INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
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# CASE CONCERNING MARITIME DELIMITATION IN THE AREA BETWEEN GREENLAND AND JAN MAYEN

(DENMARK *v.* NORWAY)

**JUDGMENT OF 14 JUNE 1993**

# 1993

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

# AFFAIRE DE LA DÉLIMITATION MARITIME DANS LA RÉGION SITUÉE ENTRE LE GROENLAND ET JAN MAYEN

(DANEMARK c. NORVÈGE)

**ARRÊT DU 14 JUIN 1993**

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# CASE CONCERNING MARITIME DELIMITATION IN THE AREA BETWEEN GREENLAND AND JAN MAYEN

(DENMARK *v.* NORWAY)

*Delimitation of the continental shelf and fishery zones of two States with opposite coasts — Maritime area the subject of the present proceedings — Request by Applicant for the drawing of a single line of delimitation — Contention of Respondent that two separate but coincident lines (median lines) are the appropriate boundaries.*

*Claim by Norway that a continental shelf boundary is already "in place" by virtue of a 1965 Agreement between the Parties providing for employment of a median line — Interpretation of Agreement — Text, context and object and purpose of Agreement — Subsequent practice of Parties — Scope* ratione loci *of the Agreement.*

*Claim by Norway that a continental shelf boundary is already "in place" by the effect between the Parties of the 1958 Geneva Convention on the Continental Shelf — Claim that Denmark had accepted that there were no "special circumstances" in the area.*

*Claim by Norway that Parties by their conduct have recognized applicability of a median line delimitation for continental shelf and fishery zones — Danish legislative acts — Diplomatic contacts and exchanges — Positions expressed by Parties at Third United Nations Conference on the Law of the Sea.*

*Law applicable to the delimitation — Absence of agreement of Parties on a single maritime boundary — 1958 Geneva Convention on the Continental Shelf applicable to delimitation of the continental shelf — Customary law applicable to fishery zones — Relationship of this law with that governing exclusive economic zone.*

*Provisional drawing, as first step in delimitation process, of a median line that may then be adjusted or shifted to ensure an equitable result — Whether appropriate for continental shelf — Whether appropriate for fishery zones — Factors*

*requiring adjustment or shifting of provisional line — "Special circumstances" under 1958 Geneva Convention — "Relevant circumstances" and customary law.*

*Special circumstances and relevant circumstances in the present case indicated by the Parties — Disparity of lengths of relevant coasts — Whether 200-mile line from the Greenland coast equitable boundary — Access to fishery resources — Pattern of distribution of fish stocks — Effect of ice — Effect on access to waters — Population and socio-economic factors — Security considerations — Conduct of the Parties — 1980 and 1981 Agreements between Norway and Iceland on Fishery and Continental Shelf Questions — Relationship between fishery protection zone round Svalbard (including Bear Island) and economic zone of Norwegian mainland.*

*Whether Court should confine itself to "declaratory" judgment or should delimit the boundary — Method of delimitation.*

## JUDGMENT

*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.

In the case concerning maritime delimitation in the area between Greenland and Jan Mayen,

*between*

the Kingdom of Denmark,

represented by

Mr. Tyge Lehmann, Ambassador, Legal Adviser, Ministry of Foreign Affairs,

Mr. John Bernhard, Ambassador, Ministry of Foreign Affairs,

as Agents;

Mr. Per Magid, Attorney,

as Agent and Advocate;

Mr. Eduardo Jiménez de Aréchaga, Professor of International Law, Law School, Catholic University of Uruguay,

Mr. Derek W. Bowett, C.B.E, Q.C., F.B.A., Emeritus Whewell Professor of International Law in the University of Cambridge,

as Counsel and Advocates;

Mr. Finn Lynge, Expert-Consultant for Greenland Affairs, Ministry of Foreign Affairs,

Ms Kirsten Trolle, Expert-Consultant, Greenland Home Rule Authority,

Mr. Milan Thamsborg, Hydrographic Expert,

as Counsel and Experts;

Mr. Jakob Høyrup, Head of Section, Ministry of Foreign Affairs,
Ms Aase Adamsen, Head of Section, Ministry of Foreign Affairs,
Mr. Frede Madsen, State Geodesist, Danish National Survey and Cadastre,

Mr. Ditlev Schwanenflügel, Assistant Attorney,
Mr. Olaf Koktvedgaard, Assistant Attorney,

as Advisers;

and

Ms Jeanett Probst Osborn, Ministry of Foreign Affairs,
Ms Birgit Skov, Ministry of Foreign Affairs,

as Secretaries,

*and*

the Kingdom of Norway,

represented by

Mr. Bjørn Haug, Solicitor-General,
Mr. Per Tresselt, Consul-General, Berlin,

as Agents and Counsel;

Mr. Ian Brownlie, Q.C., D.C.L., F.B.A., Chichele Professor of Public International Law, University of Oxford; Fellow of All Souls College, Oxford,

Mr. Keith Highet, Visiting Professor of International Law at the Fletcher School of Law and Diplomacy and Member of the Bars of New York and the District of Columbia,
Mr. Prosper Weil, Professor Emeritus at the Université de droit, d'économie et de sciences sociales de Paris,

as Counsel and Advocates;

Mr. Morten Ruud, Director-General, Polar Division, Ministry of Justice,

Mr. Peter Gullestad, Director-General, Fisheries Directorate,
Commander P. B. Beazley, O.B.E., F.R.I.C.S., R.N. (Ret'd),

as Advisers;

Ms Kristine Ryssdal, Assistant Solicitor-General,
Mr. Rolf Einar Fife, First Secretary, Permanent Mission to the United Nations, New York,

as Counsellors;

Ms Nina Lund, Junior Executive Officer, Ministry of Foreign Affairs,
Ms Juliette Bernard, Clerk, Ministry of Foreign Affairs,
Ms Alicia Herrera, The Hague,

as Technical Staff,

THE COURT,

composed as above,

after deliberation,

*delivers the following Judgment:*

1. On 16 August 1988 the Chargé d'affaires *ad interim* of the Embassy in The Hague of the Kingdom of Denmark filed in the Registry of the Court an Application instituting proceedings against the Kingdom of Norway in respect of a dispute concerning maritime delimitation between the Danish territory of Greenland and the Norwegian island of Jan Mayen. In order to found the jurisdiction of the Court the Application relied on declarations made by the Parties accepting the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute.

2. Pursuant to Article 40, paragraph 2, of the Statute of the Court, the Application was forthwith communicated by the Registrar to the Government of Norway. In accordance with paragraph 3 of that Article, all other States entitled to appear before the Court were notified by the Registrar of the Application.

3. By Orders made by the Court on 14 October 1988 and by the President of the Court on 21 June 1990, time-limits were fixed for a Memorial and a Counter-Memorial and for a Reply and a Rejoinder, respectively; these pleadings were duly filed within the time-limits fixed therefor.

4. Since the Court included upon the bench a judge of Norwegian nationality, but no judge of Danish nationality, the Government of Denmark, in exercise of its right under Article 31, paragraph 2, of the Statute, chose Mr. Paul Henning Fischer to sit as judge *ad hoc*.

5. Between the date of filing of the Reply of Denmark and the opening of the oral proceedings a series of supplemental documents were filed in turn by Denmark, by Norway, again by Denmark and again by Norway. After the closure of the written proceedings, the other Party was consulted in each case in accordance with Article 56 of the Rules of Court, and indicated that it had no objection to the production of the documents.

6. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and annexed documents should be made accessible to the public from the opening of the oral proceedings.

7. At public hearings held between 11 and 27 January 1993, the Court heard oral arguments addressed to it by the following:

| | |
|---|---|
| *For the Kingdom of Denmark:* | Mr. Tyge Lehmann,<br>Mr. John Bernhard,<br>Mr. Per Magid,<br>Mr. Eduardo Jiménez de Aréchaga,<br>Mr. Derek W. Bowett, Q.C.,<br>Mr. Finn Lynge,<br>Ms Kirsten Trolle,<br>Mr. Milan Thamsborg. |
| *For the Kingdom of Norway:* | Mr. Bjørn Haug,<br>Mr. Per Tresselt,<br>Mr. Ian Brownlie, Q.C.,<br>Mr. Keith Highet,<br>Mr. Prosper Weil. |

8. During the hearings, questions were addressed to both Parties by a Member of the Court, and replies were given in writing after the close of the hearings in accordance with Article 61, paragraph 4, of the Rules of Court.

* *

9. In the course of the written proceedings, the following submissions were presented by the Parties:

*On behalf of the Kingdom of Denmark:*

in the Memorial:

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

*May it please the Court:*

To adjudge and declare that Greenland is entitled to a full 200-mile fishery zone and continental shelf area vis-à-vis the island of Jan Mayen; and consequently

To draw a single line of delimitation of the fishing zone and continental shelf area of Greenland in the waters between Greenland and Jan Mayen at a distance of 200 nautical miles measured from Greenland's baseline";

in the Reply:

"In view of the facts and the arguments presented in the Memorial and this Reply,

*May it please the Court:*

(1) To adjudge and declare that Greenland is entitled to a full 200-mile fishery zone and continental shelf area vis-à-vis the island of Jan Mayen; and consequently

(2) 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*:

| *Point No.* | *Designation* | *Latitude N* | *Longitude W* |
|---|---|---|---|
| 1 | At Cape Russel | 69° 59′ 38″3 | 22° 19′ 18″2 |
| 2 | At Cape Brewster | 70° 07′ 24″0 | 22° 03′ 55″5 |
| 3 | At Cape Lister | 70° 29′ 33″5 | 21° 32′ 28″7 |
| 4 | At Cape Hodgson | 70° 32′ 16″7 | 21° 28′ 51″0 |
| 5 | Rathbone Island SE | 70° 39′ 53″4 | 21° 23′ 01″4 |
| 6 | Rathbone Island NE | 70° 40′ 14″7 | 21° 23′ 01″8 |
| 7 | At Cape Topham | 71° 19′ 56″0 | 21° 37′ 57″0 |
| 8 | Murray Island | 71° 32′ 45″3 | 21° 40′ 00″0 |
| 9 | Rock | 72° 16′ 09″4 | 22° 00′ 17″6 |
| 10 | Franklin Island | 72° 38′ 57″2 | 21° 40′ 04″7 |
| 11 | Bontekoe Island | 73° 07′ 15″9 | 21° 12′ 09″0 |
| 12 | Cape Broer Ruys SW | 73° 28′ 57″9 | 20° 25′ 05″9 |
| 13 | At Cape Broer Ruys | 73° 30′ 30″9 | 20° 23′ 02″6 |

* Between points No. 1 and 2, 3 and 4, 12 and 13, and 19 and 20 the baseline follows the low water mark along the coastline. The protrusive points on the above-mentioned parts of the low water mark are presented in the sub-annex to Annex 58. Co-ordinates of all base points are given in WGS 84.

| *Point No.* | *Designation* | *Latitude N* | *Longitude W* |
|---|---|---|---|
| 14 | Arundel Island | 73° 45′ 49″4 | 20° 03′ 28″9 |
| 15 | At Cape Borlase Warren | 74° 15′ 58″1 | 19° 22′ 11″4 |
| 16 | At Clark Bjerg | 74° 20′ 34″3 | 19° 11′ 04″7 |
| 17 | Lille Pendulum | 74° 36′ 43″9 | 18° 22′ 33″0 |
| 18 | At Cape Philip Broke | 74° 57′ 15″2 | 17° 31′ 08″5 |
| 19 | Cape Pansch S | 75° 00′ 34″8 | 17° 22′ 20″4 |
| 20 | At Cape Pansch | 75° 08′ 37″5 | 17° 19′ 01″6 |
| 21 | Cape Børgen SE | 75° 21′ 26″1 | 17° 50′ 52″2." |

*On behalf of the Kingdom of Norway:*

in the Counter-Memorial:

"*Having regard to* the considerations set forth in this Counter-Memorial and, in particular, the evidence relating to the relations of the Parties at the material times,

*May it please the Court to adjudge and declare that:*

(1) The median line constitutes the boundary for the purpose of delimitation of the relevant areas of the continental shelf between Norway and Denmark in the region between Jan Mayen and Greenland;

(2) The median line constitutes the boundary for the purpose of delimitation of the relevant areas of the fisheries zones between Norway and Denmark in the region between Jan Mayen and Greenland;

(3) The Danish claims are without foundation and invalid, and that the Submissions contained in the Danish Memorial are rejected";

in the Rejoinder:

"*Having regard to* the considerations set forth in the Norwegian Counter-Memorial and this Rejoinder, in particular, the evidence relating to the relations of the Parties at the material times, and maintaining without change the submissions presented in the Counter-Memorial,

*May it please the Court to adjudge and declare that:*

(1) The median line constitutes the boundary for the purpose of delimitation of the relevant areas of the continental shelf between Norway and Denmark in the region between Jan Mayen and Greenland;

(2) The median line constitutes the boundary for the purpose of delimitation of the relevant areas of the adjoining fisheries zones in the region between Jan Mayen and Greenland;

(3) The Danish claims are without foundation and invalid, and that the Submissions contained in the Danish Memorial are rejected."

