REPLY SUBMITTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

(Federal Republic of Germany/Denmark)

INTRODUCTION

1. This Reply to the Counter-Memorial of the Kingdom of Denmark and the Counter-Memorial of the Kingdom of the Netherlands is submitted to the International Court of Justice by the Government of the Federal Republic of Germany in pursuance of the Order of the Court, dated 26 April 1968.

2. This Reply has taken into consideration that the dispute submitted to the Court is in its essence a dispute about the applicable law, the Parties being in disagreement what principles and rules of international law govern the delimitation of the continental shelf between the Parties in the North Sea. Therefore, the Federal Republic of Germany regards it to be the primary function of this Reply to elaborate and clarify the central legal issues of the dispute. For this purpose, it does not seem necessary or appropriate to answer any argument or remark contained in the Counter-Memorial; it will be sufficient to take up those facts, arguments, and remarks contained in the Counter-Memorial which are relevant to the question submitted to the Court. It should, however, be made clear that in so far as this Reply does not refer to certain facts, arguments or remarks contained in the Counter-Memorial, thereby the Federal Republic of Germany does not admit or recognize those facts, arguments or remarks. The Federal Republic of Germany reserves its right to return to any fact, argument or remark contained in the Counter-Memorial in the Oral Proceedings.

3. This being premised, the Federal Republic of Germany will not, in this Reply, comment in detail on the additional facts and on the way in which the facts and history of the case have been presented in the Counter-Memorial. One general remark, however, seems necessary: In Part I of the Counter-Memorial which contains "an exposition of the relevant facts and of the history of the dispute supplementing and correcting the exposition given in the Memorial of the Federal Republic of Germany" (Danish Counter-Memorial, para. 5; Netherlands Counter-Memorial, para. 3), facts are occasionally presented in a way which implies a certain legal interpretation not in accordance with the facts. For example, the Danish Counter-Memorial states that the Federal Republic of Germany by its Proclamation of 20 January 1964 concerning the German Continental Shelf had "endorsed" the Continental Shelf Convention (Danish Counter-Memorial, para. 35, p. 166, *supra*) and both Counter-Memorials state that in the Exposé des motifs accompanying the proposal of the German Government for the Statute on the Continental Shelf of 24 July 1964 ". . . once again the Federal Government of Germany acknowledges the Geneva Convention as an expression of customary international law" (Danish Counter-Memorial, para. 24, p. 164, *supra*; Netherlands Counter-Memorial, para. 25, p. 319, *supra*); both statements are not correct and misleading. This Reply will revert to this point later in its legal observations (see para. 28).

4. Furthermore, one new fact deserves to be especially mentioned here: the Kingdom of Denmark and the Kingdom of the Netherlands, on 1 August

1967, have ratified the Agreement concerning the delimitation of the continental shelf under the North Sea between the two countries, that had been signed on 31 March 1966 (text and translation in the German Memorial, Annexes 14 and 14 A, pp. 133-138, *supra*). The Government of the Federal Republic of Germany had declared that the arrangement made in this agreement cannot have any effect on the question of the delimitation of the continental shelf between the Parties in the North Sea (cf. German Aide-Mémoire, dated 25 May 1966, reproduced in Annexes 15 and 15A of the German Memorial).

5. As the Counter-Memorial of the Kingdom of Denmark (hereafter abbreviated: Dan. C.-M.) and the Counter-Memorial of the Kingdom of the Netherlands (hereafter abbreviated: Neth. C.-M.) are identical in their Part II containing the legal arguments, this Reply will refer to both of them simultaneously.

6. Consequently the present Reply is divided into the following parts:

Part I which contains additional legal arguments of the Federal Republic of Germany together with its observations on the legal position contained in the Counter-Memorials of the Kingdom of Denmark and of the Kingdom of the Netherlands;

Part II which contains the submissions to the Court as to what principles and rules of international law are applicable to the delimitation as between the Parties of the continental shelf in the North Sea, supplementing or replacing the submissions contained in the Memorial;

Part III which contains a single Annex.

PART I. THE LAW

CHAPTER I

THE PRINCIPLE OF THE JUST AND EQUITABLE SHARE GOVERNING THE DELIMITATION OF THE CONTINENTAL SHELF

7. The Counter-Memorial contends that the principle of the just and equitable share which, in the view of the Federal Republic of Germany, governs the delimitation of the continental shelf, "lacks any legal content" and "seems to be nothing less than a request to the Court to lay down that . . . the delimitation of the continental shelf in the North Sea should be settled *ex aequo et bono*" (Dan. C.-M., para. 37, p. 169, *supra*; Neth. C.-M., para. 32, p. 323, *supra*). The Court will be well aware that the Counter-Memorial by interpreting this principle in such a misleading way confounds the application of general principles of law (Article 38 (1), lit. *(c)*, of the Statute of the Court) with a decision *ex aequo et bono* (Article 38 (2) of the Statute of the Court).

8. The Permanent Court of International Justice had made clear in the *Free Zones* case (*Series A, No. 24*, p. 10) what would constitute a settlement *ex aequo et bono* outside its competence:

> ". . . even assuming that it were not incompatible with the Court's Statute for the Parties to give the Court power to prescribe a settlement disregarding rights recognized by it and taking into account considerations of pure expediency only, such power, which would be of an absolutely exceptional character, could only be derived from a clear and explicit provision to that effect, which is not to be found in the Special Agreement".

A decision of the Court *ex aequo et bono* involves compromise, expediency, conciliation, and evaluation of conflicting non-legal interests; the settlement may disregard existing rights, *praeter* or even *contra legem*, although general considerations of justice may not be absent.

> *H. Lauterpacht*, The Development of International Law by the International Court, 1958, p. 213: "Adjudication *ex aequo et bono* is a species of legislative activity. It differs clearly from the application of rules of equity in their wider sense. For inasmuch as these are identical with principles of good faith, they form part of international law as, indeed, of any system of law. They do so irrespective of the provisions of the third paragraph of Article 38 which authorizes the Court to apply general principles of law recognized by civilized States. On the other hand, adjudication *ex aequo et bono* amounts to an avowed creation of new legal relations between the parties."

In the same sense:

> Cf. *Brownlie*, Principles of Public International Law, 1966, pp. 23-24; *U. Scheuner*, Decisions ex aequo et bono by International Courts and Arbitral Tribunals, International Arbitration, Liber amicorum for Martin Domke, 1967, pp. 275-288.

The function of a decision *ex aequo et bono* is to provide for a new adjustment

of interests without deference to the rules of law, or if necessary under the peace-keeping function of such a decision, for a change in the existing law. Here, however, the Federal Republic of Germany is not asking the Court to deviate from the existing rules of law or to apply special rules for the sake of individual justice, but to tell the Parties the law which should apply in the controversy submitted to the Court.

9. The principle that each of the States adjacent to the continental shelf may claim a just and equitable share thereof, does not involve merely a settlement *ex aequo et bono* because the term "equitable" is used and "equity" sometimes is understood in the wider sense as connoting an *ex aequo et bono* settlement. The principle of the just and equitable share, however, is meant here to be a legal rule prescribing that the share to be allotted to each State should be measured out "equitably" i.e., with impartial reason and fairness according to the weight of all factors pertinent to the right of the State over the submarine areas before its coast.

> *O'Connell*, International Law, 1965, explains the meaning of the term "equity", as a juridical term, as opposed to the term "ex aequo et bono" in this way: "An authorization to decide a question ex aequo et bono is an authorization to decide without deference to the rules of Law, whereas an authorization to decide on the basis of equity does not dispense the judge from giving a decision based upon law even though the law be modified." (Vol. I, p. 14.)
>
> *Brownlie, op. cit.*, pp. 23-24, similarly distinguishes "equity" in the English sense as meaning the normal judicial function in applying general principles of law, and "equity" in the non-juridical sense of a settlement ex aequo et bono (e.g., as used in the General Act of Geneva, 1928).

That the principle of the just and equitable share is not an empty formula, has already sufficiently been demonstrated in Part II, Chapter III, of the German Memorial where the more concrete criteria pertinent to the delimitation of the continental shelf in the North Sea have been examined in detail (cf. Memorials, paras. 76-87, pp. 76-84, *supra*).

10. The principle of the just and equitable share as advocated by the Federal Republic of Germany, belongs to the realm of the general principles of law to which the international judge is authorized to recur in order to avoid a *non liquet* in cases where there are no rules of treaty or customary law at hand which might be applied, or where these rules are so general that they need supplementation. The doctrinary question whether the general principles of law are a formal or merely a material source of international law, can be left aside here, because the Court is expressly authorized, by Article 38 (1), lit. *(c)*, of its Statute, to apply not only treaty or customary law, but also general principles of law recognized by all nations for the legal solution of controversies.

> Cf. *Lauterpacht*, Symbolae Verzijl; 1958, Some Observations on the Prohibition of "*Non Liquet*" and the Completeness of the Law, pp. 196, 205; "... the Statute ... in Article 38 elevated 'general principles of law recognized by civilized States' to the authority of one of the three principal and formal sources of International Law—an apparent innovation which in itself may not have been more than a declaration and affirmation of previous practice. However that may be, that apparent innovation added to the reality of the prohibition of *non liquet*. It did so in two ways: in the first instance, by making available without limitation the resources of

substantive law embodied in the legal experience of civilized mankind—the analogy of all the branches of municipal law and, in particular, of private law—it made certain that there always would be at hand, if necessary, a legal rule or principle for the legal solution of any controversy involving sovereign States. Secondly, inasmuch as the principle of the completeness of the legal order is in itself a general principle of law, it became on that account part of the law henceforth to be applied by the Court."

11. Today it is generally accepted that general principles of law recognized by all nations form part of international law; they are the outcome of legal convictions and values acknowledged all over the world. Some of them may even impose themselves as having an inherent, self-evident, and necessary validity.

Cf. *Fitzmaurice*, The Formal Sources of International Law, Symbolae Verzijl, 1958, pp. 153, 174-175.

It is submitted that the principle that each State may claim a just and equitable share in resources to which two or more States have an equally valid title, ranks among those general principles of law which might be regarded as having such an inherent, self-evident, and necessary validity. Its quality in this respect is evidenced, *inter alia*, by the fact that the Counter-Memorial, while trying to brush it aside on procedural grounds, does not dare to attack its legal substance.

12. It is the function of the principle of the just and equitable share to supplement the emerging law on the continental shelf. While it had been gradually recognized in the practice of States that every coastal State has *ipso jure* an exclusive right to the seabed and subsoil of the submarine areas "adjacent" to its coast (cf. Articles 1 and 2 of the Continental Shelf Convention), generally accepted rules on the delimitation of a continental shelf adjacent to more than one State were, and still are, lacking. It had been shown in Part II, Chapter I, of the German Memorial (cf. paras. 29-38, pp. 30-36, *supra*) that the practice of States as well as the authors of the Continental Shelf Convention started from the premiss that any rule, method or formula for the delimitation of a continental shelf adjacent to the coast of two or more States should apportion a just and equitable share to each of these States. That this was the *raison d'être* of the formulation of Article 6, paragraph 2, of the Continental Shelf Convention, had been totally ignored in the arguments put forward by Denmark and the Netherlands in favour of the equidistance line.

13. Article 6, paragraph 2, of the Continental Shelf Convention was but one cautious step in the attempt to find a formula which might lead to an equitable solution of the boundary problem; it is exaggerating to say that Article 6 had already "translated this general concept into the more concrete criteria for the delimitation of continental shelf boundaries" (Dan. C.-M., para. 54, p. 175, *supra*; Neth. C.-M., para. 49, p. 329, *supra*), because it offers no criteria as to the circumstances which allow the application of the equidistance line, or which are so "special" as to justify another boundary line. Therefore, it is not surprising that the authors of the Continental Shelf Convention by a very wise decision put the agreement between the States concerned in the first place and thereby made it an obligation for the States concerned to seek a settlement primarily by agreement. What purpose should this provision serve if one side were allowed to start negotiations from the outset with the pre-established argument that the equi-

distance line is the only applicable rule, without considering whether the equidistance line would provide an equitable result? By proposing the principle of the just and equitable share as the controlling principle for the delimitation of the continental shelf, the Federal Republic of Germany asks the Court to provide the Parties with a guiding line for the negotiation of an agreement. If the Court felt able to add some more precise criteria to guide the Parties in the special case of the North Sea (like those submitted in Part II, Chapter III, of the German Memorial; cf. paras. 76-87), it would certainly help the Parties to reach agreement more easily.

14. In a further effort to escape from the test whether delimitation by the equidistance line would give each of the two Parties an equitable share of the continental shelf in the North Sea, the Counter-Memorial makes the rather artificial verbal distinction between the "delimitation" and the "sharing out" of areas of the continental shelf (Dan. C.-M., paras. 40 *et seq.*; Neth. C.-M., paras. 35 *et seq.*), although it is evident that any delimitation between two States necessarily allots each of them a certain share of the shelf so divided. By alleging that the Special Agreement (Compromis) "does not request the Court to decide what principles and rules of international law should govern the sharing out . . . of areas of the continental shelf in the North Sea" (Dan. C.-M., para. 40, p. 169, *supra*; Neth. C.-M., para. 35, p. 323, *supra*), the Counter-Memorial practically attempts to exclude the effect of an equidistance boundary on the size of Germany's share from the considerations of the Court. Such a restriction of the Court's competence cannot be read into the terms of reference of the Compromis; moreover, it would unduly encroach upon the judicial power of the Court to decide the controversy between the Parties in the light of all relevant factors. To show that such an interpretation of the Special Agreement (Compromis) is inadmissible, it will be sufficient to recall the origin of the controversy: it was essentially the inequitable share of the continental shelf allotted to Germany by application of the equidistance line that led the Government of the Federal Republic of Germany to question the applicability of the equidistance line as a suitable method for delimiting the continental shelf in the previous negotiations between the Parties; it was upon this controversy that the Parties decided to submit it to the Court.

15. Even assuming, as the Counter-Memorial does, that the rule contained in Article 6, paragraph 2, of the Continental Shelf Convention would be applicable here, how could the question whether "special circumstances" in this case prohibit the application of the equidistance line, be decided without looking into all the effects of the proposed method of drawing the boundary, including the size of the share each State could expect by the one or the other method? Curiously enough, the Counter-Memorial ends its reasoning on this point with the statement: "If it is necessary to look for a general concept underlying the modern law regarding the delimitation of the continental shelf boundaries, this is . . . 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 the other are to be delimited *on equitable principles*" (Dan. C.-M., para. 55, p. 175, *supra*; Neth. C.-M., para. 49, pp. 328-329, *supra*; italics added). This statement comes very close to the principal thesis put forward by the Federal Republic of Germany; the only remaining difference between the Parties seems to be that the Kingdom of Denmark and the Kingdom of the Netherlands regard the equidistance line, which is favourable to them, as an equitable solution of the boundary question, while the Federal Republic of Germany, as a look on the

map (see Memorial, p. 27, *supra*) will easily explain, cannot accept such a boundary line as a "delimitation on equitable principles".

16. In view of the arguments put forward in the preceding paragraphs 7-15 it is respectfully submitted that the Government of the Federal Republic of Germany by introducing the principle of the just and equitable share as the controlling principle for the delimitation of the continental shelf *is not asking for a decision* ex aequo et bono *but for the application of a principle of law.*

CHAPTER II

THE APPLICABILITY OF THE EQUIDISTANCE LINE IN THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN THE PARTIES

17. The main legal issue between the Parties in the present dispute is the question whether the delimitation of the continental shelf between the Parties should follow the equidistance line or not. The Counter-Memorial advances various grounds, not always relevant to their purpose and sometimes inconsistent with each other, why the Federal Republic of Germany must accept the equidistance line as the boundary line of the continental shelf between the Parties. These grounds may be summarized under the following heads:

(a) the previous attitude of the Federal Republic of Germany towards the Continental Shelf Convention in general, and the equidistance line in particular;
(b) the alleged general recognition of the equidistance line by States;
(c) the absence of special circumstances which would justify another boundary line.

18. However, before turning to the specific arguments advanced by the Counter-Memorial under these different heads, it would seem appropriate to make some general remarks on various lines of reasoning followed in the Counter-Memorial which, in the view of the Federal Republic of Germany, lead away from the central legal issue.

Section 1. General Remarks on the Lines of Reasoning in the Counter-Memorial

A. Source of the Obligation to Accept the Equidistance Line

19. The Counter-Memorial does not distinguish clearly enough between the *intrinsic merits* of the equidistance method on the one hand and the *source of obligation* for a State to settle its boundary vis-à-vis its neighbour States by application of this method. The Counter-Memorial goes to great lengths to demonstrate that the equidistance line has found acceptance in the Continental Shelf Convention and in State practice as a suitable method for drawing sea boundaries; the Federal Republic of Germany, in its Memorial too, has already recognized the merits as well as the shortcomings of the equidistance line, and has not disputed the fact that in many cases the equidistance line may be regarded as the most equitable boundary line (see paras. 63-64, pp. 62-63, *supra*). But there remains the question under what legal title the equidistance line can be imposed on the Federal Republic of Germany; here the Counter-Memorial fails to prove its case. Referring to the unilateral application of the equidistance line by Denmark and the Netherlands vis-à-vis Germany the Counter-Memorial contends that:

> "... Denmark and the Netherlands having delimited their continental shelf boundaries 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 ... In the present case it is not a question of Denmark and 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" (Dan. C.-M., para. 59, p. 177, *supra*; Neth. C.-M., para. 53, p. 331, *supra*);

and later asserts a—

"... general recognition by the international community of Article 6 as expressing the rules of international law governing continental shelf boundaries" (Dan. C.-M., para. 100, p. 192, *supra*; Neth. C.-M., para. 94, p. 346, *supra*).

But all these contentions beg the question, because they start from the unproved assumption that Germany is bound to regard the equidistance line as an obligatory rule of international law. The legal source of that obligation, however, remains an open question.

B. The Substance of the Alleged Rule of Law on the Delimitation of the Continental Shelf

20. The Counter-Memorial is not very clear on the *substance of the legal rule* which, in the view of the Kingdom of Denmark and of the Kingdom of the Netherlands, should oblige the Federal Republic of Germany to accept the principle of equidistance with regard to the boundaries of its continental shelf. The necessary distinction between the *method* of drawing the boundary line according to the principle of equidistance from the nearest points of each coast, and the *alleged rule* of law which prescribes the application of this method under certain or, as the Counter-Memorial interprets it, under nearly all circumstances, is missing. In some parts the Counter-Memorial asserts that the equidistance line is the "general rule" for the delimitation of the continental shelf, thereby elevating the *method* to a veritable *rule of law* (Dan. C.-M., paras. 61, 72, pp. 178, 183, *supra*; Neth. C.-M., paras. 55, 66, pp. 332, 337, *supra*). In other parts of its argument the Counter-Memorial tries to minimize the serious objections put forward in the Memorial against the general applicability of the equidistance line, by pointing out that the rules of law to be followed are not the equidistance line pure and simple but rather the equidistance line in combination with the special circumstances clause, the so-called "equidistance/special circumstances rule" (Dan. C.-M., paras. 91, 100, 111, 114, pp. 190, 192-193, 196, 197, *supra*; Neth. C.-M., paras. 85, 94, 105, 108, pp. 343, 346, 349-350, 350-351, *supra*), which permit the consideration of factors justifying another boundary line. On the one hand the Counter-Memorial tries to impose the equidistance line like a generally valid rule of law on the Federal Republic of Germany if the latter cannot "show why Denmark or the Netherlands should not be entitled to apply the generally recognized principles and rules of delimitation", viz. the equidistance line (Dan. C.-M., para. 59, p. 177, *supra*; Neth. C.-M., para. 53, p. 331, *supra*), while on the other hand it seems to come nearer to the view of the Federal Republic of Germany that each case has to be tried on its merits whether the equidistance or another boundary line would produce the most equitable result.

