INTERNATIONAL COURT OF JUSTICE

MARITIME DELIMITATION
IN THE AREA BETWEEN
GREENLAND AND JAN MAYEN
(DENMARK/NORWAY)

REPLY
SUBMITTED BY
THE GOVERNMENT OF
THE KINGDOM OF DENMARK

VOLUME I

JANUARY 1991

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INTRODUCTION

1. As stated in Article 49 of the Rules of Court, the main purpose of the Reply and the Rejoinder should be to address those issues of the dispute which continue to divide the Parties. Unfortunately, the Parties seem to have little common ground with respect to the law which should govern the present dispute. Also with regard to the facts of the case the two Parties are not in agreement. The contents of the Memorial and the Counter-Memorial make it apparent why this maritime delimitation case is now pending before the International Court of Justice.

2. Though the Counter-Memorial operates with several lines of reasoning which are said to be both independent of and supplementary to each other, they all seem to end up in the thesis that the median line method amounts to a legal principle which must govern all maritime delimitation situations at least as a starting point, and in the present case even as a mandatory rule deciding the dispute.

3. However, the governing norm for maritime delimitation according to contemporary international law is to seek an equitable solution. It is the submission of the Danish Government that the relevant factors substantiating that norm in the present case, and among them first and foremost the factors of geography and population, lead to the establishment of a 200-mile boundary line measured from Greenland's baseline.

4. The most astonishing features in the Norwegian presentation are the assertion that the boundary line concerning the continental shelf in the waters between Greenland and Jan Mayen is already in place and has, in fact, been so since 1965, and the assertion that Denmark has caught Norway by surprise in suddenly changing its long-standing practice of defending the median line approach.

5. The former assertion is without legal foundation, see pages 126 - 130 paragraphs 337 - 350 below. Suffice it at this stage to recall that this contention has never been made to the Danish side during the eight years of negotiations preceding the present proceedings before the International Court of Justice as acknowledged in the Counter-Memorial, page 73, paragraph 258.

6. The latter assertion, mentioned in paragraph 4 above, is equally unfounded, see pages 130 - 150, paragraphs 351 - 408. In this connection it is worth recalling that Norway itself recognised that a median line would not in all situations lead to an equitable result in the North Atlantic region. Already in 1976 Norway did not pay any attention to Bear Island - and rightly so - when drawing the boundary line for the economic zone of Norway, and four years later when entering into the Agreement of 28 May 1980 with Iceland on Fishery and Continental Shelf Questions Norway recognised that the island of Jan Mayen should not be allowed to encroach upon Iceland's 200-mile economic zone.

7. Denmark fully shares this attitude adopted by Norway and has adopted the same position as far as the boundary line in the waters between Greenland and Jan Mayen is concerned. In the view of the Danish Government an equitable solution in this area would not allow Jan Mayen to encroach upon Greenland's 200-mile fishery zone and corresponding shelf area. The island of Jan Mayen must be well-satisfied with a claim under contemporary international law to a maritime zone of some 255,000 square kilometres consisting of a 200-mile zone to the east and a somewhat reduced zone to the south and to the west, respecting the rights of Iceland and Greenland. That zone alone would *prima facie* seem to be exorbitant compared to the land area of Jan Mayen consisting of some 380 square kilometres. In terms of maritime zones Norway indeed belongs to the group of countries which may be categorised as geographically privileged States.

8. The Norwegian Government has chosen a historical approach emphasising the importance of earlier bilateral

agreements between Denmark and Norway, of Danish conduct before the present case arose and of the equidistance method stipulated in Article 6 of the 1958 Geneva Convention on the Continental Shelf. This approach disregards contemporary international law as evidenced in the 1982 Convention on the Law of the Sea, in State practice and in international case law, especially the Judgments of the International Court of Justice.

9. Another characteristic feature of the Counter-Memorial is its constant reference to the *entitlement* of Jan Mayen to maritime zones, including a median line vis-à-vis Greenland, as if title was the governing norm in maritime *delimitation*. "Title" and "delimitation" are two different legal concepts. From the fact that a delimitation situation cannot arise without title, it does not follow that title governs a maritime delimitation situation. Delimitation is governed by the norm of equity as an expression of justice and the rule of law substantiated by a set of factors considered to be relevant in each individual case.

10. Norway's strong emphasis on Jan Mayen's entitlement to broad maritime zones can be explained - as will be done in Chapter II of Part II of this Reply - by the uncertainty as to whether Jan Mayen could be considered to have a status under international law which would allow it to claim the broad maritime zones that won general acceptance among States in 1976/77. Denmark does not, for its part, question Jan Mayen's status as an island under international law, but it is the Danish submission that the small size and unpopulated character of Jan Mayen does not entitle the island to a maritime zone which impinges upon Greenland's 200-mile zone. This submission still leaves a 12-mile territorial sea and an *additional* maritime zone of no less than 32 nautical miles to Jan Mayen vis-à-vis Greenland.

11. As to the task of the Court in this case, the Government of Denmark furthermore wishes to make the following observations.

12. Under the heading "Procedural Issues" the Norwegian Government raises questions as to "the nature" of the claim brought forward in this case. It is stated that "(t)o the extent that the claim for a single line is a claim for a delimitation of a different nature as compared with other delimitations" such claim would not be admissible without the agreement of the Parties (the Counter-Memorial, p. 197, paras. 702 - 704).

13. Norway makes no reference to applicable procedural rules, and Denmark, for its part, has not been able to identify any such rules.

14. The Government of Denmark has asked the Court to 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. It is Denmark's contention that international law supports the claim to a 200-mile fishery zone and a 200-mile continental shelf area. A special agreement is, therefore, not a precondition for a single line delimitation.

15. The Government of Denmark submits that the Court is competent to deal with the case as brought forward by Denmark and in doing so also competent to draw the final line of delimitation. This is a task already undertaken by Courts and Tribunals in delimitation cases and in no sense a claim of a "different nature" to those normally made.

16. Norway's contention that the Court should not make the precise identification of the maritime boundary is not supported by any legal arguments. If the contention were to be followed by the Court, the scope of Article 36, paragraph 2, of of the Statute of the International Court of Justice would be limited in a way which would not further international justice.

17. Despite the basic difference of approach the Government of Denmark will make a new effort to clarify the Facts (Part I) and the Law (Part II), taking into account the presentation contained in the Norwegian Government's

Counter-Memorial. The Reply will end by stating the Submissions of the Government of Denmark at the present juncture of the proceedings (Part III).

18. The Government of Denmark reserves its position with regard to all points of facts and law advanced by Norway in its Counter-Memorial which have not been addressed in this Reply.[1]

[1] In its Reply, the Government of Denmark has not taken Norway's Corrected Reprint of Appendix 5 to the Counter-Memorial into account. The Government of Denmark received the Corrected Reprint on 14 January 1991.

PART I

THE FACTS

Refutation of the Norwegian Presentation and Supplementary Information

A. The Relevant Area

19. In the opinion of the Danish Government the Parties to a delimitation dispute pending before the Court should establish the area within which the actual delimitation is to be effected. This is in accordance with the practice of the Court, see e.g., the *Libya-Malta* case (*I.C.J. Reports 1985*, p. 20, para. 14, and pp. 49 - 50, paras. 67 - 68). The Norwegian description of this basic element of maritime delimitation as "a geometrical exercise" (the Counter-Memorial, p. 130, para. 437), "wholly irrelevant to any delimitation in accordance with legal principles" (*ibid.*, pp. 148 - 49, para. 505), and an "artificiality" (*ibid.*, p. 149, para. 506) appears to be nothing but an attempt to avoid a confrontation between the two coastal fronts which are the basis of title to the adjacent maritime areas of Greenland and Jan Mayen, respectively.

20. Norway has argued that by its definition of the disputed area Denmark has requested the Court to determine its entitlement to an area which by Agreements between Norway and Iceland of 28 May 1980 and 22 October 1981 has been afforded to Iceland, see the Counter-Memorial, page 4, paragraph 14. Norway requests the Court to confine its consideration to the maritime area which to the south is bounded by the outer limit of the Icelandic economic zone as defined by Iceland to the point where this line intersects the median line between Jan Mayen and Greenland at 70°12'04"N (the Counter-Memorial, p. 4, para. 15).

21. Denmark does not seek a decision from the Court which affects the rights of Iceland under international law. It follows from Article 59 of the Statute of the International Court of Justice that a line drawn by the Court will not be binding on Iceland.

