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

(Federal Republic of Germany/Denmark)

INTRODUCTION

1. This Counter-Memorial is submitted to the International Court of Justice by the Government of the Kingdom of Denmark in pursuance of an Order made on 8 March 1967 by the Judge discharging the duties of President of the International Court of Justice under Article 12 of the Rules of Court. For further particulars regarding the submission of the present dispute to the Court reference is made to paragraphs 1-5 of the Memorial filed on 21 August 1967 by the Government of the Federal Republic of Germany.

2. The dispute has arisen because the Federal Republic has thought fit to lay claim to areas of the continental shelf beneath the North Sea which lie nearer to the coast of Denmark than they do to that of the Federal Republic and which, naturally, are considered by Denmark to form part of her continental shelf. The dispute has come to the Court because the Federal Republic, while invoking the recognition by the Geneva Conference in the Continental Shelf Convention of the rights of a coastal State over the submarine areas adjacent to its coast, has declined to acknowledge the right of Denmark to delimit her continental shelf in accordance with the principles recognized as applicable by that same Conference in that same Convention. And now the crux of the dispute before the Court is that the Federal Republic demands an apportionment of the continental shelf beneath the North Sea according to the Federal Government's own notion of what is due to the Federal Republic *ex aequo et bono*, whereas Denmark asks for the delimitation of her continental shelf in accordance with the generally recognized principles and rules of international law.

3. The Memorial contains numerous references to writers, which references have only been sparsely commented upon in this Counter-Memorial. Several quotations, however, appear out of context. Annex 15 illustrates a number of instances where quotations seem to be incomplete.

4. For the convenience of the Court, and having regard to Article 42 of the Rules of Court, the present Counter-Memorial is divided into the same main parts as the Memorial submitted on 21 August 1967 by the Agent for the Government of the Federal Republic of Germany.

In framing the individual Chapters of these main parts, two principles have been followed. On the one hand the present Pleading, being a Counter-Memorial, seeks to comply with the second paragraph of Article 42 of the Rules of Court, which prescribes that a Counter-Memorial shall contain, among other things, an admission or denial of the facts stated in the Memorial, and observations concerning the statement of law in the said Memorial. On the other hand the present Pleading takes account of the fact that it affords the first opportunity to place before the Court the views of the Kingdom of Denmark on the matter in dispute. This results from Article 2 of the Special

Agreement of 2 February 1967 between the Kingdom of Denmark and the Federal Republic of Germany, wherein, pursuant to the provisions of Article 37 of the Rules of Court, the Parties have agreed that, without prejudice to any question of burden of proof, a Memorial shall first be submitted to the Court by the Federal Republic of Germany, and then a Counter-Memorial by the Kingdom of Denmark.

5. Consequently, the present Counter-Memorial contains:

in Part I an exposition of the relevant facts and of the history of the dispute, supplementing and correcting the exposition given in the Memorial of the German Federal Government;

in Part II the legal considerations which the Government of the Kingdom of Denmark considers to be of importance to the present case, together with its observations on the legal position taken by the German Federal Government in Part II of the Memorial;

in Part III the submissions to the Court regarding the principles and rules of international law applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them;

in Part IV the annexes, with English translations where the text is neither in English nor in French.

PART I. FACTS AND HISTORY OF THE DISPUTE

CHAPTER I

GEOLOGY AND GEOGRAPHY

6. The description given of the North Sea in paragraphs 7-8 of the Memorial is, from a strictly geographical point of view, no doubt correct. The legal conclusions drawn from it already at this stage are, however, unjustified.

7. The Court will find as Annex 7 to this Counter-Memorial a Memorandum giving a summary of exploration activities as well as certain additional geological facts concerning the area under dispute, including such generally admitted conclusions as may be drawn from scientific knowledge and practical experience as to the probability of the existence of mineral oil or natural gas in different parts of the area.

As appears from this Memorandum, the most promising area is situated just to the north of the shelf boundary established according to the principle of equidistance.

The Danish concessionaire has acted upon the knowledge acquired by scientific and practical experience and confirmed by geophysical surveys which started in 1963.

The first drillings undertaken in the Danish continental shelf area started in August 1966 and were resumed in August 1967. They were carried out in exactly that part of the shelf area which presented the most promising prospects at locations specified on the chart shown in Annex 7. The Danish concessionaire was the first to undertake drilling in the area, and the preliminary results of the drillings indicate the existence of natural resources which may be commercially exploitable.

It will be seen from the chart that the positions where drillings have been undertaken and where the presence of oil- and gas-bearing layers has been ascertained are within the area which the Federal Republic of Germany now suggests is to be allotted to her (Memorial, fig. 21, p. 85, *supra*).

Under the terms of the concession it expires in 1972 unless the concessionaire has found natural resources and started production prior thereto. Therefore the concessionaire—immediately after the concession in 1963 was extended to comprise the Danish continental shelf—started the necessary surveys of the Danish North Sea continental shelf. These surveys were extended and intensified during the following years. The Danish Government—which has based the delimitation of Danish shelf boundaries on the principle of equidistance as laid down in Article 6 of the Geneva Convention—has not felt bound to put any restraint on the development of natural resources of the greatest importance to the economy of a small country.

8. Furthermore, it should be noted that although Danish geological research in the North Sea was not started until 1963, as early as 1952 Denmark clearly and on an international plane expressed views identical to those on which her attitude in the present dispute is based. Denmark has subsequently consistently claimed and administered her continental shelf in accordance with those views.

9. In order to provide the Court with a convenient geographical view of the

North Sea the map enclosed on the inside back cover of this Counter-Memorial, among other things, shows those continental shelf boundaries on which agreement has already been achieved—in all cases on the basis of equidistance—as well as the boundaries of the North Sea under the North Sea Fisheries Convention of 1882.

10. With regard to paragraph 9 of the Memorial the following facts are submitted:

The angle of the German North Sea coast is approximately 100°.

The Federal Republic of Germany has not, so far, established straight baselines along her coast. The boundary on the basis of equidistance suggested on charts annexed to the present Counter-Memorial takes into account the relevant base-points along the German shore and coastal islands. There is no dispute between the Parties on this aspect of the delimitation.

The Island of Heligoland is of no significance to the present dispute, since it exercises no material—if any—influence on the equidistance line.

CHAPTER II

DANISH ATTITUDE TO THE CONTINENTAL SHELF QUESTION

11. Denmark took an initiative in continental shelf matters at an early stage. In 1948 a committee was set up by the Ministry of Foreign Affairs with the object of examining the legal, political, economic and scientific problems relating to the continental shelf.

12. As a result of its work, the committee made a recommendation in early 1952 with an attached sketch of the delimitation of the Danish continental shelf in the North Sea and the Baltic. The recommendation formed the basis of the comments of the Danish Government on the International Law Commission's draft of the Continental Shelf Convention. A memorandum, with the sketch attached was sent to the United Nations in May 1952. It was reprinted without the sketch in the *International Law Commission Yearbook* of 1953, Volume II, pages 245-247, and is submitted as Annex 8. In the memorandum the Danish Government said, among other things:

> "The Danish authorities have prepared the enclosed sketch of a division of the shelf contiguous to the Danish coasts facing the North Sea and the Baltic and the waters between them. This sketch is primarily based on the boundaries fixed on 3 September 1921 between Danish and German territorial waters east and west of Jutland, and the boundary fixed by agreement of 30 January 1932 between Danish and Swedish waters in the Sound and the prolongation of these lines combined with the median line, where the latter is applicable, and otherwise based on planes forming the locus of points closer to Denmark than to any other country involved. The sketch might serve as an illustration of a division under concrete conditions calling for special solution; the principles outlined may also be applicable to analogous cases in other geographical areas."

13. During the Geneva Conference Denmark moved two amendments to the draft of the Convention, both relating exclusively to the question of scientific freedom, one of which was adopted. At the eighteenth plenary meeting, held on 26 April 1958, Denmark voted for all the articles of the Convention. On 29 April 1958 the Convention was signed by Denmark.

14. In March 1963 the Danish Foreign Minister submitted to the Parliament a motion for a resolution on Denmark's ratification of the Convention. The motion further asked for consent of the Parliament that Danish sovereignty for the purposes of exploration and exploitation of natural resources should be exercised over that part of the continental shelf which belongs to the Kingdom of Denmark according to the Convention. In May 1963 the resolution was unanimously adopted and the Danish ratification procedure was completed in June 1963. Furthermore, in pursuance of the Parliament resolution a Royal Decree on the exercise of Danish sovereign rights over the continental shelf was issued on 7 June 1963.

15. The Statutes governing the right to utilize Denmark's subsoil are contained in the Prospecting for and Recovery of Raw Materials in the Kingdom of Denmark's Subsoil Act, No. 181, 8 May 1950, and, as far as Greenland is concerned, Decree No. 153, 27 April 1935, and Act No. 166, 12 May 1965. The sovereignty over the shelf as far as exploration and exploitation of natural

resources are concerned has been established by the above-mentioned Royal Decree of June 1963. On the question of delimitation the Decree provided as follows:

> "The boundary of the continental shelf in relation to foreign States whose coasts are opposite the coasts of the Kingdom of Denmark or which are adjacent to Denmark shall be determined in accordance with Article 6 of the Convention. Accordingly, in the absence of any special agreement the boundary shall be the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

The Decree comprises the continental shelf around Denmark proper as well as around Greenland and the Faroe Islands. On 10 July 1963 the Government of the Federal Republic of Germany was notified of the Decree by Denmark. The 1963 Decree makes the 1935 Decree and the 1950 Act applicable to the Danish shelf area as regards the granting of concessions.

16. In 1963 the concession for exploration and exploitation of oil and gas in Denmark's underground granted to the Danish concessionaire, the A. P. Møller Companies, was extended to comprise the Danish continental shelf, but with exclusion of the shelf surrounding Greenland and the Faroe Islands, since the concession as such does not comprise Greenland and the Faroe Islands.

17. During the time which has passed since the ratification of the Convention on the Continental Shelf Denmark has, as mentioned also in the Memorial (paras. 20-22) made agreements with Norway, Great Britain, and the Netherlands on the shelf boundaries in the North Sea, and also a Treaty with the Federal Republic of Germany concerning the boundary in the North Sea near the coast. In addition reference may be made to the shelf boundary in the Baltic Sea in relation to the Federal Republic of Germany. In a Protocol attached to the aforementioned Treaty with the Federal Republic of Germany of 9 June 1965 the second paragraph runs as follows:

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

CHAPTER III

ATTITUDE OF THE FEDERAL REPUBLIC OF GERMANY IN RESPECT OF THE CONTINENTAL SHELF

18. At the 1958 Geneva Conference the Federal Republic of Germany submitted a memorandum to the Fourth Committee (the Continental Shelf Committee) advocating free utilization for everyone of the natural resources of the continental shelf, reserving only certain controlling rights to the coastal State closest to the installations in question.

19. The Federal Republic's proposal received no support, however, from the other States participating in the Conference, the preponderant view being that an exclusive right to the naturel resources of the shelf was vested in the coastal State.

20. The position of the Federal Republic at the various votes taken during the Conference presents the following picture:

(a) at the vote taken in the Fourth Committee (the Continental Shelf Committee) on Article 6 (at that time Art. 72) the Federal Republic voted in favour thereof (*Official Records*, Vol. VI, p. 98).

After the vote the representative of the Federal Republic said: "that, in view of the inexact nature of the outer limit of the continental shelf as defined by Article 67 (the later Art. 1), his delegation would have preferred the adoption of the Venezuelan amendment [1]. When that amendment was rejected, the delegation of the Federal Republic of Germany had accepted the views of the majority of the Committee, subject to an interpretation of the words 'special circumstances' as meaning that any exceptional delimitation of territorial waters would affect the delimitation of the continental shelf." (*Ibid.*, para. 38.)

(b) At the ninth plenary meeting on 22 April 1958 Article 6 (at that time still Art. 72) was adopted. The Federal Republic of Germany did not vote against the article and it seems reasonable to assume that she was not among those abstaining.

(c) At the eighteenth plenary meeting on 26 April 1958 the Convention as a whole was adopted. The Federal Republic of Germany voted against for reasons not connected with Article 6, a matter that will be further dealt with below (*ibid.*, Vol. II, p. 57).

Having thus voted against the adoption of the Convention on the Continental Shelf the Federal Republic of Germany nevertheless signed the Convention on 30 October 1958—which was the last day but one on which it was open for signature—making a reservation only in respect of Article 5 on fishing rights.

21. In the period 1957-1963 extensive German scientific explorations were carried out in the eastern part of the North Sea including the southern part

[1] Under this amendment Article 6 would read as follows:

"1. Where a continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them or by other means recognized in international law.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined in the manner prescribed in paragraph 1 of this Article."

of the Danish shelf area. In a Note of 18 March 1964 the Danish Government protested officially against German seismic, gravimetric and magnetic explorations of the Danish shelf area having been carried out after the notification to the German authorities of the Danish Royal Decree of 7 June 1963. The German explorations in the Danish shelf area were not repeated after this, but there is little doubt that a thorough picture of potentialities in the German as well as in the Danish shelf areas had already been obtained.

In early 1963 Oberbergamt Clausthal Zellerfeld, which is the competent authority in this field in the Federal Republic of Germany, granted a temporary concession to the German North Sea Syndicate to perform drillings outside the territorial sea limits.

22. About the turn of the year 1963-1964, it was reported in the press that an American oil company had announced its plans to carry out drilling off the German territorial sea. It would have been no more than a natural reaction on the part of the Federal Republic of Germany to take adequate measures to protect its national interests, and this, apparently was what prompted it to issue the Government Proclamation of 20 January 1964.

23. Only fragments of the text of this Proclamation appear in the Memorial. In view of the relevance of this document the full text has been reproduced as Annex 10. As will be seen, the Government of the Federal Republic of Germany states in this Proclamation:

(a) that "the Federal Government will shortly submit to the Legislature an Accession Bill on this Convention" with a view to German ratification.

(b) that it deems exploration and exploitation of the seabed and subsoil to be the sovereign right of the Federal Rebublic, and that this right is based on "the development of general international law as expressed in recent State practice and, in particular, in the signing of the Geneva Convention on the Continental Shelf".

24. No Accession Bill was, however, presented to the Legislature by the Federal Government. On 15 May 1964 a Bill was submitted with a view only to establishing a statute relating to the activity in the German shelf area.

But in the Exposé des Motifs of the Bill (Annex 11) the Federal Government stated that the statute was to be "the municipal supplement to the effects of the Proclamation in the field of international law". It will further be seen from the text that once again the Federal Government of Germany acknowledges the Geneva Convention as an expression of customary international law.

25. The Parliament ("Bundestag") of the Federal Republic of Germany responded favourably to the Government Bill, adopting it unanimously at the third reading on 24 June 1964. In its report as well as in its recommendation, the parliamentary committee concerned advocated an early German ratification of the Geneva Convention, and this recommendation was endorsed by Parliament.

26. Why, then, was the ratification of the Convention never carried out by the Federal Republic of Germany? The Government announced it in a Note Verbale of 26 August 1963 to the Netherlands Government and advocated it in its Proclamation, and Parliament recommended it. But when the Netherlands-German and the Danish-German agreements on delimitation of the continental shelf in the North Sea near the coast were placed before Parliament in December 1964 and October 1965 respectively, no reference whatsoever was made to ratifying the Geneva Convention.

CHAPTER IV

THE NEGOTIATIONS BETWEEN THE PARTIES

Section I. Bilateral Negotiations

27. It is only natural that the delimitation question has been the object of thorough negotiation between the Parties—be it official talks or informal discussions. The Memorial might convey the impression that only a formal presentation of official viewpoints took place, and that "the other Party" was intransigent in upholding the Continental Shelf Convention and the equidistance principle. But the fact is that a series of negotiations were held. Between Denmark and the Federal Republic of Germany there were formal talks on two occasions, viz. during two days in October 1964 and during two days in March 1965.

28. The Danish-German negotiations resulted only in a Treaty concerning the delimitation of the continental shelf of the North Sea near the coast and an annexed Protocol in which the Parties, *inter alia*, agreed to a unilateral delimitation of the continental shelf in the Baltic Sea based on the median line. The Treaty was signed on 9 June 1965 by the Foreign Ministers of the two countries.

29. There remained the question of the North Sea outside the partial boundary established through the above-mentioned Treaty. The two meetings of delegations in October 1964 and March 1965 had provided a very useful presentation of viewpoints but also shown how difficult would be a reconciliation between the positions of the two countries. At the end of the bilateral round of negotiations the Danish delegation was informed of a German intention of calling tripartite negotiations between the Federal Republic, Denmark and the Netherlands. However, a German initiative was never taken. On various occasions during the year 1965 the Danish Embassy in Bonn invited the German Foreign Ministry to present in some detail the proposals for a solution which they would wish to have discussed at a negotiation. No such indications were ever forthcoming.

30. On 8 December 1965 the German Foreign Ministry in an Aide-Mémoire to the Danish and Netherlands Embassies proposed that the Foreign Ministers of the three countries take up the matter on the occasion of a ministerial meeting in Paris later in December. The full text of the Aide-Mémoire was as follows:

> "The Government of the Federal Republic of Germany proposes continuing negotiations on the delimitation of the continental shelf areas appertaining to the two States in the North Sea, the first phase of which was concluded by the signing of the German-Danish Treaty on 9 June 1965. In the opinion of the Federal Republic of Germany the legal opinions of the two States on the principle on which to base the continental shelf delimitations which are still in dispute after the negotiations held so far, should be excluded in further discussions.
>
> However, the Federal Government is also prepared to submit the said legal issue to an arbitration tribunal. Should the Royal Danish Government prefer this alternative, the Federal Government would propose that the Royal Netherlands Government should likewise take part in negotia-

tions on the details of the proceedings before an arbitration tribunal in line with section 3 of the Final Protocol to the German-Danish Arbitration and Amicable Settlement Agreement dated 2 June 1926, which assumes such a procedure wherever the practical consequences of a dispute between the parties to the agreement transcend the concrete issue at hand."

In other words: as an understanding on legal terms was not foreseeable, legal principles should be disregarded during the continued negotiations, but the Aide-Mémoire failed to provide any suggestions on the basis on which a solution was to be sought.

31. The meeting of the three Foreign Ministers was brief and inconclusive, but gave a vague indication that on the German side the idea was entertained that joint utilization might be the solution. The Foreign Ministers agreed that new discussions should be held either bilaterally or between all three countries.

Section II. Trilateral Negotiations

32. The first tripartite negotiations took place in The Hague in February 1966. Second and third rounds of tripartite talks were held in Bonn and Copenhagen in May and August 1966 respectively.

33. At the meeting in The Hague it soon became clear that the Danish and Netherlands delegations were feeling no inclination to leave their legal standpoint: that the Geneva Convention should be applied. From the German side no proposals as to another theme of negotiations were presented. Upon request of the German delegation it was agreed that a new trilateral meeting should be held in Bonn in May, at which, it was stated, a concrete German proposal on the division of the shelf could be expected.

34. Meeting in Bonn in May 1966, the three delegations entered into a discussion on whether joint utilization could be the basis for negotiations, which disregarded the legal positions, as maintained by the German delegation. The two other delegations upheld their position that even a possible solution along these lines would have to be based on a fixation of the lines of delimitation. The German delegation did not present any concrete proposal as announced at The Hague meeting. The German delegation concluded that no further negotiations were possible, and the discussions then concentrated on the question of the procedural steps to be taken. These discussions were finalized at the third trilateral meeting in Copenhagen in August 1966.

Section III: Conclusions

35. Admittedly all during the negotiations the Danish delegation upheld its position that the Geneva Convention was a codification of international customary law and that it would not be possible to make a departure from this Convention, which had been ratified by Denmark and signed by the Federal Republic of Germany. The Federal Republic had furthermore endorsed the Convention in its Government Proclamation of 20 January 1964, which had been approved by the Legislative Assembly through the adoption of the Bill referred to in paragraph 24 above, which became the German Act for the Provisional Determination of Rights over the Continental Shelf of 25 July 1964. It is likewise correct that the Federal Republic of Germany during the negotiations indicated that other principles or criteria might be applied, namely:

division according to a parity principle,
division in proportion to the length of each country's coast facing the North Sea,
division into sectors under a multilateral arrangement of the central part of the North Sea,
joint utilization.

36. While the German delegation at no point during the many meetings presented any concrete proposal nor any elaboration of these suggestions, the Danish side at all stages maintained its legal position based on Article 6 of the Geneva Convention and the principle of equidistance, but continued discussions on the substance until both sides agreed that all possibilities of agreement had been exhausted.

PART II. THE LAW

CHAPTER I

THE QUESTION SUBMITTED TO THE COURT

37. The question which, under the terms of the Compromis (Special Agreement), the Court is called upon to decide is:

> "what principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the above-mentioned (i.e., Danish-German) Convention of 9 June 1965".

The Federal Republic, in its submissions and in Part II of the Memorial, asks the Court in effect to declare that the only applicable principle or rule of law is an alleged principle that each coastal State is entitled to a just and equitable share; and that neither the equidistance method nor any other method is a fit and proper method of delimitation in any circumstances, unless it is established by agreement, arbitration or otherwise that the particular method will "achieve a just and equitable *apportionment* . . . among the States concerned" [1]. (Italics added.)

38. The claim thus formulated by the Federal Republic seems to the Government of Denmark to be nothing less than a request to the Court to lay down that, as between Denmark and the Federal Republic, the delimitation of the continental shelf in the North Sea should be settled *ex aequo et bono*. Without a framework of legal criteria to determine what is "just and equitable", the concept of a "just and equitable apportionment" lacks any legal content. Indeed, as the very terms of the Compromis show, it was precisely in order to obtain the Court's directions regarding the applicable framework of legal criteria that Denmark and the Federal Republic have submitted the dispute to the Court. Accordingly, the claim formulated by the Federal Republic appears to Denmark not to fall within the terms of the question put to the Court in the Compromis.

39. In any event, the thesis put forward by the Federal Republic reflects a concept of the coastal State's rights in the continental shelf which has no basis either in the terms of the Compromis or in the applicable rules of international law.

40. The Compromis does not request the Court to decide what principles and rules of international law should govern the *sharing out* between Denmark and the Federal Republic of areas of the continental shelf in the North Sea. It requests the Court to decide the principles and rules applicable to the *delimitation as between Denmark and the Federal Republic of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary already fixed by the 1965 treaty*. In short, the question put to the Court in the Compromis concerns the principles and rules applicable for completing the *delimitation* of the *boundary* running between the areas of continental shelf which *appertain* to each of two adjacent coastal States.

[1] Memorial, p. 91, *supra*.

41. The manner in which the question for the Court's decision is framed in the Compromis also corresponds to the way in which the question of delimitation presents itself in State practice, in the proposals of the International Law Commission and in the provisions of the Geneva Convention of 1958 on the Continental Shelf.

42. All the pre-1958 texts of Proclamations or Decrees given in paragraph 31 (p. 31, *supra*) of the Memorial view the question as one of *boundary delimitation* in accordance with equitable principles. The proposals of the International Law Commission in both paragraphs of Article 72 of the draft submitted by it to the General Assembly were also framed entirely as rules for *delimiting the boundaries of the areas of continental shelf appertaining to coastal States* (*Yearbook*, 1956, Vol. II, p. 300). Article 6 of the Geneva Convention on the Continental Shelf, which reproduces the Commission's texts almost word for word, is similarly couched entirely in terms of the delimitation of continental shelf boundaries. Thus, the text of Article 6 reads:

> "1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, *the boundary of the continental shelf appertaining to such States* shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, *the boundary is the median line*, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
>
> 2. Where the same continental shelf is adjacent to the territories of two adjacent States, *the boundary of the continental shelf* shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, *the boundary shall be determined by application of the principle of equidistance* from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
>
> 3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land." (Italics added.)

43. The same is true of the State practice after the 1958 Geneva Conference, and especially that relating to the North Sea itself, as clearly appears from the terms of the unilateral acts and bilateral agreements cited in Chapter II of Part I of the Memorial. Thus, the Norwegian Proclamation and Decree, of 1963, speak of Norway's submarine areas having a *boundary* midway between Norway and other countries. The Danish Decree and Note Verbale, both also of 1963, echoing the language of the Convention, speak in terms of *boundary delimitation*. The Federal Republic's own Proclamation of 20 January 1964 (see Annex 10) speaks of the *delimitation* of the German part of the continental shelf in relation to the parts of the continental shelf of foreign States. The United Kingdom's Continental Shelf (Designation of Areas) Order of the same year refers to certain areas as subject to the exercise of its continental shelf rights "pending agreement with other Powers on the *boundaries of the continental shelf appertaining to the United Kingdom*" (italics added). As to the Netherlands, its Note Verbale of 21 June 1963 (Annex 2 A of the Memorial) notified the Federal Republic that *the part of the continental shelf of the North Sea over*

which the Netherlands exercised sovereignty in conformity with the Convention

> "*is delimited* to the east by the equidistance line beginning at the point where the Thalweg in the mouth of the Ems reaches the territorial waters" (italics added).

44. Particularly striking is the fact that all the bilateral agreements hitherto concluded between North Sea Powers are expressed as *delimitations of boundaries* between the parts of the continental shelf appertaining to the respective countries, not as agreements for *sharing out* the continental shelf. Thus, the *United Kingdom-Norway Agreement* of 10 March 1965 (Annex 5 of the Memorial) has a preamble which proclaims that the two States—

> "Desiring to establish the *boundary between the respective parts of the continental shelf*:
>
> Have agreed as follows" (italics added).

And then the operative clause of Article 1 of the Agreement reads—

> "The *dividing line* between *that part of the Continental Shelf which appertains to the United Kingdom* of Great Britain and Northern Ireland and *that part which appertains to the Kingdom of Norway* shall be based . . .", etc. (italics added).

The same forms of preamble and operative clause appear also in the *Netherlands-United Kingdom Agreement* of 6 October 1965 (Annex 9 of the Memorial). Similarly, the *Denmark-United Kingdom Agreement* of 3 March 1966 (Annex 12 of the Memorial) has a preamble in the terms that the two States—

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

And the operative clause of Article 1 of the Agreement then takes the same form as in the United Kingdom-Norway and the Netherlands-United Kingdom Agreements. The *Denmark-Norway Agreement* of 8 December 1965 (Annex 11 A of the Memorial) has a preamble and operative clause which, if the wording is slightly different, are inspired by precisely the same concept of the purpose and effect of the Agreement.

45. The Treaties of the Federal Republic itself with Denmark of 9 June 1965 (Annex 6 A of the Memorial) and with the Netherlands of 1 December 1964 (Annex 3 A of the Memorial) for the delimitation of the continental shelf near the coast are equally expressed in terms of the partial delimitation of the *boundary of the continental shelf adjacent to the territories of the States concerned.* Moreover, even the Joint Minutes and the Protocol (Annexes 4 A and 7 A of the Memorial) accompanying those Treaties and reserving the position of the Parties with regard to the further course of the boundary recognized that the question at issue was the determination of the *common boundary* between the respective Parties. True, the delegation of the Federal Republic in the Joint Minutes accompanying the Netherlands Treaty announced that the Federal Government was—

> "seeking to bring about a conference of States adjacent to the North Sea with a view to arriving at an appropriate division of the continental shelf situated in the middle of the North Sea".

But it referred to a division in accordance with the first sentences of paragraphs 1 and 2 of Article 6 of the Geneva Convention which speak expressly of the

determination of the *boundary* of the continental shelf appertaining to the States concerned. Nor did the Federal Government pursue the idea of a conference. On the contrary, in identic Aide-Mémoires of 25 May 1966 addressed simultaneously to the Danish and Netherlands Governments concerning their Agreement for the delimitation of their respective parts of the North Sea, the Federal Republic contented itself with underlining that the arrangement made in that Agreement—

> "cannot have any effect on the question of the *delimitation* of the German-Netherlands or the German-Danish parts of the Continental Shelf in the North Sea". (Italics added.)

Furthermore, in its two identic Aide-Mémoires of 12 July 1966, addressed by the Embassy of the Federal Republic to the United Kingdom Government with reference to the conclusion of the United Kingdom-Netherlands and the United Kingdom-Denmark Agreements for the delimitation of the continental shelf, the Federal Government reserved its position expressly in terms of the delimitation of its boundaries with the Netherlands and Denmark (Annexes 10 A and 13 A of the Memorial):

> "the Federal Government wishes to point out to the British Government that *the final settlement of the question of the lateral delimitation of the continental shelf* in the North Sea between the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands is still outstanding. The Federal Government would moreover bring the Aide-Mémoire of 25 May 1966, a copy of which is attached, to the attention of the British Government and would add that the arrangement made in the aforementioned Agreement cannot prejudice *the question of the delimitation of the continental shelf between the Federal Republic of Germany and the Netherlands (Denmark)* in the eastern part of the North Sea" (italics added).

46. Lastly, it is noteworthy that in the Protocol of 9 June 1965 on the delimitation of the continental shelf in the Baltic Sea the Federal Republic together with Denmark again dealt with the question purely and simply as one of the *delimitation of boundaries*, not of the *sharing out* of areas between the littoral States of that sea:

> "With respect to the continental shelf adjacent to the coasts of the Baltic Sea which are opposite each other, it is agreed that *the boundary* shall be the median line. Accordingly, both Contracting Parties declare they will raise no basic objections to the other Contracting Party's *delimiting its part of the continental shelf* of the Baltic Sea on the basis of the median line." (Italics added.) (See Annex 7 A of the Memorial.)

Reference is also made to paragraph 104 below regarding the Belgian Bill on the continental shelf.

47. Accordingly, the practice of States—in their unilateral acts, their bilateral agreements and in the Geneva Convention on the Continental Shelf—affords no support whatever for the conclusion which the Federal Republic seeks to draw from it in paragraph 38 of its Memorial (p. 36, *supra*):

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

On the contrary, that conclusion is in direct contradiction both with the

existing practice of a large number of States and with the rules adopted in the Geneva Convention on the Continental Shelf.

48. Nor is the Federal Republic's thesis made any more compatible with State practice or with the Geneva Convention by framing it in the truncated form in which it appears in the Federal Government's first submission:

> "The delimitation of the continental shelf between the Parties in the North Sea is governed by the principle that each coastal State is entitled to a just and equitable *share* [1]." (Italics added.)

49. This proposition starts from the inadmissible basis of *sharing out the continental shelf like a cake* instead of from the basis of determining, as between opposite or adjacent States, where the boundary is to be drawn as between the territory appertaining to each State. When the Federal Rebuplic states in paragraph 30 of the Memorial (p. 30, *supra*) that—

> "if, by virtue of their geographic position, two or more coastal States can claim that a continental shelf 'appertains' to each of them, the necessity arises of apportioning that common continental shelf between them",

this is a manifest misrepresentation of the legal situation under positive international law. In the first place, this statement confuses the *geological* concept of the continental shelf with the entirely different *legal* concept of sovereign rights of a State over the continental shelf. There are, perhaps, reasons for considering a continental shelf as a "unit" from the *geological* point of view. There is, however, no more reason to regard that geological unit as a *legal* entity than there is to consider the "continent of Europe" or the "low countries" as such. From the legal point of view the continental shelf, like land, sea and air, is primarily "space" wherein activities take place and objects are found, and space is *a priori* susceptible to any limitation or division. Secondly, the mere fact that two or more States each lay a claim (or even *can* lay a claim) to the same space does not make that space *common* space to be divided between them. Indeed the normal legal situation in respect of, for instance, a disputed territory is not that the territory is divided but that the better claim prevails. Nor have any of the other North Sea States sought to treat the continental shelf beneath that sea as legally a unity. On the contrary, every single one of them—with the exception of the Federal Republic of Germany—has demonstrably regarded its claim as limited to that part of the continental shelf every point of which is nearer to its coast than to that of any other State.

Equally, the reference in paragraph 35 of the Memorial to the use of the waters of international rivers is entirely beside the point. The régime for the utilization of the waters of international rivers is a quite different question which does not concern the delimitation of boundaries.

50. No doubt, when the determination of the boundaries of the areas of continental shelf appertaining to each coastal State has been made, the result may be spoken of as constituting an "apportionment" of the continental shelf among the States concerned or as a determination of their "shares". But there is a fundamental difference between a principle which starts from the basis that the continental shelf is the common property of the littoral States, each of whom is entitled to an "equitable and just *share*" of the common property, and one which starts from the basis that each littoral State is entitled to the areas which appertain to its territory and that the *boundaries between these appurtenant areas* are to be delimited on equitable principles. If these principles

[1] Memorial, p. 91, *supra*.

may not always have been clearly distinguished by some writers, there can be no doubt that it is the latter principle which is found in State practice and expressed in the Geneva Convention, not the principle formulated in the Federal Government's first submission.

51. Furthermore, the Federal Republic's submission, that the delimitation of the continental shelf in the North Sea as between Denmark and the Federal Republic should be governed by the principle that each coastal State is entitled to a just and equitable share, is one which by its very nature cannot give an adequate answer to the question put to the Court in the Compromis. In the first place, a delimitation of the boundary as between Denmark and the Federal Republic would not *by itself* determine the *total* area appertaining to either or both of them, since the total area of each would be dependent upon their other boundary lines with third States not parties to the present dispute. In the second place, and consequentially, the question whether such a delimitation would produce a "just and equitable share" for Denmark and the Federal Republic *would necessarily also be dependent on the delimitation of their boundaries with third States*. Thus, the alleged principle formulated by the Federal Republic simply cannot constitute a principle or rule of international law applicable to the delimitation of the continental shelf boundary *as between the Parties to the Compromis*.

52. If there were such a principle or rule of positive international law, it would follow logically that the delimitation of the continental shelf of each and every North Sea coastal State could be effected only through a *multilateral* agreement concluded between all of them. The Federal Republic did, indeed, at one stage in the negotiations speak of an intention to convene a multilateral "conference of States adjacent to the North Sea with a view to arriving at an appropriate division of the continental shelf situated in the middle of the North Sea" (Joint Minutes of 4 August 1964, Annex 4 A of the Memorial). But it made no effort to carry the matter further. No doubt, this was because the Federal Government soon came to realize that not only Denmark but all the other States concerned would automatically demand the application of Article 6 of the Geneva Convention and that the only result of such a conference must be the delimitation of the North Sea continental shelf in accordance with the equidistance principle. At any rate, it never adverted to the idea of a multilateral conference again.

53. Now, however, the Federal Government shifts its ground and demands that the boundary between Denmark and itself should be determined bilaterally in isolation from the other North Sea States but in such a way as to provide the Federal Republic *with a share of the total continental shelf beneath the North Sea* that it considers "just and equitable". In short, the Federal Republic now seeks to put the burden of providing for itself what it considers a just and equitable share of the North Sea shelf not on all but on one or at most two of the North Sea States. The very nature of this demand, in the view of Denmark is incompatible with the existence of the supposed principle which the Federal Republic invokes.

54. On this point, there is a certain consistency in the position taken up by the Federal Republic. Prior to the Geneva Convention it advocated that the continental shelf outside territorial waters should be regarded as common to all States and should be exploited in the interests of all. That concept of the continental shelf was, however, in total conflict with the practice of States and was completely and finally rejected at the Geneva Conference of 1958. The principle formulated in the Federal Republic's first submission seems to be

essentially a relic of that very "community" concept of the continental shelf which the Federal Government has itself now abandoned. Be that as it may, the principle is certainly in conflict with the practice of States and with the concept of the continental shelf which was adopted in the Geneva Convention and animates the provisions of Article 6 concerning the delimitation of boundaries of the continental shelf.

55. If it is necessary to look for the general concept underlying the modern law regarding the delimitation of continental shelf boundaries, this is that each State has *ipso jure* sovereign and *exclusive* rights of exploration and exploitation over the areas of continental shelf *adjacent* to its coast and that, in the case of two States fronting upon the same continental shelf, the areas which are to be considered as appertaining to one or to the other are to be delimited on equitable principles. However, State practice and the Geneva Convention have translated this general concept into the more concrete criteria for the delimitation of continental shelf boundaries which are examined in the next Chapters of this Counter-Memorial. In the view of the Danish Government, it is in these more concrete criteria that the answer to the question put to the Court in the Compromis has to be found.

CHAPTER II

THE PRINCIPLE THAT A DELIMITATION OF A MARITIME AREA IN ACCORDANCE WITH GENERALLY RECOGNIZED RULES OF INTERNATIONAL LAW IS PRIMA FACIE VALID AND OPPOSABLE TO OTHER STATES

56. The Federal Republic, as pointed out in the previous Chapter, asks the Court in its submissions to recognize only one alleged principle of law as governing the delimitation of the continental shelf between the Parties in the North Sea, namely the principle that "each coastal State is entitled to a just and equitable share". By way of clearing the ground for its alleged principle of law, however, the Federal Republic also asks the Court expressly to deny the status of a rule of customary law to the "equidistance" principle—the principle applied by Denmark and the Netherlands as well as by other North Sea States in the delimitation of their respective continental shelf boundaries. The Federal Republic's second submission reads:

> "The method of determining boundaries of the continental shelf in such a way that every point of the boundary is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured (equidistance method), is not a rule of customary international law and is therefore not applicable as such between the Parties [1]."

This submission has to be read in the light of the Federal Republic's discussion of the equidistance line in Chapter II of Part II of the Memorial where, after dealing with the genesis of the equidistance method and its introduction into Article 6 of the Geneva Convention on the Continental Shelf, the Federal Government asserts:

> "Thus Article 6 is not a codification of already existing international law, but it is the outcome of an effort to develop the existing legal situation, with its demand for an equitable solution, by the establishment of a method which it was assumed would, under normal geographical conditions, lead to an equitable and just apportionment of the continental shelf between the States concerned. Article 6 must be interpreted in this sense, *with the consequence that an equidistance boundary may not be imposed upon a State which has not acceded to the Convention*, so long as it has not been proved that it would be the best method of apportioning the continental shelf between the adjacent States in a just and equitable manner, having regard to the special geographical situation of the individual case [2]." (Italics added.)

57. The Federal Government's contentions regarding the status of the equidistance method are believed by Denmark to be based on a misconception no less fundamental than that which underlies its first submission. In the present instance the fundamental misconception concerns the position of the Parties in relation to the principles and rules of law expressed in the Geneva Convention.

58. The Court itself, in its judgment in the *Fisheries* case (*I.C.J. Reports 1951*,

[1] Memorial, p. 91, *supra*.
[2] *Ibid.*, para. 53, p. 57, *supra*.

p. 116) has stated authoritatively the position of a coastal State with regard to the delimitation of sea areas (at p. 132):

> "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that *the act of delimitation is necessarily a unilateral act*, because only the coastal State is competent to undertake it, *the validity of the delimitation with regard to other States depends upon international law*." (Italics added.)

The Court did not in that passage say that the validity of a delimitation by a coastal State vis-à-vis another State depends on the *will of that other State*. It said that the validity of the delimitation with regard to other States *depends upon international law*.

59. The situation in the present case is that, exercising the competence which they have under their respective systems of municipal law, the Danish and Netherlands Governments, by unilateral acts and by bilateral agreements concluded both between themselves and separately with other North Sea coastal States, have delimited the boundaries of the areas which they believe properly to appertain to their respective coasts under the principles and rules of delimitation generally recognized by States. In doing so they have sought to base their delimitations directly on the principles and rules adopted by a very large number of States at the Geneva Conference of 1958 and embodied in Article 6 of the Geneva Convention on the Continental Shelf. In short, Denmark and the Netherlands having delimited their continental shelf boundaries specifically on the basis of generally recognized principles and rules of law, these delimitations are prima facie not contrary to international law and are valid with regard to other States. Accordingly, if the Federal Republic considers that the delimitations are invalid, the onus is on it to show why Denmark or the Netherlands should not be entitled to apply the generally recognized principles and rules of delimitation in delimiting their respective continental shelf boundaries. In the present case it is not a question of Denmark or the Netherlands seeking to impose a principle or rule upon the Federal Republic; it is rather a question of the Federal Republic's seeking to prevent Denmark and the Netherlands from applying in the delimitation of their continental shelf boundaries the principles and rules of international law generally recognized by States. Neither Denmark nor the Netherlands has entered into any international engagement or otherwise placed itself under any international obligation vis-à-vis the Federal Republic which might preclude either State from delimiting its maritime areas in accordance with the generally recognized principles and rules of international law.

CHAPTER III

THE STATUS OF THE PRINCIPLES EMBODIED IN ARTICLE 6 OF THE CONVENTION ON THE CONTINENTAL SHELF AS GENERAL RULES OF LAW

60. The Federal Republic's principal contention in Chapters I and II of Part II of the Memorial appears to be that, as between the Parties to the present case, delimitation on the basis of equidistance is not to be regarded as a principle of law but merely as one of several possible methods of delimitation which may come under consideration in aiming at an "equitable and just apportionment". This contention, which seeks to deprive the "equidistance" principle of all legal force for the purposes of the present case, conflicts with the general recognition of the equidistance principle as a legal rule by States as well as with the attitude adopted towards that principle by the Federal Republic itself otherwise than in the case of the particular boundaries now in dispute before the Court.

61. In the State practice prior to the Geneva Conference of 1958 the tendency admittedly was to refer in general terms to the delimitation of continental shelf boundaries on "equitable principles" without mention of the "equidistance" principle in particular. But the concept of a delimitation on "equitable principles", as already mentioned in Chapter I of this Part, was afterwards converted first through the work of the International Law Commission and then through the Geneva Conference of 1958 into the rules set out in Article 6 of the Geneva Convention on the Continental Shelf, which accept the equidistance principle as a rule of law. In addition, as is shown in paragraphs 84-90 below, the equidistance principle adopted in Article 6 of the Geneva Convention as applicable to the delimitation of the continental shelf was a principle which had already received wide recognition in the practice of States in connection with the delimitation of other forms of both maritime and fresh-water boundaries. Moreover, since then no less than 37 States have ratified the Geneva Convention and a number of States have already applied the rules contained in Article 6 in their practice. Finally, the Federal Republic itself, although not yet a party, has not only placed its signature on the Convention but has also employed the equidistance principle in delimiting its continental shelf boundaries with Denmark and with the Netherlands near the coast and again in delimiting its continental shelf boundary with Denmark in the Baltic.

