

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

NORTH SEA CONTINENTAL SHELF CASES

(FEDERAL REPUBLIC OF GERMANY/DENMARK;
FEDERAL REPUBLIC OF GERMANY/NETHERLANDS)

VOLUME II

1968

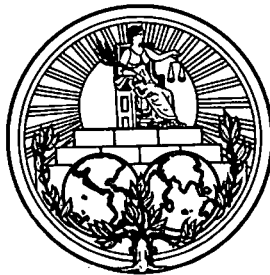
COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRES DU PLATEAU CONTINENTAL DE LA MER DU NORD

(RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE/DANEMARK;
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE/PAYS-BAS)

VOLUME II

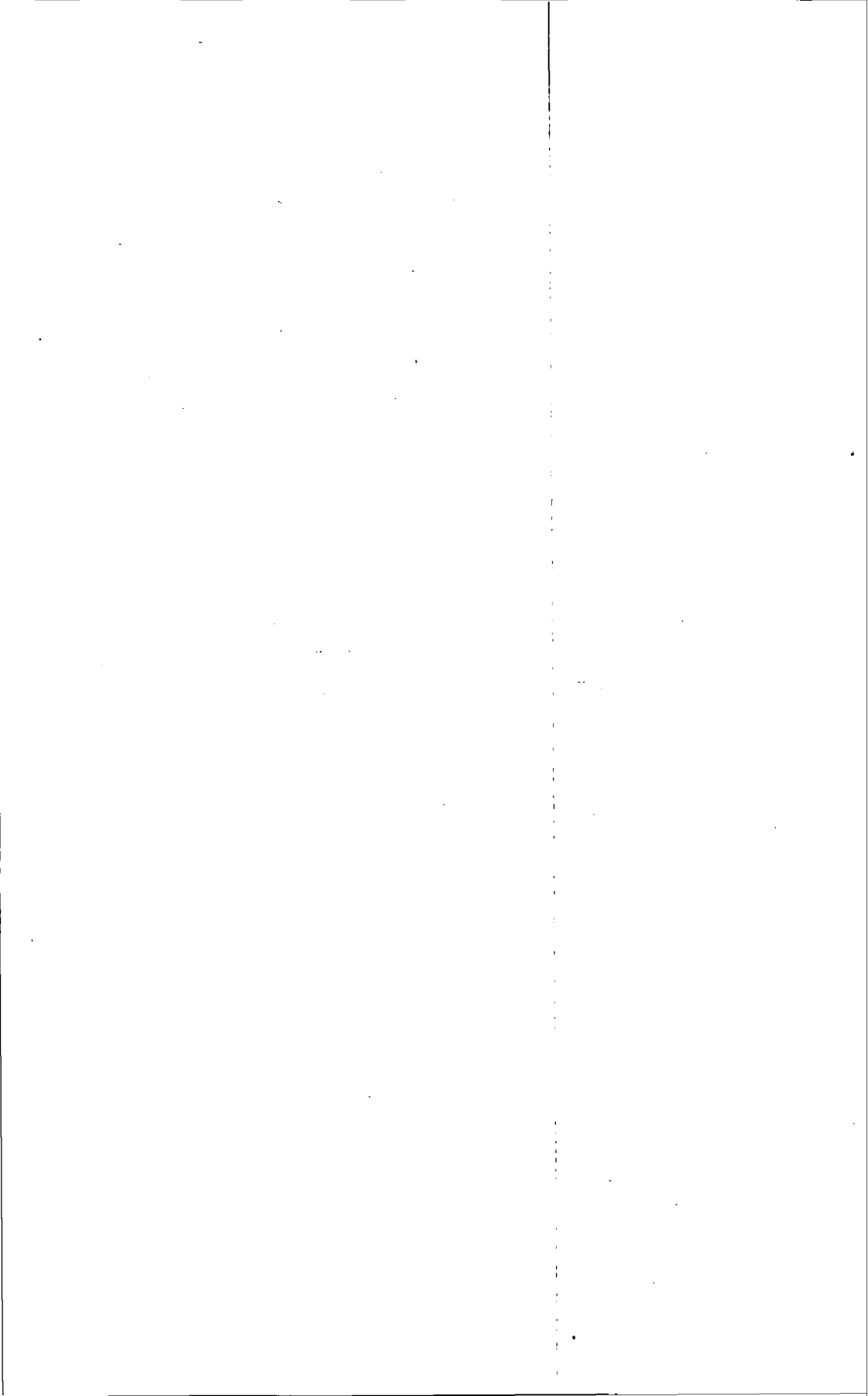


SECTION B

DOCUMENTS FILED BY THE PARTIES AT THE
REQUEST OF THE COURT

SECTION B

DOCUMENTS DÉPOSÉS PAR LES PARTIES A LA
DEMANDE DE LA COUR



I. DOCUMENTS FILED BY THE AGENT FOR THE GOVERNMENT OF DENMARK ¹

1. Excerpts from a Confidential Report of 27 October 1964 on the Danish-German Negotiations in Bonn on 15-16 October 1964, on the Demarcation of the Continental Shelf between Denmark and Germany

(Translation)

1. On the initiative of Germany, negotiations took place in Bonn on 15-16 October 1964, between a Danish and a German Government Official Delegation on the demarcation of the Continental Shelf between Denmark and Germany.

2. The two delegations now turned to the question of establishing the end point of a Danish-German demarcation line at the outer limit of the territorial waters. The two delegations submitted sundry charts, which were studied and commented upon.

The Danish delegation said that for practical reasons the demarcation line of the Continental Shelf should begin as a continuation of the dividing line between the Danish and the German territorial waters. This dividing line—and the sea demarcation line—had been determined by the Frontier Delimitation Committee in 1921. However, as the dividing line was not firmly established since it should follow shiftings of the Lister Dyb Channel, the Danish delegation, in order to avoid possible complications, suggested that the starting point should be the line of sight described by the Frontier Delimitation Committee from the eastern Lighthouse of Sild through the two western lighthouses of Sild which formed the outer section of the demarcation line between Danish and German territorial waters.

Furthermore, the Danish delegation said it intended to use the line described by the Frontier Delimitation Committee from Rømø Flak southwards to its point of intersection, the sea demarcation line/the territorial water line being taken as a basis line, and that the Danish delegation foresaw that Germany, as far as she was concerned, would use the continuation of that line to the north-west point of Sild as a basis line.

Without committing itself the German delegation was of the opinion that the idea of using the northwest point of Sild as a starting point in Germany was acceptable, but it had to reserve its opinion on the Danish basis line from Rømø Flak since, *prima facie*, it seemed doubtful whether this would be in accordance with sub-article (3) of Article six of the Convention on the Continental Shelf.

The discussions were concluded by the parties agreeing to consider the legal and the geographical aspects of the problem for the purpose of subsequent negotiations.

3. In another confidential conversation, the leader of the German delegation said that as far as he was concerned he saw no possibility of reaching a Danish-

¹ See pp. 162 and 212. See also No. 47, p. 389, *infra*.

German agreement on the entire Continental Shelf of the North Sea, but, on the other hand, he would attach much importance to a limited agreement being reached, viz. an agreement which comprised only the starting point of the shelf demarcation line and the part of the sea which was closest to the coast.

In reply the Danish delegation said that this aspect would have to be closely considered.

2. *Excerpts from a Confidential Note of 17 February 1965 to the Danish Foreign Minister on the Stand of the Negotiations with the Federal Republic of Germany*

(Translation)

THE CONTINENTAL SHELF: LINE OF DEMARCATION BETWEEN DANISH AND
GERMAN SHELF AREAS

Summary

In October 1964, the first Danish-German negotiations were held in Bonn at a civil-servant level on the establishment of the line of demarcation between the Danish and the German shelf areas. The Danish delegation adhered to the median line principle as basis of delimitation, which principle was acceptable to Germany as far as the Baltic is concerned, whereas the German delegation rejected that principle as a criterion of the establishment of the Danish-German shelf demarcation line in the North Sea, where Germany had to demand to have a shelf area larger than that she would obtain according to the median line principle. However, Germany could accept—and wished to have—an agreement on the North Sea Continental Shelf line of demarcation next to the coast, which line might be established on the basis of the median line principle subject to such practically motivated deviations as concrete circumstances might make natural.

Germany expects that further negotiations will be made, preferably with a view to an agreement on the above minor part of the shelf line of demarcation in the North Sea next to the coast.

2. On 15 and 16 October 1964, on the initiative of Germany, negotiations took place in Bonn between a Danish and a German civil-servant delegation on the delimitation of the shelf areas of the States, first and foremost in the North Sea, but the lines of demarcation in the Baltic were also discussed.

Germany would not contest that in certain instances and to a certain extent, in particular as far as areas close to the coast are concerned, the equidistance principle might be adequate and could result in a reasonable division.

In the course of confidential talks between the heads of the Danish delegation and the German delegation, the head of the latter said that there were no practical possibilities of a Danish-German agreement being obtained about the entire North Sea Continental Shelf line of demarcation on the basis of the equidistance principle, but that Germany was ready and attached importance to making an agreement on a small part of the line next to the coast.

The negotiations briefly touched upon the question of the end point of the North Sea Continental Shelf line of demarcation at the outer limits of the territorial waters. The Danish delegation suggested for practical reasons that the shelf line of demarcation should commence as a continuation of the delimitation of Danish and German territorial waters irrespective of the fact that that delimitation is not the median line; since the line of demarcation is to follow the natural changes of the Lister Dyb Water Way, it was also suggested that

the demarcation basis should be the unchangeable line of sight which the Border Commission used in 1921 to define the outermost section of the line of demarcation. The German delegation did not immediately state its attitude to this Danish proposal, and reserved the right to consider it.

Finally, the question of applying certain (Danish) base lines in connection with the establishment of the shelf delimitation line in the North Sea was touched upon.

3. At a meeting held to deal with the question of continuing the negotiations with Germany and attended by representatives of the Ministry of Foreign Affairs, the Ministry of Public Works, and the Danish Syndicate which has been granted an exclusive concession to explore and exploit deposits of hydrocarbons in the Danish underground and the Continental Shelf, the representative of the Syndicate said that it was not actually or concretely interested in having established a Danish-German equidistance line of demarcation in the North Sea area next to the coast, because in view of the results of the explorations made in that area and in view of other information available it was to be assumed that there was only little likelihood of finding deposits of gas or oil there; the Syndicate would not be particularly active there. However, there were appreciably greater possibilities of finding deposits of gas or oil further to the west, i.e., towards the middle of the North Sea in the border regions adjacent to Germany, the Netherlands, and Great Britain. The Syndicate is particularly interested in that area, which area would naturally be lost if the German aspirations were realized.

The Syndicate agreed—and positively recommended—that the negotiations with Germany be continued about the starting points of the lines of demarcation of the Baltic and the North Sea, but the Syndicate advised against negotiations on a small section of the line of demarcation of the North Sea next to the coast; the Syndicate said that Danish-German negotiations on that subject—possibly resulting in an agreement—caused misgivings, since Germany might use such an agreement as a basis and an argument for claiming that the line of demarcation should deviate from the equidistance principle from the western end point agreed upon.

6. Accordingly, this Department of the Ministry of Foreign Affairs finds that the situation can be described as follows:

(a) Germany wishes and expects that the Danish-German negotiations on the Continental Shelf be continued. This expectation can be supported by the Convention on the Continental Shelf, according to which the line of demarcation is principally to be established through agreement between the parties. In this connection it should be remembered that the communiqué published after the initial negotiations unreservedly envisaged additional negotiations.

It must be presumed that Germany will categorically adopt the point of view that as long as both parties stand firm on their fundamental points of view, it will not be possible to negotiate on the establishment of the entire Danish-German North Sea Continental Shelf line of demarcation, and that as far as the North Sea is concerned the negotiations should be limited to the problem of establishing a small part of the line of demarcation next to the coast.

(b) Seen from a Danish shelf-economic point of view (exploitation and utilization) it is not necessary to establish the line of demarcation close to the coast of the North Sea.

(f) As regards the misgivings expressed by the Concessionaires with reference to further negotiations with Germany on a line of demarcation in the North Sea next to the coast—corresponding to the point of view formerly adopted by the Netherlands—it should be noted in the first instance that the adviser to the Ministry of Foreign Affairs on international law is, if anything, of opinion that negotiations—and possibly an agreement—on this point will not, seen from the legal point of view—prejudice Denmark's position as regards the further course of the line of demarcation, in which connection it should be noted that in a possible agreement Denmark should emphasize her point of view on the course of the part of the line of demarcation which is not to be established through the agreement. Another point is that whereas the information which has been given by the Concessionaire Syndicate—to the effect that seen from a shelf-economic point of view it would be of interest to establish the line of demarcation—must be an essential factor of the deliberation.

7. Summing up, Denmark should . . . continue the negotiations with the Federal Republic of Germany on the line of demarcation of the shelf areas of these two States . . .

In the event that this conclusion is acceptable, this Department would further suggest

that during the negotiations Denmark should continue to maintain the equidistance principle,

that nevertheless negotiations may be made on a practical and appropriate delimitation with reference to the establishment of the end point of the shelf demarcation line at the outer limits of the territorial waters, regardless of whether the resulting line would be a median line or not (Denmark will thereby for practical reasons deviate from the equidistance principle only over a geographically short section of the line of demarcation),

that the negotiations may comprise the subject of an agreement on a short section of the shelf demarcation line in the North Sea next to the coast,

3. *Excerpts from a Confidential Report of 31 March 1965 on the Danish-German Negotiations in Copenhagen on 17-18 March 1965, on the Demarcation of the Continental Shelf between Denmark and Germany and Recommendation on the Next Step*

(Translation)

I. Introduction

The Danish/German negotiations about the demarcation of the Continental Shelf, which were commenced in Bonn in October 1964, were continued in Copenhagen on 17-18 March 1965.

The North Sea

As during the negotiations in Bonn, the discussions were focused on the conditions in the North Sea. Both parties gave to understand that their points of view as regards the principles of division of the Continental Shelf of the North Sea were unchanged; Denmark maintained that the division should be made in accordance with the equidistance line principle, whereas Germany considered the concave configuration of the German coast of the North Sea a special circumstance which entitled Germany to expect that the demarcation line should be drawn according to other criteria. However, the two delegations agreed not to continue the discussions on the principles governing the drawing of the demarcation line which had taken place in Bonn, since it was found that such discussions would not lead to a result. Instead the delegations agreed at once to attempt to bring about an agreement on the establishment of the demarcation line of the Continental Shelf in the coastal area of the North Sea on the basis of what would be expedient in practice, so that the result of the discussions would not prejudice the respective views of the parties as regards the principles governing the division of the Continental Shelf of the North Sea outside the coastal areas.