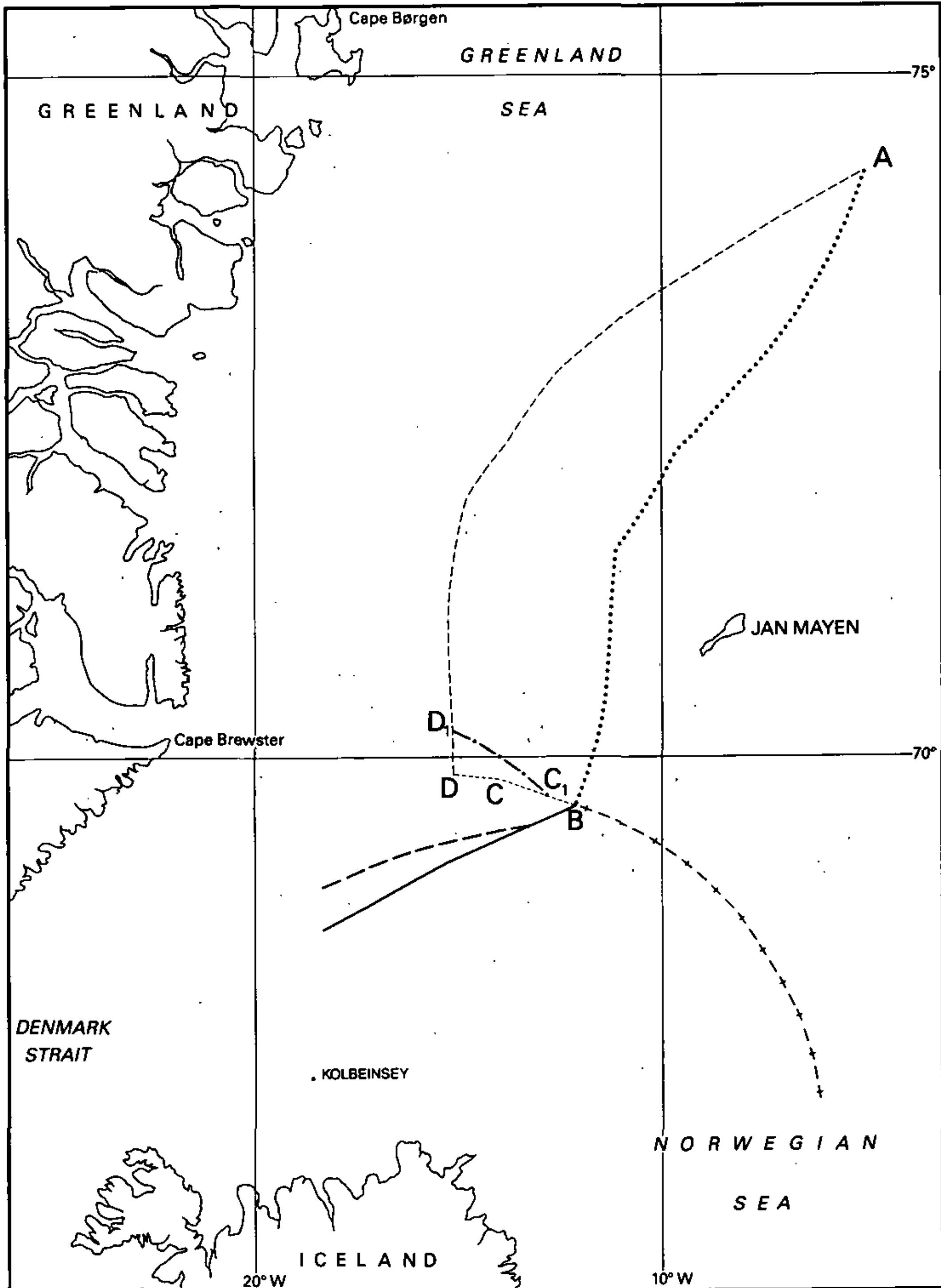
22. At this stage it may be appropriate briefly to reiterate the status of the delimitations between Iceland and Greenland and between Iceland and Jan Mayen. In their relevant legislation

Denmark and Iceland have both provided that the waters between Greenland and Iceland will be delimited by an equidistance line, see the Memorial, pages 10 - 11, paragraph 27. The Parties have not yet agreed on the drawing of the delimitation line, as Denmark has disputed the legitimacy under international law of Iceland's use of the rock of Kolbeinsey as a basepoint, see *ibid.*, page 11, note 2. At present there are, therefore, two median lines, an Icelandic and a Danish, see the sketch map on page 13, where the northern line between Iceland and Greenland employs Kolbeinsey as a basepoint, whereas the southern line disregards Kolbeinsey. Similarly, two Icelandic 200-mile lines vis-à-vis Jan Mayen can be drawn. The sketch map also depicts these two lines, the northern employing Kolbeinsey as a basepoint (represented by the $B\text{-}C_1\text{-}D_1$ line), the southern disregarding Kolbeinsey (represented by the B-C-D line).

23. The Norwegian assertion that the B-C-D line presented by Denmark in Map II of the Memorial prejudices Iceland's rights under the above mentioned Agreements between Norway and Iceland leads the Government of Denmark to make two observations. First, that under international law two States cannot by agreement divide a maritime area to which a third State has a legitimate claim without the consent of that State. Thus, any agreed Icelandic-Norwegian boundary within maritime areas that Greenland claims in accordance with international law is not binding on Denmark.

24. Secondly, the disputed area and the relevant area were defined by Denmark in its Memorial precisely with a view to leaving the interests of Iceland unaffected, see the Memorial, page 10 - 11, paragraphs 25 - 29 and Map II. The definition of the two areas was based on the assumption that in the Agreements between Iceland and Norway of 1980 and 1981, Norway had not consented to Iceland's use of Kolbeinsey as a basepoint.

Sketch Map of the Disputed Area



Symbol	Meaning
··········	200-nautical mile line off East Greenland.
------	Median line between Greenland and Jan Mayen.
+—+—	200-nautical mile line off Iceland (East of point B).
— — —	Median line between Greenland and Iceland drawn by Iceland (with respect of Kolbeinsey).
———	Median line between Greenland and Iceland drawn by Denmark (disregarding Kolbeinsey).
—·—·—	200-nautical mile line off Iceland (BC₁D₁) drawn by Norway (with respect of Kolbeinsey).
------------	The broken line BCD representing the 200-nautical mile line off Iceland (disregarding Kolbeinsey).

25. The Agreements between Norway and Iceland of 1980 and 1981 do not express such consent. No map depicting the actual delimitation line was attached to either Agreement as published in the official Norwegian gazette.[2] The Danish assumption that Kolbeinsey had not been recognised as a valid Icelandic basepoint by Norway was further supported by the sketch map attached to the Iceland-Norway Agreement of 22 October 1981 in Annex 28 to the Memorial. This map was copied by Denmark from the United Nations publication *Maritime Boundary Agreements (1970 - 1984)*, Office for Ocean Affairs and the Law of the Sea, New York, 1987, pages 38 - 42. The map from this publication is reproduced in Annex 56. In this map the delimitation line between Iceland and Jan Mayen stops at a point that is close to or coincides with the point where Kolbeinsey starts to affect the drawing of the line (point C_1 on the sketch map on page 13 above). Maps showing a similar delimitation line, i.e., terminating before Kolbeinsey starts to influence the line, are found in the Report of the Conciliation Commission appointed by the Governments of Iceland and Norway to recommend a delimitation of the continental shelf area between Iceland and Jan Mayen (*I.L.M.* Vol. XX, 1981, p. 828) and in the Proposition dated 19 February 1982 submitted by the Norwegian Government to the *Storting* relating to the granting of consent to conclusion of an Agreement with Iceland on the continental shelf between Jan Mayen and Iceland (*St. Prp. No. 61*). The map from the Norwegian Government's Proposition to the *Storting* is reproduced in Annex 57.

26. The sketch map now attached by Norway to the 1981 Agreement between Iceland and Norway on the Continental Shelf and presented in Annex 72 to the Counter-Memorial has surprised the Government of Denmark. In contrast to the map presented by the Norwegian Government to the *Storting*, this sketch map depicts a maritime boundary line between Iceland and Jan Mayen that continues from the point where Kolbeinsey starts to affect

[2] *"Overenskomster med fremmede stater"* 1980 page 912 and 1982 page 598, published by the Ministry of Foreign Affairs, Oslo.

the line (point C_1 on the sketch map on page 13) up to a point on the median line between Greenland and Jan Mayen that corresponds to latitude 70°12'04"N, a latitude given by Norway in the Counter-Memorial, page 4, paragraph 15 (illustrated as point D_1 on the sketch map on page 13). This delimitation line seems to reflect a Norwegian consent to Iceland's use of Kolbeinsey as a basepoint.

27. The Government of Denmark would thus appreciate if the Government of Norway would disclose any agreement or understanding between Norway and Iceland which recognises Kolbeinsey as an Icelandic basepoint and the date of such agreement or understanding. The Government of Denmark would further appreciate being informed of when the sketch map in Annex 72 to the Counter-Memorial was produced and when it was first released.

28. In the Memorial the disputed area was defined on the basis of information then known to the Government of Denmark. Upon receipt of the Counter-Memorial the Government of Denmark has noted that the Government of Norway does not claim any maritime area south of the outer limit of the Icelandic 200-mile economic zone as defined by Iceland (i.e., giving full effect to the rock of Kolbeinsey) as part of the Norwegian fishery zone around Jan Mayen, see page 4, paragraphs 14 - 15 of the Counter-Memorial. The relevant segment of the 200-mile limit as claimed by Iceland is shown in the sketch map on page 13 as the line B-C_1-D_1.