Section I. The International Law Commission

62. When the International Law Commission first took up the question of delimitation in 1950 it is true that, as indicated in paragraph 48 of the Memorial, "discussions . . . showed . . . a great deal of uncertainty regarding the way to solve the problem of delimitation and regarding any rules which might be applied". But the suggestion which also seems to be made in that paragraph that the Commission viewed the matter as a question of *apportioning a common* area of continental shelf is, on the contrary, quite untrue. The question put by the Special Rapporteur to the Commission was:

"Comment faudra-t-il *délimiter* les plateaux continentaux—le cas

échéant: les zones contiguës—de différents Etats, au cas où il y a chevauchement? [1]" (Italics added.)

This question, the record shows, had not yet been gone into very deeply by members of the Commission, and the discussion was of a preliminary character. Indeed, the State practice up to that date was not regarded by the Commission as sufficiently consistent to establish any customary rule as already in existence with respect to the continental shelf, and its whole discussion of the nature and extent of the rights of a coastal State over the continental shelf was still somewhat tentative and exploratory. It is therefore scarcely surprising that the Commission should not at that session have had any very clear ideas about the criteria for delimiting continental shelf boundaries; or that some members, such as Amado and Hudson, should have doubted whether there was any general principle applicable and should have simply fallen back upon "arbitration" or "agreement".

63. In 1951 the Commission reverted to the problem. The Special Rapporteur now proposed that the delimitation of continental shelf boundaries should in the first place be left to the agreement of the parties but that:

> "Faute d'accord, la démarcation entre les plateaux continentaux de deux Etats voisins sera constituée par la prolongation de la ligne séparant les eaux territoriales et la démarcation entre les plateaux continentaux de deux Etats séparés par la mer sera constituée par la ligne médiane entre les deux côtes." (*Yearbook*, 1951, Vol. II, at p. 102, para. 162 (9).)

The discussion that followed was again somewhat confused: various suggestions were made and it is true that again no majority was obtained for any general principle of delimitation to determine continental shelf boundaries between "adjacent" States. The principle mainly discussed was that of "prolonging" the territorial sea boundary. But members of the Commission doubted whether any general principle had yet been established for delimiting the boundary between the territorial waters of adjacent States. Indeed, in discussing this problem at its 1950 and 1951 sessions the Commission was in the difficulty that it had not yet begun its study of the territorial sea. As a result, in its 1951 Report the Commission could do no more than advocate that the continental shelf boundary between "adjacent" States should be established by "agreement" and, failing agreement, by compulsory recourse to arbitration *ex aequo et bono*. On the other hand, in that same report the Commission did express itself in favour of the "equidistance" principle—in its median line form—for "opposite" States whose territories are separated by an arm of the sea. It conceded that in these cases the configuration of the coast might sometimes give rise to difficulties in drawing a median line and recommended that such difficulties should be referred to arbitration. But it recognized that the boundary "would generally coincide with some median line between the two coasts".

64. The 1953 session of the Commission was a turning-point in the development of the law regarding the delimitation of continental shelf boundaries. In commenting upon the Commission's 1951 Report, numerous governments and particularly those of some of the smaller States had raised strong objections to the proposal that disputes concerning the delimitation of continental shelf boundaries should be settled *ex aequo et bono*; and these governments had urged the Commission to formulate rules of law as a basis for the settlement of disputes regarding the delimitation of continental shelf boundaries [2]. In ad-

[1] *Yearbook*, 1950, Vol. II, p. 51, para. 124 (7).
[2] *Ibid.*, 1953, Vol. II, pp. 241-269.

dition, at the wish of the Commission, a committee of experts had been convened by the Special Rapporteur shortly before the 1953 session to consider technical questions connected with the delimitation of the territorial sea. This committee had presented a report [1] endorsing the use of the "median line" in the case of "opposite" States and recommending that the lateral boundary between the territorial seas of adjacent States should be traced according to the "principle of equidistance". Furthermore, in doing so, the committee had stressed the importance of finding "des formules pour tracer les frontières internationales dans les mers territoriales qui pourraient en même temps servir pour délimiter les frontières respectives de 'plateau continental' concernant les Etats devant les côtes desquelles s'étend ce plateau [2]". True, the experts had conceded that the equidistance method might not *always* give an equitable result, and that in such a case a solution by negotiation might be necessary. But this had not deterred them from coming down firmly in favour of the equidistance principle as the generally applicable rule for the continental shelf as well as for the territorial sea.

65. Accordingly, at the 1953 session the Special Rapporteur submitted a new draft article (Art. 7 of his draft) providing that:

(1) in the case of opposite States, the boundary should be "the median line every point of which is equidistant from the two opposite coasts";
(2) in the case of adjacent States, the boundary "should be drawn according to the principle of equidistance from the respective coastlines";
(3) disputes regarding the application of these principles should be submitted to arbitration [3].

Paragraph 3 was eliminated from this Article by reason of the inclusion of a general provision for arbitration applying to all the articles. As to paragraphs 1 and 2, their essential principle—an equidistance boundary—was accepted by the Commission. But these paragraphs were amended so as: (1) to make the application of the equidistance principle subject to any agreement concluded between the States concerned; (2) to allow for cases where "special circumstances" justify another boundary; and (3) to define more precisely the "coast" from which the equidistance line should be measured by substituting "the base-lines from which the width of the territorial sea of each country is measured".

66. The Federal Republic in paragraph 32 of the Memorial seeks to interpret the proceedings of the Commission as showing that the equidistance method was suggested by the Rapporteur and accepted by the Commission as a *subsidiary* rule; and also that the Commission regarded the question essentially as one of equitable *apportionment* rather than of determining boundaries. Indeed, in paragraph 50 it gives the impression that the Commission's acceptance of the equidistance principle at the 1953 session was very half-hearted. These interpretations of the Commission's attitude are, however, in plain contradiction with the Commission's own explanations of its views in paragraphs 81-85 of its report to the General Assembly (*Yearbook*, 1953, Vol. II, p. 216).

67. The Commission's commentary begins 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 pro-

[1] Cf. Annexes 12 and 12 A.
[2] *Yearbook*, 1953, Vol. II, p. 79.
[3] *Ibid.*, Vol. I, p. 106.

posals made by the committee of experts on the delimitation of territorial waters . . ." (Italics added.)

And throughout the remaining paragraphs the commentary speaks, not of apportionment, but of the delimitation of boundaries. Then, in paragraph 82, the Commission expressly designates the "principle of equidistance" as the "general rule" and as the "major principle":

> "Having regard to the conclusions of the committee of experts referred to above, the Commission now felt in the position to formulate a *general rule*, based on the principle of equidistance, applicable to the boundaries of the continental shelf both of adjacent States and of States whose coasts are opposite to each other. The rule thus proposed is subject to such *modifications* as may be agreed upon by the parties. Moreover, while in the case of both kinds of boundaries *the rule of equidistance is the general rule*, it is subject to *modification* in cases in which another boundary line is justified by *special* circumstances. As in the case of the boundaries of coastal waters, provision must be made for departures *necessitated* by any *exceptional* configuration of the coast, as well as the presence of islands or of navigable channels. To that extent the rule adopted partakes of some *elasticity*. In view of the general arbitration clause . . . no special provision was considered necessary for submitting any resulting disputes to arbitration. Such arbitration, while expected to take into account the *special* circumstances calling for *modification* of the *major principle* of equidistance, is not contemplated as arbitration *ex aequo et bono*. That *major principle must constitute the basis of the arbitration, conceived as settlement on the basis of law*, subject to reasonable *modifications* necessitated by the *special* circumstances of the case." (Italics added.)

In the light of that paragraph in the Commission's report, it seems to Denmark quite misleading to suggest that it accepted the "equidistance principle" either half-heartedly or merely as a purely "subsidiary" rule.

68. When the Commission adopted the equidistance principle in 1953 for the continental shelf it had still not begun its study of the régime of the territorial sea. However, like the committee of experts, it recognized that the delimitation of the territorial sea and the continental shelf should be governed by the same principles. Paragraph 83 of the Commission's 1953 report thus records:

> "Without prejudice to the element of elasticity implied in article 7, the Commission was of the opinion that, where the same continental shelf is contiguous to the territories of two adjacent States, the delimitation of the continental shelf between them should be carried out in accordance with the same principles as govern the delimitation of the territorial waters between the two States in question."

Conformably with this opinion, when the Commission did come to deal with the régime of the territorial sea at its 1954 and 1955 sessions, it adopted the equidistance principle as the general rule both for opposite and for "adjacent" States. As in the case of the continental shelf, it made the application of the principle subject to any agreement reached between the States concerned and made allowance for "special circumstances". But both for "opposite" and "adjacent" States the general rule which it proposed was a boundary determined by application of the principle of equidistance from the respective baselines of the States concerned. In doing so, it recalled the opinion of the committee of experts and underlined that it was following the same method of delimitation for the territorial sea as for the continental shelf. (See Arts. 15

and 16 of the Commission's draft articles for 1954 on the Régime of the Territorial Sea, *Yearbook*, 1954, Vol. II, pp. 157-158, reproduced without material change as Arts. 14 and 15 of its 1955 draft, *Yearbook*, 1955, Vol. II, p. 38.)

69. At its 1956 session the Commission completed its work on the law of the sea, re-examining the texts of all its articles. In the meantime a number of governments had submitted comments on the Commission's drafts. Neither in the case of the territorial sea nor of the continental shelf did any of these governments oppose the adoption of the equidistance principle as the general rule for delimiting the boundary both as between opposite States and as between adjacent States, should they not agree upon the boundary. Only three States made comments on the delimitation proposals, and one of these, Yugoslavia, did so for the purpose of advocating the strengthening of the equidistance rule by omitting the words "in the absence of agreement between those States, or unless another boundary line is justified by special circumstances" (*Yearbook*, 1956, Vol. II, p. 100). Norway's comment sought only to call attention to the problem of delimiting the boundary of the territorial sea in cases where the States concerned claim territorial seas of different breadths. Having declared her support of the "median line" principle, she suggested that the problem might be solved by formulating the rule for the territorial sea negatively: "in the absence of special agreement, no State is entitled to extend the boundary of its territorial sea beyond the median line" (*ibid.*, p. 69). This suggestion, although not followed up by the Commission, in fact formed the basis of the solution afterwards arrived at by the Geneva Conference. (See Chapter IV, para. 123, of this Part.)

70. The third State, the United Kingdom, had no criticism to make of the Commission's proposals for the delimitation of the territorial sea and continental shelf boundaries in the case of *adjacent* States. Its comments were directed at the rules proposed for "opposite" States in Articles 14 and 7 of the Commission's draft, which provided that, in the absence of agreement and unless another boundary is justified by special circumstances, "*the boundary is the median line every point of which is equidistant . . .*", etc. (italics added). In substance, the United Kingdom proposed that instead of stating "the boundary is the median line" the texts should read: "the boundary . . . is *usually determined*, unless another boundary line is justified by special circumstances, *by the application of the principle of the median line, every point of which is equidistant . . .*", etc. (italics added). This proposal it explained as follows (*Yearbook*, 1956, Vol. II, pp. 85 and 87):

> "The application of an *exact* median line, which is a matter of considerable technical complexity, would in many instances be open to the objections that the geographical configuration of the coast made it inequitable, and that the base lines (i.e., the low-water mark of the coast) were liable to physical change in the course of time. (Italics added.)
>
> In the experience of the United Kingdom Government, the most satisfactory course will usually be to apply *the principle of the median line*: that is an approximate or simplified median line based as closely as circumstances allow on an exact median line and drawn on a specific chart of specific date." (Italics in the original.)

After a brief discussion, the Commission concluded that the existing wording of the text already met the situation sufficiently on this point.

71. In its final revision the Commission slightly modified the wording of the provisions concerning the territorial sea and continental shelf boundaries of "opposite" States so as to specify that, in the first instance, they should be determined by agreement. But after weighing the comments of governments it reaffirmed, without any hesitation and almost without discussion, its support for the principle of equidistance as the *general* rule of delimitation in the absence of agreement both in the case of "opposite States" and in that of "adjacent States".

72. Throughout the period during which the codification and progressive development of the law of the sea was under consideration by the International Law Commission the whole doctrine of the coastal State's rights over the continental shelf was still in course of formation. The unilateral claims which had been made by individual States varied in their nature and extent; and many coastal States, including all the Parties to the present dispute, had not yet promulgated any claim, although Denmark had already indicated her conception of her continental shelf boundaries in her reply to the Commission in 1952 (see para. 73, below). The work of the Commission both helped to consolidate the doctrine in international law and to clarify its content. This it did no less in regard to the delimitation of boundaries between States on the continental shelf than it did in regard to the nature and extent of the legal rights of coastal States over the continental shelf. The provisions drafted by the Commission regarding the delimitation of boundaries were part and parcel of its consolidation and clarification of the continental shelf doctrine. Thus, just as the work of the Commission and the contribution to that work made by Governments were important factors in developing a consensus as to the acceptability of the doctrine and its nature and extent, so also were they important factors in developing a consensus as to the acceptability of the equidistance principle as the general rule for the delimitation of continental shelf boundaries.

73. The Danish Government participated in the work of the International Law Commission by commenting upon the Commission's proposals as and when requested by the Secretary-General. On the question of delimitation it expressed its support for the median line as early as 13 May 1952 when commenting in a Note Verbale of that date upon the draft articles on the continental shelf prepared by the Commission in 1951. Moreover, it attached to that Note Verbale a sketch map showing its conception of Denmark's continental shelf boundaries and explained the sketch map as follows:

> "Having regard to the basic principles of the draft in connexion with the above comments, the Danish authorities have prepared the enclosed sketch of a division of the shelf contiguous to the Danish coasts facing the North Sea and the Baltic and the waters between them. This sketch is primarily based on the boundaries fixed on 3 September 1921 between Danish and German territorial waters east and west of Jutland, and the boundary fixed by agreement of 30 January 1932 between Danish and Swedish waters in the Sound and the prolongation of these lines combined with the median line, where the latter is applicable, and otherwise based on planes forming the locus of points closer to Denmark than to any other country involved. The sketch might serve as an illustration of a division under concrete conditions calling for special solution; the principles outlined may also be applicable to analogous cases in other geographical areas [1]."

[1] *Yearbook*, 1953, Vol. II, p. 246 and Annex 8.

The line shown on this rough sketch map as representing the Danish-German continental shelf boundary, as the Court can see from Annex 9, corresponds in all its essentials with the line shown on figure 2 (p. 27, *supra*) of the Memorial as the boundary resulting from a strict application of the equidistance line.

74. The Federal Republic was not among the States invited to comment upon the Commission's proposals and did not, therefore, participate in any way in its work. On the other hand, the proceedings of the International Law Commission were published by the United Nations and the Federal Republic can hardly fail to have known of them and to have followed the growth of the consensus among States regarding both the continental shelf and the equidistance principle. True, the Danish sketch map was not reproduced in the Commission's report or *Yearbook*. But the Note Verbale was printed both in the Report and in the *Yearbook* and the map was obtainable from the Secretariat of the United Nations. Moreover, publicity was given to the sketch map in the Danish Press.

Section II. The 1958 Geneva Conference on the Law of the Sea

75. At the Geneva Conference of 1958 the International Law Commission's draft articles formed the basis of the work of the Conference. In the Fourth Committee, the Committee concerned with the continental shelf, the main focus of interest was the nature and extent of the right to be attributed to coastal States. On this question the Federal Republic submitted a memorandum opposing "the whole conception" of the rules proposed by the Commission and advocating a system which would preserve the character of the continental shelf as part of the high seas (*Official Records*, Vol. VI, pp. 1, 71 and 125). This memorandum attracted very little notice at the Conference, which concentrated its attention on the proposals of the Commission. Apparently recognizing that it was swimming against an overwhelming current, the Federal Republic participated fully in the discussion of the Commission's draft articles.

76. If the main focus of interest at the Conference was the nature and extent of the coastal State's rights, there was also, as paragraph 52 of the Memorial indicates, some discussion and revision of the text of Article 72 of the Commission's draft concerning the delimitation of continental shelf boundaries. The Federal Republic in that paragraph summarizes the proceedings at the Conference as follows (p. 56, *supra*):

> "Some attempts were made to replace the flexible system contained in Article 72 by more rigid rules. But all amendments proposed in this direction met with overwhelming opposition both in the Fourth (Continental Shelf) Committee (8-9 April 1958) and in the Plenary Session (22 April 1958), and were rejected.
>
> The proposal of the Yugoslav delegate, that the equidistance method should be declared determinant, without reservations, for the apportionment of the continental shelf, was rejected by the Plenary Session of the Conference by 45 votes to 5 (with 11 abstentions). A very large majority of the States was not prepared to make the equidistance method a solely applicable rule. Rather did the Conference recognize very clearly that *the equidistance method was suitable for the drawing of boundaries only under certain circumstances.*" (Italics added.)

This summary, if in large measure true, gives a somewhat misleading impression as to the outcome of the debate. If a Yugoslav proposal to delete the reference to special circumstances and to leave the equidistance principle standing alone was rejected by the Conference, so also was a Venezuelan proposal to delete the reference to the equidistance principle and to leave the whole matter to the agreement of the States concerned. What the Conference in fact did was to endorse the text proposed by the International Law Commission, subject only to minor revisions. Under this text, in the absence of an agreement, *the equidistance principle is laid down as the general rule* unless another boundary line is justified by special circumstances.

77. The Federal Republic, it is interesting to note, ultimately voted with the majority and in favour of the Commission's text, as revised in discussion (*Official Records*, Vol. VI, p. 98, para. 38). In an "explanation of vote" the delegate of the Federal Republic stated:

> "in view of *the inexact nature of the outer limit of the continental shelf as defined by article 67*, his delegation would have preferred the adoption of the Venezuelan amendment. When that amendment was rejected, the delegation of the Federal Republic of Germany had accepted the views of the majority of the Committee, subject to an interpretation of the words 'special circumstances' as meaning that *any exceptional delimitation of territorial waters* would affect the delimitation of the continental shelf." (Italics added.)

This "explanation of vote" is illuminating in two respects. First, the Federal Republic's delegation voted for the Venezuelan amendment not because of any doubts as to the merits of the equidistance principle but *because of the inexact definition of the outer limit of the continental shelf* which had been adopted by the Conference. Secondly, the delegation's *caveat* as to its understanding of the words "special circumstances" related only to any "*exceptional delimitation of territorial waters*". (Italics added.) That *caveat* made no reference at all to any implications to be drawn from the lengths of coastlines or to any special considerations affecting the "apportioning" of "common areas".

78. No particular significance can be attached to the fact, underlined in paragraph 52 of the Memorial, that the Yugoslav proposal to make the equidistance principle the sole rule was rejected in the plenary meeting of the Conference by 47 votes to 5 (with 11 abstentions). The provisions proposed by the Commission and contained in Article 6 of the Convention do not, however, make the equidistance principle the sole criterion. They make it the *general* rule unless another boundary is justified by special circumstances. More significance is, therefore, to be attached to the fact that in that plenary meeting the text (Art. 72) containing these provisions was finally adopted by 63 votes to none with only 2 abstentions (*Official Records*, Vol. II, p. 15).

79. It is true that, when at the eighteenth plenary meeting the Conference voted upon the adoption of the Convention as a whole, the Federal Republic cast its vote against the text of the Convention; for the Convention was adopted by 57 votes to 3 with 8 abstentions, and one of the three negative votes was that of the Federal Republic. But each of the three States rejecting the Convention explained its vote and it does not seem that any of them was motivated by opposition to Article 6. Japan said that she had voted against the Convention because no reservations were admitted to Articles 67 and 68 (now Arts. 1 and

2) and because Article 74 (compulsory arbitration) had been rejected by the Conference. Belgium and the Federal Republic explained that they had voted against the Convention because they objected to the criterion of exploitability in Article 67 (now Art. 1) and equally could not support the Convention without Article 74. Thus, at the final vote not a single voice was lifted against Article 6. Moreover, if for other reasons the Federal Republic did on 26 April 1958 cast its vote against the Convention, its rejection of the Convention was short-lived because on 30 October of the same year it put its signature to the text.

80. In paragraph 52 of the Memorial, however, emphasis is also given by the Federal Republic to the fact that Article 12, paragraph 1, of the Convention allows any State to make reservations to all the articles of the Convention other than Articles 1-3, and so permits reservations to Article 6. This shows, says the Federal Republic, that "the substance of Article 6 was neither regarded as part of customary international law nor accorded any sort of fundamental significance". The conclusion thus drawn by the Federal Republic from the reservations clause in Article 12 seems much too sweeping for the following reasons.

81. A wide freedom to formulate reservations is normally permitted in general multilateral treaties, and that even in the case of codifying conventions largely concerned with the reformulation of the existing law. But this is only for the purpose of facilitating the maximum number of acceptances of the Convention by allowing States having special problems to make reservations, provided that these are compatible with the object and purpose of the Convention. Accordingly, a freedom to make reservations is perfectly consistent with the acceptance of the provisions of the Conventions as stating the generally recognized rules of international law applicable in the matters in question. Neither the Convention on the Territorial Sea and the Contiguous Zone nor the Convention on the High Seas has any clause prohibiting or restricting the making of reservations, and a number of reservations have in fact been made to each Convention. Yet no one could deny the fundamental significance of many of the provisions of these Conventions or the essential character of many of their other provisions. The same observations may be made with reference to the Vienna Convention on Diplomatic Relations.

82. A reservations clause is introduced primarily when for particular reasons it is desired to prohibit altogether reservations to specific provisions of the Convention. That this was the case with regard to Article 12 of the Continental Shelf Convention is clear from the record of the ninth plenary meeting of the Geneva Conference. Reservations to Articles 1-3 were excluded because some States considered that reservations to these Articles would really deprive the doctrine of the continental shelf of most of its meaning and destroy the very basis of the Convention (*Official Records*, Vol. II, pp. 16-18). But the fact that reservations to Articles 4-7 were not excluded by the Conference in no way implies that these Articles were not considered to be an integral and important part of the Convention. The records of the Conference and of the proceedings of the International Law Commission themselves suffice to contradict any such implication.

83. Furthermore, as appears from paragraphs 93-98 below, none of the States which have become a party to the Convention—already 37 in number—has formulated a reservation questioning the validity of the rules set out in Article 6. A few States have made declarations of their understandings regarding the application of "special circumstances" in their own cases. But there is

nothing in the practice of States since the Geneva Conference to support the idea that Article 6 has not been generally accepted as an integral and important part of the Convention.

Section III. The Provisions of Article 6 Are in Harmony with State Practice in the Delimitation of Other Maritime and Fresh-Water Boundaries

84. The equidistance principle, proposed by the committee of experts and the International Law Commission and adopted by the Geneva Conference, was far from being a novelty invented by the committee of experts in 1953. In paragraph 41 of the Memorial the Federal Republic indeed admits that the "equidistance principle" in its median line form has long been known in international law:

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

It is true that later, in paragraph 46, the Federal Republic seems rather less generous when it asserts that—

> "the *occasional* division of rivers, lakes, or inland seas between two States lying opposite each other by median lines is no proof of a general recognition of the so-called principle of equidistance also for other geographical situations than those of opposite coasts" (italics added).

But an examination of the relevant State practice amply justifies the Federal Republic's first statement that "median lines as sea, lake or river boundaries have existed for a long time past", and shows that the use of median line boundaries has been much more than occasional.

85. In this connection the Court is asked to refer to Annex 13 which, without attempting to be exhaustive, sets out a very considerable number of cases in which the equidistance principle, chiefly in its median line form, has been employed in the delimitation of sea, lake or river boundaries. The list of cases is impressive enough even if "thalweg" boundaries are left out of account. But in many cases, as the *Dictionnaire de la Terminologie du Droit International* points out (p. 602), the term Thalweg is used in treaties as denoting the median line of the navigable channel or, where the river is not navigable, simply the median line of the river.

86. As to the Federal Government's contention[1] that any practice in regard to the use of median lines as boundaries between "opposite" States would be no proof of a general recognition of the principle of equidistance also for other geographical situations, this does not seem to be to the point. It is not here a question of establishing the "equidistance principle" as a principle universally binding in boundary delimitation and, as such, binding on the Parties to the present dispute. Between 1945 and 1958 a new doctrine developed in international law vesting new rights in coastal States over the continental shelf adjacent to their coasts. The question here is of the general recognition, as part of the development of this doctrine, of the rule that, in the absence of agreement, inter-State boundaries on the continental shelf are to be delimited by application of the principle of equidistance unless another boundary is

[1] Memorial, para. 46.

justified by special circumstances. In the view of Denmark the relevance of the practice set out in Annex 13 is this: it shows that the rules, proposed by the committee of experts and the International Law Commission and adopted by the general body of States at the Geneva Conference, *were rules which were in harmony with the existing practice of States in the delimitation of boundaries.* This fact—that the rules set out in Article 6 of the Geneva Convention on the Continental Shelf are not in conflict, but in clear harmony, with existing principles of boundary delimitation—cannot fail to reinforce and consolidate the character of those rules as generally recognized rules of international law.

87. The Federal Republic, however, makes a special point of the novelty of *lateral* equidistance boundaries. Contrasting these in paragraph 41 *(b)* with median lines between opposite coasts, it states:

> "*Lateral equidistance boundaries* are, in contrast, a novel method of drawing water boundaries; they had not been put to the test before the Geneva Conference on the Law of the Sea of 1958." (Italics in the original.)

Reverting to the question in paragraph 46, the Federal Republic states:

> "Only relatively recently has the equidistance line been adopted as a *technique for the drawing of maritime boundaries.* (Italics in the Memorial.)
>
> . . . . . .
>
> The drawing of a maritime boundary between two coasts lying opposite each other is, by the very nature of the circumstances, different from the drawing of a *lateral* boundary between two neighbouring States into the open sea. For the drawing of *lateral* boundaries the equidistance method has hardly been practised at all. If among the existing boundaries a small number of median lines are to be found which *grosso modo* correspond to an equidistance line, it does not follow therefrom that the equidistance line has been generally recognized as the principal rule for the drawing of maritime boundaries." (Italics added.)

Both these statements seem to need considerable qualification.

88. In the first place, it may be doubted whether *lateral* equidistance boundaries are quite the complete novelty which the Federal Republic suggests. There is a substantial body of practice, as the Federal Republic itself concedes, which is of respectable antiquity and applies the equidistance principle in delimiting lake boundaries. In the nature of things, an equidistance line in a lake is a lateral, as well as median line, boundary. Certainly, at each end of the boundary where it approaches the shore an equidistance line in a lake has all the characteristics of a lateral equidistance boundary. Furthermore, although it may be true that there is little evidence in treaties or in the legislation of individual States before 1958 of lateral equidistance boundaries in sea areas, it does not follow that the principle was not acted on in practice when occasion arose. An equidistance boundary is an expression of the concept that each State should exercise jurisdiction over the areas which are closer to its coast than to that of the other State, and States have always tended to regard propinquity as a basis for asserting their jurisdiction over maritime areas. The truth seems to be that in most cases States did not find it necessary to conclude treaties or legislate about their *lateral* sea-boundaries before the question of exploiting the mineral resources of the seabed and subsoil arose. But even in regard to treaties, it is not strictly speaking correct that lateral equidistance

boundaries "had never been put to the test before the Geneva Conference on the Law of the Sea". One instance is the Agreement of 28 April 1924 between Norway and Finland, which prescribed an equidistance line as their boundary in the Varangerfjord (Annex 13, B, No. 5). Another is the Treaty of Peace of 1947 concluded between the Allied and Associated Powers and Italy which provided in Article 4 that the boundary between Italy and the Free Territory of Trieste from the shore to the high seas should be a line equidistant from the coast-lines of Italy and the Free Territory; and again in Article 22 that the seaward boundary between the Free Territory and Yugoslavia should likewise be a line of equidistance (Annex 13, B, Nos. 1 and 2). The Court may find it significant that in this major collective treaty, when it was necessary to define a sea-frontier, the equidistance principle was the solution adopted.

89. Secondly, the use of the equidistance principle in its median line form for delimiting *maritime* boundaries seems to have been more widely recognized than the Federal Republic's second statement might imply. Quite apart from the fact that a number of treaties provided expressly for a median line boundary in certain straits and channels (see Annex 13 D), the replies of governments to the questionnaire for the Hague Codification Conference, 1930, were unanimous in endorsing the median line as the boundary between overlapping territorial seas in straits. Point VII of the questionnaire asked for information concerning:

> "Conditions determining what are territorial waters within a strait connecting two areas of open sea or the open sea and an inland sea:
>
> *(a)* when the coasts belong to a single State;
>
> *(b)* when they belong to two or more States."

Nineteen States replied, of which 15 without any hesitation or qualification specified the median line as the boundary in cases under *(b)* when the territorial seas overlap; the other 4 did not deal with the point (*Proceedings of the Conference*, Vol. II, Bases of Discussion, pp. 55 to 59). Among the States which thus endorsed the median line were Germany, Denmark and the Netherlands. Furthermore, the draft Convention submitted to governments by the League of Nations Committee of Experts in connection with the questionnaire also provided for a median line boundary in straits; and the Rapporteur of this Committee was the distinguished German international lawyer, M. Schücking. (*Ibid.*, p. 193.)

90. No doubt, there are elements of novelty in the provisions of Article 6 of the Geneva Convention on the Continental Shelf. Not only was the doctrine of the continental shelf itself still new in 1958, but the practice on which it was based still dealt with the problem of boundaries in entirely general terms. The provisions of Article 6 were admittedly a new element grafted on to the continental shelf doctrine at the Geneva Conference. But this element, as already pointed out, was not novel in the sense of being a new concept or one out of harmony with existing principles for the delimitation of maritime boundaries. On the contrary, it was an expression of a principle already known and accepted in State practice in relation to maritime boundaries. That the provisions of Article 6 are not only in accord with previous practice and principle but are generally accepted today as the modern law governing continental shelf boundaries is amply confirmed by the practice of States since the Geneva Conference of 1958.

Section IV. The State Practice Since the Geneva Conference of 1958

91. In paragraph 54 of the Memorial the Federal Republic asserts that the equidistance principle cannot be considered as having been generally accepted as a rule of law by the international community:

> "This is excluded not only by the fact that the Convention has, up to now, been accepted only by a minority of the States (to date 37), and that reservations to Article 6 have been made by some States, but above all by the fact that State practice necessary for the development of such a customary rule is up to now still lacking."

The reasons there given by the Federal Republic for its assertion, as will be shown, are wholly unconvincing. But it is necessary first to point out that the assertion itself presents the issue incorrectly. It is not the equidistance rule pure and simple which is generally accepted by the international community as the applicable law today; it is the "equidistance rule *unless another boundary is justified by special circumstances*".

92. The argument that "the Convention has, up to now, been accepted only by a minority of the States (to date 37)" is a little surprising. The number of acceptances [1]—37 in under ten years—is decidedly impressive by any standards in the light of the past record of the dilatoriness of States in carrying out the process of acceptance. This number, moreover, exceeds by four the number of acceptances so far given to the Territorial Sea and Contiguous Zone Convention, and is only three short of the number of acceptances of the High Seas Convention, a Convention recognized to be primarily declaratory of customary law. In short, the fact that 37 States have already taken the formal steps necessary to establish definitively their acceptance of the Convention can only be regarded as very solid evidence of the general acceptance of the Geneva Convention on the Continental Shelf by the international community.

93. Nor is the evidentiary value of the 37 acceptances of the Continental Shelf Convention materially weakened by the so-called "reservations" to Article 6. Only four acceptances contain any observation relating to Article 6. The Iranian observation, which the Federal Republic considers to be "without interest", reads:

> "*Article 6:* With respect to the phrase 'and unless another boundary line is justified by special circumstances' included in paragraphs 1 and 2 of this article, the Iranian Government accepts this phrase on the understanding that one method of determining the boundary line in special circumstances would be that of measurement from the high water mark."

This observation, which reflects a position already taken by Iran at the Conference, is by no means without interest; for it shows that Iran gave special attention to Article 6 and, having done so, fully accepted the "equidistance-special circumstances" provisions of the article, subject only to an understanding as to a particular interpretation of "special circumstances".

94. Yugoslavia's observation, which is not mentioned in the Memorial, and which also reflects a position taken by her at the Conference, reads:

> "Subject to the following reservation in respect of Article 6 of the Convention:

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[1] For convenience, the word "acceptances" is here used, not as a technical term, but as covering ratifications, accessions and "notifications of succession".

In delimiting its continental shelf, Yugoslavia recognizes no 'special circumstances' which should influence that delimitation."

This observation, whether it be regarded as a "reservation" or as an interpretative "declaration", certainly does nothing to weaken the authority of the Convention or of Article 6 as the generally accepted law. On the contrary, it assumes the general validity of the provisions of Article 6 and *for that reason* declares Yugoslavia's understanding as to the application of the "special circumstances" clause to her own continental shelf.

95. Venezuela in signing the Convention made the following observation:

"The Republic of Venezuela declares with reference to Article 6 that there are special circumstances to be taken into consideration in the following areas: the Gulf of Paria, in so far as the boundary is not determined by existing agreements, and in zones adjacent thereto; the area between the coast of Venezuela and the island of Aruba; and the Gulf of Venezuela."

Her instrument of ratification, however, simply said:

"Reservation made upon ratification ... with express reservation in respect of Article 6 of the said Convention."

This reservation is interpreted in the Memorial—no doubt correctly—not as a general rejection of Article 6 but as a reservation with respect to its application "in certain areas off the Venezuelan coast". Because of the implications of the reservation for the parts of the Kingdom of the Netherlands situated in the Caribbean Sea the Kingdom, when ratifying the Convention, filed a formal objection to the Venezuelan reservation.

96. The last of the four acceptances containing a reference to Article 6 is the "Declaration" made by France on the occasion of her ratification of the Convention:

"In the absence of a specific agreement, the Government of the French Republic will not accept that any boundary of the continental shelf determined by application of the principle of equidistance shall be invoked against it:

if such boundary is calculated from baselines established after 29 April 1958;

if it extends beyond the 200-metre isobath;

if it lies in areas where, in the Government's opinion, there are 'special circumstances' within the meaning of Article 6, paragraphs 1 and 2, that is to say: the Bay of Biscay, the Bay of Granville, and the sea areas of the Straits of Dover and of the North Sea off the French coast."

The first two of these conditions relate to special points which are of no interest in the present connection. As to the third condition, which is clearly of interest, the Federal Republic comments:

"A point of particular interest in this reservation is that it is based on the view that the equidistance line, as far as it is to be applied at all, should be used as a method of apportioning submarine areas only near the Atlantic coast (to a depth of 200 metres) and should in particular not be used for the apportionment of the North Sea[1]."

This comment appears to place much too large an interpretation on the French Declaration.

97. Here also it seems clear that the Declaration is not a general objection

[1] Memorial, para. 55.

to or reservation of Article 6. The Declaration, by its very terms, assumes the application of the provisions of Article 6. Its object is only to state the French Government's views as to the existence of "special circumstances" in a number of areas off the French coast. The French Declaration respecting Article 6, it may be added, gave rise to formal objections on the part of the Netherlands, the United Kingdom, the United States and Yugoslavia.

98. In short, the four acceptances which contain references to Article 6, so far from weakening the authority of Article 6 as an expression of the generally recognized rules of law governing continental shelf boundaries, only serve to confirm it. By invoking the exception of "special circumstances" included in Article 6, the four States concerned expressly recognized the validity, and claimed the benefits, of the provisions of that article.

99. The Federal Republic itself, as already mentioned, voted against the adoption of the Convention at the Geneva Conference and has not since ratified or acceded to the Convention. It is, however, very far from being the case that the Federal Republic has persisted in its opposition to the Convention or to the principles which the Convention contains. On the contrary, as pointed out in Chapter III of Part I, the Federal Republic signed the Convention on 30 October 1958, only one day before the Convention ceased to be open for signature. In other words, having reconsidered the matter and having fully studied the provisions of the Convention, the Federal Republic decided to associate itself with the Convention adopted at Geneva by attaching its signature to the text. After 30 October 1958 the Federal Republic, without any prior signature, would still have been free to become a party to the Convention by "accession"; so that there can be no doubt that on that date the Federal Republic very deliberately chose to associate itself with the Convention. Furthermore, when signing the Convention, the Federal Government evidently gave every attention to the question of the acceptability to the Federal Republic of the individual provisions of the Convention; for it did accompany its signature of the Convention with a special declaration recording its understanding of one Article. This was Article 5, with regard to which it declared that, in its opinion, paragraph 1 "guarantees the exercise of fishing rights in the waters above the continental shelf in the manner hitherto in practice". The Court may think it somewhat significant that, whereas the Federal Republic considered it necessary with respect to Article 5 to reserve its position in regard to freedom of fisheries in the high seas above the continental shelf, *it made no reservation nor any other form of declaration with respect to the provisions of Article 6 concerning the delimitation of continental shelf boundaries.* The significance of this circumstance is reinforced by the fact that the Federal Republic did not voice any objection or misgivings in regard to Article 6 of the Convention either in its Continental Shelf Proclamation of 20 January 1964 or in the Exposé des Motifs accompanying the Bill to give effect to the Proclamation. (Annexes 10 and 11.) It is further reinforced by the fact that subsequently the Federal Republic entered into no less than three treaties providing for delimitations which are in full conformity with the principles set out in Article 6 (see paras. 103 and 105, below).

100. If the acceptances of the Convention by States since 1958 testify, by their number and character, to the general recognition by the international community of Article 6 as expressing the rules of international law governing continental shelf boundaries, so also does the practice of States in *applying* the Convention. In appreciating that practice it is again necessary to keep in mind—as the Federal Republic does not do in its Memorial—that the rule

laid down in Article 6 is not the application of the equidistance principle pure and simple but its application "unless another boundary is justified by special circumstances". When that point is kept in mind, it at once becomes apparent that the practice of States since 1958, with the single exception of the Federal Republic's position in the present case, gives solid support to the recognition of Article 6 as the expression of the general rules of international law governing continental shelf boundaries today.

101. In paragraph 57 of the Memorial the Federal Republic lists three precedents in which States not yet parties to the Convention have applied the principle of equidistance, making a great point of the fact that each of them was a case of "opposite coasts". The first is the *Island of Malta Act 1960*, making provision as to the exploration and exploitation of the continental shelf, which states that, in the absence of agreement, the boundary is to be:

> "the median line, namely, a line every point of which is equidistant from the nearest points of the base-lines".

Malta being a mid-Mediterranean island, the Malta Act was necessarily limited to "median lines" between "opposite" coasts. It may, however, be noted that subsequently Malta became a party to the Convention and thus subscribed to the provisions of Article 6 *in toto*.

102. The second example mentioned in the Memorial is the *Soviet-Finnish Agreement of May 1965* regarding the Boundaries of Sea Waters and the Continental Shelf in the Gulf of Finland, although it would appear that in fact both the Soviet Union and Finland had already become parties to the Geneva Convention before they concluded this Agreement. On this Agreement the Federal Republic comments:

> "This treaty, in establishing the boundary near the coast (Article 1), where it may be regarded as a lateral boundary between adjacent States, does not follow the principle of equidistance. Only on its seaward extension where it becomes a boundary between two opposite coasts, it is based on the principle of the median line which is referred to in the treaty (Articles 2 and 3)."

If it may be true that under Article 1 the inshore boundary between the two States does not in all respects follow the equidistance line, the Agreement itself supplies the explanation (Annex 13, A, No. 10). That part of the boundary is governed by the provisions of the Peace Treaties of 1940 and 1947, so that Article 1 reflects a special circumstance already existing when the Agreement of 1965 was concluded. In the areas to seaward of the Peace Treaties boundary, on the other hand, Articles 2 and 3 of the Agreement prescribe the median line. If in these areas the Soviet and Finnish coasts assume the appearance of "opposite" coasts, it is no less true that the median line boundary through these areas is a continuation of a lateral boundary dividing two "adjacent" States. Nor does the Federal Republic mention that in the recitals to the Agreement the two States make an express reference to their reliance upon the 1958 Geneva Convention on the Continental Shelf.

103. The third example mentioned in the Memorial is the *Protocol to the Danish-German Treaty of 9 June 1965*. This Protocol, after noting the existence of divergent views between the Parties concerning the principles applicable to the delimitation of the continental shelf of the North Sea, provides with regard to the Baltic:

> "With respect to the continental shelf adjacent to the coasts of the Baltic Sea which are opposite each other, it is agreed that the boundary shall be

the median line. Accordingly, both Contracting Parties declare that they will raise no basic objections to the other Contracting Party's *delimiting its part of the continental shelf of the Baltic Sea on the basis of the median line*." (Italics added.) (See Annex 7 A of the Memorial.)

Here also the sharp distinction drawn by the Federal Republic between "opposite" and "adjacent" coasts seems somewhat strained. Any delimitation by Denmark or by the Federal Republic of "its part of the continental shelf of the Baltic Sea on the basis of the median line" must at its western end merge into the lateral "equidistant" line drawn from the shore through first the territorial seas and then the continental shelves of the two countries. To make a sharp distinction at this western end between "adjacent" and "opposite" coasts and between the "lateral" and the "median" character of the equidistant line seems altogether arbitrary.

104. In paragraphs 58 and 60 the Federal Republic turns its attention to the practice, which it evidently finds somewhat embarrassing, of a number of North Sea coastal States, including itself. This practice, with which the Court will already be largely familiar, consists in the first place of five treaties in which the continental shelf boundaries between five different pairs of North Sea States are delimited purely and simply by application of the equidistance principle:

(a) United Kingdom-Norway of 10 March 1965;
(b) Netherlands-United Kingdom of 6 October 1965;
(c) Denmark-Norway of 8 December 1965;
(d) Denmark-United Kingdom of 3 March 1966;
(e) Denmark-Netherlands of 31 March 1966.