The Danish delegation expressed the view that the course of the Danish-German sea demarcation line and the dividing line between the territorial waters of the North Sea should not be solely decisive at the establishment of the starting point of the shelf demarcation line. The reason was that due to special geographical circumstances in the area, the frontier was constantly undergoing a change. It is true that the said sea demarcation line and the dividing line were defined in 1921 by the International Frontier Delimitation Committee set up under Article 111 of the Versailles Treaty, but that Committee had also laid down that the sea demarcation line and the dividing line in Lister Dyb should follow the natural shifts of the channel. Such shifts occurred constantly and has, as was known, been the object of the exchange of certain Danish-German Notes during the period from 1935 to 1941. For the purpose of finding a fixed point it seemed natural in these circumstances to make the 1921 provisions the starting point, hence the Danish delegation deemed it reasonable and practical to define the shelf demarcation line in the coastal region as a continuation of the outmost part of the territorial water demarcation line defined in 1921, which, in the description of the frontier, is unequivocally and clearly indicated as an unchangeable line, viz. the line of sight from the

Eastern Lighthouse of List through the centre point of the line between the two Western Lighthouses of List; thereby the starting point of the shelf demarcation line would be the point of intersection of the line of sight and the outer limit of the territorial waters. In the nature of the case, it was in all circumstances necessary in practice to disregard the question of fluctuations of the courses of the sea demarcation line and the dividing line; the shelf demarcation line had to be established as a definite line. It was said that the Danish delegation realized that the establishment of the shelf demarcation line did not prejudice the course of the frontier. (It was not said directly, but it must presumably be admitted that today it is not clear exactly what course the outmost western part of the Danish-German frontier takes, and whether the said line of sight is at all a part of the actual frontier. Lister Dyb may have shifted so much northward that this is no longer the case. However, the problem is of minor interest in practice, and its solution may probably be left in abeyance for the time being.)

The German delegation agreed that it was necessary to establish a "point a quo", and it also agreed that the changes resulting from the natural shifts of the Lister Dyb Channel had to be disregarded. As regards the sea demarcation line and the dividing line, the Danish proposal about the shelf demarcation line must be deemed to be one of several possible solutions. For example, the German delegation might consider a shelf demarcation line calculated on the basis of the equidistance line principle and on the basis of the natural coastal line, which shelf demarcation line would take a northern course. To illustrate this point, the German delegation produced a chart (which is attached to this Report) in which the continuation of the territorial water dividing line (the line of sight), and also the said equidistance line had been drawn. (As regards the latter line, the German chart used a fictitious line from the Northwest Point of Sild to a low-water point on Rømø; the starting point of the equidistance line was the point of intersection of the outer limit of the territorial waters and the perpendicular bisector of the said Sild-Rømø line.)

The German delegation emphasized that the chart did not represent a German proposal, it only represented theoretical possibilities.

The Danish delegation emphasized that it endeavoured to find a practical line and was ready to negotiate about such a line with due regard to the actual conditions in the coastal area, but that it would not be able to agree to any line which might leave the impression that Denmark had deviated from fundamental points of view. Accordingly it could agree with the German delegation that there were possibilities other than a continuation of the said line of sight, although the Danish delegation found that it was to be preferred as the most natural one. On the other hand, the Danish delegation could not accept the method applied in the German chart for the purpose of establishing the starting point of the equidistance line of the chart. In the view of Denmark, it was justifiable to demand that the calculation of the shelf demarcation line should be made from base lines as stated in Article six of the Geneva Convention of 29 April 1958, with reference to the Continental Shelf, and Denmark had to insist that the line from Rømø Flak to the Northwest Point of Sild be applied as the basis of calculation if the starting point and the innermost part of the shelf demarcation line were to be established according to an equidistance principle.

The German delegation could not accede to the Danish points of view relative to the line from Rømø Flak to the Northwest Point of Sild, and maintained in this connection that an equidistance calculation—in accordance with the Convention on the Continental Shelf (in which connection the German delega-

tion presumably alluded to sub-article (3) of Article six of the Convention)—should be made on the basis of fixed, visible points on land.

The Danish delegation as well as the German delegation refrained from sifting these diverging points of view, which were hardly completely cleared up during the discussions, and with mutual regard to the existing differences of opinion, the two delegations finally succeeded in agreeing on a shelf demarcation line extending in a straight line in the western direction from the point of intersection of the outmost part of the territorial water dividing line as defined in the Frontier Description of 1921 (in other words, the line of sight between the Eastern Lighthouse of List and the centre point between the two Western Lighthouses of List) and the outer limit of the territorial waters to the nearest point on the coast, which, according to the equidistance calculation has Blaavands Huk as a "base point" on the Danish coast. It was agreed that the starting point of the shelf demarcation line should be defined with reference to the Frontier Description of 1921, whereas the western end point of the part of the demarcation line should be indicated completely concretely through geographic co-ordinates with reference to the location of the point in relation to the Danish coast and the German coast. However, the Danish delegation made the reservation that—in relation to the Press and otherwise—it would feel entitled to maintain that the point is an equidistance point.

In this connection it was clearly understood by both parties that a protocol should be drawn up relative to the signing of the agreement on the part of the demarcation line, in which protocol the parties should reserve their respective points of view as regards the principles of establishing the line of demarcation between the Danish and the German Continental Shelf Area, so that it would be made quite clear that this agreement could not in any way be deemed to be prejudicial to the course of the Danish-German shelf demarcation line in the North Sea, to the west of the part of the line of demarcation established in the agreement.

The delegations then proceeded to discuss the wording of the agreement on part of the demarcation line. The German delegation produced a draft which evidently had been prepared on the lines of the corresponding German-Dutch agreement dated 1 December 1964, which draft was accepted by the Danish delegation after a few minor alterations had been made in it. It was agreed that the agreement should be prepared in the Danish and in the German language, both languages being original languages. With regard to the procedure in practice it was agreed that after the conclusion of the negotiations the Danish delegation should prepare a Danish text and submit it—through the Embassy in Bonn—to the German Ministry of Foreign Affairs for approval. It was further agreed that the Danish Hydrographic Department should calculate the geographic co-ordinates of the western end point of the part of the demarcation line, and these calculations should be communicated to the German Ministry of Foreign Affairs for verification in Germany. It was agreed that the agreement should be signed in Bonn. As regards the wording of the protocol to be attached to the agreement it was agreed that each party should prepare a draft to be shown to the other party before the signing of the agreement.

III. The Line of Demarcation of the Continental Shelf within the Outer Limits of the Territorial Waters

During the discussions, the German delegation said that in connection with the establishment of the shelf demarcation line in the coastal area they would like that an arrangement be made with regard to the Continental Shelf between the natural coast line and the outer limits of the territorial waters, since the

shiftings of the sea demarcation line and the territorial water dividing line, after the shifting of the Lister Dyb Channel, made it difficult to establish how far northward or southward, respectively, German and Danish concessionaires, respectively, would be able to carry out their activities. The Danish delegation was of opinion that that problem was not of any major practical importance, and, at any rate, it found it difficult to discuss that problem during the present negotiation, one reason being that the necessary concrete particulars of the changes of Lister Dyb during recent years were not available.

Thereupon the German delegation dropped that question.

.....
VII. Statement to the Press

At the final phase of the negotiations, the delegations prepared the following joint statement to the press:

In October 1964, and in March 1965, negotiations took place between a Danish delegation and a German delegation about the line of demarcation of the part of the Continental Shelf in the North Sea situated outside the Danish and the German sovereignty territories. As a result of these negotiations, the two delegations agreed upon a draft agreement which will now be submitted to the two Governments for approval. It is expected that the draft agreement after being approved by the Governments will be signed in Bonn, the agreement is to be ratified.

According to the draft an approximately 30 nautical mile long part of a line of demarcation ¹ is to be drawn to a point situated equally distanced from Blaavands Huk and the Island of Sild; during the negotiations, a final agreement could not be reached on the further course of the line of demarcation. The two negotiating parties have reserved their points of view with regard to the principles relevant in this respect. The German delegation has suggested that negotiations should be made within the near future about the further course of the line of demarcation. This proposal will be considered by Denmark.

.....
VIII. The following enclosures are attached for information:

- (1) Draft of a Danish-German agreement on the Continental Shelf (German text) ²,
- (2) Draft of a Danish-German agreement on the Continental Shelf (Danish text) ²,
- (3) German chart
(The line of demarcation foreseen in the agreement extends from point S to point Br. 7, 6.)

.....
X. Recommendation

This Department recommends that the Government

- (1) approve the agreement with Germany referred to in this Report;

.....
¹ The length of the part of the line of demarcation was measured only roughly at the preparation of the statement; a more exact indication would be approximately 25 nautical miles.

² Substituted by an English version at The Hague, 3 November 1965, see p. 312, *infra*.

TREATY BETWEEN THE KINGDOM OF DENMARK AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF OF THE NORTH SEA NEAR THE COAST

The Kingdom of Denmark and
The Federal Republic of Germany,

Considering that a delimitation by mutual agreement of the continental shelf adjacent to their territories near the coast is urgently required,
have agreed as follows:

Article 1

The boundary between the Danish and the German parts of the continental shelf of the North Sea near the coast shall run in a straight line starting from the point mentioned in the boundary description of 1921 at which the extension of the connecting line between the List East beacon and the central point of the connecting line between the two List West beacons reaches the high seas, and ending at point $\dots\dots\dots$ N, $\dots\dots\dots$ E of the European Datum System (in accordance with the Danish geographical co-ordinates $\dots\dots\dots$ N, $\dots\dots\dots$ E and the German geographical co-ordinates $\dots\dots\dots$ N, $\dots\dots\dots$ E).

Article 2

The present Treaty shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Kingdom of Denmark within three months of the date of entry into force of the Treaty.

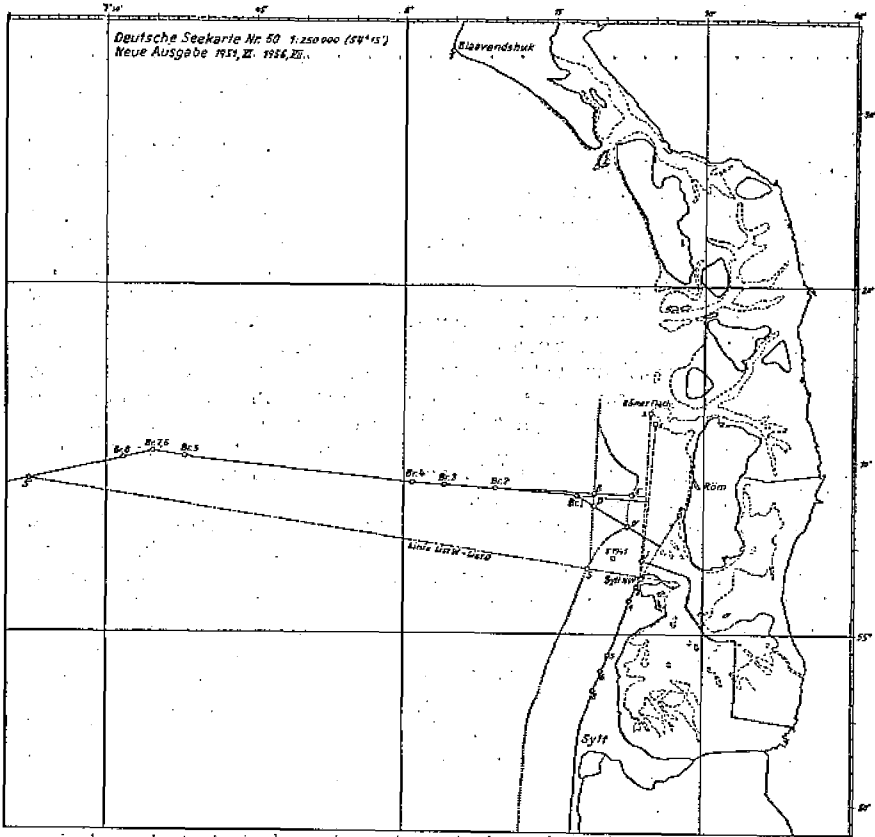
Article 3

1. The present Treaty is subject to ratification. The instruments of ratification shall be exchanged as soon as possible in Copenhagen.
2. The present Treaty shall enter into force on the day after the exchange of instruments of ratification.

Done at Bonn, . . . 1965 in duplicate in the Danish and German languages, both texts being equally authentic.

For the Kingdom of Denmark:

For the Federal Republic of Germany:



Deutsche Seekarte Nr. 50 1:250000 (SW 15) Neue Ausgabe 1919, Z. 1916, Z.

4. *Excerpts from a Report of 21 March 1966 on the Trilateral Danish-Dutch-German Negotiations in The Hague on 28 February 1966, on the Demarcation between the Parts of the Three States of the Continental Shelf Below the North Sea*

(Translation)

.....
Riphagen said that all parties agreed that new negotiations should be made on the basis of the German aide-mémoire.

With regard to the object of the negotiations, the Netherlands would appreciate, however, if the German delegation would explain the meaning of the proposal in the German aide-mémoire¹ about the negotiations at which the respective legal points of view of the parties were to be "ausgeklammert". At the close of the German-Dutch negotiations about an agreement on the common shelf demarcation line in the area nearest the coast, each party had defined in the so-called "Gemeinsame Verhandlungsniederschrift" its point of view with regard to the further course of the demarcation line, which point of view, as far as the Netherlands are concerned, was that the demarcation line was to be established in accordance with the equidistance principle. This was still the position when the German aide-mémoire was delivered in December 1965, and the Dutch Ministry of Foreign Affairs had wondered whether Germany was now ready to make an agreement under which the demarcation line was to be established according to the equidistance principle, if only such an agreement did not contain any reference thereto.

Truckenbrodt answered that by the said passage of the aide-mémoire Germany had had in mind that there was but slight possibility of agreeing upon the demarcation line between the Continental Shelf areas of the three States on a legal basis; Denmark and the Netherlands insisted that the demarcation line should be established in accordance with the equidistance principle, a principle which the Federal Republic had not found and still did not find it possible to accept since its application to the German Bay, as a consequence of the configuration of the coast, would lead to unreasonable results. Germany would definitely refuse to take criteria of a legal nature into consideration during future negotiations, but Germany held that if there was a will to reach a compromise it would be expedient to keep the respective legal points of view out of the discussions.

.....

¹ Dated 8 December 1965 and reproduced in the Danish Counter-Memorial, I, pp. 165-166.

5. *Excerpt from a Report Dated 11 September 1964 from the Danish Embassy in Bonn to the Danish Ministry of Foreign Affairs*

(Translation)

.....

What wishes the Federal Republic intend to state during the coming Danish-German negotiations Dr. Sympher would not venture to say—this would only be decided when Professor Meyer-Lindenberg had returned from leave by the end of September—but he did say that from the outset it was clear to the Auswärtiges Amt that a deviation from the equidistance principle near the coast where exploitation of possible natural resources would be considerably easier than further out in deep waters, politically would be quite unacceptable to Denmark. In all possibility, the German wishes would concentrate upon a deviation further out in the North Sea.

.....