29. As the Government of Norway has renounced all claims to the area south of the line B-C_1-D_1 on the sketch map, the area is not part of the dispute between the Parties presently pending before the Court. The disputed area must be redefined accordingly.

30. Consequently, the Government of Denmark respectfully submits that the Court confines its decision to the area north of the line B-C_1-D_1 on the sketch map above. The redefined disputed area is depicted as the triangular-shaped figure

A-B-C_1-D_1 on Map V of this Reply. The relevant coordinates are listed in the legend to Map V.

31. Map V also incorporates the revised East Greenland baseline established on the basis of the results of a hydrographic/geodetic reconnaissance expedition carried out in 1989, see the Memorial, page 9, note 1.[3] The northward transposing of the southern border of the disputed area described above does not necessitate any substantial modification of the relevant area as defined in the Memorial, pages 11 - 12, paragraphs 30 - 35. In accordance with the notation applied above, the relevant area is now defined as the geodetic polygon: A - E - the NW baseline of Jan Mayen - F - B - C_1 - D_1 - G - the relevant baseline of East Greenland - H, see Map V.

32. On the basis of the results of the reconnaissance expedition the relevant coastal front of Greenland (the geodesic GH) has now been computed to approximately 518 kilometres vis-à-vis the relevant coastal front of Jan Mayen (the geodesic FE) of approximately 54 kilometres. The ratio between the relevant coastal fronts is thus reduced from 9.8:1 to about 9.6:1 in favour of Greenland, see the Memorial, page 96, paragraph 297.

B. History of the Dispute

1. The Incident

33. The Government of Norway finds it difficult to see how the critical situation which developed in the disputed area at the end of August 1981, including the boarding by the Norwegian Coast Guard of two Danish fishing vessels, can be termed an "incident", with the connotations attaching to that concept in current diplomatic usage. Norway prefers to name the

[3] The revised baseline is shown in medium scale in Map VII inserted on the inside backcover of this Volume. The details of the baseline are given in Annex 58.

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situation a "sequence of events" (the Counter-Memorial, p. 75, para. 269).

34. This expression is not adequate to describe the critical situation which, within very few days, necessitated several contacts, direct and indirect, between the Foreign Ministers of the two countries as well as meetings in Denmark at governmental level and consultations with the Foreign Affairs Committee of the Danish Parliament (*Folketing*), see the excerpt from a day-to-day description drafted by the Ministry of Foreign Affairs, dated 16 September 1981 (Annex 59). Seen against this background, the term "incident" is obviously a correct expression for the events.

35. The serious character of the incident proved the dangers created by the absence of a clear jurisdictional line in the disputed area and has been one of the factors prompting Denmark to seek a final solution of the delimitation dispute in accordance with international law.

2. Interim Arrangement

36. The Memorial describes the mutual understanding reached in 1984 between Denmark and Norway on an interim arrangement regarding monitoring of fishing for capelin (the Memorial, pp. 17 - 18, paras. 58 - 60).

37. In the Counter-Memorial the Norwegian Government disputes the correctness of the account of the issue given in the Memorial. It is stated that the understanding is "alleged", and the text of this understanding is claimed to "resemble" an informal paper produced by the "Danish" side and rejected by Norway. It is also maintained that Norway at the time clearly stated that no understanding, formal or informal, would be acceptable (the Counter-Memorial, pp. 75 - 76, paras. 270 - 272).

38. The description in the Counter-Memorial is not correct. The facts are as follows.

39. The matter was discussed between Danish and Norwegian negotiators at meetings in Oslo on 6 January 1984 and in Copenhagen on 4 June 1984. At the meeting in Copenhagen the Norwegian side tabled a draft in the Norwegian language, dealing both with catch allocations to each of the Parties and with the conduct of surveillance operations in the disputed area. It was agreed at the meeting that the two items should be dealt with in two separate papers, which were both typed out during the meeting in the Danish language. The text of the paper dealing with the conduct of surveillance operations was identical to the Norwegian draft. It is this text translated into English which is enclosed as Annex 13 to the Memorial and referred to by Norway as a text *resembling* an informal paper produced by the *Danish* side.

40. At the meeting on 4 June 1984 the Parties agreed on said text *ad referendum*.

41. On 12 July 1984 the Norwegian Foreign Ministry informed the Danish Foreign Ministry that the Norwegian authorities would abide by the agreed temporary arrangement of 4 June 1984 concerning the conduct of surveillance operations. It was, however, the wish of Norway that the two Parties should consider the arrangement as based on a tacit understanding, and information to the public would be limited to a statement by the Norwegian authorities to the effect that the Norwegian Coast Guard would receive instructions aiming at avoiding episodes in the disputed area. This was accepted by Denmark on 19 July 1984 by a letter to the Under-Secretary for Legal Affairs of the Norwegian Foreign Ministry. The text of the understanding was attached to that letter.

3. Arbitration Negotiations

42. The account given in the Counter-Memorial of the negotiations between Denmark and Norway on having the delimitation dispute settled by arbitration gives an incorrect

description of the events (the Counter-Memorial, pp. 73 - 74, paras. 262 - 263). It is necessary to redress that description.

43. At the meeting in Copenhagen on 7 - 8 April 1988 it was agreed that the Danish delegation should draft a paper describing the elements to be included in an arbitration agreement. Such a paper - covering the composition of an arbitration court, the questions to be put to the court, as well as the basis on which the arbitration court should make its decision - was sent to the Norwegian Ministry of Foreign Affairs on 9 May 1988 and discussed at the meeting in Oslo on 20 May 1988 (Annex 60). On all essential points Norway disagreed with the Danish suggestions.

44. At the meeting in Copenhagen on 21 June 1988 the Norwegian delegation tabled two papers containing draft elements of an "arbitration" procedure (Annex 61), adding that the papers could not be interpreted as reflecting the position of the Norwegian Government, see Danish conclusion résumé of the meeting on 21 June 1988 (Annex 62).

45. In the view of both delegations, the lengthy and complicated procedure suggested by Norway would extend over several years and was to be followed by further negotiations. This procedure did not satisfy the Danish wish for a final solution of the dispute within a reasonable time.

46. This was made unequivocally clear to the Norwegian delegation at the meeting on 21 June 1988. At the conclusion of the meeting the Danish delegation stated that the matter would be submitted to the Government for evaluation on the basis of the latest developments and for consideration of the possibilities to make progress in the matter, either through negotiation or judicial settlement by arbitration or by the International Court of Justice (Annex 62). The alleged Norwegian understanding that contact between the Parties with a view to further exploration of the possibility of agreement on the procedures for judicial settlement was still in progress subsequent to this meeting, cannot be based on the Danish response to the Norwegian proposal. For anyone

present at the meeting it was clear that the time for further negotiations between the Parties on these issues had come to an end. This conclusion is also supported by the fact that contrary to normal practice, no further meetings were scheduled at the end of the meeting on 21 June 1988.

47. The Government of Denmark regarded a unilateral submission of the dispute to the International Court of Justice as the only way to secure a final and binding solution of the dispute within a foreseeable future, and as a step which Denmark was fully entitled to take as a matter of law.

48. The Norwegian assertion that the period 1980 - 1988 can be split up into "Formal Negotiations 1980 - 1983" and "Further Contacts 1983 - 1988" (the Counter-Memorial, pp. 73 - 74, paras. 256 - 265), is nothing but a semantic exercise. During the negotiations in Oslo on 20 May 1988 and in Copenhagen on 21 June 1988, concrete documents were submitted and discussed.

49. According to Article 40 of the Statute of the Court, a case can be brought before the Court either by special agreement between the parties or by unilateral application by one party. In this case, the experience gained by Denmark from eight years of fruitless negotiation - including finally the rejection by Norway of the Danish proposal concerning the elements of an arbitration agreement, and the contents of the Norwegian counter-proposal - could only lead to the conclusion that it would not be possible to come to terms with Norway on the contents of a special agreement. Consequently, the Government of Denmark chose to submit its Application to the International Court of Justice on 16 August 1988.

50. This ought not to have caused any surprise to Norway considering both the negative result of the negotiations as well as the fact that Norway, when accepting the compulsory jurisdiction of the International Court of Justice in conformity with Article 36, paragraph 2, of the Statute by its Declaration of 2 April 1976, had added the following reservation to its acceptance:

"... the Royal Norwegian Government, having regard to Article 95 of the Charter of the United Nations, reserves the right at any time to amend the scope of this Declaration in the light of the results of the Third United Nations Conference on the Law of the Sea in respect of the settlement of disputes." (See Doc. ST/LEG/SER.E/8 Multilateral Treaties deposited with the Secretary General. Status as at 31 December 1989).

51. This reservation would have allowed Norway to limit or withdraw, at any moment, its acceptance of the compulsory jurisdiction of the Court, thereby extinguishing the last possibility for Denmark to obtain a final judicial solution of the present delimitation dispute.