These Agreements were all separately negotiated and concluded. Moreover, Norway, who is a party to two of these Agreements, acted on the basis of the equidistance principle, although she is not herself yet a party to the Geneva Convention—a point not mentioned in the Memorial. Indeed, it may be added in passing that the Netherlands also adopted the equidistance principle in its Agreement with the United Kingdom at a time when the Netherlands had not yet ratified the Geneva Convention. In addition, Belgium has recently adopted the equidistance principle for the delimitation of her continental shelf boundaries, although she too is not a party to the Continental Shelf Convention. On 23 October 1967 the Belgian Government introduced in the Belgian Parliament a "Projet de Loi", Article 2 of which provides that Belgium's boundary with the United Kingdom is determined by the median line and her boundaries both with France and the Netherlands by the line of equidistance (Annex 14). Furthermore, the "Exposé des Motifs" explaining the Law expressly states that these provisions were adopted in conformity with Article 6, paragraphs 1 and 2, of the Geneva Convention.

105. The North Sea practice also comprises two treaties concluded by the Federal Republic itself concerning the lateral delimitation of the continental shelf near the coast:

(a) Federal Republic-Netherlands of 1 December 1964;
(b) Federal Republic-Denmark of 9 June 1965.

The Federal Republic maintains that these treaties cannot be considered precedents for the recognition of the equidistance method in the North Sea:

> "It is true that in the treaty between Germany and the Netherlands the boundary line, to some extent, follows in fact the equidistance line, without however referring to the equidistance method, and that the seaward terminus of the German-Danish partial boundary is equidistant from the

German and the Danish coasts. These boundaries, however, had been agreed upon only because both sides were interested in a speedy determination of the boundary, and because the boundary line, even if it in fact followed the equidistant line to some extent in the vicinity of the coast, was not considered inequitable [1]."

These explanations only serve to underline the difficulty in which the Federal Republic finds itself in regard to the North Sea practice.

106. The real point at issue is not whether the two "partial boundary" treaties may be considered as precedents for the recognition of the "equidistant method" in the North Sea, though Denmark thinks that they clearly are such precedents. It is whether they constitute yet further instances of the recognition of the rules contained in Article 6 of the Geneva Convention as the generally accepted law regarding the delimitation of continental shelf boundaries; and both treaties seem to fall squarely within the provisions of Article 6, paragraph 2, of the Convention. In each case the treaty takes account of the special circumstance that an inshore boundary line has already been fixed under a previous treaty between the Parties concerned. In each case, starting from the most seaward point of the already existing line, the treaty proceeds to delimit for a considerable distance out to sea a continental shelf boundary which in fact follows the equidistance line. Both treaties are therefore in perfect harmony with the "equidistance-special circumstances" rules found in Article 12 of the Territorial Sea and Contiguous Zone Convention and in Article 6 of the Continental Shelf Convention.

107. As to the value of these North Sea treaties as precedents, what difference can it make that they do not refer expressly to the "equidistance principle" if in fact they determine the boundary by application of that principle? Furthermore, if the Federal Republic did not then recognize the general character of the provisions of Article 6 of the Geneva Convention, why in the case of its treaty with the Netherlands did it in the Joint Minutes of 4 August 1964 (Memorial, Annex 4 A) speak of the Treaty as constituting "an agreement in accordance with the first sentence of paragraph 2 of Article 6 of the Geneva Convention on the Continental Shelf, dated 29 April 1958"? and why did it in those same Joint Minutes underline that the boundary was being determined "with due regard to the *special circumstances* prevailing in the mouth of the Ems" (italics added), if it did not have in mind the language of Article 6, paragraph 2, of the Geneva Convention? These questions are all the more pertinent when it is recalled that both in its Continental Shelf Proclamation of 20 January 1964 and in the Exposé des Motifs of the Bill giving effect to the Proclamation the Federal Republic emphasized the significance of the Geneva Convention of 1958 in the development of general international law regarding the continental shelf (Annexes 10 and 11).

108. Again, what difference can it make that in each case both sides were "interested in a speedy determination of the boundary" if in fact, after due consideration of their interests, they determined the boundary by applying the principle of equidistance in the light of the special circumstances—the very solution contemplated by Article 6 of the Convention?

109. And what is the Court to understand by the final explanation given by the Federal Republic: "Because the boundary line, even if it in fact followed the equidistant line to some extent in the vicinity of the coast, *was not considered inequitable*" (italics added)? Presumably that the Federal Republic recognizes

[1] Memorial, para. 60.

that a determination of the lateral boundaries of her continental shelf in the North Sea *in accordance with the principles envisaged in Article 6 of the Geneva Convention* gives a perfectly equitable result at any rate for a certain distance out to sea. If such is the meaning of the Federal Republic's explanation, it is pertinent to point out that the statement that the boundaries fixed in the treaties in fact follow "the equidistant line to some extent *in the vicinity of the coast*" (italics added) is a little misleading. In the vicinity of the coast the boundaries in fact give effect to special circumstances in the form of pre-existing agreements. *It is in extending the line over the continental shelf of the open North Sea that these two treaties concluded by the Federal Republic determine the boundary by application of the principle of equidistance in the manner envisaged by Article 6 of the Convention.*

110. The Federal Republic, however, claims that the two "partial boundary" treaties cannot be invoked against it as precedents for the application of the principle of equidistance in the North Sea because it "stated clearly when signing the treaties that it did not recognize the equidistance method as determining the extended seaward course of the boundaries in the North Sea"[1]. It is true that in its Joint Minutes with the Netherlands of 4 August 1964 and in its Protocol with Denmark of 9 June 1965 the Federal Republic reserved its position with regard to the further—seaward—course of the boundary; and from this it may follow that the "partial boundary" treaties cannot be invoked *as themselves imposing a contractual obligation* on the Federal Republic to complete its continental shelf boundaries seawards by application of the equidistance principle. But it does not at all follow that these two treaties cannot be invoked as precedents—which they manifestly are—of the determination of continental shelf boundaries in the North Sea *by application of the principles contained in Article 6 of the Geneva Convention.* In short, the solemn fact is that all the continental shelf boundaries, including those of the Federal Republic, so far established in the North Sea as well as in the Baltic reflect the principles of Article 6 of the Geneva Convention.

111. Two further arguments of the Federal Republic in relation to the State practice require brief notice. One is a general argument in paragraph 56 of the Memorial to the effect that the practice does not show such a consistency and uniformity of usage as would suffice to establish the "equidistance principle" as a rule of customary law. This argument, as the foregoing review of the practice shows, is highly questionable merely on the facts. But it is in any event beside the point since, as already emphasized, it is not the equidistance principle pure and simple which is in issue but the "equidistance principle-special circumstances" rule of the Geneva Convention. For the general recognition of this rule there is abundant evidence in the State practice since 1958. (See paras. 91-105 above.)

112. The other argument—in paragraph 59 of the Memorial—is to the effect that the North Sea practice cannot be regarded as showing that "the equidistance method has been promoted to the status of a rule of regional customary law valid for the North Sea". This argument is supported by the contentions that: *(a)* any such view is precluded by the fact that France in her reservation to Article 6 expressly excluded the equidistance method for the drawing of boundaries in the North Sea; and *(b)* no such regional rule can be established without the concurrence of the Federal Republic. The whole of this argument is again vitiated by its concentration on "the equidistance method" instead of

[1] Memorial, para. 60.

on the "equidistance-special circumstances" rule. Nor, as pointed out in paragraphs 96 and 97 above, is it correct to say that France's declaration seeks to negate altogether the application of the provisions of Article 6, including the equidistance principle, in the North Sea. On the contrary, her declaration admits the application of the article and claims the benefit of the "special circumstances" provision. In any event, the question is not one as to the establishment of a particular regional custom. It concerns rather the recognition of the rules set out in Article 6 of the Convention as the generally accepted rules of international law governing the delimitation of the continental shelf. This, as already pointed out, the practice of States, including that of the Federal Republic, since 1958 abundantly shows.

113. A final argument put forward by the Federal Republic in paragraph 61 of the Memorial must now be noticed: namely that Article 6 cannot be said to have become general international law merely because this is what has happened in the case of Articles 1 to 3 of the Geneva Convention. It argues that the provisions of Article 6 are not so indissolubly bound up with the basic principles in Articles 1 to 3 as necessarily to go with them:

> "It is true that a necessary, logical consequence of the recognition of the right of the coastal State over the continental shelf is that, in the case of conflicting claims of several coastal States adjacent to the same continental shelf, an apportionment must be made between them, and that the international legal order must provide methods and standards for the apportionment. There is, however, no cogent reason that this apportionment must be made according to the equidistance method. The drafting of Article 6 shows that the equidistance method was only one method among others of attaining a just and equitable apportionment, and that the objections against making the equidistance method the exclusive rule were so strong that the equidistance method was adopted only under the condition that it would not apply in the presence of any 'special circumstances'. The apportionment of a continental shelf shared by several States has not been made easier by Article 6. Even when Article 6 is applied, the question remains open whether the equidistance method is suitable or whether in a concrete case 'special circumstances' exist which would justify another boundary line."

114. This argument is again misdirected by reason of its concentration on the "equidistance principle" pure and simple instead of on the "equidistance-special circumstances rule". In the context of Article 6 it is both irrelevant and inadmissible to say that "the equidistance method is only one method among others of attaining a just and equitable apportionment". It is irrelevant because the article itself admits the possibility of another boundary line if such is justified by "special circumstances". It is inadmissible because Article 6 nevertheless makes the equidistance principle the *general* rule *unless special circumstances justify* another boundary. Under the provisions of Article 6—the authoritative statement of the generally recognized principles—the equidistance principle is not just one method among others; it is the general rule.

115. Moreover, there were cogent reasons why Article 6 should state the equidistance principle as the general rule—reasons which are linked to the *ratio legis* of Articles 1 and 2. Under Articles 1 and 2 each coastal State is now recognized to possess *ipso jure* sovereign rights of exploration and exploitation over the seabed and subsoil of the submarine areas *adjacent* to its coast. Inherent in the concept of a coastal State's title *ipso jure* to the areas adjacent to its coast is the principle that areas nearer to one State than to any other State

are to be presumed to fall within its boundaries rather than within those of a more distant State. Clearly, it is this principle which also underlies the delimitation of "median line" and "equidistant line" boundaries in other maritime and fresh-water contexts. In other words, this principle establishes a direct and essential link between the provisions of Article 6 regarding the equidistance principle and the basic concept of the continental shelf recognized in Articles 1 and 2 of the Geneva Convention of 1958.

116. Accordingly, under Articles 1 and 2, as well as under Article 6, of the Geneva Convention it is incumbent on any State which lays claim to areas of continental shelf which are nearer to the coast of another State to establish the legal grounds on which its title should be preferred to that of the nearer State.

CHAPTER IV

THE APPLICABLE PRINCIPLES STATED IN ARTICLE 6 OF THE CONVENTION ON THE CONTINENTAL SHELF

117. Article 6 of the Geneva Convention, as the Court knows, has two principal paragraphs, the first of which applies to States whose coasts are opposite each other and the second of which applies to States whose territories are adjacent to each other. The present case between Denmark and the Federal Republic of Germany manifestly relates to the delimitation of the continental shelf between adjacent States, as does also the other case before the Court between the Netherlands and the Federal Republic. Accordingly, it is paragraph 2 of Article 6 which primarily interests the Court.

118. Paragraph 2 of Article 6, like paragraph 1, contains two main provisions, one stating that the boundary shall be determined by agreement between the States concerned and the other laying down the rule for cases where no agreement is reached. In the present instance, negotiations for a determination of the boundary by agreement have taken place in each of the two cases before the Court, and have resulted in a deadlock; and in each case the "Special Agreement", in its fourth recital, expressly records the existence of a "disagreement between the Parties which could not be settled by detailed negotiations". It follows that in the two cases in which the Court is now called upon to decide the applicable "principles and rules of international law", it is only the second provision of paragraph 2 of Article 6 which is pertinent:

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

119. Before examining the meaning of this provision, Denmark finds it necessary to draw the Court's attention to certain points touching the provisions of both paragraphs 1 and 2 of Article 6. First, quite apart from the close similarity of the language, the substantive rules stated respectively for "opposite" and "adjacent" States in the two paragraphs are precisely the same. Each paragraph opens with a provision for determination of the boundary by agreement and then provides, in the absence of agreement and unless another boundary is justified by special circumstances, for the determination of the boundary by application of the principle of equidistance. No doubt, paragraph 1 states that "the boundary is the *median line*, every point of which is equidistant from the nearest points . . .", etc. (italics added), whereas paragraph 2 states simply that "the boundary shall be determined by application of the principle of equidistance from the nearest points . . .", etc. But this difference is purely one of terminology and in each paragraph the rule—the principle of equidistance from the nearest points of the baselines of the territorial sea, unless another boundary is justified by special circumstances—is the same. Accordingly, Article 6 furnishes no basis whatever for the theme which recurs more than once in the Memorial that "median lines" between opposite States are both more generally recognized and more generally equitable than lateral equidistance lines. On the contrary, Article 6 does not distinguish in any way between the treatment

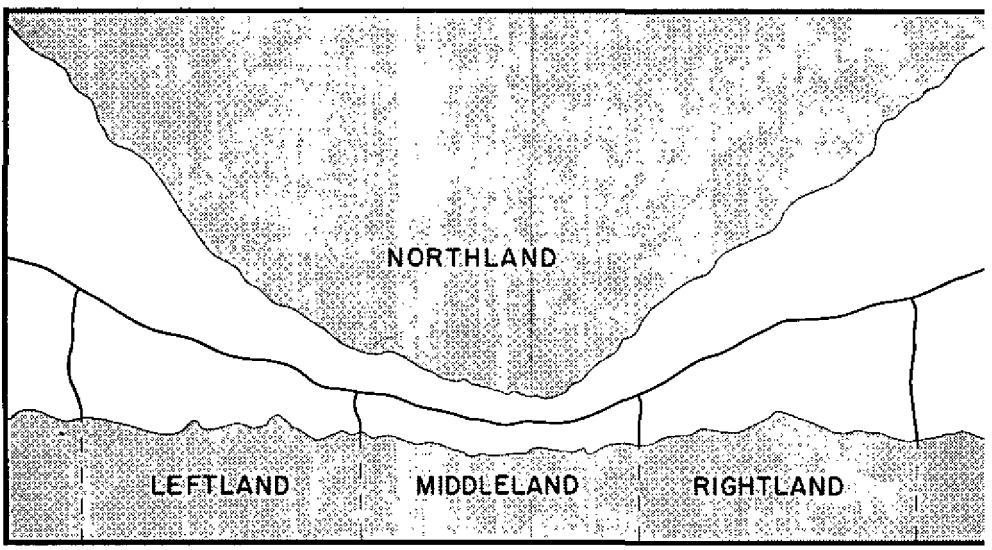

Figure 1

of the two cases. Moreover figure 1 shows that a proper median line—like other equidistance lines—may well result in neighbouring States having shelf areas not proportionate to the length of the coast-lines.

120. Secondly, there is not the slightest trace in Article 6 of the idea put forward in paragraphs 63-67 of the Memorial that, whereas the application of the equidistance principle may be equitable and appropriate in the case of median lines between opposite States and also of lateral lines between adjacent States *near the coast*, it is altogether unsuitable for the delimitation of *larger submarine areas* out in the open sea. In those paragraphs the Federal Republic argues that in the larger submarine areas out to sea "the equidistance principle lends disproportionate significance to special configurations of the coast"[1]. In support of this argument it cites an observation of Mr. S. Hsu in the International Law Commission in 1951 opposing the solution of prolonging the territorial sea boundary over the continental shelf:

> "The dividing-line would be relatively unimportant in the case of territorial waters, which were a narrow belt, but might take on great significance and cause injustice if applied to continental shelves which were sometimes of considerable extent [2]."

It is a sufficient commentary on this argument that the Federal Republic can only base it on an observation made with reference to *prolonging the dividing line of territorial waters seawards* in 1951 before the Commission had obtained the advice of the committee of experts and before it had even begun its study of the territorial sea (see para. 63 of the previous Chapter of this Part). The Federal Republic passes over the fact that, notwithstanding the observation of Mr. S. Hsu, the committee of experts in its report in 1953 and the Inter-

[1] Memorial, para. 63.
[2] *Ibid.*, para. 67.

national Law Commission in its reports of 1953 and 1956 not only adopted the same principles of delimitation for the continental shelf as for the territorial sea but underlined the importance of doing so. The committee of experts, the Commission and the Geneva Conference were well aware of the existence of large expanses of continental shelf in the North Sea, Baltic, West Atlantic, China Seas and other areas. Yet in none of these three bodies was any distinction drawn between large or small areas of continental shelf or between near-shore or distant areas. The equidistance principle was deliberately adopted by the Commission and the Conference as the *general* rule *everywhere* except only where another boundary is justified by *special circumstances.*

121. Again, the Federal Republic seeks in paragraph 67 to justify its distinction between near-shore and more distant areas by an argument which attempts to reduce the application of the equidistance principle to absurdity:

> "The fact that the equidistance method is unsuitable for the apportionment of extensive sea areas far from the coast has become obvious since exploitation of the seabed at greater depths and at greater distances from the coast calls for a legal settlement."

And then, in figure 15 it presents a dramatic diagram of the whole North Atlantic Ocean divided among its littoral States by equidistance boundaries. Leaving aside any question as to the particular boundaries shown on the diagram, Denmark considers that this argument is completely fallacious. The problem thrown up by technological advances in the exploration and exploitation of the ocean deeps—a problem already raised by Malta in the United Nations—concerns the limit to be placed on the very concept of the continental shelf, having regard to its indeterminate definition in Article 1 of the Convention. It does not concern the principles of delimitation already accepted for areas which undeniably fall within the concept of the continental shelf; and its irrelevance in the present case is underlined by the fact that none of the submarine areas in dispute are more than 67 metres below the surface of the sea or more than 160 sea miles from land. The fallacy of the argument in the present case is indeed underlined by the position taken by the Federal Republic in the Memorial in regard to the application of the equidistance principle in the North Sea. In paragraphs 89 and 90 the Federal Republic expressly records its recognition of the appropriateness and equitableness of the median line boundary accruing to the United Kingdom in the North Sea under the equidistance principle, despite the largeness of the "share" of the North Sea which the United Kingdom thus obtains. At the same time, the Federal Republic underlines that this large share is "the consequence of natural geographical conditions". True, it argues that it is the "land mass" of the British Isles which justifies the large British share. Under Article 1 of the Geneva Convention, however, it is not *land mass* but *coast* to which the continental shelf appertains; and under Article 6 it is the configurations of the coast—the baselines of the territorial sea—which constitute the "natural geographical conditions" that determine the boundaries of the shelf and thus the size of the "share".

122. Another argument put forward by the Federal Republic to justify the above-mentioned distinction is that the difference in the language of Article 12 of the Territorial Sea Convention and Article 6 of the Continental Shelf Convention shows the Geneva Conference to have recognized that the equidistance principle *has a wider scope of application in regard to the territorial sea than in regard to the continental shelf.* Having observed in paragraph 64 that, from the point of view of control over the territorial sea, distance from the coast is an

indispensable criterion for the apportionment of territorial waters, the Federal Republic observes:

> *(a)* Under Article 12 of the Territorial Sea Convention "the equidistance method does not apply only—'. . . where it is *necessary* by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision' ",
>
> *(b)* Under Article 6 in the case of the Continental Shelf Convention "the equidistance method does not apply already where—'. . . another boundary line is *justified by special circumstances* . . .' ". (Italics in the Memorial.)

This interpretation of the two Articles, even if it were sound, would not advance the Federal Republic's argument one inch; for it remains the fact that the Geneva Conference and Article 6 of the Continental Shelf Convention made no distinction whatever between near-shore and more distant areas of the continental shelf. Furthermore, the difference in wording between the two Articles is far from justifying the conclusion drawn from it by the Federal Republic.

123. The International Law Commission, the Court will recall, insisted that the principles for delimiting the boundary of the territorial sea and the continental shelf ought to be the same. In the final draft adopted in 1956 the wording of the Commission's provisions regarding the territorial sea (Art. 12, para. 1, and Art. 14, para. 1) and its provisions regarding the continental shelf (Art. 72) was, in fact, almost identical and in the form: "In the absence of agreement and unless another boundary is justified by special circumstances, the boundary is drawn by application of the principle of equidistance." The Geneva Conference, it is true, reworded the territorial sea formula (Art. 12, para. 1) to that given in the Memorial. At the same time, however, it completely redrafted the whole paragraph *and it did so for reasons quite unconnected with the considerations adduced by the Federal Republic.* Norway pointed out—as indeed she had to the Commission—that a rule simply providing for the application of the principle of equidistance, unless another boundary is necessitated by special circumstances, was not adequate in the case of the territorial sea *because of the possibility that the States concerned might be claiming different breadths of the territorial sea.* Accordingly, what was needed instead for the territorial sea was a negative rule *forbidding each State to extend its territorial sea beyond the equidistance line.* The Conference adopted the Norwegian proposal, at the same time deciding that it was still essential to make allowance for "special circumstances" and, in particular, for historic claims. The new negative form of the Article meant that it had to be completely recast, and this was done in the First Committee, whereas the continental shelf was dealt with in the Fourth Committee. There is no indication in the records of the Conference that the difference in the formulation of the territorial sea and continental shelf provisions was due to anything else than the difficulty brought up by Norway and the vicissitudes of drafting in different Committees.

124. Furthermore, it is only necessary to glance at paragraph 82 of the International Law Commission's report for 1953 to see how strained is the inference which the Federal Republic seeks to draw from the difference between the word *necessary* in the Territorial Sea Convention and the word *justified* in the Continental Shelf Convention (*Yearbook*, 1953, Vol. II, p. 216). In that paragraph the Commission actually explains the phrase "unless another boundary is *justified* by special circumstances" by reference to the need to make provision for modifications of the equidistant line *necessitated* by the special circumstances of the case.

125. Nor is it possible to attach any weight to the criticism directed against the equidistance principle in paragraph 66 of the Memorial, that this principle does not take into account what might be called the "quality" of the coasts the points of which are taken as a basis for the construction of the equidistance line. The equidistance method, it says, does not take into account ". . . whether . . . uninhabited promontories, harbourless islands, or densely inhabited stretches of coasts with plenty of harbours are involved". And it then argues:

> "From the point of view of exploitation and control of such submarine areas, the decisive factor is not the nearest point on the coast, but the nearest coastal area or port from which exploitation of the seabed and subsoil can be effected. The distance of an oil, gas or mineral deposit from the nearest point on the coast is irrelevant for practical purposes, even for the laying of a pipe line, if this point on the coast does not offer any possibilities for setting up a supply base for establishing a drilling station or for the landing of the extracted product."

This argument is in itself wholly invalid, since experience shows that, if a deposit is exploited, the nearest points on the coast, even if theretofore unused or scarcely inhabited, may be developed into important elements of support for the exploitation, if only as a relay-station of a pipe line. Moreover, it is an argument which, if it were valid, would apply equally to "median lines" between opposite States as to which the Federal Republic has little objection.

But, quite apart from that, the argument is irrelevant to the present dispute. There is no difference in "quality" between the North Sea coast of the Federal Republic and the North Sea coast of the Kingdom of Denmark. Every single part of both coast-lines, relevant for the drawing of the equidistance line, has in principle the same potentialities for being used for the exploitation of the seabed and subsoil.

Section I. The Meaning of the Principal Rule Applicable in the Present Case

126. The principal rule of international law applicable in the present case, as has been pointed out, is the provision in Article 6, paragraph 2, which reads:

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

If this provision is interpreted, as it must be, "in accordance with the ordinary meaning to be given to the terms of the treaty in their context"[1], it can mean only one thing: in the absence of agreement, the *general* rule requires the boundary to be determined by application of the principle of equidistance, but this general rule will be displaced if—and only if—it is shown that another boundary line is justified by special circumstances. In other words, the provision means that the equidistance line is the boundary unless a case of "special circumstances" within the meaning of the Convention is both shown to exist and to justify a boundary other than the equidistance line.

127. In paragraphs 68-73 of the Memorial, however, the Federal Republic contends that the "special circumstances" clause is to be "understood not so much as a limited exception to a generally applicable rule, but more in the

[1] Cf. Art. 27, para. 1, of the International Law Commission's draft articles on the Law of Treaties (*I.L.C. Reports* 1966, A/6309/Rev. 1, p. 49).

sense of an alternative of equal rank to the equidistance method"[1]. In support of this contention it isolates a single statement made in the debate in the International Law Commission in 1953 which hardly seems to bear the weight put upon it by the Federal Republic. At the same time, it passes over the clear evidence in that debate that the Commission adopted the equidistance principle as the *general rule* and introduced the "special circumstances" clause by way of an *exception*. Quite apart from the fact that the very words *unless* and *special* stamp the "special circumstances" clause with the hall-mark of an exception, several passages in the debate indicate that this clause was envisaged as an exception to the equidistance principle (*Yearbook, 1953*, Vol. I, pp. 126-133). For example, Mr. Sandstrom referred to the special circumstances clause as covering "*special* cases where the application of the *normal* rule would lead to *manifest* hardship" (italics added). Mr. Lauterpacht similarly spoke in terms of providing for exceptions from the equidistance rule when its application would lead to "*undue* hardship" (italics added). As to the author of the clause, M. Spiropoulos, he also envisaged his proposal as leading to departures from the equidistance rule only where its application would lead to "manifest unfairness".

128. Furthermore, the Federal Republic passes over completely the Commission's clear and considered statement of its understanding of the relation between the "equidistance rule" and the "special circumstances clause" in the commentary to its 1953 report. Almost every line of this commentary, the relevant passage of which has already been brought to the Court's attention (para. 67 of Chapter III of this Part) rebuts the contention now put forward by the Federal Republic as to the "alternative" character and "equal rank" of the "special circumstances clause". This commentary, the Court will recall, speaks of the equidistance principle as the *general rule* and as the *major principle* subject to "reasonable *modifications necessitated* by the *special* circumstances of the case" [2] (italics added). The Federal Republic—perhaps understandably—refers only to the heavily abbreviated commentary attached to Article 72 of the Commission's final draft on the law of the sea as a whole. Yet even this abbreviated commentary clearly visualizes the "special circumstances clause" as an exception: "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[3]." (Italics added.) True, the commentary also observes: "This case may arise *fairly* often, so that the rule adopted is *fairly* elastic[3]." (Italics added.) But that guarded observation can hardly be said to modify the very clear impression of the equidistance principle in the work of the Commission as the *general* rule and "the special circumstances" clause as an exception to that rule.

129. Nor is any different impression of the relation between the "equidistance principle" and "special circumstances" clause given in the work of the Geneva Conference itself. On the contrary, the statements of a number of delegations make it clear that the "equidistance principle" was understood by the Conference to be the general rule to which "special circumstances" would constitute an exception; e.g., Colombia, Italy, Venezuela (*Official Records*, Vol. VI, p. 94), the Netherlands, United States (*ibid.*, p. 95), and the United Kingdom (*ibid.*, p. 96).

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[1] Memorial, para. 69.
[2] *Yearbook*, 1953, Vol. II, p. 216, para. 82.
[3] *Ibid.*, 1956, Vol. II, p. 300.

130. In short, the ordinary meaning of the words of Article 6 and the *travaux préparatoires* alike refute the contention that the "special circumstances clause" is to be understood "more in the sense of an alternative of equal rank to the equidistance method". Moreover, if it were so interpreted, the effect would be largely to denude it of legal content and destroy its value as a criterion for resolving disputes concerning continental shelf boundaries.

131. The Federal Republic further seeks in these paragraphs to undermine the legal force of the "equidistance principle" by so inflating the scope of the "special circumstances" exception as almost to make the "equidistance principle" the exception rather than the rule. Thus, in paragraph 70 it contends:

> "'*Special circumstances' are always present should the situation display not inconsiderable divergencies from the normal case. The normal case*, in which the application of the equidistance method leads to a just and equitable apportionment, *is a more or less straight coastline*, so that the areas of the shelf apportioned through the equidistance boundary more or less correspond to the shorelines (façades) of the adjacent States. *Should this not be the case*, and should therefore no equitable and appropriate solution result, *the clause of the 'special circumstances' applies.*" (Italics added.)

In this passage the Federal Republic, in effect, equates the principle of equidistance to the principle of a line drawn perpendicular to the coast; for where the coast-line is "more or less straight", the equidistance rule necessarily gives a boundary perpendicular to the coast. But the principle of a line perpendicular to the coast was considered by the committee of experts in 1953 and deliberately rejected in favour of the principle of equidistance (*Yearbook*, 1953, Vol. II, p. 79). The Federal Republic's contention is thus in complete contradiction with the legislative history of Article 6, as it is with the Commission's whole concept of the equidistance principle as the "general rule" and "major principle".

132. In any event, it is not very clear to what conclusion this contention is supposed to lead. In the area where the land-boundary between Denmark and the Federal Republic meets the sea the coast-line is "more or less straight", so that even on the Federal Republic's view of the matter the equidistance line would seem to be perfectly appropriate for this coast. So much so that, in its Treaty of 9 June 1965 with Denmark the Federal Republic did, in fact, adopt the equidistance line for the delimitation of the continental shelf boundary near the coast. Moreover, in the area also where the land-boundary between the Netherlands and the Federal Republic meets the sea, the coast-line is similarly "more or less straight"; and similarly in its Treaty of 1 December 1964 with the Netherlands the Federal Republic did, in fact, adopt the equidistance line for the delimitation of the continental shelf boundary. How and upon what principle, it may be asked, does an equidistance boundary, perfectly appropriate near the coast, cease to be so further out to sea when the coast-line is "more or less straight" *and no geographical factor other than that coast-line influences materially the course of the equidistance line*?

Section II. The North Sea not a "Special Circumstance" or "Special Case"

133. At the very heart of the case presented by the Federal Republic in the Memorial is the thesis that the North Sea is in itself a "special circumstance" or "special case" such that it cannot be dealt with "by the application of methods developed for drawing maritime boundaries in normal geographical situations"

(para. 41 *(c)* of the Memorial). This thesis is introduced in Part I (Chap. I, para. 8) in a comparatively modest form:

> "Yet it is necessary to point out already at this stage that the North Sea represents a special case in that, on account of its relative shallowness, its submarine areas constitute a single continental shelf which must be divided up among the surrounding coastal States in its entirety. In this respect, the North Sea is different from other cases of delimitation of continental shelf areas where the continental shelf constitutes but a narrow belt off the coast."

In Part II, however, the thesis assumes a much larger form. Thus, in paragraph 41 of this Part (p. 39, *supra*) the Federal Republic states:

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

And later, in paragraph 72, the Federal Republic boldly asserts the claim that continental shelf areas like that in the North Sea constitute "special circumstances" within the meaning of Article 6 of the Convention (p. 71, *supra*):

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

134. Characteristically, the only authority for its thesis cited by the Federal Republic in either paragraph 41 or paragraph 72 of the Memorial is three passages from writers published at an early stage in the development of the doctrine of the continental shelf before the "equidistance principle-special circumstances rule" had seen the light of day in the Commission. The reason, no doubt, is that no support can be found in the report of the committee of experts, the work of the Commission or the records of the Geneva Conference for the view that shallow seas, as such, constitute a "special circumstance" or a "special case". These three bodies as has already been said in paragraph 120 above, were perfectly well aware of the existence of shallow seas like the Persian Gulf, Baltic and North Sea. Indeed, one of the points singled out for mention in the Commission's report in 1953 was that shallow seas like the Persian Gulf should be considered as falling within the concept of the continental shelf. If those bodies had considered shallow seas to constitute a special case outside the "application of methods developed for drawing maritime boundaries in normal geographical situations"[1], they would certainly have so provided. Equally, it seems highly probable that the views of the three writers in question have evolved somewhat since 1953 under the influence of the work of the Commission and the Geneva Conference. This we know for a fact in the case of Richard Young, to whose article in the *American Journal of International Law* for 1951 the Federal Republic gives particular prominence in paragraphs 41 and 72. A recent article published by this writer in the 1965 *American Journal of International Law* and entitled "Off-shore Claims and

[1] Memorial, para. 41.

Problems in the North Sea" goes in a quite opposite direction to the Federal Republic. After mentioning that there now appears to be a consensus between the North Sea States regarding the territorial sea and fisheries, the article proceeds:

> "There appears to be a similar consensus in principle with respect to the continental shelf: none of the five North Sea states having potentially large interests in submarine resources has failed to recognize the exclusive appurtenance of such resources to the coastal state. Nor does it seem likely that any of them will challenge seriously the equity in general of dividing such resources by equidistant boundary lines in the absence of special agreement otherwise, although West Germany in particular may seek some readjustment through such agreements. Even Norway, with its reluctance to accept the Shelf Convention, seems prepared to accept these principles as a guide.
>
> This consensus should provide a sound foundation for the working out in practice of various particular problems concerning the delimitation and control of off-shore areas. These problems may be said to be of two general kinds: first, those relating directly to the exploitation of submarine resources in the North Sea, including the delimitation of the respective national areas and the efficient development of resources found; and second, problems arising from conflicts among different uses of the same sea areas. The first group are chiefly technical in nature and, under the circumstances existing in the North Sea, should not present great difficulties. Thus the construction of median lines should not involve any issues of principle: the general acceptance of similar rules for baselines provides a substantially uniform line of departure, and the general absence of important offshore islands beyond the coastal fringe eliminates one potential source of controversy. *The region is perhaps as simple a situation in terms of technical problems of delimitation as can be found in any area where so many different states are involved* [1]." (Italics added.)

There certainly seems to be no trace here of the idea that the North Sea, as such, is a "special case" or "special circumstance" simply by reason of its being a shallow sea on which a number of States have a frontage.

135. The Federal Republic, it is true, also devotes a whole chapter (Chap. III of Part II) to what it terms "The Special Case of the North Sea". But in that Chapter the Federal Republic sets out to construct a more general case to justify the substitution of a "sector" for an equidistance boundary; and it will therefore be more convenient to deal with those arguments separately in the next Chapter of this Part. Here it suffices to point out that the Federal Republic's general thesis that, by reason of its being a shallow sea on which a number of States have a frontage, the North Sea is, as such, a "special circumstance", is without any foundation whatever.

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[1] *A.J.I.L.*, Vol. 59 (1965), pp. 516-517.

CHAPTER V

THE SPECIAL CIRCUMSTANCES EXCEPTION AND THE FEDERAL REPUBLIC'S SECTORAL CLAIM

Section I. The Absence of any "Special Circumstances"

136. If the Government of Denmark is correct in its submission that the principles and rules of international law applicable as between the Parties are those contained in Article 6, paragraph 2, of the Continental Shelf Convention, it follows that in order to arrive at a delimitation other than that which results from the application of the equidistance principle, the Federal Republic must invoke the exception of "special circumstances justifying another boundary line". In the Memorial, however, it proceeds in a quite different manner.

137. The tactics adopted by the Federal Republic, as pointed out in the previous Chapters of this Part, are to try to undermine the value of the equidistance principle as a general rule in order to open the way for its request for an "equitable apportionment" not under the principles of the Geneva Convention but on a thinly disguised basis of *ex aequo et bono*. In character with these tactics, neither the Federal Republic's "conclusions" regarding the North Sea continental shelf on page 89, *supra*, of the Memorial nor its final "submissions" on page 91, *supra*, make any mention of the exception of "special circumstances" provided for in Article 6 of the Continental Shelf Convention. Nor does the Federal Republic anywhere in the Memorial expressly invoke the exception of special circumstances as one of the "principles or rules of international law" applicable as between the Parties under the terms of Article 1 of the Compromis.

138. The reason why the Federal Republic shows itself so averse to admitting the authority of the equidistance principle as the general rule and so shy of invoking the exception of special circumstances is, no doubt, that it does not think *that its own case can be brought within the scope of the exception of special circumstances envisaged in Article 6 of the Continental Shelf Convention.* Otherwise, it is difficult to see why the Federal Republic should have gone to such lengths in trying to question the now generally accepted authority of the equidistance principle as the principal rule instead of setting out to persuade the Court, if it can, that in the case of the delimitation of the North Sea continental shelf between Denmark and the Federal Republic "another boundary is justified by special circumstances" *within the meaning of the Convention.*

139. Scattered through the Memorial, it is true, are to be found references to the North Sea as a special case (paras. 8 and 75) or a special problem (para. 77). In one place (para. 72) the Federal Republic even goes so far as to speak of "*gulfs, bays, and shallow seas* surrounded by land" (italics in the Memorial) as: "another typical category of special coastal configuration under the heading of '*special circumstances*' "(italics added).

But the thesis that the shallow North Sea is *as such* a "special circumstance" within the meaning of the Convention is one which, as already pointed out in the previous Chapter, is entirely lacking in foundation. Moreover, it would seem to demand some courage to maintain this thesis in face of the facts that:

(a) the United Kingdom, Norway, Denmark, the Netherlands and Belgium have all treated the delimitation of the continental shelf beneath the North

Sea as a perfectly normal case for the application of the equidistance principle;

(b) the Federal Republic itself has treated the shallow Baltic Sea as a normal case for the application of the equidistance principle; and

(c) the Federal Republic never suggested at the Geneva Conference or in its Continental Shelf Proclamation of 20 January 1964 or in the Exposé des Motifs of the Law giving effect to the Proclamation or in its negotiations with Denmark that, being a shallow sea, the North Sea is a special case.

140. True, in the second part of paragraph 72 the Federal Republic does introduce the question of "gulfs, bays, or other major indentations of the coastline" where "one or even both seaward sides belong to a neighbour State" and this under the general heading "The 'Special Circumstances' in Article 6 of the Continental Shelf Convention". It maintains that this case "corresponds to the problem of islands which lie before the coast, but belong to another State"; and observes that in both cases "the drawing of a boundary line in application of the equidistance method must, by geometrical necessity, cut off the State from the sea". It goes on to illustrate the case of "gulfs, bays or other major indentations" by three small diagrams (figs. 16, 17 and 18), the last of which purports to be a representation of the configuration of the Danish-German-Netherlands coast-line "simplified to the base-line of the territorial sea". Then it baldly asserts:

> "It is obvious that a division of the submarine areas between the three States made on these lines cannot be considered as an equitable result. Geographical situations of such a kind, affecting the course of the equidistance line to such an extent, represent a special configuration of the coast which excludes the application of the equidistance method."

The Federal Republic makes no real attempt, however, to examine the actual configuration of the Danish-German-Netherlands coast-line in order to establish on what geographical grounds this coast-line is to be considered "a special configuration of the coast" amounting to a special circumstance within the meaning of the Continental Shelf Convention. On the contrary, after only a most general reference to "gulfs, bays or other major indentations of the coast-line" it proclaims that equidistance lines drawn from the Danish-German and Netherlands-German boundaries give an inequitable result for the Federal Republic and *for that reason* the Court is here confronted with a "special configuration of the coast". This, in the view of the Danish Government, puts the cart before the horse.

141. The "special circumstances" clause in Article 6, paragraph 2, of the Convention, as already pointed out in the previous Chapter of this Part, is undoubtedly an *exception* to the *general* rule of delimitation by application of the equidistance principle. Since the Federal Republic has not invoked this exception in its submissions, Denmark does not consider that she is called upon to dwell at length upon the question whether the configuration of the Danish-German-Netherlands coast-line is such as could be considered a "special circumstance" within the meaning of Article 6, paragraph 2. Nevertheless, there are certain observations which she cannot refrain from making in the light of the contentions in paragraph 72 of the Memorial.

142. First, the vignette of the coast-line found in figure 18 of the Memorial gives a somewhat misleading impression of the bend in the German coast-line at the centre of the diagram. The Federal Republic does not state whether it regards this bend as an example of a "gulf" or of a "bay" or of a "major indentation". But a glance at even a small-scale chart, or indeed at the small map enclosed with this Counter-Memorial,[1] immediately shows that this bend

[1] See pocket inside back cover.

in the coast-line is not a "bay" or a "major indentation" but rather a change in the direction of the coast. The angle of this change of direction is approximately 100 degrees and, if the intervening area of sea may properly be referred to as a "gulf", it is a wide gulf with open shores, such as exists in many parts of the world.

143. Secondly, on both sides of the wide gulf the shores are not merely open but "more or less straight" with only the most normal small protrusions in the coast-line.

144. Thirdly, from the angle of the bend the coast-line of the Federal Republic runs "more or less straight" for a distance of no less than 120 kilometres to the north before it reaches the Danish frontier; and "more or less straight" for a distance of no less than 135 kilometres to the west before it reaches the Netherlands frontier.

145. Fourthly, no offshore island—other than one forming a normal part of the baseline of the coast—affects in any material way the geographical situation with reference to the delimitation of the equidistance lines. (The influence, if any, of Heligoland on the equidistance lines is altogether insignificant.)

146. In short, the geographical configuration with which the Court is confronted in the present case is quite unremarkable and could hardly be less "exceptional".

147. Again, the Danish Government must express its strong dissent from the proposition in paragraph 72 of the Memorial that the geographical situation in the present case "corresponds to the problem of islands which lie before the coast, but belong to another State". Neither the Danish Government nor the Court is called upon in the present case to express any opinion as to what should be the solution of that particular problem under Article 6 of the Convention. The Danish Government contents itself with remarking that the Federal Republic's proposition is demonstrably untrue as a matter of pure fact; and that it is also untrue even from the point of view of the boundaries and areas of continental shelf which result from applying the equidistance principle.