C. The Equidistance Line as a "General Rule" for Maritime Boundaries

21. The Counter-Memorial regards the equidistance line as the "general rule" for all sorts of maritime boundaries (Dan. C.-M., paras. 61, 84-90, 115, pp. 178, 187-189, 197-198, *supra*; Neth. C.-M., paras. 55, 78-84, 109, pp. 332, 340-342, 351, *supra*) as if it had the same legal validity for all situations, ir-

respective of whether the boundary line had to be drawn between adjacent or opposite coasts, whether they were boundaries in straits, in waters near the coast or in the wider regions of the open sea, or whether the delimitation was made for the purposes of customs and fishery control or for the division of submarine resources. By treating the existing maritime boundaries alike the specific factors relevent to the applicability of the equidistance line for delimiting continental shelf boundaries might be disregarded. This is in contradiction not only to the practice of States but also to the wording of the Geneva Conventions on the Law of the Sea. It does not seem necessary to repeat all what has been said in this respect in the Memorial of the Federal Republic of Germany; it may suffice to ask why Article 6 of the Continental Shelf Convention put the rules on boundaries between adjacent and opposite coasts in different paragraphs and why the impact of "special circumstances" is treated differently in Article 6 of the Continental Shelf Convention from Article 12 of the Convention on the Territorial Sea (see Memorial, para. 64, p. 62, *supra*), were it not from the conviction that special factors had to be taken into account in each of these distinct situations. If we examine the report of the Committee of Experts, which played such a great role in introducing the equidistance line into the Geneva Conventions (see the text reproduced in Annex 12 of the Dan. C.-M., pp. 249-258, *supra*, and in Annex 7 of the Neth. C.-M., p. 377, *supra*), we see how differently the Committee treats these situations. While for the delimitation of territorial waters between opposite coasts the median line was adopted as a matter of course, for the delimitation between territorial waters of two adjacent States there was a thorough discussion on various methods proposed, until the equidistance line was adopted in the end with the reservation that "in a number of cases this may not lead to an equitable solution, which should be then arrived at by negotiation" (*ibid.*, p. 258, *supra* and p. 377, *supra*, respectively). It was thought by the experts that these proposals might also be used for the delimitation of the continental shelf, which question, however, remained outside the terms of reference of the Committee. Therefore, the material submitted by the Counter-Memorial in support of the equidistance line does not always carry the same weight, depending on the situation where the median or equidistance line had been used.

Section 2. The Attitude of the Federal Republic of Germany towards the Equidistance Line

22. The Counter-Memorial pointedly argues (Dan. C.-M., paras. 77-79, 99, pp. 185-186, 192, *supra*; Neth. C.-M., paras. 71-73, 93, pp. 338-339, 345, *supra*), that the Federal Republic of Germany—

(a) did not motivate its opposition to the Convention in the 1958 Conference on the Law of the Sea with doubts as to the merits of the equidistance principle;

(b) signed the Continental Shelf Convention on 30 October 1958 (one day before the time-limit for signature expired) and thereby ". . . deliberately chose to associate itself with the Convention";

(c) accompanied its signature with a reservation to Article 5 of the Convention in regard to freedom of fisheries, but ". . . made no reservation nor any other form of declaration with respect to the provisions of Article 6 concerning the delimitation of continental shelf boundaries";

(d) did not voice ". . . any objection or misgiving in regard to Article 6 of the Convention in its Continental Shelf Proclamation of 20 January

1964 or in the Exposé des Motifs accompanying the Bill to give effect to the Proclamation".

23. It is not altogether clear what legal consequences, in the view of the Counter-Memorial, the Court should draw from these facts. The Counter-Memorial does not apparently go so far as to assert that the signing of a Convention subject to ratification in itself created an obligation for the Federal Republic of Germany to accept the provisions of the Convention as binding rules of international law. As the International Law Commission stated in its commentary to Article 11 of its 1962 Draft on the Law of Treaties with respect to the legal effects of signature:

> "There is also some authority for the proposition that a State which signs a treaty 'subject to ratification, acceptance or approval' comes under a certain, if somewhat intangible, obligation of good faith subsequently to give consideration to the ratification, acceptance or approval of the treaty. The precise extent of the supposed obligation is not clear. That there is no actual obligation to ratify under modern customary law is certain, but it has been suggested that signature 'implies an obligation to be fulfilled in good faith to submit the instrument to the proper constitutional authorities for examination with the view to ratification or rejection'. This formulation, logical and attractive though it may be, appears to go beyond any obligation that is recognized in State practice. For there are many examples of treaties that have been signed and never submitted afterwards to the constitutional organ of the State competent to authorize the ratification of treaties, without any suggestion being made that it involved a breach of an international obligation. Governments, if political or economic difficulties present themselves, undoubtedly hold themselves free to refrain from submitting the treaty to parliament or to whatever other body is competent to authorize ratification. The Commission felt that the most that could be said on the point was that the Government of a signatory State might be under some kind of obligation to examine in good faith whether it should become a party to the treaty. The Commission hesitated to include such a rule in the draft articles." (U.N. Doc. A/5209, *Yearbook of the International Law Commission* 1962, Vol. II, p.171.)

In its final 1966 Draft on the Law of Treaties the International Law Commission did not revert to this point; in Article 15, the Commission considered that the only obligation incumbent on a State arising from signature subject to ratification was ". . . to refrain from acts tending to frustrate the object of a proposed treaty . . . until it shall have made its intention clear not to become a party to the treaty . . ."

> Reports of the International Law Commission on the 2nd part of its 17th Session and on its 18th Session 1966, U.N. *Gen. Ass. Off. Rec.*, 21st Session, Suppl. No. 9 (Doc. A/6309 rev.), pp. 34-35.

Therefrom it follows that the liberty of a State not to ratify a convention it has signed subject to ratification, or to ratify it only with such reservations as permitted by the convention, remains unaffected. This being so, there can also be no obligation on that State to regard the provisions of a convention it has signed subject to ratification, as binding until it has expressed its consent to be bound by ratification.

24. Although the signing of the Continental Shelf Convention could not *per se* create an obligation for the Federal Republic of Germany to regard the

rule contained in Article 6 of the Convention as binding international law, the Counter-Memorial nevertheless attempts to have this act of the Federal Republic of Germany interpreted as contributing to the acceptance of that rule as customary international law. The Counter-Memorial does not expressly say so, being content with the statement that the Federal Republic of Germany by signing the Convention without any reservation to Article 6 apparently has found the provisions of the Convention, including Article 6, "acceptable"; but from the context within which this action of the Federal Republic of Germany is mentioned, it must be inferred that the Counter-Memorial wishes to create the impression that the Federal Republic of Germany itself had, prior to this dispute, recognized Article 6 of the Convention as an expression of "general international law".

25. Such an interpretation of the conduct of the Federal Republic of Germany must be strongly opposed. It would amount to an assertion that the Federal Republic of Germany had to take active steps to voice its opposition to the equidistance line during and after the Conference in order to prevent the equidistance method from becoming a rule of customary law binding on the Federal Republic of Germany; it would attach to the signature of the Convention, or even to the mere participation in the drafting of the Convention, a legal effect equivalent to ratification. Whether a State taking part in a conference codifying and developing international law, by its passive attitude towards certain rules adopted at the conference, contributes to their irrecognition as international law, depends essentially on the quality of such rules. Inasmuch as certain rules adopted at the conference and incorporated into a law-making convention, are meant to state and codify existing rules of customary or general international law, aquiescence in the incorporation of such rules into the convention may be interpreted as recognizing their customary law character, and continuous and consistent opposition might be necessary to repudiate their customary law character effectively.

> Cf. International Court of Justice in the *Norwegian Fisheries* case, *I.C.J. Reports 1951*, p. 131: ". . . the ten-mile rule has not acquired the authority of a general rule of international law . . . In any event the ten-mile rule would appear to be inapplicable as against Norway as she has always opposed any attempt to apply it to the Norwegian coast."

If, however, certain rules adopted at the conference and incorporated into the convention are purported to develop the existing law or to fill gaps in the law caused by the emergence of new problems, a passive attitude of a State participating in the conference towards such a development cannot be interpreted as an expression of *opinio juris* recognizing such rules as already binding customary law. In such cases only the act of ratification or any other equivalent act by which a State accepts the provisions of the Conventions as binding, and the subsequent application of these rules by other States may become the basis of new custom. As had already been sufficiently demonstrated in the Memorial of the Federal Republic of Germany (paras. 46-53, pp. 50-57, *supra*) and as the Counter-Memorial, too, had to concede: "No doubt, here are elements of novelty in the provisions of Article 6 . . . The provisions of Article 6 were admittedly a new element grafted on to the continental shelf doctrine at the Geneva Conference" (Dan. C.-M., para. 90, p. 189, *supra*; Neth. C.-M., para. 84, pp. 342-343, *supra*). It cannot be denied that the rules on the delimitation of the continental shelf, in particular the equidistance line incorporated into Article 6 of the Convention, were new rules which hitherto had neither been applied for the delimitation of continental shelf bound-

aries nor recognized as customary international law, although the Counter-Memorial *(ibid.)* tries to minimize their novel character by asserting that the principle of equidistance had already been practised in the drawing of other maritime boundaries. Because Article 6 was new international law, the fact that the Federal Republic of Germany signed the Convention without attaching a reservation to Article 6 could not be interpreted as an act of recognizing the rules contained in Article 6 as being an expression of customary international law, or otherwise contributing to the emergence of new customary law, as long as the Federal Republic of Germany had not ratified the Convention.

26. The attempt to exploit the action of the Federal Republic of Germany in 1958 for asserting inconsistencies in the German attitude towards the Continental Shelf Convention and, thereby, to weaken the German position in the present dispute, cannot succeed. The German attitude at the Geneva Conference cannot be properly appreciated in retrospect from the present dispute. At that time the Federal Republic could not possibly know that the Kingdom of Denmark and the Kingdom of the Netherlands would go so far as to maintain that the acts of unilateral delimitation of their continental shelf areas by the equidistance line "are *prima facie* not contrary to international law and are valid with regard to other States" (Dan. C.-M., para. 59, p. 177, *supra*; Neth. C.-M., para. 53, p. 331, *supra*) and to interpret Article 6 of the Convention in such a way (see Dan. C.-M., paras. 126 *et seq.*, pp. 203, *supra, et seq.*; Neth. C.-M., paras. 120 *et seq.*, pp. 356, *supra, et seq.*) as to reduce the importance of the reservation of "special circumstances" practically to nothing. Although having preferred a rule that would have made settlement by agreement obligatory, the delegation of the Federal Republic of Germany voted at the Committee stage with the majority who were in favour of Article 6 of the Convention because the German delegation regarded the rule contained therein also as a workable solution, provided that its interpretation would pay due regard to its purpose, namely to reach an equitable solution of the boundary problem, and provided further that differences in this respect would be submitted to arbitration. In 1958, the delimitation problem had not been the main German concern; it was the possible detrimental effects of the Convention on the freedom of the high seas and on their exploitability by all nations on equal terms, especially with regard to fisheries, that caused concern and induced the German Government to accompany its signature with a reservation to Article 5 of the Convention. Needless to say, this did not preclude the Federal Republic of Germany from making additional reservations to other Articles of the Convention in case of ratification, or from opposing the customary law character of the equidistance line.

27. The fact that the Federal Republic of Germany decided to sign the Convention in 1958 and even contemplated ratifying it in due course, does not therefore seem to be inconsistent with its present position. At that time the Federal Republic could still expect to come to an amicable agreement with its neighbours on the delimitation of the continental shelf before its coast on equitable lines inasmuch as Article 6 expressly refers the Parties to a settlement by agreement in the first place. If the Counter-Memorial pointedly asks why the Federal Republic of Germany did not proceed with the ratification of the Convention (Dan. C.-M., para. 26, p. 164, *supra*; Neth. C.-M., para. 27, pp. 319-320, *supra*), the answer is quite simple: there was no change of attitude on the part of the Federal Republic of Germany with regard to the concept of the continental shelf as expressed by the Convention, nor was there a change in the view of the

German Government that if the North Sea continental shelf were to be divided up between the North Sea States each of them should be entitled to an equitable share. What was new, however, was the insistence on the equidistance line as the only valid rule for the delimitation of the continental shelf, and the reliance on Article 6, paragraph 2, of the Convention for this purpose by the Kingdom of Denmark and the Kingdom of the Netherlands in the negotiations taken up on the instance of the Federal Republic of Germany. These new facts caused the Government of the Federal Republic to reconsider the advisability of ratifying the Continental Shelf Convention as long as the interpretation of Article 6, paragraph 2, is uncertain.

28. When the Counter-Memorial asserts that the German Federal Government, in its Continental Shelf Proclamation of 20 January 1964, and in its Exposé des Motifs to the Statute on the Continental Shelf of 24 July 1964, "acknowledges the Geneva Convention as an expression of customary international law" (Dan. C.-M., para. 24, p. 164, *supra*; Neth. C.-M., para. 25, p. 319, *supra*), this is only partly correct. A careful reading of these instruments (reproduced as Annexes 10 and 11 of the Danish Counter-Memorial) would have shown that recognition of the customary law character of the provisions of the Continental Shelf Convention was limited to the rules contained in Articles 1 and 2 of the Convention, according to which every State has *ipso jure* an exclusive right to exploit the natural resources of the continental shelf adjacent to its coast. Not a single word, however, appeared in these instruments on the delimitation of the continental shelf which could be interpreted as a recognition of Article 6, paragraph 2, of the Convention or of the rules contained therein as customary international law; on the contrary, the Proclamation expressly declared that the delimitation of the German continental shelf vis-à-vis the continental shelves of other States would remain the subject of agreements with those States. This is wholly consistent with the legal position taken up by the Federal Republic of Germany in the present dispute.

29. The Counter-Memorial even goes so far as to use the two treaties concluded between the Federal Republic of Germany and the Kingdom of Denmark and the Kingdom of the Netherlands respectively which fixed the boundary line in the vicinity of the North Sea coast and, by an additional Protocol to the German-Danish Treaty, also in the Baltic Sea, as precedents against the Federal Republic because they allegedly follow the equidistance line. In fact the German-Netherlands partial boundary follows, in the greater part of its course, the equidistance line, while the terminal of the German-Danish partial boundary is an equidistant point (the only one on its course). Apart from this, how can these treaties be used as precedents against the Federal Republic of Germany or, as the Counter-Memorial later puts it, be regarded as "further instances of the recognition of the rules contained in Article 6 of the Continental Shelf Convention" when the Federal Republic of Germany, upon signing these treaties, made it clear that it did not recognize the equidistance method as determining the further seaward course of the boundary line?

> Cf. Joint Minutes to the German-Netherlands Treaty of 4 August 1964 (reproduced in Annex 4 of the Memorial), Protocol to the German-Danish Treaty of 9 June 1965 (Annex 7 of the Memorial).

The Joint Minutes drawn up on the signature of the German-Netherlands Treaty stated that that Treaty constituted "an agreement in accordance with the first sentence of paragraph 2 of Article 6 of the Geneva Convention . . .", thereby referring only to one rule of Article 6, namely settlement by agreement,

but deliberately leaving out the second sentence of paragraph 2 of Article 6, which contains the equidistance line. It therefore seems inadmissible to cite these treaties as precedents or as instances of recognition of Article 6 or of the equidistance line, and most of what the Counter-Memorial says in appreciation of these treaties (Dan. C.-M., paras. 103, 105-110, pp. 193-194, 194-196, *supra*; Neth. C.-M., paras. 97, 99-104, pp. 347, 348-349, *supra*), is irrelevant here.

30. The German-Netherlands and German-Danish Treaties of 4 August 1964 and 9 June 1965, respectively, prove nothing more than the fact that the equidistance line may be employed for the delimitation of the continental shelves between adjacent States in the vicinity of the coast where the direction of a boundary line based on the equidistance method is not yet influenced by the special configuration of the coast so much as to cause an inequitable result. The Federal Republic of Germany has never denied that the equidistance line has its legitimate field of application (see Memorial, paras. 63-64, p. 62, *supra*); therefore, consent to its partial application resp. application in the terminal point by the above-mentioned treaties was not inconsistent with the legal position taken by the Federal Republic of Germany in the present dispute. The treaties could not, however, constitute precedents for the recognition of an obligation to accept the equidistance line as the primary rule governing the delimitation of the continental shelf.

31. The Counter-Memorial believes to have found an easy explanation for the alleged change in the attitude of the Federal Republic of Germany towards the application of the principle of equidistance in the southeastern part of the North Sea:

> "Indeed, it may be permissible to wonder whether in 1964 it was considerations *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" (Dan. C.-M., para. 153, p. 212, *supra*; Neth. C.-M., para. 148, p. 365, *supra*).

The Danish Counter-Memorial accompanies its reference to German seismic, gravimetric, and magnetic explorations within the eastern part of the North Sea in 1957-1963 with the pointed remark:

> "... 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" (Dan. C.-M., para. 21, p. 164, *supra*).

The Federal Republic of Germany does not wish to enter this kind of argument; a few comments will suffice:

(a) as the Federal Republic of Germany has never recognized the applicability of the principle of equidistance in the North Sea and this attitude was perfectly consistent with its past and present attitude towards the Continental Shelf Convention in general, these remarks in the Counter-Memorial are irrelevant in this respect;

(b) the German explorations referred to by the Counter-Memorial could not possibly provide the Federal Republic of Germany with reliable information about the existence of oil and gas deposits in the disputed area. Only actual drilling as undertaken in 1967 under a Danish concession, might have resulted in such information.

It should be added that while the German explorations were stopped on the request of the Danish Government in the disputed area, the Danish Govern-

ment granted drilling concessions in that area. This attitude is in line with the unfounded claim upheld in the Counter-Memorial by the Kingdom of Denmark and the Kingdom of the Netherlands, that a State could delimit its continental shelf boundaries vis-à-vis other States unilaterally by application of the principle of equidistance.

Section 3. Have the Rules Contained in Article 6, Paragraph 2, of the Continental Shelf Convention Become Customary International Law?

32. The Counter-Memorial tries to prove that the equidistance line has to be accepted by Germany because of the "... general recognition of the equidistance principle as a rule of law by States ..." that has acquired the status of a "general rule of law" (Dan. C.-M., Chap. III, para. 60, p. 178, *supra*; Neth. C.-M., Chap. III, para. 54, p. 332, *supra*). It is not wholly clear what the Counter-Memorial understands by the term "general rule of law": does the equidistance principle derive its legal force from its character as customary international law or from its being a general principle of law which applies if there is no treaty or customary law available? As the main arguments of the Counter-Memorial refer to the practice of States, however, it must be assumed that the Counter-Memorial wants to assert that the rule contained in Article 6, paragraph 2, of the Continental Shelf Convention, viz. "the equidistance line unless another boundary line is justified by special circumstances", has become customary international law and, therefore, binding on the Federal Republic of Germany.

> Cf. also the Danish Counter-Memorial (para. 35, p. 166, *supra*) which states that "... all during the negotiations the Danish delegation upheld its position that the Geneva Convention was a codification of international customary law ..."

33. In order to prove an obligation of the Federal Republic of Germany to accept the equidistance line under customary international law, the argumentation of the Counter-Memorial takes two different courses:

(a) that "the equidistance principle ... 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" (Dan. C.-M., para. 61, p. 178, *supra*; Neth. C.-M., para. 55, p. 332, *supra*);

(b) that the provisions of Article 6 of the Continental Shelf Convention "which accept the equidistance principle as a rule of law" (Dan. C.-M., para. 61, p. 178, *supra*; Neth. C.-M., para. 55, p. 332, *supra*) had found "general recognition by the international community ... as expressing the rules of international law governing continental shelf boundaries" because the Convention had been ratified (or accepted) and applied by States (Dan. C.-M., para. 100, p. 192, *supra*; Neth. C.-M., para. 94, p. 346, *supra*).