C. Jan Mayen

1. General Description of Jan Mayen

52. In the Counter-Memorial, Norway has taken exception to the way in which Denmark has described Jan Mayen. Norway finds that Denmark has "rather deprecatingly characterized" Jan Mayen as "an oceanic volcanic island ... a desolate island ... and as an isolated island" (the Counter-Memorial, p. 133, para. 444). The use of the term "isolated" is felt to be "gratuitously pejorative", (*ibid.*, p. 143, para. 482) and Denmark is said to "... *make play with adjectives such as* "desolate" *and* "uninhabited"..." (*ibid.*, p. 189, para. 675). Denmark would respectfully point out that all these terms are commonly used in descriptions of Jan Mayen, not least by Norwegians themselves. Some examples will serve to illustrate this point and to refute the Norwegian attempt to discredit the scientific integrity which Denmark has sought to maintain in its pleadings before the Court.

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53. This is a standard geological term, and is used of Jan Mayen in the most comprehensive published account of Jan Mayen geology, that by the Icelandic geologist P. Imsland (*Rit Vísindafélag íslendinga 43*, Reykjavik 1984), which begins on page 11 with the following words: "Oceanic volcanic islands fall into three major groups..." and continues 14 lines later: "Jan Mayen falls into this third group". Other oceanic volcanic islands placed in this third group by P. Imsland are Gough Island, Réunion, Easter Island and Bouvet Island, the last annexed by Norway in 1928. Some of these islands are desolate and uninhabited, others are pleasant places to live on.

54. How the use of the term "oceanic volcanic island" can be "deprecating" in a paragraph describing the geology of Jan Mayen is beyond comprehension. *NATO's Fifteen Nations*, April - May 1978 contains the following description in an article by Ellmann Ellingsen (Jan Mayen in Norwegian Security Policy): "It is of volcanic origin...Beerenberg, the volcano of 2,277 metres, covers large parts of North Jan Mayen. It had its last eruption in 1970, when the island was evacuated for a short time."

A DESOLATE ISLAND

55. The description of Jan Mayen by W. Werenskiold in *A Geography of Norden* (A. Somme (editor), Oslo 1960) begins with the following words: "Jan Mayen is a desolate island". In an article published in *Annuaire Français de Droit International*, 1980, page 711, Judge J. Evensen gives a description of Jan Mayen containing *inter alia* the following phrases: "Jan Mayen is in almost all respects an inhospitable island. The flora there is poor. No tree grows there...".[4]

[4] Original text: "Jan Mayen est, à presque tous égards, une île inhospitalière. La flore y est pauvre. Aucun arbre n'y pousse ..."

56. In the Counter-Memorial, one finds the words "Jan Mayen stands in isolation" and "an isolated island like Jan Mayen" (p. 186, para. 665, and p. 191, para. 685). In these days of helicopters and short take off and landing aircraft, many parts of the world are geographically isolated yet accessible. The Counter-Memorial fails to distinguish between isolation and inaccessibility, and has assumed that Denmark has done the same.

57. *Norway Information*, published by the Royal Norwegian Ministry of Foreign Affairs, January 1982, describes Jan Mayen as follows: "There are no bushes and trees and no bays sheltered from the open sea...Access to Jan Mayen is season-limited and difficult because of the climate and lack of harbours...The barren, unproductive landscape of Jan Mayen and its severe climate provides no basis whatsoever for industry of any kind". The above-mentioned article in *Annuaire Français de Droit International*, 1980, page 711, by Judge J. Evensen, contains the following phrase: "Jan Mayen has no natural harbours or other harbours".[5] In *NATO's Fifteen Nations*, April - May 1978, it is also mentioned that "There is no harbour on the island...supplies from the sea are therefore today put ashore by floats and dories." In the same article it is stated that the Governor of Svalbard, who holds the chief administrative responsibility for Jan Mayen, has only visited the island once.

2. The Relevance of Geology and Geomorphology

58. Denmark had not expected that geology and geomorphology would be an issue in the present case, and had hoped that the Court would not have to concern itself greatly with these matters. Unfortunately, Norway has chosen otherwise and has attempted to discredit Denmark's presentation of the facts concerning geology and geomorphology. However, in its

[5] Original text: "Jan Mayen n'a pas de ports naturels ou autres."

eagerness to achieve this end, Norway has overlooked or misunderstood several passages in the Memorial. This will be demonstrated in the following paragraphs.

59. In the Counter-Memorial, the paragraphs on geology in the Memorial are characterised as "...in form at least, descriptive, but in the result they produce highly tendentious evaluations..." (the Counter-Memorial, p. 171, para. 601). As evidence of tendentiousness the following sentence from page 40, paragraph 158 in the Memorial is quoted:

> "As for the shelf margin to the west of the Ridge *and south of 70°N*, this is within 50 nautical miles of the axis of the Ridge, i.e. more than 200 nautical miles from the east coast of Greenland."

The words "and south of 70°N" were not emphasised in the original, as it was not thought that the sentence could be misunderstood, least of all in its original context.

60. The facts are that in the maritime area south of 70°N and west of the Jan Mayen Ridge, the Ridge is flanked by an oceanic basin floored by oceanic crust and more than 2,000 metres deep, see Map on page 39 in the Memorial and Profile 2 on page 30 in the Counter-Memorial. The maximum westerly position of the *geomorphologic* shelf margin of Jan Mayen here cannot lie farther west than the axis of this basin, i.e., the line where the ocean floor ceases to slope away from the Ridge and instead begins to slope towards it. This basin axis is more than 200 nautical miles from the east coast of Greenland. It appears that Norway has included this oceanic basin in the "Jan Mayen shelf" (see pp. 27 - 28, para. 69 below). No claim is made by Denmark that the geologically/geomorphologically defined continental margin of East Greenland lies farther east than the axis of the adjacent oceanic basins.

61. As for the area west of Jan Mayen and north of 70°N, this is described on page 40, paragraph 158 in the Memorial as follows:

> "However, it should be noted that in the maritime area west of Jan Mayen and north of approximately 70°N, the sea floor topography is rough, and terms like continental rise, slope and shelf break are not applicable in this area."

The word "rough" is commonly used in descriptions of sea floor morphology where volcanic ridges, seamounts and plateaus (guyots) rise from the ocean floor. The word was chosen here because the area in question was labelled "zone of rough topography" in a paper published in a Norwegian journal and with a Norwegian as first author (Grønlie, G., Chapman, M. & Talwani, M. *Norsk Polarinstitutt Skrifter Nr. 170*, Oslo 1979, fig. 2, p. 28). Map III in the Counter-Memorial is simplified so much that the character of this area is not apparent.

62. From the wording of paragraph 602, page 171, and particularly paragraph 603, pages 171 - 172, in the Counter-Memorial it would appear that the sentence from paragraph 158 of the Memorial quoted in the paragraph above has been overlooked. The Memorial makes no attempt to interpret or conceal the data, or to detect the location of the Jan Mayen shelf margin north of 70°N. What the Memorial is trying to convey is that it is doubtful whether a continental shelf, as normally understood by geologists and geomorphologists, can be said to exist in the area between 70°N and the Jan Mayen Fracture Zone to the north.

63. On page 172, paragraph 604 of the Counter-Memorial, it is stated that the bathymetry contradicts the Memorial. As an example it is implied that the Memorial suggests that the Jan Mayen continental shelf is cut off to the south. The Memorial does not discuss how and where the shelf ends to the south or if there is a continental margin in this direction. It is merely remarked that the depth of the top of the ridge increases to about 1,000 metres at a point about 150 nautical miles south of the southwestern tip of the island. This

can be supplemented by the following quotations from papers by Norwegian authors:

> "Physiographically, the Jan Mayen Ridge is a flat-topped north-south trending ridge extending southwards from the island of Jan Mayen. ... At 69°N the ridge trend changes towards the south-west. The ridge breaks up into a regime of individual seamounts at about 68.5°N with *no bathymetric relief south of 67.6°N*." (Myhre, A.M., Eldholm, O. & Sundvor, E. *Polar Research* Vol. 2 n.s., Oslo 1984, p. 47; emphasis added)

> "The Jan Mayen Ridge block, which becomes fragmented south of 68.5°N, loses its bathymetric signature south of 67.6°N" (Eldholm, O., Skogseid, J., Sundvor, E. & Myhre, A.M. *Geology of North America* Vol. L, 1990, p. 356).

In other words, Norwegian geoscientists seem to be in no doubt that the Ridge ends to the south.

64. Perhaps it has been overlooked in the Counter-Memorial that it is the Jan Mayen *Ridge*, and not the continental shelf and margin, that is described in the relevant sentence on page 38, paragraph 158 of the Memorial. The Memorial does not discuss the southern extent of the Jan Mayen *shelf*, because it is the maritime boundary between Greenland and Jan Mayen that is in dispute, not that between Iceland and Jan Mayen.

65. In any case page 172, paragraph 604 of the Counter-Memorial is illogical. The Kolbeinsey Ridge lies to the west of the Jan Mayen Ridge, not to the south. How the Jan Mayen Ridge ends to the south has nothing to do with how it might or might not be connected to Kolbeinsey Ridge to the west. The western extent of the Jan Mayen Ridge and shelf has already been discussed above on pages 24 - 25, paragraphs 60 - 62.