10. In the course of the oral proceedings, the following submissions were presented by the Parties:

*On behalf of the Kingdom of Denmark:*

Submissions (1) and (2) identical to those in the Reply, reproduced in paragraph 9 above, together with the following additional submission:

"(3) If the Court, for any reason, does not find it possible to draw the line of delimitation requested in paragraph (2), Denmark requests the Court to decide, in accordance with international law and in light of the facts and arguments developed by the Parties, where the line of delimitation shall be drawn between Denmark's and Norway's fisheries zones and continental shelf areas in the waters between Greenland and Jan Mayen, and to draw that line."

*On behalf of the Kingdom of Norway:*

Submissions (1) and (2) identical to those in the Rejoinder, reproduced in paragraph 9 above, and submission (3) revised to read:

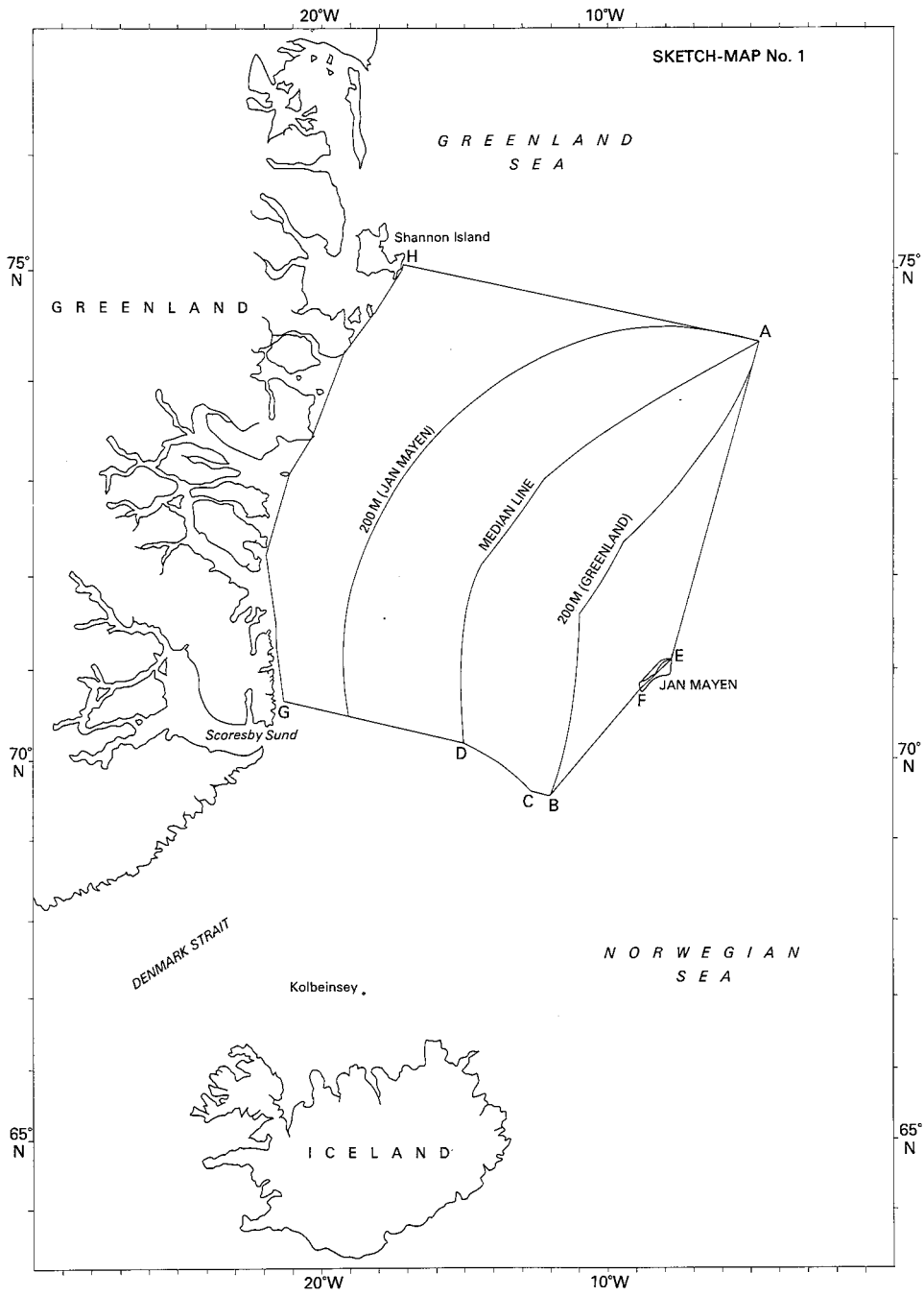
"(3) The Danish claims are without foundation and invalid, and that the Danish submissions and claims are rejected."

* * *

11. The maritime area which is the subject of the present proceedings before the Court is that part of the Atlantic Ocean lying between the east coast of Greenland and the island of Jan Mayen, north of Iceland and the Denmark Strait between Greenland and Iceland, as indicated on sketch-map No. 1 on page 45 of the present Judgment. The distance between Jan Mayen and the east coast of Greenland is some 250 nautical miles (463 kilometres). The depth of the sea in the area between them is for the most part rather less than 2,000 metres; it varies however between 3,000 metres in the north of the area and 1,000 metres in the south, and there are a few sea-bed elevations, west of the southernmost part of Jan Mayen, where the depth is no more than 500 metres. A number of geographical, economic or other facts have been presented to the Court by the Parties as pertaining to the region with which the Court is to deal; it will be for the Court in due course to decide whether any of these in law affect the delimitation, as "special" circumstances or "relevant" circumstances.

12. The whole of the area with which the Court is concerned lies north of the Arctic Circle: the waters off the northern part of the east coast of Greenland are permanently covered by compact ice. The area is much affected by drift ice the extent of which varies according to the time of year.

13. Sovereignty over Greenland and Jan Mayen appertains to Denmark and to Norway respectively. Greenland, which had previously been a Danish colony, has since 1953 been an integral part of the Kingdom of Denmark. A Danish Act of Parliament of 1978, and a referendum held in Greenland in 1979, introduced home rule for Greenland. Jan Mayen, which was used from 1922 on by the Norwegian Meteorological Institute, was annexed by Norway in 1929, when Norwegian sovereignty over the island was proclaimed. In 1930 the island was integrated into the Kingdom of Norway as an inalienable part of the Realm.


20°W
10°W
SKETCH-MAP No. 1
GREENLAND SEA
Shannon Island
H
75° N
GREENLAND
A
200 M (JAN MAYEN)
MEDIAN LINE
200 M (GREENLAND)
E
JAN MAYEN
F
G
Scoresby Sund
70° N
D
C
B
DENMARK STRAIT
NORWEGIAN SEA
Kolbeinsey
ICELAND
65° N
20°W
10°W

14. The total population of Greenland is about 55,000 of whom about 6 per cent live in East Greenland. The fisheries sector in Greenland employs about one-quarter of the labour force, and accounts for approximately 80 per cent of total export earnings. The sea area with which the Court is concerned comprises an important fishing ground for summer capelin, the only fish which is commercially exploited in the area (paragraph 73 below).

15. Jan Mayen has no settled population; it is inhabited solely by technical and other staff, some 25 in all, of the island's meteorological station, a LORAN-C station, and the coastal radio station. The island has a landing field, but no port; bulk supplies are brought in by ship and unloaded principally in Hvalrossbukta (Walrus Bay). Norwegian activities in the area between Jan Mayen and Greenland have included whaling, sealing, and fishing for capelin and other species. These activities are carried out by vessels based in mainland Norway, not in Jan Mayen.

16. In 1976 the Danish Parliament enacted legislation empowering the Prime Minister to extend the existing Danish fishery zone so as to comprise waters "along the coasts of the Kingdom of Denmark" delimited by a fishing limit 200 miles from the relevant baselines; such extension might be for one area at a time. A limited extension of the Greenland fishery zone was brought into force on 1 January 1977; off the east coast of Greenland it only applied as far north as latitude 67° N. According to Denmark, among the reasons for this limitation was that extension further north might cause certain difficulties in relation to the delimitation of the fishery zones vis-à-vis Iceland and Jan Mayen. By an Executive Order effective 1 June 1980, Denmark extended to 200 miles the fishery zone off the east coast of Greenland north of latitude 67° N. It was there provided that vis-à-vis Jan Mayen, fisheries jurisdiction would not, "until further notice", be exercised beyond the median line. By an Executive Order dated 31 August 1981, jurisdiction was asserted over the full 200 miles (see paragraph 36 below).

17. The Norwegian Parliament in 1976 enacted legislation empowering the Norwegian Government to establish 200-mile "economic zones" around its coasts, and such a zone was established round mainland Norway with effect from 8 January 1977. By a Royal Decree taking effect on 29 May 1980, the Norwegian Government established a 200-mile fishery zone around Jan Mayen. This Decree provided that the zone should not extend "beyond the median line in relation to Greenland". Between 1 June 1980 and 31 August 1981 the median line was thus the *de facto* line between the areas where the two Parties exercised their respective fisheries jurisdictions.

18. It will be convenient now to indicate how the Court proposes to designate, for the purposes of the present Judgment, three maritime areas between Greenland and Jan Mayen which have featured in the arguments of the Parties. First there is the area bounded by the single 200-mile delimitation line claimed by Denmark and the two coincident median lines asserted by Norway; this area may for convenience be called the "area of overlapping claims", and is delineated on sketch-map No. 1. To the north, it is closed by the intersection of the delimitation lines proposed by the Parties; to the south it is limited by a line BCD on sketch-map No. 1 representing the limit of the 200-mile economic zone claimed by Iceland[1]. Denmark requests the Court to limit its decision to the areas north of that line, a position which is accepted by Norway.

19. A second area involved is as follows. Denmark claims an entitlement to a full 200-mile continental shelf and fishery zone off the east coast of Greenland. Norway limits its claim to the area on the eastern side of the median line, but this does not mean that it considers that Jan Mayen has any less entitlement to 200 miles of continental shelf and fishery zone than has the coast of Greenland. The area between the 200-mile line claimed by Denmark and a corresponding line drawn 200 nautical miles from the baselines on the north-west coast of Jan Mayen has been referred to by Norway as the "potential area of overlap of claims". This area, also shown on sketch-map No. 1, may for the purpose of the present Judgment conveniently be referred to as the "area of overlapping potential entitlement".

20. Thirdly, Denmark in its Memorial has put forward what it terms the "area relevant to the delimitation dispute", shown on sketch-map No. 1 as the area bounded by the lines HA; AE; the baselines along the coast of Jan Mayen between E and F; FB; BCDG; and the baselines along the coast of Greenland between G and H. Norway has denied that the term "relevant area" has any independent legal significance, and has contended that the area identified by Denmark is wholly irrelevant to any delimitation, bearing no relation either to the geography of the region or to legal principle. The Court notes however that the selection of points G and H, which define the extent of the Greenland coastline used by Denmark for comparison with the length of the coast of Jan Mayen, is not arbitrary. Point H is the point on the Greenland coast which determines, in conjunction with the appropriate point on the northern tip of Jan Mayen (point E), the equidistance line at its point of intersection with the Danish 200-mile line (point A). Similarly, point G is the point on the Greenland coast which determines, in conjunction with the southern tip

[1] On the maps produced by the Parties, and referred to in argument, the points called C and D in the present Judgment were designated $C_1$ and $D_1$. *[Note by the Registry.]*

of Jan Mayen (point F), the equidistance line at its point of intersection (point D) with the 200-mile line claimed by Iceland which the Parties have agreed to be the southern limit of the delimitation requested of the Court.