6. *Excerpts from a Summary, Dated 11 February 1965, of a Meeting Held in the Danish Ministry of Foreign Affairs on 11 January 1965, to Discuss the Problems Connected with the Delimitation of the Continental Shelf of Denmark.*

(Translation)

In the meeting participated:

Ministry of Foreign Affairs:

Assistant Under-Secretary of State

T. Oldenburg

Head of Department:

P. Frellesvig

Head of Section:

K. Sommer

Secretary:

F. Mørch

Ministry of Public Works:

Head of Department:

P. Bang Christensen

The A. P. Møller Companies Ltd. (Concessionaires)

Managing Director

I. Hoppe

Manager

I. Kruse

1. *Mr. Oldenburg* opened the meeting by outlining the problems under discussion. After the initial Danish-German negotiations in Bonn in October 1964 there was a clear and not unfounded expectation on the part of the Federal Republic towards continued negotiations but it was to be a condition that these negotiations mainly—in actual fact perhaps exclusively—were to deal with the question of agreement on the starting point of the Danish-German North Sea continental shelf boundary on the outer boundary of the territorial waters and a smaller part of the continental shelf boundary from the starting point plus the question of a practical, generally phrased definition of the median line as Danish-German continental shelf boundary in the Baltic.

The Ministry of Foreign Affairs was inclined to think that if possible one more round of negotiations with Germany should be undertaken, but the question would naturally arise whether the Danish side would be at all ready to negotiate about a “short boundary line” in the North Sea which decidedly, on the part of Germany, was the primary object of the negotiations. If the answer was in the negative it seemed doubtful whether there was adequate basis for fresh negotiations. The Ministry of Foreign Affairs had not adopted any specific view but regarded with some favour negotiations respecting “the short boundary line in the North Sea”, *inter alia*, because it wished firstly to manifest the willingness of Denmark to solve the problems of the continental shelf boundary through diplomatic means, partly to avoid that the negotiations already initiated should end quite negatively.

As matters stood, the Ministry of Foreign Affairs would draft a report to the Minister, in order to obtain his, or possibly the Government’s resolution that negotiations should continue and in this connection it was but natural and desirable that not only the Ministry of Public Works but also the Danish consortium representing the concessionaire were given an opportunity of stating their views.

3. *Mr. Hoppe* declared that the concessionaire wholly approved of the idea of further Danish-German discussions and quite agreed to having the problem in

connection with the determination of the starting point of the Danish-German shelf boundary in the North Sea discussed during those talks. To the mind of the concessionaire, the question was not of the utmost importance, but it was presumably a matter on which Denmark and Germany could reach agreement and which would have to be settled sooner or later.

On the other hand, he was against negotiations or possible agreement respecting a short boundary line in the North Sea. This might offer Germany an argument and a springboard for claiming the drawing of a boundary deviating from the median line respecting the area west of a short boundary line. That Germany and the Netherlands had achieved agreement upon a similar line was due to the fact that the authorities in Germany had been under pressure from German oil companies who wanted to commence drillings in the boundary area as soon as possible. Such considerations, however, did not apply to the Danish-German North Sea boundary area near the coast where the chances of finding oil or gas were slight and where the concessionaire did not expect to undertake any future great activity.

Under these circumstances the concessionaire was of the opinion that at the present time a Danish-German agreement concerning a short boundary line in the North Sea was not to be thought of. This matter should thus await the determination of the boundary between, on one side, the Danish and, on the other side, the British, Norwegian and possibly Netherlands shelf areas. Naturally, he was aware that especially a possible Danish-Netherlands agreement might cause a strong reaction on the part of Germany; but the concessionaire thought that Danish-Netherlands discussions should be opened in a foreseeable future; incidentally, it would be important to have these boundaries determined the more so as these boundary areas seemed to offer the largest possibilities of gas or oil resources.

.....

4. The representative of the Ministry of Foreign Affairs declared that it would presumably be difficult to discuss the starting point of the North Sea continental shelf boundary without discussing the course of a certain part of the boundary line from the above point. If agreement with Germany were possible respecting a line stretching a good distance westwards, it might be said to have a certain interest also from a Danish point of view, especially if the parties could agree to draw the line up to so great a distance from the coast that it would reach—and possibly go beyond—the point where the general direction of the boundary according to the equidistance principle changes from north-west to southwest, i.e., the first point which under the above principle would have Blåvandshuk as its nearest point on the Danish coast. Naturally it would be of great importance, if Germany would accept a line embodying this change of direction but *a priori* this did not seem very probable; on the other hand, it was obvious that the Danish side would have to avoid a line beyond the first “blåvandshuk-point” which was not in agreement with the equidistance principle. Within the three-mile limit, the boundary (the boundary between the internal waters and the territorial waters) was defined by the Border Commission after the reunion in 1920 and the determination of the actual course of this boundary was a question of applying the Border Commission’s definition and this question should not form part of the actual Danish-German continental shelf discussions.

.....

7. Excerpts from Minutes Dated 26 March 1965 from a Meeting Held in the Danish Ministry of Foreign Affairs on 22 March 1965 with Representatives of the Danish Concessionaires

(Translation)

1. In the meeting participated:

Assistant Under-Secretary of State:	T. Oldenburg
Managing Director, The A. P. Møller Companies Ltd.	I. Hoppe
Manager, The A. P. Møller Companies Ltd.	I. Kruse
Head of section, Ministry of Foreign Affairs	K. Sommer

2. *Mr. Hoppe* said that the press communiqué had caused the concessionaires to view the outcome of the negotiations with some concern; *Mr. A. P. Møller* was worried over the development of the matter. Thus, the consortium was concerned that an agreement had been entered into concerning the North Sea shelf boundary in the coastal area, since an agreement of this nature might give the impression that Denmark did not stand firm on the equidistance principle.

.....

Mr. Oldenburg accounted for the Danish-German negotiations, at the same time making *Mr. Hoppe* acquainted with the sketch map submitted by the German delegation. As regards the question of the advisability of an agreement with Germany concerning the part of the boundary near the coast, it should be taken into consideration that, irrefutably, special circumstances existed around the Danish-German sea frontier and the territorial waters demarcation line in the North Sea which it was natural and reasonable to have elucidated through an agreement. Our own interpretation of the words of the Geneva Convention respecting "special circumstances" presupposed that this problem was solved through an agreement. This had now happened. The course of the boundary line agreed upon was—well in conformity with Danish thinking—motivated by concrete conditions and formed a practical, reasonable solution; in this connection it should be remembered that the western terminating point of the line was an equidistance point. It had thus been made clear that none of the parties—not Denmark either—had prejudiced their principles or waived their claims. Furthermore, it should be emphasized that in accordance with the view-point of its legal advisor on international law the Ministry of Foreign Affairs had thought it advisable to manifest its willingness as far as possible to seek agreement respecting the continental shelf through negotiations. This point was of importance in a possible lawsuit.

.....

8. Text of a Report Dated 16 June 1965 from the Danish Embassy in Bonn to the Danish Ministry of Foreign Affairs

(Translation)

During a conversation yesterday concerning other matters, the Embassy took the opportunity to remind Mr. Sympher that whereas the Federal Republic is able to outline on a map with complete precision what the wishes of Denmark respecting the delimitation of the North Sea are, Denmark is not in possession of material enabling her in the same way to illustrate clearly what the German claims amount to. So far, all we have is Professor Meyer-Lindenberg's rather vague statement in Bonn during the talks in October 1964 to the effect that the Germans would like a delimitation according to the principle of parity. On this background the Embassy asked if—and if so when—the Federal Republic intended to define her claims more explicitly.

Mr. Sympher answered that no such definition would be made in the near future. Auswärtiges Amt was of the opinion that the possible lawsuit (mentioned in the Embassy cable No. 136) was solely to ascertain whether or not according to customary international law, the equidistance principle was applicable in the delimitation between the Netherlands, the Federal Republic and Denmark. If the decision of the Court turned out in favour of the Danish/Netherlands view—viz. that the above principle is applicable—the only question left would be the purely practical one of letting the hydrographic experts calculate the relevant co-ordinates and incorporate them in a supplementary agreement to the already existing German-Netherlands and German-Danish treaties on the determination of a partial boundary.

Should the decision of the court, on the other hand, be in favour of the German point of view—viz. that in this case the equidistance principle is not applicable—the consequences would be that the entire problem should become the subject of renewed bilateral negotiations based upon the maxim that in this context the principle of equidistance is irrelevant. Not until then—i.e., at the commencement of a fresh round of negotiations—will the German delegation see cause to define its wishes respecting the delimitation more precisely.

II. DOCUMENTS FILED BY THE AGENT FOR THE GOVERNMENT OF THE NETHERLANDS

6 November 1968.

NEGOTIATIONS WHICH LED UP TO THE TREATY OF 1 DECEMBER 1964 BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE LATERAL DELIMITATION OF THE CONTINENTAL SHELF NEAR THE COAST

At the Public Sitting held on 1 November 1968 the Court called upon the Agents of the Parties¹ to make available to the Court, in so far as the information is in their possession or can be obtained by them, any minutes, notes or reports which would indicate the bases on which the Parties determined the delimitation agreed upon in the negotiations which led up to the above-mentioned Agreement, especially with reference to the reasons why the exact terminal points were fixed as they are, rather than at some points nearer to or farther from the coastline.

In reply the Agent for the Government of the Kingdom of the Netherlands has the honour to supply the following information and documentary material:

NOTES VERBALES

1. Note Verbale of the Netherlands Government, 21 June 1963. Text reproduced in Annex 2 to the Memorial of the Federal Republic. Corrected translation reproduced in Annex 8 to the Counter-Memorial of the Netherlands². (See also para. 16, last sub-paragraph, of the Netherlands Counter-Memorial³.)

2. Note Verbale of the Federal Government, 26 August 1963. Text and translation reproduced in Annexes 9 and 9A to the Counter-Memorial of the Netherlands⁴. (See also para. 28 of the Netherlands Counter-Memorial⁵.)

No other Notes have been exchanged between the two Parties on this subject, except communications on dates, places, and such-like available for negotiations and communications on exploration activities on the shelf.

JOINT MINUTES

Joint minutes have been made on two occasions only:

24 June 1964, the Joint Report of a working group (see *sub* 6 below).

4 August 1964, the Joint Minutes of the final stage of the negotiations (see *sub* 8 below).

¹ P. 162, *supra*. See also p. 212, *supra*.

² I, p. 378.

³ I, p. 316.

⁴ I, pp. 379-381.

⁵ I, p. 321.

REPORTS

Following the exchange of the Notes mentioned *sub* 1 and 2, discussions between delegations representing the two Parties took place six times, on the dates given below. (See also paras. 29 and 30, pp. 17-18, of the Netherlands Counter-Memorial ¹.) The Netherlands delegation delivered a Report to the Minister for Foreign Affairs of the Kingdom on four of these discussions, i.e., not on the two occasions when Joint Minutes were signed.

In the Annexes to be mentioned below are reproduced the literal texts and the translations of those passages of the delegation Reports which indicate the bases on which the Parties determined the coastal continental shelf boundary.

3. First Netherlands-German discussions regarding the demarcation of the continental shelf, held in Bonn on 3 and 4 March 1964. Relevant part of the Report in Annex A; translation in Annex B.

4. Continued discussions, held at The Hague on 23 March 1964. Relevant part of the Report in Annex C; translation in Annex D.

5. Third round of discussions, held in Bonn on 4 June 1964. Relevant part of the Report in Annex E; translation in Annex F.

6. Meeting of a Netherlands-German working group in Bonn on 24 June 1964. Joint Report in Annex G; translation in Annex H.

7. Fourth round of discussions, held in The Hague on 14 July 1964. Relevant part of the Report in Annex J; translation in Annex K.

8. Final discussions, held in Bonn on 4 August 1964. Joint Minutes and translation reproduced in Annexes 4 and 4A to the Memorial of the Federal Republic ².

(Signed) W. RIPHAGEN.

¹ I, pp. 321-322.

² I, pp. 102-104.

Annex A

VERSLAG VAN DE NEDERLANDS-DUITSE BESPREKINGEN INZAKE AFBAKENING VAN HET CONTINENTAAL PLATEAU, GEHOUDEN IN BONN OP 3 EN 4 MAART 1964

Prof. Meyer-Lindenberg stelt vervolgens de vraag wat er moet gebeuren, indien men niet tot een overeenkomst zou kunnen komen? Indien de kwestie voor een scheidsgerecht zou worden gebracht, heeft Duitsland naar zijn mening niets te verliezen. Van *Nederlandse zijde* wordt de vraag gesteld in welke richting men zich dan langs die weg uitbreiding van het Duitse aandeel voorstelt.

Nog eens geeft de *Duitse voorzitter* uiting aan zijn teleurstelling die des te sterker wordt gevoeld daar tegenover de Duitse openbare mening, gezien de mate van Europese samenwerking, toch zou kunnen moeten worden aangevoerd dat met Nederland en Denemarken zodanig goede betrekkingen worden onderhouden dat een redelijke oplossing vanzelfsprekend mag worden geacht.

Prof. Meyer-Lindenberg vraagt aan *Prof. Riphagen* of de Nederlandse delegatie de gedachte der proportionaliteit zou willen betrekken in haar overwegingen in de komende weken.

Prof. Riphagen zet hierop uiteen dat de Nederlandse delegatie daags tevoren voor het eerst kennis heeft kunnen nemen van de Duitse suggestie en aan die gedachtengang uiteraard nooit eerder aandacht heeft besteed. De Nederlandse delegatie heeft gerekend met een gans ander gesprek waarin men zich zou bezighouden met kwesties, verband houdende met het afbakeningsvraagstuk op basis van de equidistantie-lijn (het punctum a quo bij de Eemsmonding).

Prof. Meyer-Lindenberg herhaalt zijn eerder gedane verzoek of de Nederlandse delegatie de Duitse gedachte in Den Haag nog eens wil voorleggen en nagaan of het proportionaliteitsbeginsel een aanvaardbaar criterium zou kunnen vormen. Als uitgangspunt voor een verdere bespreking stelt hij voor overleg omtrent het z.g. punctum a quo van de door Nederland voorgestane equidistantie-lijn, evenwel "sans préjudice" t.a.v. het verder gebruik van het beginsel van equidistantie.

Prof. Riphagen vraagt de Duitse voorzitter of hij ermede accoord kan gaan die kwestie op een volgende bijeenkomst ter sprake te brengen aangezien zijn delegatie eerst gaarne gelegenheid zou hebben overleg te plegen omtrent een aantal der besproken gezichtspunten.

Prof. Meyer-Lindenberg zegt hiermede accoord te gaan.

Annex B

REPORT ON THE NETHERLANDS-GERMAN DISCUSSIONS REGARDING THE DEMARCA-
TION OF THE CONTINENTAL SHELF, HELD IN BONN ON 3 AND 4 MARCH 1964

.....

• *Professor Meyer-Lindenberg* next asked what was to be done if agreement was not reached. He thought that Germany had nothing to lose if it should be decided to submit the question to arbitration. The *Netherlands side* countered by asking in what way Germany envisaged its share being increased if arbitration were resorted to.

The *German Chairman* once more gave vent to his great disappointment, aggravated as it was by the fact that, in view of the large measure of European co-operation, the German public should be able to take for granted that relations with the Netherlands and Denmark were such as to leave no doubt about a reasonable solution being found without too much difficulty.

Professor Meyer-Lindenberg asked Professor Riphagen whether the Netherlands delegation would consider discussing the idea of proportionality in their consultations during the coming weeks.

