pleadings have put forward essentially congruent depictions of the "relevant area" Such an exercise is somewhat figurative, and, as stated, is only an indirect tool in identifying which coastlines are to be taken into account.

617. In the present case several versions of a relevant area can be constructed, all different from the model presented by Denmark, to bring out the element of frontal opposition.

618. The type of exercise involved in constructing such intellectual tools is normally a part of the process by which geographical facts are analysed and fitted into a legal framework. A related but substantially distinct operation is involved when a tribunal considers that a disparity in the lengths of the coasts of the Parties constitutes a relevant circumstance to be taken into account. This situation also calls for a fairly precise determination of the relevant coasts: see the Judgment in the *Libya-Malta Case* (*I.C.J. Reports 1985*, pp. 49-50, paras. 67-68).

619. Any coast which itself is determinative in the shaping of the geographical framework has thereby manifested its impact on the delimitation process. Such a coast is not automatically subject to discounting by the mechanical comparison of its length with that of another relevant coastline.

620. The coast of Jan Mayen is clearly one which determines the geographical framework for the delimitation of maritime areas in the region between Jan Mayen and Greenland. That is regardless of how one chooses to construct the "relevant area". There are quite simply only two coastlines to consider; they are not equal in length, but they contribute on a basis of equality to the definition of any "relevant area", and indeed, to the definition of the dispute.

621. It is to be recalled in this context that the effects of any adjustment of a primary delimitation in the light of a disparity of coastal lengths have been of small scale. There are good reasons for this. The parameters of adjustment are highly impressionistic and if substantial adjustment takes place, the objective reliance upon geography, by means of the instruments of distance and adjacency, will be destroyed.

622. It is for this reason that the process of modification of a primary delimitation on the basis of a median line is expressed by tribunals exclusively as the "adjustment" of the median line and not its displacement or invalidation. Thus in the *Gulf of Maine Case* the Chamber refers to the "correction" of the median line (*I.C.J. Reports 1984*, pp. 334-337, paras. 218-223). The alignment does not lose its normative integrity as a median line. Similarly, in the *Libya-Malta Case* the Court refers to "the adjustment of the median line" (*I.C.J. Reports 1985*, p. 50, para. 68; pp. 51-53, paras. 71-73). Moreover, a consideration applied by the Court was the need to decide on this adjustment "without ceasing to have an approximately median location" (*ibid.*,p. 52, para. 73).

623. In the submission of the Norwegian Government, reference to disparity in coastal lengths leads directly to the problems which international tribunals have indicated, if proportionality were to be treated as an independent principle of delimitation. A lack of clear and decisive articulation of the reasons for an adjustment conduces to the view that the process itself is close to the limits of legal principle.

624. The fundamental question is the significance of the principle of distance as the basis of title and the relation between distance and actual geography of coasts. Distance focuses upon location, basepoints, and relationships of coasts. Ratios or comparisons of coastal lengths bear no logical relation either to location or to relationships.

625. Reliance not only upon ratios of coasts but also upon other criteria involving coastal length involves a departure from real geography, an abuse of the concept of entitlement, and the injection of disguised elements of land mass and geophysics. Such risks are present particularly in a situation of opposite facing coasts, precisely because any departure from the median line can only be at the expense of the prevailing geographical relationships. Moreover, these risks are increased, rather than diminished, in a situation in which there is no semi-enclosed sea and no "Italian coast". In other words there are no "parameters of adjustment" comparable to those detected by the Court in the *Libya-Malta Case*.

626. Those considerations are respectfully commended to the Court in relation to the Danish Government's proposals concerning "the relevant area" in the present case.

11. Conclusion

627. In conclusion the Norwegian Government considers that the median line represents an equitable delimitation in the present case both in respect of fisheries jurisdiction and in respect of continental shelf areas. It is not necessary to summarize the considerations expounded above in support of this conclusion. However, there are certain points to be made by way of clarification and emphasis.

628. In the geographical circumstances of Greenland and Jan Mayen the drawbacks of the equidistance method which the

Court was concerned to avoid in the *North Sea Cases* are not present. On the contrary, precisely because considerations of title and distance generate a median line boundary, any departure from this alignment would do violence to legal principle.

629. Proportionality considerations in whatever form do not produce either reasons for a particular alignment or reasons for a particular adjustment to an alignment. Reference to the comparable lengths of coasts can only reflect spatial and distributive elements which the Court rejected in the *North Sea Cases*. The difference in coastal lengths is impossible to articulate *in terms of a boundary*.

630. To give effect to a factor based on coastal lengths in the present case would be to erect this factor into a principle of entitlement (see the Judgment of the Court in the *Libya-Malta Case* on this point: *I.C.J. Reports 1985*, p. 45, para. 58). Such a result would be incompatible with the true basis of title, which is distance. It would also be incompatible with the principle of general international law, confirmed in Article 121 of the Law of the Sea Convention, according to which islands constitute land territory.

631. The position of the Danish Government on the question of coastal lengths remains more than a little obscure. It is difficult to see how the categorical reliance upon the outer limit of 200 nautical miles can be related to, much less justified by, any legal conception of proportionality.

632. The distance of Jan Mayen from Greenland is neither a geographical advantage nor a geographical disadvantage. It is a geographical (and political) datum. The practice of States in comparable situations confirms the view that considerations of size and distance do not justify elements of cut-off or encroachment. The frontal opposition of coasts under the sovereignty of different States connotes equality both of entitlement and delimitation.

PART III
CONCLUSION

CHAPTER I
THE IRRELEVANCE OF REFERENCES TO BEAR ISLAND

633. Denmark continues, in the Reply, to invoke as a relevant element of State practice what it persists in referring to as the "delimitation" between the Fisheries Protection Zone around Svalbard (Spitsbergen), and the Economic Zone off Norway's mainland coast (Reply, pp. 100-108, paras. 277-298). The Norwegian Government is therefore bound to reiterate its position as set out in the Counter-Memorial (p. 66, para. 231).

634. The Economic Zone off mainland Norway was established with effect from 1 January 1977, pursuant to Royal Decree of 17 December 1976 (Counter-Memorial, Annex 25). The enabling Act of the same date, relating to the Economic Zone of Norway (Counter-Memorial, Annex 24), specifically authorizes the King to determine that the establishment of the zone shall be carried out at varying dates in regard to different waters (Section 1, first paragraph). It was decided as a first stage only to establish a zone off the coast of mainland Norway.

635. In accordance with Section 1, second paragraph, of the Act, the outer limit of the mainland zone would be drawn at a distance of 200 nautical miles from baselines, "but not beyond the median line *in relation to other States*" (emphasis supplied). In establishing the 200-mile mainland Economic Zone, Norway did not consider and did not effect any "delimitation" vis-à-vis Bear Island nor any other part of the Svalbard archipelago, which form an integral part of the sovereign State of Norway. A full 200-mile zone was established from the mainland, also in areas where the distance between the mainland and Spitsbergen is less than 400 nautical miles. This, of course, demonstrates the legal position in relation to Svalbard as a part of the Kingdom of Norway, but obviously cannot be seen as a "delimitation", nor as evidence that Norway would disregard islands like Bear Island (or any other island in the Svalbard archipelago) in the event of a delimitation under international law between sovereign States.

636. The Fisheries Protection Zone around Svalbard was established with effect from 15 June 1977 (pursuant to Royal Decree of 3 June 1977; Counter-Memorial, Annex 26). Section 1, third paragraph, of the Decree specified that the zone extends to an outer limit of 200 nautical miles from baselines (or corresponding lines between headlands where baselines had not been formally

established), to the outer limit of the mainland zone, and to agreed limits where the zone was adjacent to the area of jurisdiction of another State.

637. The more recently established zone was thus defined on the basis of the configuration of the previously existing zone. Again, no delimitation was intended, or even considered, as between parts of Svalbard and the Norwegian mainland.

638. It is clear that there can be no question of any delimitation, as that concept is known in international law, between two maritime areas both subject to the same sovereign authority, both under the surveillance of the same Coast Guard, both giving rise to the jurisdiction of the same courts in relation to law enforcement (cf. Counter-Memorial, p. 137, para. 459).

639. As stated in the Counter-Memorial (at p. 65, para. 230), policy considerations linked to possibly differing views with regard to the interpretation of the 1920 Spitsbergen Treaty played a part in determining the scope of the regulations for the Fisheries Protection Zone. Norway chose to limit that scope to those conservation and administrative measures which were necessary to cover actual resource management needs and to ensure the proper and orderly conduct of fishing operations (cf. Counter-Memorial, p. 65, para. 230).

640. The Government of Denmark appears to suggest that the line of separation between two Norwegian maritime areas is an international delimitation. It bases its argument in that regard on various aspects of the 1920 Spitsbergen Treaty, and the difference of views in relation thereto. The Government of Denmark has at the same time conclusively demonstrated that the circumstances pertaining to Svalbard and the Fisheries Protection Zone are unique. It has thereby effectively acknowledged that the line of separation between the Fisheries Protection Zone and the mainland economic zone cannot have any significance as a precedent.

641. The Norwegian Government, when exercising sovereign authority with regard to the waters around Svalbard, is of course free to adopt such measures as are adjusted to Norway's general policy at any time. In the Reply, the Government of Denmark makes a number of statements touching upon the status, interpretation and implications of the Treaty of 9 February 1920 relating to Spitsbergen. Any discussion of matters which might arise in that respect is entirely extraneous to the present

proceedings. The Norwegian Government will therefore not take up a rebuttal of any particular statement relating thereto. It reserves its position in respect of any and all such statements.

CHAPTER II
PRINCIPAL CONCLUSIONS

642. On the basis of the Rejoinder now presented to the Court the Norwegian Government reaffirms the general conclusions formulated in the Counter-Memorial (p. 196, para. 701).

643. The Norwegian position is to be understood primarily in the light of the bilateral relations of the Parties and the relevant chronological sequence. The continental shelf rights of Norway did not, in terms of general international law, depend upon express claim or specific legislation. Such rights arose *ipso facto* and by operation of law.

644. The question of delimitation of the continental shelf between the Parties to these proceedings was conclusirely determined by Article 1 of the bilateral Agreement of 1965. As a consequence of this Agreement, and the conduct of the Parties, a median line boundary was established for all parts of the continental shelf. This boundary, based as it was upon the principle of agreement, was also in conformity with the stipulation of agreement as the primary criterion of delimitation contained in Article 6 of the Convention of 1958, and with the congruent claims and legislation of both Parties.

645. On the basis of the conduct of the Parties, the median line boundary was recognized as constituting a delimitation of adjoining fisheries zones between Greenland and Jan Mayen, the specific legislation of the Parties having made such recognition inevitable.

646. There have been no developments in general international law which could affect the validity of the median line boundary. The principle of consent is entirely compatible with general international law, and the principle of the stability of boundaries applies with equal strength both to land and to maritime boundaries.

647. Without prejudice to the operation of the principle of consent, the validity of the median line boundary receives independent support and confirmation from the equitable principles forming part of general international law. In the geographical circumstances obtaining in the region of Jan Mayen there are no legal considerations requiring the modification of the median line boundary.

CHAPTER III
THE NATURE OF THE JUDICIAL FUNCTION IN THE PRESENT PROCEEDINGS

648. In its Application of 16 August 1988 Denmark formulated its request to the Court in the following terms:

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

649. In its Memorial of July 1989 the Danish submission was reformulated as follows:

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

650. In the Danish Reply of January 1991 the second part of the submission has received a further addition:

> "(... from Greenland's baseline), the appropriate part of which is given by straight lines (geodesics) joining the following points in the indicated order: ... "

651. While the first part of the reformulated submission is a request for the Court to adjudge separately on the entitlement to the continental shelf and the fishery zone, the second part of the submission, in the same manner as the original application, asks the Court "to draw a single line of delimitation".

652. In its Counter-Memorial (pp. 1-4, paras. 5-13 and pp. 197-198, paras. 702-704) the Norwegian Government stated its position in regard to two procedural issues arising out of the Danish submissions.

653. In the first place Norway pointed out that to the extent that a claim for a single maritime boundary was a claim to a delimitation of a different nature, such a claim would not be admissible without a Special Agreement between the Parties.

There exists no agreement in relation hereto between the Parties, either on the procedural level, or with regard to the substance of such a claim.

654. Secondly, the Norwegian Government submitted that there are substantive considerations of law 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. In Norway's submission, it would transcend the proper limits of the judicial function to proceed to the precise articulation of those boundaries by drawing any specific line of delimitation.

655. The Danish claim cannot be held to relate to a "single maritime boundary" in the sense of a delimitation for all legal purposes. However, the Danish claim might be interpreted as a request for a delimitation resulting in a single line of delimitation, irrespective of whether the application of the rules of law applicable to the delimitation of the continental shelf and of those rules relating to fishery zones, would lead to differing results.

656. The Danish claim might further be held to imply a request to exclude the application of sources of law relevant in respect of the delimitation of the continental shelf, but not to the delimitation of a fishery zone (i.e., a request to treat the law relating to a "single maritime boundary" as a separate or distinct body of law). In the submission of Norway, the Danish claim cannot be accommodated in this sense in the absence of a Special Agreement specifically authorizing the Court to consider claims relating to a "single maritime boundary".