21. Denmark has calculated this "area relevant to the delimitation dispute" as comprising some 237,000 square kilometres. Denmark calculates further that, of this area, approximately 96,000 square kilometres would by a median line be allocated to Norway, and approximately 141,000 square kilometres to Denmark. These figures have not been challenged by Norway. If however one considers the area of overlapping potential entitlement, as defined in paragraph 19 above, between the 200-mile line off the coast of Greenland and the 200-mile line round the coast of Jan Mayen, the division of this area (totalling some 136,000 square kilometres) by the median line would, in the understanding of the Court, allot approximately 71,500 square kilometres to Denmark, and between 64,500 and 65,000 square kilometres to Norway.

* *

22. A principal contention of Norway is that a delimitation has already been established between Jan Mayen and Greenland. The effect of treaties in force between the Parties — a bilateral Agreement of 1965 and the 1958 Geneva Convention on the Continental Shelf — has been, according to Norway, to establish the median line as the boundary of the continental shelf of the Parties, and the practice of the Parties in respect of fishery zones has represented a recognition of existing continental shelf boundaries as being also applicable to the exercise of fisheries jurisdiction. Independently of this question of the effect of the treaties, the "conjoint conduct" of the Parties has, Norway maintains, long recognized the applicability of a median line delimitation in their mutual relations, in the context both of the continental shelf and of fishery zones. These contentions, that a boundary is already in place, will need to be examined at the outset.

23. Denmark and Norway concluded an Agreement on 8 December 1965 concerning the delimitation of the continental shelf. The authentic text of that Agreement was in the Danish and Norwegian languages: the Court was supplied with an English translation of the Agreement, which has not been questioned. The Parties however disagree as to the meaning and the effect of this Agreement. The Preamble and Article 1 of the Agreement read as follows:

> "The Government of the Kingdom of Denmark and the Government of the Kingdom of Norway, having decided to establish the common boundary between the parts of the continental shelf over

which Denmark and Norway respectively exercise sovereign rights for the purposes of the exploration and exploitation of natural resources, have agreed as follows:

*Article 1*

The boundary between those parts of the continental shelf over which Norway and Denmark respectively exercise sovereign rights shall be the median line which at every point is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each Contracting Party is measured."

Article 2 provides that "In order that the principle set forth in Article 1 may be properly applied, the boundary shall consist of straight lines" which are then defined by eight points, enumerated with the relevant geodetic co-ordinates and as indicated on the chart thereto annexed; the lines so defined lie in the Skagerrak and part of the North Sea, between the mainland territories of Denmark and Norway.

24. It is clear that the Agreement contains no provision for the definition of the position of a median line specifically between Greenland and Jan Mayen. Norway's contention is however that the Agreement is a general one between the two countries to treat the median line as the line of delimitation of all continental shelf boundaries between them and that the Agreement is accordingly unrestricted in its area of operation. Denmark, on the other hand, contends that it is not an Agreement of such a general application, but one relating exclusively to the Skagerrak and part of the North Sea. It submits that this limitation is evident from the terms of Article 2 of the Agreement, which provides that "the boundary shall consist of straight lines" passing through eight points in the Skagerrak and part of the North Sea.

25. Norway accordingly contends that the text of Article 1 is general in scope, unqualified and without reservation, and that the natural meaning of that text must be "to establish definitively the basis for all boundaries which would eventually fall to be demarcated" between the Parties. In its view Article 2, which admittedly relates only to the continental shelves of the two mainlands, "is concerned with *demarcation*". Norway deduces that the Parties are and remain committed to the median line principle of the 1965 Agreement, and that as and when the need for a more precise definition of a continental shelf boundary between them in another area might arise, they are bound to "demarcate" or delineate any such boundary on that basis. Moreover since no reference is to be found in the 1965 Agreement to special circumstances, such as might affect the "demarcation" of their continental shelf boundaries, Norway submits that it is to be concluded that both Parties at that time found that there were no "special circumstances". Denmark on the other hand argues that the object and

purpose of the Agreement is solely the delimitation in the Skagerrak and part of the North Sea on a median line basis.

26. The Court has to pronounce upon the interpretation to be given to the 1965 Agreement. The Preamble to the Agreement states that the two Governments have decided to establish "the common boundary" between the parts of the continental shelf over which Denmark and Norway respectively exercise sovereign rights for the purposes of exploration and exploitation of natural resources. Similarly, Article 1 also refers to "the boundary between those parts of the continental shelf . . .". Consistently, the Agreement also provides in Article 2 that "the boundary shall consist of straight lines" passing through eight points in the North Sea. The words "the boundary" in all these three parts of the Agreement, expressed in the singular, must refer to the one boundary defined in Article 2. If the intention had been otherwise, Article 2 would have been so worded as to make it clear that it is providing for only a part of the total boundary contemplated by the Preamble and Article 1. Considered in the light of Article 2 of the Agreement, the principle laid down in Article 1 is valid only as regards the area mentioned in Article 2.

27. The 1965 Agreement has in any event to be read in its context, in the light of its object and purpose. The Geneva Convention on the Continental Shelf, adopted in 1958, defined the term "continental shelf", in Article 1, as referring:

> "*(a)* to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; *(b)* to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands".

By 1965 both Parties had incorporated that definition of the continental shelf given in the Convention into their domestic legislation (Danish Decree of 7 June 1963, Art. 2 (1); Norwegian Decree of 31 May 1963 and Law of 21 June 1963, Art. 1). Denmark has therefore argued that in 1965 the two Parties could not have had the area between Greenland and Jan Mayen in mind as the subject of a potential future delimitation: both Parties were asserting shelf rights under the definition of the shelf in the 1958 Convention (200 metres depth or the limit of exploitability). The Court considers that the object and purpose of the 1965 Agreement was to provide simply for the question of the delimitation in the Skagerrak and part of the North Sea, where the whole sea-bed (with the exception of the "Norwegian Trough") consists of continental shelf at a depth of less than 200 metres, and that there is nothing to suggest that the Parties had in mind the possibility that a shelf boundary between Greenland and Jan Mayen

might one day be required, or intended that their Agreement should apply to such a boundary.

28. It is also appropriate to take into account, for purposes of interpretation of the 1965 Agreement, the subsequent practice of the Parties. The Court first notes the terms of a Press Release issued by the Ministry of Foreign Affairs of Norway on 8 December 1965, which refers to the Agreement of that date as "the second Agreement entered into by Norway *concerning the delimitation of the continental shelf in the North Sea*" (emphasis added) (the first having been an agreement of 10 March 1965 with the United Kingdom). More significant is a subsequent treaty in the same field. On 15 June 1979, Denmark and Norway concluded an Agreement "concerning the Delimitation of the Continental Shelf in the Area between the Faroe Islands and Norway and concerning the Boundary between the Fishery Zone around the Faroe Islands and the Norwegian Economic Zone". According to that Agreement the continental shelf boundary between the Faroe Islands and Norway was to be "the median line" (Art. 1), and the "boundary between the fishery zone near the Faroe Islands and the Norwegian economic zone" (Art. 4) was to follow the boundary line which had been defined in Article 2 "in the application of the median line principle referred to in Article 1". No reference whatever was made in the 1979 Agreement to the existence or contents of the 1965 Agreement. The Court considers that if the intention of the 1965 Agreement had been to commit the Parties to the median line in all ensuing shelf delimitations, it would have been referred to in the 1979 Agreement.

29. This absence of relationship between the 1965 Agreement and the 1979 Agreement is confirmed by the terms of the official communication of the latter text to Parliament by the Norwegian Government. Proposition No. 63 (1979-1980) to the Storting states that:

> "On 8 December 1965 Norway and Denmark signed an agreement concerning the delimitation of the continental shelf between the two States.
>
> The agreement did not cover the delimitation of the continental shelf boundary in the area between Norway and the Faroe Islands."

Since, as noted above, the 1965 Agreement did not contain any specific exclusion of the Faroe Islands area, or of any other area, this statement is consistent with an interpretation of the 1965 Agreement as applying only to the region for which it specified a boundary line defined by co-ordinates and a chart, i.e., the Skagerrak and part of the North Sea.

30. The Court is thus of the view that the 1965 Agreement should be interpreted as adopting the median line only for the delimitation of the continental shelf between Denmark and Norway in the Skagerrak and

part of the North Sea. It did not result in a median line delimitation of the continental shelf between Greenland and Jan Mayen.

31. The Court therefore turns to the Norwegian argument based on the 1958 Geneva Convention on the Continental Shelf (hereafter referred to as "the 1958 Convention"). Both Denmark and Norway are parties to that Convention, and recognize that they remain bound by it; but they disagree as to its interpretation and application. The 1958 Convention, which came into force on 10 June 1964, was signed by Denmark on 29 April 1958. Subsequently, Denmark ratified the 1958 Convention on 12 June 1963 and later Norway acceded to it on 9 September 1971. The issue centres on the purport of Article 6, paragraph 1, of the 1958 Convention, which reads:

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

Norway contends that a delimitation of the continental shelf boundary — specifically, a median line boundary — is already "in place" as a result of the effect of this Article of the 1958 Convention. It considers that the effect of the 1965 Agreement, which provides for such a boundary and omits any mention of "special circumstances", is declaratory of the interpretation by the Parties of the 1958 Convention, in its application to their geographical situations, i.e., that no special circumstances were present, or alternatively that the Parties have "renounced the proviso of Article 6" relating to special circumstances. It will however be apparent that this Norwegian argument rests on the contention, already rejected by the Court, that the 1965 Agreement was intended to apply generally, to delimitation other than that specifically provided for, in the Skagerrak and part of the North Sea.

32. Thus, in the view of the Court, the 1965 delimitation Agreement does not constitute an agreement that there were no special circumstances, and therefore does not have the result that, pursuant to Article 6, paragraph 1, of the 1958 Convention, the median line would be the boundary. Apart from its argument based on the 1965 Agreement, Norway further argues that there are in fact no special circumstances within the meaning of Article 6; and that, in the absence of an agreement, and of special circumstances, that Article operates on a prescriptive and a self-executing basis to establish the median line as the boundary. The validity of this argument will depend on whether the Court finds that there are indeed special circumstances, a matter which will be dealt with below. The

Court will therefore now turn to the arguments which Norway bases on the conduct of the Parties and of Denmark in particular.

33. Norway contends that, up to some ten years ago at least, the Parties by their "conjoint conduct" had long recognized the applicability of a median line delimitation in their mutual relations. In the contention of Norway,

> "*(a)* the Danish Government has by its various public acts expressly recognized and adopted a median line boundary in its relations with Norway both in the context of continental shelf delimitation and in the context of fisheries zone delimitation;
>
> *(b)* the general pattern of conduct on the part of the Danish Government constitutes acquiescence in, or tacit recognition of, a median line boundary in its relations with Norway;
>
> *(c)* the consistent pattern of Danish conduct, together with knowledge of the long-standing position of the Norwegian Government in the matter of maritime delimitation, prevents Denmark from challenging the existence and validity of the median line boundary between Greenland and Jan Mayen, which boundary is consequently opposable to Denmark;
>
> *(d)* the consistent pattern of Danish conduct, together with knowledge of the long-standing position of the Norwegian Government in the matter of maritime delimitation, prevents Denmark from asserting the existence and validity of a delimitation in the form of the outer limit of a 200-mile fishery zone and continental shelf area vis-à-vis the island of Jan Mayen: in other words, the claim presented in the Danish Memorial is not opposable to Norway".

While Norway lays some emphasis on the consistency, both chronological and substantial, of the legislation and other actions of the two Parties during the period to be examined, it is the conduct of Denmark which has primarily to be examined in this connection.

34. On 7 June 1963, the Government of Denmark issued a Royal Decree concerning the Exercise of Danish Sovereignty over the Continental Shelf, Article 2, paragraph 2, of which provided that

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

Norway draws attention to the omission in this text of any reference to the provision of Article 6 of the 1958 Convention, "unless another boundary line is justified by special circumstances" and infers that, in the course of the Danish legislative process, the geographical situation of the Kingdom of Denmark had been examined and no special circumstances had been found that would call for delimitation on any other basis than a median line. Denmark however observes that the Decree was, according to its Preamble, promulgated in accordance with the 1958 Convention, and expressly extended the Danish claim to continental shelf as far as the Convention allowed; it explains that special circumstances had in fact been under contemplation in 1963, but were not mentioned specifically, the intention being that they were comprised in the reference to the 1958 Convention. In support of this it cited *inter alia* a passage of the legislative history of a Danish Act of 9 June 1971 laying down regulations for the continental shelf. In the light of these indications, the Court is not persuaded that the Decree of 7 June 1963 supports the argument which Norway seeks to base on conduct.