Here again, the Counter-Memorial fails to distinguish clearly in its arguments between the *method* which employs the principles of equidistance for the delimitation of maritime boundaries, and the *rule* contained in Article 6 of the Convention which prescribes the application of the equidistance method under the condition that no "special circumstances" are present (see later, para. 76, p. 421, *infra*). The occasional use of the equidistance method in the past, mostly in the form of the median line, does not prove the existence of a *rule of law* that maritime boundaries must be delimited according to the equidistance method, nor

have States, by ratifying and applying the Convention, recognized that the equidistance line is the only valid rule.

A. The Equidistance Principle in the Practice of States Prior to the Continental Shelf Convention

34. It had never been doubted that the adoption of the equidistance method for the delimitation of continental shelf boundaries by the International Law Commission and by the Geneva Conference on the Law of the Sea constituted a new development in international law. The Counter-Memorial, too, does not assert that the principle of equidistance, when it was incorporated into the Continental Shelf Convention, could be qualified as customary international law. Commenting on the view expressed by the German Memorial (para. 46, p. 50, *supra*) that the use of the median line for certain water boundaries in the past was not sufficient proof for a general recognition of the principle of equidistance for the delimitation of maritime bounderies, the Counter-Memorial admits that "it is here not 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" (Dan. C.-M., para. 86, p. 187, *supra*; Neth. C.-M., para. 80, p. 341, *supra*). The Counter-Memorial claims, however, that the existing practice of States to use the equidistance method in the form of the median line for certain lake, river and sea boundaries "cannot fail to reinforce and consolidate" the character of the rules contained in Article 6 of the Continental Shelf Convention as "generally recognized rules of international law" (Dan. C.-M., para. 86, p. 188, *supra*; Neth. C.-M., para. 80, p. 341, *supra*). Obviously this must be understood to mean that such use of the equidistance method by States, although hitherto not continental shelf boundaries, nevertheless had contributed to the transformation of the rules contained in Article 6 of the Continental Shelf Convention into customary international law. The factual and legal basis for such a contention is lacking.

35. Before commenting on the weight of the factual evidence adduced by the Counter-Memorial in support of its contention, it must first be questioned whether the adoption by the Continental Shelf Convention of one of the various methods that had hitherto been practised by States in drawing river, lake or sea boundaries, could be regarded as a relevant factor in transforming that method into a rule of customary international law. Obviously the authors of the Continental Shelf Convention would not have framed the rules on the delimitation of continental shelf boundaries without regard to the experience made with such methods in State practice, and would not have chosen a method which they had not considered the most suitable for its purpose. A law-creating effect in customary law, however, could be attributed to the incorporation of the equidistance method into the Convention only if that method was chosen and sanctioned by the Convention on the ground that it was the only one uniformly and consistently applied in the past. But, as the Counter-Memorial concedes, there was no universal application of the equidistance principle, but only "a 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" (Dan. C.-M., para. 85, p. 187, *supra*; Neth. C.-M., para. 79, p. 340, *supra*) and "little evidence in treaties or in the legislation of individual States before 1958 of lateral equidistance boundaries in sea areas . . ." (Dan. C.-M., para. 88, p. 188, *supra*; Neth. C.-M., para. 82, p. 341, *supra*). In view of the divergent practice of States in the methods used to determine maritime

boundaries, it can at best be contended that the authors of the Continental Shelf Convention regarded the equidistance method as one of the most practicable and suitable methods. This is not sufficient to create an obligation under customary international law to accept the equidistance method as the "general" or primary rule.

36. The weight of the practice on which the Counter-Memorial relies, is further reduced by the fact that the supposed "wide recognition" of the equidistance principle is mainly restricted to boundaries in rivers, straits, channels and coastal waters. The situation in these cases is not comparable to a situation where boundaries have to be drawn through extensive maritime areas under the high sea. However persistently the Counter-Memorial may refuse to admit it, there can be no doubt that the function of maritime boundaries is not a mere "delimitation" of the maritime area each State controls, but also, if not primarily, an equitable partition of the maritime area between the States concerned. When States resorted to the equidistance method for the settlement of boundaries in rivers, straits, channels or territorial waters between opposite coasts, they did so because of the fact that the median line between opposite banks or coasts normally apportions an equal share of the waters to each of the two States. As precedents carry weight only for comparable situations, this practice cannot be regarded as relevant for other maritime situations where such an equitable apportionment cannot be expected from the application of the equidistance principle under all circumstances. The German Memorial has amply demonstrated that it depends very much on the various coastal configurations whether the equidistance method will effect an equitable apportionment of the continental shelf areas between adjacent States. It does not therefore seem admissible to regard boundaries in rivers, lakes, straits, channels or territorial waters between opposite banks or coasts as an expression of a principle which must necessarily be valid for all kinds of maritime boundaries.

37. In both Counter-Memorials a number of "Boundary Treaties Delimiting Continental Shelves" are listed as Annexes 13 (Dan. C.-M.) and 15 (Neth. C.-M.) respectively under the heading "equidistance principle". Most of the boundaries are median lines in rivers, straits, channels, and territorial waters between opposite coasts, and some of them are not true equidistance lines in the full sense because only a limited number of points on the boundary have been defined as being equidistant from certain coastal points. Some of the cases referred to require further comment:

(a) The Belgian bill, given under No. 12 is not a treaty at all (see para. 55 below).

(b) Treaty No. 3 (Netherlands-Denmark) should not be quoted as a precedent of international law in this context as its validity will entirely depend on the ruling of this Court.

(c) Treaties Nos. 2 and 6 should also be ruled out as precedents for the reasons given in paragraph 29 above.

(d) Treaties Nos. 5, 7, 8, contain one or several points of equidistance which are connected by straight lines; others provide for boundaries following more or less precisely a general middle line (Nos. 1, 10, 11). Thereby it might be suggested that equidistance and middle lines are identical which clearly they are not.

Observations to the individual treaties listed in Annexes 13 and 15 of the Counter-Memorials are given in the Annex below. This compilation aims at a comprehensive survey of all treaties on the delimitation of the continental shelves concluded so far, in their historical order.

38. The boundary treaties delimiting maritime areas other than continental shelves listed in Annexes 13 and 15 of the Counter-Memorials can be invoked as precedents of equidistance solutions to a very limited degree only. Besides there is a considerable number of cases in the practice of States, where the equidistance method has not been used at all:

(a) The methods of delimiting the relatively narrow belt of the *Territorial Sea* need not be the same as in large submarine areas far off the coasts. So even if the territorial waters of the majority of States were bounded by equidistance lines—*quid non*—this would not prove that the same States have agreed or would agree on the delimitation of their continental shelves in the same way. But, as will be shown in section B of Annex below, the 14 treaties listed in the Counter-Memorial do by no means demonstrate general agreement on the lateral delimitation of territorial waters one way or another. Treaties Nos. 3, 4, 6, 7, 8, 9 should be disregarded for the reasons given below whereas the remaining Nos. 1, 2, 5, refer to treaties which are no longer in force. Nos. 10-14 are based on other methods than equidistance; quite a number might be added to them.

(b) As far as *Fishing Zones* are concerned it should be noted that the Federal Republic of Germany has not ratified the European Fisheries Convention to which reference is made under (C) of Annexes 13 and 15 in the Counter-Memorials.

(c) *Rivers* are even more unsuitable for comparison. Thalweg boundaries which are often used in this context cannot be cited as an argument in favour of the median line. The Thalweg corresponds to the main channel of navigation which may or may not be situated in the middle of a river (or *lake* respectively).

39. In view of the divergent practice of States it seems exaggerated to contend that the equidistance method had already, prior to the Geneva Conference 1958, found "wide recognition" in State practice; its application had been mainly limited to the "median *line*" between opposite coasts, and it had not as yet been employed at all for the definition of continental shelf boundaries. Therefore, it is difficult to sustain that Article 6, paragraph 2, of the Continental Shelf Convention which adopted the equidistance line as the rule to be followed "unless another boundary is justified by special circumstances", did nothing more than "consolidate" an existing custom into a rule of customary law.

B. The Impact of the Continental Shelf Convention on the *Formation of Customary Law*

40. One of the main arguments put forward by the Counter-Memorial in support of the customary law character of the rules contained in Article 6, is that "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 a very solid evidence of the general acceptance of the Geneva Convention on the Continental Shelf by the international community" (Dan. C.-M., para. 92, p. 190, *supra*; Neth. C.-M., para. 86, p. 343, *supra*). The picture, however, would be incomplete, if the following figures were not added: 85 States attended the Geneva Conference, 45 of them signed the Convention, 21 of the signatories ratified the Convention; 9 States that had attended but not signed the Convention within the prescribed time-limit and 7 new States accepted the Convention later; 10 years after the Conference the majority, among them quite a number of important States with a sea coast, have not yet accepted the Con-

vention as binding. Among the signatories there are 7 island-States and 5 landlocked States; in view of these figures the acceptance of the Convention does not seem to be so impressive as the above statement in the Counter-Memorial might indicate.

41. Apart from the fact that the present number of ratifications and acceptances cannot yet be qualified as a "general acceptance of the Geneva *Convention on the Continental Shelf* by the international community", the more the general question poses itself whether, and if so under what circumstances, a multilateral "law-making" convention may, at the same time, create customary law. Some brief remarks are necessary in this respect.

42. There is some legal opinion to the effect that an international conference for the codification and development of international law, open to all States or at least to all Members of the United Nations and its specialized agencies, should be regarded as some sort of a "quasi-legislative" body of the international community. It is contended that the rules of law adopted at such conferences and incorporated into "law-making" conventions are an expression of the general law on the subject and, therefore, binding on all States whether they have formally subscribed to them or not.

Waldock, Recueil des Cours 1962, II, p. 83, writes with respect to the Continental Shelf Convention:

> "It can already be prophesied with some confidence that ultimately it will be very difficult for any State, whether it has subscribed to the convention or not, to resist its force as an expression of the general law on the subject."

Such a doctrine if generalized and indiscriminately applied, can be rather dangerous. It must be rejected because it tends to confuse the conditions for the creation of treaty and customary law.

Waldock (loc. cit.) too, is very careful in formulating the conditions under which a law-making convention may develop into customary international law: "Its text, which will usually have been adopted by something like two-thirds of the international community, is both a well-considered and an 'official' expression of general opinion in regard either to the existing law or the desired law on the subject. A text having, apparently, such a large measure of general support is inevitably invested with a certain *persuasive authority*, although it may lack the authority of a legally binding instrument. *Much then depends on the subsequent reaction of States. If a certain number definitely manifest their rejection of the treaty, it may come into force for those States which accept it but never achieve the status of general law.* More frequently, however, States merely fail to commit themselves to the treaty and keep their position open as to its ultimate acceptance by them. It is then that the persuasive authority of a general treaty may gradually work its provisions into the fabric of customary law" (italics added).

43. If States conclude a law-making convention, they create, by ratifying it, a contractual obligation among themselves to the effect that each of them has to apply the rules contained in the convention. They are, however, not exercising a mandate to "legislate" for the whole international community, for which they would require express authority. If an obligation to apply the substantive rules of the convention is also to be incumbent on States that have not yet ratified the convention or did not even attend the conference, it would need some legal basis other than the convention. Such a basis could be found

only in the long accepted conditions for the formation of customary international law: practice coupled with the recognition that such practice should be the law. Therefore, if it is contended that rules adopted by a law-making convention are generally binding on all States, it must be shown either that these rules were already customary law at the time the convention was concluded, or that also the States not bound by the convention consistently apply these rules in practice.

44. While it is generally admitted that a State's legal title to the continental shelf before its coast had already found general recognition by the international community, when the Convention was adopted, specific rules on the delimitation of the continental shelf between two or more States adjacent to the same continental shelf have not yet been generally recognized. Neither in the discussions of the International Law Commission nor in the debates of the Geneva Conference on the Law of the Sea were the rules now contained in Article 6, paragraph 2, of the Convention on the Continental Shelf introduced because of their already being customary international law, but were rather proposed on the ground that they might constitute a workable solution of the boundary problem on equitable lines. The Counter-Memorial has devoted many pages to demonstrating that the equidistance line had been advocated not as a "subsidiary", but as the "primary" rule for delimitation, but it could not cite any opinion which had justified this proposal on the ground that the principle of equidistance had already the force of binding customary law. Therefore, the incorporation of the equidistance method into the Continental Shelf Convention could not *per se* create, over and above the treaty obligation flowing from the formal acceptance of the Convention, a customary law obligation for other States.

C. The Legal Effect of the Reservations to Article 6 of the Continental Shelf Convention

45. The necessity to distinguish clearly between treaty and customary law obligations becomes even more evident if the legal effect of reservations to the Articles of the Continental Shelf Convention is considered. The German Memorial had already pointed to Article 12 of the Convention which permitted reservations to all Articles with the exception of Articles 1-3, and had stated that this was evidence of the fact that the members of the Convention, by permitting reservations to some Articles, including Article 6, had recognized that these Articles did not constitute customary international law; otherwise they would not have been able to authorize States to "contract out" from the rules contained in these Articles. The Counter-Memorial (Dan. C.-M., paras. 80-83, pp. 186-187, *supra*; Neth. C.-M., paras. 74-77, pp. 339-340, *supra*) tries to minimize the validity of this argument by asserting that even in the case of a codifying convention reservations were permitted, mainly for the purpose of facilitating the general acceptance of the convention and that:

> "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" (Dan. C.-M., para. 82, p. 186, *supra*; Neth. C.-M., para. 76, p. 340, *supra*).

This counter-argument does not touch the crucial point. Even if in some cases reservations were made or permitted to codifying provisions or to other "important" provisions of a law-making convention, this does not allow of the reverse argument, namely that express permission to formulate reservations is irrelevant. It is an indisputable fact that the Continental Shelf Convention

makes a clear distinction between those of its provisions, to which reservations are permitted, and others, to which reservations are not permitted; this distinction must have some legal significance, at least it is evidence that the authors of the Convention regarded the two categories as not having the same quality.

46. The crucial issue in the present discussion is not the question whether the Article to which reservations are permitted contains rules that *were already* customary law (which had already been denied), but rather the question whether the Article should *create* generally binding law by the mere fact that the Convention had been accepted by a sufficient number of States. This cannot be the case for the simple reason that a rule contained in an Article of the Convention to which reservations are permitted and reservations have already been made by States parties to the Convention, could not at the same time become binding on other States not parties to the Convention which had not been in a position to contract out of such a rule. Therefore, the theory that a multilateral law-making convention may create generally binding law cannot be sustained with regard to those provisions of the Convention to which reservations are expressly permitted; States that have not become parties to the Convention will be bound by the rules it contains only if they have accepted them by customary application.

Section 4. State Practice Since the 1958 Geneva Conference

47. In order to prove that the rules contained in Article 6, paragraph 2, of the Continental Shelf Convention had now become customary law, it would have been necessary to show that this rule had been practised as law also by States which had not or not yet accepted the Convention formally. The Counter-Memorial alleges 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" (Dan. C.-M., para. 100, p. 193, *supra*; Neth. C.-M., para. 94, p. 346, *supra*),

and that "there is abundant evidence in State practice since 1958" (Dan. C.-M., para. 111, p. 196, *supra*; Neth. C.-M., para. 105, p. 350, *supra*), for the general recognition of the rule that the principle of equidistance applies unless another boundary is justified by special circumstances.

However, looking through the cases cited by Counter-Memorial to this effect, it is difficult to understand how this practice could be characterized as "abundant evidence"; on the contrary, the practice since 1958 shows that neither the States that had become parties to the Convention nor the States that had remained outside the Convention have shown much enthusiasm to rally behind the concept that the equidistance line was the primary or general rule.

48. In this context the Counter-Memorial has taken great pains to point out that it is not the equidistance line pure and simple that in its view should be regarded as "general international law", but rather the principle of equidistance qualified by the exception of special circumstances justifying another boundary line. Despite this qualification, which has not much importance in view of the narrow interpretation given in the Counter-Memorial to the "special circumstances" clause (see below para. 68 of this Reply), there still remains, however, the main contention of the Kingdom of Denmark and the

Kingdom of the Netherlands that the equidistance line should be the "general rule", i.e., should normally apply if no agreement on another boundary line is forthcoming. The entire argumentation of the Counter-Memorial oscillating between defending the equidistance rule pure and simple and defending the so-called "equidistance/special circumstances rule", leads to the thesis that a State may unilaterally apply the equidistance method vis-à-vis another State if the latter cannot convince the former that there are special circumstances necessitating another boundary line.

49. If this is the interpretation of Article 6, paragraph 2, of the Continental Shelf Convention by the Kingdom of Denmark and the Kingdom of the Netherlands, the Counter-Memorial should have adduced evidence to the effect that such a paramount role of the equidistance line had been recognized by the international community. For this purpose, it was not sufficient to show that States have in a number of cases—mostly between opposite coasts—applied the principle of equidistance; it has been neither doubted nor contested by the Federal Republic of Germany that the equidistance method may be applied for the delimitation of the continental shelf if it leads to equitable results. To sustain the argument that the rules contained in Article 6 had become customary international law, the Counter-Memorial should have shown that the equidistance method was *applied in recognition of an obligation to apply that method as the "general rule"*. There is, however, no evidence of such a practice.

50. The Counter-Memorial argues that the reservations which had been attached by France, Iran, and Venezuela to Article 6 of the Convention could not be interpreted as a "general objection or reservation with respect of Article 6", their sole object being to invoke the exception of "special circumstances" in certain areas before their coasts; the Counter-Memorial then continues that "by invoking the exception of 'special circumstances' included in Article 6, the States . . . concerned expressly recognized the validity, and claimed the benefits, of the provisions of that Article" (Dan. C.-M., paras. 97-98, pp. 191-192, *supra*; Neth. C.-M., paras. 91-92, p. 345, *supra*). This is a clear misinterpretation of these reservations and of the purpose they should serve. If by these reservations the above-mentioned States wanted simply to declare that they regarded "special circumstances" as being present in the defined areas before their coast but did not want to exclude that Article 6 might be invoked against them if their view were not recognized, they would not have needed the instrument of reservation. The very purpose of these reservations was to preclude other States from invoking Article 6 and claiming the equidistance line if "special circumstances" were not recognized. The three States wanted to exclude any claim to an equidistance boundary within the defined areas in reliance on Article 6. Therefore, these reservations are certainly not a recognition of the primary role of the equidistance principle; on the contrary, they go to show that the rules contained in Article 6 were not thought acceptable within the areas defined because Article 6 might be interpreted as it is in fact done by the Counter-Memorial, in a way which establishes the principle of equidistance as the "general rule".

51. The other three cases cited by the Counter-Memorial, the Island of Malta Act 1960, the Soviet-Finnish boundary agreement of May 1965, and the German-Danish Protocol on the boundary in the Baltic Sea of June 1965 concern median lines between opposite coasts and are therefore likewise not evidence of the general applicability of the principle of equidistance. In the Protocol on the continental shelf boundary between Germany and Denmark

in the Baltic Sea (which as a look on the map will show, is a boundary between opposite coasts from its start in the Flensburger Förde), it is expressly stated that only "coasts which are opposite each other" are concerned and contains an agreement that in this respect "the boundary shall be the median line" (see German Memorial, Annex 7 A, p. 113, *supra*); in addition, a special reservation has been expressed in the Protocol by both Parties as to their divergent legal standpoints with respect to the delimitation of the Continental Shelf of the North Sea. In contrast to the impression created by the Counter-Memorial, the Protocol can neither be regarded as a precedent for the general applicability of the principle of equidistance nor as a recognition by Germany of the rules contained in Article 6 of the Continental Shelf Convention. The fact that no other cases could be cited than one unilateral declaration and two agreements on median lines, fortifies the legal position of the Federal Republic of Germany that the equidistance line in the form of the median line may be acceptable as an equitable solution of the boundary question, but that there is as yet no evidence of a general recognition of the principle of equidistance in other geographic situations, in particular in situations where a boundary has to be drawn through maritime areas before the coast of States which are adjacent to each other or surround an enclosed sea.