66. Turning now to the description of geology and geomorphology in the Counter-Memorial (pp. 18 - 19 and pp. 28

- 31, paras. 60 - 67 and 102 - 109), two comments are called for.

67. The first is that Norway has not taken care always to distinguish between facts and opinions. This can be exemplified by the remark on page 19, paragraph 62, (see also p. 28, para. 104) that "Jan Mayen is a landmass which is situated on a ridge of continental crust". This is an opinion, not a statement of scientific fact, and it is an opinion that is not greatly favoured in the scientific community. The matter is discussed fully in a monograph on the volcanic rocks of Jan Mayen by the Icelandic geologist P. Imsland (*Rit Vísindafélag íslendinga 43*, Reykjavik 1984, 332 pp.), in which one finds the following statement:

> "Grönlie et al. (1979) believe the continental segment in the Jan Mayen ridge to end somewhere about 50 km south of Jan Mayen island. All this [the foregoing paragraphs in Imsland's monograph] points to the absence of a continental rock segment under Jan Mayen" (p. 303). (The author Grönlie referred to by P. Imsland is the Norwegian geoscientist Gisle Grønlie.)

68. In a recently published account of the geology of the Norwegian-Greenland Sea by four Norwegian scientists the island of Jan Mayen is shown as being situated on oceanic crust, with continental crust first occurring under the submerged Jan Mayen Ridge to the south (see Figure 5 on p. 359 in Eldholm, O., Skogseid, J., Sundvor, E. & Myhre, A.M. *Geology of North America*, Vol. L, 1990). This is how the situation is described in paragraph 203 of the Memorial.

69. The second comment is more important and concerns the Norwegian use of the term "continental shelf". While Denmark, in paragraphs describing geology and geomorphology, has consistently used this term as it is understood in these sciences, Norway uses the term in the geological sense when referring to the East Greenland shelf, but in some other sense when referring to the Jan Mayen shelf. This, in a section on geology, can result in rather confused statements such as that

introducing paragraph 109, page 31 in the Counter-Memorial: "As has been noted, the Kolbeinsey Axis projects northeastwards on the central portion of the continental shelf between Jan Mayen and Greenland...". Since the Kolbeinsey Ridge (or Axis) is a typical mid-*oceanic* ridge with associated rift (see for example p. 29, para. 104 of the Counter-Memorial), the sentence quoted is, scientifically speaking, a contradiction in terms.

70. The above should be borne in mind when reading references in the Counter-Memorial to "the Jan Mayen shelf... towards the west" (p. 29, para. 106), "the western part of the Jan Mayen continental shelf" (p. 29, para. 107), "the shelf to the west of Jan Mayen" (p. 50, para. 159). Until Norway defines what it means by the Jan Mayen shelf in each context, these references to the shelf can lead to ambiguity.

71. In summary, the Memorial presents a correct, albeit brief, description of the maritime area between Greenland and Jan Mayen, using terms as they are understood in the sciences of geology and geomorphology. The final statement in this description that "...there exists no common shelf between East Greenland and Jan Mayen" is a statement of a geological fact.

D. Activities in the Region

1. General Remarks

72. The Norwegian activities in the North Atlantic region are described at great length in the Counter-Memorial, particularly in Part I, Chapter I and Appendices 2 - 5. A detailed account is given of the Norwegian activities in the north, south, east, and west of this region, but only a small part of the information submitted by Norway concerns the disputed area or even the area relevant to the present delimitation as defined by Denmark in the Memorial, pages 11 - 12, paragraphs 30 - 35. Historical aspects of Norwegian fishing and particularly sealing as well as the Norwegian exploitation of a number of resources that are far

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removed from the area in dispute are addressed extensively in the Counter-Memorial.

73. The present case, however, centres around

- the relevant *coasts* of East Greenland and Jan Mayen,

- a certain geographical *area* between East Greenland and Jan Mayen (the relevant area as illustrated on Map V of this Reply),

- a certain *period*, i.e., from 1979 until the present proceedings, which is the only period when competing claims have been made to the maritime area in question, and

- the actual and potential exploitation of economic *resources* in the relevant area, i.e., primarily capelin fishing, as no exploitation of possible sea-bed resources has so far taken place or is likely to take place in the foreseeable future.

74. A striking feature in the Counter-Memorial is the apparent reluctance to address these essential issues of relevant coasts, relevant area, relevant period and relevant resources.

75. The Norwegian effort is instead directed towards depicting Norway as a major power in the North Atlantic region dating back from the time of the Vikings/Norsemen, carrying out activities in almost all quarters of the region, thereby claiming a predominant and legitimate interest in, *inter alia*, the Jan Mayen region. These activities are then alleged to be opposable to neighbouring countries, in the present case to Greenland. But how could an expansive Norwegian maritime policy in the North Atlantic region in general be opposable to Greenland as far as the area west of Jan Mayen is concerned, where activities relevant for the present case, i.e., capelin fishing, started as late as in 1978 and have been the subject of interest of *both* parties? The answer is of course that it cannot.

76. Norway, in all fairness, does not claim any historical rights in the relevant area. Indeed, such rights would be impossible for Norway to substantiate, a fact recognised by a member of the Norwegian Parliament during the debate on the 1980 Icelandic-Norwegian Agreement on 6 June 1980: "In fact there is no tradition of Norwegian fishing off Jan Mayen", see Records of the Parliamentary Debate on 6 June 1980 on Recommendation No. 318 (1979 - 1980) to the *Storting* (Annex 11 to the Counter-Memorial, p. 44). It may nevertheless be appropriate briefly to state the general position of international law with respect to historical rights.

77. Land territory may be *terra nullius* and as such subject to acquisition. It is generally recognised that a State's activities within such territory can form part of the basis for a claim of sovereign rights or other rights to the territory whether in competition or not with claims from other States whose activities have been less intensive.

78. As regards *the high seas*, the situation is different. The high seas outside territorial waters were until recently considered to be *res communis* and could be used by all States and their citizens on an equal basis. A State's activities, however long they have lasted, could not form the basis for any special rights in relation to particular parts of the high seas, and certainly not the basis for an assertion of exclusive, sovereign rights.

79. This is true also as far as such parts of the high seas are concerned that now form part of the present broad maritime zones established in accordance with international law as it has subsequently developed. The basis for the exclusive rights of coastal States to such zones lies in their mere existence as coastal States. The previous activities of the coastal State in the area are of no consequence, and the right of the coastal State to a broad maritime zone is unaffected by activities previously carried out within the zone area by other States.

80. It seems equally clear that a *delimitation* of maritime zones outside territorial waters on the basis of international law

between opposite States are not affected by the previous activities of the States concerned, however long-lasting, in the zones to be delimited. Such activities do not constitute a relevant circumstance to be taken into account by an international court in deciding the course of a boundary line. This does not, however, hinder the parties concerned from seeking a negotiated arrangement as a supplement to the delimitation, involving a "phasing out" of, *inter alia*, traditional fishery according to the principles underlying proposals discussed at the Second Conference on the Law of the Sea, 1960, and later implemented in the Fisheries Convention of 9 March 1964 (the European Fisheries Convention). An example is provided by the Danish-Swedish Delimitation Agreement of 9 November 1984 where the median line between Sweden and the Danish island of Bornholm was supplemented by a Protocol concerning the phasing out of Danish fishery on the Swedish side of the boundary, provisionally for a 10-year period (Annex 33 to the Memorial).

81. Norwegian expansionist activities in the North Atlantic region have forced Denmark to challenge their legality on a previous occasion. In the early 1930s, these activities had reached a point where Norway felt justified in claiming part of East Greenland for Norway under the name of a Norwegian Viking (Eirik Raude's Land). This provocative act prompted Denmark to unilaterally institute proceedings against Norway before the Permanent Court of International Justice without consulting Norway as to the appropriateness of such a step. Denmark has felt justified in taking a similar step in the present case to seek judicial recognition of Greenland's right to a 200-mile fishery zone and continental shelf zone vis-à-vis the island of Jan Mayen. In passing, it may be noted that the area in dispute is situated off that part of the coast of East Greenland (the area between latitudes 71°30' and 75°40' N) which Norway attempted to take possession of in 1931 after having annexed Jan Mayen in 1929.

82. It is generally recognised that *heavy* dependence on fisheries may be a relevant factor under international law as far

as territories like Greenland are concerned. Reference is made to the Resolution adopted on 26 April 1958 in connection with the Convention of 29 April 1958 on Fishing and Conservation of the Living Resources of the High Seas (*Official Records*, Vol. II, Doc. A/CONF 13/38, p. 144). By that Resolution Greenland, together with the Faroe Islands and Iceland, was recognised as overwhelmingly dependent upon fisheries for its livelihood and economic development (the Memorial, p. 98, para. 305).