148. The standpoint of Denmark is that she is entitled under international law to consider the line of equidistance as constituting the boundary between the continental shelves of Denmark and the Federal Republic *unless and until it is established that another boundary line is justified by special circumstances within the meaning of the Convention.* Denmark, as explained in the previous Chapter, founds her position, first, upon the provisions of Articles 1 and 2 of the Convention under which a coastal State is in principle entitled to the area of the continental shelf which is *adjacent* to its coast; and secondly upon the principles and rules expressed in Article 6 of the Convention under which the equidistance line forms the boundary unless another boundary line is justified by special circumstances. In other words, Denmark maintains that the Federal Republic is bound to respect the equidistance line as their mutual boundary on the continental shelf unless and until the Federal Republic establishes *both* that:

(a) there exists a "special circumstance" within the meaning of Article 6 of the Convention;

and

(b) this "special circumstance" *justifies* another boundary line within the meaning of that Article.

In the view of the Danish Government, the Memorial entirely fails to make good either of these points.

149. If the *travaux préparatoires* of the Geneva Conventions and the actual terms of Article 12 of the Territorial Sea Convention indicate that some not purely geographical circumstances, such as a historic title, may constitute a "special circumstance", it is only geographical configuration with which the Court is concerned in the present case. At any rate, the Memorial does not appear to envisage that in the present case any other form of "special circumstance" comes into account. True, in attempting to depreciate the equidistance principle and minimize the scope of its application the Federal Republic refers in paragraph 70 to "special situations of a technical nature—such as navigable channels, cables, safety or defence requirements, protection of fisheries (fish banks), indivisible deposits of mineral oil or natural gas—"; and in connection with them cites selected passages from various writers. But, quite apart from the fact that certain of these matters are the subject of specific safeguards in the Convention (cf. Arts. 3, 4 and 5), none of these so-called "special situations" has been claimed by the Federal Republic in its submissions as constituting a "special circumstance" for the purpose of the application of Article 6 of the Convention. Nor has any of the other North Sea States found any of these matters to constitute an obstacle to delimiting their boundaries strictly by application of the principle of equidistance. In the case of "indivisible deposits of mineral oil or natural gas", for example, the United Kingdom, Norway, Denmark and the Netherlands have delimited their mutual boundaries strictly on the basis of the equidistance principle, merely providing for consultation in regard to the exploitation of resources bordering the boundary line. Accordingly, the Federal Republic's reference to these so-called "special situations" would seem to be entirely without relevance for the application of the provisions of Article 6, paragraph 2, of the Convention in the present case.

150. Furthermore, the Federal Republic's numerous references to "island" situations, which it illustrates with a variety of figures (Nos. 4-7 and 11-15), are equally irrelevant for the purposes of the present case. Islands situated outside the territorial sea play no material role in the delimitation of the continental shelf as between the Federal Republic and Denmark. The only relevant island is Heligoland and, as stated in paragraph 145, the influence of this island, if any, on the equidistance line is altogether insignificant. Nor is there any disagreement between the Parties regarding the islands off the coast which may be taken into account under international law as base-points for the delimitation of their respective territorial seas, contiguous zones and continental shelves.

Indeed, so far from there having been any question raised in this part of the North Sea regarding islands as "a special circumstance", even a *low-tide elevation which does exercise a material influence on the equidistance line* has been used by the Federal Republic for delimiting its continental shelf without any objection from the Netherlands (see fig. 2).[1] This low-tide elevation—the "Hohe Riff"—lies near the German island of Borkum but off the mainland of the Netherlands coast. Its presence there causes, in the phrase used in paragraph 71 of the Memorial, "dislocations in the apportionment" of the continental shelf; and this dislocation operates in favour of the Federal Republic. The Federal Government, it would seem, never for a moment imagined that the low-tide elevation could be regarded as a "special circumstance" for the purposes of Article 6.

[1] See pocket inside back cover.

151. Since neither islands nor low-tide elevations play any material role in the delimitation of the boundary of the continental shelf as between Denmark and the Federal Republic, *only the geographical configuration of the base-lines of the mainland coast* calls for consideration as a possible source of a "special circumstance". But it has already been demonstrated in paragraphs 142-146 above that there is absolutely no exceptional geographical configuration in this part of the North Sea coast which could possibly be regarded as constituting "a special circumstance" within the meaning of Article 6.

152. Even if the bend in the German coast could be regarded as a "special circumstance", it still would not be a "special circumstance" *justifying another boundary line*. The Danish-German stretch of coast is, as previously emphasized, quite ordinary, and "more or less straight"; and the continental shelf which accrues to Denmark under the equidistance principle is perfectly normal, being the area which naturally appertains to the Danish coast. This can readily be seen from the small map of the North Sea reproduced in figure 3 on page 213 opposite. This map picks out Danish territory by showing it shaded and depicts the area of continental shelf accruing to it under the equidistance principle as compared with the areas appurtenant to other stretches of the North Sea coast-line. The Danish "share" of the North Sea shelf is in no way abnormal in relation to the Danish coast-line and its size cannot be said to be unduly enlarged by the protrusion of any promontory in the Danish coast. *Denmark, in short, gains absolutely nothing at the expense of the Federal Republic from any unusual disposition or configuration of Danish territory.*

153. It follows that what the Federal Republic is really asking from the Court in the present case is that it should lay down a principle which would require Denmark, simply on considerations of *ex aequo et bono*, to transfer to the Federal Republic part of the continental shelf which is adjacent and naturally appertains to Denmark. Indeed, it may be permissible to wonder whether in 1964 it was considerations of *ex aequo et bono* or a recently acquired knowledge that this part of the continental shelf may hold greater prospects of oil and gas that led the Federal Republic to challenge the application of the equidistance line. Be that as it may, there does not appear to be any basis for suggesting that the International Law Commission or the Geneva Conference ever contemplated that such a redistribution of areas of continental shelf could legitimately be demanded under the provisions of Article 6.

154. The Federal Republic thus seems to overlook the fact that her neighbour, Denmark, also has a claim to a share of the continental shelf under international law which is identical to that of the Federal Republic in its legal basis and validity. At any rate, it has provided no reason in the Memorial why this neighbour State should be called upon to renounce part of its normal and natural shelf area merely because the Federal Republic's own coast provides a less satisfying basis for delimiting its continental shelf. There is, in the view of the Danish Government, no basis whatever in the Geneva Convention for transferring legitimately claimed continental shelf areas from one State to another merely because the latter State is dissatisfied with its part of the continental shelf for reasons *stemming exclusively from its own coast.*

155. In paragraph 72 of the Memorial, however, the Federal Republic seeks to draw into the case between Denmark and the Federal Republic the equidistance boundary between the Netherlands and the Federal Republic. Yet in the *travaux préparatoires* of the Convention there is not the slightest indication that it was ever envisaged that a State might be able to combine a boundary question vis-à-vis one adjacent State with a boundary question vis-à-vis another

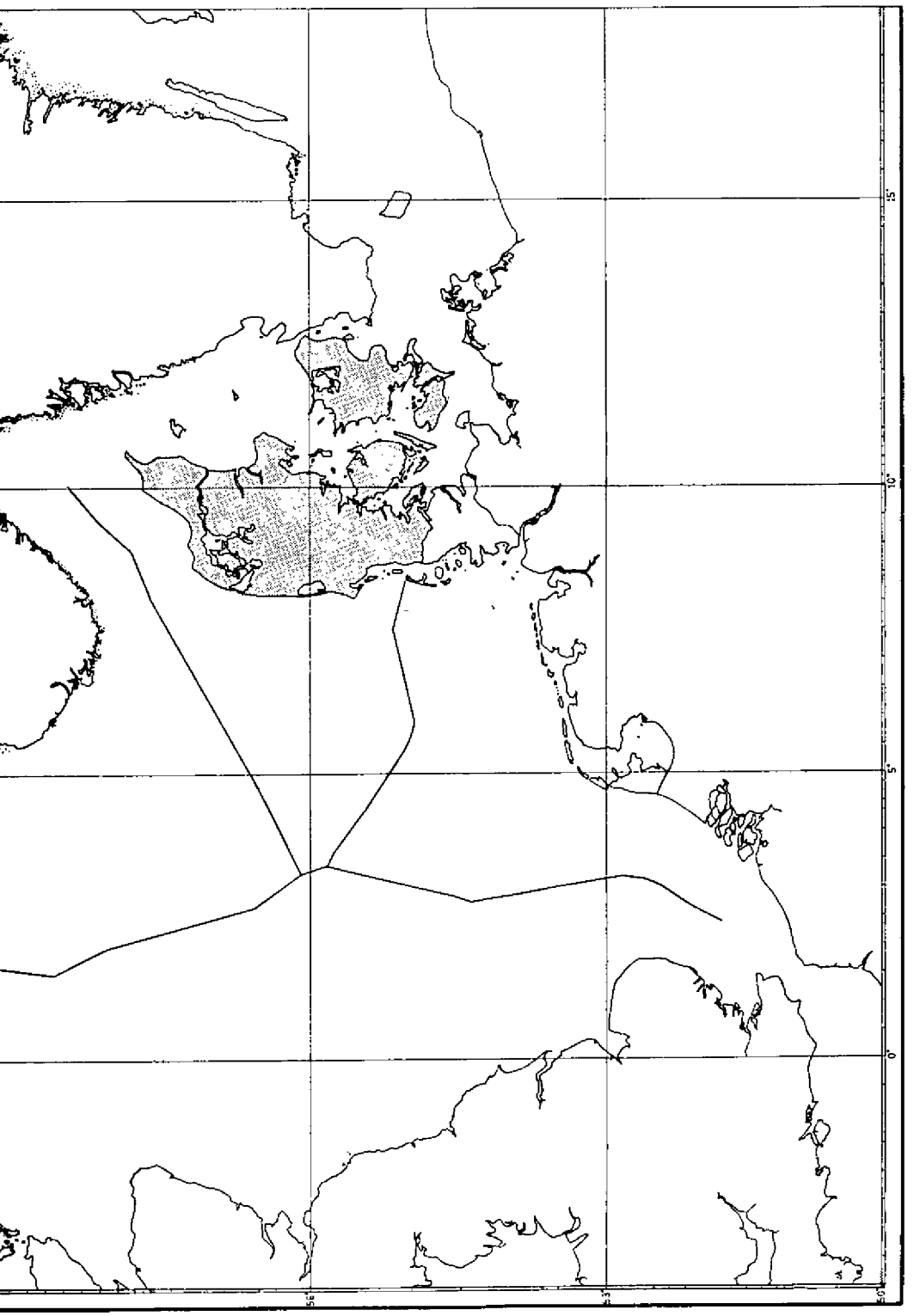


Figure 3

adjacent State and then maintain that "special circumstances justifying another boundary line" exist which manifestly do not exist in relation to either of these adjacent States considered by itself. Furthermore, paragraph 2 of Article 6 of the Convention, in contrast with the wording "two or more States" in paragraph 1 speaks only of cases "where the same continental shelf is adjacent to the territories of *two* adjacent States" (italics added); and thus clearly contemplates only questions of delimitation arising between two States alone. Accordingly, in seeking to combine two separate boundary questions between two different adjacent States, the Federal Republic passes completely outside the limits of the "special circumstances" exception recognized in Article 6, paragraph 2.

156. The Federal Republic's whole discussion of the "special circumstances" exception 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 which satisfies its aspirations. The special circumstances clause was, however, formulated and intended to be applied as rule of law. It admits the possibility of a modification of the general rule on the basis of geographical configuration only in 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*. In short, the modification to the general rule is allowed by the clause only when it is equitable and just with regard to *both* States concerned in relation to the general configuration of their *respective coasts*. 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.

Section II. The Inadmissibility of the Federal Republic's Sectoral Claim

157. The second of the "conclusions" formulated by the Federal Republic in paragraph 96 of the Memorial asserts:

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

This "conclusion" the Federal Republic seeks to support by an elaborate argument in paragraphs 75-92 based upon: *(a)* the alleged special character of the North Sea as a shallow sea surrounded by coastal States; *(b)* an interpretation of the principle of equality carefully tailored to meet the needs of the Federal Republic's claim; and *(c)* a supposed analogy with the Polar Sector theory.

158. The Danish Government has already amply demonstrated in the previous Chapter (paras. 133-135) that neither the geographical character of the North Sea nor the *travaux préparatoires* of the Continental Shelf Convention nor the practice of States provides any basis for treating the continental shelf beneath the North Sea as a "special case" or a "special circumstance" for the purposes of its delimitation under the principles contained in Article 6 of the Convention.

159. The principle of the equality of States is, no doubt, a principle of high importance. But it needs no argument to demonstrate that the equality of

States does not mean that every State must have an "equal" area of land, or of territorial sea, or of continental shelf; of that the facts of political geography are sufficient proof. The meaning and content of the principle of equality clearly depend on the context in which it falls to be applied. In the present context it can only mean that each coastal State is entitled to *the even-handed application of the principles and rules of maritime international law governing the delimitation of a coastal State's rights in the sea areas adjacent to its coasts.* These principles and rules of maritime international law prescribe that:

(a) the sea areas, whether territorial sea, contiguous zone or continental shelf, over which the coastal State may claim rights are the areas of sea or continental shelf which are adjacent to, and thereby appertain to, its coast;

(b) for the purpose of determining these areas the "coast" of a State is constituted by the baselines of the shore specified in the Territorial Sea Convention; and

(c) in consequence, the boundaries of a coastal State's territorial sea, contiguous zone or continental shelf are to be delimited by reference to the base-lines specified in the Territorial Sea Convention.

Denmark, like every other State, is entitled to have her rights determined by the application of these principles and rules. The Federal Republic, however, while invoking the principle of equality of States, urges upon the Court the adoption of a "sectoral" division of the North Sea continental shelf which, as will be shown, denies to Denmark her fundamental right to have her continental shelf boundaries delimited in accordance with the above-mentioned principles and rules of maritime international law applicable to other States. It is, therefore, evident that the Federal Republic's "sectoral" claim has nothing whatever to do with the principle of equality of States.

160. The Federal Republic illustrates its "sectoral" theory of the division of the North Sea continental shelf in figure 21 (p. 85, *supra*, of the Memorial); and it can be seen at once from this figure that the boundaries proposed by the Federal Republic are not delimited by reference to the baselines of the coast but by reference to the arcs of a circle artificially constructed by the Federal Republic in the southern part of the North Sea. Figure 21, in other words, makes it crystal clear that the theory urged upon the Court by the Federal Republic denies to Denmark the delimitation of her continental shelf by reference to the baselines of her coast in accordance with the established rules of international law. Yet even in that same figure the continental shelf boundaries of Norway and the United Kingdom are delimited by reference to the baselines of their coasts, as indeed also is the boundary of the Netherlands vis-à-vis the United Kingdom. It may, therefore, be asked upon what principle the equal application of these rules of international law should be denied to Denmark.

161. In addition, the Federal Republic's sectoral theory bears every mark of opportunism, artificiality and arbitrariness. At the negotiating stage, it is true, the Federal Republic did maintain that its continental shelf in the North Sea, measured in relation to the length of its coast, should be comparable with that of its neighbours; and it also made a vague reference to a sector without explaining what this might imply. But at that time it clearly assumed that in this connection the length of the *actual* German coast in the North Sea was the relevant one. That position it has now changed, substituting for its actual coast an artificial line drawn a considerable distance to seawards even of the most liberally estimated baseline of the coast [1]. And this artificial line the Federal

[1] Memorial, para. 78.

Republic now puts forward as corresponding to its "façade" upon the North Sea—a term and a concept alike wholly unknown to maritime international law. Again, at the negotiating stage the Federal Republic, in seeking a basis for justifying its claim, argued that paragraph 1 of Article 6, dealing with "opposite" States, because it precedes paragraph 2, dealing with "adjacent" States, must be given priority so as to entitle the Federal Republic as of right to a continental shelf boundary with the United Kingdom. This argument, in itself altogether untenable and also having certain implications for the Federal Republic with respect to the Danish-Netherlands boundary, has been completely abandoned in the Memorial. Instead, the Federal Republic now advances a somewhat nebulous and dogmatic claim to be entitled to reach what it calls the centre of the North Sea.

162. Whatever may be the legal value of the sector theory in Polar areas—a matter quite outside the scope of the present case—it is clear that no basis for the application of the sector theory in the delimitation of the continental shelf can be found in State practice, the debates in the International Law Commission or in the records of the Geneva Conference. A memorandum prepared by the United Nations Secretariat for the International Law Commission in 1950 prior to its discussion of the continental shelf did, admittedly, contain a mention of the sector principle (*Yearbook*, 1950, Vol. II, pp. 106-108). But this only makes it all the more significant that no member of the Commission, no Government in its comments on the Commission's proposals, and no State at the Geneva Conference ever adverted to the sector principle in discussing the rules of international law which should govern the continental shelf. No doubt, it is precisely because the Federal Republic is aware of the total lack of any legal basis for its sectoral claim that in the Memorial (para. 96) it does not dare to put the sector theory before the Court as a "principle of law" but only as a method of division which would result in "the most equitable apportionment of the continental shelf". The Court, however, may conclude that the absolute lack of any legal authority in maritime law for the method of division advocated by the Federal Republic only serves to confirm that its alleged principle of the "just and equitable share" is indeed nothing more than a thinly disguised demand for a delimitation of the continental shelf *ex aequo et bono*.

163. The Federal Republic's sectoral division of the North Sea is also highly artificial and arbitrary. In order to give its argument some air of plausibility the Federal Republic recognizes that it must have a circular (or elliptical) area of shallow sea and, by a lucky accident, it believes that it has found such an area in the North Sea which it illustrates in figure 21 of the Memorial. But this figure shows that the Federal Republic's circular area is obtained only by a highly selective and arbitrary process. The "circle" does not cover the whole of the North Sea, nor even a clearly defined or separate part of that sea; it covers only an arbitrarily chosen area in part of the North Sea. If regarded as depicting the southern area of the North Sea shelf, the circle takes no account of the configurations of the French, Belgian, south Netherlands or south English coasts; nor does the arc even touch the Federal Republic's own coast or the Norwegian coast. In short, it is a circle constructed purely *ad hoc* for the purposes of the argument and even with the best of good fortune the Federal Republic is unable to make the arc of its circle touch some of the relevant coasts.

164. Again, as the Court will see from figure 21, the "sectors" of the Federal Republic's circle are not drawn with reference to the extremities of the coasts of the States concerned, *but with reference to the equidistance lines between their territories. Denmark's* sector is depicted as starting at one end from a point

on the median line agreed between Denmark and Norway in the Treaty of 8 December 1965 and at the other end from an arbitrary point on the equidistance boundary near the coast established between Denmark and the Federal Republic by the Treaty of 9 June 1965. The *Federal Republic's* sector starts at one end from that same point on the Danish-German equidistance boundary and at the other end from a similar point on the German-Netherlands equidistance boudary near the shore established by the Treaty of 1 December 1964. The *Netherlands* sector starts at one end from the last-mentioned point on the German-Netherlands equidistance boundary and at the other end from another point in midsea on the median line agreed between the Netherlands and the United Kingdom by the Treaty of 6 October 1965. The Federal Republic, presumably in order not to draw too much attention to the geographically meaningless character of its circle, does not complete the northern arc. But the impression is left in figure 21 that comparable sectors attach to the *United Kingdom* between its median line boundaries with the Netherlands and Norway and to *Norway* between its median line boundaries with the United Kingdom and Denmark. It is, to say the least, curious that the hostility to the equidistance principle so frequently evinced by the Federal Republic in the Memorial should melt away so easily when this principle was found to be very convenient for the construction of its sector claim.

165. The principal way in which the Federal Republic seeks to justify its sectoral claim to a larger area of continental shelf is the proposition in paragraph 78 of the Memorial that in the case of the North Sea the share of each coastal State should be measured by the length of its North Sea coastline. This proposition is expounded in that paragraph as follows:

> "The degree of the geographic connection between the coast and the submarine areas lying in front of it does not manifest itself by the length of the coastline measured with all its articulations, but by the breadth of contact of the coast with the sea—the country's coastal frontage. The degree of connection of the German coast with the submarine areas of the North Sea would accordingly be measured by the linear distance between Borkum and Sylt, two German islands immediately adjacent to both end points of the German coast between the Danish and Netherlands continental territories. If the breadth of the German coast is evaluated in this fashion, and the breadth of the Danish and Netherlands coasts were to be ascertained in like fashion, then the shares of these countries would stand in the ratio 6 : 9 : 9 respectively."

From this the Federal Republic concludes:

(a) the areas which accrue to the three States under the equidistance principle, and which it gives as Denmark 61,500 square kms., the Netherlands 61,800 square kms. and the Federal Republic 23,600 square kms., are disproportionate to the ratio of their coastal frontages and, in consequence, inequitable;

(b) the areas which would accrue to the three States under the Federal Republic's sectoral division, and which it gives as the Federal Republic 36,700 square kms., Denmark 53,900 square kms. and the Netherlands 56,300 square kms., do correspond roughly to the ratio of 6 : 9 : 9 and, in consequence, constitute a "just and equitable share".

166. The first and immediate objection to the Federal Republic's coastal frontage—façade line—concept is that there is not the slightest basis for it in State practice, the work of the International Law Commission or in the records of the Geneva Conference. In support of it the Federal Republic, it is true, adduces statements by two writers; but these statements—at best only sug-

gestions—were made in papers written before the International Law Commission had even begun its study of the continental shelf. Nor is it clear that even these writers had in mind "coastal frontage" in the form of the "façade" line propounded by the Federal Republic. Be that as it may, the façade concept was never suggested or adverted to in the International Law Commission or by any government in its comments upon the Commission's proposals or by any State at the Geneva Conference; nor does it appear to have received any mention in State practice other than in the argument of the Federal Republic in the present dispute. The reason is obvious enough. The legal concept and definition of a coast for the purposes of international law is well established: *it is the baseline of the coast, i.e., the low-water line along the open coast or* straight lines where these are admitted in the case of island fringes, bays, etc. Moreover, international law places specific limits upon the indentations which may be regarded as bays for this purpose and upon the length of the lines which may be drawn across bays. The Federal Republic's concept of a "façade" line and the particular façade line between Borkum and Sylt which it claims for its coast violate both the established legal concept of the coast and the specific rules applicable thereto. In short, the Federal Republic invokes a novel concept of the coast completely outside anything contemplated either by the International Law Commission or by States at the Geneva Conference.

167. The "coastal frontage"-"façade line" concept is, in fact, nothing but an artificial construction devised for the purpose of enabling the Federal Republic to escape alike from the consequences of its own geography and from the normal application of the relevant rules of maritime international law. Furthermore, as already pointed out, even the "façade line"—the Borkum-Sylt line—is not enough for the Federal Republic's purpose; for it is impossible to make the arc of the Federal Republic's magic circle come anywhere near the Borkum-Sylt line. In consequence, in order to give its sector even the semblance of plausibility, the Federal Republic has to construct it not with reference to the Borkum-Sylt line but to a purely fictional line joining selected points on its two near-shore continental shelf boundaries established in treaties respectively with Denmark and the Netherlands. Thus, the base of the Federal Republic's sector is still further divorced from the established concept of a coast in international law.

168. In any case, even if the Federal Republic's "coastal frontage" concept were to be treated as in some way relevant, it would seem essential that the comparisons should be made between continental shelf shares within the same sea areas. Yet in measuring the size of the Danish North Sea continental shelf, the Memorial has included the area of the Danish shelf which lies to the North of Denmark after the coast veers sharply to the east; and this area is outside the North Sea as defined in the North Sea Fisheries Convention of 1882 which specified the line between Hanstholm in Denmark and Lindesnæs in Norway as the easterly limit of the North Sea.

169. Moreover, the Danish Government has been unable to follow the basis upon which the areas resulting from the Federal Republic's sectoral division are estimated in the Memorial to correspond to the ratios of the breadths of the coastal frontages. The area, it would seem, should be appreciably smaller than that indicated in the Memorial.

170. As to the sectors, by no means all the sector lines are radii of the Federal Republic's circle running inwards to its true centre. The Danish-Norwegian, United Kingdom-Norwegian and Netherlands-United Kingdom lines are orthodox equidistance lines drawn in accordance with the Geneva

Convention. Only the Federal Republic's sector boundaries with Denmark and the Netherlands appear in figure 21 as radial lines running to the actual centre of the circle. The sectoral lines depicted in figure 21 therefore demonstrate the special treatment meted out by the Federal Republic to itself and the unequal treatment accorded by it both to Denmark and the Netherlands as against other North Sea States in the drawing of the "sectoral" boundaries.

171. Another thing which figure 21 shows clearly is that the Federal Republic has no valid reason for claiming that it is entitled to a continental shelf reaching to the centre of the North Sea. The Federal Republic's magic circle, if it touches the coasts of Denmark, the Netherlands and the United Kingdom, falls somewhat short of the Norwegian coast and very far short of that of the Federal Republic. This indicates that, while some of the other North Sea States may be States whose coasts actually border upon the central part of the North Sea, the Federal Republic's coast is situated in an extension of the North Sea to the south-east, as are also the coasts of Belgium and France in an extension to the south-west. The result is that the Federal Republic's coast, like those of Belgium and France, is much more distant from the central part of the North Sea. In other words, while the distances from the centre of the magic circle to the coasts of Denmark, the Netherlands and the United Kingdom are identical, the distance to that centre from any point on the Federal Republic's coast is considerably greater. In consequence, it is neither surprising nor inequitable nor unjust that the Federal Republic's continental shelf should not reach out to the place which it speaks of as the centre of the North Sea.

172. In addition, both the Federal Republic's addiction to the supposed principle of "the just and equitable share" and its enthusiasm for a sectoral division of the continental shelf as an application of that "principle" seem to be capriciously confined to the coastal States of the south-eastern part of the North Sea. Belgium and France are both "North Sea States" as defined in the North Sea Convention of 1882, and both have limited frontages on the southern part of the North Sea. In some ways, moreover, their positions are analogous to that of the Federal Republic. Yet neither in figure 21 nor in its exposition of the sectoral theory in paragraphs 84-92 does the Federal Republic find any room for these States in its "equitable apportionment of the North Sea". This highly selective application of the alleged principle of the "just and equitable share" and of the concept of a "sectoral division" of the continental shelf serves, once more, to show that it is not a delimitation in accordance with any principle or rule of international law for which the Memorial asks but a delimitation simply *ex aequo et bono* in accordance with the *aspirations* of the Federal Republic.

173. In the final analysis, it is an insuperable objection to the Federal Republic's alleged principle of the "just and equitable share" and to its proposed "sectoral division" of part of the North Sea that both that alleged principle and that method of division are in total conflict with the established principles and rules of international law governing the delimitation of maritime areas. Thus, they misconceive the very nature and the operation of these principles and rules, which are based upon the doctrine *la terre domine la mer* and not vice versa. The rules of international law in this sphere take the coast as their starting point, and not the—in any case imaginary—middle of the sea. These principles and rules do not have as their object to share out or distribute the sea, seabed or subsoil by sector or otherwise. They have as their object to delimit in space the extent to which the sovereignty of a State over its land finds continuation in sovereign rights relating to the sea areas adjacent to its

land. Moreover, at the root of these rules is the concept that the sovereign rights of a State over sea areas are, in principle, limited in space to areas all points of which are nearer to its coast than to that of any other State, because it is these areas which are truly "adjacent" to its land.

174. The Federal Republic's alleged principle and sectoral method of division depart alike from these fundamental principles of maritime international law and from the detailed rules regarding the delimitation of sea boundaries in which they have their application. Accordingly, in the view of the Danish Government, neither the alleged principle of the just and equitable share nor its particular application in the Federal Republic's "sectoral" division possess the characteristics of a "principle or rule of international law" within the meaning of Article 1 of the Compromis.

PART III. SUBMISSIONS

Considering that, as noted in the Compromis, disagreement exists between the Parties which could not be settled by detailed negotiations, regarding the further course of the boundary beyond the partial boundary determined by the Convention of 9 June 1965;

Considering that under the terms of Article 1, paragraph 1, of the Compromis the task entrusted to the Court is not to formulate a basis for the delimitation of the continental shelf in the North Sea as between the Parties *ex aequo et bono*, but to decide *what principles and rules of international law* are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea *which appertain to each of them* beyond the partial boundary, determined by the above-mentioned Convention of 9 June 1965;

In view of the facts and arguments presented in Parts I and II of this Counter-Memorial,

May it please the Court to adjudge and declare:

1. The delimitation as between the Parties of the said areas of the continental shelf in the North Sea is governed by the principles and rules of international law which are expressed in Article 6, paragraph 2, of the Geneva Convention of 1958 on the Continental Shelf.

2. The Parties being in disagreement, unless another boundary is justified by special circumstances, the boundary between them is to be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. Special circumstances which justify another boundary line not having been established, the boundary between the Parties is to be determined by application of the principle of equidistance indicated in the preceding submission.

20 February 1968.

(signed) Bent JACOBSEN

Barrister at the Supreme Court of Denmark
Agent for the Government
of the Kingdom
of Denmark.

PART IV. ANNEXES TO THE COUNTER-MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF DENMARK

Annex 1

CONVENTION ON THE CONTINENTAL SHELF

The States Parties to this Convention
Have agreed as follows:—

Article 1

For the purpose of these articles, 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.

Article 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

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

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

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

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

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.

Article 8

This Convention shall, until 31 October 1958, be open for signature by all States Members of the United Nations or of any of the specialized agencies, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 9

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 10

This Convention shall be open for accession by any States belonging to any of the categories mentioned in article 8. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 11

1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 12

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1 to 3 inclusive.

2. Any Contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 13

1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 14

The Secretary-General of the United Nations shall inform all States Members of the United Nations and the other States referred to in article 8:

(a) Of signatures to this Convention and of the deposit of instruments of ratification or accession, in accordance with articles 8, 9 and 10.

(b) Of the date on which this Convention will come into force, in accordance with article 11.

(c) Of requests for revision in accordance with article 13.
(d) Of reservations to this Convention in accordance with article 12.

Article 15

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 8.

In witness whereof, the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have signed this Convention.

Done at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

Annex 2

SIGNATURES, RATIFICATIONS AND ACCESSIONS RELATING TO THE CONVENTION ON THE CONTINENTAL SHELF

	(a) Dates of signature	*(b)* Dates prior to the entry into force of the Convention on 10 June 1964 refer to the day of depositing the instruments of ratification or accession; dates after 10 June 1964 refer to the day when the Convention went into force for the said State.
Afghanistan	30.10 1958	
Albania		6.1 1965
Argentina	29.4 1958	
Australia	30.10 1958	14.5 1963
Bolivia	17.10 1958	
Bulgaria		31.8 1962
Byelorussian Soviet Socialist Republic	31.10 1958	27.2 1961
Cambodia		18.3 1960
Canada	29.4 1958	
Ceylon	30.10 1958	
Chile	31.10 1958	
China (Taiwan)	29.4 1958	
Colombia	29.4 1958	8.1 1962
Costa Rica	29.4 1958	
Cuba	29.4 1958	
Czechoslovakia	31.10 1958	31.8 1961
Denmark	29.4 1958	12.6 1963
Dominican Republic	29.4 1958	10.9 1964

	(a)	(b)
Ecuador	31.10 1958	
Federal Republic of Germany	30.10 1958	
Finland	27.10 1958	18.3 1965
France		14.7 1965
Ghana	29.4 1958	
Guatemala	29.4 1958	27.11 1961
Haiti	29.4 1958	29.3 1960
Iceland	29.4 1958	
Indonesia	8.5 1958	
Iran	28.5 1958	
Irish Republic	2.10 1958	
Israel	29.4 1958	6.9 1961
Jamaica		7.11 1965
Lebanon	29.5 1958	
Liberia	27.5 1958	
Madagascar		31.7 1962
Malawi		3.12 1965
Malaysia		21.12 1960
Malta		21.9 1964
Mexico		1.9 1966
Nepal	29.4 1958	
Netherlands	31.10 1958	20.3 1966
New Zealand	29.10 1958	17.2 1965
Pakistan	31.10 1958	
Panama	2.5 1958	
Peru	31.10 1958	
Poland	31.10 1958	29.6 1962
Portugal	28.10 1958	8.1 1963
Romania		12.12 1961
Senegal		25.4 1961

	(a)	*(b)*
Sierra Leone		25.12 1966
Sweden		1. 7 1966
Switzerland	22.10 1958	17. 6 1966
Thailand	29. 4 1958	
Tunisia	30.10 1958	
Uganda		14.10 1964
Ukranian Soviet Socialist Republic	31.10 1958	12. 1 1961
The Union of South Africa		9. 4 1963
Union of Soviet Socialist Republics	31.10 1958	22.11 1960
United Kingdom	9. 9 1958	11. 5 1964
United States of America	15. 9 1958	12. 4 1961
Uruguay	29. 4 1958	
Venezuela	30.10 1958	15. 8 1961
Yugoslavia	29. 4 1958	27. 2 1966

Annex 3

RESERVATIONS and DECLARATIONS RELATING TO THE CONVENTION ON THE CONTINENTAL SHELF AND OBJECTIONS TO RESERVATIONS AND DECLARATIONS

A. Reservations and Declarations in Connection with the Signing of the Convention

When signing the Convention on the Continental Shelf on 28 May 1958, 30 October 1958, and 30 October 1958, respectively, reservations were made by Iran and Venezuela while the Federal Republic of Germany made a declaration.

1. In the *Iranian* reservation it is stated: ". . . *Article 4*: With respect to the phrase 'the Coastal State may not impede the laying or maintenance of submarine cables or pipe-lines on the continental shelf', the Iranian Government reserves its right to allow or not to allow the laying or maintenance of submarine cables or pipe-lines on its continental shelf; *Article 6*: with respect to the phrase 'and unless another boundary line is justified by special circumstances' included in paragraphs 1 and 2 of this article, the Iranian Government accepts this phrase on the understanding that one method of determining the boundary line in special circumstances would be that of measurement from the high water mark."

2. *Venezuela*: ". . . declares with reference to Article 6 that there are special circumstances to be taken into consideration in the following areas: the Gulf of Paria, in so far as the boundary is not determined by existing agreements, and in zones adjacent thereto; the area between the coast of Venezuela and the island of Aruba; and the Gulf of Venezuela."

3. *The Federal Republic of Germany*: ". . . declares with reference to Article 5, paragraph 1, of the Convention on the Continental Shelf that in the opinion of the Federal Republic of Germany Article 5, paragraph 1, guarantees the exercise of fishing rights (Fischerei) in the waters above the continental shelf in the manner hitherto generally in practice."

B. Reservations and Declarations in Connection with Ratification of or Accession to the Convention

Upon ratification of or accession to the Convention on the Continental Shelf the Governments of Venezuela, France and Yugoslavia made reservations and/or declarations.

1. The instrument of ratification by the Government of *Venezuela* (deposited on 15 August 1961) stipulates that the ratification is subject to express reservation in respect of Article 6 of the said convention.

2. The instrument of accession by the Government of the *French Republic* (deposited on 14 June 1965) contains the following declarations and reservations:

A. Declarations:

(a) Re Article 1

In the view of the Government of the French Republic, the expression

"adjacent" areas implies a notion of geophysical, geological and geographical dependence which *ipso facto* rules out an unlimited extension of the continental shelf.

(b) Re Article 2 (paragraph 4)

The Government of the French Republic considers that the expression "living organisms belonging to sedentary species" must be interpreted as excluding crustaceans, with the exception of the species of crab termed "barnacle".

B. Reservations:

(a) Re Article 4

The Government of the French Republic accepts this Article only on condition that the coastal State claiming that the measures it intends to take are "reasonable" agrees that if their reasonableness is contested it shall be determined by arbitration.

(b) Re Article 5 (paragraph 1)

The Government of the French Republic accepts the provisions of Article 5, paragraph 1, with the following reservations:

(i) An essential element which should serve as the basis for appreciating any "interference" with the conservation of the living resources of the sea, resulting from the exploitation of the continental shelf, particularly in breeding areas for the maintenance of stocks, shall be the technical report of the international scientific bodies responsible for the conservation of the living resources of the sea in the areas specified respectively in Article 1 of the Convention for the Northwest Atlantic Fisheries of 8 February 1949 and Article 1 of the Convention for the North-east Atlantic Fisheries of 24 January 1959.

(ii) Any restrictions placed on the exercise of acquired fishing rights in waters above the continental shelf shall give rise to a right to compensation.

(iii) It must be possible to establish by means of arbitration, if the matter is contested, whether the exploration of the continental shelf and the exploitation of its natural resources result in an interference with the other activities protected by Article 5, paragraph 1, which is "unjustifiable."

(c) Re Article 6 (paragraphs 1 and 2)

In the absence of a specific agreement, the Government of the French Republic will not accept that any boundary of the continental shelf determined by application of the principle of equidistance shall be invoked against it:

if such boundary is calculated from baselines established after 29 April 1958;
if it extends beyond the 200-metre isobath;
if it lies in areas where, in the Government's opinion, there are "special circumstances" within the meaning of Article 6, paragraphs 1 and 2, that is to say: the Bay of Biscay, the Bay of Granville, and the sea areas of the straits of Dover and of the North Sea off the French coast".

3. In its instrument of ratification (deposited on 28 January 1966), the Government of *Yugoslavia* made the following reservation in respect of Article 6 of the said Convention: "In delimiting its continental shelf, Yugoslavia recognizes no 'special circumstances' which should influence that delimitation."

C. Objections to Reservations and Declarations

A number of Governments have declared that they do not find acceptable some of the reservations and/or declarations made by certain Governments with respect to the Convention on the Continental Shelf.

1. In a letter dated 19 September 1962, the Permanent Representative of the *United States of America* to the United Nations has informed the Secretary-General of the United Nations that the United States does not find the following reservations acceptable:

"(1) The reservation made by the Iranian Government to Article 4.
(2) The reservation made by the Federal Republic of Germany to Article 5, paragraph 1."

2. The Government of the *French Republic* in its instrument of accession (supra B, 2) declared: "The Government of the French Republic does not accept the reservation made by the Government of Iran with respect to Article 4 of the Convention."

3. In a letter dated 9 September 1965 to the Secretary-General of the United Nations the Permanent Representative of the *United States of America* to the United Nations declared with regard to the French instrument of accession: ". . . The Government of the United States of America does not find acceptable the reservations to Articles 4, 5 and 6. The declarations by France with respect to Articles 1 and 2 are noted without prejudice."

4. In a letter dated 29 September 1965 to the Secretary-General of the United Nations the Permanent Representative of *Yugoslavia* to the United Nations declared: ". . . The Government of Yugoslavia does not accept the reservation made by the Government of the French Republic with respect to Article 6 of the Convention on the Continental Shelf, Geneva, 1958."

5. In a letter received on 14 January 1966, the Deputy Permanent Representative of *the United Kingdom of Great Britain and Northern Ireland* to the United Nations communicated to the Secretary-General of the United Nations the following observations of the Government of the United Kingdom on the declarations and reservations contained in the French instrument of accession:

Re Article 1

The Government of the United Kingdom take note of the declaration made by the Government of the French Republic and reserve their position concerning it.

Re Article 2 (paragraph 4)

This declaration does not call for any observations on the part of the Government of the United Kingdom.

Re Article 4

The Government of the United Kingdom and the Government of the French Republic are both parties to the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes done at Geneva on 29 April 1958. The Government of the United Kingdom assume that the declaration made by the Government of the French Republic is not intended to derogate from the rights and obligations of the parties to the Optional Protocol.

Re Article 5 (paragraph 1)

Reservation (i) does not call for any observations on the part of the Government of the United Kingdom.

The Government of the United Kingdom are unable to accept reservation (ii).

The Government of the United Kingdom are prepared to accept reservation (iii) on the understanding that it is not intended to derogate from the rights and obligations of parties to the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes.

Re Article 6 (paragraphs 1 and 2)

The Government of the United Kingdom are unable to accept the reservations made by the Government of the French Republic.

6. On depositing its instrument of ratification on 18 February 1966 the Government of the *Kingdom of the Netherlands* declared that they "do not find acceptable—

the reservations made by the Iranian Government to Article 4;
the reservations made by the Government of the French Republic to Articles 5, paragraph 1, and 6, paragraphs 1 and 2".

And that—

"the Government of the Kingdom of the Netherlands reserve all rights regarding the reservations in respect of Article 6 made by the Government of Venezuela when ratifying the present Convention."

Annex 4

CONVENTION ON THE TERRITORIAL SEA
AND THE CONTIGUOUS ZONE
OF 29 APRIL 1958

Part I

TERRITORIAL SEA

. . . . . .

Article 12

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

. . . . . .

Part II

CONTIGUOUS ZONE

Article 24

1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(b) punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

3. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the two States is measured.

Annex 5

CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS OF 29 APRIL 1958

Article 7

1. Having regard to the provisions of paragraph 1 of Article 6, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) that there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) that the measures adopted are based on appropriate scientific findings;

(c) that such measures do not discriminate in form or in fact against foreign fishermen.

3. These measures shall remain in force pending the settlement, in accordance with the relevant provisions of this Convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by Article 9. Subject to paragraph 2 of Article 10, the measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in Article 12 of the Convention on the Territorial Sea and the Contiguous Zone shall be adopted when coasts of different States are involved.

Annex 6

THE EUROPEAN FISHERIES CONVENTION,
LONDON, 9 MARCH 1964

Article 7

Where the coasts of two Contracting Parties are opposite or adjacent to each other, neither of these Contracting Parties is entitled, failing agreement between them to the contrary, to establish a fisheries régime beyond the median line, every point of which is equidistant from the nearest points on the low water lines of the coasts of the Contracting Parties concerned.

Annex 7

MEMORANDUM

SUMMARY OF EXPLORATION ACTIVITY IN DENMARK AND THE DANISH NORTH SEA CONTINENTAL SHELF

By Th. Sorgenfrei, D.Sc.,
Professor at the Technical University of Denmark,
Adviser to the Danish Concessionaire.

The search for hydrocarbons in Denmark and the Danish North Sea continental shelf has been pursued in accordance with advanced exploration practice.

Work started on land in 1935 and in the North Sea continental shelf in 1963. It included mapping of the subsurface by means of gravity, magnetic, and seismic surveys, and subsequent drilling of wells. From 1935 until now (November 1967) a total of 35 wells have been completed in the land area, and two wells have been completed in the Danish North Sea continental shelf.