657. It is Norway's position that the median line constitutes the boundary for the continental shelf and for the fishery zones. It goes without saying that the median line would be calculated in the same manner in both cases. The two *lines* would therefore coincide, but the two *boundaries* would remain conceptually distinct. To the extent that alternative criteria were to be applied to an assessment of the two separate boundaries, the request for a "single line of delimitation" cannot be held to restrict the Court from applying such criteria differently to each of the boundaries.

658. In the same context, Norway reaffirms its submission (Counter-Memorial, para. 704) that the adjudication should result in a judgment which is declaratory as to the basis of delimitation, and which leaves the precise articulation (or demarcation) of the alignment to negotiation between the Parties.

SUBMISSIONS

Having regard to the considerations set forth in the Norwegian Counter-Memorial and this Rejoinder, in particular, the evidence relating to the relations of the Parties at the material times, and maintaining without change the submissions presented in the Counter-Memorial,

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 adjoining fisheries zones 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, 27 September 1991

Bjørn Haug
(signed)

Per Tresselt
(signed)

Agents of the Government of the Kingdom of Norway

ANNEXES

LIST OF ANNEXES

(in chronological order)

Crown Prince Regent's Decree of 30 June 1955 concerning Basepoints for Jan Mayen

– – –

III. The outer limit for the Norwegian Fishery Zone for Jan Mayen shall be drawn (according to Royal Decree of 22 February 1812) four nautical miles beyond and parallel to the straight baselines between the following points:

Base-point No.	Name of Basepoint	Position of Basepoint	
		Latitude N	Longitude W
1.	Nordkapp, skerry on the east side	71° 09,6'	7° 57,2'
2.	Austkapp	71° 08,8'	7° 56,1'
3.	Søraustkapp	71° 01,2'	7° 59,8'
4.	Søraustkapp, headland point	71° 00,9'	8° 00,8'
5.	Kapp Wohlgemuth	71° 00,4'	8° 03,0'
6.	Fyrtårnet	70° 51,6'	8° 49,3'
7.	Kjeglene	70° 50,0'	8° 57,0'
8.	Sørkapp	70° 49,6'	9° 00,0'
9.	Sjuskjera, the southernmost skerry ...	70° 49,8'	9° 03,5'
10.	Skerry off Hoybergodden	70° 52,0'	9° 05,0'
11.	Headland west of Richterkrateret	70° 52,5'	9° 04,4'
12.	Outermost skerry northwest of Richterkrateret	70° 52,7'	9° 03,9'
13.	Skerry outside Fuglesøyla	70° 54,9'	8° 57,0'
14.	Vakta	71° 07,4'	8° 17,5'
15.	Koksneset	71° 09,6'	8° 04,5'
16.	Nordkapp, drying shoal on north side	71° 09,7'	7° 58,3'
17.	Nordkapp, skerry to the north-east	71° 09,7'	7° 57,5'

Note: Coordinates for Jan Mayen Basepoints in WGS 84

	Values as given in Crown Prince Regent's Decree		Corresponding values in WGS 84	
Base-point No.	Latitude N	Longitude W	Latitude N	Longitude W
1.	71° 09,6'	7° 57,2'	71° 09' 25,10"	7° 56' 45,62"
2.	71° 08,8'	7° 56,1'	71° 08' 44,89"	7° 55' 43,00"
3.	71° 01,2'	7° 59,8'	71° 01' 16,67"	7° 59' 10,18"
4.	71° 00,9'	8° 00,8'	71° 00' 47,58"	8° 00' 34,32"
5.	71° 00,4'	8° 03,0'	71° 00' 17,96"	8° 02' 49,84"
6.	70° 51,6'	8° 49,3'	70° 51' 34,23"	8° 49' 00,47"
7.	70° 50,0'	8° 57,0'	70° 49' 55,22"	8° 56' 34,66"
8.	70° 49,6'	9° 00,0'	70° 49' 31,04"	8° 59' 37,07"
9.	70° 49,8'	9° 03,5'	70° 49' 39,82"	9° 03' 45,98"
10.	70° 52,0'	9° 05,0'	70° 51' 51,96"	9° 04' 38,63"
11.	70° 52,5'	9° 04,4'	70° 52' 20,95"	9° 04' 07,37"
12.	70° 52,7'	9° 03,9'	70° 52' 34,71"	9° 03' 45,17"
13.	70° 54,9'	8° 57,0'	70° 54' 47,59"	8° 56' 53,88"
14.	71° 07,4'	8° 17,5'	71° 07' 20,33"	8° 17' 10,10"
15.	71° 09,6'	8° 04,5'	71° 09' 31,23"	8° 04' 05,89"
16.	71° 09,7'	7° 58,3'	71° 09' 38,32"	7° 58' 08,42"
17.	71° 09,7'	7° 57,5'	71° 09' 35,26"	7° 57' 09,83"

Memorandum from the Embassy of Denmark in Oslo to the Norwegian Ministry of Foreign Affairs handed over 10 July 1963 concerning the Danish Royal Decree No. 259 of 7 June 1963 on the Continental Shelf

MEMORANDUM

On 12 June 1963 Denmark deposited with the Secretary-General of the United Nations its instrument of ratification concerning the Convention on the Continental Shelf signed in Geneva on 29 April 1958 at the United Nations Conference on the Law of the Sea.

In this connection, a Royal Decree was issued on 7 June 1963 concerning the exercise of Danish sovereignty over the continental shelf. The text of the Decree reads as follows:

"In accordance with the Convention on the Continental Shelf signed at the United Nations Conference in Geneva in 1958 on the Law of the Sea, and with reference to the resolution of 2 May 1963 by the Folketing, the following is hereby laid down:

Article 1

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 on the Continental Shelf which was opened for signature at Geneva on 29 April 1958 (hereinafter referred to as the "Convention"), belongs to the Kingdom of Denmark, cf. Article 2.

Article 2

1. In accordance with Article 1 of the Convention, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

2. The boundary of the continental shelf in relation to foreign States whose coasts are opposite the coasts of the Kingdom of

Denmark or are adjacent to Denmark 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, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. The Minister of Public Works may, if necessary, cause official charts to be prepared on which the boundary line shall be entered.

Article 3

The exploration and exploitation of the natural resources of the continental shelf referred to in Article 1 may be effected only by virtue of a concession granted in pursuance of Act No. 181 of 8 May 1950 concerning prospecting for and exploitation of raw materials in the subsoil of the Kingdom of Denmark or of Royal Order No. 153 of 27 April 1935 concerning the exploitation of raw materials in the soil of Greenland."

A corresponding notification has been communicated to the Governments of Sweden, the Soviet Union, Poland, the Federal Republic of Germany, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, Iceland, Canada and the USA.

Danish Bill concerning the Continental Shelf

submitted on 13 January 1971 by the Minister of Justice.

Article 1

1. The natural resources of the Danish continental shelf are vested in the Danish State and may only be explored or utilized by other parties under a concession or licence.

2. For the purposes of this Act the term "natural resources" means:

(1) The mineral and other non-living resources of the seabed and its subsoil, and

(2) Living organisms which, when harvestable, are either immobile on or under the seabed, or are unable to move unless they are in constant physical contact with the seabed or its subsoil.

Article 2

1. The Minister of Public Works may permit exploration of the natural resources specified in Article 1, paragraph 2(1), where such exploration is not undertaken with a view to utilization. He may also permit the removal of such raw materials as were available for utilization by private interests in Denmark before 23 February 1932. Otherwise exploration and utilization of the resources specified in Article 1, paragraph 2(1), may only take place under a concession granted in accordance with the rules laid down in the Act concerning prospecting for and exploitation of raw materials in the subsoil of the Kingdom of Denmark.

2. The Minister of Fisheries may permit fishing and exploration of the living organisms specified in Article 1, paragraph 2(2). If the study of the natural resources specified in Article 1, paragraph 2(1) is required for fisheries or oceanographic research, permission for such study shall similarly be granted by the Minister of Fisheries.

3. Permits according to the second period of paragraph 1 and paragraph 2 are given for up to 5 years at a time. They may be

made conditional, among other things, on payment of fees to the authorities and on the landing of recovered raw materials in this country.

Article 3

1. Danish law shall apply to installations which are to be used for exploration or exploitation of the continental shelf and are situated in the area of the shelf and in safety zones surrounding the installation (cf. however, paragraph (2)). In determining the area of jurisdiction of Danish courts and administrative authorities, installations and safety zones shall be deemed to belong to the area nearest to them, save as otherwise provided by the Minister concerned.

2. The following laws shall not apply to installations and safety zones:

(1) The Act on Salt Water Fisheries;

(2) The Act on Hunting;

(3) The Act concerning the Conduct of Economic Activities in Greenland;

(4) The Act on Hunting and Fresh Water Fisheries in Greenland; and

(5) The Act on Commercial Trapping, Fishing and Hunting in Greenland.

Article 4

1. The Minister of Public Works may prescribe special regulations concerning safety measures in connexion with the setting-up and operation of the installations specified in Article 3, paragraph 1, concerning the laying of pipelines and cables and concerning measures to prevent or remedy pollution. Supervision to ensure compliance with the regulations shall be the responsibility of the authorities entrusted with similar tasks under other laws, and complaints concerning decisions of the supervisory authority shall be made in accordance with the regulations otherwise applicable to complaints concerning such decisions. The Minister may, however, authorize departures from these provisions.

2. The Minister may also prescribe regulations concerning the establishment of safety zones surrounding installations used for such exploration or exploitation. The maximum extent of such zones shall be 500 metres round the installation, measured from

any point at its outer edge. The Minister may prescribe rules concerning sailing in safety zones and, in that connexion, may prohibit access to them by unauthorized ships.

3. The Minister of Public Works shall draw up the regulations specified in paragraphs 1 and 2 of this Article in consultation with the ministers responsible for dealing with matters of this kind.

Article 5

1. Violations of the exclusive right of the State under Article 1 shall be punishable by a fine or term of detention not exceeding six months save where a higher penalty is applicable under another law.

2. Any failure to comply with the conditions governing a concession or licence granted in pursuance of this Act or in pursuance of the laws specified in Article 2, paragraph 1, and Article 6, shall be punishable by a fine save where a higher penalty is applicable under another law.

3. Rules issued in pursuance of Article 4 may provide for a penalty of a fine for any violation of such rules.

4. In the case of offences committed by joint-stock companies, co-operative societies or the like, the company or society as such may be held liable.

Article 6

In the case of installations and safety zones (cf. Article 3, paragraph 1) situated or established in the part of the continental shelf appertaining to Greenland, the law otherwise applicable to Greenland shall apply. The Minister for Greenland shall exercise the powers specified in Articles 2 and 4 in compliance with the regulations laid down in the Act concerning mineral raw materials in Greenland.

Article 7

The Act enters into force on 1 March 1971.

Paragraph 2 of Article 3 of Royal Decree No. 259 of 7 June 1963 concerning the Exercise of Danish Sovereignty over the Continental Shelf is repealed.

Article 8

The Act does not apply to the Faroe Islands.

Comments on the Bill

General Comments

On 31 May 1963, Denmark ratified the Convention on the Continental Shelf. This was done in pursuance of the consent granted by the Folketing on 2 May 1963 (see Folketingstidende 1962-63, Supplement A, col. 1569; Supplement B, col. 779; Supplement C, col. 363; and Records of the Proceedings of the Folketing 1962-63, cols. 4231, 4830 and 5215). The Convention was included as an annex to the ratification proposal submitted to the Folketing.

It was subsequently established, by Royal Decree of 7 June 1963, that Danish sovereignty shall be exercised, in so far as the exploration and exploitation of natural resources are concerned, over that portion of the shelf which according to the Convention belongs to Denmark. Article 3 of the Decree laid down that the exploration and exploitation of the natural resources which the Convention gives member countries exclusive rights to exploit must be carried out by virtue of concessions granted in pursuance of Act No. 181 of 8 May 1950 concerning prospecting for and exploitation of raw materials in the subsoil of the Kingdom of Denmark or, where Greenland is concerned, in pursuance of Royal Order No. 153 of 27 April 1935 concerning the exploitation of raw materials in the soil of Greenland.

With authority in the Royal Decree and the Subsoil Act, Royal Decree of 5 October 1963 granted companies in the A.P. Møller shipowning group exclusive concessions to exploit various raw materials on inter alia the continental shelf. Where the continental shelf off Greenland is concerned, a number of permits to carry out preliminary studies have been issued according to Act No. 166 of 12 May 1965 concerning mineral raw materials in Greenland.

In 1967, the Ministry of Public Works appointed a committee to study the problems relating to exploration and recovery activities on the Danish continental shelf. This committee appointed two sub-committees, one which was mandated to study the legal problems arising in connection with activities on the shelf, and one to report on safety problems relating to exploration and recovery.

The present Bill was prepared by the above-mentioned committee on legal problems. The Ministries whose areas of responsibility

the problems particularly relate to were represented on the committee, which was chaired by the Minister of Justice.