83. This is far from being the case of Norway. Figures quoted in the Counter-Memorial, page 11, paragraph 39, reveal that fisheries account for only a very small percentage of Norway's total export value (approximately 4 per cent. in 1985, see p. 38 - 39, para. 102, note 9, below), although this fact has been somewhat disguised in the Norwegian presentation of the figures. In 1989, the corresponding figure for Greenland was 78 per cent. And even more relevant in the case presently pending before the Court, Jan Mayen - having no population in the usual sense of the word and no economic life - is not at all dependent on fisheries.

84. Norway has emphasised that the capelin resource of the disputed area is not fished by Greenland vessels. This is correct, and the reasons for Greenland's present exploitation of the capelin resource through issuance of fishing licences to third State vessels against payment are given below on pages 58 - 60, paragraphs 142 - 149. It is a method of exploitation of off-shore resources commonly used by developing States. How Greenland is exploiting the capelin resource at present is, however, immaterial to the present delimitation of the maritime zones. Greenland's right to an extension of the fishery zone to 200 miles is based on a rule of customary international law that has been expressed in the 1982 Convention on the Law of the Sea. A State's *application of this rule* does not depend upon the existence of any particular resource within such a zone, nor is it conditional on the capacity of the State itself to exploit the resources of the zone. Article 62 of the 1982 Convention on the Law of the Sea explicitly recognises that a coastal State may not have the capacity to harvest the entire resources of its 200-mile

zone. In this situation the coastal State must give other States access to reap any surplus living resource. The coastal State exercises the right to exploit the living resources within the 200-mile zone either by domestic fishing vessels or by licence arrangements with third States. As a corollary to that right, the State is obliged, through proper conservation and management measures, to ensure that the maintenance of the living resources in the zone is not endangered by over-exploitation.

85. The concept of the 200-mile zone does not depend upon *actual* or full exploitation of the resources of the zone by the coastal State nor does the delimitation of that zone. The concept recognises the right of the coastal State to its future economic *potential*, either through the gradual expansion of a domestic fishing fleet, or through licensing of foreign fishing vessels. The Norwegian comment that the Greenland population is largely concentrated on the West Coast is thus irrelevant (the Counter-Memorial, p. 175, para. 616). For the population of Greenland, every single part of its coast and the adjacent sea is of importance both to the survival of the population and to preserving its cultural roots. Thus the northeast coast has been the site of many settlements throughout the ages and no one knows which part of Greenland and its surrounding sea may be the next to prosper. Even if Greenland at present does not itself catch the capelin in the disputed area but exploits this resource through the issuance of licences to third State vessels, this merely reflects the current priorities of Greenland's administration of its fishing resources, but by no means an absence of Greenland interest in the resources of the area.

86. Greenland derives an important income from the issuance of fishing licences to third State vessels under the ten year Fishery Agreement with the EEC, see below page 50, paragraphs 126 - 127. Full exploitation of the living resources, however, must not be pursued at the expense of a proper maintenance of the ecological balance. In the relevant area the existence of an ample capelin stock is particularly important, as the capelin constitutes the main food resource for seals and larger fish in the area. Greenland's interest in the disputed area is

concerned with the conservation as much as with the exploitation of the capelin resource.

2. Specific Comments on Map I in the Counter-Memorial

87. The Government of Denmark wishes to point out that Map I "Human Settlement and Norwegian Hunting and Fishing Grounds" in the Counter-Memorial, gives a distorted picture of habitation, hunting, and fishing patterns, both with respect to the time period and the geographic locations covered by the Map.[6]

88. First of all, the Map does not give any indication of which date or period it relates to. According to the Counter-Memorial, page 7, paragraph 21 and the legend to Map I, the Map demonstrates "the persistent pattern" of settlement and Norwegian hunting and fishing grounds.

89. According to the Map legend, the red spots mark "land use involving 10 people or more within a radius of 2 kilometres". It must be pointed out that a number of inhabited places in Greenland which satisfy this criterion are not included. The following examples are striking.

90. In North-West Greenland in the municipality of Avanersuaq the Savissivik settlement on Meteorite Island, midway between Cape York and Cape Melville, has 116 inhabitants, and the settlement Qeqertat at the head of Inglefield Broad has 31 inhabitants. The settlements Moriusaq with 73 inhabitants and Qeqertarsuaq with 17 inhabitants, both settlements established around 1950, are not included on the Map. In the East Greenland municipality of Taasiilaq the settlements Isortoq with 180 inhabitants as of 1 January 1990, and Sermiligaaq with 182 inhabitants as of 1 January 1990, are not included.

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[6] In order to enable the Court to get a general knowledge on the history and culture of Greenland the atlas *Kalaallit Nunaat Greenland*, 1990, has been deposited in 20 copies with the Registrar of the Court.

91. The omission of these inhabited places mentioned here cannot be due to the scale of the Map, nor to overlap with red marks already on the Map as the settlements mentioned are situated in isolation from existing red marks on the Map.

92. Furthermore, the criterion "Land use involving 10 people or more within a radius of 2 kilometres" is not suitable to Greenland conditions. The Greenland population lives mainly in towns and settlements, but especially in the hunting regions of East and Northwest Greenland a significant portion of the population is semi-nomadic during the summer - a pattern which has prevailed for centuries. In the hunting and fishing territory - fiords, highlands, mountain stream valleys and bird cliff areas - numerous summer settlements are used by 10 people or more, who exploit an area around the settlement larger than four kilometres in diameter. According to the legend, these settlements are qualified to a red mark on the Map. In the view of the Government of Denmark these numerous periodic settlements should have been included on the Map. This would have shown a remarkable increase in the number of red spots on Greenland's land territory.

93. One could of course also sketch a Map with the criterion 30 people or more within a radius of 25 kilometres in which case all the red spots and many more on Greenland's territory would appear on the Map whereas the red spots on Jan Mayen and Bear Island would disappear.

94. The marks on the Map indicating Norwegian hunting grounds at sea are similarly incorrect. The four whale signs off the West Coast of Greenland do not satisfy "the persistent pattern" criterion that seems to have been adopted by Norway, as Norwegian whaling in the West Greenland fishery zone ended in 1985. The four whale signs within the East Greenland fishery zone south of Kangerlussuaq are also incorrect, as the Greenland Home Rule Authority issued its last permit for Norwegian whaling inside the East Greenland fishery zone in 1985. Finally, when considering the four seal symbols off the East Coast of Greenland, it should be noted that permission for Norwegian seal

hunting inside the East Greenland fishery zone was last granted by the Greenland Home Rule Authority in 1988.

95. If the Map presented by Norway is intended to reflect present-day reality, discontinued activities should not be included as they give the impression that the areas indicated are "Norwegian hunting grounds". They are not. The Norwegian whaling and sealing activities in question belong to history.

96. As regards the marks on the Map for fishing activities off the West and East Coast of Greenland it must be pointed out that since January 1977 Norwegian fishing activity has been dependent on negotiated access to the Greenland zone. The current Norwegian access, mainly to the East Coast of Greenland, is further described below, pages 50 - 51, paragraphs 128 - 130.

E. The Greenland Economy and Fisheries Sector

1. Recent Developments in the Greenland Economy

97. In the Counter-Memorial, Norway has set forth a number of allegations on the economy and fisheries sector of Greenland and made several comparisons between Greenland and Norwegian fisheries. Before responding to these Norwegian points, developments in the Greenland economy subsequent to the filing of the Memorial have prompted the Government of Denmark to submit the following supplementary observations on the status and trends of Greenland's economy and, in particular, on the prospects of the fisheries sector.

BALANCE OF TRADE

98. The development and strengthening of the Greenland economy is closely tied to Greenland's ability to generate income from exports. After having sustained a considerable trade deficit

hunting inside the East Greenland fishery zone was last granted by the Greenland Home Rule Authority in 1988.

95. If the Map presented by Norway is intended to reflect present-day reality, discontinued activities should not be included as they give the impression that the areas indicated are "Norwegian hunting grounds". They are not. The Norwegian whaling and sealing activities in question belong to history.

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97. In the Counter-Memorial, Norway has set forth a number of allegations on the economy and fisheries sector of Greenland and made several comparisons between Greenland and Norwegian fisheries. Before responding to these Norwegian points, developments in the Greenland economy subsequent to the filing of the Memorial have prompted the Government of Denmark to submit the following supplementary observations on the status and trends of Greenland's economy and, in particular, on the prospects of the fisheries sector.

Balance of Trade

98. The development and strengthening of the Greenland economy is closely tied to Greenland's ability to generate income from exports. After having sustained a considerable trade deficit

for years, Greenland produced its first trade surplus in 1989 amounting to USD 22 million.[7]

99. Table I illustrates that the 1989 trade surplus was caused by an increase in export value and a considerable decrease in the volume of imports.

TABLE I Greenland's Trade Balance. Selected Years between 1970 and 1989. Millions of USD (Current Prices)

	1970	1975	1980	1985	1986	1987	1988	1989
Exports	13	66	135	239	272	307	341	395
Imports	51	96	239	407	382	450[8]	453[8]	373
Trade deficit	38	30	104	168	110	143[8]	112[8]	+22

Source: The Prime Minister's Department: Greenland Yearbook 1989 and Report on the Economic Development in Greenland in 1989, submitted by the Advisory Committee on the Economy of Greenland, the Prime Minister's Department, Copenhagen.