Professor Riphagen then explained that the German suggestion had been mooted for the first time only the day before and that, understandably, the Netherlands delegation had never given any thought to such an idea. The Netherlands delegation had counted on having discussions of a completely different nature, dealing with such questions as the demarcation problem on the basis of the equidistance line ("punctum a quo" near the Ems estuary).

Professor Meyer-Lindenberg repeated his earlier request, again asking the Netherlands delegation to explain the German idea to its Ministry in The Hague and to investigate whether the principle of proportionality could be made an acceptable criterion. He suggested that the so-called "punctum a quo" of the equidistance line advocated by the Netherlands could serve as the point of departure for future discussions, without prejudice, however, to the further application of the principle of equidistance.

Professor Riphagen asked the German Chairman whether he would mind bringing up this question for discussion at a future meeting because his delegation would rather be given an opportunity first to discuss a number of the points raised at the present meeting.

Professor Meyer-Lindenberg said that he would do so.

.....

Annex C

VERSLAG VAN DE VERVOLGBESPREKINGEN TUSSEN DE NEDERLANDSE EN DUITSE DELEGATIES BETREFFENDE DE AFBAKENING VAN HET CONTINENTAAL PLATEAU IN DE NOORDZEE, GEHOUDEN TE 'S-GRAVENHAGE OP 23 MAART 1964

.....
De Voorzitter van de Duitse delegatie geeft te kennen dat bij de bepaling van de basislijn het Borkumer Rif dient te worden betrokken.

Deze opvatting wordt door *de Nederlandse delegatie* bestreden met een herhaling van het reeds eerder vermelde beroep op de beide Eems-Dollard-overeenkomsten, waarbij ook de grens van de territoriale zee werd vastgesteld.

Aan *Duitse zijde* concretiseert men daarop de opvattingen en verlangens in dier voege, dat nu ook voortzetting van het gemeenschappelijk exploitatie-regime zoals dat thans geldt in de Eemsmonding, ter sprake komt.

Men acht het tenslotte toch wenselijker het over een scheidingslijn eens te worden welke b.v. als "punctum a quo" zou kunnen hebben het punt, waar de werklijn (groene lijn voorkomend op Eemsmonding-kaart behorende bij de aanvullende overeenkomst bij het Eems-Dollard-verdrag) de buitengrens der territoriale zee snijdt.

Prof. Meyer-Lindenberg vat het door de Duitse delegatie in de loop van deze bespreking naar voren gebrachte samen en stelt voor als hypothese aan te nemen dat naar Duitse opvatting de laagwaterlijn (basislijn) ongeveer loopt van het Borkumer Rif in zuid-zuid-westelijke richting om daarna noordelijk van Rottumeroog en Rottumerplaat langs Schiermonnikoog te koersen.

Nadat het *Duitse delegatie-lid, Prof. Dr. Kötter*, had betoogd dat de minimum-correctie op het equidistantie-beginsel toch wel moet zijn een afbakeningstechniek, die voorkomt, dat een gemeenschappelijke Deens-Nederlandse grens ontstaat waar Duitsland geheel buiten valt, vraagt *de Duitse Voorzitter* aandacht voor de merkwaardige situatie die ontstaat door consequente toepassing van het equidistantie-principe ten aanzien van de verdeling van het continentaal plateau in de Noordzee, te weten dat daar de verhouding tussen de *aanliggende landen primair wordt gesteld en de relatie tussen tegenover elkaar liggende landen van secundaire betekenis zou zijn*. Waarom, zo vraagt *Prof. Meyer-Lindenberg*, zou *laterale* afbakening de voorrang genieten?

Prof. Riphagen repliceert daarop dat Nederland dan ook met Noorwegen in overleg zou dienen te treden.

Om 12.30 uur wordt de bespreking onderbroken voor een lunchpauze. De Duitse gasten gebruiken op uitnodiging van de Nederlandse delegatie het dejeuner in restaurant ROYAL. Tijdens de lunch komen de delegatievoorzitters overeen, alvorens weer in voltallige vergadering bijeen te komen, eerst een gesprek "à deux" te hebben.

Om 4 uur worden de besprekingen voortgezet.

Prof. Riphagen stelt resumerend vast dat thans duidelijk is dat het punt A op de kaart van de Eemsmonding behorende bij de aanvullende overeenkomst bij het Eems-Dollard-verdrag van 8 april 1960, een equidistant-punt is. Tegenover het door Nederland ingenomen standpunt dat punt A uitgangspunt zou behoren te zijn voor het trekken van een equidistant-afbakeninglijn, is gebleken dat men aan Duitse zijde tenminste punt L' als het wenselijke "punctum a quo" beschouwt.

Voorts, aldus de Nederlandse Voorzitter, is duidelijk geworden dat de Duitse delegatie de basislijn acht te lopen vanaf het Borkumer Rif en verder zoals hierboven reeds eerder is aangegeven.

De Duitse delegatie-voorzitter ontvouwt dan een naar zijn mening wellicht bruikbare werk-hypothese voor de vaststelling van de afbakeningslijn welke zou kunnen aanvangen in punt C'' (eerdergenoemde kaart Eemsmonding) om vandaar te lopen naar het zuidelijkste punt op de equidistance-lijn voor de bepaling waarvan het betwiste gebied in de Eems irrelevant is; die lijn zou zich vervolgens over een zekere lengte volgens het equidistantie-beginsel kunnen voortzetten om tenslotte westwaarts af te buigen naar een punt op de afbakeningslijn met Engeland.

Gezien het gevorderde uur is deze werk-hypothese niet verder in bespreking gekomen.

In het gesprek tussen de delegatie-leiders buiten de vergadering bleek dat Prof. Meyer-Lindenberg in gedachten heeft, dat het noordelijkste punt, waar de afbakeningslijn westwaarts zou afwijken van de equidistance-lijn, ongeveer op de 55e breedte-graad zou liggen, en het zuidelijkste punt, waarvandaan — wederom in afwijking van de equidistance-lijn — een rechte lijn zou worden getrokken naar het punt C'', ongeveer halverwege tussen het zojuist genoemde noordelijkste punt en de kust zou liggen.

Voorts bleek dat hij persoonlijk wel enig begrip had voor de gedachte, dat, indien men zou willen pogen te komen tot een andere verdeling van het Noordzee-plateau dan die welke voortvloeit uit de toepassing van het equidistance-beginsel, dit slechts in een multilateraal overleg tussen alle aanliggende staten zou kunnen worden verwezenlijkt.

In deze gedachtengang zou de bilaterale regeling tussen Nederland en Duitsland — voorzover afwijkende van het equidistance-beginsel — dan ook alleen betrekking kunnen hebben op de door de Eems-situatie geschapen moeilijkheid.

.....

Annex D

REPORT ON THE CONTINUED DISCUSSIONS BETWEEN THE NETHERLANDS AND GERMAN DELEGATIONS ON THE DEMARCATION OF THE CONTINENTAL SHELF IN THE NORTH SEA, HELD AT THE HAGUE ON 23 MARCH 1964

The Chairman of the German delegation stated that the Borkumer Rif should be taken into consideration when determining the baseline.

The Netherlands delegation opposed this contention and again invoked the Ems-Dollard agreements¹ in which the boundary of the territorial sea was also determined.

The German delegation then formulated its views and wishes in such a way, that the continuation of the joint exploitation system, in force in the Ems estuary, also came up for discussion. In fact, both delegations considered it more desirable to reach agreement concerning a demarcation line starting at the point where the working line (the green line² on the map of the Ems estuary annexed to the supplementary agreement to the Ems-Dollard agreement) intersects the outer boundary of the territorial sea.

Professor Meyer-Lindenberg summarized the points raised by the German delegation during the discussions and proposed that it be taken as a hypothesis, that according to the German view the low-water line (base line) ran approximately in a south-south-westerly direction from the Borkumer Rif and then north of Rottumeroog and Rottumerplaat and past Schiermonnikoog.

When Professor Kötter, a member of the German delegation, had argued that the minimum correction of the equidistance principle should be a delimitation-technique preventing a common Danish-Netherlands border, that would completely exclude Germany, from being created, the German Chairman called attention to the curious situation that would arise if the equidistance principle were applied consistently to the division of the continental shelf in the North Sea, namely that the relationship between adjacent countries would be of primary importance and that the relationship between countries lying opposite each other would be of secondary importance. Why, asked Professor Meyer-Lindenberg, should preference be given to lateral delimitation?

Professor Riphagen replied that in that case the Netherlands would also have to get into contact with Norway.

At 12.30 p.m. the discussions were adjourned for lunch. At the invitation of the Netherlands delegation the German guests lunched at the "Royal" Restaurant. During the lunch the chairmen of the delegations agreed to talk matters over together, before the discussions in plenary session were resumed.

The discussions were resumed at 4 o'clock.

¹ The agreements mentioned on this page are: Ems-Dollard Treaty, 3 April 1960; see para. 29 of the Netherlands Counter-Memorial (I, p. 321). Supplementary Agreement, 14 May 1962; see Annexes 16 and 16A of the German Memorial (I, pp. 141-149).

² For a definition of the "green line" mentioned on this page see Article 1 of the Supplementary Agreement. The map attached to that Agreement is not in the written pleas, but the line, and its northern termination point C'', will also be found on the map in the German Memorial (I, p. 100).

Summing up, *Professor Riphagen* stated that it was now clear that point *A* on the map of the Ems estuary accompanying the supplementary agreement to the Ems-Dollard agreement¹ of 8 April 1960 was an equidistant point. Though the Netherlands had adopted the standpoint that point *A* should be the point from which the equidistant delimitation line should be drawn, it had become apparent that the Germans considered that at least point *L'* was the desirable starting point.

The Netherlands chairman went on to state that it had also become clear that the German delegation regarded the baseline as running from the Bor-kumer Rif and thence as indicated above.

The Chairman of the German delegation then described what he thought might be a usable working-hypothesis for the determination of the delimitation line, which might begin at point *C''* (see above-mentioned map of the Ems estuary) and run from there to the southernmost point on the equidistance line, for the determination of which the disputed area in the Ems estuary was of no relevance; the line might then continue for some distance according to the equidistance principle and finally turn westward to a point on the British boundary line.

This working-hypothesis did not come up for discussion in view of the late hour.

During the discussion between the chairmen of the delegations in between sessions it transpired that Professor Meyer-Lindenberg thought that the northernmost point, where the delimitation line would turn west from the equidistance line, would lie approximately on the 55th parallel of latitude and that the southernmost point—whence—again deviating from the equidistance line, a straight line would be drawn to point *C''*—would lie approximately halfway between the northernmost point just referred to and the coast. It also transpired that personally he could understand that, if there was a desire to attempt to divide the North Sea Shelf in any manner, other than by applying the equidistance principle, it could only be done by way of multilateral discussions between all the adjacent States. Accordingly, the bilateral arrangement between the Netherlands and Germany—in so far as it differed from the equidistance principle—would only concern the difficulties arising out of the situation in the Ems estuary.

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¹ See map inserted as p. 336, *infra*, between the present documentary material, for points *A*, *L'* and *C''* referred to above on this page and on p. 330, *infra*.

Annex E

VERSLAG VAN DE BESPREKINGEN IN BONN OP DONDERDAG 4 JUNI 1964 TUSSEN DELEGATIES VAN NEDERLAND EN DE BONDSREPUBLIEK TER AFBAKENING VAN HET NEDERLANDSE EN DUITSE DEEL VAN HET CONTINENTAAL PLAT IN DE NOORDZEE

De Duitse voorzitter herinnert ook aan hetgeen is besproken met betrekking tot het vraagstuk van de vaststelling van het beginpunt van de afbakingslijn — het "punctum a quo" — en het eerste verloop van die lijn. Hij zegt gaarne te zullen vernemen welk standpunt op grond van het beraad in Nederland wordt ingenomen t.a.v. de verschillende door hem genoemde kwesties.

Prof. Riphagen deelt mede dat de vraagstukken zijn voorgelegd aan de Nederlandse Regèring die de voorgelegde kwesties aan een nauwkeurig onderzoek heeft onderworpen. Voor wat betreft het "punctum a quo" stelt zij voor als uitgangspunt te kiezen het punt C'' voorkomend op de bijlage-kaart van de aanvullende overeenkomst bij het Eems-Dollardverdrag van 8 april 1960 en vandaar een rechte lijn te trekken naar een punt Q, het eerste punt in zee dat op gelijke afstand ligt van de dichtstbijzijnde laagwaterpunten van Nederland en Duitsland en waarvan de verbindingslijnen met laatstgenoemde punten het zogenaamde "Eems-Dollard Grensgebied" niet snijden.

Prof. Meyer-Lindenberg is van mening dat men zich voorlopig in elk geval kan bezig houden met het probleem van de vaststelling van het beginpunt en het eerste gedeelte van de Nederlands-Duitse afbakingslijn. Hij stelt daarbij allereerst vast dat de lijn welke vanuit C'' zou worden getrokken nooit mag prejudiceren op de Duitse aanspraak op een gemeenschappelijke grens met Engeland. Een slechts relatief kort gedeelte van de lijn zal equidistant kunnen lopen om daarna westwaarts af te buigen naar de Engelse afbakingslijn.

Om 4 uur in de middag worden de besprekingen hervat en komt volgens afspraak het beginpunt en het eerste gedeelte van de afbakingslijn ter sprake.

Prof. Meyer-Lindenberg deelt mede dat men ook aan Duitse zijde als uitgangspunt voorstelt punt C'', zoals dit voorkomt op de bijlagekaart van de aanvullende overeenkomst bij het Eems-Dollard-verdrag van 8 april 1960.

Voor het bepalen van de aanvankelijke richting van de afbakingslijn heeft men aan Duitse zijde twee hulplijnen getrokken, te weten de verbindingslijn L'A en een loodlijn door C'' op L'A. Vervolgens heeft men een equidistantie-lijn geprojecteerd welke is gebaseerd op de "droge" punten Borkumer Rif aan Duitse zijde en op de schildgronden (nabij Rottumer Oog en Rottumerplaat) en verder westwaarts gelegen Nederlandse "droge" punten.

De aldus geconstrueerde equidistantielijn snijdt genoemde loodlijn in een punt X, dat naar voorlopige schatting op ongeveer 10 zeemijlen van punt C'' verwijderd is. Het lijnstuk C''X zou naar Duitse opvatting het eerste gedeelte van de Nederlands-Duitse afbakingslijn kunnen zijn. Men zou bereid zijn op dit eerste gedeelte een tweede stuk te laten volgen dat voldoet aan het vereiste van equidistantie tot ongeveer de 54e breedtegraad mits de afbakingslijn daarop in westelijke richting zou afbuigen ter ontmoeting van de Britse grenslijn.

Beide delegaties stellen elkaar daarop vragen met betrekking tot de juiste

ligging van de eindpunten van het eerste lijnstuk doch bij gebreke aan nauwkeurige en juiste gegevens voor de positiebepaling komt men overeen een kleine deskundigengroep in te stellen voor het vaststellen van een kaart houdende de juiste ligging en het verloop van de lijnstukken zoals die overeenkomstig het Nederlandse en het Duitse voorstel zouden kunnen worden getrokken.

