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Public sitting

held on Thursday 14 January 1993, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

in the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen

(Denmark v. Norway)

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le jeudi 14 janvier 1993, à 10 heures, au Palais de la Paix,

sous la présidence de sir Robert Jennings, Président

en l'affaire de la Délimitation maritime dans la région située entre le Groenland et Jan Mayen

(Danemark c. Norvège)

COMPTE RENDU

Present:

President Sir Robert Jennings
Vice-President Oda
Judges Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola

Judge *ad hoc* Fischer

Registrar Valencia-Ospina

Présents:

Sir Robert Jennings, Président
M. Oda, Vice-Président
MM. Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola, juges

M. Fischer, juge *ad hoc*

M. Valencia-Ospina, Greffier

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The PRESIDENT: Excellencies, Ladies and Gentlemen, it is my sad duty first this morning to announce that our well-respected and much loved colleague and former President of this Court, Judge Lachs, died in the early hours of this morning. A full tribute will be paid to him later in this Court when it is possible to arrange it but, before we begin our work this morning, I suggest that we should all stand for a minute in respect to a very great man and colleague, a great international lawyer, a great teacher and a great friend and colleague.

A minute's silence was observed.

Now I think the two Agents would like to say a word. Mr. Lehmann?

Mr. LEHMANN: Mr. President, on behalf of the Government of Denmark I would like to add my tribute to Judge Lachs. He has for many years represented all that is best in the international judicial tradition. His integrity, his human qualities and learning, will be sadly missed.

Mr. HAUG: Mr. President, distinguished Members of the Court, on behalf of the Norwegian Government and on behalf of the Norwegian Delegation I would like to express our deep regret on the passing of Judge Lachs. As a former President, an outstanding and the longest standing Member of the Court, he has shaped the jurisprudence of the Court and contributed to the development of the international law the last quarter-century. We very much share in your sorrow. We will miss his wise counsel.

The PRESIDENT: Thank you very much. The Court and all the Members of the Court very much appreciate the sympathy and kindness with which these tributes have been paid on behalf of the two Governments that appear before us in this case.

Now we will proceed, as Judge Lachs would have wished I think, with the administration of international justice and we will hear further the case of Denmark. Professor Bowett is the first speaker.

Mr. BOWETT:

The actual method of drawing a single line of delimitation
to produce an equitable result

Mr. President, Members of the Court, it is my task to address you on the question of method. What, in this case, is the method of delimitation most suited to produce an equitable result?

The risk of casuistry is very real. There is a real temptation to postulate the result one would like to have; and then to rationalize it. So that, instead of the method emerging at the end, as the rational and logical result of the arguments - based on the law and the facts - the process is one where the result is the premiss, the method chosen is simply that which produces the desired result, and the arguments are structured to support that premiss.

I shall try to avoid that risk and, to that end, I shall first say something of the legal principles which should govern the choice of methods. Then I will turn to the factors specific to this case which, in accordance with those legal principles, should govern our choice of method. Following that I will demonstrate how, in Denmark's submission, those factors dictate a single line of delimitation which would have no effect on Greenland's 200-mile limit. And I will show that this result accords with State practice, whereas the method proposed by Norway - the strict median line - does not.

I. The law governing the choice of method

Let me offer to the Court a few elementary propositions which seem to emerge from the jurisprudence, and which find support in State practice.

First, that the law recognizes no single method of delimitation which is in all circumstances obligatory.

The Court will, I trust, recognize that proposition from paragraph 55 of its own 1969 Judgment. It is echoed in subsequent decisions and fully reflects State practice. For State practice demonstrates a whole variety of methods - lines adopting a fixed azimuth, lines adopting a line of latitude, stepped lines, equidistance lines, modified equidistance lines, lines perpendicular to coasts, enclaves, total or partial, and so on.

Second, that equidistance is simply one method. Certainly a method of great utility, but it has

no preferred status and certainly no claim a priori to application as a "first step", to be modified only as circumstances prove to be necessary.

There the Court will recognize its dictum in paragraph 110 of the 1982 Judgment in the *Tunisia/Libya* case. It was followed in paragraph 102 of the *Guinea/Guinea-Bissau* case, and in paragraph 107 of the *Gulf of Maine* Judgment.

The long, and bitter, opposition to any specific mention of equidistance in Articles 74 and 83 of the 1982 Law of the Sea Convention supports the position of principle adopted by the Court and reflected in the proposition I have made to you.

I am, of course, aware that in the 1985 *Libya/Malta* case the Court adopted a median line provisionally, as a first stage in the delimitation process. It may thus be argued that the Court has given a preferential status to equidistance. But the provisional median line, used by the Court in that case, was never used as a provisional boundary. In was in fact *two* lines: one between the coasts of Italy and Libya, and the other between the coasts of Malta and Libya. The purpose of these lines was to create a "corridor", a zone of maximum Libyan claims and maximum Maltese claims. The Court's concern was to locate an equitable line within that corridor. So the median lines used by the Court were never, in fact, used as provisional boundaries.

And lest there shall be any risk of assuming that the 1985 Judgment in some way reinforced equidistance, I would ask the Court to recall and compare the actual Maltese claims - based on equidistance - with the line drawn by the Court. The Maltese claim, which extended as far east as 18° longitude (a line mid-way across the Gulf of Sirte) and as far south as latitude 34° 12' north was clearly rejected by the Court.

And now to my next proposition.

Third, that the appropriate method in any particular case is that which reflects, and takes account of, the geographical and other relevant factors of that case.

This proposition was most aptly summarized by the 1977 Award in the *Anglo/French* case. The Tribunal there stated:

> "this Court considers that the appropriateness of the equidistance method, or any other method, for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case" (para. 239).

Now, I believe this proposition is fully supported in both the case-law and State practice, as I shall demonstrate later in my presentation. It follows from this proposition that what we have to do is to identify those factors in the present case which, consistently with the law, must govern and control the choice of a method in this case. So I turn to the second part of my presentation.

II. The factors governing the choice of method in this case

A. The geographical factors

It can scarcely be doubted that the dominating factor is the geographical configuration of the coasts of the two Parties.

To cite from paragraph 47 of the 1985 *Libya/Malta* Judgment, which incorporates part of the 1982 Judgment: it is "the coast of each of the Parties," which

> "constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each one of them extend in a seaward direction, ..." (*I.C.J. Reports 1982*, para. 74.)

As you have heard from Dr. Jiménez de Aréchaga, the coasts are the basis of legal title. Not surprisingly, therefore, the coasts dominate the delimitation process. Think of the way in which the concavity of the coastline dominated the 1969 Judgment's rejection of the equidistance method. Think of the way in which, in the 1977 Award, the broad similarity between the two opposite and generally-equal coasts of the United Kingdom and France dictated the choice of a basic median line. Think of the way in which, in the 1982 Judgment, the line of general direction of the Libyan and Tunisian coasts dictated, for the first sector, a line perpendicular to the coasts: and how the radical change in the direction of the Tunisian coast dictated a different line for the second sector. Think of how the disparity in coastal lengths governed the adjustments made to the line in both the *Gulf of Maine* case, and *Libya/Malta*.