The assumption which the sub-committee took as its point of departure was that the Decree of 7 June 1963 must be presumed to have entailed that such Danish legislation as is not according to its own content limited to the land areas and sea territories has been extended to apply to activities relating to exploration for and exploitation of natural resources on the shelf. The committee nevertheless decided that to prevent all doubts as to the extent to which Danish legislation and law enforcement applies to the shelf, it would be advisable to carry out a comprehensive legal regulation of conditions on the continental shelf.

The Ministry of Justice shares the committee's view, and the Bill is identical with the committee's draft.

Sweden and Norway have also enacted special legislation concerning conditions on the continental shelf, viz. Sweden's Act No. 314 of 3 June 1966 concerning the Continental Shelf, and Norway's Act of 21 June 1963 relating to Exploration for and Exploitation of Submarine Natural Resources.

Where such activities on the continental shelf are concerned as are already covered by current legislation, implementation of the Act will entail no administrative consequences. The extent of the administrative work which will be necessary in connection with any permits granted to carry on exploration and recovery not covered by existing legislation will depend on the number of permits given. It will, however, be possible to compensate for increased administrative costs by collecting the fees mentioned in paragraph 3 of Article 2, and if recovery of raw materials, such as pebble gravel, gravel and sand, is initiated, the activity may result in revenues to the state. It is impossible, given the nature of the case, to estimate the amount of any such revenues.

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Comments on individual provisions in the Bill

Re *Article 1*

Re paragraph 1. According to Article 1 of the Convention on the Continental Shelf, the continental shelf comprises the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

In cases where the Danish continental shelf is adjacent to the shelves of other states, delimitation shall according to the Convention primarily be agreed between the neighbour states. In the absence of an agreement, delimitation shall be in accordance with the equidistance principle, unless special circumstances indicate a different boundary line.

On the basis of these provisions, Denmark has to date concluded continental shelf agreements with Norway, Great Britain and the Netherlands, and with the Federal Republic of Germany concerning delimitation, in the coastal regions, of the continental shelf of the North Sea. (Lovtidende C, Executive Order No. 48 of 11 July 1966, cf. Executive Order No. 67 of 21 June 1968, Executive Order No. 14 of 17 February 1967, Executive Order No. 56 of 11 August 1967 and Executive Order No. 37 of 11 June 1966). Following new negotiations with the Federal Republic of Germany on the basis of the judgement delivered by the International Court of Justice at The Hague, the two countries have initialled a new agreement concerning the whole extent of the dividing line, which will be signed in the near future and then submitted to the Folketing with a view to ratification. The agreement will require minor adjustments to the agreements with Great Britain and the Netherlands. In respect of other Danish waters, the question may also arise of establishing the limits to the continental shelf in the Kattegat and the Baltic and, in respect of Greenland, in relation to Canada. Furthermore, it is to be expected that in the next few years, provisions will be laid down at international level concerning the outer limits of the continental shelf where it meets the deep seabed.

The Act does not apply to Denmark's territorial seas. Their extent is established in Royal Decree No. 437 of 21 December 1966 and, in respect of Greenland, in Royal Decree No. 191 of 27 May 1963.

Re paragraph 2. The delimitation of the natural resources to which the Act applies corresponds to the delimitation in paragraph 4 of Article 2 of the Convention.

It follows from the provision that the Act does not concern fisheries for other species than those which are unable to move except in constant physical contact with the seabed or subsoil. Ordinary fisheries will accordingly only be affected if, in connection with the establishment of safety zones etc., cf. paragraph 2 of Article 4 of the proposed Act, certain reductions are made in fishing areas. Such reductions can, however, hardly be supposed to entail lasting inconvenience.

Re *Article 2*

Re paragraph 1. This provision relates to mineral and other non-living resources on the seabed or in the subsoil. As a main rule, the provisions of the Act concerning prospecting for and exploitation of raw materials in the subsoil of the Kingdom of Denmark also apply to exploration for and exploitation of these resources, cf. the last period of the provision. The Subsoil Act lays down a complicated procedure for issuing exploration and recovery permits, cf. Article 2 of the Act. It was found reasonable to propose the introduction of a less complicated procedure in respect of exploration undertaken for purely scientific purposes, i.e. with no view to subsequent utilization. It is therefore proposed that the Minister of Public Works be authorized to permit such exploration.

The Subsoil Act excepts from its area of application such raw materials as were available for utilization by private interests in Denmark before 23 February 1932. Examples of such materials might be rock, pebble gravel, sand and gravel, which are covered by the Continental Shelf Convention. In recent years there has been a considerable increase in the utilization of such raw materials off the coast of Denmark and, as can be seen in the Bill concerning exploration for and utilization of sea materials in the territorial sea recently submitted by the Minister of Public Works, it must now be regarded as necessary to establish control of the extent of the utilization and the location where the recovered raw materials are to be landed. As the raw materials are to some extent also recovered on the continental shelf, the control should extend to cover it. That is the purpose of the provision in the second period of the first paragraph of Article 2.

Re paragraph 2. Extensive scientific studies are currently being carried out of the seas and their living resources. Denmark is engaged in these studies, which must be expected to concern themselves increasingly with the waters around Denmark. It is proposed to authorize the Minister of Fisheries to permit such studies, and such studies as relate immediately to the non-living resources on the seabed or in the subsoil, but the final object of which is to shed light on conditions affecting the living resources. It is presupposed that in such cases the Minister of Fisheries will issue such permits in consultation with the Minister of Public Works.

Re paragraph 3. The provision only relates to the permits mentioned in the second period of paragraph 1 and paragraph 2. Concessions to prospect for and recover raw materials which fall within the scope of the Subsoil Act will continue to be issued in

pursuance of that Act. Permits may be issued subject to conditions, for instance that the research plans must be approved by the competent Ministry, that the research work must be carried on with a certain level of intensity, and that the results of the use of the permits must be notified to the Ministries concerned. It is furthermore proposed that permits may be made conditional on the payment of a fee to the authorities and the landing of recovered raw materials in this country.

Re *Article 3*

Re paragraph 1. As mentioned in the general comments, such portions of Danish legislation as are not limited by their contents to the land territory and the territorial sea must to that extent be supposed to apply to activities related to the exploration and exploitation of the natural resources of the continental shelf. The aim of this provision is to establish this explicitly.

The possibility was considered of formulating the provision so as to list the Acts which were to apply to the continental shelf. Preference was given instead to a general extension of Danish law, explicitly excepting those Acts which will not apply, cf. the comments on paragraph 2. This was partly because this is the safest procedure, and partly because parts of Danish law, for instance significant parts of the law relating to damages, has not been codified.

In accordance with Swedish and Norwegian continental shelf legislation, it is proposed to extend the scope of Danish law to installations and safety zones, but not to the rest of the continental shelf. The legal effect of this will be that installations and safety zones will be regarded as parts of the Danish state in so far as the validity of Danish law is concerned. It follows from this that the Danish state has jurisdiction with regard to violations of Danish law, cf. litra 1 of paragraph 1 of Article 6 of the civil penal code.

"Installation" is not defined more closely, because it is not possible to foresee the particular nature of the technical means that may be used in exploration and utilization. Platforms, whether fixed or mobile, will be covered by the term "installation". The same will apply to vessels used for drilling on the continental shelf. Whether or not ships used for exploration may be regarded as installations in the meaning of the Act will depend among other things on the intensity and duration of the exploration activity and on the nature and equipment of the vessel. The most reasonable solution must be to let this delimitation find expression in court practice.

The general extension of Danish law entails, for instance, that legislation protecting workers, regulations imposing technical requirements on engines, electrical equipment etc., and regulations relating to the safety of shipping and the like will apply to installations and in safety zones. It will be possible to exercise authority in laws to issue administrative regulations relating to installations and safety zones.

Re paragraph 2. The Convention on the Continental Shelf does not give the contracting states exclusive rights to other forms of activity on the shelf than those relating to the exploration and recovery of the natural resources mentioned in Article 1.

Exceptions will therefore have to be made to the general extension of Danish law to installations and safety zones in respect of laws which, according to their content, would be applicable in this area, but which are incompatible with the provisions of the Convention.

Re *Article 4*

Re paragraphs 1 and 2. Cases may arise where it will not be sufficient to extend existing legislation to installations and safety zones. The need may arise, for instance, to issue special safety regulations because of the special risks which may be involved in exploration and exploitation of the continental shelf. Such regulations may be required, not only in relation to the installations themselves and pipelines issuing from them, but also in relation to pipelines from installations located outside the Danish continental shelf. Such regulations must be expected to impinge on the areas of responsibility of several Ministries. For administrative reasons, it is considered most expedient to place the authority in the hands of one Minister, and it is proposed to give the powers to issue such regulations to the Minister of Public Works, who according to paragraph 1 of Article 2 of the Bill is the person who will be chiefly responsible for the administration of exploration and utilization of the natural resources of the continental shelf.

With the Minister of Public Works responsible for issuing any administrative regulations with which it is found necessary to supplement current provisions, doubts may arise concerning which authority is to supervise compliance with the rules, and with whom appeals against decisions by the supervisory authority may be lodged. It is therefore emphasized in the proposed Act that the general rules governing these matters will apply unless it is found practical to depart from them in a given case. Administrative regulations issued pursuant to this provision ought presumably as a rule to contain explicit rules governing supervision and the right to appeal.

Re paragraph 3. The rules must of course be formulated in consultation with the Ministries whose areas of responsibility are affected. This would in any case follow from normal practice under administrative law but, having regard to the fact that the Act impinges on the areas of responsibility of a large number of Ministries, it was thought best to include a provision expressly to this effect in the Act.

Re *Article 5*

Re paragraph 1. Current legislation contains no particular penal provision relating to unwarranted exploration and recovery of natural resources on the continental shelf.

It was therefore decided to propose an express penal clause relating to infringement of the state's exclusive rights according to Article 1 of the Act.

Re paragraph 2. Failure to observe conditions in licences and permits may result in loss of the licence or permit. This sanction is not, however, likely to be applied in less serious cases of non-compliance. It should therefore also be possible to impose fines.

Re *Article 6*

Where the part of the continental shelf appertaining to Greenland is concerned, it should be such Danish law as is generally applicable to Greenland which is extended in scope. It would in any case be possible to arrive at the same result by interpreting the provision in paragraph 1 of Article 3, but it was found more appropriate to lay it down explicitly. For practical reasons, Acts in respect of which exceptions are to be made are exhaustively listed in paragraph 2 of Article 3, although systematic considerations might have suggested the inclusion here of the legislation specific to Greenland.

Re *Article 7*

Article 3 of Royal Decree No. 259 of 7 June 1963 provides that the exploration and exploitation of the natural resources of the shelf requires a concession in pursuance of the Subsoil Act or in pursuance of Royal Order No. 153 of 27 April 1935 concerning the exploitation of raw materials in the soil of Greenland. According to paragraph 1 of Article 2 of the Bill, cf. Article 6, this provision will be superfluous, and its repeal is accordingly proposed.

Re *Article 8*

For administrative reasons, specifically regard for legislation particular to the Faroes, it is deemed most appropriate to regulate circumstances relating to the continental shelf around the Faroes in a separate Act.

[Original: English] **ANNEX 86**

Letter of 2 December 1974
from the Norwegian Minister of Industry
to the United States National Science Foundation
concerning Drilling Operations on the Vøring Plateau

National Science Foundation
1800 G. Street – More
Washington DC 20550
USA

2 December 1974

Sirs,

DEEP SEA DRILLING PROJECT

During the period 15-22 August 1974 and as part of the Deep Sea Drilling Project, which, according to our information is founded on a contract between the Regents of the University of California and the US National Science Foundation with the Scripps Institution of Oceanography acting as operator of the drillship *Glomar Challenger* drilled 5 holes in the Voering Plateau in an area designated by 67°12' and 67°57' Lat.N. and 4°55' and 6°18' Long.E. The sea depth varied from 1206 to 1439 metres, and the holes were drilled from 105 to 456 metres down in the seabed. The distance from land was between 130 and 162 nautical miles. In the period 6–14 September another 3 holes were drilled on the Jan Mayen Ridge at depths varying from 187 metres to 320 metres into the seabed. These drill holes were located between 65 and 100 nautical miles from Jan Mayen Island.

The Norwegian Government holds the view that the above mentioned areas are part of the Norwegian continental shelf.

According to Article 5, paragraph 8 of the Convention on the Continental Shelf of 1958 ratified by both the United States of America and Norway, and the Norwegian Royal Decree of 31 January 1969 relating to Scientific Research for Natural Resources on the Norwegian Continental Shelf etc., the consent of the coastal state must be obtained in respect of any research concerning the continental shelf which is undertaken there.

Such consent had not been obtained by the project leader when this drilling operation was undertaken.

On 23 April 1974 the Norwegian Petroleum Directorate received a letter requesting permission to execute the planned drilling program. The letter was signed by five Norwegian scientists with Professor, now Director K.S. Heier of Norges Geologiske Undersøkelse, acting as contact-man with the project leaders.

The request raised various political and practical problems of great importance, and the matter was taken up with the Ministry of Industry and the Ministry of Foreign Affairs. Upon their advice the Petroleum Directorate on 9 July informed the Norwegian scientists that permission to execute the planned drilling could not be given. According to the Ministry of Industry's information, due to various misunderstandings and practical problems, the letter was not in fact received by the project leader until 2 October 1974.