Besloten wordt hiervoor aan te wijzen aan Duitse zijde een nog nader te noemen hydrografische deskundige en Dr. Treviranus; aan Nederlandse zijde Ktz. Ir. W. Langeraar, Hoofd van de Afdeling Hydrografie van het Ministerie van Defensie (Marine) en Mr. G. Hubée.

Prof. Meyer-Lindenberg stelt voor dat de deskundigenwerkgroep op korte termijn bijeenkomt en het resultaat van haar arbeid zo spoedig mogelijk voorlegt aan de voorzitters van beide delegaties.

Nadat men het over en weer eens zal zijn geworden over de uiteindelijke richting van het eerste lijnstuk zullen de twee voorzitters een ontwerp-tekst kunnen voorbereiden ter afsluiting van een overeenkomst inzake het eerste gedeelte van de Nederlands-Duitse afbakeningslijn.

.....

Annex F

REPORT ON THE DISCUSSIONS BETWEEN THE NETHERLANDS AND GERMAN DELEGATIONS ON THE DELIMITATION OF THE DUTCH AND GERMAN PARTS OF THE CONTINENTAL SHELF IN THE NORTH SEA, HELD IN BONN ON THURSDAY, 4 JUNE 1964

The *German Chairman* also referred to the discussion on the point at which the demarcation line should begin—the “punctum a quo”—and the first course of that line. He stated that he would like to know where the Dutch delegation stood with regard to these questions, after their consultations in the Netherlands.

Professor Riphagen stated that the questions had been submitted to the Netherlands Government, which had scrutinized them closely. In respect of the “punctum a quo”, the Netherlands Government proposed that Point C'' on the Chart attached to the Supplementary Agreement to the Ems-Dollart Convention of 8 April 1960 be taken as the beginning of the boundary line. From C'' a straight line should be drawn to Point Q, the first point in sea equidistant from the nearest Dutch and German Low-water points. The lines connecting point Q and the latter points would not intersect the Ems-Dollart “boundary zone”.

Professor Meyer-Lindenberg was of the opinion that for the time being the delegations could concentrate on the problem of fixing the point at which the boundary line between the Netherlands and Germany is to begin, and the course of the first part thereof. He stated categorically that any line drawn from Point C'' may never prejudice German rights to a common boundary line with England. Only a relatively short part of the line could run equidistant; it would then have to curve westwards towards the British demarcation line.

The discussions were resumed at 4 o'clock in the afternoon, the points dealt with being the “punctum a quo” and the first part of the demarcation line.

Professor Meyer-Lindenberg stated that the German delegation also proposed that Point C'' on the Chart attached to the Supplementary Agreement to the Ems-Dollart Convention of 8 April 1960 be taken as the beginning of the boundary line.

In order to plot the course of the first part of the demarcation line, the German suggestion was that two additional lines should be drawn, viz. a line joining L' and A a perpendicular line through C''¹ on to L'A. An equidistance line should then be plotted, based on the “dry” Borkum Reef points on the German side, and on the “Schildgronden” (near Rottumeroog and Rottumerplaat) and “dry” points lying farther westward on the Netherlands side.

The equidistance line thus plotted intersects the perpendicular line at a point X, which is estimated to lie some 10 nautical miles away from point C''. In the opinion of the German Government, the line C'' X could be taken as the first part of the Netherlands-German demarcation line. The German

¹ See map inserted as p. 336, *infra*, between the present documentary material for points A, L' and C'' referred to on p. 327, *supra*, and above on this page.

Government would be prepared to consider an extension of the line based on the equidistance principle up to approximately latitude 54°N., provided that the demarcation line would then veer westwards to meet the British demarcation line.

The *delegations* then questioned each other as to the exact location of the terminal points of the first part of the line, but since no detailed and accurate data were available, it was decided to form a small group of specialists to plot the exact position and course of the various Parts of the demarcation line as suggested in the Netherlands and the German proposals. The German members of the working group were to be Dr. Treviranus and a hydrographer to be nominated later. Captain W. Langeraar, Head of the Hydrography Department of the Ministry of Defence (Navy) and Mr. G. Hubée were to represent the Netherlands.

Professor Meyer-Lindenberg suggested that the working group meet in the near future and that it submit the results of its activities to the chairman of the delegation as soon as possible.

Once agreement would have been reached on the course of the first part of the demarcation line, the chairman could prepare a draft text of an agreement on the first part of the Netherlands-German demarcation line.

.....

Annex G

GEMEINSAMER BERICHT

Am 24. Juni 1964 trat in Bonn die niederländisch-deutsche Arbeitsgruppe, bestehend aus den Herren

Kapitän zur See Dipl. Ing. W. Langeraar,
1. Botschaftssekretär Mr. G. Hubée
auf niederländischer Seite,
Leg. Rat I. Kl. Dr. Grüssner,
Leg. Rat I. Kl. Dr. Treviranus
auf deutscher Seite,

zusammen, um in Ausführung des ihr in der Sitzung der niederländischen und der deutschen Delegation vom 4. Juni 1964 erteilten Auftrages eine Linie festzulegen, die in dem bekannten Punkt c'' (gemäß der Anlage zum Ems-Dollart-Zusatzabkommen vom 14. Mai 1962) beginnt und von hier zunächst auf der Mittelsenkrechten seewärts verläuft, die auf der Verbindungslinie der Punkte A und L' (gemäß der Anlage zum Ems-Dollart-Zusatzabkommen) errichtet wird. Von dem Schnittpunkt der Mittelsenkrechten mit der Äquidistanzlinie, welche von See zu den Punkten Borkum-Riff einerseits, zu den nächstgelegenen trocken fallenden Punkten auf der niederländischen Küste andererseits gezogen wird, soll die Linie bis etwa 54° nördlicher Breite der bezeichneten Äquidistanzlinie folgen.

Der Konstruktion der Linien gemäß dem Auftrag der Arbeitsgruppe haben die neuesten Seekarten zugrunde gelegen.

Die Arbeitsgruppe erzielte Übereinstimmung über die Ausgangspunkte für die Konstruktion der Linien; die Koordinaten dieser Ausgangspunkte sind in der Anlage zu diesem Bericht bezeichnet.

Die auf Grund der genannten Ausgangspunkte gezeichnete Linie verläuft von dem Punkt c'' geradlinig bis zu dem Punkt E₁, von dort geradlinig zu dem Punkt E₂ und von dort geradlinig zum Punkt E₃. Der Punkt E₁ ist der Schnittpunkt zwischen der Mittelsenkrechten auf die Punkte A und L' einerseits und der oben bezeichneten Äquidistanzlinie andererseits, welche in der hier berührten Teilstrecke auf Grund der Ausgangspunkte Borkum-Riff und Rottumerplaat West zu ziehen ist. Der Punkt E₂ ist der nächste Brechpunkt der oben bezeichneten Äquidistanzlinie, in dem der Ausgangspunkt Simonszand an Stelle des Punktes Rottumerplaat West berücksichtigt werden muß. Der Punkt E₃ ist der Schnittpunkt der oben bezeichneten Äquidistanzlinie mit dem 54. Grad nördlicher Breite.

Die Koordinaten der Punkte E₁, E₂ und E₃ ergeben sich aus der Anlage zu diesem Bericht.

Es bestand Übereinstimmung darüber, daß beide Seiten die durch Abgreifen aus der Karte ermittelten Koordinaten der Punkte E₁, E₂ und E₃ noch rechnerisch nachprüfen können.

Diesem Bericht liegt ferner eine Karte an, auf der die genannten Punkte und Linien eingezeichnet sind; diese Karte soll nur der Veranschaulichung des gewonnenen Ergebnisses dienen.

Bonn, den 24. Juni 1964.

Borkum-Riff:	$\varphi = 53^{\circ}37'04''$ $\lambda = 6^{\circ}35'24''$
Rottumerplaat West:	$\varphi = 53^{\circ}33'22''$ $\lambda = 6^{\circ}25'33''$
Simonszand:	$\varphi = 53^{\circ}32'31''$ $\lambda = 6^{\circ}20'00''$

Aus der Anlage zum Zusatzabkommen zum Ems-Dollart-Vertrag v. 8. April 1960

Punkt A:	$\varphi = 53^{\circ}37'52''$ $\lambda = 6^{\circ}33'52''$
Punkt L':	$\varphi = 53^{\circ}34'22''$ $\lambda = 6^{\circ}16'00''$
Punkt c'':	$\varphi = 53^{\circ}36'21''$

Punkt E ₁ :	$\lambda = 6^{\circ}24'48''$ $\varphi = 53^{\circ}45'22''$ $\lambda = 6^{\circ}19'48''$
Punkt E ₂ :	$\varphi = 53^{\circ}49'33''$ $\lambda = 6^{\circ}15'20''$
Punkt E ₃ :	$\varphi = 54^{\circ}00'00''$ $\lambda = 6^{\circ}06'30''$

Annex H

JOINT REPORT OF THE NETHERLANDS-GERMAN WORKING GROUP

The Netherlands-German working party, composed of Captain W. Langeraar (Royal Netherlands Navy), Dr. G. Hubée, 1st Secretary of Embassy (Netherlands), Dr. Grüssner, Counsellor of Legation, 1st Class (Germany) and Dr. Treviranus, Counsellor of Legation, 1st Class (Germany), met at Bonn 24 June 1964 to fix—as they had been invited to do at the meeting of the Netherlands and German delegations of 4 June 1964—a line starting at the well-known point c'' (in accordance with the Annex to the Ems-Dollart Supplementary Agreement of 14 May 1962) and thence initially running seawards along the line perpendicular to the line connecting points A and L' (in accordance with the Annex to the Ems-Dollart Supplementary Agreement). From the point where the perpendicular intersects the equidistance line drawn from the sea to the Borkum Reef points on the other side, the line should follow the above-mentioned equidistance line up to about latitude 54°N.

The latest charts were used for plotting the lines in accordance with the working group's instructions.

The working party reached agreement on the location of the initial points to be used for plotting the lines; the co-ordinates of these initial points are to be found in the Annex to this Report.

The line thus drawn runs from point c'' straight to point E₁, thence straight to point E₂ and from there straight to point E₃. Point E₁ is the intersection point of the perpendicular to points A and L' and the above-mentioned equidistance line which, in the section in question, should be drawn on the basis of the starting points of the Borkum Reef and Rottumerplaat West. Point E₂ is the nearest point of fracture of this equidistance line, where the Simonszand point must be taken instead of the Rottumerplaat West point.

Point E₃ is the point where this equidistance line and the line of latitude 54°N intersect.

The co-ordinates of points E₁, E₂ and E₃ are to be found in the Annex to this Report.

It was agreed that the co-ordinates of points E₁, E₂ and E₃ derived experimentally from the chart could be subsequently checked arithmetically by the two parties.

A chart showing the above-mentioned points and lines is attached to this Report; the purpose of the chart is merely to elucidate the results obtained.

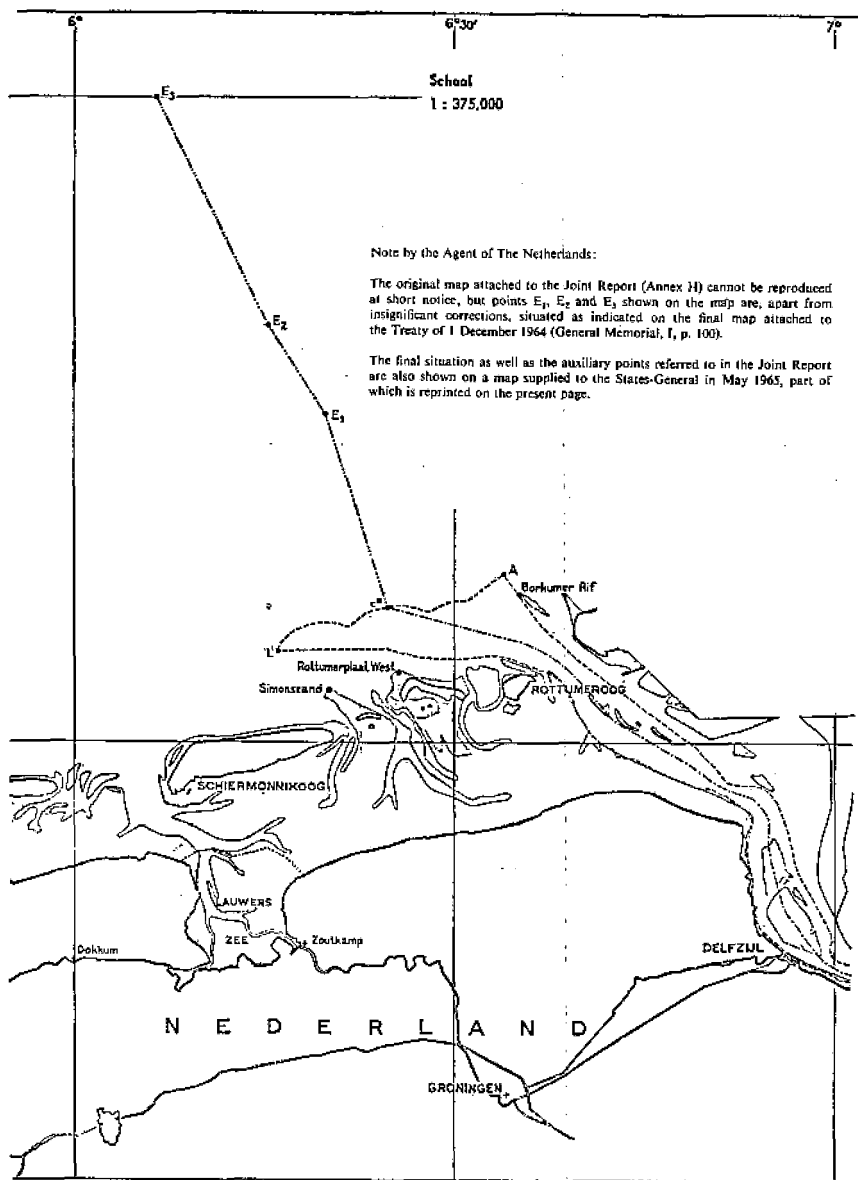
Bonn, 24 June 1964.