Mr President, I submit we can, with absolute confidence, start from the premiss that it will be the geographical configuration of the coasts of the Parties which will largely control the choice of

method in this case.

That being so, I believe the Court must ask itself this question: "what are the special characteristics of the coastal relationship in this case?" In my submission, they are three.

(i) The Factor of Distance

The island of Jan Mayen and the coasts of Greenland are no more than 250 miles apart. It follows from this that, although they may each have a legal entitlement to an exclusive economic zone of 200 miles, given that the distance between them is less than 400 miles, the two coasts cannot each enjoy their full entitlement. Thus, when we leave aside the question of entitlement and turn to delimitation, some solution will have to be found which denies to one or other coast, the full entitlement of a 200-mile zone. The Norwegian answer to this problem is to rely upon the concept of "equal division". That sounds very well and the phrase has a ring of equity about it, but of course the phrase is misleading. Because the phrase is no more than a different way of saying 'equidistance', and the trouble with that solution is that it ignores completely the other very important factor - which I shall come to in a moment - which is, the very real disparity in the lengths of the two coasts. As the Court will well recall, in the *Libya/Malta* Case the Court faced a similar type of problem, with two coasts of very different lengths being less than 400 miles apart. And, just as in that case, the Court could not find an equitable solution in the simple notion of "equal division", namely strict equidistance, so too in this case the Court has to take account of the limited distance between the two coasts, in such a way as to take account at the same time of this other very important factor, the disparity between coastal lengths.

(ii) The factor of "oppositeness"

The second factor is simply that the two coasts are opposite rather than adjacent. Where the geographical relationship is one of adjacency, then the geography automatically looks after the problem of an equitable allocation of maritime areas. The geography is "self-adjusting" in the sense that the maritime area attaching to a particular length of coast is cut off at the point where that coast terminates and another adjacent coast begins. Thus, as a projection seawards the maritime area is

confined by the projections of the coasts adjoining it on either side, provided the two coastal fronts are aligned and it is those coastal fronts that are projected seawards rather than allowing minor coastal features to distort an equidistance line. It is exactly the process of self-adjustment which you see reflected in the delimitations between the Gambia and Senegal on the west coast of Africa. The Gambian projection is a corridor automatically limited by the adjoining projections of Senegal both to the north and to the south. One sees an exactly similar process on the Pacific coast of South America where, for example, the maritime zone of Ecuador is restricted by the maritime zones of Colombia to the north and Peru to the south, where lines of latitude drawn from the terminal points of the land boundary provide a delimitation which is virtually dictated by the very fact of geographical adjacency.

But with opposite coasts there is no automatic self-adjustment imposed by geography. Of course, if the opposite coasts are of comparable length, it really does not matter because the equidistance principle there produces an equal sharing of the maritime area between those coasts which is fair and proportionate precisely because the coasts are comparable, or broadly equal, in length.

But where one of the coasts is an island, and of a very different length to the opposite mainland coast, then there is no self-adjustment imposed by geography, and no equal division of the area produced by an equidistance line. The effects of equidistance, combined with the radial projection around the island, can be seen in Figure 2. The equidistance line produces an allocation of a maritime zone to the island which is patently disproportionate to its size and unfair in relation to the longer opposite mainland coast. It is in this situation that the adjustment, not being provided automatically by the geography of adjacent coasts, has to be provided by the Court. It rests with the Court to make that adjustment in order to reach an equitable result, and the factor which is paramount in the making of that adjustment is the difference in the lengths of the respective coasts. So I turn now to this third factor; the difference in coastal lengths of Greenland as compared with Jan Mayen.

(iii) The difference in coastal lengths

Now the facts are clear enough. The coastal length of Jan Mayen, facing westwards toward Greenland is some 54 kilometres. The opposite coast of Greenland is, on Denmark's calculation, some 504 kilometres, that is to say roughly nine times the length of Jan Mayen's coast. True, the measurement of the Greenland coastal length depends upon a proper identification of the relevant area and the relevant coast. The Court has already heard the justification for the selection of this particular length of coast given by Mr. Thamsborg. Even admitting that the identification of a relevant coast calls for a certain judgment, and is not mathematically self-justifying, it must be clear that the opposite coast of Greenland is many times the length of the coast of Jan Mayen. The problem is broadly that which the Court faced in the *Libya/Malta* case, and there the Court had no hesitation in rejecting strict equidistance and then seeking an equitable delimitation which took account of the various relevant factors, including the disparity in coastal lengths.

In case after case the courts have adjusted their methodology to cope with substantial disparities of this kind. I am not, at this point, discussing proportionality as a test of the equity of the result - Mr. Bernhard will deal with that later. I am discussing the relevance of a real disparity in coastal lengths to the choice of method. As the Court said in the *Libya/Malta* case:

> "It is however one thing to employ proportionality calculations to check a result; it is another thing to take note, in the course of the delimitation process, of the existence of a very marked difference in coastal lengths, and to attribute the appropriate significance to that coastal relationship ..." (*I.C.J. Reports 1985*, para. 66; emphasis added.)

I am now concerned with this second aspect of proportionality: its relevance to the delimitation process.

In the present case, Denmark submits that, once this disparity in Greenland's favour is taken into account, an equitable solution must accord to Greenland a full 200-mile zone. Indeed, as we shall see, if the disparity was more accurately reflected in a proportionate allocation of maritime areas, the boundary would lie even further than the 200-mile limit from Greenland's coast. However, Denmark is bound to accept that the law is such as to limit Greenland to a 200-mile zone and Denmark does not claim the right to exceed the 200-mile limit, imposed by law, merely on the argument that the coastal ratios between Greenland and Jan Mayen would place the boundary even

further from the Greenland coast.

But, for the result to be equitable, we need to consider all the relevant factors, not just those of geography. So I go on to consider these other relevant factors - and I hope in so doing we can get some clearer insight into the justification for drawing the delimitation line so as not to affect Greenland's full 200-mile zone.

I turn now to the conduct of the parties as a relevant factor.

B. The Conduct of the Parties

As Mr. Per Magid has demonstrated, courts have tended to turn to the conduct of the parties as a highly relevant factor in choosing the appropriate method - the method the parties, *by their own conduct*, have indicated to be likely to produce an equitable result. One has only to think of the 1982 *Tunisia/Libya* case, where the Court looked to the conduct of both Parties in using the 26° line as a dividing line for concessions granted by them, and then confirmed that line as the appropriate delimitation in the first sector, in order to see how powerful a factor this can be.

In this case, too, we have conduct of a highly persuasive kind. I refer the Court back to the survey of Norway's conduct, already reviewed in detail by my colleagues Per Magid and Ambassador Lehmann. Given that detailed treatment, I need only summarize the relevance of Norwegian conduct to this specific issue of the method for reaching an equitable result. And I can do this fairly briefly. The two instances of Norwegian conduct I would like to call to the attention of the Court are the Norwegian Agreement with Iceland, and the Norwegian fishery protection zone around Bear Island.