52. In the last resort the Counter-Memorial relies on the treaties that have been concluded on the delimitation of the continental shelf in the North Sea. That the "partial boundary" treaties concluded between the Federal Republic of Germany on the one hand and the Kingdom of Denmark and the Kingdom of the Netherlands on the other, cannot be invoked as precedents against Germany in support of the customary law character of the rule contained in Article 6 of the Continental Shelf Convention, has already been clarified (see above para. 29); despite its efforts to interpret also these treaties as evidence of ". . . the determination of continental shelf boundaries in the North Sea by application of the principles contained in Article 6 . . ." (Dan. C.-M., para. 110, p. 196, *supra*; Neth. C.-M., para. 104, p. 349, *supra*), the Counter-Memorial is unable to disguise the fact that both treaties had been concluded on the understanding that the Federal Republic of Germany thereby does not recognize any obligation to apply the principle of equidistance for the further seaward—course of its continental shelf boundaries in the North Sea. Therefore, these treaties cannot be regarded as precedents for the customary law character of the rules contained in Article 6, paragraph 2, nor do they "reflect" these rules *(ibid.)*. It is not relevant here that these treaties use partially resp. in the terminal of the boundary the equidistance method; the only relevant point is whether this had been done in *recognition of an obligation*, equivalent to the obligation in Article 6 of the Convention, to apply the equidistance method. In view of the circumstances under which these treaties were concluded and in view of the express reservation as to the further course of the boundary (see Memorial, paras. 16, 18, 60, pp. 21, 22, 60-61, *supra*), this must certainly be answered in the negative. On the other hand, it was not inconsistent with the present position of the Federal Republic of Germany to agree with its neighbours on an equidistance boundary where *both* sides considered it to be equitable in the vicinity of the coast up to a distance of some 25-30 nautical miles.

53. The other treaties between Denmark, Great Britain, the Netherlands, and Norway, which apply the principle of equidistance in the North Sea, do not prove anything that could be used to support the thesis of the Counter-Memorial.

All these treaties concern boundaries between opposite coasts, where the median line, in the absence of islands influencing its course, normally divides the maritime areas between the opposite coasts into nearly equal parts thereby ascribing to each party a just and equitable share. In addition, the Federal Republic of Germany lodged legal protests against the treaties between Denmark, Great Britain, and the Netherlands, on the ground that they imply that the continental shelf of the Federal Republic of Germany is limited vis-à-vis its neighbours to an area embraced by equidistance boundaries.

54. In consequence of the repeated protests and reservations made by the German Government it was known to all North Sea States that the Federal Republic of Germany did not recognize the principle of equidistance as applicable for the delimitation of its continental shelf. If it was permissible for the parties to the Continental Shelf Convention, to exclude, by way of a reservation under Article 12, the application of the principle of equidistance to certain areas before its coast, as did France in its reservations with respect to certain parts of its Atlantic and North Sea coasts, why should Germany be forbidden to make a similar declaration with respect to the continental shelf before its North Sea coast? If Germany were obliged, as the Counter-Memorial contends, to accept the rules contained in Article 6 of the Convention as customary international law, this obligation could evidently not be more stringent than for States which have ratified or accepted the Convention, but may attach reservations to Article 6 excluding the applicability of the equidistance principle for certain maritime areas before their coasts.

55. The reference to the proposal of the Belgian Government for a statute on the Continental Shelf of Belgium is a very weak precedent. Apart from the fact that it is at present only a proposal without the force of law, it is certainly within the discretion of any State to adopt the principle of equidistance for the delimitation of its continental shelf vis-à-vis its neighbours if it considers such delimitation equitable. It does not follow from the Exposé des Motifs of the Belgian Government which accompanies the proposal, that the Belgian Government had chosen delimitation by the principle of equidistance because Belgium is obliged to accept this mode of delimitation.

Section 5. "Propinquity" and Equidistance

56. A further argument put forward by the Counter-Memorial in support of the principle of equidistance is the concept of "propinquity". At first sight this appears to be a new argument but in reality "propinquity" is but another aspect of the principle of equidistance. The Counter-Memorial argues that the equidistance line is an expression of the concept that a State should have jurisdiction over those maritime areas which are closer to its coast than to any other State, and thus is based on "propinquity" (Dan. C.-M., paras. 88, 115, pp. 188, 197-198, *supra*; Neth. C.-M., paras. 82, 109, pp. 342, 351, *supra*). If this argument is meant to be an additional justification for making the equidistance line the general rule for the delimitation of the continental shelf, it presupposes that the Counter-Memorial regards the concept of "propinquity" as a generally recognized legal principle to the effect that any maritime area which is closer to a point of the coast of a State than to any other coast should come under the jurisdiction of that State. In this way, however, the argument is only a repetition of the pretension that the principle of equidistance is a generally binding rule, because "propinquity" is but another aspect of "equidistance". Equidistance boundaries are *per definitionem* constructed in such a way that the whole are embraced by equidistance

boundaries must, by geometric necessity, be closer to one coastal point of that State than to any other coast. Thus, the concept of "propinquity" advocated by the Counter-Memorial, is no further justification of the principle of equidistance; it only puts the same question in another way: Is it a rule of international law that the distance from the coast should be the only criterion for the allocation of maritime areas to one or the other State?

57. The Counter-Memorial attempts to draw some support for its theory on the general recognition of the concept of "propinquity" from the term "adjacent" in Article 1 of the Continental Shelf Convention. As the first Articles of the Convention recognize that each coastal State possesses an *ipso jure* title to the submarine areas "adjacent" to its coast, the Counter-Memorial argues that "by cogent reason" it followed from this definition "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" (Dan. C.-M., para. 115, pp. 197-198, *supra*; Neth. C.-M., para. 109, p. 351, *supra*). The Counter-Memorial relies heavily on this theory, when at the end of its arguments it defends the application of equidistance boundaries against Germany by stating 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" (Dan. C.-M., para. 173, p. 219, *supra*; Neth. C.-M., para. 166, p. 373, *supra*).

58. The weakness of this argumentation becomes apparent when one reads Article 6 of the Convention: Article 6 prescribes rules for the delimitation of a continental shelf which is "adjacent to the territories of two or more States", thereby assuming that there may be conflicting claims of two or more States because of their all being "adjacent" to the same continental shelf. If the authors of Article 1 had used the term "adjacent", as the Counter-Memorial contends, in the specific and limitative sense of restricting the claim of a coastal State to the areas which are nearer to its coast than to any other coast, there would have been no need to invent rules for the settlement of conflicting claims. If the principle of equidistance were nothing more than a logical consequence of the term "adjacent", Article 6 of the Convention would have been superfluous and the extended debates on the principles and rules contained in Article 6 would have been a waste of time and without purpose. In reality, however, the concept of a State's title to the continental shelf adjacent to its coast—embodied in the first Article of the Convention—simply recognized the right of a State to extend its jurisdiction over the continental shelf extending from its coast into the open sea, but did not imply any rule or principle for deciding on conflicting claims of two States adjacent to the same continental shelf.

59. It is extremely doubtful whether "propinquity" alone, especially in the narrow sense as defined by the Kingdom of Denmark and the Kingdom of the Netherlands could ever form a legal basis for a better claim to maritime areas under international law. It depends essentially on the nature of the rights claimed by the coastal State over maritime areas before its coast to what extent the "propinquity" of these areas to the coast must be taken into account as a factor determining the allocation to one or the other of the States adjacent to them. There might be justification in regarding the distance from the nearest point of a coast as an essential element in the delimitation of territorial waters or of the contiguous zone because the main function of the width of these zones is to secure the protection of the coast and the enforcement of the laws of the country. There is much less justification in regarding the nearest distance to a coastal point as an essential element in the delimitation of the continental shelf

because here the main function of the rights over the continental shelf is not to secure some power of control from the coast but to reserve its natural resources to the coastal State. There is no valid reason for a theory by which some projecting point of a coast should be decisive for allocating extensive continental shelf areas to one or the other adjacent States. It has already been sufficiently demonstrated in the German Memorial (paras. 42-45, pp. 39-49, *supra*) what would be the effects if the distance of a maritime area to one point of a coast were the only criterion for the allocation of that area to one or the other of the adjacent States.

60. If "propinquity" has any significance in the delimitation and allocation of continental shelf areas it must be understood in a much larger sense. The concept of the continental shelf as a generally recognized right of a State to the natural resources of the seabed and subsoil of the submarine areas adjacent to its coast is based on the generally accepted fact that the continental shelf is a natural continuation of the State's territory into the sea; therefore a State has a legal title to the continental shelf before its coast as far as that shelf may legitimately be regarded as a continuation of its territory. This concept of the continental shelf requires a solid geographical connection of these continental shelf areas with that State's territory, but does not necessarily require that all points within their boundaries must be closer to its coast than to a projecting part of the coast or to an island of a neighbouring State; this concept implies further that in the case of two or more States fronting the same continental shelf, conflicting claims should be adjudicated with a view to whether the disputed parts of the continental shelf are to be regarded as the natural continuation of the territory of the one or the other State into the common continental shelf. The equidistance line does not necessarily correspond to this concept, because by making the distance from one point of the coast the only criterion it completely disregards the general geographical situation.

61. If "propinquity" really had to be regarded as a sufficient justification for the employment of the principle of equidistance, this would mean that a boundary line other than the equidistance line could never be envisaged because "propinquity" would, by geometric necessity, require delimitation by equidistance boundaries. But Article 6 of the Continental Shelf Convention makes special allowance for "special circumstances" which exclude the application of the principle of equidistance.

Section 6. Onus of Proof with Regard to the Existence of Customary Law

62. The Counter-Memorial tries to shift the onus of proof in this respect on to the Federal Republic of Germany. After Denmark and the Netherlands had unilaterally delimited their respective continental shelf boundaries vis-à-vis Germany by application of the principle of equidistance, they assert in their Counter-Memorials that—

> "the onus is on it to show why the Netherlands or Denmark should not be entitled to apply the generally recognized principles and rules of delimitation in delimiting their respective continental shelf boundaries" (Dan. C.-M., para. 59, p. 177, *supra*; Neth. C.-M., para. 53, p. 331, *supra*).

The question who bears the onus of proof for the existence of customary law, seems to be governed by the following *dictum* of the Court in the *Asylum* case, where it was in doubt whether a regional South American convention had created regional customary law:

> "The party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other party . . . that the rule invoked is in accordance with a constant and uniform usage practised by the States in question . . ." (*I.C.J. Reports 1950*, p. 276).

This is in harmony with the general principle of law recognized in all law systems that the party relying on a right has to prove its existence. If, therefore, *the customary law character of the rules contained in Article 6 of the Continental* Shelf Convention cannot be established beyond doubt, the Kingdom of Denmark and the Kingdom of the Netherlands cannot rely on those rules against the Federal Republic of Germany.

Section 7. Conclusion

63. In view of the arguments put forward in paragraphs 32-62 the following conclusion is respectfully submitted:

The rule contained in Article 6, paragraph 2, of the Continental Shelf Convention prescribing the application of the principle of equidistance unless special circumstances justify another boundary line, has not become a rule of "general" international law binding on the Federal Republic of Germany. Therefore, the submission of the Kingdom of Denmark and the Kingdom of the Netherlands that the delimitation as between the Parties of the continental shelf in the North Sea is governed by such a rule must be rejected.

CHAPTER III

THE SPECIAL CASE OF THE NORTH SEA

Section 1. The Law Governing the Delimitation of the Continental Shelf

64. Before commenting on the arguments put forward in the Counter-Memorial with respect to the delimitation of the continental shelf in the North Sea, it would seem appropriate to state once more the general position of the Federal Republic of Germany concerning the principles and rules of international law which govern the determination of continental shelf boundaries.

65. In the view of the Federal Republic of Germany the following principles apply:

(a) There is no rule of customary international law which allows a State to impose a specific method for the determination of continental shelf boundaries vis-à-vis another State adjacent to the same continental shelf. These boundaries must therefore be fixed by agreement between the States concerned.

(b) As all States adjacent to the same continental shelf have a right to be attributed a just and equitable share of that shelf, each of them may rightfully claim that the boundary on which both parties have to agree should be determined in such a way that it effectuates an equitable apportionment of the continental shelf between the States concerned.

(c) The question whether, in the concrete case, the boundary should be fixed according to the equidistance or any other method depends on the factors determining the just and equitable share under the special circumstances of the case.

(d) As it cannot be presumed that the equidistance method will effectuate an equitable apportionment of a continental shelf under all circumstances, no State has a right to insist, vis-à-vis another State, on the equidistance boundary as long as it has not been established that such a boundary apportions an equitable share to each State adjacent to the same continental shelf. The equidistance boundary, therefore, cannot be applied as being lawful *ipso jure*.

(e) If it can be established that, under the circumstances of the case, the equidistance method will effectuate an equitable apportionment of the continental shelf, as for example in the case of a boundary between opposite coasts, in such a case each State may rightfully insist that the other accepts the equidistance line as the boundary.

(f) If, however, it cannot be established that, under the circumstances of the case, the equidistance method will effectuate an equitable result, the States concerned have to come to an agreement on another boundary which would result in an equitable apportionment of the continental shelf between them.

66. Applying these principles to the special case concerning the delimitation as between the Parties in the North Sea, the Federal Republic of Germany maintains:

(a) that the North Sea is a special case because it covers a single continental shelf surrounded by several States;

(b) that it cannot be presumed that the equidistance line will be the "equitable" boundary because the boundary of the continental shelf between the Parties is not a question of delimitation between opposite coasts;

(c) that the Kingdom of Denmark and the Kingdom of the Netherlands cannot impose the equidistance boundary for the delimitation of their respective parts of the continental shelf on Germany because they cannot show that such a boundary will effectuate an equitable apportionment of the North Sea continental shelf between the Parties.

The real issue in the present dispute between the Parties is the question whether under the special geographic circumstances in the North Sea the application of the principle of equidistance will effectuate, as the Counter-Memorial contends, an equitable apportionment of the continental shelf between the Parties, or whether the Parties will have to agree on another boundary which might achieve such an equitable result. As there is no presumption for either of the two alternatives, there is no *onus* on the Federal Republic of Germany to prove that the first alternative has to be answered in the negative. It will be for the Court to decide whether the circumstances of the case permit the application of the principle of equidistance or not.

Section 2. The Role of Article 6, Paragraph 2, of the Geneva Convention Within the Law on the Continental Shelf

67. The interest of the Kingdom of Denmark and the Kingdom of the Netherlands in having the dispute to be decided on the basis of Article 6 of the Continental Shelf Convention, in spite of the fact that the Federal Republic of Germany is not a party to the Convention, has become apparent by the interpretation of Article 6, paragraph 2, advocated by the Counter-Memorial to the effect that—

(a) Article 6 establishes the principle of equidistance as the "general" rule of boundary delimitation, thereby reducing the alternative that another boundary line is justified by "special circumstances" to a narrow exception, and

(b) Article 6 shifts the *onus of proof* as to whether there are "special circumstances" which justify another boundary line on to the party alleging such special circumstances.

Although the Federal Republic of Germany is not bound by the Convention and, therefore, need not go into the details of the interpretation of Article 6, paragraph 2, it nevertheless seems appropriate to comment on the views expounded in the Counter-Memorial in this respect, as it might be useful to show that Article 6, paragraph 2, if interpreted in harmony with its real purpose, is in essence not so far from the general principles which, in view of the Federal Republic of Germany, govern the delimitation of the continental shelf (see above, para. 66).

68. The Counter-Memorial puts great emphasis on the point that the International Law Commission "adopted the equidistance principle as the *general rule* and introduced the special circumstances clause by way of an *exception*" (Dan. C.-M., para. 127, p. 204, *supra*; Neth. C.-M., para. 121, p. 356, *supra*); it attacks the interpretation advanced in the German Memorial that the "special circumstances" clause must be understood more in the sense of an alternative of

equal rank to the equidistance method, *inter alia*, with the argument, that, if Article 6 "were so interpreted, the effect would be largely to denude it of legal content and to destroy its value as a criterion for resolving disputes concerning shelf boundaries" (Dan. C.-M., para. 129, pp. 204-205, *supra*; Neth. C.-M., para. 123, p. 357, *supra*). From the last phrase it is obvious that the Counter-Memorial is trying to establish the equidistance method as the only rule, reducing the weight of the "special circumstances" clause to a virtually unimportant exception. Such a narrow interpretation would be inconsistent with the purpose of Article 6.

69. The Counter-Memorial completely overlooks the fact that the *first* and *primary* obligation contained in Article 6, paragraph 2, is the obligation of the States concerned to seek agreement on an equitable boundary line. This obligation would be reduced to an empty formula if one of the parties could start from the premises that the equidistance boundary is the "general" rule. Logically the application of the equidistance method is either considered to be equitable by both sides or it will be disputed by one side. In the first case, there is no need to negotiate a boundary; its determination will be reduced to the technical matter of fixing the geographical co-ordinates of the boundary. In the second case, the equidistance method will certainly favour one side, but not the other; in such a case it could not be the sense of Article 6, paragraph 2, to allow one party to insist from the outset on the equidistance line and then, by asserting the absence of agreement, to impose the equidistance line on the other party as the "lawful" boundary.

70. Article 6 is to be understood as a *procedure* to come to the most equitable solution of the boundary problem in the concrete case. The first stage of the procedure envisaged by the authors of Article 6 is negotiations with a view to achieve agreement on a boundary line which would be regarded as equitable by *both* sides. Not before such negotiations fail, Article 6, paragraph 2, prescribes two alternatives: either there are "special circumstances" justifying a special boundary line which Article 6 was unable to define in detail, or there are no such "special circumstances", in which case the equidistance line applies. Not only logic but also the language of Article 6 requires that the examination whether there are "special circumstances" justifying another boundary line must take precedence; not before it had been established that this question can be answered in the negative way, may the parties apply the principle of equidistance. Article 6, paragraph 2, does not provide that, exceptionally, States may deviate from the equidistance method if "special circumstances" are invoked by one of the parties; the formulation of Article 6, paragraph 2, rather indicates that the absence of "special circumstances" is a necessary precondition for the application of the equidistance line.

71. Even if the Court followed the line of argument of the Counter-Memorial in the interpretation of Article 6, paragraph 2, of the Convention, and regarded the "special circumstances" clause juridically as an exception to the rule, this would not necessarily mean that the field of application of this exception would be as narrow as suggested in the Counter-Memorial. If the principle of equidistance applies under "normal" circumstances and another boundary has to be found under "special" circumstances, this distinction between "normal" and "special" circumstances does not indicate where the borderline between a "normal" and a "special" case has to be drawn. One need not go so far as to consider the "exception" more important than the "rule", but it is equally inadmissible to hold that an "exception" to the rule must necessarily be so narrow as to be limited to a few exceptional cases. The debates in the International

Law Commission and in the meetings of the 1958 Geneva Conference do not indicate that the "special circumstances" clause was thought to be a narrow exception; on the contrary, the commentary of the International Law Commission stressed the fact that the cases where another boundary line would be justified by the presence of islands, navigable channels, and exceptional configurations of the coast, "may arise fairly often, so that the rule adopted is fairly elastic".

(*Yearbook of the International Law Commission*, 1956, II, p. 300.)

If it is the purpose of Article 6, as the Counter-Memorial, too, concedes (Dan. C.-M., para. 55, p. 175, *supra*; Neth. C.-M., para. 49, pp. 328-329, *supra*), to translate the concept of delimiting the continental shelf on equitable principles into a more concrete formula, the border line between the "normal" and the "special" circumstances must be defined with this purpose in view. Any interpretation which would *a priori* presume that the equidistance method guarantees *per se* delimitation on equitable lines, would pass over the considerations which led to the formulation of Article 6.