The Ministry of Industry, however, takes it for granted that the project leaders understood that permission from the proper Norwegian authorities was necessary before any drilling could be undertaken. The drilling should not therefore have been undertaken before the attitude of the Norwegian authorities was ascertained.

The Ministry of Industry finds it highly regrettable that the "Deep Sea Drilling Project", which is generally esteemed as a serious research project, should have been carried out under the circumstances described above.

The Ministry of Industry has every confidence that the contents of this letter will be made known to the persons responsible for the drilling operation in question, so that such regrettable incidents may be avoided in future.

Yours faithfully,

(*Signed*) Ingvald Ulveseth

(*Signed*) Knut Dæhlin

Danish Bill concerning the Fishing Territory of the Kingdom of Denmark

submitted on 9 November 1976 by the Prime Minister.

1. (1) The Prime Minister shall be empowered to enact that the fishing territory of the Kingdom of Denmark be extended to a breadth of 200 nautical miles (1 nautical mile = 1,852 metres) so that the fishing territory, in addition to the internal waters, shall comprise waters along the coasts of the Kingdom of Denmark, delimited by a line (the fishing limit) which at every point is 200 nautical miles from the baselines applicable at any given time. The extension may be effected for one area at a time.

(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).

(3) Detailed provisions governing the delimitation of the fishing territory of the Faroe Islands shall be laid down by Royal Ordinance.

2. (1) This Act shall enter into force on 1 January 1977.

(2) In step with the extension of the fishing territory in pursuance of Article 1, section (1) of this Act, subsection (2) and (3) of the Salt Water Fisheries Act (Act No. 195 of 26 May 1965) shall be repealed, while in the Commercial Hunting, Fishing and Shooting Activities Act for Greenland (Act No. 413 of 13 June 1973), the words "12 nautical miles" in subsection (1) shall be amended to read "200 nautical miles".

(3) The Fishing Territory of Denmark Act (Act No. 207 of 2 June 1964) shall be repealed.

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Comments on the Bill
General comments

1. The rules currently in force relating to the Danish fishing territory are laid down in Act No. 195 of 26 May 1965 on Salt Water Fisheries. Off the Kattegat, Skagerrak and North Sea coasts the limit is 12 nautical miles, whereas it is 3 nautical miles off other coasts.

The Act does not apply to the Faroe Islands or Greenland. The fishing limit established for those territories is 12 nautical miles, cf. in respect of Greenland Act No. 413 of 13 June 1973 and in respect of the Faroes Royal Ordinance No. 129 of 18 March 1976.

Concerning the reasons for the Salt Water Fisheries Act, see Folketingstidende 1964-65, cols. 2342, 2644, 4896, 4910, and 5169; Supplement A col. 1105; Supplement B col. 505; 735; Supplement C col. 461. With regard to the Act for Greenland, see Folketingstidende 1972-73, cols. 3375, 5205, 6950, and 7225; Supplement A col. 4949; Supplement B col. 2145; Supplement C col. 1601.

2. The 12 nautical mile fishing limit was established in accordance with the European Fisheries Convention of 9 March 1964, concerning which see Executive Order No. 10 of 27 January 1965, Lovtidende C. At this time, however, developments were already taking place in the international community in the direction of steadily increasing claims by coastal states to control over marine resources.

This trend culminated at the third United Nations Conference on the Law of the Sea, where the proceedings so far have shown that there is a large majority in favour of the establishment of "economic zones" of 200 nautical miles, within which the coastal state shall among other things have the right to exploit living and mineral resources. Especially important in this connection is the right of the coastal state to the fish resources, seeing that on the basis of the Geneva Convention of 1958 on the Continental Shelf, current international law has already granted coastal states sovereign rights over the continental shelf.

Despite the widespread support at the Law of the Sea Conference for the principle of economic zones, difficult negotiations still lie ahead. The reason for this is that full agreement has yet to be reached on the more detailed rules which are to apply within the zone: a particular source of difficulties is the question of the rights in the area of other countries.

3. The trend in the direction of extended claims by coastal states to broad sea areas has already led to the unilateral establishment

by some 40 countries of national zones exceeding 12 nautical miles. As a consequence, moreover, of the growing threat to fish stocks of over-fishing, especially in the North Atlantic area, pressure is mounting in a number of coastal states to extend fishing territories or establish economic zones now, without awaiting the outcome of the Conference on the Law of the Sea.

In addition to Iceland, which set its fishing limit at 200 nautical miles in the autumn of 1975, the USA has resolved to extend its fishing limit to 200 nautical miles, with effect from 1 March 1977.

The Government of Canada has made known that the Canadian fishing limit is being set at 200 nautical miles as from 1 January 1977. The Norwegian Government has stated that it considers an extension to 200 nautical miles by the end of 1976 to be necessary, and proposed legislation authorizing the Government to establish an economic zone has been submitted to the Storting. In addition, Mexico has adopted a law on economic zones, which entered into force on 6 June 1976. We have also been informed that in July 1976, the French legislative assembly, too, enacted a law authorizing the French Government to establish an economic zone.

In a declaration dated 27 July, the Council of the EC emphasised the threat posed to the fish stocks in the waters of member countries by the decisions of a number of countries to extend their fishing zones, and expressed its determination to protect the lawful rights of Community fishermen. The Council decided that the necessary steps should be taken in accordance with the conclusion reached by the Conference on the Law of the Sea, but noted that the extension of their fishing zones by other states could oblige member states to act before the Conference had concluded its work. It was decided to act in concert, according to more detailed rules to be adopted in the autumn.

At the end of September, the EC Commission proposed a concerted extension by member states of their fishing zones to 200 nautical miles as of 1 January 1977 in those areas which are particularly threatened by the consequences of extensions of their fishing territories by other countries, i.e. the North Sea and the North Atlantic.

4. The Government's position is that questions relating to the law of the sea can best be resolved on an international basis, and it has therefore been regarded as important that the negotiations at the Conference on the Law of the Sea should result in the earliest possible adoption of an extensive and broadly supported convention. Despite the developments in certain areas, the Government remains of the opinion that the many complex issues being

discussed at the Conference can only be resolved by means of a globally accepted convention; and under all circumstances, every effort must be made to continue the work on the law of the sea convention.

However, developments in the practice of states where fisheries are concerned leave Denmark no choice. With the establishment of 200 nautical mile zones off the United States, Canada, Iceland and Norway, the only important fishing areas remaining open in the North Atlantic will be the waters around Greenland and the Faroes, and the North Sea. A serious situation for the fish stocks could arise very rapidly if large parts of the international fishing fleet, having been excluded from other countries' coasts, were free to begin fishing in Danish waters. This would of course especially affect Greenland and the Faroes, whose populations depend on fisheries to a decisive degree. Against this background, in July and August 1976 respectively, Greenland's Provincial Council and the Home Rule Authority of the Faroes resolved to request the Government to take steps at the earliest opportunity to extend the fishing limit to 200 nautical miles. But in the North Sea, too, any further strain on resources could have incalculable consequences. To prevent the very serious consequences to Danish, Greenland and Faroes fishing interests entailed by other countries' extensions to their fishing territories, it is therefore necessary to enable Denmark to extend its fishing territories.

On the basis of negotiations at the Conference on the Law of the Sea, and because certain countries in our region wish to establish economic zones, the Government also considered that question, but decided that the extension where Denmark is concerned should for the present be in the form of an extension to the fishing territories, seeing that the new concept in international law, "an economic zone", has yet to find its definitive meaning. It must in this connection be emphasized that, where resources on the seabed are concerned, sovereign rights over the continental shelf already apply according to current international law and current Danish law (Decree of 7 July [*sic*] 1963 on Danish Sovereignty over the Continental Shelf and Act of 9 July [*sic*] 1971 concerning the Continental Shelf).

Upon the establishment of a fishery limit of 200 nautical miles, questions of delimitation in relation to other countries will arise in a number of cases. Although in theory the possibility of different fishery and continental shelf boundaries cannot be ruled out, this would be an unrealistic solution. In practice, these limits must coincide. That means that where Denmark is concerned, continental shelf boundaries which have already been agreed may be

used as fishery boundaries. In those cases where a shelf boundary has not yet been agreed, it is important, since the fishery limit also influences shelf delimitation, that both fishing interests and shelf interest be taken into account in future negotiations on the delimitation of the Danish area.

5. The present Bill concerning an extension to the fishing territory has been prepared on the basis of discussions between the Prime Minister's Office, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Justice, the Ministry of Trade, the Ministry of the Environment, the Ministry of Fisheries, and the Ministry for Greenland.

A draft of the Bill has been submitted for comment to the Home Rule Authority of the Faroes and the Provincial Council of Greenland, and was approved by both authorities.

The Bill in itself is not believed to entail financial consequences for central or local government. An extension of the fishing territory on the scale envisaged here must, however, have consequences for the future fisheries inspection. No exact figures can at present be submitted for the increase in costs, because the scale and nature of the inspection service has not yet been finally settled, but the extension of the fishing territory does entail a need to give the fisheries inspection increased resources.

Comments on individual provisions in the Bill

Re *Section 1*

Subsection (1) of Section 1 of the Bill is worded as authority for the Prime Minister to establish the new fishing limit, while the provision also provides that separate extensions may be made for particular sea areas. Among the reasons why the Government is proposing an enabling Act are that the international situation, on which the choice of the time for and the scale of a Danish fishing limit extension as described will be based, is not clear at the present time, and that it may be necessary to implement the extension at short notice. The timing of the extension must be viewed in relation to the fishing limit extensions of other countries, and must where Denmark and Greenland as members of the EC are concerned be coordinated within the Community. Since a fishing limit extension will affect the fisheries of other countries in areas that will fall within the extension, negotiations will have to be conducted concerning future rules for fisheries within the new fishing limit.

The provision in the Bill for the possibility of extending fishing limits in one sea area at a time was included in the expectation that

an extension off Greenland and the Faroes may be called for before extensions elsewhere in the realm, and because an extension in the Baltic, for instance, would require special consideration and, in addition to the EC coordination, would also call for harmonization with the positions of the other coastal states in the Baltic region.

Subsection (2), Section 1 of the Bill, relating to the delimitation of the Danish fishing territory in relation to other countries, has been drawn up on the same lines as earlier legal rules in this field, and prescribes that in the absence of an agreement in this respect, a boundary following a median line shall be established. Upon an extension to 200 nautical miles, the need arises for agreements on delimitation in the North Sea, the Baltic Sea, and the Kattegat, as well as around the Faroe Islands and Greenland.

Re *Section 2*

The appropriate date from which to make a fishing limit extension effective is not clear at the moment, but at least where the Faroes and Greenland are concerned, the question of an extension will arise on 1 January 1977, and it is accordingly proposed in subsection (1) of Section 2 to make the enabling Act effective as of 1 January 1977.

When a 200 nautical mile fishing limit is established, the existing 12 nautical mile limits must be abolished and, pursuant to subsection (2) of Section 2 of the Bill, the boundary provision relating to Denmark in the Salt Water Fisheries Act and the corresponding provision relating to Greenland in the Act for Greenland concerning Fisheries etc. will therefore be repealed. As already mentioned, the boundary provision for the Faroes was laid down by Royal Ordinance, and will be repealed when the Royal Ordinance mentioned in subsection (3) of Section 1 of the Bill is issued.

In addition to EC rules, fishing in Denmark and Greenland is regulated in the Salt Water Fisheries Act and the Act for Greenland concerning Fisheries and Hunting, and these provisions will remain applicable to fisheries also after an extension to the fishing limit. As a result of negotiations, both at the third United Nations Conference on the Law of the Sea and in the EC concerning changes in joint EC fisheries policies, it is nevertheless to be expected that changes will have to be made in the existing legislation. Amendments have already been proposed to the Act on Commercial Trapping, Fishing and Hunting in Greenland (amendments to subsection (8) of Section 1 and to Article 11 of the Act). Other necessary proposed amendments to existing

legislation will be submitted to the Folketing as and when the results of the international negotiations mentioned become available.

According to the Home Rule Act, the issuing of rules governing fishing off the Faroes is the Faroes' own concern, cf. item 13 of list A in the Act. The rules currently in force are contained in the Lagting's Act No. 12 of 10 March 1964 as subsequently amended.

Act No. 195 of 26 May 1965 on Salt Water Fisheries

Section 1

1. Unless otherwise provided, this Act applies to fisheries in the fishing territory of Denmark, except for waters which fall within the scope of the Act on Fresh Water Fisheries.

2. In addition to inner waters, Denmark's fishing territory comprises sea territories along the Danish coasts delimited by a line (the fishing limit) which runs parallel to the base lines in force at any given time and at the following distance from them:

(1) In respect of Denmark's North Sea, Skagerrak and Kattegat coasts: 12 nautical miles (1 nautical mile = 1,852 m). In this connection, Kattegat means the waters delimited to the south by lines drawn from Hasenøre to Gniben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to Kullen.

(2) In respect of other Danish coasts: 3 nautical miles.