Now as to the *Iceland/Norway Agreement* of 1980. It is not disputed that, in the Agreement of 28 May 1980 between Norway and Iceland, Norway has accepted that Iceland is entitled to a full 200-mile zone as against Jan Mayen. In essence, Iceland maintained a position identical to that which Denmark now argues for in relation to Greenland. So the question is why does Norway treat Greenland differently from Iceland?

Norway's answer is both brief and unsatisfactory. It is, in effect, that the Agreement with Iceland was "political" or "pragmatic", I use the Norwegian terms (Counter-Memorial, para. 252). That answer simply will not do, Mr President.

In the first place, when the Norwegian Foreign Minister sought the consent of the Norwegian Parliament to this Agreement he explained exactly why Norway could not have maintained its original position - that is the median-line claim. He said: "it would have been a zone which other countries would not have respected, and which Iceland would probably actively have opposed ..." (Counter-Memorial, Ann. II, p. 54). Now, if the Norwegian Government anticipated opposition from other countries, and not just from Iceland, it must have anticipated opposition *to the legal basis of the claim*. The Norwegian Foreign Minister was not talking simply about political expediency or pragmatism: he was talking about a challenge to Norway's legal entitlement to a median-line boundary. The 1980 Agreement was therefore a resolution of *conflicting legal claims*: and a resolution acceptable to Norway. And, in the second place, as with all maritime boundary agreements, the basic conclusion must be that the agreements represented an equitable solution, acceptable to both sides. I do not suggest for one moment that no element of compromise is present in such agreements. Of course it is. But the basic, overall result is one which both Governments accept as an equitable result, as required by law and reflecting their legitimate legal rights. I suppose, theoretically, one can imagine a Foreign Minister reporting to his Parliament that the Agreement he had signed involved a cession of hundreds of square miles of maritime territory, which by law belonged to his own State, but that is difficult to imagine. Usually a Foreign Minister will commend an agreement to his Parliament because it reasonably safeguards his country's legal rights.

So the question remains: if Jan Mayen has no legal right to a median line with Iceland, why does such a legal right exist in relation to Greenland? Where is the difference?

This is a question to which Norway, in its pleadings, replies with a discreet silence.

Obviously, the difference cannot lie in entitlement: no one doubts that Iceland and Greenland are equally entitled to maritime zones. It cannot lie in their coastal lengths: for by any standard, Greenland has the longer coast by far. Nor can it lie in their distance from Jan Mayen: Greenland is

250 miles away, Iceland 290 miles, so there is little difference.

We get some clues as to how Norway perceived the difference in the Norwegian Foreign Minister's statement I have just referred to. He was obviously aware of the risk that Denmark would expect a similar agreement to that concluded with Iceland, because he referred to this pending problem expressly. What he said was this:

> "they are different in many respects. Iceland is a small country and overwhelmingly dependent on its fisheries. Special circumstances have led to our acceptance of an agreement which recognizes its zone in full. There is no question of such circumstances in connection with negotiations concerning the East Greenland zone. The latter is a matter, not of a small separate island community on its own, but of a State on the continent of Europe, and indeed of the European Communities, the EC. It is a fundamentally different situation." (Counter-Memorial, Ann. II, p. 40.)

Well now, we must assume that the Minister was speaking without the benefit of legal advice. Of course, he is right as to Iceland's comparative smallness, as compared with Greenland: but quite wrong as to his conclusion. Greenland's greater coastal length ought to increase its entitlement, not decrease it. He is wrong if he assumes Greenland is any the less dependent on fisheries. Fish and fish products at that time accounted for 80 per cent of Greenland's exports (Memorial, para. 165) and today, as Mrs. Trolle explained, account for 95 per cent; and Greenland's economy, as a whole, is far poorer than Iceland's. He is wrong in his assumption that Greenland merits a smaller maritime zone because it is part of Denmark on the continent of Europe. Denmark is as irrelevant to Greenland as Norway is to Jan Mayen: this case is about the maritime zones of Greenland and Jan Mayen, not continental Denmark, or Norway. And membership of the EEC is totally irrelevant in law: and, in fact, Greenland left the EEC in 1985.

So, Mr President, the question remains, where is the difference? If Jan Mayen was not entitled to a maritime zone which cut into Iceland's 200-mile zone, why is it that Norway thinks that the very same island, in the very same region, is entitled to cut into Greenland's 200-mile zone?

It is not as though we are dealing with a quite different delimitation, in quite different circumstances and in a different part of the world. This is the *same* island, in the *same* area; and, whatever differences may exist, as between Iceland and Greenland, should operate in Greenland's

favour, not against it. Greenland has the longer coast and is more economically dependent on fisheries than Iceland. So it cannot be right to give to it a smaller maritime zone.

Now the question may be asked: why should Norway treat Iceland and Greenland the same? Consistency may be a virtue but it is not a legal obligation.

The answer, Mr President, is that we are not dealing with virtues, or morals, but with legal rights. As the Court emphasized way back in 1969, in the *North Sea Continental Shelf* cases, the shelf attaches to the territory, ipso jure, as of legal right. And, under contemporary law, that is true of the shelf out to 200 miles: and where a single maritime boundary is sought, and justified by law, that is equally true of the waters above the shelf.

So, if the maritime zone attaches to the territory - I stress, Mr. President, *to the territory* - the question of which State is sovereign is irrelevant, for the rights in the maritime zone attach to the territory as such. In short, the boundary to Greenland's maritime zone should be the same, whether Denmark, or Iceland, or any other State is sovereign. It is simply not open to Norway to say: "Of course, if the territory had belonged to Iceland we would have accepted that the territory merited a full 200-mile zone: but since it belongs to Denmark it should get less." And, so, the inconsistency is not just a character defect: it is a denial of Greenland's legal rights.

Bear Island

The second, glaring example of inconsistency lies in Norway's treatment of Bear Island. Mr. Per Magid has dealt with this extensively, so I need add only this. If the matter is one of legal entitlement, and if Bear Island is not granted a maritime zone which cuts into the 200-mile zone off Norway's coast, why should Jan Mayen have a greater entitlement as against Greenland?

Of course, Norway replies that this is not a delimitation, but an administrative boundary. But that can scarcely be true of the rest of the outer limit around Svalbard. A reading of the proceedings in the Norwegian Parliament, when this fishery protection zone was discussed - they are reproduced as Annexes 80, 82, 83 to the Danish Reply - makes it quite clear that the limits to the fishery protection zone around Svalbard were considered by the Norwegian Government as international limits, enforceable against foreign vessels and, therefore, justified by international law. They were

not seen as internal, Norwegian administrative limits and it is difficult to see why this one section south of Bear Island should be any different. My submission is, therefore, that Norway's own practice in relation to Bear Island does show that Norway itself does not believe that an island like Bear Island is entitled to a zone which cuts into the 200-mile zone of a nearby mainland. Denmark agrees with that. And Norway has given us no reason to believe that Jan Mayen should be treated any differently in relation to Greenland.