72. The German Memorial (para. 64, pp. 62-63, *supra*) pointed to the difference in the language of Article 12 of the Territorial Sea Convention and Article 6 of the Continental Shelf Convention; while under Article 12 a deviation from the principle of equidistance is only possible if special circumstances "necessitate" it, under Article 6 the principle of equidistance is already excluded if special circumstances "justify" another boundary line. The conclusion drawn from this difference is that Article 12 by its language alone indicates that the authors of these Articles had thereby recognized a wider scope of application for the equidistance line in the territorial sea than in the delimitation of the continental shelf. The Counter-Memorial tries to explain that difference in the language of both Articles as merely accidental by pointing out that the original proposals of the International Law Commission for both Articles had the same wording but that at the Conference Article 12 had been completely redrafted for other reasons by the Conference Committee responsible for the drafting of the Territorial Sea Convention, while the proposal of the International Law Commission for Article 6 had only been slightly changed. (Dan. C.-M., para. 123, p. 202, *supra*; Neth. C.-M., para. 117, pp. 345-355, *supra*). These facts do not affect the validity of the foregoing conclusion. Whatever may have been the reason for redrafting Article 12, the different language in both Articles remains significant: it demonstrates that the authors of the Territorial Sea Convention in redrafting Article 12 have felt able to limit the scope of "special circumstances" much more than in the Continental Shelf Convention and to reduce this clause, in fact, to a veritable "exception" of the rule.

73. Relying on their restrictive interpretation of the "special circumstances" clause, the Kingdom of Denmark and the Kingdom of the Netherlands assert (Dan. C.-M., para. 148, p. 210, *supra*; Neth. C.-M., para. 142, pp. 363-364, *supra*) that the Federal Republic of Germany—

> "... is bound to respect the equidistance line as their mutual boundary on the continental shelf 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."

This contention can only mean that Article 6, paragraph 2, of the Continental Shelf Convention contained a *presumptio juris* that the equidistance line is the lawful boundary as long as the other party has not successfully "established" the existence of "special circumstances" justifying another boundary. Such an interpretation of Article 6 goes too far; if only by virtue of Article 6, paragraph 2, each State were entitled to regard the equidistance boundary as the lawful boundary vis-à-vis its neighbours as long as another boundary had not been recognized by agreement or arbitration, it would be tantamount to establishing the principle of equidistance as the only rule. Such an interpretation of Article 6 would be inconsistent with the purpose of that Article.

74. Article 6, paragraph 2, of the Continental Shelf Convention must be understood as a formula for settling conflicting claims between States adjacent to the same continental shelf in an equitable manner. If from negotiations with the object defined above (paras. 69, 70) no agreement is forthcoming between the States concerned, Article 6, paragraph 2, provides that in this case the conflicting claims have to be decided on the basis of the formula:

> "... unless another boundary is justified by special circumstances the boundary shall be determined by application of the principle of equidistance ...".

This cannot mean that the equidistance boundary is lawful in any case as long as another boundary has not been validly determined; it can only mean that the equidistance boundary is lawful in such cases where under an objective standard of evaluation there are no such "special circumstances" which justify another boundary. In case of dispute between the States concerned whether there are "special circumstances" justifying another boundary line, it does not follow from this formula of Article 6, paragraph 2, that the party which denies the existence of such circumstances has a *better right* than the other. If at all, the formula might be interpreted as shifting the *onus of proof* onto the party asserting the existence of such "special circumstances". This might be relevant, if the dispute is submitted for adjudication, but could never give one party the right to impose the equidistance boundary on the other party as long as the dispute has not been settled by agreement or judicial decision.

75. Even if the second sentence of Article 6, paragraph 2, would be interpreted as creating a presumption in favour of the equitableness of the equidistance line in the sense that the *onus of proof* is shifted onto the party asserting that "special circumstances" exclude the application of the principle of equidistance, such a rule could not be invoked against the Federal Republic of Germany because the Federal Republic is not a party to the Convention and the rules contained in Article 6 have not yet become customary international law binding on States which are not parties to the Convention. With respect to the present dispute before the Court, it follows from these considerations that in case of doubt as to whether under the circumstances of the case the equidistance line would be an equitable solution of the boundary question, there is no presumption in favour of the equidistance.

Section 3. The "Special Circumstances" in the Present Case

76. The Counter-Memorial indicates that the Federal Republic of Germany, if it wanted to establish that the circumstances of the present case exclude the application of the principle of equidistance, should formally and expressly "invoke the exception of the special circumstances" in its pleadings and submissions

(Dan. C.-M., para. 137, p. 208, *supra*; Neth. C.-M., para. 131, p. 361, *supra*). This argument is without foundation. As the Federal Republic of Germany is not a party to the Continental Shelf Convention, it could not possibly rely on or invoke against the other Parties a provision of the Convention; moreover, had it done so, the Kingdom of Denmark and the Kingdom of the Netherlands might have regarded such an approach as recognition of the rules contained in Article 6, paragraph 2, of the Convention. Even if the Court were to accept the reasoning of the Counter-Memorial and regard the rules contained in Article 6, paragraph 2, of the Convention as customary international law, there is no rule in Article 6, paragraph 2, which prescribes that the State which contests the applicability of the principle of equidistance on the ground that there are special circumstances justifying another boundary line must formally and expressly refer to the "special circumstances" clause of Article 6, paragraph 2. In any case the arguments in the German Memorial as well as in the present Reply leave no doubt with the Court that the Federal Republic of Germany wants to assert that the special geographical situation in the North Sea excludes a delimitation of the continental shelf between the Parties according to the principle of equidistance, irrespective of whether it may be qualified as a "special circumstance" within the meaning of Article 6 or not.

77. The Counter-Memorial attacks the view of the Federal Republic of Germany that there are circumstances which exclude the application of the equidistance method in the delimitation of the continental shelf between the Parties, mainly on the following three grounds:

(a) The North Sea is no "special case" which could justify another delimitation of its continental shelf between the North Sea States.

(b) The delimitation of the continental shelf between Germany and Denmark on the one hand and between Germany and the Netherlands on the other hand have to be viewed as individual problems independently from each other and without regard to other continental shelf boundaries in the North Sea.

(c) The breadth of the coastal frontage of each Party facing the North Sea is not a relevant criterion for the judgment on the equitableness of the equidistance boundary.

All three contentions have to be rejected.

A. The North Sea as a "Special Case"

78. The Federal Republic of Germany maintains that the North Sea presents a "special" case because it covers a single continental shelf surrounded by several States, and that such a geographical situation which might well be regarded as a "special circumstance" within the meaning of Article 6, calls for special solutions in order to arrive at an equitable apportionment of the continental shelf between the North Sea States (German Memorial, para. 41, p. 39, *supra*). The Counter-Memorial attacks this view with the argument that the authors of the Continental Shelf Convention were certainly aware of the existence of geographical situations of this kind (e.g., North Sea, Persian Gulf, Baltic Sea, and others), but nevertheless had made no provision to the effect that these cases should fall outside the scope of the principle of equidistance or be treated as a "special circumstance" within the meaning of Article 6 of the Convention (Dan. C.-M., para. 134, pp. 206-207, *supra*; Neth. C.-M., para. 128, pp. 358-359, *supra*). This argument is not very convincing. It was not the intention of the authors of the Continental Shelf Convention to provide for or mention all cases

of "special circumstances"; they could have been content with the adoption of a formula which, as the commentary of the International Law Commission indicates (*Yearbook* 1956, II, p. 300), provides for "any exceptional configuration of the coast", leaving it to the subsequent practice of States what configurations might be covered by this clause. It would be a misinterpretation of the characterization of the North Sea as a "special" case in the Memorial if it were understood to mean that a well-enclosed sea like the North Sea *per se* constitutes a circumstance which would necessarily require other than equidistance boundaries between the adjacent States. It is maintained, however, that in such a geographical situation where conflicting claims of *several* States surrounding the *same* continental shelf have to be settled, special consideration must be given to the fact that the boundaries of the part of that continental shelf attributed to one State must be determined in relation to the corresponding claim of each other State to an equitable share of the same continental shelf. Therefore, equity will require departures from the principle of equidistance on account of the configuration of the coastline here more often than in other cases where the boundary problem merely has to take account only of the interests of two States. In support of its contention that the North Sea did not present any difficulty for the delimitation of its continental shelf between the surrounding States, the Counter-Memorial cites *R. Young* (see Dan. C.-M., para. 134, p. 207, *supra*; Neth. C.-M., para. 128, p. 359, *supra*); although this author is of the opinion that the North Sea States would not "challenge seriously the equity in general of dividing such resources by equidistant boundary lines", he nevertheless recognizes that "Germany in particular may seek some re-adjustment" by agreement.

B. The Indivisibility of the Boundary Problem in the North Sea

79. The Federal Republic of Germany holds the view that an equitable apportionment of the continental shelf of the North Sea among the surrounding States could not be achieved by determining the boundary lines between each pair of adjacent or opposite States as an isolated act. The boundary problem must rather be considered as a joint concern of all North Sea States, taking into account the effect of each boundary on the apportionment as a whole (see German Memorial, para. 75, p. 76, *supra*).

80. The Counter-Memorial, on the other hand, attempts to split up the boundary dispute between Germany on the one hand and Denmark and the Netherlands on the other into two individual problems which should be solved separately and independently of each other: with respect to the German argument that a German-Danish equidistance boundary and a German-Netherlands equidistance boundary in combination with each other would reduce Germany's share to a disproportionately small fraction of the North Sea, the Counter-Memorial argues that—

> "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 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" (Dan. C.-M., para. 155, pp. 212-214, *supra*; Neth. C.-M., para. 150, p. 367, *supra*).

81. To have a legal basis for this extraordinarily restrictive interpretation, the Counter-Memorial refers to Article 6, paragraph 2, of the Continental Shelf Convention which makes provision for the delimitation of the continental

shelf "where the same continental shelf is adjacent to the territories of *two* adjacent States" (*ibid.*; italics added by the Counter-Memorial). As a lateral boundary through the maritime areas before the coasts of States lying adjacent to each other is only conceivable as a boundary between *two* States, while a boundary between opposite coasts may involve "*two or more*" States (Article 6, paragraph 1), the difference in the language of the two paragraphs of Article 6 does not seem to have any legal significance for its interpretation. Therefore, the formulation of Article 6 of the Continental Shelf Convention is no support for the view in the case of lateral boundaries, only circumstances stemming directly from the geographical relationship of the two adjacent States, could be regarded as "special circumstances" within the meaning of Article 6, paragraph 2.

82. Apart from the fact that Article 6, paragraph 2, of the Continental Shelf Convention—even if it were binding on the Federal Republic of Germany —could not furnish a legal basis for such a restrictive interpretation, it is evidently impossible to pass judgment on the equitableness of a continental shelf boundary without considering the whole geographical situation and its effect on the apportionment of the continental shelf; it is sufficient that the proposed equidistance boundary, under the special geography of the case, would contribute to the disproportionate reduction of Germany's share of the continental shelf in the North Sea. There is every indication that "special circumstances" which may influence the determination of boundaries must be understood in the broadest sense: if geographical circumstances bring about that an equidistance boundary will have the effect to cause an unequitable apportionment of the continental shelf between the States adjacent to that continental shelf, such circumstances are "special" enough to justify another boundary line.

83. A judgment on the question whether the delimitation of the German Continental Shelf vis-à-vis Denmark or the Netherlands by application of the equidistance method is equitable, cannot be passed in isolation without regard to the combined effect which both equidistance boundaries would have on the size of Germany's share of the continental shelf of the North Sea. As the map shows, it is the almost rectangular bend in the German coastline that causes both equidistance lines (if such lines were drawn as continental shelf boundaries vis-à-vis Denmark and the Netherlands) to meet before the German coast, thereby reducing Germany's share of the continental shelf in the North Sea to a disproportionately small part if compared with the shares of the other North Sea States. This geographical situation is certainly "special" enough to come within the meaning of the "special circumstances" of Article 6, paragraph 2, of the Continental Shelf Convention, if that provision were applicable between the Parties.

84. The Counter-Memorial tries to minimize the importance of this effect by arguing that the small size of Germany's share is a consequence "stemming exclusively from its own coast" (Dan. C.-M., para. 154, p. 212, *supra*; Neth. C.-M., para. 149, pp. 365-367, *supra*). This argument is further advanced in the Counter-Memorial by arguing that a special geographical configuration could justify a boundary other than the equidistance one 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" (Dan. C.-M., para. 156, p. 214, *supra*; Neth. C.-M., para. 151, p. 367, *supra*).

This reasoning cannot be accepted because it is not in harmony with the purpose of the rules on the delimitation of the continental shelf. It cannot be regarded as a material difference whether "the exceptional configuration" of the coastline is to be attributed to the "losing" or the "gaining" State; what is relevant is the fact that such a configuration of the coastline irrespective where it is situated, results in a boundary which must be regarded as inequitable because the size of the share of the continental shelf of that State is disproportionately reduced thereby. It is in line with the unduly restrictive interpretation of the "special circumstances" clause by the Counter-Memorial that only an "abnormally small" portion of the continental shelf should be recognized as so inequitable as to justify another boundary.

85. In a further effort to disguise the inequitable result of the employment of the principle of equidistance in the delimitation of Germany's continental shelf, the Danish as well as the Netherlands Counter-Memorial produces a small map (Dan. C.-M., p. 213, *supra*; Neth. C.-M., p. 366, *supra*), which is meant to show that, if the boundaries were drawn according to the equidistance method, neither the "Danish share" nor the "Netherlands share" of the North Sea would be "abnormal" in relation to their respective coastline. However, the two maps are not identical: the one in the Danish Counter-Memorial deliberately omits the German-Netherlands equidistance boundary as claimed by the Netherlands, the other in the Netherlands Counter-Memorial deliberately omits the German-Danish equidistance boundary as claimed by Denmark; neither of them shows the size of Germany's share because in the Danish map the shares of Germany and of the Netherlands appear as a single share, and in the Netherlands map the shares of Germany and Denmark appear as a single share. This creates the impression that the Danish share as well as the Netherlands share of the continental shelf in the North Sea are perfectly "normal" compared with the shares of the other North Sea States. It will suffice to compare these maps with the map reproduced in the German Memorial (p. 27, *supra*), and it will at once be seen that the size of the shares of Denmark and of the Netherlands if compared with Germany's share in relation to their respective coastlines are not as "normal" as they should appear.

Section 4. Criteria for an Equitable Apportionment of the Continental Shelf in the North Sea

86. The Counter-Memorial makes a great point of the argument that the Federal Republic of Germany, by asking for an enlargement of its share of the continental shelf in the North Sea, requires Denmark and the Netherlands to "transfer" to the Federal Republic part of the continental shelf which is "adjacent" and "naturally appertaining" to them (Dan. C.-M., para. 153, p. 212, *supra*; Neth. C.-M., para. 148, p. 365, *supra*). The entire argumentation of Chapter V of the Counter-Memorial (the special circumstances exception and the Federal Republic's sectoral claim) tries to give the impression that the Federal Republic of Germany is seeking to gain something "at the expense" (Dan. C.-M., para. 152, p. 212, *supra*; Neth. C.-M., para. 147, p. 365, *supra*) of Denmark or of the Netherlands. To prevent such a wrong impression from gaining ground, it seems necessary and appropriate to state once more the

German position as to the size of the share each North Sea State may rightfully claim for itself.

87. If the Kingdom of Denmark and the Kingdom of the Netherlands claim that the maritime areas which they have *unilaterally* delimited vis-à-vis the Federal Republic of Germany as "their" continental shelf, are "naturally appertaining" to them, such a claim must be rejected. The claim that these parts of the continental shelf of the North Sea are "appertaining" to them under the "principles of general international law" is nothing but a reiteration of the equally untenable claim, already rejected (see above, paras. 56-61), that all parts of a continental shelf which are nearer to some point of the coast of a State than to any other coast, "appertain" to that State. This is as good as saying that the principle of equidistance is the only rule determining the apportionment of a continental shelf between adjacent States, which would be in clear contradiction with general international law and in particular also with Article 6 of the Continental Shelf Convention. Even under Article 6 it depends on the presence or absence of "special circumstances" whether the principle of equidistance applies or not. This being so, a higher standard than the principle of equidistance must be the basis for the judgment whether in the concrete case the equidistance boundary is equitable or whether there are "special circumstances" which exclude its application. The principle of equidistance could not possibly be the standard for the equitableness of its own application.

88. In its Memorial the Federal Republic of Germany has tried to develop criteria for the judgment what constitutes an equitable apportionment under the circumstances of the case. Starting from the generally recognized conception that the rights of a State over the continental shelf before its coast have their legal basis in the continuation of the State's territory into the sea, the Federal Republic of Germany is of the opinion that it is not the distance from a single point of the coast, but the connection with the coast at large measured by the *breadth of the "coastal frontage"* of the State, that would be an appropriate criterion for determining what parts of the continental shelf before the coast must be regarded as the continuation of the State's territory into the sea. The configuration of the coast should be irrelevant in this respect: the breadth of the coastal front should be measured on the basis of the general direction of the coast, thereby eliminating the effect of indentures as well as of promontories. If such configurations would have the effect to apportion parts of the continental shelf which appear to an unbiased observer as a continuation of one State's territory, to another State such an effect has to be regarded as a circumstance—or a "special circumstance" in the meaning of Article 6, paragraph 2, of the Continental Shelf Convention if it were applicable—which excludes the application of the equidistance method for the determination of the boundary between these States as inequitable.

89. The following diagrams, figures 1-3 will illustrate effects of this kind:

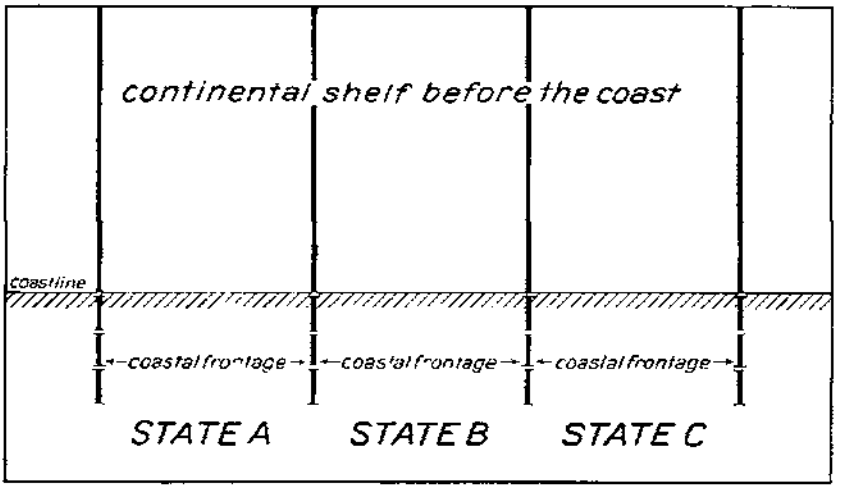

Figure 1

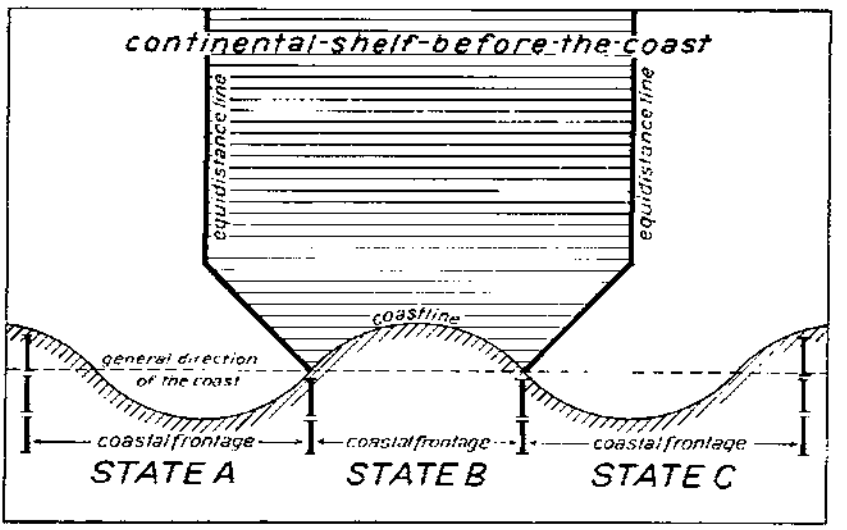

Figure 2

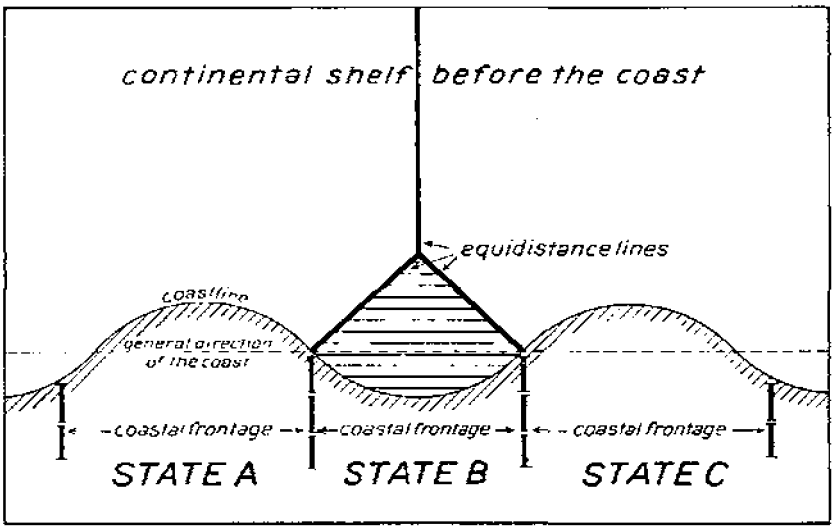

Figure 3

These diagrams show the simplest case of a coast with a continental shelf extending into the open sea. Obviously, no serious objection could be raised against the claim of each of these States that its continental shelf should extend into the open sea in a breadth corresponding to its coastal frontage, no regard being paid to the projecting parts of the neighbour State. Or would the Kingdom of Denmark and the Kingdom of the Netherlands wish to say that in figure 2 State A and C, and in figure 3 State B, should pay for a geographical situation "stemming exclusively from its own coast" (Dan. C.-M., para. 154, p. 212, *supra*; Neth. C.-M., para. 149, p. 365, *supra*)?