3. Where the Danish coast lies opposite the coast of a foreign state, the fishing limit may however not cross any such line as may follow from a special agreement with the foreign state in question or, in the absence of such an agreement, the line which at all points is equally distant from the closest points of the low-water lines of the coasts of the two states.

4. Fishing in Denmark's fishing territory may only be carried on by:

(1) Danish nationals,

(2) persons who are and have permanently been resident in this country for the past two years,

(3) foundations and associations whose managements consist exclusively of Danish nationals resident in the realm,

(4) jointly-owned shipping companies, of which at least two-thirds are owned by Danish nationals, and whose managing shipowner is Danish and resident in the realm,

(5) joint-stock companies and other companies with limited liability which have elected a Board at least two-thirds of whose members are Danish nationals resident in the realm,

(6) other companies, at least two-thirds of whose participants are Danish nationals resident in the realm.

Provided foundations, associations or companies are participants in jointly-owned shipping companies or in the companies mentioned in No. 6, each participant must satisfy the requirements for being regarded as a Danish owner.

5. It is prohibited for others than those mentioned in subsection 4 to process or tranship fish in Danish fishing territory or to transport fish or fish products through Danish fishing territory direct from the sea to Danish landing places.

6. Ships used for the purposes mentioned in subsection 4 and 5 must be Danish and two-thirds of the crew must satisfy the conditions in No. 1 or 2 of subsection 4.

7. The Minister of Fisheries may make exceptions to the provisions in subsections 4 to 6 when this is believed to be in the interests of fisheries development, and exceptions to the provisions mentioned may similarly be made in agreements with foreign states. By agreement with Norway and Sweden it may furthermore be decided that where Norwegian and Swedish fishermen are concerned, the fishing territory shall be smaller in extent than laid down in No. 1 of subsection 2. The Minister of Fisheries will issue more detailed provisions concerning the implementation of such agreements.

8. Irrespective of the provisions in subsection 4, and according to the respective rules laid down by the Minister of Fisheries, Finnish, Icelandic, Norwegian and Swedish nationals may engage in angling with rods, jigs or similar hand tackle. The Minister of Fisheries may issue rules concerning permission for other foreign nations to engage in angling to the same extent.

Act No. 413 of 13 June 1973 on Commercial Fishing, Trapping and Hunting in Greenland

Section 1.

1. Commercial fishing, trapping and hunting at sea off Greenland within a distance of 12 nautical miles of such boundary lines as the Minister for Greenland shall lay down, may only be engaged in by:

(1) Persons resident in Greenland and having permanent links with the Greenland community.

(2) Foundations and associations whose managements consist exclusively of persons as mentioned under No. 1.

(3) Jointly-owned shipping companies, in which two-thirds of the shares and the bulk of the capital are held by persons as mentioned under No. 1, and whose managing shipowner is a person as mentioned under No. 1.

(4) Joint-stock companies and other companies with limited liability which have elected a Board, when at least two-thirds of the Board and the majority of the participants are persons as mentioned in No. 1, and when the bulk of the company's capital is owned by persons as mentioned under No. 1.

(5) Other companies, in which at least two-thirds of the participants including those with full liability are persons as mentioned under No. 1, and when the bulk of the company's capital is owned by persons as mentioned under No. 1.

2. If foundations, associations or companies are participants in jointly-owned shipping companies or the companies mentioned in No. 5 of subsection 1, those participants must satisfy the conditions for being permitted themselves to engage in commercial fishing, trapping and hunting.

3. Persons and companies etc. engaging in commercial fishing in the area mentioned in subsection 1, must possess certificates stating that they satisfy the conditions in subsection 1. The certificate is valid for five years, and is issued by the local council of the person's place of residence or the place where the company etc. has its registered office. If a local council refuses to issue such a certificate, the decision may be appealed to the Governor of Greenland, whose decision may be appealed to the Minister.

4. The Minister may issue provisions according to which the persons and companies etc. mentioned in subsection 1 may only engage in commercial trapping and hunting in the area mentioned in subsection 1 if they are in possession of a certificate stating that they are engaged in trapping and hunting either as a principal or as a secondary occupation.

5. Without the permission of the Minister or, as authorized by him, of the Governor of Greenland, other persons than those mentioned in subsection 1 may not process or tranship fish or fish products within the area mentioned in subsection 1, or transport fish or fish products direct from the sea through this area to landing places in Greenland.

6. Only vessels registered in a Greenland home port may be used for the purposes mentioned in subsection 4 and 5.

7. Under very exceptional circumstances, the Minister may depart from the provisions in subsection 1 and 6 when this is believed to be of significance to the development of the Greenland fisheries.

8. The Minister may issue provisions according to which persons and companies etc. not covered by subsection 1, but who were covered by subsection 1 of section 1 of Act No. 223 of 3 June 1967 on Commercial Hunting, Fishing and Shooting in Greenland are permitted to continue to engage in activities as mentioned in subsection 1 and 5 and for this purpose to use vessels registered in home ports elsewhere in the realm.

Act No. 207 of 12 June 1964
on Denmark's Fishing Territory

Section 1

The Minister of Fisheries is empowered to establish the more detailed rules for Denmark's fishing territory in accordance with the provisions contained in the Convention on Fisheries entered into on 9 March 1964.

Section 2

This Act does not apply to the Faroe Islands or Greenland.

Excerpts from Records of Proceedings of the Folketing 1976 – 77, relating to the Bill concerning the Fishing Territory of the Kingdom of Denmark

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Written presentation of a proposal.

The Prime Minister (*Anker Jørgensen*):
I hereby take leave to submit to the honourable assembly a *proposed Act relating to the fishing territory of the Kingdom of Denmark.*

As we know, the Third UN Conference on the Law of the Sea has for a long time been engaged with the problems concerning the distribution of marine resources between the countries of the world. Despite widespread support for the principle of establishing 200 nautical mile economic zones, the Conference has not yet reached agreement on the rules which will apply within the zones.

It is the Government's position that the many problems relating to the law of the sea can best be solved in an international context, and that efforts to arrive at a globally accepted law of the sea convention must be continued regardless of developments in particular sectors.

On the basis of the negotiations at the Conference on the Law of the Sea, the Government has considered whether an economic zone ought already now to be established but, having regard to the fact that the law of the sea concept has yet to find its definitive form, has decided against submitting a proposal to that effect at the present time.

Where fisheries are concerned, however, in view of the increasing threat of over-fishing of fish stocks, a number of countries have decided not to await the results of the law of the sea conference, but have either already moved their fishing limits out to 200 nautical miles or are about to take that step. In the North Atlantic area, this applies to such states as the USA, Canada, and Iceland. Norway, too, intends to establish a 200 nautical mile zone.

A result of this development will be that the only significant fishing areas to remain open will be in the waters off Greenland and the Faroes and in the North Sea. A serious situation for fish stocks could arise very rapidly, should the international fishing

fleet which is excluded from other areas be free to move to these waters. Greenland and the Faroes, whose populations are vitally dependent on fisheries, would be particularly affected.

The Government therefore regards it as absolutely essential to comply with the requests from Greenland's Provincial Council and the Faroese Home Rule Authority to carry out an extension of the fishing limit to 200 nautical miles no later than 1 January 1977.

The question of extending fishing territories also arises in connection with Danish waters. As a member of the EC, Denmark applies a joint fisheries policy with the other member countries. The EC is at this moment engaged in very thorough discussions of fisheries problems, and it is anticipated that it will be possible to carry out coordinated extensions for the member countries in the North Sea and the North Atlantic from 1 January 1977. With this in mind, the Government is seeking powers to carry out an extension of the fishing territory.

For the Kattegat and the Baltic, the intention on Denmark's part is to maintain the existing pattern of fisheries. Negotiations with other riparian states in the region suggest that it will be possible to reach agreement on a regional arrangement, so that the question of extending fishing territories in these areas will not arise at present.

The planned extensions of the fishing territory presuppose negotiations with the countries whose fishing interests will be affected. These negotiations, which where Denmark and Greenland are concerned, must be conducted at Community level, must be expected to result in the mutual concession of fishing rights. It is unlikely that it will be possible to conclude these negotiations earlier than during the course of 1977.

The extension of Denmark's fishing limits gives rise in a number of cases to problems of delimitation in relation to other countries. According to the general rules of international law, delimitation must be according to the median line principle, as it is in respect of the continental shelf, over which as you know Denmark already has sovereign rights according to the rules in force. In future negotiations concerning the delimitation of Danish territory, importance will have to be attached to both fishing and shelf-related interests.

In consequence of the very considerable widening of the fishing territory, from the present 12 nautical miles to 200 nautical miles, fisheries inspection duties will be significantly expanded, and increased allocations will be necessary for that purpose. Specific

information on the amounts needed cannot be given at this time, because the scale of the fishing limit extension and the more detailed inspection duties have yet to be finally settled.

Referring you to the above presentation and to the comments accompanying the proposed Act, I recommend the proposal to the Folketing for favourable and rapid treatment.

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(Records of Proceedings 1976 – 77, cols. 1344 – 1346)

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First debate on the proposed Act relating to the Fishing Territory of the Kingdom of Denmark

Berglund (Greenland):
Let me say how pleased I am that the present proposed Act has brought us closer to fulfilling one of the greatest wishes of Greenlanders, which has been voiced several times over many years.

It is apparently necessary to underline how essential an extension of the fishing territory is to us in Greenland. As Mr. Hilmar Baunsgaard also said, it is the only considerable fishing area in the North Atlantic which will still be open when other countries extend their fishing territories. There is therefore a grave risk that fishermen who fish in the fishing territories of other countries will move to Greenland waters, creating a serious danger of over-fishing of fish stocks. That would result in a reduction of the raw materials available for processing in Greenland and an ensuing increased deficit to be covered by the Treasury.

In his written presentation, the Prime Minister states that it is absolutely necessary to comply with the Provincial Council's request that an extension of the fishing limit to 200 nautical miles be carried out no later than 1 January 1977. This extension of the fishing territory presupposes negotiations with the countries whose fishing interests are affected, and it is expected that the negotiations will be concluded in the course of 1977. I therefore wish to ask the Prime Minister what consequences unconcluded negotiations will have for an extension of Greenland's fishing territory on 1 January 1977, and what arrangements we can expect with the countries whose fishing interests are affected. The last sentence of subsection 1 of section 1 of the proposed Act reads: "The extension may be effected for one area at a time". I therefore wish to ask the Prime Minister whether the Government intends

to accept Canada's extension in relation to West Greenland. If so, I would point out that the northern boundary of Canada's extension is ICNAF statistical area zero, i.e., outside Holsteinborg, whereby the shrimp fishing grounds north of that boundary will remain unprotected. I therefore request the Government to use its best offices to see that the boundary to the extension of the fishing territory off West Greenland is moved to 75° N, i.e. up to Melville Bay.

The increase in fisheries inspection has been mentioned. There is no option but to increase the amount of inspection off Greenland, and I therefore urge the Government to examine the possibility of EC support for increasing fisheries inspection off Greenland in connection with the extension of the fishing territory. We already know that certain other EC countries have been given support, so there should be possibilities.

Finally, I recommend the approval of the proposed Act.

Thue Christiansen (SF):
We in Greenland have for years now been pointing out to the authorities that if our fish resources are to be maintained and protected, measures such as quota arrangements and an extension of the fishing limits must be adopted. We have thus as a group, a political body, in Greenland for several years been pointing to the need for a rapid and effective extension of the fishing limit.

Now, fortunately, we have reached a stage where from this rostrum we can begin to consider a proposed Act, the intention of which is to protect fish stocks here in Denmark and not least off the Faroes and in Greenland. This is an important step for us Greenlanders and for our fishermen, who have been waiting for years for a proposed Act of this nature from the Danish Government. It is gratifying that we have made so much progress.

Nevertheless, I cannot refrain from pointing out that Greenland's fishery policy problems are far from being solved by the present proposed Act. I daresay we recall Greenland's clear "No" to the Common Market. One of the most important reasons for that "No" was that it would exclude foreign fishermen, including members of the Common Market, from our fishing grounds, which were and still are threatened by over-fishing. The proposed Act will not exclude fishermen whose nations belong to the EC, and as long as no negotiations are initiated concerning fish quotas and economic zones, the danger will remain of over-fishing of Greenland's most important source of industrial income. We expect negotiations to be initiated in the very near future between Denmark and the EC and the Provincial Council of Greenland

concerning quotas and economic boundary arrangements, for the greatest possible benefit of Greenland's fishing interests.

It is important to bear in mind that Greenland's fisheries are Greenland's most important industry, and that Greenlanders are completely dependent on them. Greenland will soon have home rule, and it is my hope that the Government will take the necessary decisions on protecting Greenland's fisheries at the earliest opportunity.

With these reservations, I recommend the rapid approval of the present proposed Act.

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(Records of Proceedings 1976 – 77, cols. 1978 – 1980)

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The second debate on the proposed Act relating to the Fishing Territory of the Kingdom of Denmark.

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Erlendsson (FP):
As we know, a good deal has happened since the first debate on this proposed Act, so it may be appropriate to make some general comments in the second debate as well.