C. The population and socio-economic factors

I turn now to the human and economic factors which bear on the present dispute. The facts are clear enough. Jan Mayen has no population at all, in the sense of a group of people to whom the island is their home. The people to be found there are about 25 in number, technicians manning a weather-station - a meteorological installation - and they are in no sense a fishing community. Indeed, the island has no harbour. It follows from this that whatever Norwegian fishing interests exist in the surrounding waters are the interests of mainland Norway - not of Jan Mayen as such.

In contrast, Greenland has a true population, heavily dependent on fisheries. It is certainly true that the traditional Greenland fisheries have been off the west coast, not around Jan Mayen. And it is true that the bulk of the Greenland population is to be found on the west coast - a fact which Norway has been at pains to emphasize.

But the east coast fishery, especially the capelin, is a resource of fairly recent discovery. And if the bulk of fishing in the waters off the east coast is carried out by foreign vessels under licence - then there is nothing very extraordinary about that. This is a practice quite common in developing countries, who benefit from their 200-mile zones more by licensing foreign fishing than by fishing themselves. What is extraordinary is that Norway, a rich nation, should choose not to pay for licences to fish in Greenland's 200-mile zone, but rather to contest Greenland's right to its 200-mile zone.

So, as I say, the facts are clear enough. Of the two land territories to which the disputed area might theoretically attach, the one - Greenland - has a vital interest in the development and protection of these fisheries: the other - Jan Mayen - has none.

As the Court will readily see, I draw a comparison solely between the two relevant territories, Greenland and Jan Mayen, and I exclude entirely mainland Norway for the very simple reason that Norway does not abut onto this maritime area. It is not a coastal State for the purposes of this delimitation.

Norway seeks to obscure this basic fact. For Norway's pleadings are full of the importance of these fisheries to Norway, and they mean mainland Norway. This is equally true of the alleged Norwegian interests in navigational safety - though for the life of me I cannot see how the size of Jan Mayen's maritime zone will affect the functioning of the meteorological station, or even of the airstrip on Jan Mayen.

But, as a matter of law, the interests of mainland Norway must be irrelevant for, as I say, Norway is not the coastal State, the relevant territory adjoining this maritime area. The moment that mainland Norway's economic interests are taken into account, we reach a result totally at variance with the contemporary law of the sea. I do not need to remind the Court that the whole *raison d'être* of the new 200-mile zone was to exclude foreign long-range fishing States. Yet it is precisely this exclusion from Greenland's 200-mile zone which Norway - a long-range fishing State - seeks to evade by postulating that the economic interests of mainland Norway can be transferred to Jan Mayen, simply because it is under Norwegian sovereignty. In short, Mr. President, my submission is that the Norwegian claim to a part of Greenland's 200-mile zone is a claim by a long-range fishing State to encroach upon that zone. To accept such a claim would be to accept a result totally at variance with the concept of an exclusive 200-mile zone. That is the reality of the situation. The claim is that of mainland Norway. Jan Mayen is simply a convenient peg on which Norway can hang the interests of mainland Norway.

Now, in asking the Court to give full respect, and full weight, to the real economic interests of Greenland, I assume, of course, that this is a legally-relevant factor. Yet I am aware that the jurisprudence has been somewhat ambivalent on the relevance of these socio-economic interests, and it may help the Court if I say something of how Denmark sees the matter.

Denmark accepts that, in deciding upon a just and equitable delimitation, the Court must be

concerned, primarily, with the geographical relationship of the two relevant coasts: and the Court is not in the business of allocating resources by an exercise of distributive justice. Equally, Denmark accepts that, following the *Tunisia/Libya* and *Libya/Malta* decisions, the Court will not accept a "Poor State v. Rich State" argument. Denmark does not, in fact, make such an argument, for it is impossible to talk of Jan Mayen in terms of wealth or poverty. Having no population, the terms are meaningless when applied to it.

Denmark equally accepts that it would not be right to establish a permanent boundary by reference to factors which are impermanent. Both in the Libyan cases and in the Arbitral Award in the *Guinea/Guinea-Bissau* case (Judgment of 14 February 1985, para. 122) we have seen a reluctance to allow the location of an exhaustible, non-renewable resource, such as oil - which might well have a productive life of no more than 25 years - to influence a boundary. Denmark has no quarrel with that view.

But here we have a renewable resource, a fishery which with careful management could well be of permanent benefit to the coastal communities of Greenland. Certainly, there are fluctuations in the size and location of the stock, for it varies from year to year according to environmental conditions. But over the long term, and assuming proper management by Iceland, Denmark and Norway, the availability of the stock ought to be assured. And so Denmark feels entitled to submit that this resource, and Greenland's dependence on it, is a highly-relevant factor.

It may well be that, if Greenland were to be denied its full entitlement to a 200-mile zone, because of Jan Mayen, Greenland would not suffer the "catastrophic repercussions" for the livelihood and economic well-being of the population of Greenland which was the test applied by the Chamber of this Court in the *Gulf of Maine* case (*I.C.J. Reports 1984*, para. 237) and approved quite recently in the *St. Pierre et Miquelon Arbitral Award* (Award of 10 June 1992, para. 84).

But Denmark submits that the Court is entitled to look to the future, as well as to the present. And though, because the capelin fishery is a recent one, the effect of denying Greenland its full 200-mile zone may not have catastrophic repercussions on the existing living standards of the Greenlanders, we are entitled to look to the future. In the long-term, the future benefits to the

Greenlanders could be very substantial. And the loss of this future long-term benefit in the fishery could have a very considerable impact on the future prosperity of the population. It is in this light that Denmark asks the Court to view Greenland's economic and social dependence on the fishery as a highly-relevant factor. This was the main thrust behind the intervention by Mrs. Trolle on Tuesday.

After all, there is both logic and reasonableness in asking that, for the purpose of delimiting fishery zones, account should be taken of the dependence of the coastal populations on those fisheries. For that is the whole purpose of these zones - to support the coastal communities. The theme which emerged in UNCLOS III, and which commanded wide support, was that it was right and equitable to grant to coastal States a full 200-mile exclusive economic zone precisely because such a zone would contribute to the economic prosperity of the coastal State.

This is the policy of the law, the rationale for the "distance-principle", the 200-mile zone. The approach to delimitation must be consistent with that policy. It would be extraordinary if the entitlement to a 200-mile zone were based upon one policy, but delimitation of that zone were based upon totally different policies.

And that is why Denmark suggests that it must be right to take account of the dependence - already actual and potentially vital - of the people of Greenland on these fisheries. Equally, that is why Denmark suggests that it cannot be right to give an equal maritime area, and an equal access to these valuable resources, to 25 men who do not even fish.

Mr. President, that concludes what I wish to say on the three factors relevant to this delimitation. There is, however, one more area in which I might be of some assistance to the Court - that is the evidence of State practice in comparable situations. Now this is quite different. It is not a relevant factor in the accepted sense, and courts have traditionally been reluctant to see State practice as even a useful guide, precisely because each situation is so different. But since the pleadings of both Parties have referred to State practice, it would not be right for me to say nothing about the evidence - such as it is - which they put before the Court.