Borkum—Reef:	$\varphi = 53^{\circ}37'04''$ $\lambda = 6^{\circ}35'24''$
Rottumerplaat West:	$\varphi = 53^{\circ}33'22''$ $\lambda = 6^{\circ}25'33''$
Simonszand:	$\varphi = 53^{\circ}32'31''$ $\lambda = 6^{\circ}20'00''$

From the Annex to the Supplementary Agreement to the Ems-Dollart Convention (8 April 1960)

Point A:	$\varphi = 53^{\circ}37'52''$ $\lambda = 6^{\circ}33'52''$
Point L':	$\varphi = 53^{\circ}34'22''$ $\lambda = 6^{\circ}16'00''$
Point c'':	$\varphi = 53^{\circ}36'21''$ $\lambda = 6^{\circ}24'48''$

Point E ₁ :	$\varphi = 53^{\circ}45'22''$ $\lambda = 6^{\circ}19'48''$
Point E ₂ :	$\varphi = 53^{\circ}49'33''$ $\lambda = 6^{\circ}15'20''$
Point E ₃ :	$\varphi = 54^{\circ}00'00''$ $\lambda = 6^{\circ}06'30''$



Samengesteld bij de Afdeling Hydrografie van het Ministerie van Defensie in februari 1965

Annex J

VERSLAG VAN TE DEN HAAG GEHOUDEN BESPREKINGEN OP 14 JULI 1964 TUSSEN DELEGATIES VAN NEDERLAND EN DE BONDSREPUBLIEK TER AFBAKENING VAN HET NEDERLANDSE EN DUITSE DEEL VAN HET CONTINENTAAL PLAT IN DE NOORDZEE

.....
Nadat *Prof. Riphagen* de besprekingen omstreeks 10 uur heeft geopend, maakt hij melding van de ontvangst van het gemeenschappelijk rapport met bijlagen van de Nederlands-Duitse werkgroep, welke het eerste gedeelte van de afbakeningslijn tot de 54e breedtegraad in kaart heeft gebracht en de coördinaten daarvan heeft vastgesteld. Een afschrift van het rapport is als bijlage aan dit verslag gehecht. Een enkele wijziging in het rapport en een aantal correcties van geringe omvang op de vaststelling der coördinaten zullen in overleg tussen beide werkgroepdelegaties worden aangebracht. De Duitse delegatie deelt mede de Nederlandse correcties in beginsel te aanvaarden.

De Voorzitter van de Duitse delegatie distribueert onder de aanwezigen de ontwerp teksten van een overeenkomst ter vaststelling van het eerste gedeelte van de afbakeningslijn en een protocol houdende een gemeenschappelijk verslag van de arbeid der twee delegaties waarin tevens de rechtsstandpunten der twee regeringen zijn neergelegd.

.....
Aangezien *Prof. Meyer-Lindenberg* vanaf 7 augustus 1964 voor lange tijd afwezig zal zijn komt men overeen dat de Voorzitter van de Nederlandse delegatie en een enkel lid daarvan, na goedkeuring van de ontwerp-teksten door de Minister van Buitenlandse Zaken, zo mogelijk vóór genoemde datum naar Bonn zullen komen ter parafering van de overeenkomst en ondertekening van het protocol.
.....

Annex K

REPORT ON THE DISCUSSIONS HELD IN THE HAGUE ON 14 JULY 1964 BETWEEN THE DELEGATIONS OF THE NETHERLANDS AND THE FEDERAL REPUBLIC ON THE DEMARCATON OF THE NETHERLANDS AND THE GERMAN PARTS OF THE CONTINENTAL SHELF IN THE NORTH SEA

When, at about 10 o'clock, *Professor Riphagen* had opened the proceedings, he stated he had received the joint report with annexes from the Netherlands-German working group that has mapped the first part of the demarcation line up to the 54th degree of latitude and has fixed the co-ordinates. A copy of this report is annexed to the present document. One or two alterations will be made in the report and a number of minor corrections will be made to the co-ordinates after consultations have taken place between the delegations of the two working groups. The German delegation stated that it accepted the Netherlands amendments in principle.

The Chairman of the German delegation distributed copies of draft texts of an *agrément* on the determination of the first part of the demarcation line and a *protocol* containing the joint report on the work of the two delegations, in which the legal standpoints of the two governments were expounded.

Since *Professor Meyer-Lindenberg* was to be absent for a long period as from 7 August 1964, it was agreed that the chairman and one member of the Netherlands delegation should go to Bonn when the draft texts had been approved by the Netherlands Minister for Foreign Affairs, before the above date if possible, to initial the agreement and sign the protocol.

III. DOCUMENTS FILED BY THE AGENT FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

on the German-Netherlands-Danish negotiations, submitted to the International Court of Justice, pursuant to the President's request made at the public sitting, held on 1 November 1968, to make available to the Court, in so far as the information is in the possession of the Agents or can be obtained by them, any minutes, notes or reports which would indicate the bases on which the Parties determined the delimitation agreed upon in the negotiations which led up to the partial boundary treaties, especially with reference to the reasons why the exact terminal points were fixed as they are, rather than at some points nearer to or farther from the coastline¹.

1. Note Verbale from the Netherlands Embassy in Bonn to the German Federal Foreign Office, Dated 21 June 1963

[See Annexes 2 and 2A to the Memorial, I, pp. 96-97; Annex 8 to the Netherlands Counter-Memorial, I, p. 378.]

2. Note Verbale from the German Federal Foreign Office, Dated 26 August 1963

[See Annexes 9 and 9A to the Netherlands Counter-Memorial, I, pp. 379-381.]

¹ P. 162, *supra*. See also No. 54, p. 392, *infra*.

3. *Note Verbale from the Netherlands Embassy in Bonn, Dated 30 January 1964*

(Unabridged)

(Translation)

The Royal Netherlands Embassy presents its compliments and has the honour to refer to Note No. V 1-80/52/3 from the German Federal Foreign Office, dated 26 August 1963, in which the Government of the Federal Republic of Germany proposes negotiations with a view to reaching agreement on the course of the boundary between their two parts of the continental shelf off the coast of the Netherlands and the Federal Republic, and wishes to draw the attention of the Federal Foreign Office to the following matter.

Although it can be expected that the proposed consultations will be begun in the not too distant future, it must be assumed that it will no doubt be several months before a final agreement is reached.

It will not have escaped the attention of the Federal Government that in recent months interested oil companies have been taking more steps with a view to commencing drilling operations in the above-mentioned area.

The fact that there is still no relevant legislation applicable to this area and governing the extraction of natural resources from beneath the continental shelf is an encouragement to the companies concerned to continue their efforts, which could lead to an uncontrolled and hence probably inefficient hunt for oil and gas.

In order to rectify this trend and to prevent drilling work from being carried out at points the status of which may be the subject of forthcoming negotiations, the Embassy, on behalf of its Government, requests the Federal Foreign Office to seek the assistance of the Federal Government in reaching an arrangement to the effect that the two Parties refrain from issuing licences for drilling operations on the part of the continental shelf lying directly westward of the so-called equidistance line, as more closely defined in the Embassy's Note No. 7099 of 21 June 1963, until an agreement on the delimitation of mutual rights on the shelf has been concluded.

The Embassy would very much appreciate it if the Federal Foreign Office would inform it whether the Federal Government is prepared to make such an arrangement.

4. *Note Verbale from the German Federal Foreign Office, Dated 4 February 1964*
(Unabridged)

(Translation)

The German Federal Foreign Office presents its compliments to the Royal Netherlands Embassy and has the honour to acknowledge receipt of the Embassy's Note No. 1523 of 30 January 1964 and to reply as follows.

As already expressed in discussions, the Federal Government, too, would like an early commencement of Netherlands-German negotiations on the determination of their mutual boundary on the continental shelf. The Federal Foreign Office will take the liberty of suggesting a date for such negotiations to the Royal Netherlands Embassy as soon as possible.

The proposal of the Royal Netherlands Government that until the conclusion of a contractual agreement on this question both Parties should refrain from issuing licences for drilling operations on the part of the continental shelf lying directly westward of the so-called equidistance line, has been forwarded without delay to the appropriate German authorities. The Federal Foreign Office will communicate the Federal Government's reply to this proposal to the Royal Netherlands Embassy as soon as possible.

5. Notes of 19 February 1964

(Excerpt)

*(Translation)*GERMAN CONTINENTAL SHELF IN THE NORTH SEA
DELIMITATION IN RELATION TO THE NETHERLANDS

I

The Netherlands Government has notified the Federal Foreign Office of its readiness to open negotiations on the determination of their mutual boundary on the continental shelf. It has suggested that there should be an initial exchange of views in Bonn on 3 and 4 March 1964. The Netherlands delegation will be led by Professor Riphagen, legal adviser to the Netherlands Ministry of Foreign Affairs.

The negotiations will probably be difficult and prolonged, due to the fact that—

1. the German and the Netherlands viewpoints differ as to the course of the boundary in the Ems estuary and in coastal waters, so that with regard to the Netherlands there is not even a firm basis from which to draw the continental shelf boundary seawards;
2. according to Article 6, paragraph 2, of the 1958 Geneva Convention on the Continental Shelf, the boundary of the continental shelf between neighbouring States shall be the median line, provided that those neighbouring States do not otherwise agree. Apart from the fact that for the reasons given in sub-paragraph 1 above the Netherlands and the German views differ on the course of this median line, it would in any event be unfavourable to us to take the median line as the basis. Although under Article 6, paragraph 2, of the Convention the median line would only constitute the boundary where no "special circumstances" exist which would justify another boundary line, the Netherlands will nevertheless probably take the standpoint that under such an arrangement the onus of proof of the existence of such special circumstances rests on the State seeking a boundary line other than the median line . . .

II

As soon as there are signs of agreement with the Dutch, negotiations should be opened with the Danish Government on the delimitation of the continental shelf.

Negotiations on the delimitation of the German continental shelf must also be conducted with Great Britain. The British Embassy suggested the same on 15 February 1964. But Anglo-German negotiations should not be opened until the Netherlands-German and Danish-German negotiations have produced tangible results.

6. *Summarized Minutes, Dated 16 March 1964, of the Netherlands-German Negotiations on the Delimitation of the Continental Shelf of the North Sea Held in Bonn on 3 and 4 March 1964*

(Excerpt)

(Translation)

Both sides, whilst stating that the talks were non-binding, agreed that an attempt should be made to bring about a voluntary agreement between neighbouring States on the boundary on the continental shelf.

However, whereas the Netherlands delegation, as had already been expressed in the Note Verbale of 23 June 1963, considered the equidistance principle pursuant to Article 6, paragraph 2, second sentence, of the Geneva Convention as an appropriate basis for an agreed delimitation of the boundary . . . Ministerialdirigent *Professor Dr. Meyer-Lindenberg*, supported by the representatives of the federal ministries and the *Laender* stated that Germany, on account of her position in the North Sea area, the length of her coastline, the investments made and other achievements in this respect, was entitled to equal treatment in her relationship with her neighbours Denmark and the Netherlands in the question of their respective areas of the continental shelf. The Netherlands proposed cutting off of Germany from the middle of the North Sea was clearly unjust. Germany had postponed negotiations with Denmark and Britain to give the Netherlands an opportunity to negotiate a fair settlement first on a bilateral basis.

Professor Riphagen pointed out that an equal sharing of the North Sea shelf would have to include Britain, Norway and Belgium and could only be achieved by means of multilateral negotiations. A restriction of negotiations to the Netherlands, Germany and Denmark could not be justified on geographical grounds.

At the start of the second day of negotiations *Professor Riphagen* stated that he had been told by The Hague that the Netherlands Government saw no basis for negotiation in the equal-area principle. On the contrary, the discussions should be based on the equidistance principle.

The configuration of the German coastline did not constitute a special circumstance that could justify a delimitation varying from the principle of equidistance. The Netherlands saw no occasion to compensate her neighbour, who was both large and had greater natural resources, for any advantage the Netherlands may have from the course of her coastline. Furthermore, their partnership within the EEC ensured that the sources of power open to one State would also benefit its neighbours.

The value of the partial areas of the continental shelf was, after all, still unknown, and their size really had nothing to do with the length of national coastlines.

Moreover, the Netherlands could not consider any equal apportionment of the North Sea area, if only on account of Belgium.

With regard to the area of the Ems estuary the Netherlands delegation were willing to discuss how the equidistant boundary line should begin.

Professor Dr. Meyer-Lindenberg expressed the German disappointment over this attitude and pointed out that the subsidiary question of drawing the boundary on the basis of the equidistance principle was of no particular conse-

quence at this stage of the discussions. The main objective at the moment was rather for the Netherlands and Germany to arrive at an equitable delimitation by way of agreement. It was not seen why Germany, an important country adjacent to the North Sea, should be limited to a disproportionately small portion of the continental shelf area on account of the bend in her coastline.

Professor Meyer-Lindenberg then proposed that the German area of the North Sea should be determined in proportion to the length of the coast (with the length of the coastlines being in the ratio of 385: 273: 245 km. the sizes of the areas accruing to the Netherlands, Germany and Denmark would be approximately 57,000, 44,000, and 40,000 sq.km respectively) . . .

He pointed out that it was already difficult to keep the German companies concerned from making exploratory drillings in the disputed area. In the long run they could not be held back, particularly as there was no legal possibility of preventing them. This could produce most unpleasant consequences, not only for the negotiations but for relations between the two countries.

Professor Riphagen stated that nothing could be said about the Netherlands views with regard to the determination of the boundary in the mouth of the Ems until the next meeting, which was fixed for 23 March 1964 at 9.30 a.m. in the Netherlands Ministry of Foreign Affairs, The Hague.

7. *Minutes of Conclusions of the Netherlands-German Negotiations on the Continental Shelf Held in The Hague on 23 March 1964*

(Translation)

I

Professor Riphagen stated that these were still non-binding preliminary discussions. He still had no instructions as to how to reply to the German proposal of 4 March that year (sharing of North Sea shelf in proportion to the lengths of Germany's coastline and those of her neighbours).

Professor Meyer-Lindenberg again outlined the reasons why an early agreement on the lateral determination of the shelf boundary would be in their mutual interests.

II

The two delegations then discussed the possibilities of connecting the shelf boundary with the termination point of the lateral coastal sea boundary (point a quo). The German delegation upheld its reservations in respect of the application of the equidistance principle, while the Netherlands delegation started from the contents of the Note Verbale of the Netherlands Embassy dated 21 June 1963. Different views emerged on several points in connection with the interpretation of the Geneva Conventions on the Continental Shelf and on the Territorial Sea, as well as with the question of how baselines should be drawn. The Netherlands delegation considered that Borkum Riff might be included as a point of departure for equidistance-line boundaries. Variations were also discussed which could ensue from the arrangement provided for in the Supplementary Agreement to the Ems-Dollart Treaty, especially whether the point a quo could lie on the line A-CII-L₁ of that Supplementary Agreement. The German delegation also mentioned in particular the historic title, which, as "special circumstances" within the meaning of Article 6 of the Geneva Convention, it was felt should be taken into consideration in drawing the boundary line.

8. Notes of 6 April 1964

(Excerpt)

(Translation)

The talks with the Netherlands on the determination of the continental shelf boundary were continued in The Hague on 23 March 1964.

As regards the northern or north-western termination point of the Netherlands-German shelf boundary, the German delegation must realize that any willingness on the part of the Netherlands Government to allow Germany access to the middle of the North Sea cannot lead to concrete concessions, if only on grounds of domestic policy, unless it is certain that corresponding concessions will be made by Denmark as well. It will therefore only be possible to discuss the northern (or north-western) part of the Netherlands-German shelf boundary, and hence the problem of a German share of the subsoil beneath the middle of the North Sea, in multilateral negotiations with the participation of Denmark and, possibly, Great Britain.

The aim of the negotiations in their present phase is therefore to determine the Netherlands-German shelf boundary to such an extent seawards from the point a quo—which is still to be agreed—that, on the one hand, our claim to access to the middle of the North Sea is not prejudiced and, on the other, the German oil companies will be able to commence drilling operations at the points near the coast in which they are at present mainly interested.