90. While in the cases illustrated by these diagrams (figs. 1-3 above, para. 89, pp. 427-428) it is quite obvious which part of the continental shelf before the coast could be regarded as a natural continuation of a State's territory into the sea, this is not so obvious in cases where the coasts of several adjacent States embrace a continental shelf in a bent or almost circular line. In such cases, as in the case of the North Sea, the continental shelves of the adjacent States, as the continuation of their respective territories, *converge* towards the middle of the area surrounded by these States. In order to find a criterion for the equitable delimitation of converging continental shelves, it would again seem appropriate to start from the simplest and ideal case where the coastlines of the adjacent States would embrace a continental shelf in a perfect circular line.

91. In such a case where the coastlines of all States surrounding the same continental shelf constitute an exact circular line, apportionment by sectors among the surrounding States appears to be the most equitable solution. It is necessary to point out that in such a geometrically ideal case the principle of equidistance would effectuate exactly the same apportionment. The following diagram, figure 4, illustrates such a case:

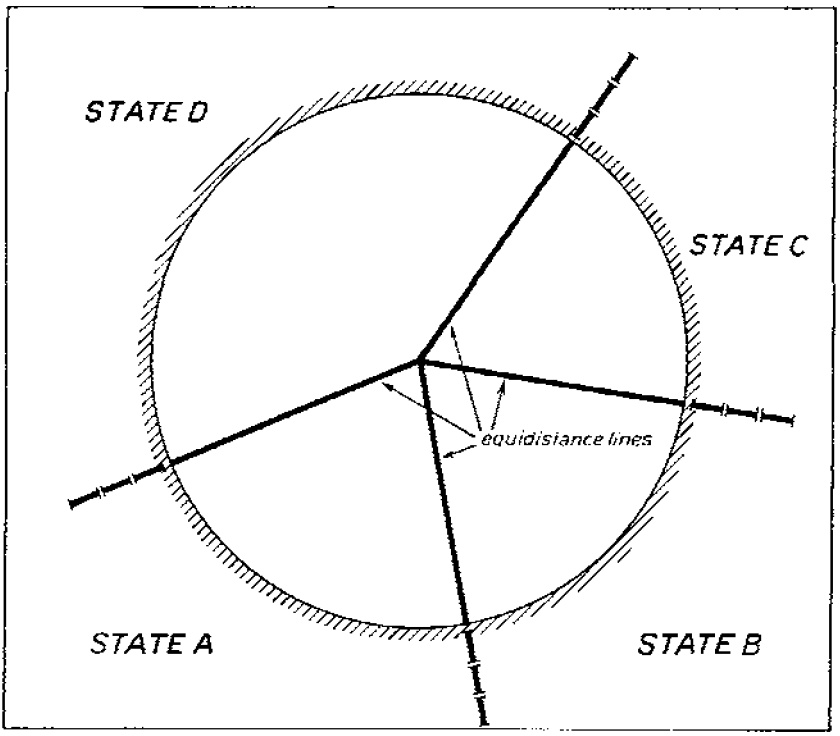

Figure 4

The reason why apportionment by sectors appears to be equitable in this case is apparently not to be found in the geometrical construction of the equidistance lines constituting the sectors but rather in the fact that the size of the sectors corresponds to the breadth of the base lines, or, as is the same in this case, to the breadth of the coastal front of each State. As the principle of equidistance, too, requires apportionment by sectors in such a case, the Counter-Memorial seems to be hardly fair in denouncing apportionment by sectors as being an "opportunistic, artificial, and arbitrary theory" (Dan. C.-M., para. 161, p. 215, *supra*; Neth. C.-M., para. 156, p. 369, *supra*).

92. In reality, the configuration of the coasts of the States embracing the same continental shelf is more complex. Of course, the coastlines do not follow the circle or any other simple geometrical line. The Federal Republic has not attempted to regard the North Sea as a case where the delimitation of the continental shelf between the adjacent States could be effected by application of the sectoral division pure and simple; it has considered the construction of sectors as a "standard of evaluation" by which to judge whether a certain boundary delimitation, in particular by the principle of equidistance, could be regarded as equitable under the circumstances of the case (see German Memorial, para. 85, pp. 83-84, *supra*). The reason why sectoral division is an appropriate standard by which to appreciate the equitableness of a certain delimitation of the continental shelf between the adjacent States will be demonstrated by the following diagram, figure 5, which presents a simplified case of converging continental shelves in an enclosed sea:

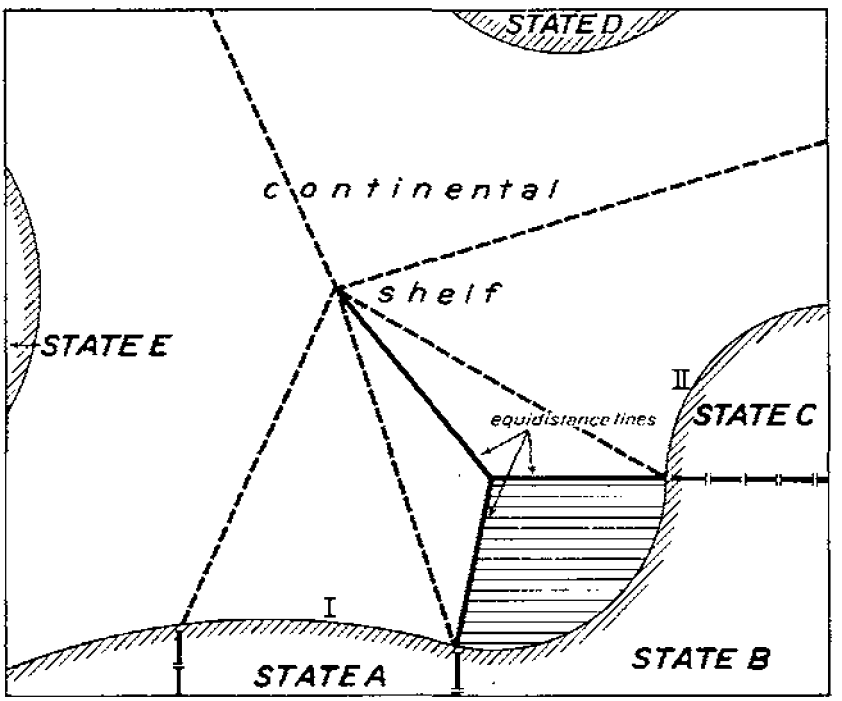

Figure 5

Here again it should be asked whether it is not more natural to regard the sectoral parts as the continuation of each State's territory into the sea, and whether it would not somehow be very "artificial" to regard only that part which is hatched in the diagram as "naturally appertaining" to State B. If the principle of equidistance were applied here, two projecting parts of the coasts of State A and C (I and II in the diagram) would have the effect that the rest of State B's sector would be transferred to State A and C respectively. The Federal Republic of Germany is of the opinion that here, too, not some projecting parts of the coast, but rather the *coastal front* of a State is the basis from which its continental shelf extends into the sea as a continuation of its territory.

93. The Counter-Memorial attempts to show that the "sector" concept does not correspond to the geographical situation of the North Sea because the circle drawn in figure 21 of the German Memorial does not touch the German coast, but connects only the end-points of the lateral boundaries between the Parties. The circle line in figure 21 may indeed have been a little misleading, as if its position were a determining factor for the construction of the sectors. In fact, it was only meant to show that the continental shelf which had to be apportioned among the North Sea States in that part of the North Sea, was roughly circular. The circle might have been drawn with a different radius or omitted altogether. The Federal Republic of Germany wanted to show by figure 21 the breadth of the front with which the territory of each of the Parties continues to extend under the water into the North Sea; this front would be

the same if the German coastline did not recede in the middle, but followed more closely the direct line between the end-points of the German land frontiers (Borkum-Sylt line).

94. The Counter-Memorial alleges that the Federal Republic of Germany, by taking the direct line between the end-points of the German land frontiers vis-à-vis Denmark and the Netherlands (in short the Borkum-Sylt line) as expressing the breadth of its coastal front facing the North Sea was attempting to escape from the unfavourable "consequences of its own geography" (Dan. C.-M., para. 167, p. 218, *supra*; Neth. C.-M., para. 162, p. 371, *supra*) and was completely neglecting the traditional coastal baselines as point of departure for the delimitation of maritime boundaries. It should be made clear that this "artificial" line the Federal Republic of Germany takes as a criterion for an equitable apportionment of the continental shelf of the North Sea, was not chosen for the purpose of getting a basis which is nearer to the middle of the North Sea than the actual coastline. The distance from the coast is, in the view of the Federal Republic of Germany, not the only relevant factor in determining the apportionment of a continental shelf among the adjacent States. The Borkum-Sylt line had been chosen as the basis for the measurement of the coastal frontage of Germany on the very ground that it would have been unfair to take the actual coastline with its deep indentures for this purpose.

95. Another objection advanced by the Counter-Memorial against the "sector" concept is the fact that the centre of the North Sea is more distant from Germany's coast than from the coasts of the other North Sea States. Apart from the fact that the difference in distance is rather small (0-14 nautical miles), compared with the area of the continental shelf (about 13,000 sq. km.) which would be transferred to the Kingdom of Denmark and the Kingdom of the Netherlands from the German sector by application of the equidistance method, it should again be emphasized in this context that distance from the coast, in particular distance from some single point of the coast is not an equitable criterion for the apportionment of extensive maritime areas. Here the Counter-Memorial returns once more to its favourite theory that areas of the continental shelf which are nearer to some point of the coast of one State than to any other coast should be regarded as "naturally appertaining" to that State. This appears very clearly from the argument that because the Federal Republic's coast is a little more distant from the centre of the North Sea "it is neither surprising nor inequitable nor unjust that the Federal Republic's continental shelf should not reach out to the place where it speaks of as the centre of the North Sea" (Dan. C.-M., para. 171, p. 219, *supra*; Neth. C.-M., para. 164, pp. 372-373, *supra*). It had already been demonstrated that such an argument is nothing but a reiteration of the principle of equidistance, and never an argument for the equitableness of its application in the concrete case.

96. The Counter-Memorial makes a very bitter attack on the criteria put forward by the German Memorial as a standard of evaluation for the equitableness of a continental shelf boundary, and reproaches the Federal Republic of Germany with neglecting "the established principles and rules of international law governing the delimitation of maritime boundaries" (Dan. C.-M., para. 173, p. 219, *supra*; Neth. C.-M., para. 166, p. 373, *supra*). For its part it advocates the coastal baselines as points of departure and reference for the delimitation of the boundaries of a State's continental shelf (Dan. C.-M., para. 159, p. 215, *supra*; Neth. C.-M., para. 154, p. 368, *supra*). It should be borne in mind that the jurisdiction of a State over the continental shelf before its coast is a new development in international law. The rules governing the contents and limits of

this jurisdiction must develop in harmony with the underlying ideas that have formed the basis of this jurisdiction. The old rules of maritime law will apply as far as they may be applied in harmony with this new concept of law. The Continental Shelf Convention, too, has made use of the traditional concepts of maritime law, in particular by introducing the equidistance line measured from the baselines of the coast as one of the methods of determining the boundaries of a State's continental shelf. At the same time, however, the Convention has well realized that the employment of such concepts has its limits, and recognized that the delimitation could not follow the baseline-equidistance concept if "special circumstances" required another solution under the terms of equity.

97. Judging by the principal objections to the "sector concept" raised by the Counter-Memorial, it is apparently assumed that this concept was meant to be a rule of international law determining the boundary of the continental shelf. This would be a misinterpretation of the function of the "sector concept". The Federal Republic of Germany wishes to emphasize once more that in the special case of a continental shelf surrounded by several States it is understood to be an objective *standard of evaluation* by which to judge whether a proposed boundary line, in particular the equidistance line, would be equitable, i.e., would apportion a just and equitable share to each State. The phenomenon in such a special case is the fact that the continental shelves of the surrounding States are convergent which must necessarily lead to an apportionment by "sectors", though they may not be sectors in the true geometrical sense. It is therefore impossible to avoid the question what are the relevant factors determining the size of the "sector" each State adjacent to the same continental shelf may rightfully claim as an equitable share. The Federal Republic maintains that not the distance from some single point on the coast but rather the breadth of the coastal front of each State is the only appropriate standard by which to determine the equitableness of the apportionment effected by the proposed boundary. If it were the distance from some single point on the coast, as the Counter-Memorial contends, such a standard would make the principle of equidistance its own standard for the equitableness of its application.

98. The standard for the equitableness of the continental shelf boundaries in the North Sea based on the breadth of the coastal front of each North Sea State should, in the view of the Federal Republic of Germany, be applied indiscriminately to all continental shelf boundaries in the North Sea. Any suggestion by the Counter-Memorial that the Federal Republic applies different standards in that it recognizes the equidistance boundaries of the United Kingdom and Norway as equitable while disputing the equitableness of the equidistance boundaries of Denmark and the Netherlands vis-à-vis Germany is wholly unfounded. It has been explained in the German Memorial (see paras. 86-87, p. 84, *supra*) that the shares which the United Kingdom and Norway have actually received by application of the equidistance method are not out of proportion to their respective coastal fronts, and it can easily be demonstrated that "sectors" construed on the basis of their fronts facing the North Sea do not differ so much from the actual shares of both States resulting from the application of the equidistance method. The standard applied by the Federal Republic of Germany is not "tailored" to suit its own purpose; rather is it founded on the generally recognized concept of the continental shelf as a continuation of a State's territory into the sea.

Cf. *International Law Commission*, Commentary to Article 68 of its 1956 draft Articles on the Law of the Sea, *Yearbook* 1956, II, p. 298.

Section 5. Conclusions

99. In view of the arguments put forward in paragraphs 64-98 of this Reply, the following conclusions are respectfully submitted:

(a) As to the delimitation of the continental shelf between the Parties in the North Sea, the application of the equidistance method does not apportion a just and equitable share to each of the Parties.

(b) As the Federal Republic of Germany is not a party to the Continental Shelf Convention, Article 6, paragraph 2, may not be invoked against the Federal Republic. Even if the rule contained in Article 6, paragraph 2, prescribing the application of the equidistance method unless special circumstances justify another boundary line were applicable between the Parties, there exist "special circumstances" within the meaning of that provision which exclude the application of the equidistance method.

(c) Consequently, the delimitation of the continental shelf in the North Sea between the Parties is a matter which has to be settled by agreement. This agreement should apportion a just and equitable share to each of the Parties.

(d) The breadth of the coastal front of each State facing the North Sea is an appropriate objective standard of evaluation with respect to the equitableness of a proposed boundary.

PART II. SUBMISSIONS

In view of the facts and the arguments presented in Parts I and II of the Memorial and Part I of this Reply

May it please the Court to recognize and declare:

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

2. *(a)* 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.

(b) The rule contained in the second sentence of paragraph 2 of Article 6 of the Continental Shelf Convention, prescribing that 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, has not become customary international law.

(c) Even if the rule under *(b)* would be applicable between the Parties, special circumstances within the meaning of that rule would exclude the application of the equidistance method in the present case.

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

(b) As to the delimitation of the continental shelf between the Parties in the North Sea, the Kingdom of Denmark and the Kingdom of the Netherlands cannot rely on the application of the equidistance method, since it would not lead to an equitable apportionment.

4. Consequently, the delimitation of the continental shelf in the North Sea between the Parties is a matter which has to be settled by agreement. This agreement should apportion a just and equitable share to each of the Parties in the light of all factors relevant in this respect.

31 May 1968

(Signed) Günther JAENICKE
Professor Dr. jur.

Agent for the Government of the Federal Republic of Germany

PART III. ANNEX TO THE REPLY SUBMITTED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

Annex

International and Inter-State Agreements concerning the Delimitation of Continental Shelves and Territorial Waters

A. CONTINENTAL SHELVES

1. 26 February 1942

United Kingdom-Venezuela

Treaty relating to the Submarine Areas of the Gulf of Paria

"Article 1. In this treaty the term 'submarine areas of the Gulf of Paria' denotes the sea-bed and sub-soil outside of the territorial waters of the High Contracting Parties to one or the other side of the lines A-B, B-Y and Y-X.

Article 3. The lines A-B, B-Y and Y-X mentioned in the preceding article are drawn on the annexed map and are defined as follows:

Line A-B runs from point A, which is the intersection of the central meridian of the island of Patos with the southern limit of the territorial waters of the island, the approximate co-ordinates of which are: latitude 10°35′04″ N., longitude 61°51′53″ W. From there the line runs straight to point B which is situated at the limit of the territorial waters of Venezuela at the point of their intersection with the meridian of 62°05′08″ W., the approximate latitude of which is 10°02′24″ N.

Line B-Y runs from point B, already established, and follows the limits of the territorial waters of Venezuela to point Y, where the said limits intersect the parallel of 9°57′30″ N., the approximate longitude of which is 61°56′40″ W.

Line Y-X runs from point Y, already established, and follows the said parallel of 9°57′30″ N., to point X, situated on the meridian of 61°30′00″ W."

Note: The lines described in Article 3 are not equidistant.

(Source: U.N. *Legislative Series* ST/LEG/SER.B/1 p. 44.)

2. 1947-1954

Chile-Peru-Ecuador

Note: These three States did not conclude separate treaties on the delimitation of their continental shelves. They agree, however, that the lateral boundaries between Chile and Peru and Peru and Ecuador follow the *parallel of geographical latitude* from the final point of the land frontier, as seen from the corresponding declarations and the treaty listed below.

(a) *Chile:* Presidential Declaration dated 23 June 1947: "4° La presente declaración de soberanía no desconoce legítimos derechos similares de otros Estados sobre la base de reciprocidad . . ."

Unofficial translation: "The present declaration of sovereignty does not dis-

regard the similar legitimate rights of other States on a basis of reciprocity . . ."