Important geological knowledge was gained during the subsurface mapping and the drilling operations.

One of the most outstanding regional structures discovered during the exploration campaign is a subsurface ridge extending from the land area of Denmark about 220 kms. out into the Danish North Sea continental shelf. This ridge is called the Fyn-Grindsted High. Drilling on land proved that it consists of shallow crystalline rocks like granite and gneiss. The ridge is, therefore, considered devoid of hydrocarbon prospects of importance, and the Fyn-Grindsted High consequently reduces the prospective area of Denmark and the Danish North Sea continental shelf considerably.

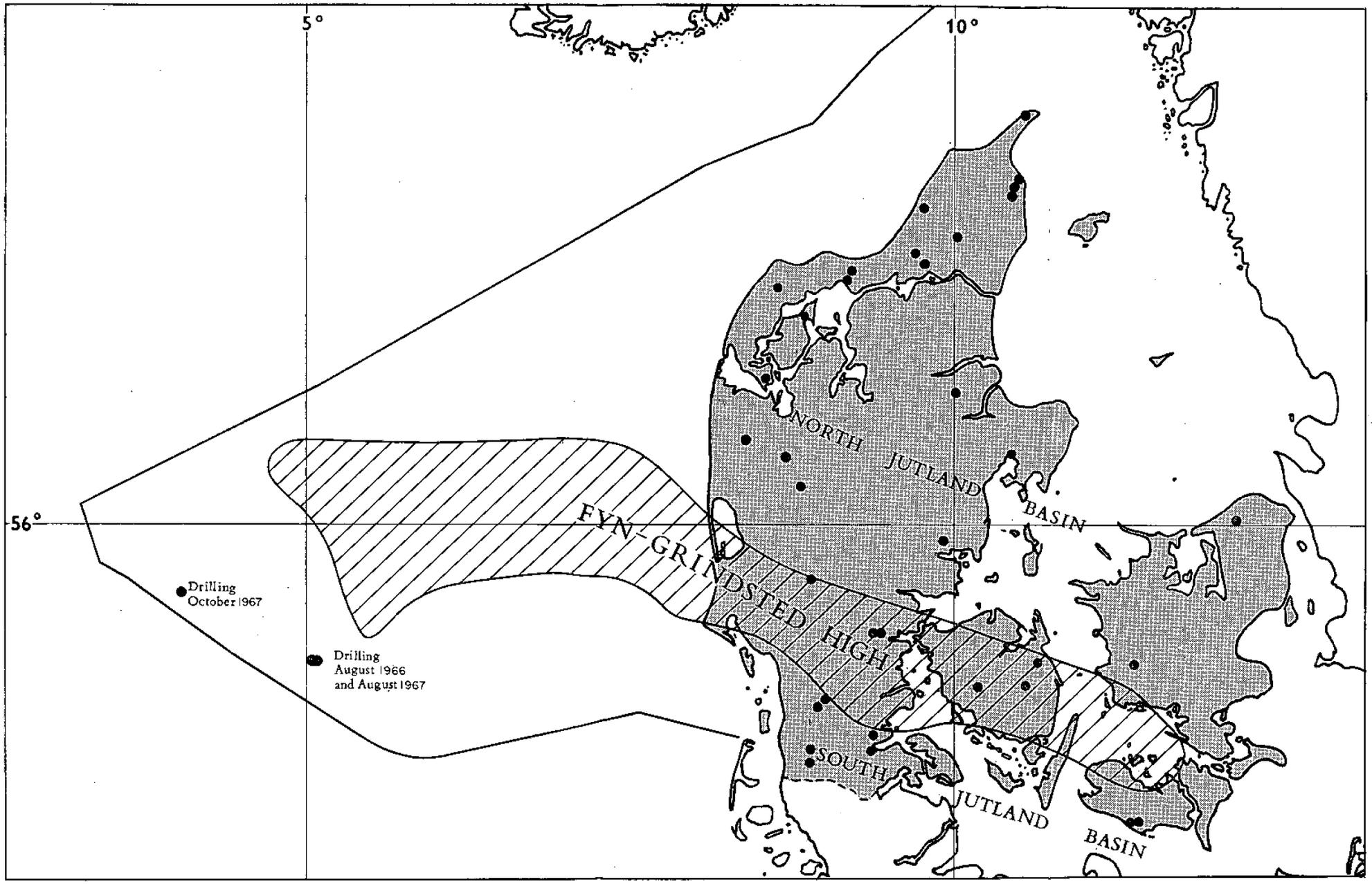
The extension of the High is shown on the accompanying map[1] which also includes the well locations. It appears from the map that 6 of the wells were drilled on the Fyn-Grindsted High, 8 wells were drilled south of the High in the so-called South Jutland Basin, while 21 wells were drilled north of the High in the North Jutland Basin. None of these 35 wells drilled on land encountered commercial deposits of hydrocarbons.

The wells on the High were carried out at times when the nature and the limits of this structure were rather unknown. Later wells were all drilled away from the High.

This was also the case with the two wells completed in the Danish North Sea continental shelf area since 1966. The wells were drilled west of the Fyn-Grindsted High in an area which, from a scientific point of view, seemed to be the most promising. Both wells have established the presence of oil and gas deposits. The position of the wells appears from the accompanying map.

Drilling of a third well in the same general area started in October 1967 to the north west of the first two wells. This well which is still drilling (November 1967) is also shown on the map.

[1] See pocket inside back cover,



Map Accompanying Annex 7 to The Danish Counter-Memorial

Annex 8

NOTE VERBALE OF 13 MAY 1952 FROM THE DANISH GOVERNMENT TO THE SECRETARIAT OF THE UNITED NATIONS REGARDING DANISH COMMENTS TO THE DRAFT ARTICLES ON THE CONTINENTAL SHELF PREPARED BY THE INTERNATIONAL LAW COMMISSION IN 1951

(*Yearbook of the International Law Commission*, 1953, Vol. II,' pp. 245-247)

4. DENMARK

Communication from the permanent delegation of Denmark to the United Nations

NOTE: By a *note verbale* to the Secretariat, dated 13 May 1952, the Permanent Delegation of Denmark to the United Nations transmitted the following "comments and viewpoints of Danish experts". The *note verbale* stated that "the Danish Government wishes to reserve its final position, until it has been given the opportunity to review the points of view of other countries as well as the formulation of the final result of the existing international co-operation in this matter".

The draft is considered a proper basis for negotiations on this subject. It is considered particularly valuable that it has succeeded in obviating the difficulties involved by the controversial question of the extent of territorial waters. By refraining from fixing any definite geographical limit to the extent of the shelf into the sea, differences of opinion have been precluded on that point. The avoidance of any reference to sovereignty in the established sense of the word is another useful aspect of the draft which refers only to an exclusive right to exploration and exploitation without involving, for instance, the question of the status of such areas during conditions of war and neutrality. The Danish authorities would find it appropriate that the right of the coastal State as set out in part I, article 2, be expressly characterized as an exclusive right since that would preclude any idea of expansion of the territory of the State concerned.

The media through which the draft thus reaches a practicable arrangement cannot, however, be considered a final solution to the problems as far as Denmark is concerned. In the Baltic, where there is no deep sea, the system outlined in the draft will necessitate agreements with the other Baltic Powers, and such agreements are likely to encounter difficulties and may perhaps prove impracticable. On the west coast of Denmark, the application of the principle of control and jurisdiction as far as possibilities of exploitation exist might also lead to conflicts of interest with other countries.

The draft, therefore, gives occasion for certain comments involving questions of principle as well as various individual aspects:

For the special conditions existing off the Danish coasts, part I, article 7, prescribes that two or more States to whose territories the same continental shelf is contiguous shall establish boundaries by agreement; failing agreement, the parties are under obligation to have boundaries fixed by arbitration, involving—according to the commentaries—a possible recourse to the International Court of Justice.

This alternative, however, is not practicable in all cases. In the first place, not all States would be willing to abide by a solution of that nature; more

particularly, some of the countries which would be involved by the areas in question are known to be opposed thereto as a matter of principle. But even when the question is to be referred to arbitration or to a court, a solution would seem unlikely, unless the treaty itself already contained certain directives or guiding principles, since these problems involve entirely new aspects which can hardly be decided according to existing legal or political principles. In this connexion, the commentaries admittedly refer to a decision *ex aequo et bono* by which the court may, to some extent, disregard existing law or the fact that the existing law contains no definite rules or guiding principles. Nevertheless, this expression has certain bearings upon a legal or a general moral evaluation, but provides no guidance for decision of entirely new technical problems or political pretentions.

Hence, the Danish authorities would find it desirable that the treaty itself should provide for a body composed of experts which could submit proposals for such delimitations, possibly with some form of appeal or recourse to arbitration or to a court. This body might consist of, for instance, three non-partisan expert members, one appointed by the Security Council of the United Nations, one by the General Assembly, and one by the President of the International Court of Justice.

The decisions of this body should be reached on the bases of directives laid down in the treaty. Should a State interested in the decision find that such directives had not been complied with, or that the decision was otherwise unreasonable, it should be entitled to refer that question to a court of arbitration established by the parties or, failing this, to the International Court of Justice which should have authority to decide the aspects specifically mentioned in the treaty, and possibly to refer the matter back to the expert body for reconsideration if the circumstances were found to warrant such action.

In regard to the directives mentioned above, the commentaries already refer to the median line, and where this line is applicable, such reference is fully approved by Denmark. Cases may occur, however, where a median line is not directly applicable, for instance, because the interests in the exploitation of the shelf are more or less at right angles to each other; in such cases reference could be made to a solution according to the bisector.

Furthermore, it is felt desirable that the points of view referred to on page 71 of the rapporteur's second report were expressly incorporated into the treaty, namely, the reference to a line perpendicular to the coast drawn from the point at which the frontier between the territorial waters of the two countries reaches the high seas. If such a boundary between the two territorial waters of two countries has previously been fixed according to a line of demarcation which can be prolonged towards the high seas, such prolongation should be indicated as the starting point for the line of demarcation also on the continental shelf.

However, in some cases an area may have to be divided between three or more countries. In such cases reference may be made to planes forming the locus to the points which are closer to one of the countries than to any of the others.

Such directives or guiding principles would establish a basis for a solution in cases where agreement among the interested countries could not be reached, while the absence of such principles may entail differences of opinion and disputes which the draft intends to obviate.

Having regard to the basic principles of the draft in connexion with the above comments, the Danish authorities have prepared the enclosed sketch[21] of a

[21] Not reproduced

division of the shelf contiguous to the Danish coasts facing the North Sea and the Baltic and the waters between them. This sketch is primarily based on the boundaries fixed on 3 September 1921 between Danish and German territorial waters east and west of Jutland, and the boundary fixed by agreement of 30 January 1932 between Danish and Swedish waters in the Sound and the prolongation of these lines combined with the median line, where the latter is applicable, and otherwise based on planes forming the locus of points closer to Denmark than to any other country involved. The sketch might serve as an illustration of a division under concrete conditions calling for special solution; the principles outlined may also be applicable to analogous cases in other geographical areas.

Concerning the actual exploitation of the sea-bed and the subsoil, part I, article 5, expressly states that the new arrangement shall not prevent the laying and maintenance of submarine cables by other States. It is assumed that this provision refers to cables not only for telecommunication but also for transmission of power and the like. The Danish authorities are in full agreement with this provision. With the present formulation it may be doubtful, however, which of the two interests shall be overriding or, in other words, whether a State may be required to move the cable or, vice versa, whether a cable can be laid even where this is at variance with an exploitation intended by the coastal State. It would seem natural here to distinguish between cables already existing, in which case a removal, if any, should probably entail a compensation for the expenses incidental to such removal, and to the laying of new cables which should be effected in such a way as not to interfere with steps for exploitation of the sea-bed already taken by the coastal State. Also where other installations are involved which have already been placed by other States, for instance, the mooring of lightships and the like, some regard should be had to arrangements existing already.

On the other hand, the commentaries indicate that this provision shall not be extended to pipelines, which is probably intended to mean the laying of new pipelines. However, other types of installations may be placed on the sea-bed and, in the view of the Danish authorities, it would therefore be desirable to have it expressly established that the exclusive right recognized for the coastal State (see the remarks to part A, article 2 above) shall cover any other exploitation of the sea-bed and the subsoil, with submarine cables as the only exception, for instance the right to cultivation (algae and other marine plants), establishment and maintenance of permanent installations for exploitation of the sea-bed, including the fixing of permanent stakes and other fishing devices, stone-gathering and pearl-fishing on the sea-bed, etc., so that other States could not in any case, apart from submarine cables, use the sea-bed or the subsoil without the consent of the coastal State, with the explicit recognition that the exclusive right comprises all such forms of exploitation.

With respect to part II, articles 1 and 2, the following comments may be made:

The Danish authorities take a favourable view of the efforts expressed in these articles to provide possibilities for the conservation and control of fishing on the high seas in such geographical areas where adequate preservation and control have not been established already. Moreover, it is acknowledged that, in areas where only few countries take part in fishing, such countries have a primary interest in the enforcement of provisions of this nature. It is felt, however, that such States should not be in a position where they could use the initiative that would have to be left to them for these purposes to establish priority for their own fishermen to the exclusion of fishermen from other coun-

tries who might later wish to take part in such fishing activities. Such priority would, in fact, be feasible even if the arrangement formally placed all countries taking part in such fishing on an equal footing, if for instance the permissible fishing methods did not have the same value to fishermen of other countries—or could not be used at all. (In this connexion, reference is made to the procedures which in some cases have rendered illusory the application of the most-favoured-nation clause). Hence, it would be essential to clarify the issue as to when and under what conditions any countries arriving later should be entitled to participation in the establishment of new regulations in order that, if agreement cannot be reached, such countries should not have to be governed by previously adopted provisions for an indefinite period. It is therefore suggested that procedures should be established for application if provisions for preservation and control have already been adopted by a certain number of countries for a geographical area in which other countries later wish to take part in the fishing activities and consider the provisions already established to be at variance with their interests, or consider the control applied to be inadequate.

In regard to the international body referred to in article 2, the Danish authorities wish to point out that it has been charged with two different tasks, viz., to make regulations where interested States are unable to agree among themselves, and to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them.

In the former respect it is pointed out that Denmark is in agreement with the principle of an international regulation of fisheries in cases of disagreement among the interested parties, but a final attitude to the draft proposal cannot be decided upon until the composition and organization of the proposed body is known in greater detail. It should be noted, however, that such regulation could, to a large extent, probably be undertaken by existing international agencies such as the International Council for the Exploration of the Sea.

In regard to the function of the body referred to in article 2, in respect of investigations, it should also be noted that in the opinion of the Danish authorities the existing international bodies, such as the International Council for the Exploration of the Sea, have functioned satisfactorily and that their activities have provided valuable experience and practical working methods; hence, it would not be desirable at the present time to replace existing bodies by one single international body. The Danish authorities therefore propose that the body referred to in article 2 should conduct its investigations in consultation with the existing international bodies and in geographical areas where such investigations are not already being carried out by existing international bodies.

In regard to part II, article 3, the Danish authorities refer to their comments on part II, article 1, and point out that it would be natural for coastal States to have an exclusive right to place permanent installations for sedentary fisheries in that part of the high seas that is contiguous to the territorial waters of such State, analogous to the exclusive right of coastal States to place installations for exploitation of the coastal State's part of the continental shelf as stated above. It would also be desirable to ensure free navigation by adding a provision to the effect that sedentary fisheries must not result in substantial interference with navigation, cfr. a similar provision in part I, article 6, concerning the exploration and exploitation of the continental shelf.

The commentaries of the International Law Commission define sedentary fisheries as fishing activities carried out by means of stakes embedded in the sea-floor. Such stakes, it is presumed, are placed during the fishing season and then removed, whereas the establishment of permanent installations, as already mentioned, should be reserved for the coastal State. Sedentary fisheries,

it is noted, can be undertaken also by devices other than stakes, e.g., buoys and anchors.

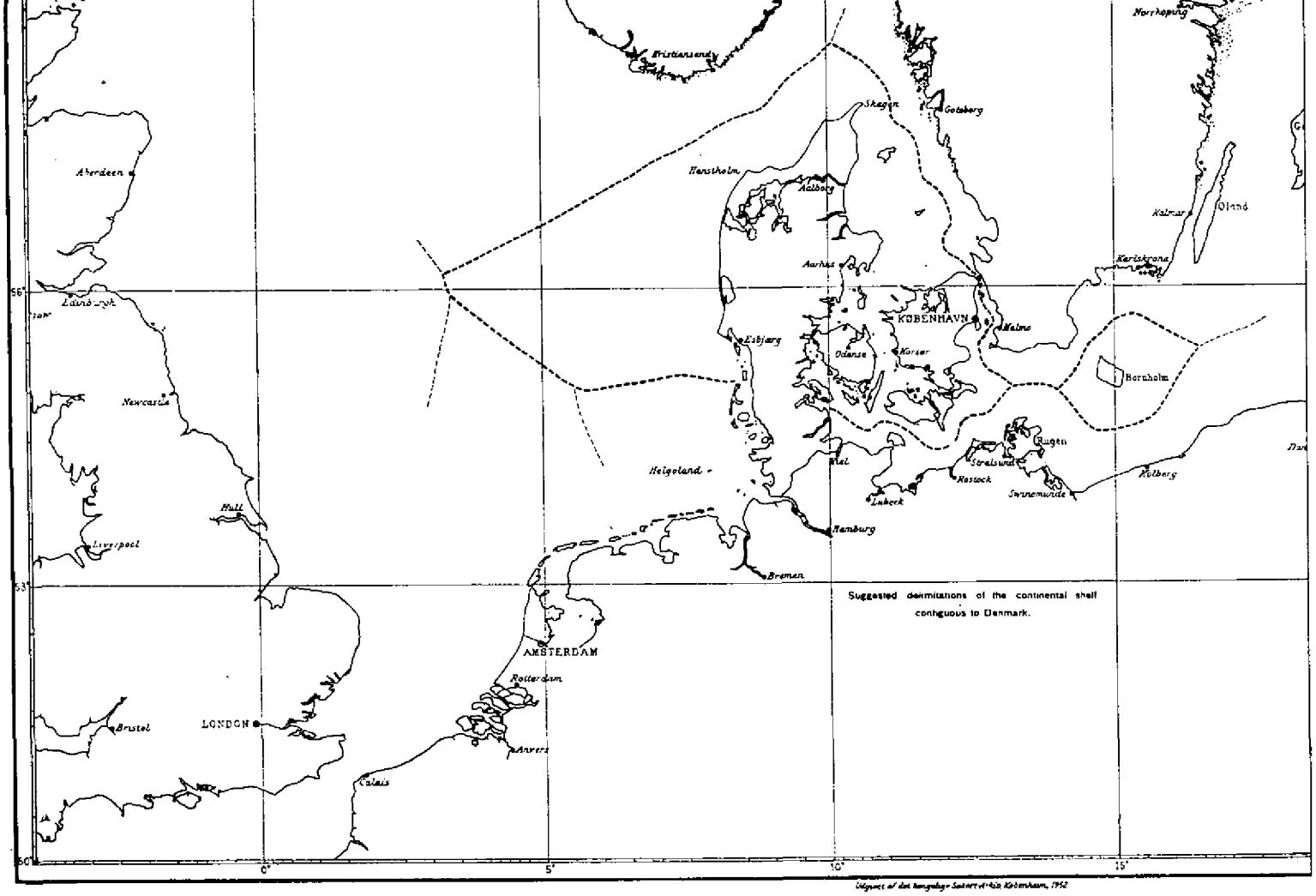
The following comments refer to part II, article 4 of the draft proposal:

The Danish authorities appreciate the potential need for establishment of contiguous zones adjacent to territorial waters where a coastal State may exercise the control necessary to prevent the infringement, within its territory, of customs, fiscal or sanitary regulations. The limit of twelve miles from the coast fixed for such zones is also acceptable to the Danish authorities.

It has been noted with satisfaction that no extension of territorial waters is involved.

Some concern is felt, however, about the absence of a specific definition of the nature of the control in question, since this may lead to abuse by the institution of meticulous control measures on navigation and fisheries where such control is not required to prevent infringement of customs, fiscal and sanitary regulations. Abuses of this type might, in point of fact, be tantamount to an expansion of territorial waters.

The Danish authorities feel, therefore, that contiguous zones should not be established unilaterally by a coastal State, but only by treaties between the interested States.


Aberdeen
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Rostock
Stralsund
Rügen
Swinemünde
Kolberg
Bornholm
Esbjerg
Odense
Korsør
KØBENHAVN
Malmø
Aarhus
Hanstholm
Aalborg
Skagen
Göteborg
Kristiansand
Karlskrona
Kalmar
Öland
Norrköping
56°
53°
0°
5°
10°
15°
Suggested delimitations of the continental shelf contiguous to Denmark.
Udgivet af det kongelige Søkort-Arkiv København, 1952

Annex 9

Annex 10

PROMULGATION OF THE PROCLAMATION OF THE FEDERAL GOVERNMENT CONCERNING THE EXPLORATION AND EXPLOITATION OF THE GERMAN CONTINENTAL SHELF OF 22 JANUARY 1964

Bundesgesetzblatt, Jahrgang 1964, Teil II

Bekanntmachung der Proklamation der Bundesregierung über die Erforschung und Ausbeutung des deutschen Festlandsockels

Vom 22. Januar 1964

Die von der Bundesregierung am 20. Januar 1964 beschlossene Proklamation über die Erforschung und Ausbeutung des deutschen Festlandsockels wird hiermit bekanntgemacht.

Bonn, den 22. Januar 1964

Der Bundesminister des Auswärtigen
In Vertretung
Carstens

Proklamation der Bundesregierung

Die Genfer Konvention über den Festlandsockel vom 29. April 1958 ist am 30. Oktober 1958 von der Bundesrepublik Deutschland und darüber hinaus von 45 weiteren Staaten unterzeichnet worden. Sie ist inzwischen bereits von 21 Staaten ratifiziert oder durch Beitritt angenommen worden und wird nach ihrem Artikel 11 Abs. 1 in Kraft treten, sobald ein weiterer Staat die 22. Ratifikationsurkunde hinterlegt hat. Die Bundesregierung wird den gesetzgebenden Körperschaften in Kürze den Entwurf eines Zustimmungsgesetzes zu dieser Konvention vorlegen, um die verfassungsrechtliche Grundlage für die Ratifikation durch die Bundesrepublik Deutschland zu schaffen.

Um Rechtsunklarheiten zu beseitigen, die sich in der gegenwärtigen Situation bis zum Inkrafttreten der Genfer Konvention über den Festlandsockel und bis zu ihrer Ratifikation durch die Bundesrepublik Deutschland ergeben könnten, hält es die Bundesregierung für erforderlich, schon jetzt folgendes festzustellen:

1. Die Bundesregierung sieht auf Grund der Entwicklung des allgemeinen Völkerrechts wie es in der neueren Staatenpraxis und insbesondere in der Unterzeichnung der Genfer Konvention über den Festlandsockel zum Ausdruck kommt, die Erforschung und Ausbeutung der Naturschätze des Meeresgrundes und des Meeresuntergrundes der an die deutschen Meeresküsten grenzenden Unterwasserzone außerhalb des deutschen Küstenmeeres bis zu einer Tiefe von 200 m und — soweit die Tiefe des darüber befindlichen Wasser die Ausbeutung der Naturschätze gestattet — auch hierüber hinaus als ein ausschließliches Hoheitsrecht der Bundesrepublik Deutschland an. Im einzelnen bleibt die Abgrenzung des deutschen Festlandsockels gegenüber dem Festlandsockel auswärtiger Staaten Vereinbarungen mit diesen Staaten vorbehalten.
2. Die Bundesregierung sieht alle Handlungen, die im Bereich des deutschen Festlandsockels zur Erforschung und Ausbeutung seiner Naturschätze ohne

ausdrückliche Zustimmung der zuständigen deutschen Behörden vorgenommen werden sollten, als unzulässig an. Sie wird gegen solche Handlungen erforderlichenfalls geeignete Maßnahmen ergreifen.

Bonn, den 20. Januar 1964

ERHARD SCHRÖDER

Annex 10 A

(Translation)

Federal Law Gazette, Year 1964, Part II (p. 104)

The Proclamation of the Federal Government adopted on 20 January 1964 concerning the exploration and exploitation of the German continental shelf is hereby promulgated.
Bonn, 22 January 1964

The Federal Minister of Foreign Affairs
By order
Carstens

Proclamation of the Federal Government

The Geneva Convention on the Continental Shelf of 29 April 1958, was signed by the Federal Republic of Germany on 30 October 1958, and has furthermore been signed by 45 other States. In the meantime it has been ratified or approved through accession by 21 States, and under subarticle (1) of Article eleven it will come into operation as soon as one additional State has deposited the twenty-second Instrument of Ratification. The Federal Government will shortly submit to the Legislature an Accession Bill on this Convention in order to create a constitutional basis for ratification by the Federal Republic of Germany.

In order to eliminate legal uncertainties that might arise during the present situation until the Geneva Convention on the Continental Shelf comes into operation and is ratified by the Federal Republic of Germany, the Federal Government deems it desirable already now to make the following statement:

1. In view of the development of general international law as expressed in recent State practice and in particular in the signing of the Geneva Convention on the Continental Shelf, the Federal Government regards the exploration and exploitation of the natural resources of the seabed and subsoil of the submarine areas adjacent to the German coast but outside the territorial sea down to a depth of 200 metres, and, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources, as the exclusive sovereign right of the Federal Republic of Germany. The detailed delimitation of the German continental shelf vis-à-vis the continental shelves of other States will remain the subject of international agreements with those States.
2. The Federal Government regards all acts performed within the area of the German continental shelf for the exploration and exploitation of its natural resources without the express permission of the competent German authorities as inadmissible. It will take appropriate measures against such acts whenever necessary.

Bonn, 20 January 1964
ERHARD/SCHRÖDER

Annex 11

EXPO DES MOTIFS OF THE GERMAN BILL FOR THE PROVISIONAL DETERMINATION OF RIGHTS OVER THE CONTINENTAL SHELF (15 MAY 1964)

Begründung

1. Allgemeines

1.

Der Entwurf will für die Erforschung und Ausbeutung der den deutschen Meeresküsten vorgelagerten Teile des sog. Festlandsockels, d. h. des Meeresuntergrundes außerhalb der Hoheitsgewässer, erstmalig eine gesetzliche Regelung schaffen.

Ein Bedürfnis hierfür hat sich aus der Proklamation der Bundesregierung vom 20. Januar 1964 (Bundesgesetzbl. II S. 104) ergeben. Die im Entwurf vorgesehene Regelung ist die innerstaatliche Ergänzung der auf völkerrechtlichem Gebiet liegenden Auswirkungen der Proklamation. Lange Zeit hindurch war in der völkerrechtlichen Lehre und Praxis die Möglichkeit des Erwerbs von Sonderrechten einzelner Staaten an den ihrer Küste vorgelagerten Teilen des Festlandsockels verneint worden. In den letzten Jahren setzte sich die gegenteilige Auffassung durch, daß die Gewinnung und Aneignung der Schätze des Meeresuntergrundes nicht frei, vielmehr den Küstenstaaten vorbehalten seien. Als sichtbarer Ausdruck dieser Wandlung kann namentlich die auf der Genfer Seerechtskonferenz zustande gekommene Konvention über den Festlandsockel vom 29. April 1958 (abgedruckt in Archiv des Völkerrechts Bd. 7 (1958/59) S. 325 ff.) gewertet werden, die neben 45 anderen Staaten auch von der Bundesrepublik Deutschland unterzeichnet und in der Zwischenzeit von 21 dieser Staaten ratifiziert worden ist. Nach ihrem Artikel 11 wird diese Konvention bereits mit der Hinterlegung der nächsten Ratifikationsurkunde in Kraft treten. Es kann angesichts dessen davon ausgegangen werden, daß der Bundesrepublik spätestens seit der ohne Widerspruch gebliebenen Proklamation der Bundesregierung vom 20. Januar 1964 im Bereich des deutschen Festlandsockels Hoheitsrechte zustehen, die sich inhaltlich mit den in der Genfer Konvention zugunsten der Küstenstaaten festgelegten Rechten decken.

Nach Artikel 2 der Genfer Konvention übt der Küstenstaat „für die Erforschung des Festlandsockels und für die Ausbeutung seiner Naturschätze Hoheitsreichte" über diesen Teil des Meeresuntergrundes aus. Festlandsockel ist dabei „der Meeresgrund und der Meeresuntergrund der an die Küste grenzenden Unterwasserzonen außerhalb des Küstenmeeres bis zu einer Tiefe von 200 m oder darüber hinaus, soweit die Tiefe des darüber befindlichen Wassers die Ausbeutung der Naturschätze dieser Zone" gestattet. Ohne ausdrückliche Zustimmung des Küstenstaates darf niemand den Fetlandsockel erforschen oder seine Naturschätze ausbeuten. Der Küstenstaat hat andererseits dafür zu sorgen, daß durch die Ausübung seiner Rechte Schiffahrt und Fischfang nicht unbillig behindert oder gefährdet werden. Im übrigen sind jedoch die über dem Festlandsockel befindlichen Gewässer weiterhin Hohe See, und ebensowenig werden die bisherigen Rechtsverhältnisse im Luftraum über diesen Gewässern von der Anerkennung der bezeichneten Rechte der Küstenstaaten berührt.

2.

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Annex 11 A

(Translation)

Exposé des Motifs

1. General

1

The aim of this Bill is to provide, for the first time, statutory rules for the exploration and exploitation of those parts of the continental shelf which are adjacent to the German coast, i.e. the seabed outside the territorial sea.

A need for such rules has arisen out of the Federal Government's Proclamation of 20 January 1964 (*Bundesgesetzbl.* II, p. 104). The rules provided for in this Bill are to be the municipal supplement to the effects of the Proclamation in the field of international law. Theory and practice of international law have long denied the possibility for coastal States to acquire special rights over those parts of the continental shelf which are adjacent to their coasts. In recent years, the opposite view has come to prevail, namely that the exploitation and appropriation of the resources of the subsoil are not free but reserved for the coastal States. This change is manifest especially in the Convention on the Continental Shelf of 29 April 1958, adopted at the Geneva Conference on the Law of the Sea (reproduced in *Archiv des Völkerrechts*, vol. 7, 1958/59, pp. 325 *et seq.*). This Convention, signed by the Federal Republic of Germany and 45 other States, has now been ratified by 21 of those States. In pursuance of Article 11 of the Convention the latter will enter into force when the next instrument of ratification is deposited.

In the light hereof, it may be assumed that at least from the time of the Federal Government's Proclamation of 20 January 1964, against which no objection has been raised, the Federal Republic holds sovereign rights over the German continental shelf, and that the contents of these rights conform to those established for coastal States by the Geneva Convention.

According to Article 2 of the Geneva Convention the coastal State exercises "over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources" over that part of the seabed. For this purpose, seabed is to be understood as "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas". Without the express consent of the coastal State no one is allowed to explore the continental shelf or exploit its natural resources. The coastal State, on the other hand, must ensure that the exercise of its rights shall not unjustifiably impede or jeopardize navigation and fishing. Moreover, the sea above the continental shelf remains part of the high seas, and the previous legal position of the airspace above that sea shall not be affected by the recognition of the above-mentioned rights of the coastal States either.

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Annex 12

REPORT OF THE COMMITTEE OF EXPERTS TO THE [INTERNATIONAL LAW COMMISSION OF 18 MAY] 1953

(*Yearbook of the International Law Commission*, 1953, Vol. II, pp. 77-79)

Rapport du Comité d'experts sur certaines questions d'ordre technique concernant la mer territoriale

Se rendant à une invitation du professeur J. P. A. François, rapporteur spécial de la Commission du droit international pour le régime de la mer territoriale, les experts suivants se sont réunis à titre personnel dans le Palais de la Paix à La Haye du 14 au 16 avril 1953 pour examiner certaines questions d'ordre technique soulevées pendant les discussions de la Commission:

Professeur L. E. G. Asplund (Département de cartographie, Stockholm);

M. S. Whittemore Boggs (*Special Adviser on Geography*, Department of State, Washington [D. C.]);

M. P. R. V. Couillault (ingénieur en chef du Service central hydrographique, Paris);

Commander R. H. Kennedy, O.B.E., R.N. (Retd.) (Hydrographic Department, Admiralty, Londres) accompagné de M. R. C. Shawyer (*Administrative Officer*, Admiralty, Londres);

M. le vice-amiral A. S. Pinke (retraité) (Marine royale néerlandaise, La Haye).

Le Comité d'experts fut présidé par le rapporteur spécial, et le rapport fut rédigé par M. C. W. van Santen, conseiller juridique adjoint du Ministère royal néerlandais des affaires étrangères, secrétaire du Comité.

Un questionnaire dressé par le rapporteur spécial fut soumis aux experts. Les questions ainsi que les réponses des experts sont données dans les pages suivantes.

Il convient de remarquer que ces réponses ont été formulées en tenant compte du point de vue technique et en vue d'être interprétées facilement par les navigateurs.

I

Si l'on accepte le principe que la mer territoriale soit mesurée à partir de la laisse de basse mer, quelle sera alors la ligne qui serait de préférence adoptée comme telle?

1. Sauf dans les cas où d'autres dispositions seront prévues, la ligne de base, à partir de laquelle est mesurée la mer territoriale, devrait être la laisse de basse mer (longeant la côte) ainsi qu'elle se trouve indiquée sur les cartes à grande échelle en service, reconnues officiellement par l'Etat côtier. Si des cartes détaillées, indiquant la laisse de basse mer, n'existent pas, c'est la ligne côtière (ligne de marée haute) qui devrait servir de ligne de départ.

2. La Commission n'a pas estimé qu'il y avait lieu de craindre que l'omission des dispositions arrêtées par la Conférence de 1930, concernant les indications spéciales en cette matière, ne soit de nature à inciter les gouvernements à déplacer les laisses de basse mer sur leurs cartes de façon exagérée.

3. Toutefois, le Comité a ajouté la restriction qu'on ne devrait pas tenir compte des rochers ou fonds affleurants au niveau de réduction des sondes, choisi pour la carte *(rocks awash)*.

4. Si des rochers ou fonds, couvrants et découvrants, se trouvent dans la mer territoriale, ils peuvent être pris comme points de départ pour mesurer la mer territoriale. En pareil cas, ils formeront un saillant dans le tracé de la limite extérieure de la mer territoriale.

5. En ce qui concerne les bancs de coraux, on considérera le rebord de ces bancs, indiqué sur ces cartes, comme la laisse de basse mer pour tracer la limite de la mer territoriale.

II

Si l'on accepte le système de la laisse de basse mer comme règle générale pour tracer la limite extérieure de la mer territoriale, tandis que dans les baies une ligne droite à travers la baie doit circonscrire « les eaux intérieures», quelles sont les observations d'ordre technique sur les questions suivantes:

A. La distinction entre une baie et toute autre échancrure?

B. L'établissement d'un rapport entre la longueur maximum (B milles) de la ligne droite susmentionnée et l'étendue de la mer territoriale?

C. Les points entre lesquels ladite ligne droite devrait être tirée?

D. La direction à donner à cette ligne, ou les points entre lesquels cette ligne doit être tirée, au cas où plusieurs lignes de B milles peuvent être tracées?

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ad. A.

1. Une baie est une baie *juridique* lorsque sa superficie est égale ou supérieure à la superficie du demi-cercle ayant comme diamètre la ligne tirée entre les points limitant l'entrée de la baie. (Sont exceptées les baies historiques, ainsi libellées sur les cartes.)

2. Si la baie a plus d'une entrée — voir paragraphe B — le demi-cercle devra être tracé en prenant comme diamètre la somme des lignes fermant toutes ces entrées.

3. Si des îles existent dans une baie, leurs superficies seront comprises dans la superficie totale de la baie.

ad. B.

1. La ligne délimitant l'entrée d'une baie (au sens juridique) ne devrait pas dépasser 10 milles en largeur (deux fois l'horizon visuel par un temps clair pour un observateur situé sur une passerelle à une hauteur de 5 mètres). Dans les cas de grand marnage, la laisse de basse mer sera considérée comme ligne côtière pour calculer la ligne d'entrée.

2. Si par suite de la présence d'îles une baie comporte plusieurs entrées, des lignes de démarcation peuvent être tracées fermant ces ouvertures, pourvu qu'aucune d'elles ne dépasse une longueur de 5 milles — sauf *une* pouvant atteindre 10 milles.

ad. C.

1. Au cas où l'entrée d'une baie ne dépasserait pas 10 milles, la ligne *inter fauces terrarum* devrait constituer la ligne de démarcation entre les eaux intérieures et la mer territoriale.

2. Au cas où l'entrée de la baie serait de plus de 10 milles, il faudrait tracer la ligne de démarcation à l'intérieur de la baie, là où elle n'excéderait pas 10

milles. Si plusieurs lignes de 10 milles peuvent être tracées, on devrait choisir la ligne enfermant dans la baie la superficie d'eau la plus grande.

ad. D.

Devenue superflue à cause de la réponse à la question C.

III

Si la laisse de basse mer peut être remplacée par des lignes de base droites, système reconnu par la Cour internationale de Justice dans l'affaire des pêcheries anglo-norvégienne, quelles seront les questions d'ordre technique qui pourront surgir concernant:

A. Le choix des points entre lesquels ces lignes doivent être tirées?

B. La longueur de ces lignes?

C. Les îles, les rochers, les sèches se trouvant à moins de T milles devant la côte? (T indique l'étendue de la mer territoriale).

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1. Le Comité était d'avis que la longueur maximum admissible pour une « ligne de base droite » (au sens technique "*straight base-line*") devrait être fixée d'abord. Le Comité s'est prononcé en faveur d'une longueur maximum de 10 milles (voir explication par. II, B).

2. Ces « lignes de base » pourraient être tracées — si le droit international le permet formellement — entre promontoires de la côte ou entre un promontoire et une île, pourvu qu'elle soit située à moins de 5 milles de la côte, ou enfin entre des îles, pourvu que ces promontoires et/ou ces îles ne soient pas séparés entre eux par une distance de plus de 10 milles.

3. Le Comité a estimé que l'on pourrait tracer des « lignes de base droites » entre plus de deux îles situées à une distance de moins de 5 milles les unes des autres. Dans ce cas, ces îles constitueraient un « groupe ». Les eaux renfermées par ces lignes de base devraient être considérées comme eaux intérieures.

4. Le Comité a reconnu comme cas spécial un « groupe » d'îles dans lequel ces lignes entre les îles n'ont pas plus de 5 milles de longueur sauf une pouvant atteindre 10 milles de longueur au maximum. Ce cas pourrait être appelé une « baie fictive ».

5. Une baie fictive de ce genre peut encore être formée par un chapelet d'îles en conjonction avec une partie de la ligne côtière continentale, comme indiqué au paragraphe II, B.

6. Le Comité était d'accord que les soi-disant « lignes de base droites » ne devraient pas être tracées vers des fonds affleurants à basse mer ni à partir de ceux-ci. Le rôle de ces fonds affleurants à basse mer dans le tracé de la limite de la mer territoriale a été développé au paragraphe I, alinéa 3.

IV

Si, comme règle générale, le tracé des lignes de base ne peut s'écarter de façon appréciable de la direction générale de la côte, quelle sera l'exécution technique de ce système?

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1. Le Comité était d'accord que dans plusieurs cas, pour une côte quelconque, il sera impossible d'établir une « direction générale de la côte », et il a pris acte que tout effort en ce sens entraîne des questions comme celle de l'échelle de la carte à employer dans ce but et la décision quelque peu arbitraire sur l'étendue de la côte à utiliser dans la recherche de la « direction générale ».

2. Tenant compte de cette réserve, le Comité a répondu à la question IV en fixant la longueur maximum de toute « ligne de base droite », à 10 milles.

3. Dans des cas exceptionnels, lorsque le droit international le permet spécialement, on peut admettre de tracer des lignes plus longues sur une côte donnée. Toutefois, aucun point desdites lignes ne devrait être situé à plus de 5 milles de la côte.

4. Le Comité a estimé du point du vue technique qu'en principe le recours aux « lignes de base droites » devrait être évité, excepté comme prévu au paragraphe II pour la limite d'une baie. Ces lignes, en effet, étendent de manière injustifiée la superficie des eaux intérieures, et reportent par trop vers le large la limite extérieure de la mer territoriale.

5. Dans les cas où les « lignes de base droites » sont permises, l'Etat côtier sera tenu de publier le tracé adopté d'une manière suffisante.

6. Le Comité est opposé à l'établissement de toute liaison entre la longueur des « lignes de base droites » et l'étendue de la mer territoriale.

V

Comment faut-il fixer la limite extérieure de la mer territoriale, lorsque celle-ci aurait une largeur de T milles?

La limite extérieure de la mer territoriale est constituée par la ligne dont tous les points sont à une distance de T milles du point le plus proche de la ligne de base. Cette ligne est formée par une série continuelle d'arcs de cercle qui s'entrecoupent, et qui sont tracés avec un rayon de T milles, ayant leurs centres à tous les points de la ligne de base. La limite extérieure de la mer territoriale est composée des arcs de cercle les plus avancés dans la mer. (Cette méthode a déjà été utilisée avant 1930, mais les définitions données parfois comme « enveloppe des arcs de cercle », paraissent être fréquemment mal comprises.)

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 frontière 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?

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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 certains cas, cette méthode ne permettra pas d'aboutir à une solution équitable, laquelle devra alors être recherchée dans des négociations.

Observation sur VI et VII

Le Comité s'est efforcé de trouver des formules pour tracer les frontières internationales dans les mers territoriales qui pourraient en même temps servir pour délimiter les frontières respectives de « plateau continental » concernant les Etats devant les côtes desquelles s'étend ce plateau.

Observation générale

Le Comité tient à souligner que le tracé des limites extérieures de toute « zone contiguë » devra se baser sur la même ligne que celui des limites de la mer territoriale.