III. State Practice

As Norway quite rightly points out (Counter-Memorial, para. 440), in the *Libya/Malta* case,

the Court recognized the importance of State practice, as illustrating how States regarded an equitable result might be achieved in particular situations. However, the fact is that, in the jurisprudence so far, State practice has not exerted any great influence. And the reason for this is clear enough. One must compare like with like. To have any real significance the examples must be truly analogous - "on all fours," as we say in the common law - and the fact of the matter is that this is rarely the case. In the main, the cases that come to the Court are rather special, if not unique.

Thus, the first task must be to identify the special features of this case. We must ask: what are its distinguishing characteristics? Only when those are identified can useful comparisons be made. There would appear to be *three*: a small, barely-inhabited island lying off another State's long, mainland coast; the isolation of that island from its metropolitan mainland, so that its claim to a maritime zone is based entirely on the island per se. And a distance between the two of less than 400 miles.

If those are the characteristics of the present case - and I hope the Court will feel that I have identified them fairly and objectively - then the fact is that there are very few examples of State practice that can offer any real analogy.

In its Counter-Memorial Norway has offered us some 17 examples. I am fully prepared to deal with each and every one of them in detail. But, Mr. President, the examples are almost wholly irrelevant to our case, for the islands in those examples do not have the essential characteristics of our case. And so I am reluctant to burden the Court with a long, detailed analysis of each example when, in my view - and I suspect the Court's view - it would not assist the Court in any way.

So perhaps at this stage I can content myself with indicating why, in general terms, I find Norway's examples irrelevant. I can then offer a more detailed analysis of any particular agreement in the second round of pleading, should the Court indicate that it would be assisted by such an analysis.

Now first, there can be no comparison between our case and the many cases where the island's entitlement is linked to the entitlement of a larger mainland, so that there is, in effect, but one maritime zone common to both island and mainland. Thus, the Japan/Korea Agreement of 1974

(Counter-Memorial, Ann. 56) cannot help us, for the zone attaching to the island of Tsushima is integrated into the zone attaching to the mainland of Japan. Even the Venezuelan agreements in the area of Aves Island with the United States of America (Ann. 63), with the Netherlands (Ann. 64B), or with France (Ann. 71) fall into this same category. For the treatment of Aves Island was not as an isolated island, but as part of the entitlement of Venezuela itself, and both island and mainland share a common maritime zone.

Second, there can be no comparison with agreements balancing one small island group against another. Greenland is not a small island group. So, for example, the France/Australia Agreement of 1982 (Ann. 73), balancing small groups of islands in the Coral Sea, tells us nothing.

Third, there can be no real analogy with cases where there is a large island group with a long coastal façade and an important population and economy. Thus, the various agreements concluded by India concerning the Nicobars and Andaman Islands - agreements with Indonesia (Anns. 57 and 60), with Thailand (Ann. 66), and with Myanmar (Ann. 75) - offer no real analogy. For the Indian groups of islands are large, well-populated, and have a coastal façade of a length matching that of its neighbour. The agreements concluded by Colombia regarding the Intendencia San Andres y Providencia - with Panama (Ann. 58 A), with Costa Rica and Honduras (new illustration) - are not dissimilar. And so, too, with the United Kingdom/Norway Agreement of 1965 (Ann. 44), as regards the Orkneys and Shetlands, which are well-populated islands. And certainly none of these agreements concerns a small, totally-detached and uninhabited island like Jan Mayen.

Mr. President, that brings me to the end of my discussion of the examples of State practice used by Norway. I hope I have shown that they are none of them true analogies. In particular, none of them show any practice to support the proposition that a small island, with no population, should have a maritime zone which cuts into the 200-mile zone off a nearby, populated landmass.

I have to say, Mr. President, that there is, to Denmark's knowledge, only one truly comparable example to be drawn from State practice. This is the Norway/Iceland Agreement of 1980 and 1981. Even there, as I have already pointed out, the Icelandic coast is far less extensive than Greenland's - so Greenland should, from that point of view, merit more favourable treatment than Iceland,

vis-à-vis Jan Mayen.

There are, as Denmark has pointed out in the Memorial, examples where a maritime area has been divided, not by a median line but by a line effecting an areal division in an agreed proportion. For example, the 1988 Sweden/USSR Agreement (Memorial, Ann. 29). This gave the island of Gotland a reduced effect as against the Soviet mainland, even though Gotland is heavily populated. The 1988 Denmark/GDR Agreement (Memorial, p. 93) and the 1989 Poland/Sweden Agreement (Memorial, p. 93) are similar in effect.

But these are not true analogies, but more in the nature of cases *a fortiori*. By that I mean that, if heavily-populated islands do not justify a median-line, then, *a fortiori*, a small island with no population should not.

Hence, in the absence of true comparisons, the Court must, in Denmark's submission, go back to basic principles. As I have already shown, these not only cannot support a median-line, they cannot support any delimitation which would affect Greenland's 200-mile zone.

I almost have the impression that we are before the Court arguing the wrong case. Even if Greenland gets its full 200-mile zone, that still leaves Jan Mayen with an area of 31,000 sq. km. within the relevant area: plus a further 224,000 sq. km. to the north, east and south of Jan Mayen, but outside the relevant area (Reply, Map V). As the Norwegian Chairman of the Foreign Affairs Committee told the Norwegian Parliament with some pride in 1980, when reporting the Agreement with Iceland (Counter Memorial, Ann. 11), this was an area equal to the size of the entire mainland of Norway.

There must be some question, or at least some concern, over a result which gives to Norway such a vast area of exclusive fisheries, in an area of otherwise high seas, far from its own coasts and simply by virtue of this one small island with no permanent population. Maybe that is the basic question the Court ought to be considering.

But I accept that this rather basic question is not properly before the Court. Nevertheless, the extraordinary situation does exist. And all that Denmark really asks is that the Court should not make that extraordinary situation even more extraordinary by granting to Jan Mayen yet more of an

area, and at the expense of Greenland.

IV. The methods proposed by the Parties

In conclusion, I need say relatively little about the two methods proposed by the Parties, because the whole of my previous argument has been directed towards showing that Denmark's proposed method is consistent with the law: and Norway's is not.

I need not review the case for a single maritime boundary: that has already been made by Dr. Jiménez de Aréchaga.

And it must be clear that the actual line proposed by Denmark does conform to the relevant factors in this case.

It conforms to the geography, for it grapples with the most glaring feature of the geography - the large discrepancy in the lengths of the two relevant coasts - in a way which Norway's method does not.

It conforms to the pattern of conduct established by the Parties, for the Danish method is consistent with the conduct already adopted by Norway in the same region vis-à-vis Iceland. In contrast, Norway's method is quite incompatible with its earlier conduct. And the Danish method certainly conforms to the human and economic realities of the situation. The Greenlanders need the maximum resources they can derive from their economic zones, if they are to have any reasonable prospect of future development and economic prosperity. And that means they need the full 200-mile zone that the law allows to a coastal State. In contrast, those 25 men on Jan Mayen need nothing from any maritime zone around Jan Mayen. Whatever fish they need will come straight out of the deep freeze, to be replenished by the next flight from Norway. So the Norwegian method is irrelevant to Jan Mayen: it has, as its purpose, the enrichment of a small part of the Norwegian population on mainland Norway.