35. A Danish Act of 17 December 1976 empowered the Prime Minister of Denmark to proclaim 200-nautical-miles fishery zones in "waters along the coasts of the Kingdom of Denmark", and Article 2 of that Act provided that, in the absence of agreement,

> "the delimitation of the fishing territory relative to foreign States whose coasts are situated at a distance of less than 400 nautical miles opposite the coasts of the Kingdom of Denmark or adjacent to Denmark, shall be a line which at every point is equidistant from the nearest points on the baselines at the coasts of the two States (the median line)".

In the view of the Court, this provision is explained, in particular, by the Parties' concern not to aggravate the situation pending a definitive settlement of the boundary. The Danish Government was of the view that it was inexpedient then to raise the question of delimitation, and the 200-mile fishing limit was therefore not extended beyond 67° N off the east coast of Greenland. Norway itself had doubts whether a 200-mile zone around Jan Mayen would be internationally acceptable, as is shown by a parliamentary reply in 1980 during a debate on a proposed agreement between Norway and Iceland. The Court does not therefore consider that the terms of the Danish legislation of 1976 imply recognition of the appropriateness of a median line vis-à-vis Jan Mayen.

36. Danish fisheries jurisdiction was extended to the area between Greenland and Jan Mayen by an Executive Order of 14 May 1980, issued pursuant to the Act of 17 December 1976, and providing that "the fishing territory in the waters surrounding Greenland", north of latitude 67° on the east coast, should, "except where otherwise pro-

vided" in the Order, extend to 200 miles from the baselines. The Order also provided that:

> "Where the island of Jan Mayen lies opposite Greenland at a distance of less than 400 nautical miles, jurisdiction of fisheries shall not, until further notice, be exercised beyond the line which everywhere is equidistant from the nearest points of the baselines of the coasts concerned (median line)."

Norway argues that in view of the reference to the median line as boundary in the 1976 Act, quoted above, by virtue of which the Executive Order was issued, the claims to 200 nautical miles went beyond the enabling authority conferred by the Act. Apart from the question whether this issue of *vires* is one for the Court, the internal validity of the Order is irrelevant to its possible significance as an indication of Denmark's attitude to delimitation. But Norway also suggests that the Order itself recognized that it would be inappropriate to implement the extension for which it purported to provide. Denmark however explains that the reason for showing restraint in the enforcement of its fishing regulations in this area was to avoid difficulties with Norway. From earlier diplomatic exchanges it was clear that Norway contemplated an equidistance line delimiting the waters between Jan Mayen and Greenland, and Denmark had indicated that this would not be acceptable. The Court cannot regard the terms of the 1980 Executive Order (which was amended on 31 August 1981 to remove the restraint on exercising jurisdiction beyond the median line), either in isolation or in conjunction with other Danish acts, as committing Denmark to acceptance of a median line boundary in the area.

37. Mention has already been made (paragraph 28 above) of the Agreement of 15 June 1979 between the Parties concerning the delimitation between Norway and the Faroe Islands. Norway has emphasized that this Agreement employed the median line both for the delimitation of continental shelf and for the boundary affecting fisheries. As the Court has explained, the conclusion of the 1979 Agreement militates against the hypothesis that by the 1965 Agreement the Parties had agreed to employ the median line for all future delimitations. The use of the median line in the Agreement relating to the delimitation between Norway and the Faroe Islands does not support the Norwegian interpretation of the 1976 Danish Act on fishery zones; nor does it commit Denmark to a median line boundary in a quite different area.

38. Norway relies also on diplomatic contacts and exchanges between the Parties, particularly in the period 1979-1980, recorded in letters, notes and minutes of discussions presented to the Court as annexes to the pleadings. It is true that Danish references in the course of these diplomatic contacts to the unacceptability of a median line delimitation were some-

what unspecific, and in particular did not allude to legal arguments such as the provision in the 1958 Convention for "special circumstances". The Danish statements were however, in the view of the Court, sufficient to prevent the position of Denmark being prejudiced.

39. Norway invokes finally the positions expressed by the Parties on the question of maritime delimitation during the Third United Nations Conference on the Law of the Sea. Apart from the question whether a decision by the Court may be based on the positions expressed by a State at a diplomatic conference for the adoption of a multilateral convention, the Court would observe that the delimitation method subscribed to in the context of the Conference by Denmark, among other States, including Norway, was a rule of equidistance combined with special circumstances.

40. To sum up, the Agreement entered into between the Parties on 8 December 1965 cannot be interpreted to mean, as contended by Norway, that the Parties have already defined the continental shelf boundary as the median line between Greenland and Jan Mayen. Nor can the Court attribute such an effect to the provision of Article 6, paragraph 1, of the 1958 Convention, so as to conclude that by virtue of that Convention the median line is already the continental shelf boundary between Greenland and Jan Mayen. Nor can such a result be deduced from the conduct of the Parties concerning the continental shelf boundary and the fishery zone. In consequence, the Court does not consider that a median line boundary is already "in place", either as the continental shelf boundary, or as that of the fishery zone. The Court will therefore now proceed to examine the law applicable at present to the delimitation question still outstanding between the Parties.

* *

41. It will be convenient in this connection to refer first to a disagreement between the Parties as to the nature of the task conferred on the Court. Denmark asks the Court to draw a delimitation line, and has indeed indicated, with precise co-ordinates, where it considers that that line should be. Norway however submits that the adjudication should result in a judgment which is "declaratory as to the basis of delimitation, and which leaves the precise articulation (or demarcation) of the alignment to negotiation between the Parties". This argument will be dealt with at a later stage of the present Judgment (paragraphs 88 ff.). The Parties also differ on the question whether what is required is one delimitation line or two lines, Denmark asking for "a single line of delimitation of the fishery zone and continental shelf area", and Norway contending that the median line constitutes the boundary for delimitation of the continental shelf, and constitutes also the boundary for the delimitation of the fishery

zone, i.e., that the two lines would coincide, but the two boundaries would remain conceptually distinct. In the pleadings of the Parties, and especially in the oral argument of Norway, some importance has been attached to this difference between the ways in which the Parties have submitted their dispute to the Court; particularly the absence of any agreement of the Parties, of the kind to be found in the Special Agreement in the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, to ask the Court what was "the course of the single maritime boundary that divides the continental shelf and fishery zones of Canada and the United States of America" (*I.C.J. Reports 1984*, p. 253).

42. At first sight it might be thought that asking for the drawing of a single line and asking for the drawing of two coincident lines amounts in practical terms to the same thing. There is, however, in Norway's view, this important difference, that the two lines, even if coincident in location, stem from different strands of the applicable law, the location of the one being derived from the 1958 Convention, and the location of the other being derived from customary law.

43. There is no agreement between the Parties for a single maritime boundary; the situation is thus quite different from that in the *Gulf of Maine* case. The Chamber of the Court was requested by the Special Agreement in that case to effect a single-line, dual-purpose delimitation; it indicated that in its view, on the basis of such an agreement, a delimitation valid for both continental shelf and the superjacent water column

> "can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of these two objects to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them" (*ibid.*, p. 327, para. 194).

The Chamber decided that Article 6 of the 1958 Convention could not, because of the Parties' agreement to ask for a single maritime boundary, be applied for the determination of such a boundary. It observed that in such a case Article 6 has no "mandatory force even between States which are parties to the Convention" (*ibid.*, p. 303, para. 124). The Court in the present case is not empowered — or constrained — by any such agreement for a single dual-purpose boundary.

44. Furthermore, the Court has already found, contrary to the contention of Norway, that there is not a continental shelf boundary already "in place". The Court accordingly does not have to express any view on the legal situation which would have arisen if the continental shelf had been delimited, but the fishery zones had not. It is sufficient for it to note, as do the Parties, that the 1958 Convention is binding upon them, that it governs the continental shelf delimitation to be effected, and that it is certainly a

source of applicable law, different from that governing the delimitation of fishery zones. The Court will therefore examine separately the two strands of the applicable law: the effect of Article 6 of the 1958 Convention applicable to the delimitation of the continental shelf boundary, and then the effect of the customary law which governs the fishery zone.

45. It may be observed that the Court has never had occasion to apply the 1958 Convention. In the *North Sea Continental Shelf* cases, the Federal Republic of Germany was not a party to the 1958 Convention; similarly, in the continental shelf cases between Tunisia and Libya and between Libya and Malta, Libya was not a party to the 1958 Convention. In the *Gulf of Maine* case, Canada and the United States of America were parties to the 1958 Convention; but they requested the Chamber to define "the course of the single maritime boundary that divides the continental shelf and fisheries zones", so that, as already noted, the Chamber considered that the 1958 Convention, being applicable to the continental shelf only, did not govern the delimitation requested. In the present case, both States are parties to the 1958 Convention and, there being no joint request for a single maritime boundary as in the *Gulf of Maine* case, the 1958 Convention is applicable to the delimitation of the continental shelf between Greenland and Jan Mayen.

46. The fact that it is the 1958 Convention which applies to the continental shelf delimitation in this case does not mean that Article 6 thereof can be interpreted and applied either without reference to customary law on the subject, or wholly independently of the fact that a fishery zone boundary is also in question in these waters. The Anglo-French Court of Arbitration in 1977 placed Article 6 of the 1958 Convention in the perspective of customary law in the much-quoted passage of its Decision, that:

> "the combined 'equidistance-special circumstances rule', in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles" (United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XVIII, p. 45, para. 70).

If the equidistance-special circumstances rule of the 1958 Convention is, in the light of this 1977 Decision, to be regarded as expressing a general norm based on equitable principles, it must be difficult to find any material difference — at any rate in regard to delimitation between opposite coasts — between the effect of Article 6 and the effect of the customary rule which also requires a delimitation based on equitable principles. The Court in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, where it was asked only to delimit the continental shelf boundary, expressed the view that

> "even though the present case relates only to the delimitation of the continental shelf and not to that of the exclusive economic zone, the principles and rules underlying the latter concept cannot be left out of consideration";

that "the two institutions — continental shelf and exclusive economic zone — are linked together in modern law"; and that the result is "that greater importance must be attributed to elements, such as distance from the coast, which are common to both concepts" (*I.C.J. Reports 1985*, p. 33, para. 33).

47. Regarding the law applicable to the delimitation of the fishery zone, there appears to be no decision of an international tribunal that has been concerned only with a fishery zone; but there are cases involving a single dual-purpose boundary asked for by the parties in a special agreement, for example the *Gulf of Maine* case, already referred to, which involved delimitation of "the continental shelf and fishery zones" of the parties. The question was raised during the hearings of the relationship of such zones to the concept of the exclusive economic zone as proclaimed by many States and defined in Article 55 of the 1982 United Nations Convention on the Law of the Sea. Whatever that relationship may be, the Court takes note that the Parties adopt in this respect the same position, in that they see no objection, for the settlement of the present dispute, to the boundary of the fishery zones being determined by the law governing the boundary of the exclusive economic zone, which is customary law; however the Parties disagree as to the interpretation of the norms of such customary law.

48. Denmark and Norway are both signatories of the 1982 United Nations Convention on the Law of the Sea, though neither has ratified it, and it is not in force. There can be no question therefore of the application, as relevant treaty provisions, of that Convention. The Court however notes that Article 74, paragraph 1, and Article 83, paragraph 1, of that Convention provide for the delimitation of the continental shelf and the exclusive economic zone between States with opposite or adjacent coasts to be effected

> "by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution".

That statement of an "equitable solution" as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of continental shelf and of exclusive economic zones.

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49. Turning first to the delimitation of the continental shelf, since it is governed by Article 6 of the 1958 Convention, and the delimitation is between coasts that are opposite, it is appropriate to begin by taking provi-

sionally the median line between the territorial sea baselines, and then enquiring whether "special circumstances" require "another boundary line". Such a procedure is consistent with the words in Article 6, "In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line."