Annex 12 A

(English version)

Report of the Committee of Experts on Technical Questions concerning the Territorial Sea

At the invitation of Professor François, special rapporteur for the régime of the territorial sea of the International Law Commission, the following technical experts, acting in their personal capacity, met at the Peace Palace, The Hague, from 14 to 16 April 1953, in order to examine certain questions of a technical nature raised during the discussions of the Commission:

Professor L. E. G. ASPLUND (Geographic Survey Department, Stockholm);
Mr. S. Whittemore BOGGS (Special Adviser on Geography, Department of State, Washington D.C.);
Mr. P. R. V. COUILLAULT (Ingénieur en Chef du Service central hydrographique, Paris);
Commander R. H. KENNEDY, O.B.E., R.N. (Retd.) (Hydrographic Department, Admiralty, London) accompanied by Mr. R. C. SHAWYER (Administrative Officer, Admiralty, London);
Vice-Admiral A. S. PINKE (Retd.) (Royal Netherlands Navy, The Hague).

This Committee of Experts met under the chairmanship of the special rapporteur and its report was drafted by Mr. C. W. van Santen, assistant juridical counsel of the Netherlands Ministry of Foreign Affairs.

A questionnaire drawn up by the special rapporteur was submitted to the experts. The questions, and the answers of the experts, are given below. It should be emphasized that these replies are given from the technical point of view, bearing in mind in particular the practical difficulties of the navigator.

I

Assuming the territorial sea to be measured from the low-water line, what line might then preferably be taken as such?

1. Except as otherwise provided for, the baseline for measuring the territorial sea should be the low-water line along the coast as marked on the largest-scale chart available, officially recognized by the coastal State. If no detailed charts of the area have been drawn, which show the low-water line, the shore-line (high-water line) should be used.

2. The Committee did not consider that there was any danger that omission of the provisions made by the 1930 Conference as regards special indications in this matter, might tempt governments unreasonably to extend their low-water lines on their charts.

3. The Committee added a proviso, however, that rocks (and similar

elevations) awash at the datum of the chart (*"au niveau qu'on a choisi pour la carte"*) should not be taken into consideration.

4. Drying rocks and shoals that are exposed between the datum of the chart and high water, if within the territorial sea, may be taken as individual points of departure for measuring the territorial sea, thereby causing a bulge in the outer limit of the latter.

5. As regards coral reefs, the edge of the reef as marked on the above-mentioned charts, should be accepted as the low-water line for measuring the territorial sea.

II

Accepting the low-water line system as the general rule for measuring the territorial sea, while in bays a straight line across the bay should circumscribe the "inland waters", what technical observations can be made as to—

A. the definition of a bay as opposed to a mere curvature in the coast-line?

B. any relation between the maximum length (B miles) of the above-mentioned straight line and the width of the territorial sea?

C. the points between which the said straight line should be drawn?

D. the direction of or the points between which this line should be drawn in case different lines of B miles are conceivable?

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ad A. 1. A bay is a bay in the juridical sense, if its area is as large as, or larger than that of the semi-circle drawn on the entrance of that bay. Historical bays are excepted; they should be indicated as such on the maps.

2. If a bay has more than one entrance—as indicated sub B—this semi-circle should be drawn on a line as long as the sum-total of the length of the different entrances.

3. Islands within a bay should be included as if they were part of the water area of the bay.

ad B. 1. The closing line across a (juridical) bay should not exceed 10 miles in width, this being twice the range of vision to the horizon in clear weather, from the eye of a mariner at a height of 5 metres (which is the internationally accepted height for hydrographical purposes). In cases of considerable tidal differences the low-water lines should be taken as the shore-lines between which the width of the bay should be computed.

2. If the entrance of a (juridical) bay is split up into a number of smaller openings by various islands, closing lines across these openings may be drawn provided that none of these lines exceeds five miles in length—except one which may extend up to a maximum of 10 miles.

ad C. 1. In case the entrance of the bay does not exceed 10 miles in width, the line *inter fauces terrarum* should constitute the delimitation between inland-waters and the territorial sea.

2. In case the entrance of the bay exceeds 10 miles, a closing line of this length should be drawn within the bay. When different lines of this length can be drawn, that line should be chosen which encloses the maximum water area within the bay.

ad D. D has become redundant by the answer to the foregoing question.

III

If the low-water line may be replaced by a straight base-line, as indicated by the International Court of Justice in the Anglo-Norwegian Fisheries Case, what technical questions may arise as to—

A. the points between which these lines should be drawn?
B. the maximum length of these lines?
C. the islands, rocks and shallow waters within T miles before the coast (T standing for the width of the territorial sea)?

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1. The Committee considered that the maximum permissible length for a "straight baseline" should first be fixed. The Committee chose 10 miles, this being—like already mentioned sub 2 B—twice the range of vision.

2. Such "straight baselines" might be drawn—if specifically justified by international law—between headlands on the coastline or between such headlands and islands less than 5 miles from the coast or between such islands, provided such headlands and/or islands are not further than 10 miles apart.

3. The Committee considered that between three or more islands at a distance of less than 5 miles from each other, "straight baselines" might be drawn. In that case, these islands constitute a *group*. Waters lying within the outer baselines around a group should be considered as inland-waters.

4. The Committee recognizes as a special case a group of islands in which one, but only one, of the said connecting lines exceeds 5 miles though not 10 miles in length. This case may be called a "fictitious bay".

5. A "fictitious bay" may also be formed by a string of islands taken together with a portion of the mainland coastline as provided for under 2 B.

6. The Committee agreed that "straight baselines" should not be drawn to and from drying rocks and shoals. Their part in measuring the territorial sea has been stated sub I.

IV

If the baseline should, as a rule, not depart to any appreciable extent from the general direction of the coast, how should this technically be accomplished?

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1. The Committee agreed that it is impracticable to establish any "general direction of the coast" in many instances, and observed that any effort to do so involves questions as to the scale of the chart used for the purpose, and the somewhat arbitrary decision as to how much coast shall be utilized in attempting to determine any "general direction", whatever.

2. With this qualification in mind the Committee answered the above question by fixing the maximum length of any such "straight baselines" at 10 miles.

3. In exceptional cases, especially justified by international law, the drawing of longer lines may be permitted in regard to a particular coast. No point, however, on such lines should be farther than 5 miles from the coast.

4. The Committee, speaking from the technical and navigational points of view, agreed that in principle the drawing of "straight baselines"—

otherwise than provided for sub II for the closing line of a bay—should be avoided as this results in an unwarranted extension of inland-waters and undesirably throws the outer limit of the territorial sea further seaward.

5. Where such straight lines are justified, it should be the responsibility of the coastal State to give adequate publicity to them.

6. The Committee rejected the idea of establishing any relationship between the length of "straight baselines" and the width of the territorial sea.

V

How should the outer limit of the territorial sea be drawn, when the width of the territorial sea is T miles?

The outer limit of the territorial sea is the line, every point of which is at a distance of T miles from the nearest point of the baseline. It constitutes a continuous series of intersecting arcs of circles drawn with a radius of T miles from all points on the baseline. The limit of the territorial sea is formed by the most seaward arcs (this method had been used prior to 1930, but the terms which were sometimes used to convey the same connotation, namely "envelopes of arcs of circles" appear to have been not infrequently misunderstood).

VI

How should the international boundary be drawn between two countries, the coasts of which are opposite each other at a distance of less than 2 T miles? To what extent have islands and shallow waters to be accounted for?

An international boundary between countries the coasts of which are opposite each other at a distance of less than 2 T miles should as a general rule be the median line, every point of which is equidistant from the baselines of the States concerned. Unless otherwise agreed between the adjacent States, all islands should be taken into consideration in drawing the median line. Likewise, drying rocks and shoals within T miles of only one State should be taken into account, but similar elevations of undetermined sovereignty, that are within T miles of both States, should be disregarded in laying down the median line. There may, however, be special reasons, such as navigation and fishing rights, which may divert the boundary from the median line. The line should be laid down on charts of the largest scale available, especially if any part of the body of water is narrow and relatively tortuous.

VII

How should the (lateral) boundary line be drawn through the adjoining territorial sea of two adjacent States? Should this be done—

A. by continuing the landfrontier?
B. by a perpendicular line on the coast at the intersection of the landfrontier and the coastline?

C. by a line drawn vertically on the general direction of the coastline?
D. by a median line? If so, how should this line be drawn? To what extent should islands, shallow waters and navigation channels be accounted for?

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1. After thoroughly discussing different methods the Committee decided that the (lateral) boundary through the territorial sea—if not already fixed otherwise—should be drawn according to the principle of equidistance from the respective coastlines.

2. In a number of cases this may not lead to an equitable solution, which should be then arrived at by negotiation.

Remark regarding the Answers to VI and VII:

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

General Remark:

The Committee desired to stress that the delimitation of the outer limits of any "contiguous zone" should be measured from the same baseline as the territorial sea.

Annex 13

QUOTATIONS FROM BOUNDARY-TREATIES DELIMITING CONTINENTAL SHELVES, TERRITORIAL WATERS, FISHERY ZONES, STRAITS, LAKES AND RIVERS

A. CONTINENTAL SHELVES

EQUIDISTANCE PRINCIPLE

1. Bahrain-Saudi Arabia (Opposite States)

The Persian Gulf

Treaty of 22 February 1958 between the Kingdom of Saudi Arabia and the Government of Bahrain for the definition of their respective rights in the off-shore areas lying between their territories.

First Clause: "The boundary line between the Kingdom of Saudi Arabia and the Bahrain Government will begin, on the basis of the middle line from point 1, which is situated at the mid-point of the line running between . . . Then the above-mentioned middle line will extend . . . to point 2 situated at the mid-point . . . extend . . . to point 3 situated at the mid-point . . . extend . . . to point 4 . . . which is situated at the mid-point . . . extend . . . to point 5 . . . which is situated at the point of the line running between the two points . . . defined on the map . . . extend . . . to point 6, which . . . is situated at the mid-point . . . extend . . . to point 7 situated at the mid-point . . . extend . . . to point 8 situated at the western extremity of the island Al Baina As Saghir . . . extend . . . to point 9 situated at the eastern extremity of the island Al Baina Al Kabir . . . extend . . . to point 10 situated at the mid-point . . . extend . . . to point 11 situated at the mid-point . . . extend . . . to point 12 situated at latitude . . . and longitude . . . extend . . . to point 13 situated at latitude . . . and longitude . . . extend . . . to point 14 situated at latitude . . . and longitude . . . Then the line will extend from point 14 in a north-easterly direction . . ."

Source: *International and Comparative Law Quarterly*, 1958, pages 519-520.

2. The Federal Republic of Germany-Denmark (Adjacent States)

The North Sea (partial boundary)

The full text is reproduced in English in the German Memorial, Annex 6 A.

3. Netherlands-Denmark (Opposite States)

The North Sea

The full text is reproduced in English in the German Memorial, Annex 14 A.

4. Norway-Denmark (Opposite States)

The North Sea-The Skagerrak

The full text is reproduced in English in the German Memorial, Annex 11 A.

5. United Kingdom-Denmark (Opposite States)

The North Sea

The full text is reproduced in English in the German Memorial, Annex 12.

6. The Federal Republic of Germany-Netherlands (Adjacent States)

The North Sea (partial boundary)

The full text is reproduced in English in the German Memorial, Annex 3 A.

7. United Kingdom-Netherlands (Opposite States)

The North Sea
The full text is reproduced in English in the German Memorial, Annex 9.

8. United Kingdom-Norway (Opposite States)

The North Sea
The full text is reproduced in English in the German Memorial, Annex 5.

9. The Federal Republic of Germany-Denmark (Opposite States/Adjacent States)

The Baltic
The full text is reproduced in English in the German Memorial, Annex 7 A.

10. U.S.S.R.-Finland (Opposite States/Adjacent States)

The Gulf of Finland
Swedish text: Överenskommelse mellan Republiken Finlands Regering och Socialistiska Rådsrepublikernas Förbunds Regering om gränserna för havsområden och kontinentalsockeln i Finska viken, av 20.5.1965.

"Republiken Finlands Regering och Socialistiska Rådsrepublikernas Förbunds Regering ha, . . . i sin önskan att fastställa havsområdena och kontinentalsockeln in Finska viken, . . . och med beaktande av de i Genève år 1958 ingångna konventionerna om territorialhav och tillägszon samt kontinentalsockel, . . . överenskommit om följande:

Artikel 1

De Avtalsslutande parterna ha överenskommit om följande uppdragning av sjögränsen mellan Finland och SRR-Förbundet samt territorialvattengränsen mellan Finland och Sovjetunionen i Finska viken nordost om Hogland (Gogland).

Sjögränsen mellan Republiken Finland och Socialistiska Rådsrepublikernas Förbund löper från den år 1940 bestämda och i fredsfördraget med Finland år 1947 fastställda sjögränsens ändepunkt, vars koordinater äro 60° 15′ 35″ nordlig latitud och 27° 30′ 43″ ostlig longitud, i en rät linje mot sydväst till en punkt, vars koordinater äro 60° 13′ 42″ nordlig latitud och 27° 27′ 50″ ostlig longitud, vänder därefter och löper i en rät linje i väst-sydvästlig riktning till en punkt, vars koordinater äro 60° 12′ 19″ nordlig latitud och 27° 18′ 01″ ostlig longitud och som skall utgöra ändpunkten för sjögränsen mellan Finland och Sovjetunionen.

Gränsen för Sovjetunionens territorialvatten löper från ovannämnda ändpunkt för sjögränsen i en rät linje i sydvästlig riktning till en punkt, vars koordinater äro 60° 08′ 49″ nordlig latitud och 27° 04′ 36″ ostlig longitud och som är belägen på den år 1940 bestämda och i fredsfördraget med Finland år 1947 fastställda gränslinjen för Sovjetunionens territorialvatten.

Gränslinjen för Finlands territorialvatten löper från ovannämda ändpunkt för sjögränsen i en rät linje i västlig riktning till en punkt, vars koordinater äro 60° 12′ 19″ nordlig latitud och 27° 13′ 49″ ostlig longitud och som är belägen på den år 1940 bestämda och i fredsfördraget med Finland år 1947 fastställda gränslinjen för Finlands territorialvatten.

Artikel 2

De Avtalsslutande parterna ha överenskommit, att de i den del af Finska viken, som är belägen norr om Hogland, icke komma att utsträcka sine fiske- eller övriga zoner över mittlinjen av det vattenområde, som är beläget mellan

Finlands och Sovjetunionens år 1940 bestämda och i fredsfördraget med Finland år 1947 fastställda territorialvattengränser.

Artikel 3

De Avtalsslutande parterna ha överenskommit, att de icke komma att utsträcka sina territorialvatten eller fiske-eller övriga zoner i den del av Finska viken, som ligger väster om Hogland över den mittlinje, som löper genom de punkter, vilkas geografiska koordinater äro . . .

. . . . . .

Artikel 6

De i 2 och 3 artiklarna av denna överenskommelse nämda linjerna utgöra gränser för Republiken Finlands och Socialistiska Rådsrepublikarnas Förbunds kontinentalsocklar i Finska viken."

Unofficial translation. Agreement of 20 May 1965 between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics concerning the boundaries of the sea and the continental shelf in the Gulf of Finland.

"The Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics, . . . desiring to delimit the areas of the sea and the continental shelf in the Gulf of Finland . . ., and having regard to the Geneva Conventions of 1958 on the Territorial Sea and the Contiguous Zone and on the Continental Shelf . . ., have agreed upon the following:

Article 1

The Contracting Parties have agreed upon the following delimitation of the boundary of the sea between Finland and the U.S.S.R. and of the boundary of the territorial sea between Finland and the Soviet Union for that part of the Gulf of Finland which is situated northeast of Hogland.

The sea boundary between the Republic of Finland and the Union of Soviet Socialist Republics shall be drawn from the terminal point of the sea boundary stipulated in 1940 and laid down in the Peace Treaty with Finland in 1947, the co-ordinates of which are 60° 15′ 35″ N and 27° 30′ 43″ E, in a straight line to the southwest to a point with the co-ordinates 60° 13′ 42″ N and 27° 27′ 50″ E, thence turning to follow a straight line west-southwest to a point with the co-ordinates 60° 12′ 19″ N and 27° 18′ 01″ E which shall be the terminal point of the sea boundary between Finland and the Soviet Union.

The boundary of the territorial sea of the Soviet Union shall be drawn from the above-mentioned terminal point of the sea boundary in a straight line southwest to a point with the co-ordinates 60° 08′ 49″ N and 27° 04′ 36″ E located on the boundary of the territorial sea of the Soviet Union as stipulated in 1940 and laid down in the Peace Treaty with Finland in 1947.

The boundary of Finland's territorial sea shall be drawn from the above-mentioned terminal point of the sea boundary in a straight line west to a point with the co-ordinates 60° 12′ 19″ N and 27° 13′ 49″ E located on the boundary of Finland's territorial sea as stipulated in 1940 and laid down in the Peace Treaty with Finland in 1947.

Article 2

For that part of the Gulf of Finland which is situated north of Hogland the Contracting Parties have agreed not to extend their fishing zones or other

zones beyond the median line of that part of the sea which is located between the boundaries of the territorial sea of Finland and the Soviet Union as these boundaries are stipulated in 1940 and laid down in the Peace Treaty with Finland in 1947 . . .

Article 3

For that part of the Gulf of Finland which is situated west of Hogland the Contracting Parties have agreed not to extend their territorial sea or fishing zones or other zones beyond a median line drawn between the points with the following geographical co-ordinates . . .

. . . . . .

Article 6

The lines mentioned in the Articles 2 and 3 in this agreement establish the boundaries of the continental shelves of the Republic of Finland and the Union of Soviet Socialist Republics in the Gulf of Finland."

Source: *Finlands Författningssamlings Fördragsserie*, 1966, No. 20, page 121.

II. U.S.S.R.-Finland (Opposite States)

The northeastern part of the Baltic

Swedish text: Överenskommelse mellan Republiken Finlands Regering och Socialistiska Rådsrepublikernas Förbunds Regering om gränsen för kontinentalsockeln mellan Finland och Sovjetunionen i den nordöstra delen av Östersjön, av 5.5.1967.

"Republiken Finlands Regering och Socialistiska Rådsrepublikernas Förbunds Regering ha, . . . in sin önskan att fastställa gränsen för kontinentalsockeln i den nordöstra delen av Östersjön, . . . med beaktande av den i Genève år 1958 avslutade konventionen om kontinentalsockel, . . . överenskommit om följande:

Artikel 1

De Avtalsslutande parterna har överenskommit om att gränsen för kontinentalsockeln mellan Republiken Finland och Socialistiska Rådsrepublikernas Förbund i den nordöstra delen av Östersjön, på området, som utsträcker sig från linjen Hangöudd-Osmussaari-Pöösäspää västerut ända till linjen mellan det finska navigationsmärket på skäret Grimsörarna och den sovjetiska fyren Ristna på Dagö, utgöres av mittlinjen . . ."

Unofficial translation: Agreement of 5 May 1967 between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics concerning the boundary of the continental shelf between Finland and the Soviet Union in the northeastern part of the Baltic.

"The Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics, . . . desiring to delimit the continental shelf in the northeastern part of the Baltic . . . and having regard to the Geneva Convention of 1958 on the Continental Shelf . . ., have agreed upon the following:

Article 1

The Contracting Parties have agreed that the boundary of the continental shelf between the Republic of Finland and the Union of Soviet Socialist Republics in the northeastern part of the Baltic in the area from the line Hangöudd-Osmussaari-Pöösäspää westward to the line between the Finnish

buoy on the Grimsörarna rock and the Soviet lighthouse Ristna on the island Dagö shall be the median line . . ."

Source: *Rigsdagsproposition*, No. 129, 1967.

12. Belgium-United Kingdom/France/The Netherlands (Opposite States/Adjacent States)

The North Sea

Bill concerning the continental shelf of Belgium, introduced to the Chamber of Representatives on 23 October 1967.

Article 2

"La délimitation du plateau continental belge vis-à-vis du plateau continental du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est constituée par la ligne médiane dont tous les points son équidistants des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de la Belgique et du Royaume-Uni. Cette délimitation peut être aménagée par un accord particulier.

La délimitation du plateau continental vis-à-vis des pays dont les côtes sont adjacentes aux côtes belges, c'est-à-dire la France et les Pays-Bas, est déterminée par application du principe de l'équidistance des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacune des puissances intéressées. Cette délimitation peut être aménagée par un accord particulier avec la puissance intéressée."

Source: *Projet de loi*, 471 (1966-1967)—n° 1.

The Bill and its "Exposé des Motifs" are reproduced in Annexes 14 and 14 A.

B. TERRITORIAL WATERS

Equidistance Principle

1. Italy-Trieste (Adjacent States)

Treaty of Peace with Italy, dated at Paris 10 February 1947.

Article 4: ". . . (ii) The line then extends in southerly direction to a point, in the Gulf of Panzano, equidistant from Punta Sdobba at the mouth of the Isonzo (Soca) river and Castello Vecchio at Duino, . . . (iii) The line then reaches the high seas by following a line placed equidistant from the coastlines of Italy and the Free Territory of Trieste."

Source: *Treaty of Peace with Italy*, TIAS No. 1648, page 130.

2. Yugoslavia-Trieste (Adjacent States)

Treaty of Peace with Italy, dated at Paris 10 February 1947.

Article 22: ". . . (iv) Thence the line follows the main improved channel of the Quieto to its mouth, passing through Porto del Quieto to the high seas by following a line placed equidistant from the coastlines of the Free Territory of Trieste and Yugoslavia."

Source: *Treaty of Peace with Italy*, TIAS No. 1648, page 138.

3. Italy-Turkey (Opposite States)

The territorial waters between the coasts of Anatolia and the island of Castellorizo.

Convention between Italy and Turkey for the delimitation of the territorial waters between the coasts of Anatolia and the island of Castellorizo, signed at Ankara on 4 January 1932.

Article 5: ". . . agreed to delimit the territorial waters as follows:

To the East: From a point situated halfway between Cape San Stephano . . . and Cape Gata;

Thence in a straight line to a point situated halfway between Psomi and Proussecliss . . .;

From this point in a straight line to a point situated halfway between Mavro-Points and Proussecliss;"

Source: *League of Nations Treaty Series*, Vol. 138 (1933), page 243.

4. Mexico-Belice (British Honduras) (Adjacent States)

Off the bay of Chetumal in the Caribbean Sea

Letter of 2 March 1967 to the Mexican Ministry of Naval Affairs from Ambassador Castaneda, chief of the multilateral political department in the Mexican Ministry of Foreign Affairs in reply to a request for information of the method which *ought* to be applied by the determination of the maritime boundaries towards U.S.A., Guatemala and Belice:

Spanish text: "El trazo de la frontera de los mares territoriales y zonas contiguas entre México y Belice puede hacerse de acuerdo con lo estipulado en el articulo 12 de la Convención de Ginebra, sin ningún problema práctico . . ."

Unofficial translation: "The delimitation of the boundaries of the territorial waters and the contiguous zones between Mexico and Belice can be made in accordance with Article 12 of the Geneva Convention without creating any practical problem . . ."

5. Norway-Finland (Adjacent States)

The Varangerfjord

In the introduction to the Parliament (Storting) Proposition No. 63 (1957) concerning the consent of the Parliament (Storting) to the ratification of the agreement between Norway and U.S.S.R. concerning the off-shore boundary in the Varangerfjord, it is stated:

Norwegian text: "Traktatforholdet vedrørende fellesgrensen mellom Norge og Finnland ble ordnet ved en overenskomst mellom de to land av 28. april 1924. I denne overenskomst ble det bestemt at delelinjen mellom de to lands sjøterritorier skulle trekkes slik at ethvert punkt på linjen lå like langt fra de to staters kyster . . ."

Unofficial translation: "The delimitation of the boundary between Norway and Finland was solved through an agreement between the two countries on 28 April 1924. According to this treaty it was determined that the line dividing the territorial sea between the two countries should be drawn in such a way that every point on the line should be situated at the same distance from the coasts of the two States . . ."

Source: *Stortingsproposition*, nr. 63 (1957), page 1, col. 1.

Article III of this Treaty reads:

"From the point where the channel ends in the Arctic Ocean beyond the mouth of the Jakobselv (Vuoremajoki) the dividing line between the territorial waters of the two Contracting States shall be drawn in such a way that any point on the said line shall be situated at an equal distance from the coasts of the two States, measured from the nearest point on the mainland, islands, islets or reefs which is not perpetually submerged."

Source: *Soc. des Nat. Rec. des Tr.*, Volume XXX, No. 758.

6. Norway-U.S.S.R. (Adjacent States)

The Varangerfjord

Agreement between the Royal Norwegian Government and the Government of the Union of Soviet Socialist Republics concerning the sea frontier between Norway and the U.S.S.R. in the Varangerfjord, signed at Oslo, on 15 February 1957.

The boundary between the territorial waters of the Soviet Union and Norway in the Varangerfjord is determined by straight lines connecting three points laid down on different principles. The first is the point where the landfrontier meets the sea, the second is the point of intersection of Norwegian and Soviet territorial waters, while the third point—the outermost—is an equidistance point.

The provisions are as follows:

Article 1: "The sea frontier between Norway and the Union of Soviet Socialist Republics in the Varangerfjord shall follow a straight line from frontier mark No. 415 (spar buoy), which is the terminal point of the frontier drawn in 1947, to the intersection of the outer limits of the Norwegian and Soviet territorial waters . . .

Neither of the Contracting Parties shall extend its territorial waters beyond the straight line extending from the intersection referred to in the first paragraph of this article to the median point of the line between Cape Nemetsky and Cape Kibergnes . . ."

Source: *United Nations Treaty Series*, Volume 312 (1958), page 322.

7. Tanzania-Kenya (Adjacent States)

The territorial waters between the coast of Kenya and the island of Pemba

Proclamation by the President of the United Republic of Tanzania, signed on 30 March 1967, published as Government Notice No. 137 on 14 April 1967:

". . . the territorial waters of the United Republic of Tanzania extend across the sea a distance of twelve nautical miles . . . Provided that in respect of the island of Pemba where the distance between the baseline measured on Pemba and the mainland of Kenya is less than twenty-four nautical miles, the territorial waters of the United Republic of Tanzania extend up to the median line every point of which is equidistant from the nearest points on the baseline between Pemba and the mainland of Kenya . . ."

8. United States-Canada (Adjacent States/Opposite States)

Passamaquoddy Bay

Treaty between the United States and Great Britain in respect of the Boundary between the United States and Canada of 24 February 1925.

Article 3: ". . . The Contracting Parties, . . . hereby agree that an additional course shall be extended from the terminus of the boundary line defined by the said Treaty of 21 May 1910, south 34° 42′ west, for a distance of two thousand three hundred eighty-three (2,383) meters, through the middle of Grand Manan Channel, to the High Seas."

Source: A/CN.4/71 and Add. 1-2 printed in *Yearbook of the I.L.C.*, 1953, Vol. II, page 86.

9. United States-Canada (Adjacent States)

Pacific Ocean coast

Convention between the United States and Great Britain relating to the Canadian International Boundary of 11 April 1908.

Article VIII: ". . . The line so defined and laid down shall be taken and deemed to be the international boundary, as defined and established by treaty provisions and the proceedings thereunder as aforesaid, from the forty-ninth parallel of north latitude along the middle of the channel which separates Vancouver's Island from the mainland and the middle of Haro Channel and of Fuca's Straits to the Pacific Ocean."

Source: Doc. A/CN.4/71 and Add. 1-2 printed in *Yearbook of the I.L.C.*, 1953, Volume II, page 86.

MODIFIED EQUIDISTANCE PRINCIPLE

10. United States-Mexico (Adjacent States)

Off the frontier on the Pacific Coast

Letter of 2 March 1967 to the Mexican Ministry of Naval Affairs from Ambassador Castaneda, chief of the multilateral political department in the Mexican Ministry of Foreign Affairs in reply to a request for information of the method which *ought* to be applied by the determination of the maritime boundaries towards U.S.A., Guatemala and Belice.

Spanish text: "En este caso, el procedimiento téchnico aplicable según dispone el artículo 12 de la Convención de Ginebra sobre Mar Territorial y Zona Contigua, es el de la 'línea media determinada en forma tal que todos sus puntos sean equidistantes de los puntos más próximos de las líneas de base . . .' Este sistema da como resultante una línea con algunas curvas incómodas para su senalamiento en el mar, debido a la superposición de areas de influencia que originan el extremo septentrional de la Isle Coronado Norte y el extremo meridional de Punta Loma . . .

Esta Secretaría estima que seria recomendable llegar a un acuerdo con el Gobierno de los Estados Unidos de América . . . para substituir la sinuosa línea . . . por una línea recta, cuyo fácil trazo reportaría mayores ventajas prácticas para uno y otro países."

Unofficial translation: "In this case the technical method applicable according to Article 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone is 'the median line every point of which is equidistant from the nearest points on the baselines . . .' This method results in a seaward line with some unpractical curves due to the predominant influence of the areas constituted by the northernmost point of the Island Coronado Norte, and the southernmost point of Punta Loma . . .

This secretariat is of the opinion that it will be recommendable to come to an agreement with the Government of the United States . . . concerning the replacement of the curved line . . . with a straight line which would be easy to draw and thus present greater practical advantages to each of the countries."

LINE PERPENDICULAR TO THE GENERAL DIRECTION OF THE COAST

11. Cambodia-(Adjacent States)

Cambodian Decree No. 662-NS of 30 December 1957 concerning the delimitation of Cambodia's territorial waters and continental shelf unilaterally delimits the territorial waters of Cambodia in relation to *South Vietnam* and *Thailand* as follows:

Article 5: "Au nord et au sud, la délimitation des eaux cambodgiennes d'avec celles des Etats limitrophes se fera par une ligne tracée de la frontière perpendiculairement à la ligne de base correspondante."

12. Mexico-Guatemala (Adjacent States)

Off the mouth of the river Suchiates in the Pacific Ocean

(a) Boundary treaty between Mexico and Guatemala of 27 September 1882 (Article 3).

Spanish text: "Los límites entre las dos naciones serán a perpetuidad los siguientes . . . La línea media del río Suchiate, desde un punto situado en el mar a tres leguas de su desembocadura, río arriba, por su canal más profundo . . ."

Unofficial translation: "The boundaries between the two nations shall in perpetuity be the following . . . The median line of the river Suchiates from a point in the sea three miles from the mouth of the river and upstream following its deepest channel . . ."

(b) Letter of 2 March 1967 to the Mexican Ministry of Naval Affairs from Ambassador Castaneda in the Mexican Ministry of Foreign Affairs referring to the said Article 3:

Spanish text: ". . . Por lo tanto, el procedimiento técnico seguir en este caso es el que a continuación se describe: . . . Esta recta sería la frontera de los mares territoriales. En término generales, puede afirmarse que dicha línea será perpendicular a la dirección general de la costa en ese tramo y deberá coincidir, exactamente, con la desembocadura del río al mar."

Unofficial translation: "Therefore, the technical procedure to be followed in this case is as described below: . . . This perpendicular line shall form the boundary in the territorial sea. In general terms it can be said that the line mentioned will be perpendicular to the general direction of the coast in this area and will exactly coincide with the mouth of the river."

STRAIGHT LINES

13. Senegal-Portuguese Guinea (Adjacent States)

Decree No. 60-504 of 25 May 1960 issued by the Government of France, published in *Journal Officiel du Mali* dated 20 August 1960 transforming into law an agreement between France and Portugal on the delineation of a part of the Senegal-Portuguese Guinea border.

Up to the limit of the territorial waters, the border "will be defined by a straight line, oriented to 240 degrees, departing from the point of intersection of the extension of the land border and the low-water mark, represented in this case by the Cape Roxo lighthouse.

In that which concerns the contiguous zone of the continental shelf, the delimitation will be constituted by the rectilineal prolongation, in the same direction, of the border between the territorial waters."

Source: Whiteman, Marjorie M., *Digest of International Law*, Volume 4, Washington 1965, page 335.

ALONG ONE OF THE COASTS

14. Hong Kong-China (Opposite States/Adjacent States)

Convention between Great Britain and China, respecting an Extension of Hong Kong Territory signed at Peking on 9 June 1898 and Boundary Determination of 14 March 1899.

International Boundary Study, No. 13 (April 1962) (prepared by the Geographer, Office of Research in Economics and Science, Bureau of Intelligence

and Research, Dep. of State, Washington), p. 4, describes the boundary in the following way:

"The Northern Boundary commences at the point of highwater-mark in Mirs Bay where the meridian of 114° 30′ East cuts the land and follows that highwater-mark to the point marked with a peg immediately to the west of the market town . . . Shat'aukok. It then proceeds straight inland . . . The boundary then follows the right or northern bank of the river generally known as the Sham Chun river down to Deep Bay, all the river and the land to the south being within British territory . . .

. . . . . .

The waters of Mirs Bay and Deep Bay are included in the area leased to Great Britain."

C. FISHERY ZONES

Equidistance Principle

The European Fisheries Convention (Opposite States/Adjacent States)

Convention between Austria, Belgium, Denmark, the French Republic, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland, signed in London on 9 March 1964.

Article 7: "Where the coasts of two Contracting Parties are opposite or adjacent to each other, neither of these Contracting Parties is entitled, failing agreement between them to the contrary, to establish a fisheries régime beyond the median line, every point of which is equidistant from the nearest points on the low water lines of the coasts of the Contracting Parties concerned."

Source: *Treaty Series*, No. 35 (1966), London.

D. STRAITS

Median Line

1. Denmark-Sweden (Opposite States)

The Sound (Northern and Southern Part)

Danish text: Deklaration . . . og Noteveksling angående Grænseforholdene i Sundet af 30.1.1932.

". . . I Sundets nordlige del fra den nordlige grænselinie til pladsen for Lous Flak Lys- og Fløjtetønde 55° 49′ 36″ N, 12° 43′ 42″ E går linien midt imellem Sjællands kyst og svensk fastland . . . Herfra (55° 29′ 19″ N, 12° 43′ 6″E) drages linien videre til sydgrænsen efter tilsvarende regler som for Sundets nordlige del, idet den på denne strækning dog dannes af rette linier bestemt ved følgende punkter. . ."

Unofficial translation: Declaration . . . and exchange of Notes of 30 January 1932, concerning the boundary in the Sound.

". . . In the northern part of the Sound from the northern boundary line to the location of the light- and whistle-buoy at Lous Flak (55° 49′ 36″ N, 12° 43′ 42″ E) the line runs halfway between the coast of Zealand and the Swedish mainland. From this point (55° 29′ 19″ N, 12° 43′ 6″ E) the line is drawn to the southern boundary according to the same principles used in the northern part of the Sound, although this part of the boundary consists of straight lines laid down between the following points . . ."

Source: *Danish Law Gazette*, A I, 1932, page 67.

2. Malaysia-Indonesia (Opposite States)

Tamboe and Sikapal Channels

Agreement between the United Kingdom and the Netherlands relating to the boundary between the State of North Borneo and the Netherlands possessions in Borneo of 28 September 1915.

International Boundary Study, No. 45 (March 1965), page 6, describes the boundary in the following way:

"... After the island of Sebatik is divided, the boundary crosses the waters between the island and the mainland in a sinuous line following the median of the Tamboe and Sikapal channels to the Sikapal range which forms the water divide between the Serudong and Simengaris rivers."

Text of the Agreement published in Lagemans' *Recueil des traités et conventions conclus par le Royaume des Pays-Bas*, Volume 18, No. 1100.

3. Morocco-Spain (Opposite States)

The Strait of Gibraltar

Note Verbale of 20 May 1967 from the Moroccan Ministry of Foreign Affairs to the Danish Embassy in Rabat:

"... Sur les côtes de notre Royaume baignées par le détroit de Gibraltar, les eaux territoriales marocaines s'étendent au point de vue de la pêche, à 6 milles marins comptés de la laisse de basse mer, sans toutefois que cette limite s'étende au-delà de la ligne médiane du détroit de Gibraltar dont tous les points sont équidistants des points les plus proches des côtes espagnoles et marocaines..."

4. United States-Canada (Opposite States)

Juan de Fuca Straits

Treaty between the United States and Great Britain, as regards the Juan de Fuca Straits of 15 June 1846:

"... the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the Continent from Vancouver's Island; and thence southerly through the middle of the said channel, and of Fuca's Straits to the Pacific Ocean..."

Source: Whiteman, Marjorie M., *Digest of International Law*, Vol. 4 (1965), pages 309-310.

THALWEG

5. Singapore-Johore (Opposite States)

Johore Strait

The Straits Settlements and Johore Territorial Waters (Agreement) Act, 1928, of 19 October 1927.

Article 1: "The boundary between the territorial waters of the Settlement of Singapore and those of the State and Territory of Johore shall, except as hereafter specified in this Article, be an imaginary line following the centre of the deep-water channel in Johore Strait ... Where, if at all, the channel divides into two portions of equal depth running side by side, the boundary shall run midway between these two portions."

Source: Whiteman, Marjorie M., *Digest of International Law*, Vol. 4 (1965), page 311.

E. LAKES

Median Line

1. Congo-Burundi (Opposite States/Adjacent States)

Lake Tanganyika

Convention of 11 August 1910 confirming the arrangement signed in Brussels on 10 May 1910 laying down the boundary between German East Africa and Belgium Congo.

Protocol respecting the Boundary between Tanganyika Territory and the Belgian Mandated Territory of Rwanda-Urundi, of 5 August 1924.

International Boundary Study, No. 48 (April 1965), page 1, describes the boundary in the following way:

"... from the Tanzania tripoint, it follows the median line of Lake Tanganyika ..."

2. Congo-Tanzania (Opposite States)

Lake Tanganyika

Convention of 11 August 1910 confirming the arrangement signed in Brussels on 10 May 1910 laying down the boundary between German East Africa and Belgium Congo.

International Boundary Study, No. 51 (June 1965), page 1, describes the boundary in the following way:

"The Congo (Léopoldville)-Tanzania boundary is the median line of Lake Tanganyika ..."

3. Congo-Uganda (Opposite States/Adjacent States)

Lake Albert

Agreement between Belgium and the United Kingdom ... respecting Boundaries in East Africa of 3 February 1915.

Article 2: "A succession of straight lines, as shown on the maps, across Lake Albert, passing through the points situated midway between the shores of the lake on the parallels of 1° 30′, 1° 45′ and 2° north latitude, to a point midway between the shores of the lake on the parallel of 2° 7′ north latitude."

Source: Jones, Stephen B., *Boundary-Making*, Washington, 1945, page 141.

4. Switzerland-France (Opposite States/Adjacent States)

Lac Léman

Convention of 25 February 1953 between Switzerland and France concerning the determination of the frontier in Lac Léman.

Article 1: "Le tracé de la frontière dans le lac Léman est formé par une ligne médiane et par deux ailes transversales à Hermance et à St-Gingolph.

La ligne médiane est définie théoriquement par les lieux des centres des cercles inscrits entre les rives suisse et française.

Cette ligne théorique se trouve cependant remplacée, pour des raisons pratiques, par une ligne polygonale de six côtés qui réalise la compensation des surfaces."

Source: Message N° 6506 du Conseil fédéral à l'Assemblée fédérale sur l'approbation de trois conventions relatives à des modifications de la frontière franco-suisse (du 14 septembre 1953).

5. Switzerland-Italy (Adjacent States)

Lago di Lugano, Lago di Maggiore

Note Verbale of 30 March 1967 from the Swiss Ministry of Foreign Affairs (Département Politique Fédéral) to the Danish Embassy in Berne:

"En ce qui concerne les lacs de Lugano et Majeur, la frontière suit le milieu des eaux, en vertu du traité dit de Varèse, du 2 août 1752, entre les 12 Cantons de l'Alliance helvétique et S.M. l'Impératrice Marie-Thérèse."

6. Switzerland-Austria-Federal Republic of Germany (Opposite States/Adjacent States)

Lake Constance

Note Verbale of 30 March 1967 from the Swiss Ministry of Foreign Affairs (Département Politique Fédéral) to the Danish Embassy in Berne:

". . . Pour ce qui a trait au lac de Constance, aucune convention n'a été signée au sujet de la délimitation de la frontière entre les Etats riverains. La Suisse s'en tient, dans ce cas aussi, au principe de la frontière au milieu du lac. Il existe cependant une autre thèse, soutenue notamment par l'Autriche, selon laquelle le lac de Constance serait soumis à la souveraineté commune des Etats riverains . . ."

7. Tanzania-Zambia (Opposite States/Adjacent States)

Lake Tanganyika

International Boundary Study, No. 44 (March 1965), page 5, describes the boundary in the following way:

"The segment of the Tanzania-Zambia boundary in Lake Tanganyika commonly is drawn on maps as an arc which trends southwestward and then northward to attain the median line of the lake as rapidly as possible after leaving the mouth of the Kalambo."

8. United States-Canada (Opposite States)

Lake Ontario

Boundary between Great Britain and the United States as laid down in Treaty of Peace concluded at Paris on 3 September 1783 and defined in Report of the International Waterways Commission upon the international boundary between the Dominion of Canada and the United States through the St. Lawrence River and Great Lakes (1915):

". . . THENCE due West 501,388 feet along the middle of Lake Ontario to Turning Point No. 107 in . . . THENCE . . . 150,480 feet along the middle of Lake Ontario to Turning Point No. 108 . . ." (cf. the above-mentioned Report, p. 55).

9. United States-Canada (Opposite States)

Lake Erie

Boundary between Great Britain and the United States as laid down in Treaty of Peace concluded at Paris on 3 September 1783 and defined in Report of the International Waterways Commission upon the international boundary between the Dominion of Canada and the United States through the St. Lawrence River and Great Lakes (1915):

". . . THENCE . . . 19,064 feet along the middle of Lake Erie to Turning Point No. 155 . . . THENCE . . . 346,460 feet along the middle of Lake Erie to Turning Point No. 156 . . ." (cf. the above-mentioned Report, p. 66).