The directive from the Soviet Union concerning a possible extension of the Soviet Union's fishing limits to 200 nautical miles could have very serious consequences for Danish fisheries, not least in the Baltic. As far as we know, admittedly, nothing definite has emerged as to whether it will be applied in the Baltic, but it does seem very likely that it will be used to put pressure on the EC countries, at least on Denmark, if the proclaimed EC intention to make very considerable cuts in Soviet catches is implemented. If the Soviet Union cannot be brought to the negotiating table, all Soviet Union fishing rights in common EC waters will be withdrawn.

In that event, according to former Minister of Fisheries Kofoed, Bornholm fishermen will lose half their catches, corresponding to a loss of between DKK 15 and 20 million. Where the loss is concerned, this is a miscalculation, seeing that over the past three years the earnings of Danish fishing vessels based on Bornholm have fluctuated between DKK 95 and 111 million. Should Poland and East Germany follow the Soviet Union and extend their fishing limits, as must be considered highly probable, and should

Finland and Sweden in self-defence do the same, the loss to the Bornholm fishermen would not be DKK 50-55 million, which would be the correct figure on Mr. Kofoed's premises, but rather in the region of DKK 80-85 million. That would be an economic disaster for the 15 per cent. of the Bornholm population who are directly or indirectly dependent on the fishing industry. In view of this, the Government must immediately take the necessary steps to ensure full compensation in common EC waters, including Greenland waters, and raise the question in the ongoing negotiations with the Faroese authorities.

I should also like to say a word or two about the size of the sea area which it will be the Danish Fisheries Inspectorate's responsibility to monitor when the Danish fishing territories around Greenland are extended.

In the Joint Council, we were informed by the Prime Minister that it was a matter of a fisheries surveillance area three times the size of the present area. I do not see how that can be correct. At present, so we are informed, the area amounts to 18,000 square nautical miles; and since the area to be extended reaches a little more than halfway up the west coast of Greenland and the extension is from 12 to 200 nautical miles, the figure of three times the present area is completely unrealistic. It has also been decided into the bargain not to include Greenland's east coast, and there is no rhyme or reason in that either, in view of the very considerable fisheries carried on, admittedly by the fishing vessels of foreign powers, in the Denmark Straits.

I also wonder at the statement to the Joint Council that where southern Denmark is concerned, the extended fishing territories will form part of the future joint EC fishing zone. This will also be the case for the waters around Greenland, a fact there is no reason to conceal from anyone.

Patursson (Faeroes):
It was on 6 August of this year that the Faroese legislative assembly (Lagting) unanimously resolved to extend the Faeroes fishing limits from their present 12 to 200 nautical miles no later than 1 January 1977. The Danish Government has since submitted to the Folketing the present proposed Act relating to the extension of the fishing territory of the Kingdom of Denmark to 200 nautical miles. The Act will enter into force on 1 January 1977, and the proposal states that the more detailed rules concerning the delimitation of the fishing territory off the Faroes will be laid down by Royal Decree. According to my information, that Decree is to enter into force on the same date as the Act itself, i.e.

on 1 January 1977. I note that a unanimous Committee has recommended the adoption of the proposed Act with no amendments.

When the proposed Act is adopted and the promised Royal Decree is issued, all foreign fishing within a 200-nautical mile limit will be prohibited. Another consequence is that the right of determination, or indeed sovereignty, over fisheries within the 200 nautical miles passes to the Faroese authorities and to them alone. Since 1964, this Faroese authority has been exercised over fishing within 12 nautical miles. It will now, as mentioned, be extended to 200 nautical miles. This takes place according to Act No. 137 of 23 March 1948 relating to Faroese Home Rule, and the resolution by the Lagting of 13 May the same year, which transferred administrative and legislative authority in respect of hunting and protection of animals in the territory and fishing and the protection of fish in the territory to Faroese authorities. I repeat, that from 1 January 1977 the right of determination, the sovereignty if you like, over fisheries within the 200 nautical miles will rest solely with the Faroese authorities and with no other instance.

I have a couple of comments to make on the proposed Act. Subsection 2 of section 1 states that 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). This is all right where Iceland and Norway are concerned, but a problem arises in relation to Great Britain. As you will know, Great Britain has fixed a fishing limit at Rockall. That limit has never been recognized and never will be recognized by the Faroes. The distance between the Faroes and Rockall is about 300 nautical miles, i.e. less than the 400 nautical miles mentioned. It will therefore be necessary, when issuing the Royal Decree, to ensure that the Faroese fishing limit to the southwest, that is towards Rockall, is given its full extent, i.e. 200 nautical miles. This will be of the utmost importance to Faroese fisheries.

The second point I want to touch on concerns fisheries inspection. The Faroese have increasingly participated in this inspection themselves, and the government of the Faroes recently established its own inspection and rescue service. However, any fines imposed for unlawful fishing and confiscated catches and equipment go to the Danish Treasury alone. There has to be a reasonable sharing of such moneys between the Danish and Faeroes treasuries.

Finally, let me repeat the request I made in the first debate on this matter: for the Faroese inspection service to be given the necessary police authority. This has with time become a long-standing Faroese demand, and it would be appropriate to grant it on the same day as the 200 nautical mile limit enters into force, 1 January 1977.

With these comments, I recommend that the proposed Act be adopted.

The Prime Minister (*Anker Jørgensen*):
Let me begin by thanking you for the excellent reception accorded this proposal in this assembly and the very objective treatment which, I am given to understand, it was given in the specially appointed committee.
Permit me a few comments on what earlier speakers have said.

First to Mr. Erlendsson, who raised the question of the Soviet Union's extension of its fishing limits. I can begin by mentioning that according to our calculations, the figures mentioned by Mr. Erlendsson relating to the Bornholm fisheries are not correct. The amount which Danish fishermen may stand to lose amounts to 14-15 million and not, as Mr. Erlendsson maintained, 85-90 million.

But what may be threatened is one thing, and the issue itself quite another, and according to the information currently available on the decree announced on Friday by the Soviet Union concerning an extension of their fishing territory, it is an enabling decree, according to which the Soviet Council of Ministers can decide to introduce new 200 nautical mile fishing territories in various waters. In principle, in other words, the procedure involved is very similar to what we are currently discussing where Denmark is concerned, namely the basic legislation being debated by the Folketing respecting Danish fishing territory.

The Soviet decree as we know it does not state in which waters or from what date the new rules will be made applicable. We have therefore been seeking further information through our Embassy in Moscow. The Soviet authorities, however, have not at present been able to inform us of the date of the entry into force or of the extent to which the extended fishing territory would be introduced.

It is of course the fisheries in the Baltic which are of particular interest to us. Fisheries in those waters are currently regulated by the Convention on the Baltic Fisheries Commission, to which all Baltic riparian states are parties. At the meeting of the Commission in Warsaw in October of this year, a quota agreement was

also entered into for 1977, to which both Denmark and the Soviet Union acceded, so the assumption on Denmark's part must be that Baltic fisheries will continue to be regulated in accordance with the existing agreements.

Mr. Erlendsson also took up the whole question of the size of the extension to take place around Greenland, and disputed the information we have given through the Ministry. I would point out that what we said at committee meetings and also wrote to the committee, to make sure that we know exactly what we are talking about, is based on estimates. No high degree of accuracy is possible at the present time, but where Greenland is concerned the 200 nautical miles will mean, we said, a ninefold increase in the area. But owing to great sea depths, where no extensive fishing will be practicable with the methods in use, the area in question is regarded as considerably less than 9 times the present area. There are a number of areas which it is reasonable to deduct, leaving a total of 3 times the present area. That is, of course, an estimate, and it is not possible at present to be more precise. I am also quite certain that Mr. Erlendsson's information would not stand up to closer scrutiny.

Mr. Lowzow discussed relations with England. On this, all I can say is that, as in numerous other areas related to this matter of extending fishing territories, we are in a process of negotiation. No decisions whatsoever have been taken; there is nothing to suggest that we are about to take any. The position is that the English desire for a special fishing territory within the common EC sea territories is not one which Denmark or, I think I can safely say, a number of other EC countries can support. That is to say that, with regard to the English desire, which moreover is shared by Ireland, I cannot promise what the outcome will be, but it is at any rate not a desire supported by wide circles or by large countries within the European Community.

I believe those were the questions asked. I would like to conclude by thanking you for the constructive debate on the proposal in question.

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(Records of Proceedings 1976 – 77, cols. 3240 – 3247)

Message of 27 August 1981
from the Norwegian Ministry of Defence to the Coast Guard
Vessel K/V *Farm* concerning Inspections in the Disputed Area

[Technical communications procedures and filing annotations not included in translation]

RESTRICTED

Danish and Norwegian authorities are considering the Jan Mayen fishery zone.

Until further notice, Danish and Faroese vessels fishing without permission in the zone shall not – repeat not – be boarded and inspected, but be advised to stop fishing and leave the area.

The vessels shall be noted and reported, but the Coast Guard shall otherwise not intervene.

Photographic evidence that capelin is fished is desired.

Acknowledgement to Defence Command North Norway and to Headquarters Defence Command Norway.

Translation **ANNEX 90**

Press Release of 30 August 1981
from the Danish Ministry of Foreign Affairs

The Foreign Ministry makes known:

Having been informed that the Norwegian Coast Guard vessel *Farm* has been instructed to board Danish vessels to deliver them written warnings, the Foreign Ministry has issued the following statement:

The Danish fishing vessels are in an area between Greenland and Jan Mayen which according to Danish law is Danish fishing territory, where Danish fishermen accordingly have the right to fish. It is unacceptable for Norway in this way to exercise fisheries inspection in respect of Danish vessels in Danish fishing territories in a situation where the question of the delimitation of the fishing zones around Greenland and Jan Mayen is the object of negotiations between the Danish and Norwegian authorities. Denmark's Ambassador in Oslo has been instructed to make this clear to the Norwegian Ministry of Foreign Affairs.

When in contrast to Denmark Norway announced in June 1980 that Norway had decided to enforce Norwegian fishing regulations in the area in question, we reacted immediately, emphasizing to Norway that this had created a new situation. We made it clear that in the light of this and subsequent developments, the Danish Government would consider whether this called for a change in the earlier decision by Denmark not to exercise fisheries jurisdiction in the area until further notice.

Under the present circumstances, the Government has decided to avail itself of its right to exercise fisheries jurisdiction in the area, and a Danish inspection vessel is on its way to the area to exercise Danish sovereignty. The Danish Ambassador in Oslo has likewise been instructed to inform the Norwegian Foreign Ministry of this. Now as before, the Danish Government wishes to avoid steps that might strain relations between two such closely connected countries as Norway and Denmark.

The temporary instruction to the Coast Guard vessel *Vædderen* is not to intervene if the Norwegians board Danish fishing vessels only to issue written warnings.

Copenhagen, 30 August 1981.

Message of 30 August 1981 from the Naval Command North Norway to the Coast Guard Vessel K/V *Farm* concerning Inspections in the Disputed Area

[Technical communications procedures and filing annotations not included in translation]

RESTRICTED

Concerns instructions received from Ministry of Defence by State Secretary Bruland.

1. Danish and Faeroese fishing vessels fishing illegally in the Jan Mayen zone are to be boarded, and shall be given a written order to stop fishing and leave the area.

At the same time an oral warning shall be issued, to the effect that if the order is not complied with this will have consequences for subsequent participation in fishing in Norwegian waters.

Means of force are not to be employed.

2. After delivery of the warning, resume patrol. If a Danish surveillance vessel arrives in the area, conflict with it shall be avoided.

3. Report to Naval Command North Norway after each boarding.

4. K/V *Farm* acknowledge.

Executive Order No. 437 of 31 August 1981 on Amendment of Executive Order No. 176 14 May 1980 on the Fishing Territory in the Waters surrounding Greenland

Section 1

Executive Order of 14 May 1980 on the Fishing Territory in the Waters surrounding Greenland shall be amended as follows:

Section 1, subsection 4, second sentence shall read as follows: "Where the island of Jan Mayen lies opposite Greenland, the breadth of the fishing territory shall be 200 nautical miles measured from the baselines referred to in Section 2."

Section 2

This Executive Order shall enter into force upon its publication in the Official Gazette.

Prime Minister's Office, 31 August 1981

(*Signed*) Anker Jørgensen

(*Countersigned*) /Ruth Christensen

Telex Message dated 21 September 1981 from the Faroe Islands *Landsstyri* to the Norwegian Directorate of Fisheries on the Faroese Capelin Fishery in the Fishery Zone between Jan Mayen and Greenland

Re Faroese capelin fishery in the fishery zone between Jan Mayen and Greenland in 1981.

The Faroe Islands *Landsstyri* [the executive body] has noted the contents of the telex from the Directorate of Fisheries dated 17 September 1981 concerning Faroese capelin fishery in the disputed area between Jan Mayen and Eastern Greenland in relation to the fishery agreement of 1981 between the Faroe Islands and Norway.