100. The reduction in the value of imported goods is a consequence of austerity measures introduced by the Home Rule Authority in 1988; measures whose full effect was not felt until 1989. The export increase may be ascribed to two equally important factors, price increases, in particular for zinc ore, and a quantitative rise in exported goods, particularly cod and cod products.

[7] Throughout the Reply, figures in Danish Kroner have been converted into US dollars at the rate of exchange employed in the Memorial, namely the exchange rate prevailing on 1 June 1989 when 100 US dollars equalled Danish kroner 772.25.

[8] In comparison with Table II, p. 44 in the Danish Memorial the import figures and consequently the deficit figures for the years 1987 and 1988 have been altered on the basis of new information made available by the Danish Bureau of Statistics.

101. 1989 may be the last year within the foreseeable future in which Greenland will enjoy a trade surplus. As has been demonstrated in the Memorial, page 43, Table I, Greenland's exports consist almost exclusively of unprocessed or semi-processed natural resources. Thus, the basis of Greenland's economy is in principle exhaustible and, at any rate, inherently unstable. The availability and exploitability of Greenland's natural resources depends to a large extent on external factors beyond the control of man, such as climate, migratory patterns of marine species and viable accessibility of mineral deposits. Despite the trade surplus of 1989, the prospects for the Greenland economy are bleak, and it is expected that the next few years will expose the vulnerability of an economy based exclusively on natural resources.

TABLE II Composition of Greenland Exports Trade in 1987 - 1989. Millions of USD (Current Prices) and Percentage of Total Export Value

	1987	(%)	1988	(%)	1989	(%)
Shrimp	220	72	217	64	236	60
Cod	16	5	30	9	58	15
Other fish products	20	6	20	6	14	3
Zinc and other minerals	37	12	61	18	73	18
Other goods	14	5	12	3	14	4
Total export value	307	100	340	100	395	100

Source: Report on the Economic Development in Greenland in 1989, submitted by the Advisory Committee on the Economy of Greenland, the Prime Minister's Department, Copenhagen.

102. Table II reveals Greenland's extreme dependence on exports of fish. In 1989 fishery products accounted for 78 per cent. of total export revenues. In comparison, the Norwegian fish exports represented approximately 4 per cent. of the total Norwegian export value in 1985, see the Counter-Memorial,

pages 10 - 11, paragraph 39.[9] In 1989, the Norwegian figure had risen to 5.5 per cent. of the total export of goods.[10]

103. Greenland's only other important export commodity, zinc ore and other minerals, represented 18 per cent. of the total value of Greenland exports in 1989, see Table II above. The last active mine in Greenland, the "Black Angel" in Uummannaq municipality, terminated its operations in the summer of 1990 as the deposits were exhausted. Consequently, the 1990 export value of minerals is expected to fall to approximately one third of the 1989 level, and Greenland will derive no income from mineral exports in 1991. No other mine projects are expected to open within the foreseeable future, although exploration surveys are being carried out in several parts of Greenland.

104. The income generated from sales of cod and cod products almost doubled between 1987 and 1988 and again between 1988 and 1989 when cod accounted for 15 per cent. of the total export value. The catch statistics for these two years may be attributed to the exceptionally plentiful cod fry of 1984 and 1985. The cod fry of 1985 may be fished until 1990, but the subsequent cod years have been so meagre that in the early 1990s the Greenland cod catch is expected to dwindle to approximately one fifth of the 1989 level. The Greenland fishery zone lies on the periphery of the cod's geographical area of distribution, and even very slight variations in climatic conditions or sea currents may make the difference between a successful and a disastrous cod year within the Greenland fishery zone.

105. With the disappearance of revenues from the exploitation of mineral resources and the anticipated substantial

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[9] On the basis of the information submitted by Norway in the Counter-Memorial, pp. 10 - 11, para. 39, the total value of Norway's exports in 1985 may be calculated to approximately USD 27,254 million, of which fisheries is quoted to account for USD 1,100 million, thus representing 4.04 per cent. of the total export value.

[10] Calculated on the basis of preliminary figures published by the Norwegian Bureau of Statistics in *Statistisk Årbog 1990*.

reduction in the cod catches, Greenland will become even more dependent on the exports of the arctic deep-water shrimp. Shrimp already constitute Greenland's most important export commodity. In 1989, shrimp accounted for an approximate 60 per cent. of the total export revenues. Due to conservation considerations, the yearly total allowable shrimp catch in the Greenland zone is not likely to be increased. As the Greenland shrimp are at the same time encountering fiercer price competition on the export markets, Greenland shrimp fishing is not expected to bring a substantially higher yield in the next few years. With no other export commodity immediately capable of offsetting the anticipated loss of income on mineral resources and cod products, Greenland may be facing a serious trade deficit problem in the years to come. These prospects compel Greenland to augment the exploitation of all available resources.

PUBLIC ACCOUNTS OF THE HOME RULE AUTHORITY

106. As a consequence of the introduction of Home Rule in Greenland in 1979, most public administrative fields have through the 1980s been gradually transferred to Home Rule, with the transfer of the law-making and budgetary powers from the Central Authorities of the Danish Realm to the Home Rule Authority, see the Memorial, pages 31 - 32, paragraphs 124 - 126. Vested with these extensive powers, the Home Rule Authority decided that increased public expenditure was required within a number of transferred administrative fields in order for Greenland to meet the challenge of sustaining an independent economy.

107. In 1986, the Home Rule Authority launched a major industrial development programme to promote employment and the profitability of the export trade. The fisheries sector is expected to remain the corner-stone of the Greenland economy, and most of the investments were made in fish processing plants, public and publicly subsidised private purchases of fishing vessels, port facilities etc.

108. As a result of these extensive capital investments, Greenland sustained a rapidly increasing budget deficit in the mid-1980s. Deficits were covered by loans from foreign and Greenland commercial banks to the Home Rule Authority. In 1988 the Home Rule Authority decided to introduce a public austerity programme lest the developing Greenland economy be crippled by a heavy foreign debt burden. Table III demonstrates that the austerity measures have improved the Greenland economy by turning the budget deficit of the mid-1980s into a surplus. The surplus was only reached through a severe reduction in public investments, especially within the fishing industry, investments that are imperative if Greenland is to obtain a higher degree of economic independence.

TABLE III Income and Expenditure of the Home Rule Authority in 1987 - 1989. Millions of USD (Current Prices).

	1987	1988	1989
1. Income tax and duties	105	134	160
2. Block grants	174	180	198
3. Fishing licences	27	28	29
4. Other income	65	55	77
5. Total income	371	397	464
6. Total operating and capital expenditure	435	391	429
7. Deficit	64	+6	+35

Source: Reports on the Economic Development in Greenland in 1988 and 1989, submitted by the Advisory Committee on the Economy of Greenland, the Prime Minister's Department, Copenhagen.

109. In addition to Greenland's export revenues from its own fishing activities, Greenland receives a very substantial income from granting third State fishing vessels access to fishing operations in the Greenland fishery zone under the Fishery Agreement with the EEC, see below pages 50, paragraphs 126 - 127. In 1989, Greenland's revenue from the issuance of fishing licences to third States was USD 28 million, growing to USD 36 million in 1990.

110. When examining the importance of exploitation of marine resources in the Greenland fishery zone to the economy of Greenland, one should focus not only on the current export revenues of the Greenland fishing industry but also on the economic potential of a future Greenland exploitation of resources that are presently allocated to third States against payment. Greenland vessels already fish more than three fourths of the fish caught in the Greenland fishery zone, see below page 48, Table VI, but it is the long-term goal of the Greenland fishery policy to render the local fishing industry capable of exploiting all of Greenland's marine resources.

2. Greenland and Foreign Fishing Activities in Greenland Waters

THE BASIS FOR NORWEGIAN AND GREENLAND/DANISH CATCH STATISTICS

111. The Counter-Memorial attempts to demonstrate the pre-eminence of Norwegian fishing, sealing and whaling in the North Atlantic Ocean *inter alia* by submitting a large number of tables on Norwegian catches in various parts of the North Atlantic Ocean (pp. 13 - 18, paras. 51 - 59; pp. 33 - 49, paras. 110 - 156; and Appendix 5, pp. 231 - 241).

112. The wealth of Norwegian catch statistics is interesting as an overview of the wide-ranging North Atlantic operations of the Norwegian fishing fleet, but the information submitted by Norway is mostly irrelevant to the present delimitation of the maritime zones between the East Coast of Greenland and Jan Mayen. Almost all catch statistics in Appendix 5 of the Counter-Memorial cover fishing activities outside the disputed area, or are concerned with species that are no longer caught in the disputed area.