There remain only two questions. If Denmark's method is correct in principle, is it technically justified in its application? And, secondly, does the line drawn by that method meet the proportionality test, as a measure of the equity of the result?

Mr. President, those two final questions will be addressed by my colleagues, Mr. Thamsborg

and Mr. Bernhard. Perhaps I could ask you to call on Mr. Thamsborg after the coffee break?

The PRESIDENT: Yes. Thank you very much Professor Bowett. We will adjourn now for ten minutes or so and then we will return to hear the rest of the Danish case. Thank you.

The Court adjourned from 11.25 to 11.50 a.m.

The PRESIDENT: Mr. Thamsborg, please.

Mr. THAMSBORG:

The Danish method of the actual drawing of Greenland's 200-nautical-mile line within the bounds of the

relevant area

Mr. President, honourable Members of the Court, it is now my task to finish with a brief explanation to the Court as to the actual drawing of the line claimed by Denmark. The figure which you see there is the same as figure 2 in the folder distributed on Monday morning to Members of the Court and the Norwegian Delegation and it shows the disputed area.

> According to the second paragraph of our submissions the Court is respectfully asked
> "to draw a single line of delimitation of the fishery zone and continental shelf area of Greenland in the waters between Greenland and Jan Mayen at a distance of 200 nautical miles measured from Greenland's baseline, the appropriate part of which is given by straight lines (geodesics) joining the following points in the indicated order ...",

and here follows an enumeration of the relevant basepoints from Scoresbysund in the south to Shannon Island in the north.

The mathematical concept underlying the drawing of such line is that of a spatial line (or curve) at a distance (in this case 200 nm) from another line (or curve), both lines (curves) being situated on the closed surface of the WGS 84 ellipsoid of revolution.

In common usage such a line is called a *distance line*.

In mathematics, however, the expression *envelope of arcs of circles* is almost invariably utilized, whether the line is on the plane or in space.

The characteristics of the distance line, or the envelope of arcs of circles, as related to the pertinent provisions of the Law of the Sea Conventions of 1958 and 1982 have been discussed at length in my previous presentation. On this occasion, therefore, I shall confine myself strictly to the method of the actual drawing of the 200-nm line off East Greenland.

Since only the segment of Greenland's 200-nm line which falls within the bounds of the earlier identified relevant area, is of pertinence to the case, the Court is accordingly asked to draw the line off East Greenland only from point A to point B. The Court will remember that point A is the northern 200-nm equidistance point as measured from Greenland's and Jan Mayen's baseline, or, expressed otherwise, the intersection point of the two claim lines, while point B is the northern 200-nm equidistance point as measured from Greenland's and Iceland's baseline, i.e., the northern intersection point between the 200-nm lines of Greenland and Iceland.

A few observations on the desired geodetic precision of Greenland's 200-nm line. Conventional geometric construction with ruler and compasses on the chart of a line at the distance of 200 nm from the appropriate baseline is far too inaccurate to constitute adequately the outer limit of zone and shelf, particularly when bearing in mind that such a line, if occasion should arise, might play, wholly or in part, the additional role of maritime boundary between two territories (States). The hydrographer, therefore, must calculate a sequence of single points along the line based on precise geodetic formulas and transformation parameters. By traditional methods this is a lengthy process. However, where adequate computer programmes are available and easy access to large computers including automatic drawing facilities is at hand, the hydrographic expert is readily able to compute and present on a chart or plotting sheet on suitable scale and projection a closely-spaced series of precise points along the line. The co-ordinates of the points in WGS 84 should be expressed to the same formal accuracy as the baseline points, that means to the nearest tenth of the second of arc of geographical latitude and longitude.

Since the distance line (envelope) in principle consists of an infinity of successive points satisfying the distance criterion, it follows that the more points the better the approximation to the idealized line.

As announced in the Danish Reply at page 173, paragraph 479, the suggested detailed computation of Greenland's 200-nm line by 119 sequential points is presented in a booklet entitled: Computation of the 200-Nautical Mile Delimitation Line off East Greenland, January 1991, edited by the Ministry of Foreign Affairs, Copenhagen.

Since details on the actual computation of the 119 points are given in the booklet, I think it suffices on this occasion to state that the Danish version of Greenland's 200-nm line, as a close fit to the idealized line, takes the form of a geodetic traverse from point A to point B embracing 117 intermediate points.

With a view to a possible straightening of the rather complex 200-nm line an account of the estimated areal deviations between the "true" line and the suggested traverse has also been presented in that booklet.

This brings me to the end of my presentation. I take advantage of the opportunity to thank the Members of the Court for their patience and attention throughout my presentations.

Mr. President, may I ask you to call upon Mr. John Bernhard.

The PRESIDENT: Thank you very much, Mr. Thamsborg. Mr. Bernhard, please.

Mr. BERNHARD:

Proportionality and the equity of the result

Mr. President, distinguished Members of the Court, most of what has been written and said in this case so far demonstrates that we are dealing with a delimitation between two territories of a highly different character. So different in all relevant aspects that it makes the case unique in the judicial history of maritime delimitation.

This, in our view, logically leads to the assumption that the concept of proportionality should play an essential role in order to obtain an equitable result in this delimitation case.

In what follows, I shall present the Danish position on this concept dealing, firstly, with the legal role of proportionality in general and, secondly, with its application to the present case.

The concept of proportionality has been gradually developed and clarified by jurisprudence over the last almost 25 years, starting with the *North Sea Continental Shelf* cases in 1969. The Judgment underlined the importance of a reasonable degree of proportionality between the area of the continental shelf of each of the States concerned and the lengths of their respective coastlines. Proportionality was seen as a factor to be taken into account already during the negotiations between the Parties, and not merely as a subsequent test of the equity of the result achieved.

The Court of Arbitration, in the case concerning the *Delimitation of the Continental Shelf* between the United Kingdom and France in 1977, interpreted the Court's pronouncement rather narrowly, on the one hand, by seeing proportionality most often as a factor for determining the effects of particular geographical features upon the course of an equidistance-line boundary. But, on the other hand, the proportionality factor unquestionably influenced the decision, as the Court of Arbitration in fact did compare the lengths of the mainland coasts of the Parties, in order to conclude that they were of comparable length, which again led to the adoption of a median-line as the basic boundary throughout the Channel. Thus, comparability as a key word in connection with proportionality emerged here and has maintained its position since. I shall later revert to the significance of what could be called the comparability test in relation to Greenland and Jan Mayen.

What is, of course, of fundamental importance when taking stock of the legal development is that, in the three most recent delimitation Judgments of the International Court of Justice the Court has confirmed that proportionality has to be taken into consideration before a decision on delimitation can be taken. The exact role of proportionality under different circumstances may not yet be fully developed, but the three Judgments leave no doubt as to the necessity of paying due attention to it, and they offer a valuable clarification of the field of application of proportionality.

From the Judgment in the *Tunisia/Libya* case from 1982 it is clear that proportionality is a general factor which is applicable to different geographical situations and not only to particular coastal configurations, a restraint which seemed to govern part of the reasoning in the *United Kingdom/France* case just mentioned.