The Faroe Islands *Landsstyri* would like to make the following comments on the statement from the Directorate of Fisheries:

The Faroe Islands *Landsstyri* agrees with the Directorate of Fisheries that the issue should be considered in the light of the memorandum from the Faroe Islands *Landsstyri*, quoted by the Directorate of Fisheries, concerning the request by the Faroe Islands for a capelin quota for 1981 in the waters round Jan Mayen. As is evident from this memorandum, the request served two purposes. Firstly, the Faroe Islands wished to continue to have access to this fishery, with as large as possible a quota allocated over as long a season as possible. Secondly, the Faroe Islands wished to avoid increasing the risk of incidents in the disputed area between Eastern Greenland and Jan Mayen, where Faroese fishing would in any case be taking place. As was also quoted, it was made quite clear that the Faroese side could not recognize any other conception of the boundary between Greenland (Danish) territory and Norwegian territory than what had been declared by the Danish Government.

The Faroe Islands hoped to obtain permission from both parties in the dispute for Faroese vessels to fish in the area, partly to reassure the masters, and partly to give the governments concerned an opportunity to refrain from intervening in Faroese fishing operations, since it was assumed that these governments wished to keep the number of incidents in the area to a minimum.

In order to achieve these aims, the Faroese side requested, as you know, a quota of 10,000 tons and access for all Faroese F01-981 vessels; likewise, they did not wish to see the season limited to the

few days it would presumably take for the whole Norwegian purse seine fleet to fish the Norwegian quota off Jan Mayen. These requests were complied with, but only to a limited degree and on such restrictive terms that this to some extent limited the value of the arrangement, especially as regards conditions in the disputed area. In addition, the capelin stock appears to have stayed in the disputed area longer than could have been foreseen by any of the parties.

The Faroe Islands *Landsstyri* can confirm that Faroese fishing operations in the undisputed Norwegian zone round Jan Mayen have been discontinued as requested by Norway after about 3,500 tons had been taken, i.e. 1,000 tons more than was permitted. We hope Norway will consider this exceeding of the quota in the light of the difficulties involved in stopping fishing operations of this type at short notice.

Since then, Faroese vessels have continued to fish for capelin in the Greenland zone, including the zone to which both Greenland and Norway lay claim. These operations are being carried out with the Danish Government's consent within a Danish quota of 80,000 tons.

It has been noted that the Norwegian fishery inspection authorities have pointed out to the Faroese vessels that Norway considers the area to be part of the fishery zone round Jan Mayen and therefore regards Faroese fishing operations as exceeding the quota granted by Norway.

As mentioned above, the Faroe Islands *Landsstyri* refers to the fact that the Danish Government considers the area to be part of Greenland's fishery zone, and that the fishery now in progress is therefore covered by a quota granted by Denmark. This is in accordance with the Faroese memorandum mentioned above and is therefore not in conflict with the fishery agreement of 1981 between the Faroe Islands and Norway.

It is not for the Faroe Islands *Landsstyri* to interfere in the dispute between Norway and Denmark over the course of the boundary line. The main task of the *Landsstyri* in this matter is to try to ensure as far as possible that the dispute does not affect the possibilities of Faroese vessels to fish in the area.

The Faroe Islands *Landsstyri* is pleased to note that no serious incidents have as yet taken place, and hopes that the high-level contacts between the two governments will make it possible to continue to avoid such incidents.

Finally, we should like to add that the Faroe Islands *Landsstyri* hopes that the two governments will be able to reach an arrangement which will create a mutually recognized framework for fisheries in the area before the next capelin season. This hope is partly based on the positive experience of the Faroe Islands in another disputed area where the Norwegian Government is one of the parties, that is to say in the so-called "grey zone" in the Barents Sea.

The Faroe Islands *Landsstyri*

Minutes of Meeting in Copenhagen 21 June 1988

CONFIDENTIAL

MEMORANDUM

Delimitation Jan Mayen – Greenland. The question of a possible judicial settlement. Meeting in Copenhagen 21 June 1988

Reference is made to the enclosed copy of the confidential Memorandum of 17.6.88 (Appendix 1). [Not included in this submission.]

At the meeting at senior civil servant level in Copenhagen on 21.6.88, the parties had the same representatives as at the corresponding informal meeting in Oslo on 20.5.88 (Appendix 2), and the parties were still agreed that the meetings should be informal and confidential so that information does not reach the media. There was also agreement that the meetings were of an exploratory, non-committal and technical nature and are intended to elucidate modalities in the event of a possible judicial settlement of an unresolved problem, and that what the parties said did not represent government positions.

The Danish side wished to see the Norwegian ideas on judicial procedure, which had previously been sketched orally, set out in writing; accordingly the Norwegian side first handed over an informal document outlining the approach envisaged for judicial proceedings (Appendix 3), and next an informal document containing the questions which it is felt that a Tribunal should initially determine (Appendix 4). (For the sake of comparison, a copy is also enclosed of the informal document containing elements of an arbitration agreement (Appendix 5) which Denmark submitted prior to the meeting of 20.5.88 in Oslo.)

When the two Norwegian documents were presented, it was emphasized that they were wholly non-committal personal ideas which were submitted solely for the purposes of illustration, with no commitment to particular or exhaustive formulations, and that they could not be regarded as expressing government positions. There was once again emphasis on the difficulties that would arise in seeking a judicial decision, especially with regard to the composition of the Tribunal and its mandate. Its composition would not be greatly facilitated if the approach outlined was

chosen, but it would give the parties a good opportunity to monitor developments and results, in that the procedure envisaged several stages, in which a Tribunal would *first* assess fundamental legal questions. The Norwegian sketch was intended to illustrate the problems one would be confronted with in connection with a judicial decision, and on Norway's part was also meant as a genuine attempt to accommodate the assessed Danish desire for arbitration. It must therefore not be regarded as an attempt at delaying tactics. It is still the opinion on the Norwegian side that a comprehensive negotiated solution offers distinct advantages, and that it should be perfectly possible to arrive at such a negotiated final solution.

On the Danish side there were few comments on the two Norwegian papers. It was admitted that they served to clarify the ideas which had previously been expressed orally, and the innovative thinking in the Norwegian sketch was acknowledged, but doubt was expressed as to whether Danish political authorities or the industries affected would show the same appreciation of the sketch. It was far from what Denmark had had in mind for a judicial settlement. It looked like developing into a complicated and time-consuming procedure. What they had had in mind was a simplified arbitration procedure based on the Danish elements in a relatively straightforward case. From the Danish point of view the case does not appear complicated, whereas the new sketch for a procedure could entail endless proceedings. The Norwegian sketches would nevertheless be faithfully reported to the political authorities in Denmark.

With particular regard to the possible preliminary questions to a court, it was moreover maintained on the Danish side that the decisive question remains of what could bring the case to a final conclusion within a reasonable space of time. As they saw it, the Danish offer of arbitration might have moved the case in the direction of a solution in 1-2 years. A judicial decision would also relieve the politicians of responsibility for the outcome. The preliminary questions will not settle the case, and that kind of approach would fail to produce a feeling of progress seen with Danish eyes. The final Danish response to the Norwegian sketch must, however, be developed through the normal decision-making processes.

It was emphasized on Norway's part that the informal Norwegian sketch reflected the legal problems which it would be necessary to face up to regardless of the procedure chosen for arriving, in the event, at a judicial decision.

Concerning the Norwegian decision-making process, it was pointed out that a decision on a possible judicial settlement would have to be taken not only by the Government, but also by the Storting. The Storting would have to be drawn into the process in two stages: before an agreement to adopt a judicial procedure is worked out, the underlying principle would have to be considered by the Foreign Affairs Committee; then the actual agreement on a judicial settlement would have to be submitted to the Storting for its consent before Norway could ratify it.

It was also maintained on the Norwegian side that a judicial decision would only partly relieve the politicians of responsibility for the outcome of the case, and that the administration would not be able to disclaim responsibility for the outcome or for the proper composition of the court. Attention was again called to the many uncertain factors attaching to the result. What was wanted was an optimal solution to the boundary question which would give an effective practicable and amicable conclusion. It was far from certain that an arbitration tribunal would contribute to this. On the Norwegian side attempts had accordingly been made to comply with the Danish desire for arbitration without forgoing the possibility of a forward-looking overall solution. Eight years were not a long time for delimitation negotiations. Given satisfactory resource management, the time spent would be no significant cost if it could save the parties from other disadvantages. It was suggested that it could take 2-3 years, from the time when agreement is reached on the composition and an agreement to seek arbitration is ratified, for a possible final solution to be achieved. But the composition of the court would have to be settled before any compromise could be entered into concerning some form or other of arbitration.

The Danish side would again consider how progress in the case might be achieved, either through a judicial solution or by means of continued negotiations, and would consider what would lead to the most satisfactory progress: the Norwegian proposal of a series of controlled steps, political negotiations at ministerial level, or other possibilities. The Danes now had a great deal to present to their government.

On the basis of the preliminay Danish comments on the informal Norwegian sketch, it is difficult to form any definite opinion about what view the Danes will take of the matter. What does seem clear, at any rate, is that the Danish administration has been

made aware of the many problems which will arise in connection with a judicial decision, and thus of the advantages of seeking a *negotiated* solution.

As things stand, it seems best to give the Danes time for internal consideration. There is reason, however, to try to keep ourselves as well informed as possible of such considerations, among other things through the Embassy in Copenhagen. In the somewhat longer term it may also be desirable to involve the Embassy more actively in order, if possible, to influence how the Danish position develops and the Danish decision-making process at its various stages. The principal Norwegian objective should still be not to miss opportunities of arriving at a negotiated solution which takes every aspect of the case into account.

The Ministry of Foreign Affairs
2nd Legal Affairs Division, 24 June 1988.

(*Signed*) Bye

Meeting in Oslo 20 May 1988
List of Participants

[Norway:]

Per Tresselt, Director General
Legal Department

Professor dr. juris Carl August Fleischer
The Adviser in International Law to the Ministry of Foreign Affairs

Birger Bye, Head of Division
2nd Legal Affairs Division

Thor Gislesen, Counsellor
Royal Embassy, Copenhagen

[Denmark:]

Tyge Lehmann, Under-Secretary
Head of the Legal Department

John Bernhard, Head of Division
Legal Department (R.I.)

John Kierulf, Head of Section
Deputy Head of the Law of the Sea Secretariat

Aase Adamsen, Head of Section
Law of the Sea Secretariat

Per Magid, Barrister
Legal Adviser

CONFIDENTIAL

Article ??

[(1)] The Tribunal is requested (i) to determine certain questions of law, bearing on the matter of the delimitation between the portions of the continental shelf appertaining to each of the Parties, and between the areas of Zones of maritime resource jurisdiction appertaining to each of the Parties, in the region between Greenland and Jan Mayen, in accordance with the rules of international law applicable in the matter as between the Parties, and (ii) subject to a further request by the Parties to that effect, to determine the course of the boundaries corresponding to the findings of the Tribunal.

[(2) Stipulations as to sources of substantive law.]

Article ?? *bis*

The Tribunal is requested to deliver an interlocutory award, providing its responses to the following questions:

– – –

Article ?? *ter*

Each Party may request the Tribunal to clarify any matter arising out of the interlocutory award, or to reconsider its award, or any part thereof, within a period of [ ] days after the rendering of the award. The Tribunal shall set time limits for each Party to comment in writing on any such request, and may allow for written counter-comment to be presented, and/or permit oral argument to be heard. The Tribunal shall respond to any request for clarification or reconsideration of its interlocutory award within a period of [ ] days after the submission of final written comment or the conclusion of oral argument.

Article ?? *quater*

The Parties agree to accept as final and binding the responses of the Tribunal to the questions set out in Article ?? *bis*, after such clarifications and reconsiderations as may have been called for.

Article ?? *quinquies*

(1) Within of [ ] days of the rendering of the interlocutory award, or of the rendering of a response to a request for clarification or reconsideration of that award, whatever is the latest, the Parties shall resume their negotiations on the delimitation questions with a view to their resolution in the light of the interlocutory award.

(2) The Parties may likewise within a period of [ ] days from the resumption of their negotiations, by an instrument supplementary to the present *compromis*, request the Tribunal to extend its functions in any manner agreed by the Parties, including a request to determine the course of the boundaries corresponding to the findings of the Tribunal with respect to the questions set out in Article ?? *bis*. In that event, the Tribunal shall make the necessary arrangements for the further proceedings in the case, and make such adjustments in respect of financial and other administrative matters as may be warranted by the extension of its function.

(3) The foregoing shall be without prejudice to the right of each Party to have recourse to any other means of judicial settlement available to it, in accordance with the relevant instruments.

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Article ?? *bis*

The tribunal is requested to deliver an interlocutory award, providing its responses to the following questions:

(i) What was the maximum extent of the continental shelf appertaining to each of the Parties in the region between Greenland and Jan Mayen on 1 January 1980, in the light of pertinent rules of international law binding upon the Parties, and of their national legislation?

(ii) Has the complementarity of the provisions of the national legislation of the parties relating to the delimitation of the continental shelf had the effect of defining the parameters for the drawing of the boundary between the portions of the continental shelf appertaining to each of the Parties.

(iii) If the answer to question (ii) above is negative, what was the effect of the parallel and complementary national legislation of the Parties with regard to the delimitation of the continental shelf in the region between Greenland and Jan Mayen?

(iv) In international law, is there any requirement for congruity between the boundaries of the continental shelf and the boundaries of the exclusive economic zone (or corresponding zones of maritime resource jurisdiction), in the absence of an agreement between the Parties to that effect?