50. Judicial decisions on the basis of the customary law governing continental shelf delimitation between opposite coasts have likewise regarded the median line as a provisional line that may then be adjusted or shifted in order to ensure an equitable result. The Court, in the Judgment in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* already referred to (paragraph 46 above), in which it took particular account of the Judgment in the *North Sea Continental Shelf* cases, said:

> "The Court has itself noted that the equitable nature of the equidistance method is particularly pronounced in cases where delimitation has to be effected between States with opposite coasts." (*I.C.J. Reports 1985*, p. 47, para. 62.)

It then went on to cite the passage in the Judgment in the *North Sea Continental Shelf* cases where the Court stated that the continental shelf off, and dividing, opposite States "can ... only be delimited by means of a median line" (*I.C.J. Reports 1969*, p. 36, para. 57; see also p. 37, para. 58). The Judgment in the *Libya/Malta* case then continues:

> "But it is in fact a delimitation exclusively between opposite coasts that the Court is, for the first time, asked to deal with. It is clear that, in these circumstances, the tracing of a median line between those coasts, by way of a provisional step in a process to be continued by other operations, is the most judicious manner of proceeding with a view to the eventual achievement of an equitable result." (*I.C.J. Reports 1985*, p. 47, para. 62.)

51. Denmark has, it is true, disputed the appropriateness of drawing an equidistance line even provisionally as a first step in the delimitation process; and to this end it has recalled previous decisions of the Court: the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*I.C.J. Reports 1982*, p. 79, para. 110); the case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (*I.C.J. Reports 1984*, p. 297, para. 107); and indeed the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (*I.C.J. Reports 1985*, p. 37, para. 43). These cases were, as already observed (paragraph 45 above), not governed by Article 6 of the 1958 Convention, which specifically provides that the median line be employed "unless another boundary line is justified by special circumstances". The 1977 Anglo-French Court of Arbitration, on the other hand, when applying Article 6 of the 1958 Convention to the

delimitation between opposite coasts in the Atlantic region, after observing that "the obligation to apply the equidistance principle is always one qualified by the condition 'unless another boundary line is justified by special circumstances'" (*RIAA*, Vol. XVIII, p. 45, para. 70), began by employing the equidistance method, and then adjusting the result in the light of special circumstances, namely the existence of the Scilly Isles (*ibid.*, pp. 115-116, para. 248). In this respect it observed that

> "it seems to the Court to be in accord not only with the legal rules governing the continental shelf but also with State practice to seek the solution in a method modifying or varying the equidistance method rather than to have recourse to a wholly different criterion of delimitation" (*ibid.*, p. 116, para. 249).

In any event, all that need be said of the decisions cited by Denmark is that the Court considered that the provisional drawing of an equidistance line was not a necessary or obligatory step in every case; yet in two of the cases mentioned (*Gulf of Maine* and the *Libya/Malta* case), where the delimitation was between opposite coasts, it was found entirely appropriate to begin with such a provisional line. Thus, in respect of the continental shelf boundary in the present case, even if it were appropriate to apply, not Article 6 of the 1958 Convention, but customary law concerning the continental shelf as developed in the decided cases, it is in accord with precedents to begin with the median line as a provisional line and then to ask whether "special circumstances" require any adjustment or shifting of that line.

52. Turning now to the delimitation of the fishery zones, the Court must consider, on the basis of the sources listed in Article 38 of the Statute of the Court, the law applicable to the fishery zone, in the light also of what has been said above (paragraph 47) as to the exclusive economic zone. Of the international decisions concerned with dual-purpose boundaries, that in the *Gulf of Maine* case — in which the Chamber rejected the application of the 1958 Convention, and relied upon the customary law — is here material. After noting that a particular segment of the delimitation was one between opposite coasts, the Chamber went on to question the adoption of the median line "as final without more ado", and drew attention to the "difference in length between the respective coastlines of the two neighbouring States which border on the delimitation area" and on that basis affirmed "the necessity of applying to the median line as initially drawn a correction which, though limited, will pay due heed to the actual situation" (*I.C.J. Reports 1984*, pp. 334-335, paras. 217, 218).

53. This process clearly approximates to that followed by the Court in respect of the *Libya/Malta* case in determining the continental shelf

boundary between opposite coasts. It follows that it is also an appropriate starting-point in the present case; not least because the Chamber in the *Gulf of Maine* case, when dealing with the part of the boundary between opposite coasts, drew attention to the similarity of the effect of Article 6 of the 1958 Convention in that situation, even though the Chamber had already held that the 1958 Convention was not legally binding on the Parties. It thus appears that, both for the continental shelf and for the fishery zones in this case, it is proper to begin the process of delimitation by a median line provisionally drawn.

54. The Court is now called upon to examine every particular factor of the case which might suggest an adjustment or shifting of the median line provisionally drawn. The aim in each and every situation must be to achieve "an equitable result". From this standpoint, the 1958 Convention requires the investigation of any "special circumstances"; the customary law based upon equitable principles on the other hand requires the investigation of "relevant circumstances".

55. The concept of "special circumstances" was discussed at length at the First United Nations Conference on the Law of the Sea, held in 1958. It was included both in the Geneva Convention of 29 April 1958 on the Territorial Sea and the Contiguous Zone (Art. 12) and in the Geneva Convention of 29 April 1958 on the Continental Shelf (Art. 6, paras. 1 and 2). It was and remains linked to the equidistance method there contemplated, so much so indeed that in 1977 the Court of Arbitration in the case concerning the delimitation of the continental shelf (United Kingdom/France) was able to refer to the existence of a rule combining "equidistance-special circumstances" (see paragraph 46 above). It is thus apparent that special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle. General international law, as it has developed through the case-law of the Court and arbitral jurisprudence, and through the work of the Third United Nations Conference on the Law of the Sea, has employed the concept of "relevant circumstances". This concept can be described as a fact necessary to be taken into account in the delimitation process.

56. Although it is a matter of categories which are different in origin and in name, there is inevitably a tendency towards assimilation between the special circumstances of Article 6 of the 1958 Convention and the relevant circumstances under customary law, and this if only because they both are intended to enable the achievement of an equitable result. This must be especially true in the case of opposite coasts where, as has been seen, the tendency of customary law, like the terms of Article 6, has been to postulate the median line as leading prima facie to an equitable result. It cannot be surprising if an equidistance-special circumstances rule produces much the same result as an equitable principles-relevant circumstances rule in the case of opposite coasts, whether in the case of a delimitation of continental shelf, of fishery zone, or of an all-purpose single boundary. There is a further finding of the Anglo-French Court of

Arbitration to this effect when, after referring to the rule in Article 6, and to the rule of customary law based upon equitable principles and "relevant" circumstances, it said that the double basis on which the parties had put their case,

> "confirms the Court's conclusion that the different ways in which the requirements of 'equitable principles' or the effects of 'special circumstances' are put reflect differences of approach and terminology rather than of substance" (*RIAA*, Vol. XVIII, p. 75, para. 148).

57. There has been much argument in the present case, both under the heading of "special circumstances" and that of "relevant circumstances", as to what circumstances are juridically relevant to the delimitation process. It may be useful to recall the much-cited statement from the Court's Judgment in the *North Sea Continental Shelf* cases:

> "In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case." (*I.C.J. Reports 1969*, p. 50, para. 93.)

It is to be noted that the Court in 1969 was addressing the task of States in negotiation; indeed the entire 1969 Judgment was necessarily thus as a result of the terms of the special agreement by which the cases were taken to the Court. In the *Libya/Malta* case the Court added the following caveat:

> "Yet although there may be no legal limit to the considerations which States may take account of, this can hardly be true for a court applying equitable procedures. For a court, although there is assuredly no closed list of considerations, it is evident that only those that are pertinent to the institution of the continental shelf as it has developed within the law, and to the application of equitable principles to its delimitation, will qualify for inclusion. Otherwise, the legal concept of continental shelf could itself be fundamentally changed by the introduction of considerations strange to its nature." (*I.C.J. Reports 1985*, p. 40, para. 48.)

58. A court called upon to give a judgment declaratory of the delimitation of a maritime boundary, and *a fortiori* a court called upon to effect a delimitation, will therefore have to determine "the relative weight to be accorded to different considerations" in each case; to this end, it will con-

sult not only "the circumstances of the case" but also previous decided cases and the practice of States. In this respect the Court recalls the need, referred to in the *Libya/Malta* case, for "consistency and a degree of predictability" (*I.C.J. Reports 1985*, p. 39, para. 45).

* *

59. Having thus concluded that it is appropriate to have recourse to a median line provisionally drawn as a first stage in the delimitation process, the Court now turns to the question whether the circumstances of the present case require adjustment or shifting of that line, taking into account the arguments relied on by Norway to justify the median line, and the circumstances invoked by Denmark as justifying the 200-mile line. For that purpose, the Court will have to consider in greater detail the geographical context of the dispute, which has already been outlined above (paragraphs 11-21). The median line, shown on sketch-map No. 1 (p. 45 above) as the line AD, has to be seen in that context, and particularly in relation to the three areas defined in paragraphs 18-20 above. The "area of overlapping claims", defined in paragraph 18 above, between the two lines representing the Parties' claims, is of obvious relevance to any case involving opposed boundary claims. But maritime boundary claims have the particular feature that there is an area of overlapping entitlements, in the sense of overlap between the areas which each State would have been able to claim had it not been for the presence of the other State; this was the basis of the principle of non-encroachment enunciated in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 36, para. 57; p. 53, para. 101 (C) (1)). It is clear that in this case a true perspective on the relationship of the opposing claims and the opposing entitlements is to be gained by considering both the area of overlapping claims and the area of overlapping potential entitlement (paragraph 19 above).

60. Both Parties have brought to the Court's attention various circumstances which they each regard as appropriate to be taken into account for the purposes of the delimitation. Neither Party has however presented these specifically in the context of the possible adjustment or shifting of a median line provisionally drawn: Norway, because it argues that the median line itself is the correct and equitable solution, and Denmark, because it contends that the median line should not be used, even as a provisional solution. Denmark does however assert that, on the basis of the 1958 Convention, it could contend

> "that the island of Jan Mayen, *par excellence*, falls within the concept of 'special circumstances' and should be given no effect on Greenland's 200-mile continental shelf area".

The particular characteristics of Jan Mayen which Denmark regards as justifying this view are that it is small in relation to the opposite coasts of Greenland, and that it cannot sustain and has not sustained human habitation or economic life of its own (cf. Article 121, paragraph 3, of the 1982 Convention on the Law of the Sea); more broadly Denmark has referred in this connection to factors of geography, population, constitutional status of the respective territories of Jan Mayen and Greenland, socio-economic structure, cultural heritage, proportionality, the conduct of the Parties, and other delimitations in the region. The Court will therefore consider whether these are factors requiring an adjustment or a shifting of the median line.

61. A first factor of a geophysical character, and one which has featured most prominently in the argument of Denmark, in regard to both continental shelf and fishery zone, is the disparity or disproportion between the lengths of the "relevant coasts", defined by Denmark as the coasts lying between points E and F on the coast of Jan Mayen, and G and H on the coast of Greenland, defined as explained in paragraph 20 above. The following figures given by Denmark for the coastal lengths have not been disputed by Norway. The lengths of the coastal fronts of Greenland and Jan Mayen, defined as straight lines between G and H, and between E and F, are: Greenland, approximately 504.3 kilometres; Jan Mayen, approximately 54.8 kilometres. If the distances between G and H and between E and F are measured along the successive baselines which generate the median line, the total figures are approximately 524 kilometres for Greenland and approximately 57.8 kilometres for Jan Mayen (see sketch-map No. 2, p. 80 below). Thus the ratio between the coast of Jan Mayen and that of Greenland is 1 to 9.2 on the basis of the first calculation, and 1 to 9.1 on the basis of the second.

62. Denmark considers, on the basis of its analysis of the jurisprudence of the Court and arbitral decisions, that proportionality in the lengths of coasts is in the first instance 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".

Secondly it contends that such proportionality is a determining factor, in the form of an arithmetical ratio, for testing the equity of the delimitation line arrived at. For Denmark, these two conceptions of the factor of proportionality are applicable concurrently. In the circumstances of the present case, Denmark argues that the disparity between the two relevant coastal lengths is obvious, and that even without taking into account the other relevant circumstances, a disparity of this nature should lead to a delimitation line which respects Greenland's right to a maritime zone of 200 miles. Denmark has observed in this respect that a geographical pro-

portionality line which took into account the relationship between the relevant coastal lengths of Greenland and Jan Mayen, and allocated maritime areas in the same proportion, would be drawn more than 200 miles from the coast of Greenland. Denmark did not however suggest that such a line, which it considered to be "equitable in its result", could be adopted, because it would be incompatible with the international legal régime governing the right of States to claim sea areas off their coasts, the maximum permissible Danish claim thus being a delimitation line 200 miles from the baselines of Greenland. In Denmark's view, the application of Article 6 of the 1958 Convention would lead to the same result.