The general applicability of the factor of proportionality was confirmed two years later by the

Chamber of the International Court of Justice in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine* Area. In the Chamber's view it was impossible to disregard a circumstance which was of undeniable importance in the case, namely, a difference in length between the respective coastlines of the two States which bordered on the delimitation area. It is interesting here to note that the difference between the lengths of the coasts corresponded to a ratio of 1.32:1 and that this difference was characterized by the Chamber as "particularly notable" in comparison with several other cases. The difference, very modest as it may appear compared to the difference in the case before us today, gave rise to a correction to the median-line as initially drawn.

And one year later, in 1985, in the *Libya/Malta* case, the International Court of Justice dealt with a difference in length of the respective coasts of no less than 8:1, a ratio which was described as "unusual", "unique in delimitation processes" and "surely a particularly relevant factor in this case". Some highly relevant points with regard to the concept of proportionality were clarified by the Court in the *Libya/Malta* case. The lengths of the respective coasts or, to quote the expression of the Court their "comparability or otherwise", may be taken into consideration already in the determination of the delimitation line, that is the choice of a particular method, and not only subsequently as a test of the proportionality, i.e., to check the equity of the result achieved by the initial delimitation. The question of a marked disparity between the coastal lengths - or their comparability at all - is dealt with at the first of these two stages as one of the relevant circumstances.

To end this short survey of relevant jurisprudence, I should like to mention the decision of 1992 by the Court of Arbitration in the case concerning the *Delimitation of the Maritime Areas* between Canada and France. The ratio between the Canadian and the French coastline was estimated to be 15.3:1, doubtless a marked disparity. The Court stated that the difference in length was an important factor to take into account for an equitable delimitation, in order to avoid disproportionate results and, subsequently, to test the equitableness of the solution finally adopted.

Referring to the Judgment of the International Court of Justice in the *Libya/Malta* case, the Court of Arbitration actually did apply the proportionality test to the solution which the Court had formulated independently of the proposals of the Parties. The solution produced a ratio for the areas

of approximately 16.4:1, i.e., a little higher than the ratio of the relevant coastal fronts. This calculation made the Court conclude that the requirements of the test of proportionality, as an aspect of equity, had been satisfied. Thus, this decision is another strong example of the role of proportionality and, in particular, in the form of a quantified proportionality test.

This aspect, the quantified proportionality test, was criticized in the dissenting opinion of Mr. Prosper Weil, who questioned whether there was any real difference between that test and proportionality as a direct delimitation criterion, which he was strongly opposed to. At the same time, Mr. Weil recognized that the jurisprudence authorized the Court to take into account a great disparity between the lengths of coastlines as a relevant circumstance among others, but, according to Mr. Weil, without seeking to define it in quantitative terms. It should finally be noted that Mr. Weil did not question the applicability of the subsequent proportionality test in itself, but only in its quantified form.

It must be added that the other dissenting opinion, by Mr. Allan E. Gotlieb of Canada, gave strong support to the role of proportionality. So one may safely conclude that the latest international decision confirms the importance of this concept in the attainment of equitable results in delimitation situations.

In the view of the Danish Government, it has become increasingly clear that proportionality may play a role at two stages: first, as a relevant circumstance or factor to be taken into consideration together with other criteria in order to adopt a method appropriate for an equitable delimitation line. Second, as a subsequent proportionality test aimed at checking the equity of the delimitation arrived at. At the first stage, a general consideration of the comparability of the coasts prima facie takes place, while at the latter stage the difference of coastal lengths is normally described as an arithmetical ratio.

I should like to underline that proportionality, in the Danish view, is not to be employed as an independent basis of delimitation, as alleged in the Norwegian Reply (para. 688) and repeated in the Rejoinder (paras. 608 and 623 *inter alia*). It is not a method per se; and certainly not a basis of title. We do not regard it as a principle that should directly dictate the delimitation, constituting the

ratio decidendi, which, as stated by the International Court of Justice in the *Libya/Malta* case, would make it difficult indeed to see what room would be left for any other consideration.

We certainly do not propose a method so simplified and far-reaching which obviously would be no guarantee of reaching an equitable solution. But, in view of the relevant jurisprudence, it is clearly not defensible to maintain the Norwegian position on the role of proportionality. Norway has characterized the Danish position as "eccentric" - this expression is perhaps more appropriate when describing the attempt by Norway to defend its view on the reduced role of proportionality as a still valid description of the legal situation today.

It is quite understandable that today's concept of proportionality is not considered very helpful to Norwegian interests in this case, to put it mildly. Nevertheless, contemporary international law has taken it into due account, and to a much larger degree than admitted by Norway. Even from the most conservative legal standpoint the case before us presents some features which are highly exceptional in a proportionality context and which must necessarily influence the result of the delimitation in order to make it equitable.

And that is all we are asking for. We do not insist on a specific legal role of proportionality in one or the other phase of the delimitation process, and we have no sympathy for reducing delimitations to pure arithmetical calculations. But in the light of the jurisprudence it could hardly be denied that proportionality is highly relevant in this particular case - probably more so than in any previous case. We think that, no matter how narrowly one would like to interpret the role of proportionality in international law, the figures and the facts regarding Greenland and Jan Mayen speak a clear and impressive language. How to translate that language into an equitable result is, of course, a matter for the Court to decide, but in what follows I should like to turn to the points which, in the view of the Danish Government, should be taken into account in that regard.

The disparity between the two relevant coast lengths is obvious. A glance at the map already sends that message, and the figures confirm it. There is a more marked difference between them than in any of the previous cases before this Court: Greenland's coastal front has a length of approximately 504 kilometres whereas Jan Mayen's coastal front, i.e., largely the whole of the

façade towards west, is about 54 kilometres long. Thus, the ratio is 9.2 to 1 in favour of Greenland.

Now, what maritime areas would attach to each coast, following the Danish and the Norwegian claims, respectively? First, if Greenland's 200-nautical-mile zone is fully respected, an area of about 206,000 square kilometres would be attributed to Greenland and 31,000 square kilometres to Jan Mayen. This gives a ratio of 6.7 to 1 in favour of Greenland.

If I may recall the ratio of coastal lengths, 9.2 to 1, the solution claimed by Denmark thus gives Greenland an area which is almost one-third smaller than indicated by the coastal lengths ratio. Without exaggerating the role of algebra in this respect, I think that even if proportionality is only used as a subsequent test and only concerning the relation between coastal lengths and maritime areas, the Danish claim would certainly seem to safeguard Norwegian interests in a more than equitable way.

But this is not enough for Norway. Norway wants a solution, the equidistance line, which would bring in 96,000 square kilometres to Jan Mayen, leaving 141,000 square kilometres to Greenland. In other words a ratio of only 1.5 to 1 in favour of Greenland, compared to the coastal lengths ratio of 9.2 to 1.

According to Norway, this is an equitable result. Denmark finds that the result could hardly be more inequitable, based as it would be on a disproportionality of hitherto unknown and unseen dimensions.