(v) Is the extension by Denmark of the Fisheries Zone for Greenland North of 67° Northern latitude by Decree of 30 May 1980 opposable against Norway, in view of the tenour of the Kingdom of Denmark Fishing Territory Act of 17 December 1976 at the time of the extension?

(vi) Does the process of negotiation undertaken by the Parties for the delimitation of their continental shelves and other zones of maritime resource jurisdiction fulfil the requirement under international law for meaningful and substantive negotiations?

CONFIDENTIAL

Elements of an Arbitration Agreement

Preamble

- Recognizing the importance attached by the Parties to judicial proceedings as an instrument for the attainment of a peaceful and amicable solution to disputes and as a contributory factor towards consolidation of the international system of law.
- Recognizing that delimitation disputes which have been the subject of long-time, inconclusive negotiations are suitable for judicial settlement as shown by previous international practice.
- Emphasizing that a settlement of the delimitation dispute will lay a solid foundation for potential bilateral agreements on mutual fishing rights and other exploitation of the resources of the maritime area concerned.

Operative terms

- The Court of Arbitration shall be *composed* of one or two persons appointed by either Party to the dispute (always provided that neither Party may appoint more than one person of its own nationality) as well as an umpire to be appointed by the Parties jointly or, alternatively, by the President of the International Court of Justice.
- The appointment of arbitrators shall be made within specified time limits.
- The Court of Arbitration shall settle the *question* as to where a single line of delimitation shall be drawn between the contracting Parties' continental shelf areas and fishing zones in the waters between Greenland and Jan Mayen.
- The Court of Arbitration shall *base* its decision on the rules of international law.
- Arbitration shall be *conducted grosso modo* in compliance with Articles 63 to 85 of the Convention of 18 October 1907 concerning Pacific Settlement of International Disputes.
- The Arbitration Agreement shall be *ratified* and *enter into force* on the date of the exchange of the instruments of ratification.

LIST OF TABLES

TABLES INCLUDED IN THE REJOINDER

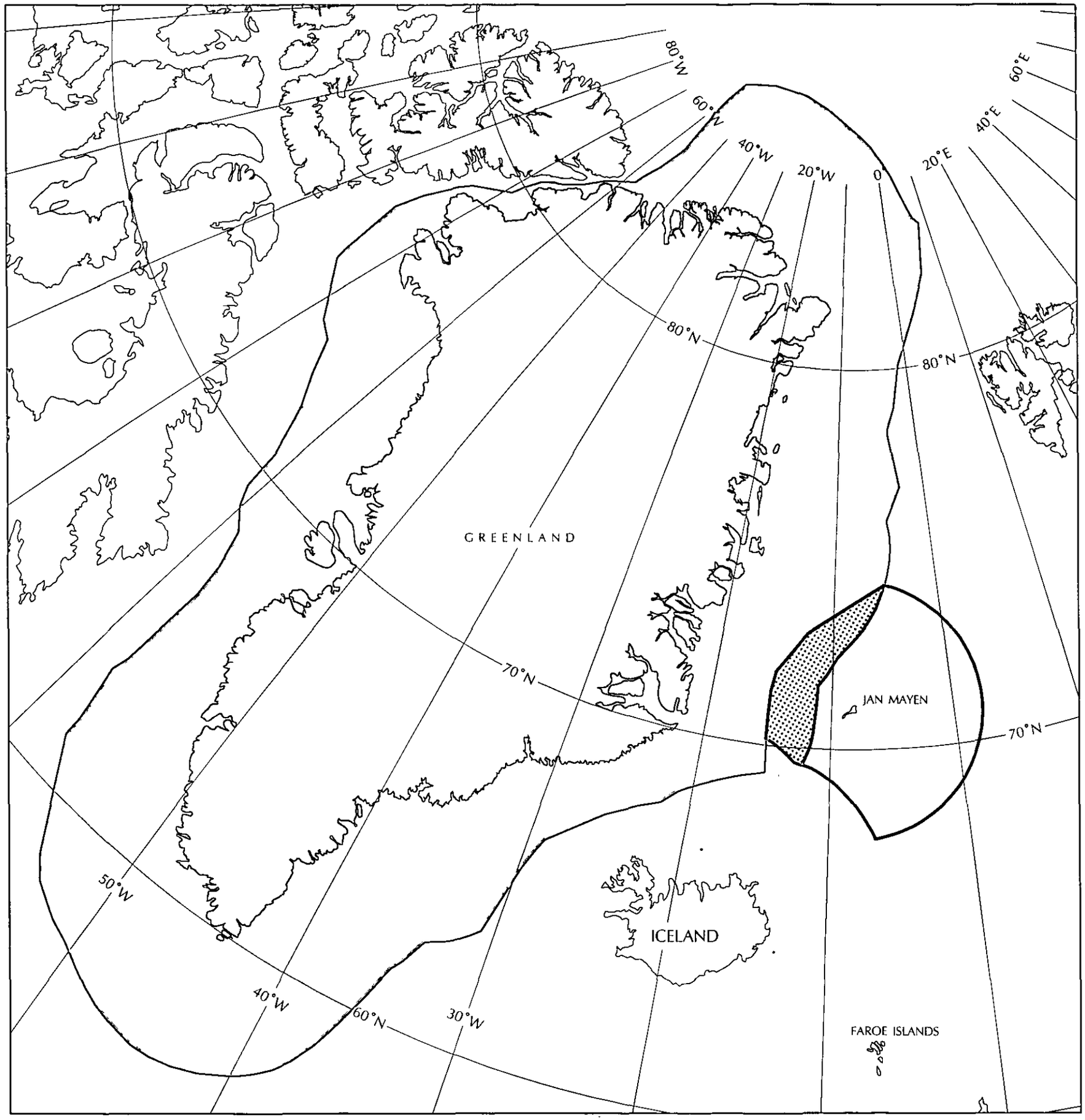
LIST OF MAPS

Maps Attached to the Rejoinder

Sketch Maps in the Rejoinder

Map V

DISPUTED AREA IN RELATION TO JAN MAYEN AND GREENLAND ZONES



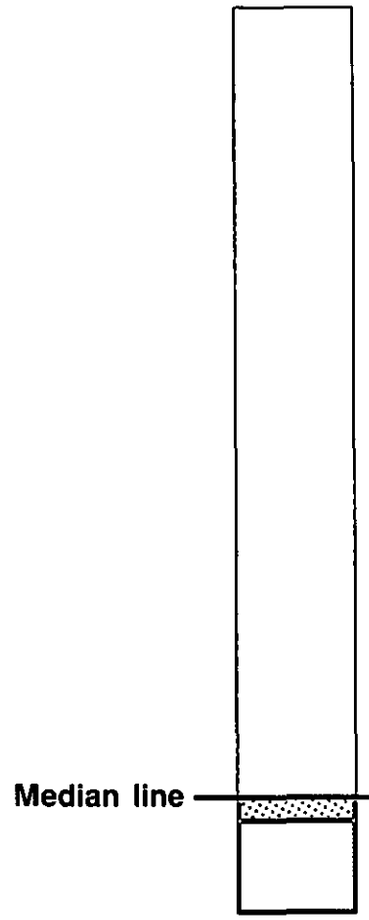
Scale

0 100 200 300 400 500 600 700 800 900 1000 km

0 50 100 150 200 250 300 350 400 450 500 nautical miles

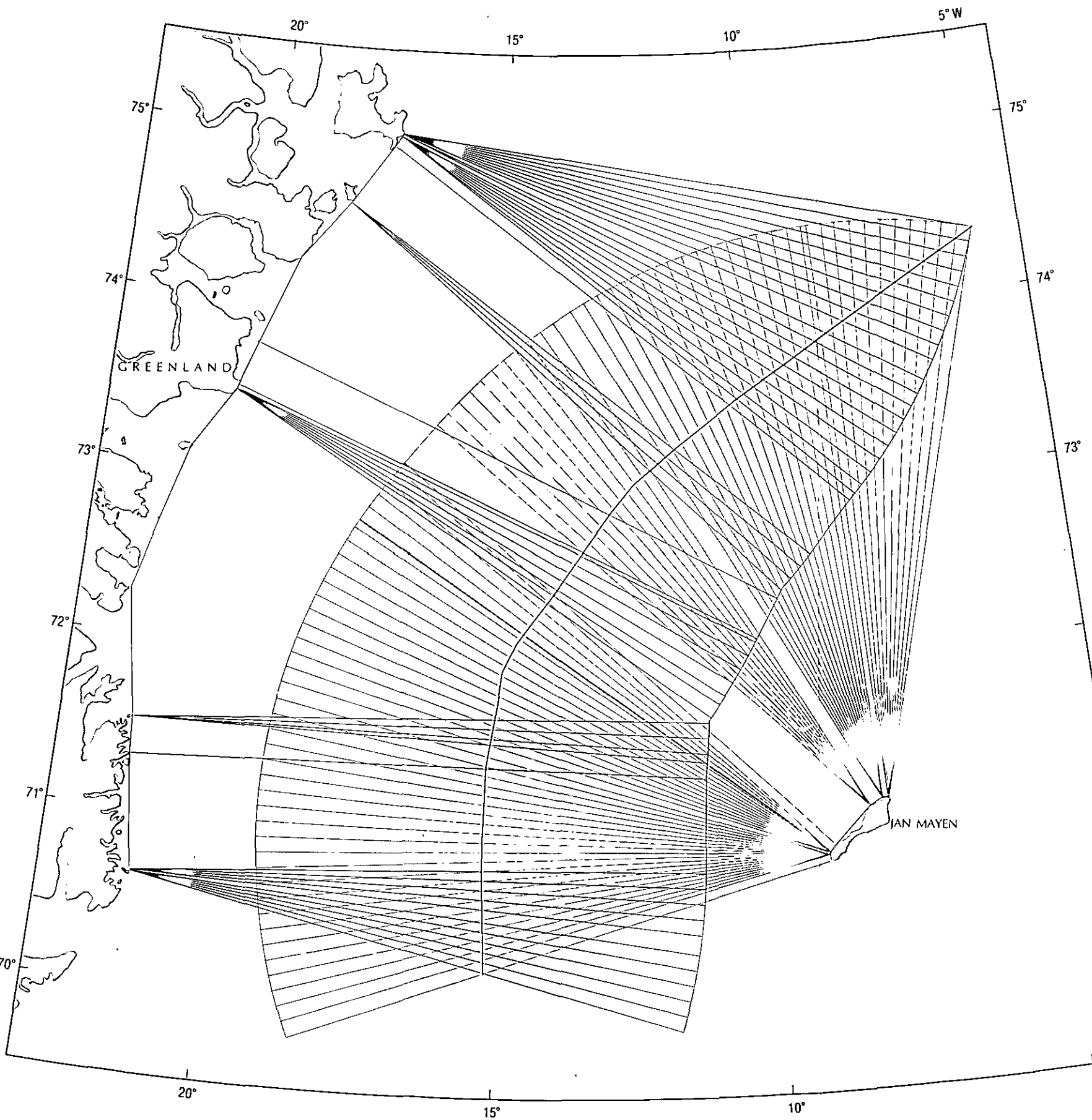
Map projection : Stereographic Oblique Zenithal
Central point : 71°N 8°W

Produced by : Statens kartverk 1991.09
(Norwegian Mapping Authority)



Disputed area
64 500 square kilometres

The disputed area corresponds to:
20.1 per cent. of Jan Mayen Zone within median line
2.9 per cent. of Greenland Zone within median line



CALCULATION OF 200 NAUTICAL MILE ZONES FROM JAN MAYEN AND GREENLAND

Scale 1:3 000 000

0 50 100 150 km
0 25 50 75 nautical miles

Map projection: Conical, standard parallel 72,5°N

Produced by: Statens kartverk 1991.09
(Norwegian Mapping Authority)

200-MILE ZONES IN THE PACIFIC OCEAN

Outer limit of 200 n. m. zone

Demarcated boundary line

Median line (computed)

Unilateral proclamation

0 200 400 600 800 1000 kilometres

0 200 400 600 nautical miles

Mercator projection

Produced by: Informasjonsteknikk A/S — Ski

140°E 150°E 160°E 170°E 180° 170°W 160°W 150°W 140°W 130°W

29°N 20°N 10°N 0° 10°S 20°S 28°S

Bonin Islands (Jap.)

Volcano Islands

Minami-tori Shima (Jap.)

Northern Mariana Islands

Guam (USA)

Wake Island (USA)

UNITED STATES OF AMERICA

Hawaii

Johnston Atoll (USA)

MARSHALL ISLANDS

MICRONESIA

Kingman Reef

Palmyra Island

Howland Island (USA)

Baker Island

NAURU

KIRIBATI

Jarvis Island (USA)

KIRIBATI

PAPUA NEW GUINEA

SOLOMON ISLANDS

TUVALU

Tokelau (N.Z.)

(Fr.) Wallis Futuna

WESTERN SAMOA

American Samoa (USA)

COOK ISLANDS

FIJI

VANUATU

New Caledonia (Fr.)

Matthew Island

Hunter Island

TONGA

Niue (N.Z.)

French Polynesia (Fr.)

Pitcairn Islands

AUSTRALIA