9. Minutes, Dated 4 June 1964, of the Conclusions of the Netherlands-German Negotiations Held in Bonn on 4 June 1964

(Excerpt)

(Translation)

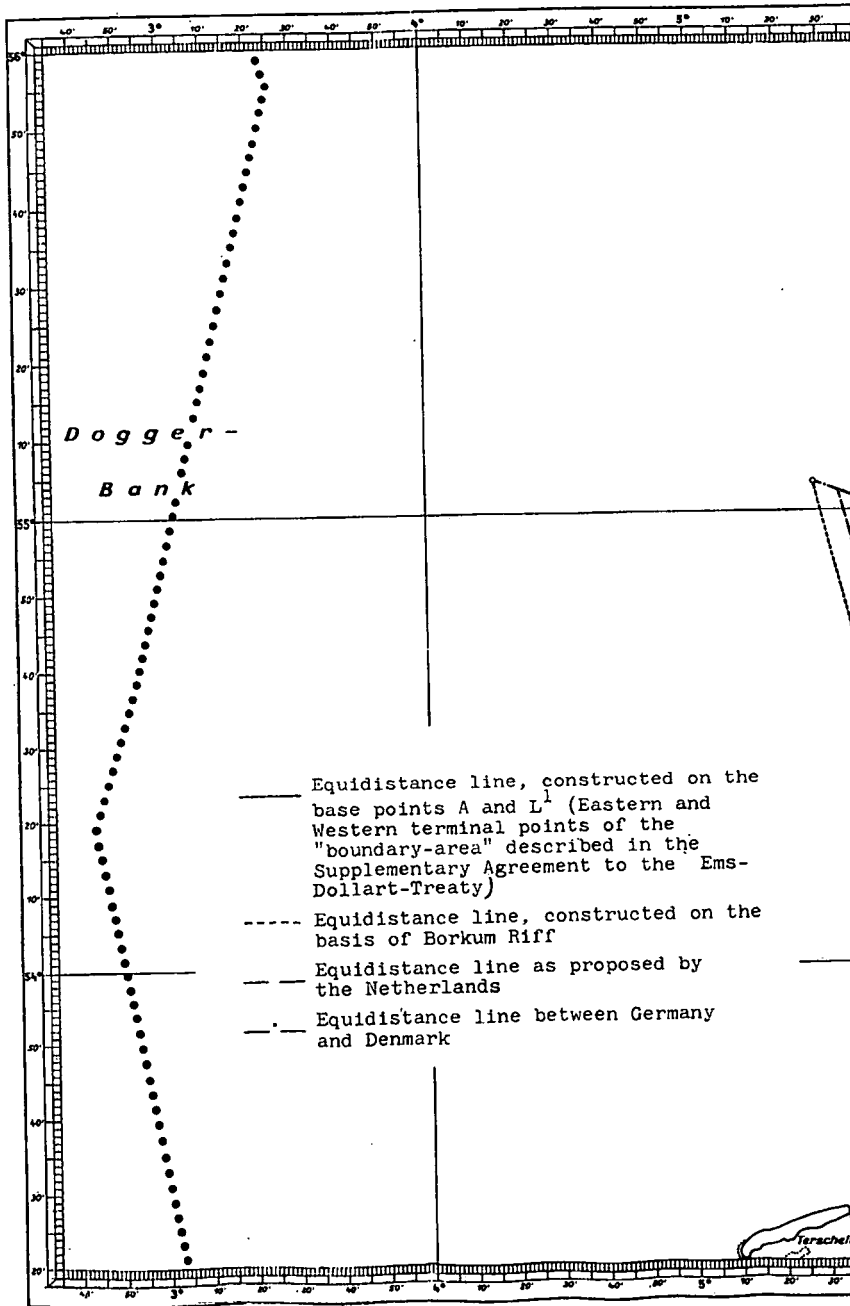
Professor Riphagen said he had been instructed to state that with regard to the determination of the Netherlands-German boundary in the North Sea continental shelf area it was only possible to digress from the principle of equidistance laid down in Article 6, paragraph 2, of the Geneva Convention on the Continental Shelf in the area near the coast, taking into account the existing agreements on the Ems estuary. Moreover, it was the Netherlands view that there did not appear to be any special circumstances which might justify a modification of the further course of the lateral boundary, as claimed by Germany.

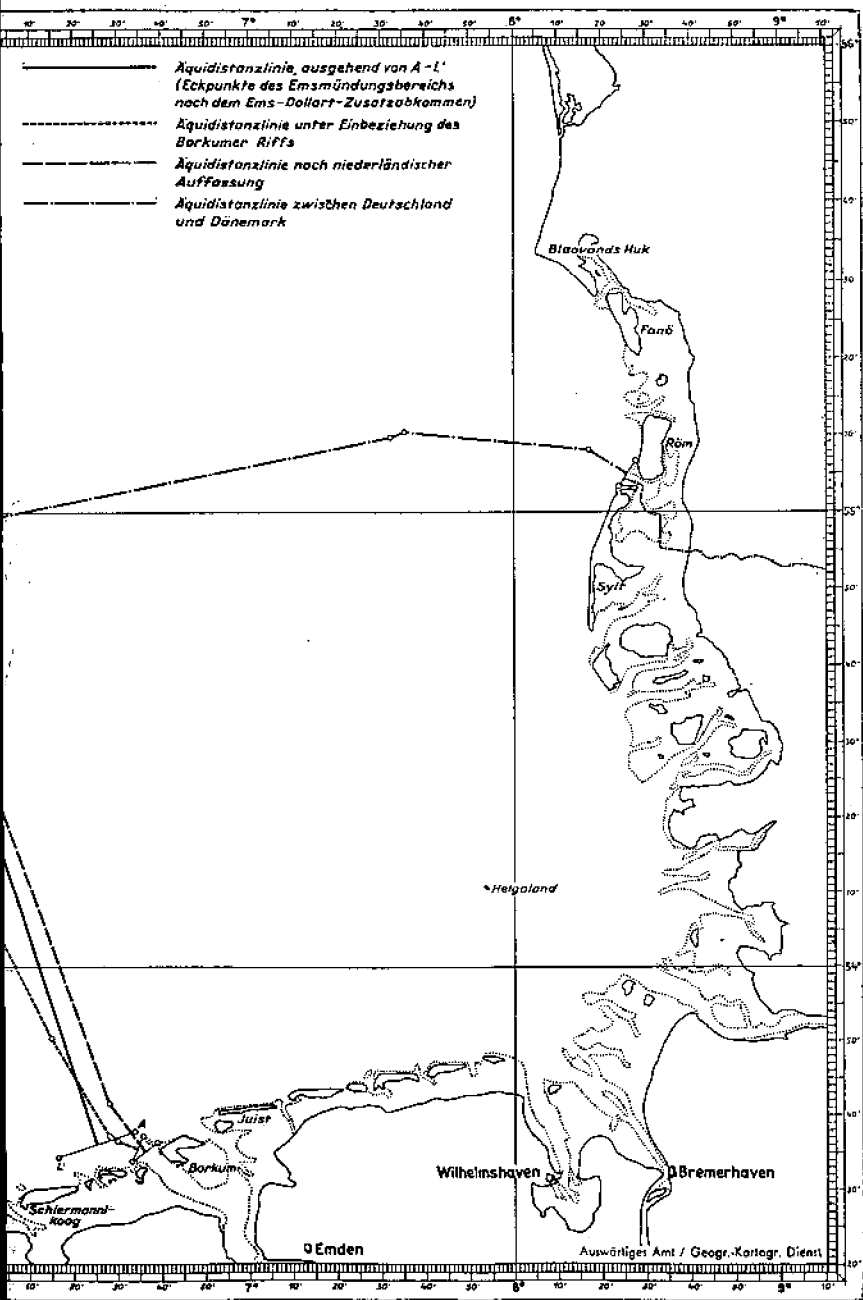
Professor Dr. Meyer-Lindenberg regretted that the bay situation of the Federal Republic was not recognized as a special circumstance by the Netherlands. Going by the genesis of the Geneva Convention this was a typical case for the application of the special circumstances clause. The Netherlands were at liberty to seek a voluntary agreement, which was the first step envisaged by the Convention (Article 6, paragraph 2, first sentence), independently of its interpretation of the term "special circumstances" . . .

The Netherlands delegation argued that the Geneva Convention also laid down guidelines as to the composition of any voluntary agreement, and that in the opinion of the Netherlands these were bound to lead to the application of the equidistance principle as an equitable method of apportionment, as there were no opposing special circumstances. The Netherlands Government was prepared to submit this difference of opinion on the interpretation of Article 6 of the Geneva Convention, together with the Federal Republic, as a legal question to the International Court of Justice.

Professor Dr. Meyer-Lindenberg said that Germany was not afraid to put the matter to arbitration, which could only end in her favour, but first it had to be absolutely certain that there could be no voluntary agreement between the countries concerned. In the German view, however, the delimitation of the continental shelf was to littoral countries of the North Sea, and particularly to Germany, not a problem that could be solved on a purely bilateral basis with neighbouring countries, in this instance the Netherlands. On the contrary, multilateral agreements were necessary to achieve an adequate apportionment of the middle of the North Sea. He suggested that as an initial step they should solve the problem of the Ems estuary by drawing a partial boundary line between Germany and the Netherlands near the coast, so as to enable oil companies of both countries to explore and exploit that area in the next few years. This arrangement did not imply recognition of the principle of equidistance as an equitable criterion for apportionment. The German side expressly reserved its legal standpoint, stating that the line could therefore only be drawn up to a certain distance from the coast, say, as far as the 54th latitude. The further determination of the boundary would have to be the subject of a future settlement on a multilateral basis which should be effected in accordance with other criteria than the principle of equidistance.

.....





10. *Joint Report of German-Netherlands Working Group, Dated 4 June 1964*

[See Annex H of the Netherlands documentation, pp. 334-335, *supra*.]

11. *Notes of 8 July 1964*

(Excerpt)

(Translation)

Subject: Continental Shelf of the North Sea; Delimitation in relation to the Netherlands.

Enclosure: Diagram (see pp. 348-349, *supra*).

I

The talks with the Netherlands concerning the lateral delimitation of the German and Netherlands share of the continental shelf of the North Sea have reached a stage where the early initialling of a partial agreement would seem possible.

The talks centre around the following questions:

1. The consequences ensuing for the course of the shelf boundary in the coastal area from the divergent mutual views on the course of the boundary in the Ems estuary;
2. Germany's access to the middle of the North Sea, which is what our demand for an appropriate area of the North Sea shelf amounts to in practice.

Ad 1:

The shelf area near the coast in which recent drilling operations have struck mineral deposits, is at present an object of special interest to the German (and Netherlands) mineral oil industry. This renders determination of the boundary urgent at least for that part of the shelf, for, failing such delimitation, politically undesirable incidents in the boundary area could not be permanently avoided. The differences of opinion between us and the Netherlands about the method of dividing the North Sea shelf among the coastal States, which, at least at the present time, still impede the fulfilment of the German request for an appropriate area of the North Sea shelf (see comments on item 2), are of only minor importance for the coastal area.

According to our concept, the . . . boundary line should end at the 54th parallel and, in its further course, which will probably be a subject of future multilateral negotiation, turn westward towards the middle of the North Sea. A partial boundary of the suggested length would in our view prejudice neither Germany nor the Netherlands with regard to future negotiations on Germany's access to the middle of the North Sea.

Ad 2:

On the other hand, the Netherlands Government is not expected at the present bilateral level to make any concessions on Germany's access to the middle of the North Sea. It accepts neither a division of the shelf on an equal basis (apportionment of the eastern part of the North Sea among the Netherlands, Germany and Denmark, each getting an equal share) nor the proportional solution, an alternative suggested by us (division in proportion to the lengths of coastlines, i.e., approximately 4 (Netherlands) to 3 (Germany) to 2.5 (Denmark)). The Netherlands Government rather insists on the application of the equidistance principle—which is favourable for the Netherlands—whereby only the hatched area on the diagram would fall to Germany. If a solution by contractual agreement is at all possible then it will only be at multilateral level with the participation of Denmark and perhaps also of Great Britain; for the Netherlands, if only for reasons of domestic policy, will not be willing to make any concessions to Germany as long as it is not established that corresponding concessions will be made by Denmark. The Netherlands Government has already had it stated that instead of continuing the bilateral talks about Germany's access to the middle of the North Sea it would rather have an arbitral settlement of the question as to whether Germany's bay coastline constitutes a "special circumstance" within the meaning of the 1958 Convention.

Bonn, 8 July 1964.

12. *Joint Minutes of German-Netherlands Delegations, Dated 4 August 1964*

[See Annexes 4 and 4A to the Memorial, I, pp. 102-104.]

13. Excerpt of 10 August 1964 of the Paper Prepared by the Federal Foreign Office for Submission to the Cabinet

(Translation)

DELIMITATION OF THE CONTINENTAL SHELF OF THE NORTH SEA IN RELATION TO
THE NETHERLANDS

The Federal Government's proclamation of 20 January 1964 has made it clear that the Federal Government, by virtue of the evolution of general international law, considers the exploration and exploitation of the natural resources of the seabed and subsoil of the submarine zone adjacent to the German maritime coast to be an exclusive sovereign right of the Federal Republic of Germany and that it makes the delimitation of the German continental shelf in relation to the continental shelves of other States subject to agreements with those States.

Following that proclamation, a German delegation headed by the Federal Foreign Office last March began negotiations with a Netherlands delegation about the lateral delimitation of the German and Netherlands continental shelves. The negotiations were concluded on 4 August 1964 when the enclosed draft treaty concerning the lateral delimitation of the continental shelf near the coast was initialled. As shown on the enclosed diagram (1) the draft provides for the boundary to be drawn from the coast into the North Sea up to the 54th parallel, i.e., a length of 25 nautical miles.

No agreement could be reached during the negotiations on the further course of the boundary line, since the Netherlands, referring to the Convention on the Continental Shelf signed in Geneva on 29 April 1958 (but not yet ratified either by them or by the Federal Republic of Germany), lays claim to the portion as marked in the enclosed diagram of the North Sea (2), so that, with a corresponding portion allocated to Denmark, Germany would receive only the area . . . within the German Bight for subsoil exploitation. According to the Geneva Convention on the Continental Shelf the method of apportionment as shown in the diagram is to be applied only if the States concerned do not agree otherwise and if no special circumstances exist such as are claimed to prevail by the German side in view of the configuration of the German North Sea coast in the form of a bay. Further negotiations will have to be held, first of all with Denmark, and then probably at multilateral level, to gain acceptance for our claim for a larger share of the North Sea shelf affording us access to the middle of the North Sea.

However, in view of the drilling operations for natural gas started by a German syndicate this summer in the western part of the German Bight, an early settlement of the boundary problem in the coastal area was urgently required. Hence the first step was to agree with the Netherlands on the partial boundary laid down in the present draft treaty; it does not prejudice the further course of the boundary in view of the reservations stated by both parties in the attached Joint Minutes of the Negotiations of 4 August 1964, and it clarifies the situation in the area near the coast on which the German mineral oil industry sets great hopes in view of the large natural gas deposits found in the Netherlands northern province of Groningen.