In conclusion, the Danish claim would not only respect Norwegian interests, from the point of view of proportionality - it would even be clearly favourable to Norway by that standard. In contrast, the result of the Norwegian claim would completely disregard proportionality.

So far, I have concentrated on coastal lengths when dealing with the concept of proportionality. So has jurisprudence, with minor exceptions which I shall revert to a little later, and doubtless, this is perfectly natural in the great majority of cases.

However, there may be cases involving such extreme differences on virtually all other features of the relevant territories that a comparison based solely on coasts would not give a full and true picture. This is such a case.

In fact, the differences between Greenland and Jan Mayen are so fundamental that it is even difficult to make a comparison at all by normal standards, figures, and ratios.

For example, this is the case with the population. Greenland has been inhabited for several thousand years. It has now about 55,000 inhabitants, 6 per cent of them living on the east coast. Greenland is a living and viable society with human beings earning their living there.

Jan Mayen has never had any population whatsoever. Not one human being has been or is living there in the proper sense of that word, that is, making a living from the land and the sea - the so-called "population" consists of a few persons posted there for short periods in order to run a meteorological station.

A disparity of this kind cannot be described by figures or ratios obviously - the two territorial units are simply not comparable in this respect.

Then a comparison is possible when it comes to the land territory of Greenland and Jan Mayen, respectively. Even though the landmass as such is not a relevant factor, the figures are striking. Greenland's territory is about 5,800 times larger than that of Jan Mayen, that is, 2,200,000 square kilometres *versus* 380 square kilometres. If one would choose to count only the ice-free area of Greenland, the ratio is still 900 to 1.

Greenland, as a society of people who have to make their living, has an economic life of its own which, as mentioned earlier, is overwhelmingly dependent on fisheries. Taking into account the absence of a population on Jan Mayen, it comes as no surprise that Jan Mayen has no economic life, not even in the form of Norwegian mainland-based economic activities operating from the island.

Therefore it also goes without saying that Jan Mayen has no social or political life. Greenland, on the other hand, has a Home Rule status within the Danish Realm, it has a Government, it has an administration and, of course, all the institutions and public services which follow from such status.

All these other aspects, besides the coastal lengths, may not traditionally be considered part of the concept of proportionality. But not to take these facts into account, together with other relevant circumstances, would seem to remove the delimitation process from real life.

It is true that such elements have not played - and usually should not play - any decisive role in decisions concerning delimitation. But they have certainly not been ignored by the jurisprudence. Without going into details I find that statements in three international Judgments - the *Libya/Malta* case, the *Anglo/French* case and the *Canadian/French* case - clearly indicate that factors such as socio-political status, economic life and population cannot be disregarded. They cannot be dismissed in the high-handed Norwegian way, characterizing them as "certain irrelevant factors invoked by Denmark".

In the case before us, the picture of the two territorial units, Greenland and Jan Mayen, is obviously only half finished if one stops at the coastal lengths, however important they and the difference between them are. The additional elements are indispensable in order to illustrate the fundamentally different character of Greenland and Jan Mayen.

And what are the arguments of Norway against the Danish proportionality considerations? They are few and far from convincing. From the Counter-Memorial and Rejoinder it seems that the substantial *interests* of Norway in the maritime areas plays the main part, and more specifically the importance for Norway of security considerations, of whaling, sealing and fisheries, and of the potential resource of the sea-bed areas. These Norwegian interests would be weakened if disparities in the lengths of coasts were to be given a major role in the process of delimitation, it is said. In other words, if proportionality considerations contributed to strengthen the Danish position, Norway and *mainland* Norwegian interests would lose! Of course they would! And why not, one may ask? The Norwegian interest is a mainland interest, not a Jan Mayen interest, and is not a relevant factor of international law in *this* maritime delimitation. Nevertheless, it is used by Norway to oppose the legal arguments and relevant factors advanced by Denmark.

Norway's line of argumentation illustrates better than any words the impossibility of even trying to present Jan Mayen as a territorial unit comparable to Greenland. Instead, Norway has to resort to its mainland-based interests in the area around Jan Mayen. They are valuable, no doubt, but they are not relevant in the context of the present legal proceedings.

In conclusion, the proportionality factor, together with the other relevant factors, speaks

clearly in favour of accepting the 200-mile maritime zone of Greenland as the equitable delimitation line in the present case. A test of proportionality shows that if this solution could be said to lack equity it is certainly not because of a disproportionate effect towards Jan Mayen, but because the area attributed to Greenland even under this formula is so modest. Thus, logically, any reduction in the 200-mile maritime zone of Greenland in favour of Jan Mayen would obviously also reduce the equitable character of the result. In this connection it should not be forgotten that, in any event, Jan Mayen's total maritime zone, counting also the areas in the other directions, will be of an absolutely exceptional size, in particular taking into account the extensive maritime zones lying to the east of the island, because of the distance to mainland Norway.

It is not often that a brief look at the map and a few facts about the territorial units involved point to a clear solution of a delimitation dispute. This, however, is the case here. A further examination of the relevant factors seen in the proper legal framework only confirms this impression: what at first sight seemed to be the equitable result, remains so, not least after having been examined from the point of view of proportionality.

With your permission, Mr. President, I shall now leave the floor to Mr. Lehmann who will deliver the concluding remarks of the initial Danish presentation. Thank you, Mr. President.

The PRESIDENT: Thank you, Mr. Bernhard. Mr. Lehmann.

Mr. LEHMANN:

Concluding Remarks

Mr. President, distinguished Members of the Court.

We have come to the end of the Danish presentation of its case in this first round of oral pleadings. And I shall spare the Court from a repetition of even the main conclusions on the various topics dealt with in this oral pleading and limit myself to a summing-up in the following simple terms.

The Government of Denmark on behalf of Greenland asks the Court to draw a *single line* of delimitation in the waters between Greenland and the Norwegian island of Jan Mayen.

In so doing we respectfully submit that the line should be drawn in such a way as to secure that an *equitable solution* is achieved.

In weighing the *factors* which are considered to be relevant in achieving an equitable result it is the further submission of Denmark that the factor of *geography*, the factor of population, and the factor of the Parties' *conduct* in relation to Jan Mayen are those to be considered the most relevant in the present delimitation case. All these factors operate in our view conclusively in favour of Greenland so as to leave Greenland's 200-mile fishery zone and corresponding shelf area untouched by the maritime zones to which Jan Mayen is otherwise entitled.

This *result* according to which the delimitation line will leave Greenland with a 200-mile zone and Jan Mayen with a zone of about 45 nautical miles at its shortest distance certainly does not have any *disproportionate* effect - neither in the direct relationship between Greenland and Jan Mayen, nor in relation to other maritime delimitations carried out in this *region* of the North Atlantic.

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I thank you, Mr. President, and your distinguished colleagues for having listened with such patience to the Danish presentation in this first round of our oral pleadings.

The PRESIDENT: Thank you, Mr. Lehmann. Now I understand that Norway will be ready to begin tomorrow morning. We will now adjourn and meet again at 10 a.m. tomorrow morning. Thank you.

The Court rose at 12.35 p.m.