63. Norway contends that a comparison of coastal lengths would result in the present case in an arbitrary refusal to give full weight to the relevant circumstances which form part of the process of evolving an equitable solution, and that such a comparison is irrelevant to the achievement of equality of treatment of the parties in delimitation. Referring to the jurisprudence of the Court, Norway also argues that proportionality (in the form of a factor based on the ratio of the lengths of the respective coasts) is not an independent principle of delimitation, but a test of the equitableness of a result arrived at by other means. Furthermore, in Norway's view, there is no reason to require that the ratio of coastal lengths should be taken into consideration in delimitation as a relevant determinative circumstance, or even as a relevant circumstance *tout court.* Norway takes the view finally that differences in the length of coasts have never qualified as special circumstances for the purposes of Article 6 of the 1958 Convention.

64. Prima facie, a median line delimitation between opposite coasts results in general in an equitable solution, particularly if the coasts in question are nearly parallel. When, as in the present case, delimitation is required between opposite coasts which are insufficiently far apart for both to enjoy the full 200-mile extension of continental shelf and other rights over maritime spaces recognized by international law, the median line will be equidistant also from the two 200-mile limits, and may prima facie be regarded as effecting an equitable division of the overlapping area. However, as the Court observed, in relation to the continental shelf, in 1969, judicial treatment of maritime delimitation does not involve the sharing-out of something held in undivided shares:

> "Delimitation is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination *de novo* of such an area. Delimitation in an equitable manner is one thing, but not the same thing as awarding a

> just and equitable share of a previously undelimited area, even though in a number of cases the results may be comparable, or even identical." (*North Sea Continental Shelf, I.C.J. Reports 1969*, p. 22, para. 18.)

Thus the law does not require a delimitation based upon an endeavour to share out an area of overlap on the basis of comparative figures for the length of the coastal fronts and the areas generated by them. The task of a tribunal is to define the boundary line between the areas under the maritime jurisdiction of two States; the sharing-out of the area is therefore the consequence of the delimitation, not vice versa.

65. It is of course this prima facie equitable character which constitutes the reason why the equidistance method, endorsed by Article 6 of the 1958 Convention, has played an important part in the practice of States. The application of that method to delimitations between opposite coasts produces, in most geographical circumstances, an equitable result. There are however situations — and the present case is one such — in which the relationship between the length of the relevant coasts and the maritime areas generated by them by application of the equidistance method, is so disproportionate that it has been found necessary to take this circumstance into account in order to ensure an equitable solution. The frequent references in the case-law to the idea of proportionality — or disproportion — confirm the importance of the proposition that an equitable delimitation must, in such circumstances, take into account the disparity between the respective coastal lengths of the relevant area.

66. One of the factors which the Court in the *North Sea Continental Shelf* cases indicated as to be taken into consideration in order to achieve an equitable solution was referred to by the Court as:

> "the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast measured in the general direction of the coastline" (*I.C.J. Reports 1969*, p. 54, para. 101 (D) (3)).

The Anglo-French Court of Arbitration in 1977, which was applying the 1958 Convention, recalled, in reference to "an alleged principle of proportionality by reference to length of coastlines" (*RIAA*, Vol. XVIII, p. 115, para. 246), that "it is ... a factor to be taken into account in appreciating the effects of geographical features on the equitable or inequitable character of a delimitation ..." (*ibid.*, p. 57, para. 99) and that "it is disproportion rather than any general principle of proportionality which is the relevant criterion or factor" (*ibid.*, p. 58, para. 101). The relevance of this factor was reaffirmed by the Court in other cases involving continental shelf delimitation: *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment* (*I.C.J. Reports 1982*, pp. 43-44, para. 37); *Continental Shelf*

*(Libyan Arab Jamahiriya/Malta), Judgment (I.C.J. Reports 1985*, pp. 43-44, para. 55); and by the Chamber in the *Gulf of Maine* case in the context of a single maritime boundary for the continental shelf and the fishery zones. In that case the Chamber observed:

> "a maritime delimitation can ... not be established by a direct division of the area in dispute proportional to the respective lengths of the coasts belonging to the parties in the relevant area, but it is equally certain that a substantial disproportion to the lengths of those coasts that resulted from a delimitation effected on a different basis would constitute a circumstance calling for an appropriate correction" (*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 323, para. 185).

67. The practical implementation of the principle may sometimes be complicated, as in the *Libya/Malta* case, by the presence of claims of third States, or by difficulties in defining with sufficient precision which coasts and which areas are to be treated as relevant. Such problems do not arise in the present case. The possible claims of Iceland appear to be fully covered by the 200-mile line (BCD on sketch-map No. 1, p. 45 above) which the Parties are treating as the southern limit of the delimitation requested of the Court. It is appropriate to treat as relevant the coasts between points E and F and between points G and H on sketch-map No. 1, in view of their role in generating the complete course of the median line provisionally drawn which is under examination. The question for the Court is thus the following. The difference in length of the relevant coasts is striking. Regard being had to the effects generated by it, does this disparity constitute, for purposes of the 1958 Convention, a "special circumstance", and as regards the delimitation of the fishery zones a "relevant circumstance" for purposes of the rules of customary law, requiring an adjustment or shifting of the median line?

68. A delimitation by the median line would, in the view of the Court, involve disregard of the geography of the coastal fronts of eastern Greenland and of Jan Mayen. It is not a question of determining the equitable nature of a delimitation as a function of the ratio of the lengths of the coasts in comparison with that of the areas generated by the maritime projection of the points of the coast (cf. *Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985*, p. 46, para. 59), nor of "rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline" (*North Sea Continental Shelf, I.C.J. Reports 1969*, pp. 49-50, para. 91). Yet the differences in length of the respective coasts of the Parties are so significant that this feature must be taken into consideration during the delimitation operation. It should be recalled that in the *Gulf of Maine* case the Chamber considered that a ratio of 1 to 1.38, calculated in the Gulf of Maine as defined by the Chamber, was sufficient to justify "correction" of a median line delimitation (*I.C.J. Reports 1984*, p. 336, paras. 221-222). The disparity between the lengths of coasts thus

constitutes a special circumstance within the meaning of Article 6, paragraph 1, of the 1958 Convention. Similarly, as regards the fishery zones, the Court is of the opinion, in view of the great disparity of the lengths of the coasts, that the application of the median line leads to manifestly inequitable results.

69. It follows that, in the light of the disparity of coastal lengths, the median line should be adjusted or shifted in such a way as to effect a delimitation closer to the coast of Jan Mayen. It should, however, be made clear that taking account of the disparity of coastal lengths does not mean a direct and mathematical application of the relationship between the length of the coastal front of eastern Greenland and that of Jan Mayen. As the Court has observed:

> "If such a use of proportionality were right, it is difficult indeed to see what room would be left for any other consideration; for it would be at once the principle of entitlement to continental shelf rights and also the method of putting that principle into operation. Its weakness as a basis of argument, however, is that the use of proportionality as a method in its own right is wanting of support in the practice of States, in the public expression of their views at (in particular) the Third United Nations Conference on the Law of the Sea, or in the jurisprudence." (*Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985*, p. 45, para. 58.)

70. Nor do the circumstances require the Court to uphold the claim of Denmark that the boundary line should be drawn 200 miles from the baselines on the coast of eastern Greenland, i.e., a delimitation giving Denmark maximum extension of its claim to continental shelf and fishery zone. The result of such a delimitation would be to leave to Norway merely the residual part (the polygon ABFEA on sketch-map No. 1, p. 45 above) of the "area relevant to the delimitation dispute" as defined by Denmark. The delimitation according to the 200-mile line calculated from the coasts of eastern Greenland may from a mathematical perspective seem more equitable than that effected on the basis of the median line, regard being had to the disparity in coastal lengths; but this does not mean that the result is equitable in itself, which is the objective of every maritime delimitation based on law. The coast of Jan Mayen, no less than that of eastern Greenland, generates potential title to the maritime areas recognized by customary law, i.e., in principle up to a limit of 200 miles from its baselines. To attribute to Norway merely the residual area left after giving full effect to the eastern coast of Greenland would run wholly counter to the rights of Jan Mayen and also to the demands of equity.

71. At this stage of its analysis, the Court thus considers that neither the median line nor the 200-mile line calculated from the coasts of eastern

Greenland in the relevant area should be adopted as the boundary of the continental shelf or of the fishery zone. It follows that the boundary line must be situated between these two lines described above, and located in such a way that the solution obtained is justified by the special circumstances contemplated by the 1958 Convention on the Continental Shelf, and equitable on the basis of the principles and rules of customary international law. The Court will therefore next consider what other circumstances may also affect the position of the boundary line.

72. The Court now turns to the question whether access to the resources of the area of overlapping claims constitutes a factor relevant to the delimitation. So far as sea-bed resources are concerned, the Court would recall what was said in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case:

> "The natural resources of the continental shelf under delimitation 'so far as known or readily ascertainable' might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation, as the Court stated in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 54, para. 101 (D) (2)). Those resources are the essential objective envisaged by States when they put forward claims to sea-bed areas containing them." (*I.C.J. Reports 1985*, p. 41, para. 50.)

Little information has however been given to the Court in that respect, although reference has been made to the possibility of there being deposits of polymetallic sulphides and hydrocarbons in the area.

73. With regard to fishing, both Parties have emphasized the importance of their respective interests in the marine resources of the area. The Court is informed that the principal exploited fishery resource of the area between Greenland and Jan Mayen is capelin. This is a migratory species, and its migratory pattern varies with climatic conditions. In general, the capelin spawn off the south coast of Iceland in March and April; the young capelin remain primarily in Icelandic waters, but in summer and autumn some of the two- and three-year-old capelin extend their migratory range to the waters between Greenland and Jan Mayen, returning to Icelandic waters in October. Norwegian records of capelin catches for the years 1980, 1981 and 1984-1989 show concentrations of stocks generally in the southern part of the area of overlapping claims, though sometimes as far east as the waters round Jan Mayen itself; no geographical data for catches in areas to the west of the median line (where Norwegian vessels do not fish) have been produced, but it is agreed that capelin stocks generally extend also west of the southern part of the area of overlapping claims.

74. An Agreement was concluded between Greenland/Denmark, Iceland and Norway on 12 June 1989 requiring the co-operation of the three parties on the conservation and management of the capelin stock in the whole of the waters between Greenland, Iceland and Jan Mayen (Art. 1), and providing for the fixing by agreement of a total allowable catch for each season (Art. 2), which is then distributed between Greenland, Iceland and Norway in the proportions 11 per cent, 78 per cent and 11 per cent. Under a Fishery Agreement with the European Community, Greenland allocates annually 40,000 tons of capelin to the Community, of which 10,000 tons is reallocated by it to the Faroe Islands, and the remainder has been traded away by the European Community to Iceland against a redfish quota in Icelandic waters. Payment is made by the European Community to Greenland whether the quota is fished or not. The remainder of the capelin quota attributed to Greenland by the 1989 Agreement is allotted to Greenland shipowners who charter Faroese vessels to fish the capelin for a fee per kilo of fish taken. Denmark has emphasized that this method of exploitation of fishery resources should be viewed as a temporary arrangement pending the build-up of the capacity of the Greenland fishing fleet. Denmark has stressed that independently of the quotas allocated to various foreign States, the quotas established for East Greenland account for over half the total quotas fixed for all Greenland waters, and stated that Greenland benefits economically from all fishing within the Greenland zone. Denmark has also stressed the dependence of the Inuit population of Greenland on the exploitation of the resources of the east coast of Greenland, particularly where sealing and whaling are concerned. Norway has indicated that the waters between Jan Mayen and Greenland have long been the scene of Norwegian whaling, sealing and fishing, and that the various fishing activities in the Jan Mayen area account for more than 8 per cent of the total quantity of Norwegian catches, and that they contribute to the fragile economy of the Norwegian coastal communities.