.....

14. *Joint Press Communiqué of 1 December 1964*

(Translation)

The Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the lateral delimitation of the Continental Shelf near the Coast was signed in Bonn on 1 December 1964 by the State Secretary of the Federal Foreign Office, Professor Carstens, and the Netherlands Ambassador, Baron van Ittersum. The Treaty establishes a partial boundary between the German and the Netherlands share of the continental shelf of the North Sea beyond the coastal sea which runs from the coast approximately 25 nautical miles north-westwards as far as the 54th parallel and clarifies the situation near the coast.

15. *Memorandum regarding the Netherlands-German Treaty of 1 December 1964 concerning the Lateral Delimitation of the Continental Shelf of the North Sea Near the Coast*¹

(Excerpt)

(Translation)

During the negotiations agreement could not yet be reached on the further course of the boundary line.

In view of the drilling operations for natural gas started this summer in the western part of the German Bight by a syndicate consisting mostly of German firms an early settlement of the boundary problem, at least in the area near the coast, was urgently required. It was therefore necessary as a first step to agree upon the partial boundary as laid down in the present draft treaty; this boundary clarifies the situation in the area near the coast on which, in view of the large deposits of natural gas found in the neighbourhood in the Netherlands north-eastern province of Groningen, the German mineral oil industry sets great hopes. The boundary does not, however, prejudice the question of the further course of the boundary.

¹ See Annexes 3 and 3A to the Memorial, I, pp. 98-101.

16. Notes of 6 October 1964

(Excerpt)

*(Translation)*CONTINENTAL SHELF IN THE NORTH AND BALTIC SEAS
DELIMITATION IN RELATION TO DENMARK

I

It had been stated in the notes that after termination of the talks with the Netherlands concerning the delimitation of the continental shelf near the coast relevant talks would have to be started with Denmark in further preparation for a multilateral conference to be held on the apportionment of the continental shelf of the North Sea. As negotiations with the Netherlands have been concluded (a treaty concerning the delimitation of the continental shelf near the coast was initialled on 4 August 1964 and will presumably be signed this month), first talks with Denmark are to be held on 15 and 16 October 1964 in Bonn.

II

As far as can be judged at this stage, the talks with Denmark will not be of the same economic importance as those with the Netherlands, as so far there are no definite suppositions that any mineral oil and natural gas deposits worth prospecting are to be found in the German-Danish boundary area.

.....

*17. Joint Press Communiqué of 16 October 1964**(Translation)*

A German and a Danish delegation met in the Federal Foreign Office in Bonn on 15 and 16 October to discuss problems involved in the delimitation of the continental shelf in the North Sea. During those talks a useful exchange of views took place in a good neighbourly atmosphere.

The negotiations will be continued in the near future.

18. *Minutes of the Conclusions of the Negotiations on the Delimitation of the Continental Shelf in the North Sea Between Germany and Denmark, Held in Bonn on 15 and 16 October 1964*

(Excerpt)

(Translation)

.....
1. The German delegation put forward the arguments contained in the minutes of the talks held with the Netherlands in favour of an equal apportionment of the North Sea shelf between Germany and Denmark, whilst the Danish delegation put up the equidistance principle as the method to be basically applied.

Since the Geneva Conference in its Article 6 did not codify customary international law on delimitation questions, there was no cause for refraining from an equitable apportionment of areas of equal size whereby in the middle of the North Sea a joint solution, perhaps according to the sector principle, would probably have to be sought by way of consultation among all littoral States concerned. Even paragraph 2 of Article 6 of the Geneva Convention prescribed, as the first step, voluntary agreement for which in the German view the primary criterion should be equality of size. It was furthermore not seen why the determination of the lateral boundary should have priority over the apportionment of the shelf among States lying opposite each other for which provision was made in paragraph 1 of Article 6 of the Convention. The portion of the continental shelf due to Germany was not any more distant from Great Britain than was the Danish. After all, Professor Meyer-Lindenberg said, the indentation of the coastline in the German Bight constituted a typical case in which the concept of "special circumstances" applied, as had, *inter alia*, been recognized by an unsuspected witness like M. François, so that, alternatively, the equidistance principle should be modified in favour of Germany.

On the other side, Viceeudenrigsrad Oldenburg made the following comments:

The equidistance principle, he said, had long been recognized as a principle of international law and accepted by all littoral States of the North Sea (the German delegate had not made any general reservations). Without the Convention having been ratified, the equidistance principle constituted the foundation for the Danish claim to a share of the shelf to be determined on the basis of geographical realities, as had already been promulgated at national level in a Danish ordinance. A principle of equal apportionment of the North Sea shelf was legally non-existent. Such equal apportionment could not be carried out in relation to other States either. Moreover, the Danish margin for negotiation had already been extremely narrowed down as a result of arrangements made with Great Britain and Norway (median lines according to the equidistance principle). Article 6, paragraph 2, first sentence, of the Convention on the Continental Shelf was no *pactum de contrahendo*. "Special circumstances" within the meaning of paragraph 2 of Article 6 of the Geneva Convention, which was a codification of customary sea law, were, in the light of the genesis of the Convention, to be understood as meaning only entirely abnormal configurations and situations (islands, sandbanks, deviating boundaries of the

coastal sea). The Danish Government felt likewise compelled to abide by its claim in the face of Parliament and public opinion.

After these basic comments there was, on the basis of charts and texts of boundary agreements, a discussion of the question from which point of the outer boundary of the coastal sea the lateral shelf boundary in the North Sea would have to start. The Danish delegation promised to provide access to a map of the boundary area between Sylt and Röm, to the text of an agreement concluded in 1941 concerning the shifting of the lateral boundary of the coastal sea, as well as records about the drawing of the baseline in 1921 between Sylt and a point called Römö Platt, and suggested that the intersection of the outer boundary of the coastal sea and a line to be drawn pursuant to the 1921 agreement in extension of a line connecting two fixed points on the Isle of Sylt should be taken as the point a quo, since the constant shifting of the channel in the List Depression would not admit of a permanent fixation of the lateral boundary of the coastal sea

.....

19. Report by the Plenipotentiary of Land Schleswig-Holstein, in His Capacity as Member of the German Delegation, to His Land (Provincial) Government, Dated 31 March 1965

(Excerpt)

(Translation)

In their introductory statements the heads of delegation pointed out that the legal positions of the two countries were fully upheld. As those positions were taken as known, the delegations soon got down to the concrete task of finding a suitable boundary on the continental shelf near the coast.

After joint and separate discussions, the point "S" fixed in the boundary description of 1921 and constituting the point of interesection of the line connecting the Sylt East lighthouse and the middle of the two beacons of the Sylt West lighthouse with the line delimiting the territorial sea (3-nautical-mile boundary) was chosen as a suitable point of departure.

It was then agreed that the partial boundary near the coast should be a straight line from point "S" approximately 30 nautical miles roughly WNW as far as a point equidistant from the island of Sylt and Kap Blaakvandshuk. In terms of co-ordinates, this provisional termination point of the Danish-German boundary line near the coast lies roughly 55°10'13" North and 7°33'13" East according to a provisional German calculation (whereas the Danes, using different maps, fixed the probable position at 55°10'07" North and 7°33'13" East). In addition it was agreed that an accurate calculation would be made in Denmark (and incorporated in the European Datum System), and that the Federal Republic would check its data.

Possibly, the Danish side will again state in a special exchange of letters through the Danish Embassy in Bonn that this termination point does not prejudice either of the contracting Parties with regard to the further course of the boundary line. The German delegation thought it was not necessary to repeat the statement, but also that it could not do any harm. The possibility of German access to the middle of the North Sea is not prejudiced by the present arrangements and statements.

It was also decided that in view of the technical details still to be cleared up, the agreed draft treaty (the draft of which is attached) should no longer be initialled but signed by the Danish Embassy and the German Federal Foreign Office in Bonn after the conclusion of the Danish-German calculations.

At the end of the first day of the negotiations, Minister Oldenburg surprisingly announced that Netherlands-Danish boundary negotiations were already envisaged for the next few months. Ministerialdirigent Dr. Truckenbrodt immediately made it clear that Germany laid claim to the area of the continental shelf in question as far as the middle of the North Sea. The German side therefore intended to open negotiations with the Netherlands and Denmark as soon as possible on the further course of the partial boundary. In this respect it would have to be considered whether it would be more expedient to discuss the disputed boundary questions trilaterally or at a conference of all littoral States of the North Sea. Moreover, the Federal Republic reserved the right to appeal to an arbitral tribunal should such discussions fail. This problem was again raised by the head of the German delegation on 18 March 1965,

who suggested tripartite talks between Germany, the Netherlands and Denmark as soon as possible.

20. Joint Press Communiqué of 18 March 1965

[See Annexes 8 and 8A to the Memorial, I, pp. 114-115.]

21. Notes of 1 April 1965

(Excerpt)

(Translation)

DANISH-GERMAN TREATY CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF OF THE NORTH SEA NEAR THE COAST

I

The attached draft letter is to be sent to the Head of the Federal Chancellery asking him to circulate it among the members of the Cabinet to gain their approval for the signature of the Danish-German treaty concerning the delimitation of the continental shelf of the North Sea near the coast.

The treaty deals with questions relating to the lateral delimitation of the continental shelf as between neighbouring States. The negotiations with the Netherlands last year failed to produce agreement on the principle on which lateral delimitation should be based; nor was such agreement possible in the recent negotiations with Denmark.

The Danish and Netherlands Governments take the standpoint that the delimitation should be based on the principle of equidistance, according to which the boundary on the continental shelf would constitute a line equidistant from the nearest points on the baseline (the baseline is a coastal line drawn for practical purposes without consideration for small inlets, from which the breadth of the coastal sea is measured).

We, however, feel that the equidistance principle cannot be automatically applied to the apportionment of the continental shelf of the North Sea on account of Germany's bay situation and the resultant special circumstances in the North Sea area.

Taking the treaty with the Netherlands as a model, the two delegations confined themselves to an agreement on a partial boundary of approximately 30 nautical miles. This partial boundary is described in greater detail in the letter to the Head of the Federal Chancellery.

.....

III

The question of the further course of the proposed boundary line in the North Sea was left open. Both sides agree that this question is not prejudiced by the arrangement made.

22. *Protocol to the Danish-German Treaty concerning the Delimitation of the Continental Shelf of the North Sea Near the Coast*¹, Dated 9 June 1965

[See Annexes 7 and 7A to the Memorial, I, pp. 112-113.]

23. *Memorandum regarding the Danish-German Treaty of 9 June 1965 concerning the Delimitation of the Continental Shelf of the North Sea Near the Coast*¹

(Translation)

This treaty is basically the same as the corresponding treaty with the Netherlands signed on 1 December 1964 (Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the lateral delimitation of the continental shelf near the coast, printed in Bundestag document No. IV/3087). The first section of the Danish-German boundary laid down in the treaty is approximately 30 nautical miles long. It starts at the point where German territorial waters, Danish territorial waters, and the high seas meet, and runs from there in a north-westerly direction to a point equidistant from Sylt and Kap Blaakvandshuk. No agreement could yet be reached on the further course of the shelf boundary.

.....

¹ See Annexes 6 and 6A to the Memorial, I, pp. 109-111.

24. *Aide-Mémoire of 8 December 1965 addressed to the Danish Embassy, Bonn*
(Translation)

The Federal Government suggests that the negotiations concerning the delimitation of the two countries' shares of the continental shelf in the North Sea of which the first stage was concluded with the signature of the German-Danish Treaty of 9 June 1965, be continued. The legal views of the two delegations concerning the principle on which delimitation should be based and on which agreement could not yet be reached, should in the opinion of the Federal Government be excluded from such negotiations.

The Federal Government would, however, be prepared to subject the aforementioned legal problem to arbitral decision before entering into any further negotiations. Should the Government of the Kingdom of Denmark prefer the latter method the Federal Government would suggest that the Government of the Kingdom of the Netherlands be invited to participate in the negotiations on the details of organization and procedure of the arbitral proceedings as provided for under item 3 of the Final Protocol to the German-Danish Treaty on Arbitration and Conciliation of 2 June 1926 in the event that the practical implications of a difference of opinion between contracting Parties extend beyond the individual case under discussion.

(An identical aide-mémoire was handed over to the Netherlands Embassy in Bonn on the same day.)

25. Notes of 8 March 1966

(Excerpt)

GERMAN SHARE OF THE CONTINENTAL SHELF OF THE NORTH SEA;
GERMAN-DANISH-DUTCH TALKS IN THE HAGUE ON 28 FEBRUARY 1966*(Translation)*

On 28 February 1966 a German, a Danish and a Netherlands delegation held talks in The Hague on the subject of apportioning the (eastern) part of the continental shelf of the North Sea. The Netherlands delegation was led by Professor Riphagen, legal adviser to the Ministry of Foreign Affairs, the Danish delegation by Min. Asst. Dir. Paludan, head of the European Division, while the German delegation was headed by the undersigned.

I

1. The following background data of the talks are put on record:

- (a) By aide-mémoire of 8 December 1965 it had been suggested to the Embassies of Denmark and the Netherlands in Bonn that the negotiations be continued excluding the legal issue (applicability of the so-called principle of equidistance) or that (alternatively) the legal issue be subjected to arbitral decision.
- (b) In talks which the Minister had in Paris in mid-December 1965 with the Foreign Ministers of Denmark and the Netherlands it was agreed that the negotiations should be resumed (Note St. S. I 2192/65 of 18 December 1965).
- (c) It was then suggested to the Netherlands Embassy that the negotiations be continued at bilateral level in mid-February, whereupon the Netherlands Embassy immediately replied that the Netherlands Government would presumably not agree to the suggested date in view of the forthcoming marriage of the Crown Princess. Much to our surprise we were then at short notice invited to come to The Hague for discussions, together with the Danes, on 24 February. We accepted the proposal in spite of the short notice, after consultation with the federal ministries and Laender concerned, in order to avoid giving the impression that we were not interested in expediting the matter.

2. It then became obvious at the tripartite talks held in The Hague on 28 February that the Danish and Netherlands interpretation of the results of the discussions among the three Foreign Ministers differed from ours. While we are of the opinion that the subject-matter itself, i.e., the possibility of a compromise solution, requires renewed negotiation, the Danes and the Dutch do not expect any results from further negotiations on the subject. The Dutch delegation stated emphatically on several occasions that the Netherlands would not agree to any arrangement providing for the determination of the boundary line in deviation from the principle of equidistance; the Danes put it a little more flexibly but intimated also that deviation from the said principle would be equally out of the question for them. Both delegations contended that no new aspects had arisen to induce their countries to change their attitudes. They suggested a more detailed discussion of the forum at which a possible

legal dispute should be settled, and stated that they thought the International Court of Justice in The Hague to be the only eligible one.

We replied that we had no instructions to continue the negotiations along those lines and reserved the right to refer once more to the material questions in the next phase of negotiations (envisaged for mid-May). Nevertheless we did not object to a first exchange of views on the question as to whether a possible legal dispute should be brought before a bilateral or trilateral) arbitral tribunal or The Hague Court

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