(b) *Peru:* Presidential Decree No. 781 (1) dated 1 August 1947: "3° . . . el Estado . . . ejercerá dicho control y protección sobre el mar adyacente a las costas del territorio peruano en una zona comprendida entre esas costas y una línea imaginaria paralela a ellas y trazada sobre el mar a una distancia de doscientas (200) millas marinas, medida siguiendo la línea de los paralelos geográficos."

Unofficial translation: ". . . the State . . . will exercise the same control and protection on the seas adjacent to the Peruvian coast over the area covered between the coast and an imaginary parallel line to it at a distance of two hundred (200) nautical miles measured following the line of the geographical parallels."

(c) *Chile-Ecuador-Peru:* Declaration on the Maritime Zone, dated 18 August 1952: "IV) . . . Si una isla o grupo de islas pertenecientes a uno de los países declarantes estuviere a menos de 200 millas marinas de la zona marítima general que corresponde a otro de ellos, la zona marítima de esta isla o grupo de islas quedará limitada por el paralelo del punto en que llega al mar la frontera terrestre de los Estados respectivos."

Unofficial translation: "The maritime zone of an island or group of islands belonging to one declarant country and situated less than 200 nautical miles from the general maritime zone of another declarant country shall be bounded by the parallel of latitude drawn from the point at which the land frontier between the two countries reaches the sea."

(d) *Chile-Ecuador-Peru:* Agreement Relating to a Special Maritime Frontier Zone, dated 4 December 1954: "Primero: Establécese una Zona Especial, a partir de las 12 millas marinas de la costa, de 10 millas marinas de ancho a cada lado del paralelo que constituye el límite marítimo entre los dos países."

Unofficial translation: "A Special Zone is hereby established, at a distance of 12 nautical miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries."

(Source: Convenios y otros documentos (1952-1966), Secretaria General, Lima, Enero de 1967, pp. 12, 14, 16, 39.)

3. 22 February 1958

Saudi Arabia-Bahrain

(Text reproduced on p. 259, *supra*, of the Dan. C.-M., and p. 388, *supra*, of the Neth. C.-M.)

Note: Although "middle lines" and "mid-points" are mentioned in this treaty the boundary does not follow a line of equidistance. Cf. *Padwa*, International and Comparative Law Quarterly, Vol. 9, 1960, p. 630: "Neither treaty utilises the principle of equidistance . . ."

4. 15 January 1961

Kuwait-Kuwait Shell

Oil Concession Agreement between the Ruler of Kuwait and Kuwait Shell Petroleum Development Co. Ltd.

"Article 1. (ii) . . . *The approximate boundaries of the seabed to which Kuwait is entitled are straight lines joining the following points:*

(i) The seaward end of the boundary between Kuwait and Iraq in the Khor Abdullah;

(ii) A point 29°43'12" N and 48°31'30" E
(iii) A point 29°35'00" N and 48°37'00" E
(iv) A point 29°32'24" N and 48°47'24" E
(v) A point 29°21'54" N and 49°13'18" E
(vi) A point 28°58'36" N and 49°29'48" E
(vii) A point 29°01'36" N and 48°52'12" E
(viii) A point 28°49'42" N and 48°22'30" E
(ix) A point 28°50'42" N and 48°19'06" E
(x) The seaward end of the boundary between Kuwait and Kuwait/Saudi-Arabian Neutral Zone."

(Source: Note Verbale from the Permanent Mission of Kuwait to the United Nations to the U.N. Secretary General, dated 6 March 1968.)

Note: The dividing line follows the general direction of the land frontier and does not reflect the principle of equidistance. While this is not an international agreement in the strict sense of the word, it may be given the same value under international law as was given to Lord Asquith's award in the case of the *Sheik of Abu Dhabi* v. *Petroleum Development Ltd.*

5. 1 December 1964

Federal Republic of Germany-Netherlands

(Text reproduced on p. 101, *supra*, of the German Memorial.)

Note: For objections against the use of this treaty as a precedent see paragraph 29 above.

6. 10 March 1965

United Kingdom-Norway

(Text reproduced on p. 105, *supra*, of the German Memorial.)

Note: This treaty as well as the two other treaties between the United Kingdom and North Sea coastal States provide for a boundary which, although being constructed on the basis of the principle of the median line, does not exactly follow the line of equidistance.

7. 20 May 1965

U.S.S.R.-Finland

(Text reproduced on p. 260, *supra*, of the Dan. C.-M. and p. 338, *supra*, of the Neth. C.-M.)

Note: The lateral boundary in the Gulf of Finland does not follow the equidistance line.

8. 9 June 1965

Federal Republic of Germany-Denmark

(a) North Sea

(Text reproduced on p. 111, *supra*, of the German Memorial.)

Note: Only the terminal point (S) is equidistant from the two coasts. See also paragraph 29 above for further objections against the treaty in this list.

(b) Baltic Sea

(Text of Protocol on p. 112, *supra*, of the German Memorial.)

Note: In the Baltic Sea the boundary constitutes a dividing line between opposite coasts.

9. 6 October 1965

United Kingdom-Netherlands

(Text reproduced on p. 117, *supra*, of the German Memorial.)

Note: See note to treaty No. 6 above.

10. 8 December 1965

Norway-Denmark

(Text reproduced on p. 126, *supra*, of the German Memorial.)

Note: See note to treaty No. 6 which applies *mutatis mutandis*.

11. 3 March 1966

United Kingdom-Denmark

(Text reproduced on p. 128, *supra*, of the German Memorial.)

Note: See note to treaty No. 6 above.

12. 31 March 1966

Netherlands-Denmark

(Text reproduced on p. 138, *supra*, of the German Memorial.)

Note: This treaty concluded by two Parties to the present proceedings only reiterates their views on the principles to be applied. In this context, therefore, it cannot be regarded as a precedent or evidence of State practice.

13. 5 May 1967

U.S.S.R.-Finland

(Text reproduced on p. 259, *supra*, of the Dan. C.-M. and p. 388, *supra*, of the Neth. C.-M.)

14. 22 November 1967

The Commonwealth of Australia

Note: This is an example of international law as applied between the individual States of a federation. Whether the Australian continental shelf is subjected to the jurisdiction of the individual States or the federation appears to be a controversial issue. The boundary lines in the following Act based on agreements between the States concerned differ largely from equidistance, particularly as the frontier between Victoria and South Australia is concerned.

Petroleum (Submerged Lands) Act, 1968 (entered into force on 1 April 1968).

SECOND SCHEDULE

AREAS ADJACENT TO STATES AND TERRITORIES

The adjacent area in respect of a State or Territory is the area the boundary of which is described in this Schedule in relation to that State or Territory, to the extent only that that area includes—

(a) areas of territorial waters; and
(b) areas of superjacent waters of the continental shelf.

AREA ADJACENT TO THE STATE OF NEW SOUTH WALES

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the geodesic between the trigonometrical station known as Point Danger near Point Danger and a point of Latitude 27° 58′ South, Longitude 154° East and runs thence north-easterly along that geodesic to the last-mentioned point, thence north-easterly along the geodesic to a point of Latitude 27° 48′ South, Longitude 154° 22′ East, thence easterly along the geodesic to a point of Latitude 27° 30′ 35″ South, Longitude 160° East, thence southerly along the meridian of Longitude 160° East to its intersection by the parallel of Latitude 39° 12′ South, thence south-westerly along the geodesic to a point of Latitude 40° 40′ South, Longitude 158° 53′ East, thence north-westerly along the geodesic to a point of Latitude 37° 35′ South, Longitude 150° 10′ East, thence north-westerly along the geodesic to the intersection of the coastline at mean low water by the boundary between the States of New South Wales and Victoria, thence along the coastline of the State of New South Wales at mean low water to the point of commencement.

AREA ADJACENT TO THE STATE OF VICTORIA

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the States of New South Wales and Victoria and runs thence south-easterly along the geodesic to a point of Latitude 37° 35′ South, Longitude 150° 10′ East, thence south-easterly along the geodesic to a point of Latitude 40° 40′ South, Longitude 158° 53′ East, thence south-westerly along the geodesic to a point of Latitude 41° 30′ South, Longitude 158° 13′ East, thence north-westerly along the geodesic to a point of Latitude 39° 12′ South, Longitude 150° East, thence westerly along the parallel of Latitude 39° 12′ South to its intersection by the meridian of Longitude 142° 30′ East, thence south-westerly along the geodesic to a point of Latitude 39° 50′ South, Longitude 142° East, thence south-westerly along the geodesic to a point of Latitude 44° South, Longitude 136° 29′ East, thence north-easterly along the geodesic to a point of Latitude 38° 40′ 48″ South, Longitude 140° 40′ 44″ East, thence north-easterly along the geodesic to a point of Latitude 38° 35′ 30″ South, Longitude 140° 44′ 37″ East, thence north-easterly along the geodesic to a point of Latitude 38° 26′ South, Longitude 140° 53′, East, thence north-easterly along the geodesic to a point of Latitude 38° 15′ South, Longitude 140° 57′ East, thence north-easterly along the geodesic to a point of Latitude 38° 15′ South, Longitude 140° 57′ East, thence north-easterly along the geodesic to a point that is the intersection of the parallel of Latitude 38° 10′ South by the meridian passing through the intersection of the coastline at mean low water by the boundary between the States of South Australia and Victoria, thence northerly along that meridian to its intersection by the coastline at mean low water, thence along the coastline of the State of Victoria at mean low water to the point of commencement.

AREA ADJACENT TO THE STATE OF QUEENSLAND

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the Northern Territory of Australia and the State of Queensland and runs thence north-easterly along the geodesic to a point of Latitude 15° 55′ South, Longitude 138° 30′ East, thence northerly along the meridian of Longitude 138° 30′ East

to its intersection by the parallel of Latitude 14° 30′ South, thence easterly along that parallel to its intersection by the meridian of Longitude 139° 15′ East, thence northerly along that meridian to its intersection by the parallel of Latitude 11° South, thence north-westerly along the geodesic to a point of Latitude 10° 51′ South, Longitude 139° 12′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 10° 11′ 15″ South, Longitude 140° 04′ 45″ East, thence north-easterly along the geodesic to a point of Latitude 10° South, Longitude 140° 21′15″ East, thence north-easterly along the geodesic to a point of Latitude 9° 52′ 30″ South, Longitude 140° 30′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 9° 38′ South, Longitude 141° East, thence north-easterly along the geodesic to a point of Latitude 9° 30′ South, Longitude 141° 35′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 9° 10′ 45″ South, Longitude 142° 00′ 15″ East, thence easterly along the parallel of Latitude 9° 10′ 45″ South to its intersection by the meridian of Longitude 142° 04′ 45″ East, thence south-easterly along the geodesic to a point of Latitude 9° 11′ 45″ South, Longitude 142° 09′ East, thence north-easterly along the geodesic to a point of Latitude 9° 10′ 30″ South, Longitude 142° 16′ East, thence south-easterly along the geodesic to a point of Latitude 9° 11′ 45″ South, Longitude 142° 18′ 30″ East, thence south-easterly along the geodesic to a point of Latitude 9° 14′ 45″ South, Longitude 142° 21′ 30″ East, thence south-easterly along the geodesic to a point of Latitude 9° 21′ 30″ South, Longitude 142° 33′ 15″ East, thence north-easterly along the geodesic to a point of Latitude 9° 08′ 15″ South, Longitude 143° 52′ 15″ East, thence south-easterly along the geodesic to a point of Latitude 9° 24′ 30″ South, Longitude 144° 13′ 45″ East, thence north-easterly along the geodesic to a point of Latitude 9° South, Longitude 144° 45′ East, thence easterly along the parallel of Latitude 9° South to its intersection by the meridian of Longitude 145° 13′ East, thence south-easterly along the geodesic to a point of Latitude 9° 15′ South, Longitude 145° 20′ East, thence south-easterly along the geodesic to a point of Latitude 10° 45′ South, Longitude 145° 40′ East, thence south-easterly along the geodesic to a point of Latitude 12° 10′ South, Longitude 146° 25′ East, thence south-easterly along the geodesic to a point of Latitude 12° 50′ South, Longitude 147° 40′ East, thence southerly along the meridian of Longitude 147° 40′ East to its intersection by the parallel of Latitude 14° South, thence westerly along that parallel to its intersection by the meridian of Longitude 146° 55′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 17° 05′ South, thence easterly along that parallel to its intersection by the meridian of Longitude 147° 45′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 18° 30′ South, thence easterly along that parallel to its intersection by the meridian of Longitude 150° 50′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 20° South, thence easterly along that parallel to its intersection by the meridian of Longitude 151° 30′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 20° 25′ South, thence easterly along that parallel to its intersection by the meridian of Longitude 153° 05′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 22° 50′ South, thence easterly along that parallel to its intersection by the meridian of Longitude 153° 40′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 23° 15′ South, thence easterly along that parallel to its intersection by the meridian of Longitude 154° East, thence southerly along that meridian to its intersection by the parallel of Latitude 23° 50′ South, thence easterly along

that parallel to its intersection by the meridian of Longitude 155° 15′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 25° South, thence easterly along that parallel to its intersection by the meridian of Longitude 158° 35′ East, thence south-easterly along the geodesic to a point of Latitude 27° 30′ 35″ South, Longitude 160° East, thence westerly along the geodesic to a point of Latitude 27° 48′ South, Longitude 154° 22′ East, thence south-westerly along the geodesic to a point of Latitude 27° 58′ South, Longitude 154° East, thence south-westerly along the geodesic between the last-mentioned point and the trigonometrical station known as Point Danger near Point Danger to its intersection by the coastline at mean low water, thence along the coastline of the State of Queensland at mean low water to the point of commencement.

AREA ADJACENT TO THE STATE OF SOUTH AUSTRALIA

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the States of South Australia and Victoria and runs thence southerly along the meridian through that point to its intersection by the parallel of Latitude 38° 10′ South, thence south-westerly along the geodesic to a point of Latitude 38° 15′ South, Longitude 140° 57′ East, thence south-westerly along the geodesic to a point of Latitude 38° 26′ South, Longitude 140° 53′ East, thence south-westerly along the geodesic to a point of Latitude 38° 35′ 30″ South, Longitude 140° 44′ 37″ East, thence southwesterly along the geodesic to a point of Latitude 38° 40′ 48″ South, Longitude 140° 40′ 44″ East, thence south-westerly along the geodesic to a point of Latitude 44° South, Longitude 136° 29′ East, thence westerly along the parallel of Latitude 44° South to its intersection by the meridian of Longitude 129° East, thence northerly along that meridian to its intersection by the parallel of Latitude 31° 45′ South, thence northerly along the geodesic to the intersection of the coastline at mean low water by the boundary between the States of South Australia and Western Australia, thence along the coastline of the State of South Australia at mean low water to the point of commencement.

AREA ADJACENT TO THE STATE OF WESTERN AUSTRALIA

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the States of South Australia and Western Australia and runs thence southerly along the geodesic to a point of Latitude 31° 45′ South, Longitude 129° East, thence southerly along the meridian of Longitude 129° East to its intersection by the parallel of Latitude 44° South, thence westerly along that parallel to its intersection by the meridian of Longitude 110° East, thence northerly along that meridian to its intersection by the parallel of Latitude 17° South, thence north-easterly along the geodesic to a point of Latitude 12° 24′ South, Longitude 121° 24′ East, thence south-easterly along the geodesic to a point of Latitude 12° 56′ South, Longitude 122° 06′ East, thence south-easterly along the geodesic to a point of Latitude 13° 20′ South, Longitude 122° 41′ East, thence easterly along the geodesic to a point of Latitude 13° 19′ 30″ South, Longitude 123° 16′ 45″ East, thence easterly along the parallel of Latitude 13° 19′ 30″ South to its intersection by the meridian of Longitude 124° 27′ 45″ East, thence north-easterly along the geodesic to a point of Latitude 13° 13′ 15″ South, Longitude 124° 36′ 15″ East, thence north-easterly along the geodesic to a point of Latitude 12° 46′ 15″ South, Longitude 124° 55′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 11° 51′ South, Longi-

tude 125° 27′ 45″ East, thence, north-easterly along the geodesic to a point of Latitude 11° 44′ 30″ South, Longitude 125° 31′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 10° 21′ 30″ South, Longitude 126° 10′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 10° 13′ South, Longitude 126° 26′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 10° 05′ South, Longitude 126° 47′ 30″ East, thence south-easterly along the geodesic to a point of Latitude 11° 13′ 15″ South, Longitude 127° 32′ East, thence south-easterly along the geodesic to a point of Latitude 11° 48′ South, Longitude 127° 53′ 45′ East, thence south-easterly along the geodesic to a point of Latitude 12° 26′ 30″ South, Longitude 128° 22′ East, thence south-easterly along the geodesic to a point of Latitude 12° 32′ 45″ South, Longitude 128° 24′ East, thence south-easterly along the geodesic to a point of Latitude 12° 55′ 30″ South, Longitude 128° 28′ East, thence southerly along the meridian of Longitude 128° 28′ East to its intersection by the parallel of Latitude 13° 15′ 30″ South, thence south-easterly along the geodesic to a point of Latitude 13° 39′ 45″ South, Longitude 128° 30′ 45″ East, thence south-easterly along the geodesic to a point of Latitude 13° 49′ 45″ South, Longitude 128° 33′ 15″ East, thence south-easterly along the geodesic to a point of Latitude 14° South, Longitude 128° 42′ 15″ East, thence south-easterly along the geodesic to a point of Latitude 14° 19′ 30″ South, Longitude 128° 53′ East, thence south-easterly along the geodesic to a point of Latitude 14° 32′ 30″ South, Longitude 129° 01′ 15″ East, thence southerly along the geodesic to a point of Latitude 14° 37′ 30″ South, Longitude 129° 01′ 45″ East, thence southerly along the geodesic to the intersection of the coastline at mean low water by the boundary between the Northern Territory of Australia and the State of Western Australia, thence along the coastline of the State of Western Australia at mean low water to the point of commencement.

AREA ADJACENT TO THE STATE OF TASMANIA

The area the boundary of which commences at a point of Latitude 39° 12′ South, Longitude 142° 30′ East and runs thence easterly along the parallel of Latitude 39° 12′ South to its intersection by the meridian of Longitude 150° East, thence south-easterly along the geodesic to a point of Latitude 41° 30′ South, Longitude 158° 13′ East, thence south-westerly along the geodesic to a point of Latitude 45° South, Longitude 150° East, thence south-easterly along the geodesic to a point of Latitude 56° South, Longitude 165° East, thence westerly along the parallel of Latitude 56° South to its intersection by the meridian of Longitude 155° East, thence north-westerly along the geodesic to a point of Latitude 45° South, Longitude 140° East, thence north-westerly along the geodesic to a point of Latitude 44° South, Longitude 136° 29′ East, thence north-easterly along the geodesic to a point of Latitude 39° 50′ South, Longitude 142° East, thence north-easterly along the geodesic to the point of commencement.