10. United States-Canada (Opposite States)

Lake Huron

Boundary between Great Britain and the United States as laid down in Treaty of Peace concluded at Paris on 3 September 1783 and defined in Report of the International Waterways Commission upon the international boundary between the Dominion of Canada and the United States through the St. Lawrence River and Great Lakes (1915):

"... THENCE ... 225,118 feet along the middle of Lake Huron to Turning Point No. 216 ... THENCE ... 645,430 feet along the middle of Lake Huron to Turning Point No. 217 ..." (cf. the above-mentioned Report, pp. 81-82).

THALWEG

11. Burundi-Rwanda (Opposite States/Adjacent States)

Lake Cohoha

Order No. 21/258 of 14 August 1949 establishing the territorial organisation of the Territory of Rwanda-Urundi:

"... the thalweg of the aforesaid lake to the outlet of the overflow named Kamahozi;"

Source: *International Boundary Study*, No. 72 (June 1966), page 3.

STRAIGHT LINES

12. Burundi-Rwanda (Opposite States/Adjacent States)

Lake Rweru (Rugweru)

Order No. 21/258 of 14 August 1949 establishing the territorial organisation of the Territory of Rwanda-Urundi:

"... a straight line through the aforesaid lake (Rweru) to the mouth of a tributary river (Agatete) on the lake which runs between the hills Songwa (Rwanda) and Mulehe (Urundi);"

Source: *International Boundary Study*, No. 72 (June 1966), page 2.

13. Chile-Peru (Opposite States/Adjacent States)

Laguna Blanca

Final Act of 5 August 1930 concerning the determination of the frontier (Lima, 1930):

"... number 69—17° 39′ 40.8″, 69° 40′ 21.7″—Southwestern point of Laguna Blanca. Number 70—17° 37′ 24.8″, 69° 37′ 31.9″—Northeastern point of Laguna Blanca ..."

Source: *International Boundary Study*, No. 65 (February 1966), page 12.

ALONG ONE OF THE SHORES

14. Malawi-Tanzania (Opposite States/Adjacent States)

Lake Nyasa

Agreement between the British and German Governments, respecting Africa and ... of 1 July 1890.

International Boundary Study, No. 37 (October 1964), page 4, describes the boundary in the following way:

"In accordance with the terms of Article I of the Anglo-German agreement of 1890, the boundary from the Mozambique tripoint on the eastern shore of Lake Nyasa strikes northward and follows the eastern, northern, and western shores of the lake."

F. RIVERS

MEDIAN LINE

1. Afghanistan-U.S.S.R.

The non-navigable boundary rivers

Frontier Agreement between Afghanistan and the Soviet Union of 13 June 1946.

International Boundary Study, No. 26 (December 1963), page 5 describes the boundary in the following way:

"Article I provides that the international boundary shall follow the main channel of the Amu Darya (Oxus) and the Pyandzh to the head of navigation, and above this point, the median line."

2. Argentine-Uruguay

The Uruguay River between Brasilera Island and Salto Grande

Treaty of Boundaries between the Republic of Uruguay and the Argentine Republic in the Uruguay River of 7 April 1961.

Article I (A): "From . . . the southwestern point of Brasilera Island to the Ayuf area (the contour where the Salto Grande dam will be constructed), the boundary shall follow the center line of the river's present bed."

Source: *International Boundary Study*, No. 68 (March 1966), page 2.

3. China-Vietnam

Convention relative to the frontier between China and Tonkin of 26 June 1887 and Convention bearing on the delimitation of the frontier between France and China of 30 June 1895.

International Boundary Study, No. 38 (October 1964), page 5, describes the boundary in the following way:

"Turning eastward, the frontier follows minor watersheds but cuts the headwaters of several small streams to approximately 22° 39′ North and 106° 29′ East. Here it joins the median line of several small streams. After following these for approximately 10 miles, the boundary continues eastward in a series of short, straight line segments to the source of the Pei-lun Ho. The median line of this river forms the boundary for the approximately 37 miles to the Gulf of Tonkin."

4. Czechoslovakia-Hungary

Non-navigable rivers

Treaty of Peace between the Allied and Associated Powers and Hungary and Protocol and Declaration of 4 June 1920.

International Boundary Study, No. 66 (March 1966), page 6, describes the boundary in the following way:

"Article 30 stated that where the terms 'course' or 'channel' were used to delimit the boundary in a waterway, they equated with the median line in non-navigable waterways . . ."

5. Greece-Turkey

The Maritsa River

Treaty of Lausanne between Turkey and various Allied Powers of 24 July 1923 (Art. 2).

International Boundary Study, No. 41 (November 1964), page 6, describes the boundary in the following way:

"Returning to the median line of the Maritsa, or of its principal channel, the boundary continues southward . . . Thence the boundary follows the median of Maritsa, a distance of 24.2 miles at which point the river divides into a western and eastern branch, the boundary following the eastern, principal branch."

6. Honduras-Nicaragua

Westerly rivers (Negro, Guasaule, Torondano)

Acts of the Mixed Commission regarding the boundary between Nicaragua and Honduras, 1900-1901.

International Boundary Study, No. 36 (October 1964), page 4, describes the boundary in the following way:

". . . From . . . Amatillo the line continues along the center of the said river Negro upstream . . . to its confluence with the river Guasaule, also upstream, to its union with the river Torondano . . . from the meeting of these two rivers the line continues along the center of the river Torondano to its confluence with the Quebrada Grande."

7. Hungary-Rumania

Non-navigable rivers

Treaty of Peace between the Allied and Associated Powers and Hungary and Protocol and Declaration of 4 June 1920.

International Boundary Study, No. 47 (April 1965), page 6, describes the boundary in the following way:

"Article 30 stated that where the terms 'course' or 'channel' were used to define the boundary in a waterway, they equated with the median line in non-navigable waterways . . ."

8. Rumania-U.S.S.R.

Non-navigable rivers

Treaty of 27 February 1961:

". . . the boundary line passing through non-navigable rivers, streams and channels shall follow any shifts that may occur on the median line . . ."

Source: *International Boundary Study*, No. 43 (December 1964), page 9.

9. Southern Rhodesia-Zambia

The Zambezi River

The Northern Rhodesia and Southern Rhodesia (Boundaries) Order in Council of 20 December 1963.

International Boundary Study, No. 30 (March 1964), page 3, describes the boundary in the following way:

"The Order in Council, in effect, delimits the boundary by the medium filum (median line) of the Zambezi, the medium filum between a specific shore and enumerated islands or the medium filum between specified islands."

10. Switzerland-

Certain boundary rivers

Note Verbale of 30 March 1967 from the Swiss Ministry of Foreign Affairs (Département Politique Fédéral) to the Danish Embassy in Berne:

". . . Le tracé sur les cours d'eau formant la frontière entre les cantons suisses ou entre la Suisse et les Etats limitrophes suit en règle générale le milieu du lit ou, parfois, le thalweg."

11. Tanzania-Zambia

Non-navigable rivers

Agreement between the British and German Governments respecting Africa and . . . of 1 July 1890.

International Boundary Study, No. 44 (March 1965), page 1, describes the boundary in the following way:

"In streams comprising the boundary, the line follows the thalweg where it can be distinguished and the middle of the stream bed otherwise."

THALWEG

12. Afghanistan-U.S.S.R.

Navigable rivers

Frontier Agreement between Afghanistan and the Soviet Union of 13 June 1946.

International Boundary Study, No. 26 (December 1963), page 5, describes the boundary in the following way:

"Article 1 provides that the international boundary shall follow the main channel of the Amu Darya (Oxus) and the Pyandzh to the head of navigation . . ."

13. Argentine-Uruguay

The Uruguay river between Salto Grande and Punta Gorda

Treaty of Boundaries between the Republic of Uruguay and the Argentine Republic in the Uruguay River of 7 April 1961:

Article 1 (B.I.): "From Ayuí to a point situated in the area of bifurcation of the Filomena and El Medio channels, the boundary shall follow a line that coincides with the centre of the main navigation channel . . .

. . . . . .

(II*a*): . . . One line shall coincide with the center of the Filomena Channel (main navigation channel) . . .

. . . . . .

(III): From the point of the confluence of the Filomena and El Medio channels to the Punta Gorda parallel, the lines shall again be united in a single boundary line for all purposes, which shall coincide with the center of the main navigation channel."

Source: *International Boundary Study*, No. 68 (March 1966), page 3.

14. British Honduras-Guatemala

Boundary treaty between the Republic of Guatemala and Great Britain, signed in Guatemala City on 30 April 1859.

Article 1: ". . . the boundary between the Republic and the British Settlements and Possessions . . . is as follows:

Beginning at the mouth of the river Sarstoon (Sarstun) in the Bay of Honduras, and proceeding up the mid-channel thereof to Gracias á Dios Falls; . . ."

Source: *International Boundary Study*, No. 8 (July 1961), page 1.

15. Burma-Laos

Mekong River

Declaration relative to the delimitation of French and English possessions along the frontiers of the Kingdom of Siam made on 15 January 1896.

Article 3: "A partir de l'embouchure du Nam-Huok et en remontant vers le nord jusqu'à la frontière chinoise, le thalweg du Mékong formera la limite des possessions ou sphères d'influence de la France et de la Grande-Bretagne . . ."

Source: *International Boundary Study*, No. 33 (June 1964), page 4.

16. Burma-Thailand

The boundary rivers north of the town of Marang

Exchange of Notes . . . regarding the boundary between Burma and Siam of 1 June 1934.

International Boundary Study, No. 63 (February 1966), page 6, describes the boundary in the following way:

"The same principle (i.e., thalweg) was extended to the Pakchan River. Specifically, 'the deep water channel of the River Pakchan, wherever it may be, should always be accepted as the boundary . . . (in) that part . . . from the . . . village of Marang northwards as far as said river forms the boundary . . .'."

17. Burundi-Congo

Rusizi-river

Convention of 11 August 1910 confirming the arrangement signed in Brussels on 10 May 1910 laying down the boundary between German East Africa and Belgium Congo:

"The boundary, leaving the median line of Lake Tanganyika, curves in order to follow the thalweg of the main western branch of the Russisi (Rusizi or Ruzisi) delta as far as the northern tip of the delta. It then takes the thalweg of that river to the point where it flows out of Lake Kivu."

Source: *International Boundary Study*, No. 48 (April 1965), page 3.

18. Czechoslovakia-Hungary

Navigable rivers

Treaty of Peace between the Allied and Associated Powers and Hungary and Protocol and Declaration of 4 June 1920.

International Boundary Study, No. 66 (March 1966), page 6, describes the boundary in the following way:

". . . Article 30 stated that where the terms 'course' or 'channel' were used to delimit the boundary in a waterway, they equated with . . . the thalweg in navigable ones."

19. The Federal Republic of Germany-France

The Rhine

Treaty between Germany and France concerning the delimitation of the frontier, of 14 August 1925.

Article 16: "Sur la section de la frontière entre la France et le Pays de Bade, la limite de souveraineté est déterminée sur le Rhin par l'axe du thalweg.

L'axe du thalweg est la suite ininterrompue des sondes les plus profondes."

Source: *Reichsgesetzblatt*, Teil II, 1927, page 959.

20. Iran-Iraq

Shatt El Arab (from Chatile to Abadan)

Treaty concerning the delimitation of the frontier between Iran and Iraq of 4 July 1937.

Article 2: "La ligne frontière commence au point le plus avancé de l'île

Chatile . . . se poursuit perpendiculairement au niveau des eaux les plus basses, rejoint le thalweg du Chatt El Arab jusqu'à un point situé en face de la jetée actuelle No I d'Abadan . . ."

21. Laos-Thailand

The rivers Nam Heung Nga, Nam Heung and Mekong

Convention for the Regulation of Relations between Siam and Indo-China of 25 August 1926.

International Boundary Study, No. 20 (September 1962), page 1, describes the boundary in the following way:

"At approximately . . . the boundary leaves the water divide to follow the thalweg of the Nam Heung Nga and the Nam Heung to the latter's confluence with the Mekong. . . . For the next 541 miles the Laos-Thailand boundary is defined by the thalweg of the Mekong River where no islands exist, or the thalweg closest to the Thai shore where islands are to be found in the river . . ."

22. Mozambique-Tanzania

Rovuma River

Exchanges of Notes between His Majesty's Government in the United Kingdom and the Portuguese Government regarding the Boundary between Tanganyika Territory and Mozambique, 11 May 1936-28 December 1937:

"Throughout the course of the River Rovuma in those places where there are no islands, the boundary shall follow the thalweg . . ."

Source: *International Boundary Study*, No. 39 (October 1964), page 4.

23. Norway-U.S.S.R.

The rivers Pasvikelv and Jakobselv

Final Protocol of the Mixed Soviet-Norwegian Commission of 18 December 1947.

International Boundary Study, No. 24 (December 1963), page 4, describes the boundary in the following way:

". . . The major modification was the specification of the thalweg in the two rivers rather than the previous 'median line of the channel'."

24. Rumania-Hungary

Navigable rivers

Treaty of Peace between the Allied and Associated Powers and Hungary and Protocol and Declaration of 4 June 1920.

International Boundary Study, No. 47 (April 1965), page 6, describes the boundary in the following way:

". . . Article 30 stated that where the terms 'course' or 'channel' were used to define the boundary in a waterway, they equated with . . . the thalweg in navigable ones."

25. Rumania-U.S.S.R.

Navigable rivers

Convention concerning the settlement of questions arising out of the delimitation of the frontier between the Kingdom of Rumania and the Czechoslovak State of 15 July 1930 and other acts.

International Boundary Study, No. 43 (December 1964), page 9, describes the boundary in the following way:

"The ... Rumania-U.S.S.R. boundary is completely demarcated by ... or c) the thalwegs of navigable rivers."

26. Rwanda-Congo

Rusizi River

Convention of 11 August 1910 confirming the arrangement signed in Brussels on 10 May 1910 laying down the boundary between German East Africa and Belgium Congo:

"... It then takes the thalweg of that river to the point where it flows out of Lake Kivu."

Source: *International Boundary Study*, No. 52 (June 1965), page 3.

27. Rwanda-Tanzania

Kagera River (first and last part of the boundary)

Treaty between His Majesty in respect of the United Kingdom and His Majesty the King of the Belgians regarding the boundary between Tanganyika and Rwanda-Urundi of 22 November 1934:

"Article 1: From the confluence of the Mwibu River with the Kagera River to the intersection of the straight line joining boundary beacon 59 A to boundary beacon 59 B with the thalweg of the Kagera River, the boundary follows the thalweg of the Kagera River ...

. . . . . .

Article 4: From the point referred to ... the boundary line follows the thalweg of the Kagera River to the Uganda frontier."

Source: *International Boundary Study*, No. 69 (May 1966), pages 3 and 5.

28. Rwanda-Uganda

The Rivers Kirumumu, Chizinga and Kachwamba-Kakitumba

Agreement between Great Britain and Germany settling the boundary between Uganda and German East Africa of 14 October 1910 and Anglo-German Protocol signed on 30 October 1911:

"The thalweg of the Kirumumu to its source ...

. . . . . .

From the source of the River Chizinga the boundary follows the thalweg of the River Chizinga to its confluence with the River Kachwamba-Kakitumba.

From the confluence of the Rivers Chizinga and Kachwamba-Kakitumba the boundary follows the thalweg of the River Kachwamba-Kakitumba to the confluence of the Rivers Kachwamba-Kakitumba and Kagera."

Source: *International Boundary Study*, No. 54 (July 1965), pages 3 and 5.

29. Switzerland-

Certain frontier rivers

Note Verbale of 30 March 1967 from the Swiss Ministry of Foreign Affairs (Département Politique Fédéral) to the Danish Embassy in Berne:

"... Le tracé sur les cours d'eau formant la frontière entre les cantons suisses ou entre la Suisse et les Etats limitrophes suit en règle générale le milieu du lit ou parfois, le thalweg."

30. Tanzania-Zambia

Navigable rivers

Agreement between the British and German Governments respecting Africa and . . . of 1 July 1890.

International Boundary Study, No. 44 (March 1965), page 1, describes the boundary in the following way:

"In streams comprising the boundary, the line follows the thalweg where it can be distinguished . . ."

STRAIGHT LINES

31. Rwanda-Tanzania

Kagera River (middle part of the course of the river)

Treaty between His Majesty in respect of the United Kingdom and His Majesty the King of the Belgians regarding the boundary between Tanganyika and Rwanda-Urundi of 22 November 1934:

Article 2: "From the point where the thalweg of the Kagera River is intersected by the straight line joining boundary pillars 59 A and 59 B to the point where the straight line joining boundary pillars 72 A and 72 B intersects the said thalweg, the boundary is determined by the series of straight lines joining intervisible stone pillars . . ."

Source: *International Boundary Study*, No. 69 (May 1966), page 3.

ONE OF THE SHORES

32. Kenya-Tanzania

Ngobwe River

Agreement between Great Britain and Germany respecting boundaries in East Africa . . . of 25 July 1893 and Anglo-German Protocol of 1900:

"The boundary follows the left bank of the Ngobwe to about the point No. 13 . . ."

Source: *International Boundary Study*, No. 71 (May 1966), page 6.

BOTH SHORES

33. Netherlands-Prussia

Treaty of Aken between the Netherlands and Prussia of 26 June 1816.

Article 27: "In all cases where streams or rivers form the frontiers they shall be common to the two States unless the contrary is expressly stipulated . . ."

Unofficial translation. Source: Netherlands *Staatsblad* 1850, No. 10.

Annex 14

BILL OF OCTOBER 1967 RELATING TO THE BELGIAN CONTINENTAL SHELF

Chambre des Représentants

SESSION 1966-1967

23 OCTOBRE 1967

Projet de loi sur le plateau continental de la Belgique

Exposé des motifs

MESDAMES, MESSIEURS,

L'affirmation des droits exclusifs d'exploration et d'exploitation des ressources naturelles du plateau continental est relativement récente. Si l'on peut relever quelques cas isolés et très localisés d'affirmation de ces droits avant 1914, c'est la proclamation faite par le Président Truman, le 28 septembre 1945, soumettant le sous-sol et le lit de la mer, appartenant au plateau continental des Etats-Unis, à leur juridiction et à leur contrôle, qui a surtout contribué à l'extension de cette notion nouvelle et à son application par un certain nombre d'Etats.

A la veille de la réunion de la Conférence des Nations Unies sur le droit de la mer, en 1958, plus de vingt Etats avaient unilatéralement étendu leurs droits sur le plateau continental proprement dit, ou sur une étendue allant parfois jusqu'à deux cents milles marins. Il s'agissait essentiellement de Puissances appartenant à l'Amérique latine, au Moyen-Orient et à l'Extrême-Orient.

Primitivement, la notion s'appliquait au socle sous-marin proprement dit des continents; mais un certain nombre de pays, dont les côtes ne comportent pas de socle sous-marin, l'ont élargie, soit en adoptant des critères de distance, soit en s'abstenant de tout critère concret.

Aussi, si la Conférence de Genève sur le droit de la mer avait comme objectif la codification du droit international, force est bien de constater que la notion même du plateau continental était trop récente et trop imprécise pour que l'on pût aboutir à une codification acceptable.

Telle qu'elle est sortie des travaux de Genève, la Convention du 29 avril 1958 sur le plateau continental apparaît au Gouvernement belge comme une construction juridique encore imparfaite. D'une part, elle ne retient comme critère que celui de l'*exploitabilité*; d'autre part, elle dispense l'Etat riverain d'exploiter réellement et même de proclamer ses droits.

Enfin, elle ne prévoit aucun système d'arbitrage obligatoire en cas de différends entre Etats.

Comme la convention étend les droits exclusifs de l'Etat riverain aux organismes vivants en contact permanent avec le lit de la mer (huîtres, moules, algues, etc.), l'absence de tout critère concret de délimitation pourrait causer de graves préjudices à nos pêcheurs de haute mer. Cette raison a amené le Gouvernement belge à ne pas signer la Convention du 29 avril 1958 sur le plateau continental.

* * *

Cette abstention ne signifie pas que le Gouvernement belge n'accepte pas le principe même des droits de l'Etat riverain. Comme la mer du Nord ne constitue en réalité qu'un seul plateau continental physique, que les droits que nous pourrions y détenir se trouvent nécessairement limités d'un manière concrète par ceux des autres Etats riverains, les lacunes de la convention de Genève ne sauraient y avoir effet.

Aussi, le Gouvernement belge, à l'instar de ce qu'a fait le Gouvernement norvégien par sa loi du 21 juin 1963, a-t-il pris la décision d'affirmer les droits de la Belgique sur la part qui lui revient dans le plateau continental de la mer du Nord par la voie d'une loi nationale, reprenant les dispositions de la Convention de Genève du 29 avril 1958, qu'il considère comme les plus appropriées au plateau continental belge.

Cette loi est volontairement très courte dans ses dispositions, parce qu'il s'agit d'une loi de principe, fixant de nouvelles limites à la juridiction de l'Etat.

* * *

L'article 1 du projet de loi consacre l'affirmation des droits de la Belgique; il définit en outre la notion de plateau continental et celle de ressources naturelles. La définition des ressources naturelles est reprise mot pour mot de celle qui figure à l'article 2, paragraphe 4, de la convention de Genève du 29 avril 1958.

L'article 2 fixe les critères de délimitation du plateau continental, conformément aux dispositions de l'article 6, paragraphes 1 et 2, de la convention précitée.

L'article 3 établit en principe que les recherches ou l'exploitation des ressources minérales et autres ressources non-vivantes du lit de la mer et du sous-sol sont subordonnées à l'octroi de concessions, accordées aux conditions et selon les modalités déterminées par le Roi.

C'est à dessein que l'article, tout en laissant au Roi le soin de déterminer les modalités de concessions, ne limite pas la possibilité d'octroi de celles-ci aux seuls ressortissants belges. L'intention du Gouvernement est de ne faire aucune discrimination entre ceux-ci — qu'il s'agisse de personnes physiques ou morales — et les étrangers, les apatrides, les sociétés ou organisations qui n'ont pas de nationalité. Mais il conservera son droit de refuser une autorisation, notamment si des considérations de sécurité, ou la perspective d'un épuisement prématuré des ressources l'y conduisent.

L'article 4 réserve aux ressortissants belges l'exploration et l'exploitation des organismes vivants du lit de la mer qui appartiennent aux espèces sédentaires selon la définition de l'article 1er, alinéa 2. Il est entendu que cet article ne tend pas à gêner la pêche au chalut effectuée par des pêcheurs étrangers, bien que ce mode de capture puisse difficilement se pratiquer sans ramener dans le chalut des algues ou l'un ou l'autre coquillage se trouvant sur le lit de la mer. D'autre part, des exceptions individuelles et collectives sont prévues; l'on ne peut préjuger notamment de ce que sera la politique communautaire en matière de pêche au sein de la C.E.E., et il est préférable de pouvoir l'appliquer, le cas échéant, avec souplesse.

Au surplus, en rendant applicables les articles 3 et 4 à toute exploration ou exploitation des ressources naturelles du plateau continental, il n'entre pas dans les intentions du Gouvernement belge de refuser les autorisations nécessaires aux fins de recherches océanographiques de caractère purement scientifique, pour autant que celles-ci ne constituent point une gêne au sens de l'article 5.

L'article 5 confère au Roi le droit de veiller à ce que l'exploitation et l'exploration ne puissent constituer d'entraves à la navigation, à la pêche, à la con-

servation des ressources biologiques de la mer ou à la recherche scientifique. Ces dispositions sont conformes à celles de l'article 5 de la Convention de Genève du 29 avril 1958.

En vertu de l'article 6 il incombe au Roi d'établir, en fonction des nécessités industrielles de l'exploration ou de l'exploitation, une zone de sécurité conformément aux dispositions de la Convention de Genève précitée.

Les articles 7, 8 et 9 du projet de loi soumettent au droit belge les installations ou autres dispositifs, situés en haute mer, fixés à demeure sur le plateau continental, ainsi que les personnes et les biens qui s'y trouvent. Sans cette disposition, il se constituerait une sorte de vide judiciaire et juridique sur ces installations, qui se trouvent en dehors du territoire national et ne sont pas soumises à la juridiction du pavillon, comme les navires. Le paragraphe 4 de l'article 5 de la Convention de Genève du 29 avril 1958, prévoit explicitement que les installations permanentes établies sur le plateau continental sont soumises à la juridiction de l'Etat riverain.

Pour tenir compte de l'avis formulé par le Conseil d'Etat, il a été nécessaire de donner, à défaut d'autres règles attributives, compétence aux tribunaux de l'arrondissement judiciaire de Bruxelles en matière pénale, et de préciser que les actes ou faits ayant des effets juridiques autres que pénaux seront réputés s'être produits en Belgique, et, à défaut d'autres règles attributives de compétence, sur le territoire du deuxième canton de justice de paix de l'arrondissement judiciaire de Bruxelles.

* * *

A l'intervention d'un arrêté royal et sur la proposition du Ministre ayant les mines dans ses attributions, les dispositions de la loi qui se rapportent aux ressources minérales et aux autres ressources nonvivantes du lit de la mer et du sous-sol feront l'objet d'un titre spécial des lois minières coordonnées par l'arrêté royal du 15 septembre 1919, avec lesquelles elles seront mise en concordance.

Le Ministre des Affaires étrangères,

P. HARMEL.

Le Ministre de la Justice,

P. WIGNY.

Le Ministre de l'Agriculture,

CH. HEGER.

Pour le Ministre des Affaires économiques, absent,
Le Ministre de la Défense nationale,

CH. POSWICK.

Le Ministre des Communications,

A. BERTRAND.

Le Ministre des Finances,

R. HENRION.

Le Ministre-Secrétaire d'Etat aux Postes,
Télégraphes et Téléphones,

H. MAISSE.

AVIS DU CONSEIL D'ETAT.

Le CONSEIL D'ETAT, section de législation, deuxième chambre, saisi par le Ministre des Affaires étrangères, chargé de la Coordination de la Politique extérieure, le 7 janvier 1966, d'une demande d'avis sur un projet de loi « sur le plateau continental de la Belgique », a donné le 28 février 1966 l'avis suivant:

Si la souveraineté étatique revêt, en principe, un caractère territorial, l'exercice par un Etat de certaines prérogatives de souveraineté en dehors des limites de son territoire national peut exceptionnellement être légitimé soit par l'effet d'une convention internationale, soit sur base du droit international coutumier.

La Belgique n'ayant pas adhéré à la Convention de Genève du 29 avril 1958 sur le plateau continental, ne peut fonder sa compétence à légiférer sur cet objet que sur la coutume internationale et tel paraît bien être, en effet, le fondement que le Gouvernement entend donner au projet.

Si ce procédé ne soulève pas d'objection de principe, sa mise en œuvre est cependant de nature à engendrer des difficultés sur le plan pratique dans les relations entre la Belgique et les autres Etats qui sont, au même titre qu'elle, directement intéressés par le régime juridique du plateau continental de la Mer du Nord. Alors que la Belgique n'est pas partie à la Convention de Genève, le Royaume-Uni, la France et les Pays-Bas y ont adhéré.

La Convention de Genève est entrée en vigueur à la date du 10 juin 1964 et, d'après les renseignements fournis par le délégué du Gouvernement, elle lie déjà trente Etats. Il est certain que le juge international qui aurait à juger les différends susceptibles d'opposer la Belgique aux Etats étrangers, à propos du régime juridique du plateau continental de la Mer du Nord, se référerait aux dispositions de cette Convention dans la mesure où celles-ci seraient considérées par lui comme l'expression de règles coutumières existantes.

Si le Gouvernement estime qu'il y a lieu de préciser le statut juridique du plateau continental adjacent aux côtes belges, plutôt que de proposer au législateur de régler cette matière d'intérêt international d'une manière unilatérale et au risque de le faire en méconnaissance des règles du droit des gens, il vaudrait mieux qu'il soumette à l'assentiment des Chambres l'adhésion de la Belgique à la Convention de Genève. Pareille adhésion peut d'ailleurs être assortie de certaines réserves dans les limites admises par l'article 12 de la Convention, c'est-à-dire à l'égard de tous les articles de celle-ci, à l'exception toutefois des articles 1er à 3.

En toute hypothèse, les dispositions unilatérales que la Belgique viendrait à édicter en violation des règles coutumières, seraient inopposables aux Etats étrangers et à leurs nationaux.

* * *

Dans ses dispositions générales, le projet de loi s'inspire des règles énoncées par la Convention de Genève, dont il reproduit parfois textuellement les termes. Il n'en est toutefois pas ainsi des dispositions de l'article 4 du projet soumis dans les termes suivants à l'avis du Conseil d'Etat:

« L'exploration et l'exploitation des ressources vivantes du lit de la mer est réservée aux ressortissants belges, sauf exceptions collectives ou individuelles qui peuvent être accordées par le Roi ».

En permettant de réserver aux seuls ressortissants belges l'exploration et l'exploitation de *toutes* les ressources vivantes du lit de la mer, le projet s'écarte de la règle énoncée par la Convention de Genève selon laquelle l'Etat côtier ne

peut réserver à ses ressortissants que l'exploration et l'exploitation de *certaines* ressources vivantes de types sédentaires.

Interrogé sur ce point, le fonctionnaire délégué a signalé que le Gouvernement n'avait nullement l'intention de s'écarter de la Convention. Ceci renforce la conclusion de l'observation qui précède. Si toutefois le Gouvernement n'entend pas adhérer à la Convention de Genève, le texte de l'article 4 devrait être rédigé comme suit:

« *Article 4.* — Sauf exceptions collectives ou individuelles qui peuvent être accordées par le Roi, sont réservées aux ressortissants belges l'exploration et l'exploitation des organismes vivants qui, selon la définition de l'article 1er, alinéa 2, b, appartiennent aux espèces sédentaires. »

* * *

Une autre discordance avec la Convention de Genève apparaît à l'article 2, 2, du projet.

D'après cette disposition, la délimitation du plateau continental vis-à-vis des pays dont les côtes sont adjacentes aux côtes belges se fait: « ...par application du principe de la ligne médiane dont tous les points sont équidistants des points les plus proches des lignes de base... », alors que, suivant l'article 6, 2°, de la Convention de Genève, à défaut d'accord particulier, cette délimitation a lieu « ...par application du principe de l'équidistance des points les plus proches des lignes de base... ».

Suivant les déclarations du fonctionnaire délégué, c'est ce dernier texte qui correspond à l'intention du Gouvernement.

Il y aurait lieu de modifier en conséquence l'article 2, 2, du projet.

* * *

Conformément à la terminologie utilisée par l'article 2 de la Convention de Genève, l'article 1er du projet dispose que le Royaume de Belgique exerce « des droits souverains » sur le plateau continental « aux fins de l'exploration de celui-ci et de l'exploitation de ses ressources naturelles » telles qu'elles sont énumérées à l'article 1er, b. Cette terminologie implique l'affirmation au profit de l'Etat belge de certains droits démembrés de la souveraineté et non l'affirmation d'une souveraineté territoriale complète qui serait inconciliable avec le principe de la liberté de la haute mer. En conséquence, l'adoption du projet ne modifiera pas les limites de l'Etat telles qu'elles ont pu être fixées par des traités antérieurs, ni la composition du territoire national telle qu'elle est décrite à l'article 1er de la Constitution. Soumis à certaines compétences spécifiques au profit de l'Etat belge, le plateau continental ne fera partie ni du territoire national, ni du territoire de la province et des communes riveraines, ni du domaine public belge. Il formera une zone soumise, pour la protection d'intérêts nationaux spécifiques, à certaines compétences particulières de souveraineté.

Les droits de souveraineté que l'article 1er du projet tend à affirmer au profit de l'Etat belge sur le plateau continental, trouvent ainsi leur justification mais aussi leurs limites dans la finalité en vue de laquelle ils ont été reconnus par le droit international tel qu'il a été précisé par la Convention de Genève du 29 avril 1958, à savoir l'exploration du plateau continental ainsi que l'exploitation des seules ressources naturelles qui sont énumérées, dans les mêmes termes, par l'article 2, alinéa 4, de la Convention de Genève et par l'article 1er, b, du projet.

* * *

L'article 2 contient dans chacun de ses alinéas, une disposition prévoyant l'aménagement de la délimitation du plateau continental belge par des accords particuliers.

Suivant les explications fournies par le fonctionnaire délégué, les dispositions de l'article 2 ne constituent pas un assentiment anticipé aux accords particuliers que le Roi pourrait conclure au sujet des limites du plateau continental.

Ces accords particuliers, encore qu'ils n'auront pas pour objet de modifier les frontières de l'Etat, seront de nature à lier individuellement les Belges par les effets qu'ils impliqueront sur le plan administratif et juridictionnel et, à ce titre, ils devront être soumis à l'assentiment des Chambres législatives conformément au prescrit de l'article 68 de la Constitution.

* * *

L'article 3 précise que toute personne physique ou morale de nationalité belge ou étrangère peut obtenir l'autorisation de rechercher ou d'exploiter les ressources minérales et autres ressources non vivantes du lit de la mer et du sous-sol. Ainsi se trouvent exclus du bénéfice d'une concession les apatrides et les sociétés ou organisations qui n'ont pas de nationalité, alors que telle ne paraît pas être l'intention du Gouvernement.

Le même article dispose que les demandes de concessions sont introduites auprès du Ministre qui a l'énergie dans ses attributions, mais l'accord du Ministre qui a la marine et la navigation intérieure dans ses attributions sera nécessaire pour les modalités d'application du prescrit de l'article 5, §§ 1er à 3.

Il serait plus conforme à l'esprit de la Constitution de laisser au Roi le soin de déterminer les conditions et modalités de l'octroi des concessions.

Le texte suivant répond à ces observations:

« La recherche et l'exploitation des ressources minérales et autres ressources non vivantes du lit de la mer et du sous-sol sont subordonnées à l'octroi de concessions accordées aux conditions et selon les modalités déterminées par le Roi. »

* * *

Au sujet de l'article 5, il y a lieu d'observer qu'il ne convient pas d'insérer dans une loi des dispositions entrant dans les détails de procédures administratives qui relèvent normalement de l'exécution de la loi.

La rédaction suivante est proposée pour cet article:

« *Article 5.* — Les installations ou autres dispositifs établis en haute mer et les zones de sécurité visées à l'article 6 ne pourront gêner d'une manière injustifiable ni la navigation, la pêche ou la conservation des ressources biologiques de la mer, ni l'utilisation des routes maritimes régulières d'un intérêt essentiel pour la navigation internationale.

A cet effet, le Roi fixe les mesures à prendre ainsi que leurs modalités d'exécution.

Il détermine de même toute obligation qu'il juge utile à cette fin, notamment en ce qui concerne la signalisation et les moyens d'éviter la pollution des eaux de la mer ainsi que la détérioration des câbles sous-marins ou des pipe-lines.

Il arrête la procédure à suivre pour l'application du retrait partiel ou total de l'autorisation ou de la concession. »

Ce texte, pas plus que celui du projet, ne fait mention de l'interdiction de gêner les recherches océanographiques et scientifiques que prévoit l'article 5, 1, de la Convention. L'exposé des motifs ne permet pas de déterminer si cette omission est intentionnelle.

* * *

Conformément à la seconde observation faite à propos de l'article 3, il est suggéré de rédiger l'article 6 comme suit:

« *Article 6.* — Une zone de sécurité pourra être établie selon les modalités déterminées par le Roi pour chaque installation ou dispositif situé sur le plateau continental.

Elle peut s'étendre à une distance de cinq cents mètres mesurés à partir de chaque point du bord extérieur de ces installations ou dispositifs. »

* * *

Suivant les renseignements fournis par les délégués du Gouvernement, les installations dont il est question à l'article 7 sont uniquement celles qui sont relatives à l'exploration du plateau continental et à l'exploitation de ses ressources naturelles. Il convient de mettre le texte en concordance avec cette intention, en substituant à l'expression « Installations permanentes situées en haute mer sur le plateau continental belge » l'expression plus adéquate: « Installations ou autres dispositifs situés en haute mer, fixés à demeure sur le plateau continental et visés par la présente loi ».

Cet article appelle, en outre, l'observation suivante: l'expression « sont soumises à la juridiction civile, pénale ou administrative belge » manque de clarté et devrait être précisée.

Il convient, en effet, de savoir si la disposition contenue dans l'article 7 tend simplement à affirmer la compétence virtuelle de législation, de réglementation et de juridiction à l'égard des activités et des personnes qui y sont visées ou si cette disposition entend soumettre, de plein droit, ces personnes et ces activités aux lois et règlements de l'Etat belge ainsi qu'à ses juridictions.

Pour illustrer les difficultés qui peuvent naître en cette matière, il suffit de se demander si tous les actes ou faits juridiques qui se produiront sur ces installations fixes (naissances, contrats, infractions) seront réputés s'être produits en Belgique; si les dites installations seront susceptibles d'hypothèques, si les revenus professionnels qui y seront réalisés seront réputés avoir été perçus en Belgique, si les délinquants étrangers qui y seront trouvés pourront être expulsés ou extradés, etc. . .

En toute hypothèse, il y a lieu d'observer que, ne faisant partie d'aucune province, arrondissement où commune belge, le plateau continental et les activités qui s'y exerceront, ne peuvent être soumis ni aux règlements provinciaux ou communaux, ni à des lois nationales dont l'application est fonction d'une certaine relation entre une activité et une région déterminée du territoire national.

Enfin, dans la mesure où l'article 7 du projet a pour objet de soumettre à des juridictions belges les activités ou les infractions localisées sur le plateau continental ou sur des installations fixes qui y seraient établies, la portée exacte de cet article devrait être précisée de manière à éviter toute discussion de compétence territoriale entre diverses juridictions belges.

On observera, à cet égard, que plusieurs lois belges qui ont étendu à des infractions commises en haute mer la compétence des juridictions belges, ont expressément prévu que seront légalement compétents: le tribunal du lieu de la

résidence de l'inculpé ou de sa dernière résidence, celui du lieu où il aura été trouvé et celui dans le ressort duquel se trouve le port d'attache du navire ou encore, à leur défaut, le tribunal correctionnel de Bruxelles (loi du 25 août 1920 sur la sécurité des navires, articles 35 — Loi du 5 juin 1928 portant revision du Code disciplinaire et pénal pour la marine marchande et la pêche maritime, article 74 — Voyez aussi la loi du 12 avril 1957 autorisant le Roi à prescrire des mesures en vue de protéger les réserves de poissons, crustacés et de mollusques en mer, article 4, et arrêté royal d'exécution du 7 mai 1958, article 9).

Sauf dans la mesure où elles attribuent compétence à la juridiction dans le ressort de laquelle se trouve le port d'attache du navire, ces dispositions légales pourraient utilement inspirer le législateur dans le choix d'une solution au problème qui est évoqué ici.

La chambre était composée de:

Messieurs: G. Holoye, conseiller d'Etat, président;

G. Van Bunnen et J. Masquelin, conseillers d'Etat;

P. De Visscher et J. De Meyer, assesseurs de la section de législation;

G. De Leuze, greffier adjoint, greffier.

La concordance entre la version française et la version néerlandaise a été vérifiée sous le contrôle de M. G. Van Bunnen.

Le rapport a été présenté par M. W. Lahaye, auditeur général adjoint.

Le Greffier, *Le Président,*

(s.) G. DELEUZE. (s.) G. HOLOYE.

PROJET DE LOI

BAUDOUIN,

Roi des Belges,

A tous, présents et à venir, SALUT.

Sur la proposition de Notre Ministre des Affaires étrangères, de Notre Ministre de la Justice, de Notre Ministre de l'Agriculture, de Notre Ministre des Affaires économiques, de Notre Ministre des Communications, de Notre Ministre des Finances et de Notre Ministre-Secrétaire d'Etat aux Postes, Télégraphes et Téléphones.

NOUS AVONS ARRÊTÉ ET ARRÊTONS:

Notre Ministre des Affaires étrangères, Notre Ministre de la Justice, Notre Ministre de l'Agriculture, Notre Ministre des Affaires économiques, Notre Ministre des Communications, Notre Ministre des Finances et Notre Ministre-Secrétaire d'Etat aux Postes, Télégraphes et Téléphones sont chargés de présenter, en Notre nom, aux Chambres législatives, le projet de loi dont la teneur suit:

Article premier.

Le Royaume de Belgique exerce des droits souverains sur le plateau continental tel qu'il est délimité à l'article 2 de la présente loi aux fins de l'exploration de celui-ci et de l'exploitation de ses ressources naturelles.

Au sens de la présente loi:

a) l'expression « plateau continental » désigne le lit de la mer et le sous-sol des régions sous-marines adjacentes aux côtes mais situées en dehors de la mer territoriale;

b) les « ressources naturelles » comprennent les ressources minérales et autres ressources non vivantes du lit de la mer et du sous-sol, ainsi que les organismes vivants qui appartiennent aux espèces sédentaires, c'est-à-dire les organismes qui, au stade où ils peuvent être pêchés, sont soit immobiles sur le lit de la mer ou au-dessous de ce lit, soit incapables de se déplacer si ce n'est en restant constamment en contact physique avec le lit de la mer ou le sous-sol.

Art. 2.

La délimitation du plateau continental belge vis-à-vis du plateau continental du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est constituée par la ligne médiane dont tous les points sont équidistants des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de la Belgique et du Royaume-Uni. Cette délimitation peut être aménagée par un accord particulier.

La délimitation du plateau continental vis-à-vis des pays dont les côtes sont adjacentes aux côtes belges, c'est-à-dire la France et les Pays-Bas, est déterminée par application du principe de l'équidistance des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacune des puissances intéressées. Cette délimitation peut être aménagée par un accord particulier avec la puissance intéressée.

Art. 3.

La recherche et l'exploitation des ressources minérales et autres ressources non vivantes du lit de la mer et du sous-sol sont subordonnées à l'octroi de concessions accordées aux conditions et selon les modalités déterminées par le Roi.

Art. 4.