75. As has happened in a number of earlier maritime delimitation disputes, the Parties are essentially in conflict over access to fishery resources: this explains the emphasis laid on the importance of fishing activities for their respective economies and on the traditional character of the different types of fishing carried out by the populations concerned. In the *Gulf of Maine* case, which concerned a single maritime boundary for continental shelf and fishery zones, the Chamber dealing with the case recognized the need to take account of the effects of the delimitation on the Parties' respective fishing activities by ensuring that the delimitation should not entail "catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned" (*I.C.J. Reports 1984*, p. 342, para. 237). In the light of this case-law, the Court has to consider whether any shifting or adjustment of the median

line, as fishery zone boundary, would be required to ensure equitable access to the capelin fishery resources for the vulnerable fishing communities concerned.

76. It appears to the Court that the seasonal migration of the capelin presents a pattern which, north of the 200-mile line claimed by Iceland, may be said to centre on the southern part of the area of overlapping claims, approximately between that line and the parallel of 72° North latitude, and that the delimitation of the fishery zone should reflect this fact. It is clear that no delimitation in the area could guarantee to each Party the presence in every year of fishable quantities of capelin in the zone allotted to it by the line. It appears however to the Court that the median line is too far to the west for Denmark to be assured of an equitable access to the capelin stock, since it would attribute to Norway the whole of the area of overlapping claims. For this reason also the median line thus requires to be adjusted or shifted eastwards (cf. paragraph 71 above).

77. In this context the Court has to consider another factor of a geophysical character brought to its attention, namely the presence of ice in the waters of the region. The waters off the northern segment of the east coast of Greenland are permanently covered by compact ice, and the East Greenland Current runs south along that coast, carrying with it enormous quantities of drifting polar ice. As a result, first, direct access to coastal waters from that coast north of Cape Brewster (point G) is practically impossible throughout the year, so that fishing vessels operating in the region have to be based on other parts of the coast. Secondly, the area of overlapping claims is itself affected by drift ice: at its minimum extension, the drift ice reaches about half-way between the Greenland coast and Jan Mayen, and then extends over virtually the whole of the area during the months of February to May, decreasing again from June to September. Maps produced by both Parties, based on statistical evaluation of long-term satellite observations, are consistent in indicating the extent to which the region is affected by ice. It is common ground between the Parties that a 40 per cent cover of drift ice renders ordinary navigation and all fishing activities impossible. Denmark argues accordingly that the 200-mile zone off the Greenland coast which it claims would not in fact provide Greenland with 200 miles of exploitable sea, and that the median line proposed by Norway would in effect leave to Denmark only 10 per cent of the waters in which fishing is made possible by the absence of ice. Neither party has commented on the possible significance of the presence of ice for the practical exploration and exploitation of the sea-bed of the area of overlapping claims.

78. In the present case the question has been argued of the effect on access to marine resources of the presence of drift ice; especially within the Arctic Circle, this geophysical feature does of course have a substantial impact on human activity. Perennial ice may significantly hinder access to the resources of the region, and thus constitute a special geographical feature of it. However, in the present case, the Court is informed that capelin, if found in a given year in fishable quantities in the southern part of the area of overlapping claims, are so found at the time of year (July-September) when the drift ice cover has retreated north-westwards. In April, when the ice cover is most extensive, there is no capelin and no other known fishable species in the waters between Jan Mayen and Greenland. The Court is therefore satisfied that while ice constitutes a considerable seasonal restriction of access to the waters, it does not materially affect access to migratory fishery resources in the southern part of the area of overlapping claims.

79. Denmark considers as also relevant to the delimitation the major differences between Greenland and Jan Mayen as regards population and socio-economic factors. It has pointed out that Jan Mayen has no settled population, as only 25 persons temporarily inhabit the island for purposes of their employment (paragraph 15 above); indeed, in Denmark's view, Jan Mayen cannot sustain and has not sustained human habitation or economic life of its own. As already noted (paragraph 14 above) the total population of Greenland is 55,000, of which some 6 per cent live in East Greenland. As regards socio-economic factors, Denmark has emphasized the importance for Greenland of fishing and fisheries-related activities, which constitute the mainstay of its economy; Norwegian fishing interests in the waters surrounding Jan Mayen are however the interests of mainland Norway, not of Jan Mayen as such, where there are no fishermen. Denmark has also relied on what it refers to as the "cultural factor", the attachment of the people of Greenland to their land and the surrounding sea, in the light of which it would, Denmark contends, be difficult if not impossible for the Greenlanders to accept that the sea area within the 200-mile zone off their coast should be curtailed in deference to the interests of the people of a remote and highly developed industrial State.

80. Although Denmark has employed the terminology of Article 121, paragraph 3, of the 1982 United Nations Convention on the Law of the Sea, which provides that "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf", it does not argue that Jan Mayen has no entitlement to

continental shelf or fishery zones, but that when maritime boundaries are to be established between that island and the territories of Iceland and Greenland, the island of Jan Mayen cannot be accorded full effect, but only partial effect, a contention which the Court has already found unacceptable (paragraph 70 above). Nor, in the view of the Court, does the "cultural factor" point to a different conclusion. The question is whether the size and special character of Jan Mayen's population, and the absence of locally based fishing, are circumstances which affect the delimitation. The Court would observe that the attribution of maritime areas to the territory of a State, which, by its nature, is destined to be permanent, is a legal process based solely on the possession by the territory concerned of a coastline. The Court finds relevant in the present dispute the observations it had occasion to make, concerning continental shelf delimitation, in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case:

> "The Court does not however consider that a delimitation should be influenced by the relative economic position of the two States in question, in such a way that the area of continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources. Such considerations are totally unrelated to the underlying intention of the applicable rules of international law. It is clear that neither the rules determining the validity of legal entitlement to the continental shelf, nor those concerning delimitation between neighbouring countries, leave room for any considerations of economic development of the States in question. While the concept of the exclusive economic zone has, from the outset, included certain special provisions for the benefit of developing States, those provisions have not related to the extent of such areas nor to their delimitation between neighbouring States, but merely to the exploitation of their resources." (*I.C.J. Reports 1985*, p. 41, para. 50.)

The Court therefore concludes that, in the delimitation to be effected in this case, there is no reason to consider either the limited nature of the population of Jan Mayen or socio-economic factors as circumstances to be taken into account.

81. Norway has argued, in relation to the Danish claim to a 200-mile zone off Greenland, that

> "the drawing of a boundary closer to one State than to another would imply an inequitable displacement of the possibility of the former State to protect interests which require protection".

It considers that, while courts have been unwilling to allow such considerations of security to intrude upon the major task of establishing a primary boundary in accordance with the geographical criteria, they are concerned to avoid creating conditions of imbalance. The Court considers

that the observation in the *Libya/Malta* Judgment (*I.C.J. Reports 1985*, p. 42, para. 51), that "security considerations are of course not unrelated to the concept of the continental shelf", constituted a particular application, to the continental shelf, with which the Court was then dealing, of a general observation concerning all maritime spaces. In the present case the Court has already rejected the 200-mile line. In the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, the Court was satisfied that

> "the delimitation which will result from the application of the present Judgment is . . . not so near to the coast of either Party as to make questions of security a particular consideration in the present case" (*I.C.J. Reports 1985*, p. 42, para. 51).

The Court is similarly satisfied in the present case as regards the delimitation to be described below.

82. With regard to the conduct of the Parties concerning the relevant area, it is first to be noted that that conduct is characterized by the care they have taken not to aggravate the dispute and by their adherence to the positions of principle they have adopted for the delimitation. That conduct has already been considered by the Court (paragraphs 33-39) in relation to the argument of Norway that the Parties, by their conduct, have already recognized the applicability of a median line delimitation, a contention which the Court did not accept. The question of the conduct of the Parties has now to be considered in another context, that of a contention by Denmark, relating primarily to acts of Norway. The contention is that, as in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case (*I.C.J. Reports 1982*, p. 84, para. 118), the conduct of the Parties is a highly relevant factor in the choice of the appropriate method of delimitation where such conduct has indicated some particular method as being likely to produce an equitable result. In this respect, Denmark relies on the maritime delimitation between Norway and Iceland, and on a boundary line established by Norway between the economic zone of mainland Norway and the fishery protection zone of the Svalbard Archipelago (Bear Island — Bjørnøya).

83. By an Agreement concerning Fishery and Continental Shelf Questions between Norway and Iceland dated 28 May 1980, a Conciliation Commission was set up to submit recommendations regarding the dividing line for the shelf area between Iceland and Jan Mayen (Art. 9). By a subsequent Agreement, dated 22 October 1981, Norway and Iceland indicated that by entering into the earlier agreement they had agreed

> "that Iceland's economic zone shall extend to 200 nautical miles also in the areas between Iceland and Jan Mayen where the distance between the baselines is less than 400 nautical miles" (Preamble);

the Agreement provided further that

> "the dividing line between the parties' sections of the continental shelf in the area between Iceland and Jan Mayen shall be the same as the dividing line for the parties' economic zones" (Art. 1).

As for Bear Island, the southernmost island in the Svalbard Archipelago, it is less than 400 nautical miles north of the Norwegian mainland. Although subject to the special provisions of the Spitsbergen Treaty of 9 February 1920, it is part of the Kingdom of Norway. On 3 June 1977 Norway, by a Royal Decree, established a fishery protection zone around Svalbard, including Bear Island, the outer limit of which was to be 200 miles from the baselines; the Decree however further provided that the zone "shall furthermore be delimited by the outer limit of the economic zone off the Norwegian mainland" (Sec. 1, para. 3). Denmark contends that Norway has thus accepted that Jan Mayen vis-à-vis Iceland, and Bear Island vis-à-vis mainland Norway, not only could not have a delimitation effected by a median line but should not cut into the respective 200-mile zones of Iceland and mainland Norway.

84. In this case Norway has denied that the Agreements between Norway and Iceland constitute relevant conduct or a precedent, arguing that they represent a political concession in favour of an island State heavily dependent on its fisheries and moreover enjoying special relations with Norway. It has recalled that Norway protested when Iceland first established its 200-mile zone, and that Iceland has traditionally been very active, particularly where fisheries were concerned, in the waters between its own coasts and Jan Mayen, which has not been the case of Greenland. With regard to the treatment of Bear Island, Norway has stressed that Svalbard, including Bear Island, is part of the Kingdom of Norway, so that there is no question of an international delimitation of overlapping areas.

85. So far as Bear Island is concerned, this territory is situated in a region unrelated to the area of overlapping claims now to be delimited. In that respect, the Court would observe that there can be no legal obligation for a party to a dispute to transpose, for the settlement of that dispute, a particular solution previously adopted by it in a different context. Even if the Svalbard delimitation be treated as international, Norway is no more bound by that solution than Denmark is bound to apply in the present dispute the method of equidistance used to effect delimitation between Norway and Denmark in the Skagerrak and part of the North Sea or off the Faroe Islands.

86. Denmark's argument based on the Agreements concluded between Iceland and Norway for the delimitation of the areas south of Jan Mayen deserves particular consideration, inasmuch as those instruments directly

concern Jan Mayen itself. By invoking against Norway the Agreements of 1980 and 1981, Denmark is seeking to obtain by judicial means equality of treatment with Iceland. It is understandable that Denmark should seek such equality of treatment. But in the context of relations governed by treaties, it is always for the parties concerned to decide, by agreement, in what conditions their mutual relations can best be balanced. In the particular case of maritime delimitation, international law does not prescribe, with a view to reaching an equitable solution, the adoption of a single method for the delimitation of the maritime spaces on all sides of an island, or for the whole of the coastal front of a particular State, rather than, if desired, varying systems of delimitation for the various parts of the coast. The conduct of the parties will in many cases therefore have no influence on such a delimitation. The fact that the situation governed by the Agreements of 1980 and 1981 shares with the present dispute certain elements (identity of the island, participation of Norway) is of no more than formal weight. For these reasons, the Court concludes that the conduct of the Parties does not constitute an element which could influence the operation of delimitation in the present case.

* *

87. Having thus completed its examination of the geophysical and other circumstances brought to its attention as appropriate to be taken into account for the purposes of the delimitation of the continental shelf and the fishery zones, the Court has come to the conclusion that the median line adopted provisionally for both, as first stage in the delimitation, should be adjusted or shifted to become a line such as to attribute a larger area of maritime space to Denmark than would the median line. The line drawn by Denmark 200 nautical miles from the baselines of eastern Greenland would however be excessive as an adjustment, and would be inequitable in its effects. The delimitation line must therefore be drawn within the area of overlapping claims, between the lines proposed by each Party. The Court will therefore now proceed to examine the question of the precise position of that line.