AREA ADJACENT TO THE NORTHERN TERRITORY OF AUSTRALIA

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the Northern Territory of Australia and the State of Western Australia and runs thence northerly along the geodesic to a point of Latitude 14° 37′ 30″ South, Longitude 129° 01′ 45″ East, thence northerly along the geodesic to a point of Latitude 14° 32′ 30″ South, Longitude 129° 01′ 15″ East, thence north-westerly along the geodesic to a point of Latitude 14° 19′ 30″ South, Longitude 128° 53′ East, thence north-westerly along the geodesic to a point of Latitude 14°

South, Longitude 128° 42′ 15″ East, thence north-westerly along the geodesic to a point of Latitude 13° 49′ 45″ South, Longitude 128° 33′ 15″ East, thence north-westerly along the geodesic to a point of Latitude 13° 39′ 45″ South, Longitude 128° 30′ 45″ East, thence north-westerly along the geodesic to a point of Latitude 13° 15′ 30″ South, Longitude 128° 28′ East, thence northerly along the meridian of Longitude 128° 28′ East to its intersection by the parallel of Latitude 12° 55′ 30″ South, thence north-westerly along the geodesic to a point of Latitude 12° 32′ 45″ South, Longitude 128° 24′ East, thence north-westerly along the geodesic to a point of Latitude 12° 26′ 30″ South, Longitude 128° 22′ East, thence north-westerly along the geodesic to a point of Latitude 11° 48′ South, Longitude 127° 53′ 45″ East, thence north-westerly along the geodesic to a point of Latitude 11° 13′ 15″ South, Longitude 127° 32′ East, thence north-westerly along the geodesic to a point of Latitude 10° 05′ South, Longitude 126° 47′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 9° 53′ 45″ South, Longitude 127° 18′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 9° 25′ South, Longitude 128° East, thence easterly along the parallel of Latitude 9° 25′ South to its intersection by the meridian of Longitude 129° 38′ East, thence north-easterly along the geodesic to a point of Latitude 8° 53′ South, Longitude 133° 21′ East, thence north-easterly along the geodesic to a point of Latitude 8° 52′ 15″ South, Longitude 133° 24′ 15″ East, thence south-easterly along the geodesic to a point of Latitude 9° 23′ 15″ South, Longitude 134° 47′ 30″ East, thence easterly along the geodesic to a point of Latitude 9° 20′ 30″ South, Longitude 135° 06′ 45″ East, thence north-easterly along the geodesic to a point of Latitude 9° 08′ 15″ South, Longitude 135° 28′ 45″ East, thence south-easterly along the geodesic to a point of Latitude 9° 50′ 30″ South, Longitude 137° 34′ East, thence south-easterly along the geodesic to a point of Latitude 10° 01′ South, Longitude 138° 03′ East, thence south-easterly along the geodesic to a point of Latitude 10° 16′ 45″ South, Longitude 138° 32′ 30″ East, thence south-easterly along the geodesic to a point of Latitude 10° 44′ 45″ South, Longitude 139° 09′ 15″ East, thence south-easterly along the geodesic to a point of Latitude 10° 51′ South, Longitude 139° 12′ 30″ East, thence south-easterly along the geodesic to a point of Latitude 11° South, Longitude 139° 15′ East, thence southerly along the meridian of Longitude 139° 15′ East to its intersection by the parallel of Latitude 14° 30′ South, thence westerly along that parallel to its intersection by the meridian of Longitude 138° 30′ East, thence southerly along that meridian to its intersection by the parallel of Latitude 15° 55′ South, thence south-westerly along the geodesic to the intersection of the coastline at mean low water by the boundary between the Northern Territory of Australia and the State of Queensland, thence along the coastline of the Northern Territory of Australia at mean low water to the point of commencement.

AREA ADJACENT TO THE TERRITORY OF ASHMORE AND CARTIER ISLANDS

The area the boundary of which commences at a point of Latitude 12° 24′ South, Longitude 121° 24′ East and runs thence north-easterly along the geodesic to a point of Latitude 11° 33′ South, Longitude 123° 14′ East, thence north-easterly along the geodesic to a point of Latitude 11° 17′ South, Longitude 123° 24′ 15″ East, thence south-easterly along the geodesic to a point of Latitude 11° 26′ 18″ South, Longitude 123° 40′ East, thence north-easterly along the geodesic to a point of Latitude 11° 21′ South, Longitude 124° 08′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 10° 55′ 45″ South, Longitude 124° 27′ East, thence north-easterly along the geodesic to a

point of Latitude 10° 37′ 15″ South, Longitude 125° 41′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 10° 21′ 30″ South, Longitude 126° 10′ 30″ East, thence south-westerly along the geodesic to a point of Latitude 11° 44′ 30″ South, Longitude 125° 31′ 30″ East, thence south-westerly along the geodesic to a point of Latitude 11° 51′ South, Longitude 125° 27′ 45″ East, thence south-westerly along the geodesic to a point of Latitude 12° 46′ 15″ South, Longitude 124° 55′ 30″ East, thence south-westerly along the geodesic to a point of Latitude 13° 13′ 15″ South, Longitude 124° 36′ 15″ East, thence south-westerly along the geodesic to a point of Latitude 13° 19′ 30″ South, Longitude 124° 27′ 45″ East, thence westerly along the parallel of Latitude 13° 19′ 30″ South to its intersection by the meridian of Longitude 123° 16′ 45″ East, thence westerly along the geodesic to a point of Latitude 13° 20′ South, Longitude 122° 41′ East, thence north-westerly along the geodesic to a point of Latitude 12° 56′ South, Longitude 122° 06′ East, thence north-westerly along the geodesic to the point of commencement.

AREA ADJACENT TO THE TERRITORY OF PAPUA

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the Territory of New Guinea and the Territory of Papua and runs thence north-easterly along the geodesic to a point of Latitude 7° 59′ 20″ South, Longitude 148° 01′ 30″ East, thence north-easterly along the geodesic to a point of Latitude 7° 50′ 45″ South, Longitude 148° 06′ 15″ East, thence north-easterly along the geodesic to a point of Latitude 7° 22′ South, Longitude 148° 16′ 45″ East, thence north-easterly along the geodesic to a point of Latitude 7° 16′ South, Longitude 148° 55′ East, thence south-easterly along the geodesic to a point of Latitude 7° 31′ South, Longitude 149° 15′ East, thence north-easterly along the geodesic to a point of Latitude 7° 22′ South, Longitude 149° 42′ East, thence north-easterly along the geodesic to a point of Latitude 7° 18′ South, Longitude 150° 10′ East, thence easterly along the geodesic to a point of Latitude 7° 19′ South, Longitude 150° 25′ East, thence easterly along the geodesic to a point of Latitude 7° 13′ South, Longitude 151° 05′ East, thence easterly along the geodesic to a point of Latitude 7° 10′ South, Longitude 152° 40′ East, thence north-easterly along the geodesic to a point of Latitude 7° 05′ South, Longitude 153° 10′ East, thence south-easterly along the geodesic to a point of Latitude 7° 18′ South, Longitude 153° 30′ East, thence south-easterly along the geodesic to a point of Latitude 7° 35′ South, Longitude 153° 48′ East, thence south-easterly along the geodesic to a point of Latitude 8° 50′ South, Longitude 155° 08′ East, thence south-easterly along the geodesic to a point of Latitude 9° 18′ South, Longitude 155° 18′ East, thence south-westerly along the geodesic to a point of Latitude 10° 9′ South, Longitude 154° 41′ East, thence south-easterly along the geodesic to a point of Latitude 10° 45′ South, Longitude 154° 55′ East, thence south-easterly along the geodesic to a point of Latitude 14° 07′ South, Longitude 156° 35′ East, thence south-westerly along the geodesic to a point of Latitude 14° 28′ South, Longitude 155° 03′ East, thence south-westerly along the geodesic to a point of Latitude 14° 45′ South, Longitude 154° 15′ East, thence north-westerly along the geodesic to a point of Latitude 14° 15′ South, Longitude 152° 15′ East, thence north-westerly along the geodesic to a point of Latitude 13° 50′ South, Longitude 151° 29′ East, thence north-westerly along the geodesic to a point of Latitude 13° 12′ South, Longitude 149° 40′ East, thence north-westerly along the geodesic to a point of Latitude 13° 05′ South, Longitude 148° 35′ East, thence north-westerly along the geodesic to a point of Latitude 12° 50′ South, Longitude

147° 40′ East, thence north-westerly along the geodesic to a point of Latitude 12° 10′ South, Longitude 146° 25′ East, thence north-westerly along the geodesic to a point of Latitude 10° 45′ South, Longitude 145° 40′ East, thence north-westerly along the geodesic to a point of Latitude 9° 15′ South, Longitude 145° 20′ East, thence north-westerly along the geodesic to a point of Latitude 9° South, Longitude 145° 13′ East, thence westerly along the parallel of Latitude 9° South to its intersection by the meridian of Longitude 144° 45′ East, thence south-westerly along the geodesic to a point of Latitude 9° 24′ 30″ South, Longitude 144° 13′ 45″ East, thence north-westerly along the geodesic to a point of Latitude 9° 08′ 15″ South, Longitude 143° 52′ 15″ East, thence south-westerly along the geodesic to a point of Latitude 9° 21′ 30″ South, Longitude 142° 33′ 15″ East, thence north-westerly along the geodesic to a point of Latitude 9° 14′ 45″ South, Longitude 142° 21′ 30″ East, thence north-westerly along the geodesic to a point of Latitude 9° 11′ 45″ South, Longitude 142° 18′ 30″ East, thence north-westerly along the geodesic to a point of Latitude 9° 10′ 30″ South, Longitude 142° 16′ East, thence south-westerly along the geodesic to a point of Latitude 9° 11′ 45″ South, Longitude 142° 09′ East, thence north-westerly along the geodesic to a point of Latitude 9° 10′ 45′ South, Longitude 142° 04′ 45″ East, thence westerly along the parallel of Latitude 9° 10′ 45″ South to its intersection by the meridian of Longitude 142° 00′ 15″ East, thence south-westerly along the geodesic to a point of Latitude 9° 30′ South, Longitude 141° 35′ 30″ East, thence south-westerly along the geodesic to a point of Latitude 9° 38′ South, Longitude 141° East, thence south-westerly along the geodesic to a point of Latitude 9° 52′ 30″ South, Longitude 140° 30′ 30″ East, thence north-easterly along the geodesic to the intersection of the coastline at mean low water by the boundary between the Territory of Papua and West Irian, thence along the coastline of the Territory of Papua at mean low water to the point of commencement.

Area Adjacent to the Territory of New Guinea

The area the boundary of which commences at a point that is the intersection of the coastline at mean low water by the boundary between the Territory of New Guinea and West Irian and runs thence north-westerly along the geodesic to a point of Latitude 2° 30′ South, Longitude 140° 56′ East, thence north-westerly along the geodesic to a point of Latitude 2° 25′ South, Longitude 140° 55′ East, thence north-easterly along the geodesic to a point of Latitude 1° South, Longitude 141° 22′ East, thence north-westerly along the geodesic to a point of Latitude 0° 47′ North, Longitude 140° 49′ East, thence north-westerly along the geodesic to a point of Latitude 2° 41′ North, Longitude 140° 46′ East, thence easterly along the geodesic to a point of Latitude 2° 40′ North, Longitude 142° 05′ East, thence easterly along the geodesic to a point of Latitude 2° 44′ North, Longitude 143° 05′ East, thence north-easterly along the geodesic to a point of Latitude 2° 47′ North, Longitude 143° 26′ East, thence north-easterly along the geodesic to a point of Latitude 3° 19′ North, Longitude 145° 10′ East, thence north-easterly along the geodesic to a point of Latitude 3° 23′ North, Longitude 145° 43′ East, thence south-easterly along the geodesic to a point of Latitude 3° 17′ North, Longitude 146° 38′ East, thence south-easterly along the geodesic to a point of Latitude 3° 12′ North, Longitude 147° 01′ East, thence south-easterly along the geodesic to a point of Latitude 2° 41′ North, Longitude 147° 58′ East, thence easterly along the geodesic to a point of Latitude 2° 46′ North, Longitude 150° 22′ East, thence south-easterly along the geodesic to a point of Latitude 2° 22′ North, Longitude 151° 02′ East, thence south-easterly along the geodesic to a point of Latitude

0° 19′ South, Longitude 152° 45′ East, thence south-easterly along the geodesic to a point of Latitude 1° South, Longitude 153° 58′ East, thence easterly along the geodesic to a point of Latitude 1° 05′ South, Longitude 1°57 40′ East, thence north-easterly along the geodesic to a point of Latitude 1° 01′ South, Longitude 157° 51′ East, thence north-easterly along the geodesic to a point of Latitude 0° 53′ North, Longitude 160° 04′ East, thence south-easterly along the geodesic to a point of Latitude 0° 15′ North, Longitude 161° 46′ East, thence south-easterly along the geodesic to a point of Latitude 3° 55′ South, Longitude 163° 58′ East, thence south-westerly along the geodesic to a point of Latitude 4° 53′ South, Longitude 160° 08′ East, thence north-westerly along the geodesic to a point of Latitude 4° 46′ South, Longitude 158° 58′ East, thence north-westerly along the geodesic to a point of Latitude 4° 35′ South, Longitude 158° 12′ East, thence south-westerly along the geodesic to a point of Latitude 5° 52′ South, Longitude 157° 53′ East, thence westerly along the geodesic to a point of Latitude 5° 51′ South, Longitude 157° 23′ East, thence north-westerly along the geodesic to a point of Latitude 5° 38′ South, Longitude 156° 32′ East, thence south-westerly along the geodesic to a point of Latitude 6° 23′ South, Longitude 156° 15′ East, thence south-westerly along the geodesic to a point which lies 9¾ admiralty nautical miles north 23° east true from Cape Friendship, thence southerly along the geodesic to a point which lies 4 admiralty nautical miles south 84° east true from Cape Friendship, thence south-westerly along the geodesic to a point which lies 2¾ admiralty nautical miles south 36° east true from Cape Friendship, thence south-westerly along the geodesic to a point which lies 2 admiralty nautical miles south 38° east true from the southernmost point of the peninsula which bounds the harbour of Tonolei on the east, thence southerly along the geodesic to a point which lies 3¾ admiralty nautical miles south 19° east true from the southernmost point of that peninsula, thence south-westerly along the geodesic to a point which lies 4 admiralty nautical miles south true from the southernmost point of that peninsula, thence north-westerly along the geodesic to a point which lies 3¾ admiralty nautical miles south 45° west true from the southernmost point of that peninsula, thence south-westerly along the geodesic to a point which lies 6 admiralty nautical miles south 40° west true from the southernmost point of that peninsula, thence westerly along the geodesic to a point which lies 4½ admiralty nautical miles north 85° east true from Moila Point, thence south-westerly along the geodesic to a point which lies 4 admiralty nautical miles south 66° east true from Moila Point, thence south-westerly along the geodesic to a point which lies 5¾ admiralty nautical miles south 53° west true from Moila Point, thence north-westerly along the geodesic to a point which lies 8¾ admiralty nautical miles south 78° west true from Moila Point, thence south-westerly along the geodesic to a point of Latitude 7° 11′ South, Longitude 155° 27′ East, thence south-westerly along the geodesic to a point of Latitude 7° 14′ South, Longitude 155° 04′ East, thence south-westerly along the geodesic to a point of Latitude 7° 27′ South, Longitude 154° 06′ East, thence south-westerly along the geodesic to a point of Latitude 7° 35′ South, Longitude 153° 48′ East, thence north-westerly along the geodesic to a point of Latitude 7° 18′ South, Longitude 153° 30′ East, thence north-westerly along the geodesic to a point of Latitude 7° 05′ South, Longitude 153° 10′ East, thence south-westerly along the geodesic to a point of Latitude 7° 10′ South, Longitude 152° 40′ East, thence westerly along the geodesic to a point of Latitude 7° 13′ South, Longitude 151° 05′ East, thence westerly along the geodesic to a point of Latitude 7° 19′ South, Longitude 150° 25′ East, thence westerly along the geodesic to a point of Latitude 7° 18′ South, Longitude 150° 10′ East thence south-westerly along the

geodesic to a point of Latitude 7° 22′ South, Longitude 149° 42′ East, thence south-westerly along the geodesic to a point of Latitude 7° 31′ South, Longitude 149° 15′ East, thence north-westerly along the geodesic to a point of Latitude 7° 16′ South, Longitude 148° 55′ East, thence south-westerly along the geodesic to a point of Latitude 7° 22′ South, Longitude 148° 16′ 45″ East, thence south-westerly along the geodesic to a point of Latitude 7° 50′ 45″ South, Longitude 148° 06′ 15″ East, thence south-westerly along the geodesic to a point of Latitude 7° 59′ 20″ South, Longitude 148° 01′30′ East, thence south-westerly along the geodesic to the intersection of the coastline at mean low water by the boundary between the Territory of New Guinea and the Territory of Papua, thence along the coastline of the Territory of New Guinea at mean low water to the point of commencement.

(Source: Commonwealth of Australia Gazette, No. 118 of 1967, pp. 97 *et seq.*)

15. 8 January 1968

Italy-Yugoslavia

Agreement is reported to have been reached as to the delimitation of the continental shelf in the Adriatic Sea. It seems that the boundary considerably deviates from the equidistance line. It may be possible to submit the text of this treaty during the Oral Proceedings.

16. *Unilateral Acts*

In both Counter-Memorials reference is made to a Belgian Bill on the continental shelf (Dan. C.-M., pp. 280, *supra et seq.*, Neth. C.-M., pp. 388, *supra et seq.*; see para. 61 above). This unilateral legislative measure is even listed as a treaty concluded with the United Kingdom, France and the Netherlands (Dan. C.-M., p. 263, *supra*, Neth. C.-M., p. 388, *supra*;) in fact it is a mere draft which, even after approval by the Belgian Parliament and subsequent entry into force, cannot be interpreted as a binding instrument under international law. It should also be noted that the Bill provides for other than equidistance solutions (Art. 2: ". . . This delimitation may be adjusted by special agreement with the Power concerned"). One might as well quote from other unilateral acts such as Article 3 of the Iranian Act on the Continental Shelf, dated 19 June 1955, an unofficial translation of which reads as follows:

> "If the continental shelf mentioned in the previous Article extends to the coasts of another country, or if it is common with that of a neighbouring country, and if differences of opinion arise over the limits of the Iranian continental shelf, these differences shall be solved in conformity with the *rules of equity* and the Government shall take the necessary measures for the solution of possible differences through diplomatic channels" (italics added).

B. TERRITORIAL WATERS

Observations on the treaties listed under B in Annex 13 of the Danish Counter-Memorial and in Annex 15 of the Netherlands Counter-Memorial.

1. Italy-Trieste

This provision (Article 4) is no longer applicable since the Free State of Trieste ceased to exist. Furthermore, the boundary at its beginning in the Gulf of Panzano did not follow the equidistance line.

2. Yugoslavia-Trieste

This provision (Article 22) is no longer applicable since the Free State of Trieste ceased to exist.

3. Italy-Turkey

This line contains only a few points of equidistance corrected by straight lines.

Cf. *Padwa*, International and Comparative Law Quarterly, Vol. 9, 1960, *op. cit.*, p. 633:

"... the line connecting a series of such midpoints does not necessarily coincide with a boundary based on the principle of equidistance. This was the case with respect to the boundary agreed upon by Italy and Turkey dividing the waters between the island of Castellorizo and the coast of Anatolia."

4. Mexico-Belize

Here an instruction of internal Mexican authorities on the practicability of Article 12 of the Geneva Convention on the Territorial Sea has been quoted. This cannot constitute a precedent for inter-State practice.

5. Norway-Finland

This treaty—which again is no longer in force—should rather be understood as an agreement between opposite States. The course of the boundary is mainly influenced by headlands and peninsulas in the Varangerfjord (cf. *Lewis M. Alexander*, Offshore Geography of Northwestern Europe, Chicago, 1965, pp. 78 *et seq.*, with a chart).

6. Norway-U.S.S.R.

As stated on previous occasions it appears to be questionable whether a boundary ending in a terminal point of equidistance only, merits being listed under the heading EQUIDISTANCE PRINCIPLE. (This treaty is also dealt with by *Alexander*, *op. cit.*, p. 79.)

7. Tanzania-Kenya

Here again a unilateral delimitation of coastal waters has been reproduced instead of a treaty between these two States. Furthermore, the Tanzanian line, due to the position of the island of Pemba, divides the waters between *opposite* rather than adjacent States.

8 and 9. U.S.A.-Canada

In both treaties the boundary runs along the middle of the channel which separates the two States. It may be suggested that in the case of a channel the middle line is taken as the centre of navigation routes or, in other words, as the Thalweg line. Again it should be noted that owing to the particular shape of the coasts the dividing lines run between *opposite* countries.

10. United States-Mexico

See observations to No. 4 above.

11-14.

To the four examples given here many others could be added which have likewise been determined without reflecting the principle of equidistance.