Sauf exceptions collectives ou individuelles qui peuvent être accordées par le Roi, sont réservées aux ressortissants belges l'exploration et l'exploitation des organismes vivants qui, selon la définition de l'article 1er alinéa 2b, appartiennent aux espèces sédentaires.

Art. 5.

Les installations et autres dispositifs établis en haute mer, nécessaires à l'exploration ou à l'exploitation des ressources naturelles du plateau continental, ainsi que les zones de sécurité visées à l'article 6 ne pourront gêner d'une manière injustifiable ni la navigation, la pêche ou la conservation des ressources biologiques de la mer, ni l'utilisation des routes maritimes régulières d'un intérêt essentiel pour la navigation internationale, ni les recherches océanographiques fondamentales ou les autres recherches scientifiques effectuées avec l'intention d'en publier les résultats.

A cet effet le Roi fixe les mesures à prendre ainsi que leurs modalités d'exécution.

Il détermine de même toute obligation qu'il juge utile à cette fin, notamment en ce qui concerne la signalisation et les moyens d'éviter la pollution des eaux de la mer ainsi que la détérioration des câbles sous-marins ou de pipelines.

Il arrête la procédure à suivre pour l'application du retrait partiel ou total de l'autorisation ou de la concession.

Art. 6.

Une zone de sécurité pourra être établie selon les modalités déterminées par le Roi pour chaque installation ou dispositif situé sur le plateau continental. Elle peut s'étendre à une distance de cinq cents mètres mesurés à partir de chaque point du bord extérieur de ces installations ou dispositifs.

Art. 7.

Les installations ou autres dispositifs situés en haute mer, fixés à demeure sur le plateau continental et visés par la présente loi, ainsi que les personnes et les biens qui se trouvent sur ces installations ou dispositifs sont soumis au droit belge.

Art. 8.

Toute personne qui aura commis une infraction réprimée par le droit belge sur une installation ou un autre dispositif visé à l'article précédent pourra être poursuivie en Belgique.

A défaut d'autres règles attributives de compétence, les juridictions qui siègent à Bruxelles sont compétentes.

Art. 9.

Les actes ou faits ayant des effets juridiques autres que pénaux qui se produiront sur ou à l'égard d'une installation ou d'un autre dispositif visé à l'article 7 seront réputés s'être produits en Belgique.

A défaut d'autres règles attributives de compétence, ces actes ou faits seront réputés s'être produits sur le territoire du deuxième canton de justice de paix de l'arrondissement judiciaire de Bruxelles.

Donné à Bruxelles, le 11 octobre 1967.

BAUDOUIN.

PAR LE ROI:
Le Ministre des Affaires étrangères,
P. HARMEL.

Le Ministre de la Justice,
P. WIGNY.

Le Ministre de l'Agriculture,
CH. HEGER.

Pour le Ministre des Affaires économiques, absent,
Le Ministre de la Défense nationale,
CH. POSWICK.

Le Ministre des Communications,
A. BERTRAND.

Le Ministre des Finances,
R. HENRION.

Le Ministre-Secrétaire d'Etat aux Postes,
Télégraphes et Téléphones,
H. MAISSE.

Annex 14 A

(Translation)

Chamber of Representatives

1966-1967 Session

23 October 1967

Bill

concerning the Continental Shelf of Belgium

EXPOSÉ DES MOTIFS

Ladies and Gentlemen,

Claims to exclusive rights to explore and exploit the natural resources of the continental shelf are relatively recent. Though it is possible to cite a few isolated and very localized cases where such rights were claimed before 1914, it is President Truman's proclamation of 28 September 1945 placing the subsoil and seabed of the United States' continental shelf under that country's jurisdiction and control, that has contributed most notably to the diffusion of this new concept and to its application by a certain number of States.

In 1958, on the eve of the meeting of the United Nations Conference on the Law of the Sea, more than 20 States had unilaterally extended their rights over the continental shelf proper or over a stretch of sea measuring sometimes as much as 200 nautical miles. The States in question were for the most part Latin-American, Middle-Eastern and Far-Eastern Powers.

Originally the concept was applied to the submarine shelf proper of the continents, but a certain number of countries whose coasts have no submarine shelf have extended it, either by adopting criteria of distance or by dispensing with any concrete criterion.

Thus, although the purpose of the Geneva Conference on the Law of the Sea was the codification of international law, it had needs to be concluded that the actual concept of the continental shelf was too recent and too imprecise for an acceptable codification to be drawn up.

In the form it has been given by the deliberations at Geneva, the Convention of 29 April 1958 on the Continental Shelf is regarded by the Belgian Government as a still imperfect juridical construction. On the one hand, it adopts exploitability as the sole criterion; on the other hand, it absolves the coastal State from the obligation of actually engaging in exploitation or of even declaring its rights.

Furthermore, it does not provide for any system of compulsory arbitration in case of disputes between States.

Since the Convention extends the exclusive rights of the coastal State to the living organisms in permanent contact with the seabed (oysters, mussels, seaweed, etc.), the absence of any concrete criterion of delimitation could seriously prejudice our sea fishermen. This has led the Belgian Government to refrain from signing the Convention of 29 April 1958 on the Continental Shelf.

* * *

This abstention does not mean that the Belgian Government does not accept the actual principle of the rights of the coastal State. Since the North Sea in fact only constitutes a single natural continental shelf, and since the rights which we could have thereover are necessarily limited in a concrete manner by the rights of the other coastal States, the lacunae in the Geneva Convention would not have any repercussions there.

Therefore the Belgian Government, following the example set by the Norwegian Government with its Act of 21 June 1963, has decided to assert the rights of Belgium over its due share of the continental shelf of the North Sea by means of an Act of Parliament in which are reproduced those provisions of the Geneva Convention of 29 April 1958 which the Belgian Government deems the most appropriate to the Belgian continental shelf.

The provisions of the Act are intentionally very brief since it is an Act stating principles; it establishes new limits to the State's jurisdiction.

* * *

Article 1 of the Bill asserts the rights of Belgium; it defines, moreover, the concept of continental shelf and that of natural resources. The definition of natural resources is taken over word for word from Article 2, paragraph 4, of the Geneva Convention of 29 April 1958.

Article 2 establishes the criteria of delimitation of the continental shelf in conformity with the provisions of Article 6, paragraphs 1 and 2, of the said Convention.

Article 3 lays down in principle that the exploration or the exploitation of mineral and other non-living resources of the seabed and subsoil shall be subject to the granting of concessions, accorded on the conditions and in the manner determined by the King.

This Article, while leaving to the King the task of determining the manner in which the concessions shall be granted, deliberately refrains from providing that they may be granted to Belgian nationals only. It is the Government's intention to practise no discrimination between Belgian nationals—whether natural or juridical persons—and foreigners, stateless persons, companies or organizations that have no nationality. But it will reserve the right to refuse a licence, notably if it is prompted to do so by security considerations or by the prospect of the resources being prematurely exhausted.

Article 4 reserves for Belgian nationals the exploration and exploitations of living organisms of the seabed that belong to sedentary species as defined in Article 1, paragraph 2. The purpose of this Article is not, of course, to hinder trawl-fishing engaged in by foreign fishermen, although this form of fishing can hardly be practised without seaweed or some shell or other being picked up from the seabed by the trawl. However, provision has been made for individual and collective exceptions, for it is not possible to know in advance what will be the common policy of the EEC as regards fisheries, and when the time comes it should be possible to apply that policy in a flexible manner.

Furthermore, in making Articles 3 and 4 applicable to all exploration or exploitation of the natural resources of the continental shelf, the Belgian Government has no intention either of refusing licences for oceanographic research of a purely scientific character, in so far as such research activities do not cause interference within the meaning of Article 5.

Article 5 accords to the King the right to ensure that exploitation and exploration do not hinder navigation, fishing, the conservation of the biological

resources of the sea or scientific research. These provisions are in conformity with those of Article 5 of the Geneva Convention of 29 April 1958.

In virtue of Article 6, it is for the King to establish, in the light of industrial needs for exploration or exploitation, a safety zone in conformity with the provisions of the above-mentioned Geneva Convention.

Articles 7, 8 and 9 of the Bill place under Belgian law the installations or other devices situated in the high seas and established permanently on the continental shelf, as also any persons or goods located there. Without this provision a kind of judicial and juridical vacuum would be created on these installations, which are situated outside the national territory and are not subject, as ships are, to the law of the flag. Paragraph 4 of Article 5 of the Geneva Convention of 29 April 1958 provides explicitly that permanent installations established on the continental shelf shall be subject to the jurisdiction of the coastal State.

In order that advice of the Council of State may be taken into consideration, it has been necessary, in the absence of other rules assigning competence, to assign competence in penal matters to the courts of the judicial district of Brussels, and to specify that actions or occurrences having other than criminal implications shall be deemed to have taken place in Belgium and, in the absence of other rules assigning competence, on the territory of the second cantonal court of the judicial district of Brussels.

* * *

By Royal Decree and on the proposal of the Minister responsible for the mines, the provisions of the Act relating to the mineral and other non-living resources of the seabed and subsoil shall be made the subject of a special section of the Mines Acts co-ordinated by Royal Decree of 15 September 1919, with which they will be brought into harmony.

(Ministers' signatures.)

Advice of the Council of State

The Council of State, Legislation Department, Second Chamber, having on 7 January 1966 been requested by the Minister for Foreign Affairs, responsible for the co-ordination of foreign policy, to advise him on a Bill "concerning the Continental Shelf of Belgium", submitted the following advice on 28 February 1966:

Although, in principle, State sovereignty bears a territorial character, the exercise by a State of certain prerogatives of sovereignty outside the limits of its national territory may, exceptionally, be justified either in virtue of an international convention or on the ground of customary international law.

As Belgium has not acceded to the Geneva Convention of 29 April 1958 on the Continental Shelf, she can only base her competence to legislate thereon on international custom, and that would indeed appear to be the foundation on which the Government intends to base the Bill.

Although this procedure does not give rise to any fundamental objection, its implementation is such as may lead to practical difficulties in relations between Belgium and the other States that have, for the same reasons as Belgium, a direct interest in the system of law governing the continental shelf of the North Sea. Belgium has not acceded to the Geneva Convention, but the United Kingdom, France and the Netherlands have done so.

The Geneva Convention came into force on 10 June 1964 and, according to the information furnished by the officer representing the Government, it is

already binding on 30 States. It is certain that the international judge who would have to arbitrate in disputes that might arise between Belgium and foreign States on the subject of the system of law governing the continental shelf of the North Sea would have reference to the provisions of this Convention in so far as he deemed them to be the expression of existing rules of customary law.

If the Government considers it preferable to have the legal status of the continental shelf adjacent to the Belgian coast precisely defined rather than to propose to the legislature that it regulate this matter of international interest unilaterally and at the risk of infringing rules of international law, the Government would be well advised to submit the accession of Belgium to the Geneva Convention for the assent of the Chambers. Such accession could be made subject to certain reservations within the limits permitted by Article 12 of the Convention, namely in respect of all Articles of the Convention with the exception, however, of Articles 1 to 3 inclusive.

At all events, such unilateral regulations as Belgium might decree in violation of the rules of customary law could not be invoked against foreign States or their nationals.

* * *

In its general provisions the Bill is based on the rules of the Geneva Convention, the text of which it sometimes reproduces word for word. Such is not the case, however, with the provisions of Article 4 of the Bill, submitted in the following terms for the consideration of the Council of State:

> "The exploration and exploitation of the living resources of the seabed shall be reserved for Belgian nationals, save for collective or individual exceptions that may be authorized by the King."

By providing that only Belgian nationals may explore and exploit *all* living resources of the seabed, the Bill departs from the rule of the Geneva Convention according to which a coastal State may only reserve for its nationals the exploration and exploitation of *certain* living resources of sedentary species.

When questioned on this point, the Officer representing the Government stated that it was by no means the Government's intention to deviate from the Convention. This reinforces the conclusion of the preceding observation. If, however, the Government does not wish to accede to the Geneva Convention, the text of Article 4 should be worded as follows:

> "Article 4—Save for collective or individual exceptions that may be authorized by the King, the exploration and exploitation of living organisms that, according to the definition of Article 1, para. 2, b, belong to sedentary species shall be reserved for Belgian nationals."

* * *

A further deviation from the Geneva Convention appears in Article 2, 2, of the Bill.

According to this provision, the delimitation of the continental shelf vis-à-vis the countries whose coasts are adjacent to the Belgian coasts shall be made: "by application of the principle of the median line every point of which is equidistant from the nearest points of the baselines . . .", whereas, according to Article 6, paragraph 2, of the Geneva Convention, in the absence of a special

agreement, this delimitation shall be made "by application of the principle of equidistance from the nearest points of the baselines . . ."

According to the statements of the officer representing the Government, it is the latter text which corresponds to the Government's intention.

Article 2, 2, of the Bill should in consequence be amended.

* * *

In conformity with the terminology used in Article 2 of the Geneva Convention, Article 1 of the Bill lays down that the Kingdom of Belgium shall exercise "sovereign rights" over the continental shelf "for the purpose of exploring the latter and exploiting its natural resources" as they are enumerated in Article 1, *b*. This wording affirms that the Belgian State has certain rights unrelated to sovereignty, and not that it has complete territorial sovereignty which would be irreconcilable with the freedom of the high seas. Consequently, the adoption of the Bill will not modify the boundaries of the State such as they may have been fixed by previous treaties, or the composition of the national territory such as it is described in Article 1 of the Constitution. Made subject to certain specific competences in the Belgian State's favour, the continental shelf will not form part of the national territory or of the territory of the coastal province or municipalities or of Belgian public property. It will constitute a zone that is subject, for the protection of specific national interests, to certain special sovereign competences.

The sovereign rights which Article 1 of the Bill asserts for the Belgian State over the continental shelf thus find their justification, but also their limits, in the finality for which they have been recognized by international law such as it was defined by the Geneva Convention of 29 April 1958, namely the exploration of the continental shelf and the exploitation of only those natural resources enumerated, in the same terms, in Article 2, paragraph 4, of the Geneva Convention and in Article 1, *b*, of the Bill.

* * *

Each paragraph of Article 2 contains a provision stating that the delimitation of the Belgian continental shelf may be adjusted by special agreements.

According to the explanations given by the officer representing the Government, the provisions of Article 2 do not constitute assent in advance to the special agreements which the King may conclude regarding the limits of the continental shelf.

Even though the purpose of these special agreements may not be to modify the frontiers of the State, they may be such as to bind the Belgians individually by reason of their administrative and jurisdictional consequences, and for this reason they will have to be submitted for the assent of the Legislative Chambers in conformity with Article 68 of the Constitution.

* * *

Article 3 provides that any natural or juridical person of Belgian or foreign nationality may obtain a licence to explore or exploit the mineral and other non-living resources of the seabed and subsoil. Stateless persons and companies or organizations not having a nationality could therefore not be granted a concession, a situation that does not appear to have been intended by the Government.

The same Article provides that applications for concessions shall be sub-

mitted to the Minister responsible for Power, but the agreement of the Minister responsible for marine affairs and inland water transport will be necessary for the application of the provisions of Article 5, sections 1 to 3.

It would be more in keeping with the spirit of the Constitution to entrust to the King the task of determining the conditions and rules relative to the granting of the concessions.

The following text takes these observations into account:

> "The exploration and exploitation of mineral and other non-living resources of the seabed and subsoil shall only be permitted on the strength of concessions accorded on the conditions and in accordance with rules determined by the King."

* * *

Where Article 5 is concerned, it should be noted that it is not appropriate to include in an Act provisions pertaining to details concerning administrative procedures which in fact relate to the implementation of the Act.

The following wording is proposed for this Article:

> "Article 5—The installations or other devices established in the high seas and the safety zones referred to in Article 6 shall not interfere in an unjustifiable manner with navigation, fishing or the conservation of the living resources of the sea, or with recognized sea lanes of essential importance to international navigation.
>
> To this end the King shall determine the measures to be taken as also the rules governing their implementation.
>
> He shall establish any obligations that he considers useful to this end, notably in respect of warning systems and means of preventing the pollution of the water of the sea and damage to submarine cables or pipelines.
>
> He shall lay down the procedure to be followed for the partial or total withdrawal of a licence or concession."

This text, like that of the Bill, makes no mention of the provision contained in Article 5, 1, of the Convention prohibiting interference with oceanographic and scientific research. It is not possible to ascertain from the Exposé des Motifs whether this omission is intentional.

* * *

In conformity with the second observation made in connection with Article 3, it is proposed that Article 6 be worded as follows:

> "Article 6—A safety zone may be established in accordance with the rules laid down by the King for every installation or device situated on the continental shelf.
>
> The zone may extend to a distance of 500 metres measured from each point of the outer edge of these installations or devices."

* * *

According to the information given by the officers representing the Government, the installations referred to in Article 7 are solely those pertaining to the exploration of the continental shelf and to the exploitation of its natural resources. The text ought to be brought into line with this intention, i.e., the phrase "permanent installations situated in the high seas on the Belgian continental shelf" should be replaced by the more adequate phrase "installations

or other devices situated in the high seas permanently established on the continental shelf and referred to by the present Act".

This Article prompts the following observation: the phrase "are subject to Belgian civil, penal or administrative jurisdiction" should be expressed in a more precise manner.

For what needs to be known is whether the provision contained in Article 7 simply asserts virtual competence as regards legislation, the making of rules and jurisdiction in respect of activities and persons referred to therein, or whether the provision wishes to subject, *ipso jure*, those persons and those activities to the laws, regulations and law courts of the Belgian State.

To illustrate the difficulties that may arise in this matter, it is sufficient merely to consider the question whether all juridical actions or occurrences that may take place on these permanent installations (births, contracts, offences) shall be deemed to have taken place in Belgium, and whether the said installations may be encumbered with a mortgage, whether earnings acquired there will be deemed to have been received in Belgium, whether foreign delinquents who may be found there can be expelled or extradited, etc. . . .

At all events, it ought to be observed that since it does not form part of any Belgian province, district or municipality, the continental shelf and the activities that may take place there cannot be subjected to provincial or municipal regulations or to national laws the application of which supposes a certain relation between an activity and a specific region of national territory.

Finally, in so far as the purpose of Article 7 of the Bill is to subject to the jurisdiction of Belgian courts such activities as take place or offences as are committed on the continental shelf or on permanent installations which may be established there, the scope of this Article ought to be defined so precisely as to preclude any dispute between Belgian law courts as to territorial competence.

It should be observed that several Belgian Acts that have extended the competence of Belgian law courts to offences committed on the high seas have expressly provided that the following shall be competent at law: the court of the place of residence of the accused or of his last residence, the court of the place in which he is found and the court within whose jurisdiction the home port of the ship is situated, or, failing these, the District court at Brussels (Act of 25 August 1920 on the Safety of Ships, Article 35—Act of 5 June 1928 revising the Disciplinary and Penal Code for the Merchant Navy and Sea Fishery, Article 74—see also the Act of 12 April 1957 authorizing the King to determine measures for the protection of stocks of fish, crustacea and moliuscs in the sea, Article 4, and the Royal Decree of 7 May 1958 concerning the implementation thereof, Article 9).

Save in so far as they attribute competence to the court within whose jurisdiction the home port of the ship is situated, these statutory provisions might prove useful to the Legislature in its choice of a solution to the problem that has here been brought forward.

The Chamber was composed of:
Messrs. etc., etc.

BILL

BAUDOUIN
King of the Belgians

To all those present and to come, GREETINGS.

At the proposal of our Minister for Foreign Affairs, of our Minister of Justice, of our Minister of Agriculture, of our Minister for Economic Affairs, of our Minister of Communications, of our Minister of Finance and of our Minister-State Secretary for Postal Affairs,

WE HAVE DECIDED AND DO HERE DECIDE:

Our Minister for Foreign Affairs, our Minister of Justice, our Minister of Agriculture, our Minister for Economic Affairs, our Minister of Communications, our Minister of Finance and our Minister-State Secretary for Postal Affairs are instructed to present, in Our name, to the Legislative Chambers, the Bill the text of which is as follows:

Article 1

The Kingdom of Belgium shall exercise sovereign rights over the continental shelf, such as it has been delimited in Article 2 of the present Act, for the purpose of exploring the said shelf and of exploiting its natural resources.

Within the meaning of the present Act:

(a) the expression "continental shelf" shall designate the seabed and the subsoil of submarine regions adjacent to the coast but situated outside the territorial sea;

(b) the "natural resources" shall consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 2

The delimitation of the Belgian continental shelf vis-à-vis the continental shelf of the United Kingdom of Great Britain and Northern Ireland is constituted by 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 Belgium and that of the United Kingdom is measured. This delimitation may be adjusted by a special agreement.

The delimitation of the continental shelf vis-à-vis countries whose coasts are adjacent to the Belgian coasts, that is to say France and the Netherlands, shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each of the Powers concerned is measured. This delimitation may be adjusted by a special agreement with the Power concerned.

Article 3

The exploration and exploitation of mineral and other non-living resources of the seabed and subsoil shall be subject to the granting of concessions accorded on the conditions and in accordance with rules determined by the King.

Article 4

Save for collective or individual exceptions that may be authorized by the King, the exploration and exploitation of living organisms that, according to the definition of Article 1, paragraph 2, *b*, belong to sedentary species shall be reserved for Belgian nationals.

Article 5

The installations and other devices established in the high seas and necessary for the exploration or exploitation of the natural resources of the continental shelf as also the safety zones referred to in Article 6, shall not interfere in an unjustifiable manner with navigation, fishing or the conservation of the living resources of the sea, or with recognized sea lanes of essential importance to international navigation, or with fundamental oceanographic or other scientific research carried out with the intention of open publication.

To this end the King shall determine the measures to be taken as also the rules governing their implementation.

He shall establish any obligations that he deems useful to this end, notably in respect of warning systems and means of preventing the pollution of the water of the sea and damage to submarine cables or pipelines.

He shall lay down the procedure to be followed for the partial or total withdrawal of a licence or concession.

Article 6

A safety zone may be established in accordance with rules laid down by the King for every installation or device situated on the continental shelf.

The zone may extend a distance of 500 metres measured from each point of the outer edge of these installations or devices.

Article 7

The installations or other devices situated in the high seas permanently established on the continental shelf as also any persons or goods located on the installations or devices, shall be subject to Belgian law.

Article 8

Any person who, on an installation or other device referred to in the preceding Article, commits an offence that is regarded as such in Belgian law may be prosecuted in Belgium.

In the absence of other rules assigning competence, the courts that sit in Brussels shall be competent.

Article 9

Actions or occurrences having legal consequences not governed by penal law that take place on or in respect of an installation or other device referred to in Article 7 shall be deemed to have taken place in Belgium.

In the absence of other rules assigning competence, these actions or occurrences shall be deemed to have taken place on the territory of the second cantonal court of the judicial district of Brussels.

Given at Brussels, 11 October 1967

BAUDOUIN

By the King;

(List of Ministers)

Annex 15

BRIEF REMARKS ON THE USE OF LITERATURE IN THE MEMORIAL OF THE FEDERAL REPUBLIC OF GERMANY ILLUSTRATED BY FURTHER QUOTATIONS FROM THE AUTHORS CITED

1. Paragraph 32 in the Memorial contains the following quotation from page 439 in the *Report on the 46th Conference of the International Law Association*, 1954:

"The new ILC formula would appear to be superior to the old because of the more precise and objective nature of the rule proposed. So long as it is understood that geometric principles are not applied *ad absurdum*, they can be useful means of ascertaining what should be *prima facie* an equitable division."

It should be noted, however, that the quotation continues as follows:

"Equidistance would seem to be in general a desirable formula to follow, although in some situations the facts of geography and politics may modify its application."

2. Paragraph 34 in the Memorial contains the following statement:

"The *doctrine* has up to now concerned itself only very little with the problem of boundary delimitation. Most of the authors who have devoted attention to this question were, however, of the opinion that the delimitation of the shares of States in a common continental shelf could not be effected by the rigid application of some geometric method, but that such methods could only be regarded as a starting point or as a means to achieve a just and equitable apportionment."

(a) In support of this statement, the paragraph quotes, among other authors, the following passage from Olivier de Ferron, *Le Droit de la Mer*, Volume II, 1960, page 201 (referring to the "median line"):

"Plusieurs pays ont critiqué à la Conférence de Genève cette disposition qui, d'après eux, manquerait de souplesse et ne saurait répondre à tous les cas qui peuvent se présenter. Appliquée d'une manière rigide, elle peut conduire à des injustices et donner lieu à des difficultés d'application;"

It should be noted, however, that the German Memorial, paragraph 70, contains the following quotation from page 202 in the same work of Olivier de Ferron:

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

(b) Furthermore, in support of the German statement in paragraph 34 the following passage is quoted from Aaron L. Shalowitz, *Shore and Sea Boundaries*, Volume II, 1964, page 384 (referring to "lateral boundaries"):

"In delimiting such boundaries, the objective is to apportion the sea area in such a manner as will be equitable to both States;"

This quotation should be read in its full context (pages 383-384) as follows:

"Besides the exterior boundaries described above other high seas boundaries are involved in delimiting the boundaries through the territorial sea and the continental shelf between contiguous States or between States opposite each other. These are termed lateral boundaries. In delimiting such boundaries, the objective is to apportion the sea area in such manner as will be equitable to both States. The Geneva Conference on the Law of the Sea adopted the principle of equidistance as the guiding rule in the delimitation of boundaries *through the territorial sea and the continental shelf.*"

Attention is further invited to the following quotation from the same work, Volume I, pages 231-232 (concerning the Convention on the Territorial Sea and the Contiguous Zone):

". . . the convention provides for the use of the median line only in the absence of such agreement, and justifies a departure from such mathematical line where a historic title or other special circumstance exists. But even in such cases, the median line would still provide the best starting point for arriving at an agreement."

And, finally, to the following quotation from the same work, Volume I, page 230, concerning the delimitation of the territorial sea:

"The problem was exhaustively considered by the International Law Commission with the aid of a study by a committee of experts. The solution agreed on as the most satisfactory and the most equitable was to draw the boundary 'by application of the principle of equidistance . . .'.",

which clearly shows that the equidistance principle as such is regarded as the most equitable principle.

(c) As further proof of the German idea of sharing out a common continental shelf, reference is made—still in paragraph 34—to: Myres S. McDougal/William T. Burke, *The Public Order of the Oceans*, New Haven and London, 1962, page 428:

"The major community policy at stake with respect to the boundary problems of adjacent and opposing States is that of achieving *equitable apportionment*, thereby avoiding disputes arising out of insistence by one or both states on a method of delimitation which does not respect the interests of the other." (Italics in the Memorial.)

However, on the next page of the above-mentioned work the authors write as follows:

"One general principle which seems fair, in the abstract, is a negative one: that a state be prohibited from locating its boundary at a place which is closer to the territory of another state than to its own. The difficulty with a general principle of this sort, however, is that it is composed entirely of reference to abstract distances and geometric conditions which may not, in the concrete case, accord with the functions and uses of the water areas being delimited and may not, therefore, constitute a solution which satisfactorily takes into account the real, and perhaps different, interests of the states concerned. Hence, the general principle cannot be imposed as an absolute scheme upon which one state is entitled to insist, even when it ignores the actual conditions in an area. If a solution in accordance with this principle is regarded as unfair, the states concerned, particularly the one seeking to locate its boundary closer to the coast of another state than to its own, should be regarded as under an obligation to seek an impartial determination of the controversy. And for the purpose of such an inquiry the contending states should bear the

further burden of providing specific evidence of their particular interests in the region."

It will be seen that the authors explicitly acknowledge that the question is one of drawing boundaries and not one of sharing out a common continental shelf.

3. In paragraph 41 in the Memorial it is maintained that:

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

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

But the author does not exclude the equidistance method. This is shown in the same work on page 336:

"The submarine areas of narrow seas might be divided by a line drawn equidistant from the shores of the limitrophe states or following the deepest channel."

(b) Reference is also made to P. C. L. Anninos, *The Continental Shelf and Public International Law*, 1953, pages 99-100:

"Submarine areas of concern to more than two States: The main type of case that belongs to this group is that of a gulf or bay, where there are several littoral States . . . it is perhaps safe to say that it is well-nigh impossible to formulate one general principle . . ."

The last part of this quotation should be read in its full context as follows:

"Probably though, median line techniques could be made to apply if no islands exist, but even this is problematic. It is obvious that in such cases as are being treated here, the principles used in the preceding subsection are of little help; median line techniques tend to exaggerate the importance of island shelves. A division based on the length of the coastline taken alone, would not prove much more satisfactory. The results would be too arbitrary to meet and satisfy the demands of all the States concerned. On the basis of this it is perhaps safe to say that it is well-nigh impossible to formulate one general principle, . . ."

It is worth noting that the German Memorial uses a quotation which, in its full context, denies a division based on the length of the coast lines—an idea which is strongly emphasized later in the Memorial.

4. In paragraph 44 in the Memorial it is stated that:

". . . the equidistance method, by making the distance from the nearest coastal points the absolute criterion, necessarily attributes undue weight to projecting parts of the coast, and so not infrequently leads to inequitable solutions. The danger of overrating the principle of equidistance was clearly en-

visaged during the debate on the principle of equidistance in the International Law Commission and at the Conference on the Law of the Sea."

In support of this contention the Memorial makes the following reference to page 436 in the previously mentioned work by McDougal/Burke:

"The least familiarity with the extremely complex geographical conditions, not to mention condition of use, involved in concrete instances is sufficient to indicate that any special insistence on a median line is impossible."

Denmark is in full agreement with this quotation, having never denied that, in certain situations, special circumstances may exist. It is, however, considered appropriate to add the following quotation from the same page 436:

"If the term 'special circumstances' is mutually given reasonably restricted interpretations, the difficulty here (i.e., the absence of rules of arbitration) could be largely avoided. It was admitted during Committee discussion that no definition for it could be given, but that certain "special circumstances" were readily identifiable, including the location of the navigable channel and the complications occasioned by small islands in the vicinity of the two states. *It is surely not unreasonable that a state claiming to depart from use of the median line should be regarded as having the burden of explaining the precise conditions which compose the special circumstances allegedly justifying such deviation and that such conditions should approximate those mentioned in the First Committee.*" (Italics added.)

In the same context, the Memorial has the following quotation from page 725 in the said work by McDougal/Burke:

"In the absence of mutual agreement either on the boundary itself or on a process of resolving disputes, because of the great variety of factors in specific contexts no meaningful, detailed recommendation seems possible."

This quotation should, in the Danish view, be given in its full context (pages 724-725):

"The principal policy goals here, as with respect to the problem of delimitation of the territorial sea in the same circumstances, are two-fold: first, that of achieving a fair apportionment of the mutually adjacent resources, taking into account the conditions that are uniquely relevant in the particular context, and, second, that of minimizing the occasions for disputes between states that might cause undesirable tension. The recommendation previously offered for achieving the same objectives in connection with delimiting areas of territorial sea seems also appropriate here. The general principle, presumed as initially fair to all parties, is that the boundary be located no closer to one state than to another. Where abstract delimitation of this type is regarded as inequitable because of the particular conditions in an area, deviation from the general principle is obviously desirable. The difficulty here, of course, is in the determination of the conditions which make deviation from the general principle a fairer delimitation. The state seeking recognition of a different delimitation, locating the boundary to its advantage closer to other states, cannot, of course, insist upon a unilateral determination of the appropriate boundary. Nor should the state insisting upon the equidistance principle be authorized to obstruct final settlement of the dispute by refusal to agree to impartial third-party determination. In sum, the major policy recommendation is that of imposing an obligation upon states to resort to third-party decision for resolution of their boundary disputes. In the absence of mutual agreement either on the boundary itself or on a process of resolving disputes because of the great variety of factors in specific contexts no meaningful, detailed recommendation seems possible."

5. In paragraph 45 in the Memorial it is stated that:

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

and reference, without direct quotation, is made to S. Wh. Boggs, *International Boundaries*, 1940, pages 184-192; *idem*, "Delimitation of Seaward Areas under National Jurisdiction", *American Journal of International Law*, Volume 45 (1951), pages 240-266.

However, the latter work contains the following passage (on p. 260):

". . . developing technologies may bring into grasp in the relatively near future some of the great resources of the sea and of the sea bed and its subsoil at very considerable distances from shore in at least a few areas . . ., some principle should be formulated for the delimitation of the contiguous zones between adjacent states. *The principle here enunciated* (i.e., median line) *will, the writer hopes, prove to be of universal applicability.*" (italics added),

and further, on page 262:

"The most reasonable and just line would be one laid down on "the median line" principle—a line every point of which is equidistant from the nearest points on the seaward limits of the territorial sea of the two states concerned."

6. Paragraph 47 in the Memorial states that:

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

(a) This contention is supported by the following quotation from David J. Padwa, *International and Comparative Law Quarterly*, Vol. 9 (1960), page 629:

"State practice . . . has not only been sparse, but inconclusive. While several techniques have been utilized in the occasional treaties delimiting maritime boundaries, their reference is to local geographical conditions and they contain little of general applicability."

In this context it is also interesting to read what is said about the equidistance principle on page 652 in the same work:

"The principle of equidistance is not a mandatory rule of international law relating to submarine boundaries until the Geneva Convention enters into force. Nevertheless, States may, prior to that time, unilaterally utilize that principle to determine the submarine frontier; for, properly used, no other State can allege a better claim to the area in question."

(b) In further support of the German view the Memorial has the following quotation from U.S. Department of State, Sovereignty of the Sea, *Geographical Bulletin No. 3* (April 1965), p. 13:

"Any two countries with contiguous offshore waters may agree on a common line of demarcation between them, but usually agreements of this type are non-existent."

Again it should be noted what this work has to say about median lines on the same page:

"Most frequently median lines are the means of expressing boundaries between adjacent states, starting at the baseline and extending seaward, first be-

tween territorial seas and then between continental shelves of the two states concerned. They also serve to separate the waters of opposite states which have merging territorial seas and/or continental shelves. . .

A median line . . . has proved to be the best solution for delineating water areas between sovereignties. In both theory and practice the geometrical principle involved in determining the median line is the most satisfactory which has so far been devised, lending itself admirably to the construction of equitable boundaries between states."

7. Paragraph 56 in the Memorial contains the following passage:

". . . two elements are generally demanded for the development of customary law: constant practice extending over some considerable time and a legal conviction in support of this practice."

Referring, without direct quotation, to O'Connell, *International Law*, 1965, Volume I, pages 15 *et seq.*, paragraph 56 at the bottom goes on to say:

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

In this connection it should be noted what O'Connell wrote in the said work (pp. 27-28) concerning the question of the Continental Shelf convention as customary law:

"The attempt to codify the law of the sea which was begun by the International Law Commission in 1952 and resulted in the Geneva Conference organised by the United Nations, in 1958, is illustrative of the point. When the Commission commenced its work the Continental Shelf doctrine was embryonic and the subject of considerable controversy. Accordingly there was wide disagreement among the members of the Commission on the doctrine as one of law. However, the debates that occurred in the Commission over the subsequent years served the useful purpose of an exhaustive examination of the arguments pro and con, with the result that the area of disagreement narrowed as conviction intensified. During the same period State practice on the matter multiplied at a considerable rate, and was channelled by reference to the Commission's reflections. When the Commission's drafts on the law of the sea were presented to the nations at Geneva in 1958 the Continental Shelf section was the one that aroused the least controversy. *One is justified in concluding that the Continental Shelf Convention then adopted is declaratory of the law which crystallised some time during the drafting period.*" (Italics added.)

8. Paragraph 93 in the Memorial contains this passage:

"Contractual agreements between the States concerned are the best method of arriving at a just and equitable solution in the apportionment of the submarine areas of the North Sea. This method is not only given prominence in Article 6 of the Continental Shelf Convention, but is also regarded in the literature on the subject as the only suitable method of dealing adequately with complex geographical situations."

(a) Supported by the following quotation from G. E. Pearcy, "Geographical Aspects of the Law of the Sea", *Annals of the Association of American Geographers*, Volume 49 (1959), No. 1, page 20:

". . . the coasts of the world are sufficiently irregular to defy any predetermined universal pattern. Each boundary must be constructed in the light of its own physical surroundings and in accordance with the principles accepted in international law. The articles of the Conventions, i.e., the Geneva Con-

vention on the Continental Shelf providing for the boundaries ... can do no more than provide an equitable guide for successful agreements."

The author's view on the median line principle is, however, expressed on pages 16-17 in the same work:

"But since median-line boundaries are objective they can frequently be used at least as a point of departure in the reaching of agreement. Site of known or potential resources, location of a navigation channel, or traditional offshore practices of a state are among special circumstances which may give rise to modifying or even disregarding completely a median line in affixing a boundary. For example, a boundary in the territorial sea may only roughly approximate a median line, compensating for loss of an area in one place by gain in another. *Despite such departures from a formula the actual precisely constructed median line stands as a potential means of establishing fair and lasting offshore boundaries.*" (Italics added.)

(b) In further support of the German view a quotation is made from: R. Young, *American Journal of International Law*, Volume 52 (1958), page 738:

"One is led by these considerations to the conclusion that, in spite of the effort in Article 6 to provide an acceptable method of determining boundaries in the event of disagreement, the only reliable boundary line remains one fixed by agreement or by the judgment of a competent tribunal."

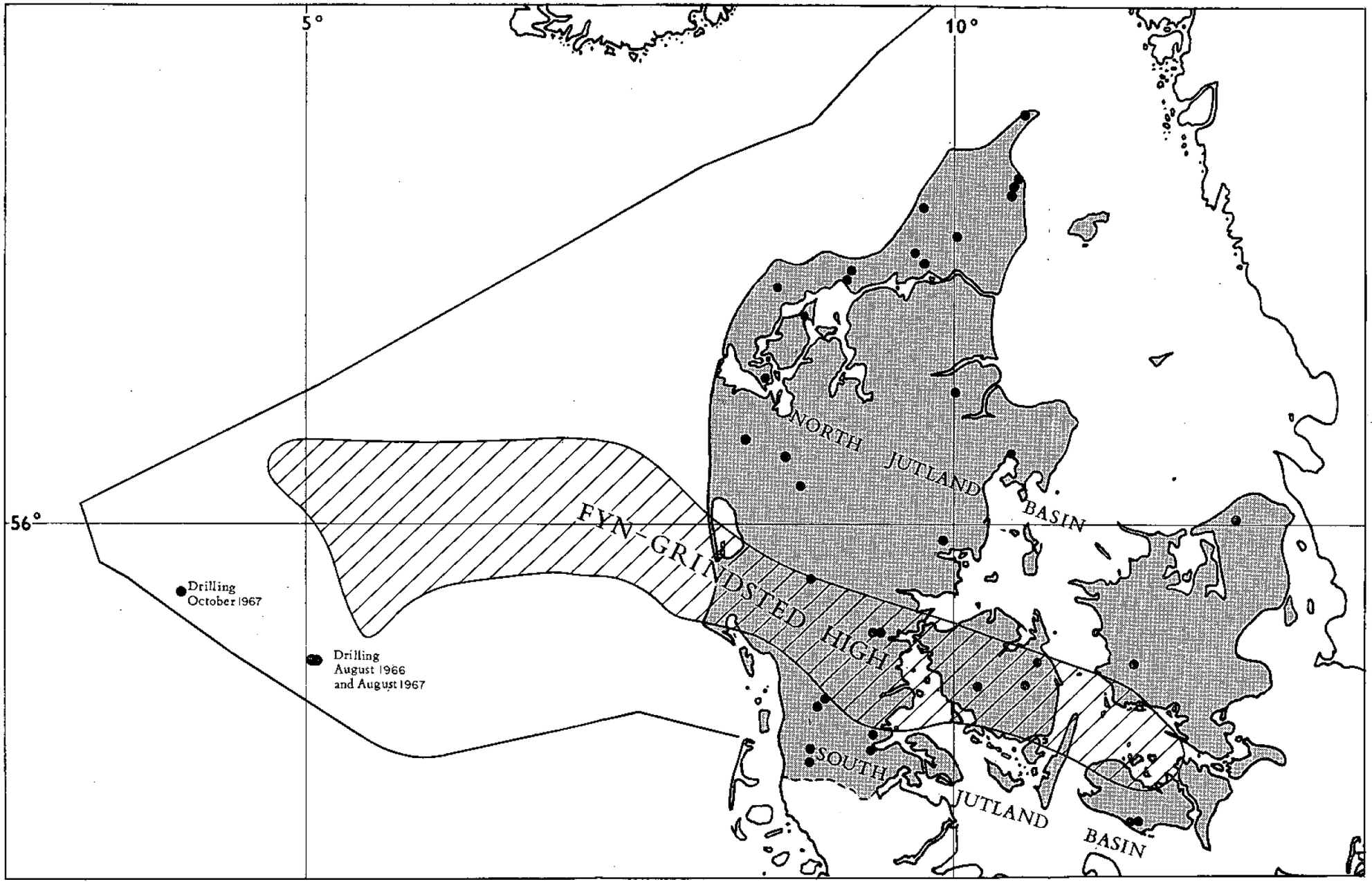
This quotation ought to be read in its full context (pp. 737-738) as follows:

"A further technical difficulty in Article 6 arises with respect to its provision that boundary lines shall be constructed with reference to the respective baselines of the states concerned ... Presumably the draftsmen of Article 6 considered that the baselines there referred to should be those laid down in accordance with the companion Convention on the Territorial Sea and Contiguous Zone ... An associate problem arising from the same situation is that a shelf boundary drawn under the rule in Article 6 may not necessarily link up with a boundary drawn through territorial waters on a different basis—thus creating a hiatus and possibly even some embarrassment. One is led by these considerations to the conclusion that, in spite of the effort in Article 6 to provide an acceptable method of determining boundaries in the event of disagreement, the only reliable boundary line remains one fixed by agreement or by the judgment of a competent tribunal."

Against this background it appears that the said quotation in the Memorial has been given a much broader scope than originally intended by the author.

Annex 16

(See pocket inside back cover)



Map Accompanying Annex 7 to The Danish Counter-Memorial