* *

88. In its Counter-Memorial, Norway argued that

> "the adjudication should result in a judgment which is declaratory as to the bases of delimitation, and which leaves the precise articulation (or demarcation) of the alignment to negotiation between the Parties",

and its submissions were, and have remained, limited to a request for what it terms a "declaratory" judgment in favour of the median line. Since the Court does not consider that the median line constitutes the boundaries which result from the application of the relevant law, it is unable to uphold those submissions. The Court is also unable to uphold the submission of Denmark that a delimitation line should be drawn 200 miles from the baselines of eastern Greenland, according to specific co-ordinates supplied by Denmark. At the hearings however Denmark presented an additional and alternative submission (paragraph 10 above) whereby the Court is asked

> "to decide, in accordance with international law and in light of the facts and arguments developed by the Parties, where the line of delimitation shall be drawn between Denmark's and Norway's fisheries zones and continental shelf areas in the waters between Greenland and Jan Mayen, *and to draw that line*" (emphasis added).

At the final hearing it was stated on behalf of Norway, in relation to the final Danish submissions, that Norway maintained the position expressed in its Counter-Memorial, and quoted above.

89. To give only a broad indication of the manner in which the definition of the delimitation line should be fixed, and to leave the matter for the further agreement of the Parties, as urged by Norway, would in the Court's view not be a complete discharge of its duty to determine the dispute. The Court is satisfied that it should define the delimitation line in such a way that any questions which might still remain would be matters strictly relating to hydrographic technicalities which the Parties, with the help of their experts, can certainly resolve. The area of overlapping claims in this case is defined by the median line and the 200-mile line from Greenland, and those lines are both geometrical constructs; there might be differences of opinion over basepoints, but given defined basepoints, the two lines follow automatically. The median line provisionally drawn as first stage in the delimitation process has accordingly been defined by reference to the basepoints indicated by the Parties on the coasts of Greenland and Jan Mayen. Similarly the Court may define the delimitation line, now to be indicated, by reference to that median line and to the 200-mile line calculated by Denmark from the basepoints on the coast of Greenland. Accordingly the Court will proceed to establish such a delimitation, using for this purpose the baselines and co-ordinates which the Parties themselves have been content to employ in their pleadings and oral argument.

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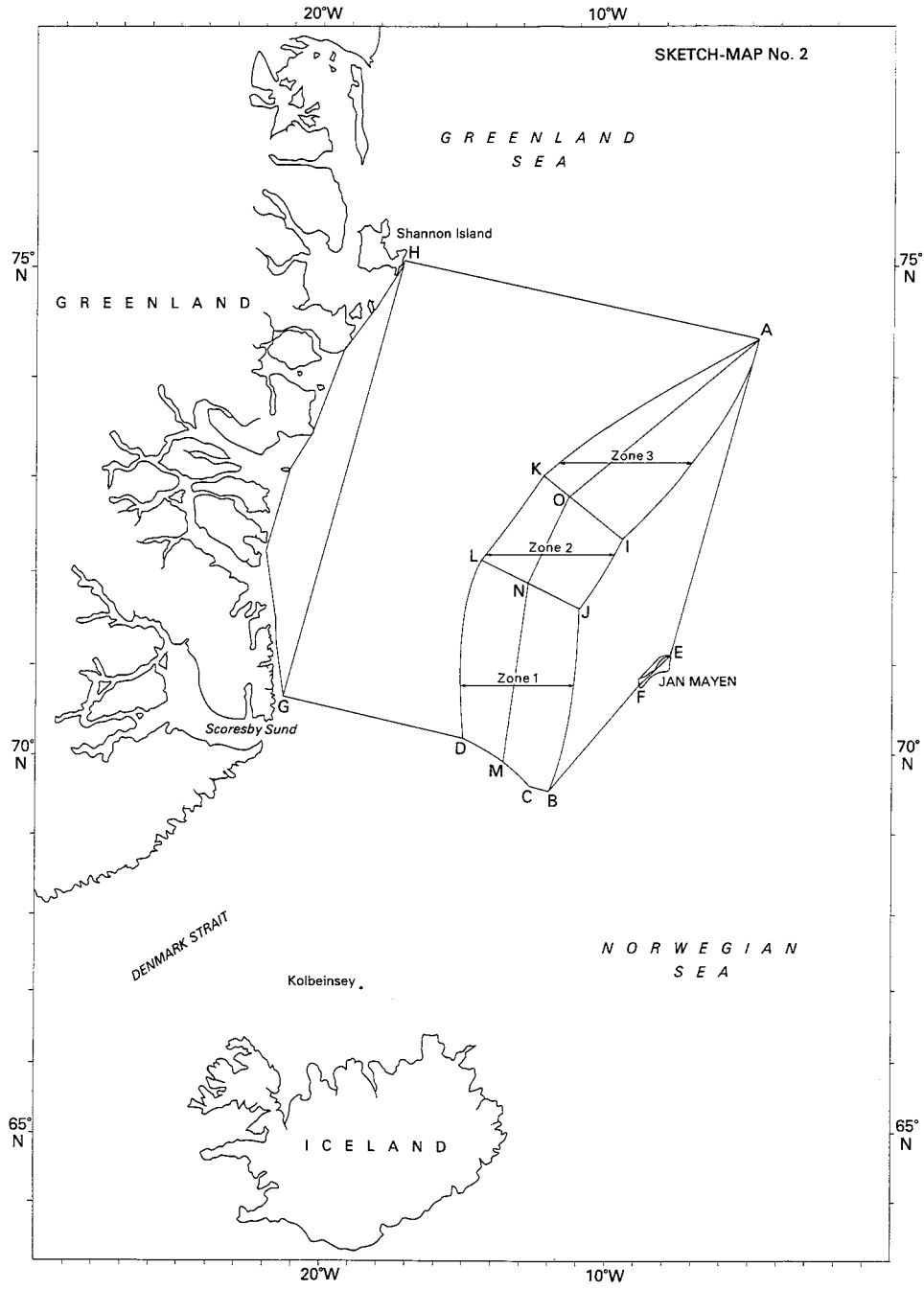
90. The Court has found (paragraph 44 above) that it is bound to apply, and it has applied, the law applicable to the continental shelf and the law applicable to the fishery zones. Having done so, it has arrived at the conclusion that the median line provisionally drawn, employed as starting-point for the delimitation of the continental shelf and the fishery zones, must be adjusted or shifted so as to attribute a larger area of maritime spaces to Denmark. So far as the continental shelf is concerned, there is no requirement that the line be shifted eastwards consistently throughout its length: if other considerations might point to another form of adjustment, to adopt it would be within the measure of discretion conferred on the Court by the need to arrive at an equitable result. For the fishery zones, equitable access to the resources of the southern part of the area of overlapping claims has to be assured by a substantial adjustment or shifting of the median line provisionally drawn in that region. In the view of the Court the delimitation now to be described, whereby the position of the delimitation lines for the two categories of maritime spaces is identical, constitutes, in the circumstances of this case, a proper application both of the law applicable to the continental shelf and of that applicable to the fishery zones.

91. The delimitation line is to lie between the median line and the 200-mile line from the baselines of eastern Greenland. It will run from point A in the north, the point of intersection of those two lines, to a point on the 200-mile line drawn from the baselines claimed by Iceland, between points D and B on sketch-map No. 2 (p. 80 below). For the purposes of definition of the line, and with a view to making proper provision for equitable access to fishery resources, the area of overlapping claims will be divided into three zones, as follows. Greenland's 200-mile line (between points A and B on sketch-map No. 2) shows two marked changes of direction, indicated on the sketch-map as points I and J; similarly the median line shows two corresponding changes of direction, marked as points K and L. Straight lines drawn between point I and point K, and between point J and point L, thus divide the area of overlapping claims into three zones, to be referred to, successively from south to north, as zone 1, zone 2 and zone 3.

92. The southernmost zone, zone 1, corresponds essentially to the principal fishing area referred to in paragraph 73 above. In the view of the Court, the two Parties should enjoy equitable access to the fishing resources of this zone. For this purpose a point, to be designated point M, is identified on the 200-mile line claimed by Iceland between points B and D, and equidistant from those points, and a line is drawn from point M so as to intersect the line between point J and L, at a point designated point N, so as to divide zone 1 into two parts of equal area. The dividing line is shown on sketch-map No. 2 as the line between points N and M. So far as zones 2 and 3 are concerned, it is a question of drawing the appropriate conclusions, in the application of equitable principles,


20°W
10°W
SKETCH-MAP No. 2
GREENLAND SEA
Shannon Island
H
75° N
GREENLAND
A
K
Zone 3
O
L
Zone 2
I
N
J
E
Zone 1
JAN MAYEN
F
G
Scoresby Sund
70° N
D
M
C
B
DENMARK STRAIT
NORWEGIAN SEA
Kolbeinsey
ICELAND
65° N
20°W
10°W

from the circumstance of the marked disparity in coastal lengths, discussed in paragraphs 61 to 71 above. The Court considers that an equal division of the whole area of overlapping claims would give too great a weight to this circumstance. Taking into account the equal division of zone 1, it considers that the requirements of equity would be met by the following division of the remainder of the area of overlapping claims: a point (O on sketch-map No. 2) is to be determined on the line between I and K such that the distance from I to O is twice the distance from O to K; the delimitation of zones 2 and 3 is then effected by the straight line from point N to this point O, and the straight line from point O to point A.

93. The co-ordinates of the various points mentioned have been calculated as follows on the basis of the information supplied by each Party to the Court as to the base points on the coasts of its territory, and are included here for the information of the Parties:

(World Geodetic System, 1984)

| *Latitude North* | *Longitude West* | | |
|---|---|---|---|
| 74° 21′ 46.9″ | 5° 00′ 27.7″ | = | A |
| 72° 28′ 35.9″ | 9° 23′ 09.4″ | = | I |
| 71° 32′ 58.4″ | 11° 11′ 23.6″ | = | J |
| 69° 34′ 43.3″ | 12° 09′ 25.5″ | = | B |
| 69° 38′ 26.8″ | 12° 43′ 21.1″ | = | C |
| 70° 12′ 50.5″ | 15° 10′ 21.8″ | = | D |
| 72° 07′ 16.0″ | 14° 40′ 25.4″ | = | L |
| 73° 01′ 42.5″ | 12° 25′ 23.2″ | = | K |
| 69° 54′ 26.9″ | 13° 38′ 01.0″ | = | M |
| 71° 50′ 00.8″ | 12° 50′ 48.2″ | = | N |
| 72° 50′ 58.7″ | 11° 23′ 23.2″ | = | O |

All straight lines referred to in paragraphs 91 and 92 are geodetic lines.

* * *

94. For these reasons,

THE COURT,

By fourteen votes to one,

*Decides* that, within the limits defined

(1) to the north by the intersection of the line of equidistance between the coasts of Eastern Greenland and the western coasts of Jan Mayen with the 200-mile limit calculated as from the said coasts of Greenland, indicated on sketch-map No. 2 as point A, and

(2) to the south, by the 200-mile limit around Iceland, as claimed by Iceland, between the points of intersection of that limit with the two said lines, indicated on sketch-map No. 2 as points B and D,

the delimitation line that divides the continental shelf and fishery zones of the Kingdom of Denmark and the Kingdom of Norway is to be drawn as set out in paragraphs 91 and 92 of the present Judgment.

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola.

AGAINST: Judge *ad hoc* Fischer.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fourteenth day of June, one thousand nine hundred and ninety-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Kingdom of Denmark and the Government of the Kingdom of Norway, respectively.

*(Signed)* R. Y. JENNINGS,
President.

*(Signed)* Eduardo VALENCIA-OSPINA,
Registrar.

Vice-President ODA, Judges EVENSEN, AGUILAR MAWDSLEY and RANJEVA append declarations to the Judgment of the Court.

Vice-President ODA, Judges SCHWEBEL, SHAHABUDDEEN, WEERAMANTRY and AJIBOLA append separate opinions to the Judgment of the Court.

Judge *ad hoc* FISCHER appends a dissenting opinion to the Judgment of the Court.

*(Initialled)* R.Y.J.
*(Initialled)* E.V.O.