113. The tables of Appendix 5 the Counter-Memorial with respect to fishing in the "Jan Mayen-Greenland Area" are

predominantly based on figures published by the International Council for the Exploration of the Sea (ICES). The statistics compiled by ICES serve as a basis for biological advice on the management of the fish stocks, but take no account of national fishery zones. A number of the Norwegian tables thus include catches taken in parts of the Greenland fishery zone, parts of the disputed area, parts of the Jan Mayen fishery zone, and in some cases parts of the high seas. The geographical scope of the Norwegian tables of Appendix 5 are correspondingly vague ("East Greenland Area, Table 5.2; "Jan Mayen-Iceland-East Greenland Area", Table 5.6). Often the tables do not indicate precisely what geographical areas are covered. The value of this type of statistics in a delimitation case is at best limited.

114. In order to rebut the inference of Norwegian fishing pre-eminence in Greenland waters that may be drawn from the general tenor of the Counter-Memorial, the Government of Denmark will describe the development of the ratio between Greenland and foreign state fishing in Greenland waters over the last decades.

115. The Government of Denmark has chosen to provide catch statistics covering catches within the Greenland fishery zone only. Following the extensions of the Greenland fishery zone in 1977 (on the West Coast and on the East Coast south of 67°N) and in 1980 (on the East Coast north of 67°N), Danish and subsequently Home Rule authorities have required all vessels fishing in the Greenland zone to submit catch reports. These reports have enabled the authorities to monitor all activities within the Greenland zone. Prior to the extensions of the Greenland fishery zone, Greenland, Faroese and Danish catches in the waters off Greenland were registered, but the total fishing activities of all States in this period may be recorded only through the application of figures collected by ICES or ICNAF (International Commission for the Northwest Atlantic Fisheries, covering the waters off the West Coast of Greenland).

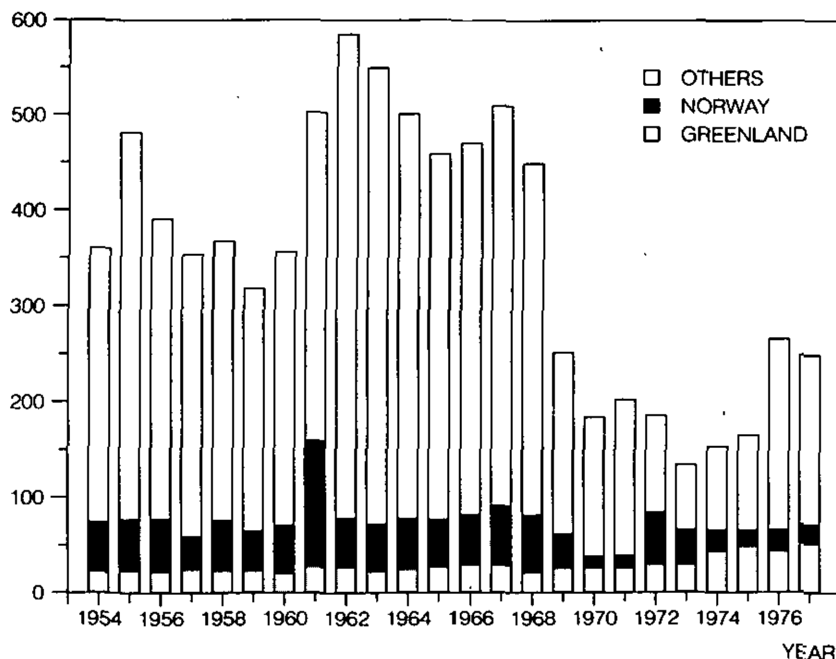
116. Due to the above-mentioned manner in which information on catches has been collected by Denmark/Greenland,

Norway, and international bodies such as ICES and ICNAF, neither Norway nor Denmark is able to provide catch statistics covering all activities within the disputed area.

FISHING IN GREENLAND WATERS BEFORE THE 200-MILE FISHERY ZONE

117. Prior to the extensions of the Greenland fishery zone to 200 nautical miles in 1977 and 1980, the resources of the waters around Greenland were predominantly exploited by non-Greenland vessels. The vessels came from a number of West and East European countries. Greenland did not benefit from the activities of these third State vessels in the area; on the contrary, the absence of regulations on the management of the fish stocks binding upon all parties led to overfishing of several species to the point of depletion of the stocks. Cod fishing was the main attraction of Greenland waters to foreign fishing vessels in the 1950s and 1960s with total yearly catches running into several hundreds of thousands of tonnes. In this period Greenland vessels accounted for approximately 5 per cent. of total cod catches. A sudden drop in sea temperature in the late 1960s resulted in a drastically reduced occurrence of the available cod stock and in reduced fishing activities by foreign vessels in the waters off Greenland. Table IV graphically depicts the proportions of foreign fishing, Norway separately noted, vis-à-vis Greenland fishing in the waters around Greenland until the extension of the Greenland fishery zone. Until 1970 cod catches formed the overwhelming part of the total annual catches.

TABLE IV Greenland and Foreign Fishing, Norway Separately Noted, in the Waters around Greenland in 1954 - 1977. Thousand Tonnes.



Source: ICES and ICNAF.

EXTENSION OF THE GREENLAND FISHERY ZONE - THE EC PERIOD

118. The extensions of the Greenland fishery zone to 200 nautical miles in 1977 and 1980 provided the legal basis for a closely monitored exploitation and an appropriate conservation of the fish stocks within the Greenland zone. Total allowable catches were established for the various species on the basis of biological advice and fishing by foreign States made contingent upon negotiated access.

119. At the time of the extensions of the zone in 1977 and 1980, Greenland was a member of the European Communities, and the Greenland fishery zone was considered EEC waters for purposes of EEC fishery policy. The EEC fishing

authorities established national quotas phasing out fishing by non-EC third States in the waters around Greenland in favour of EC vessels. Although Greenland's crucial dependence on income from the fishing industry was recognised by the EEC and the growing Greenland fishing fleet allowed to fish in Greenland waters, the Greenland vessels still had to compete with vessels from transatlantic EC countries for the allotment of quotas in Greenland waters. Norway was not a member of the Communities and was in principle barred from continuing its fishing in the waters around Greenland after the extensions of the Greenland fishery zone. However, the EEC granted Norway access to fishing in the Greenland fishery zone as part of a reciprocal fishery agreement concluded in 1980 between the Communities and Norway. Norway became entitled to exploit *inter alia* part of the valuable shrimp stock at the expense of reduced access to Greenland shrimp fishing for EC nations, including Denmark.

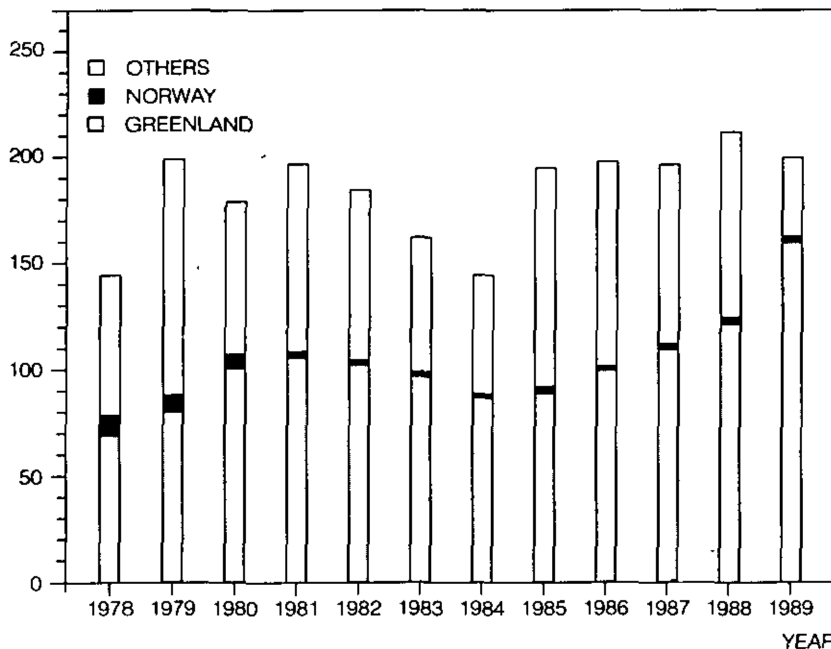
GREENLAND'S WITHDRAWAL FROM THE EC

120. Effective as of 1 February 1985 Greenland left the EC and assumed full control of the exploitation in the fish stocks in the Greenland fishery zone. This exercise of Greenland's right to make decisions on the management of its own resources had been the goal of strong political forces in Greenland since the institution of Home Rule in Greenland in 1979. The activities of foreign fishing vessels in Greenland waters did not cease with Greenland's departure from the EC, but the extent and character of foreign fishing was now regulated by the Home Rule Authority and was only allowed in so far as such fishing was considered ecologically sustainable and beneficial to the Greenland society.

121. The fishery policy of the Home Rule Authority has been committed to the promotion of the domestic Greenland fishing industry, the main source of income to the Greenland economy. The Greenland share of the total catches in Greenland waters has grown rapidly since the extensions of the zone in 1977 and 1980. In 1989 Greenland vessels fished more than 75

per cent. of the total catches in the Greenland fishery zone as opposed to only 46 per cent. in 1978. The ratio between Greenland and foreign fishing within the Greenland fishery zone in the period 1978 - 1989 is graphically depicted below in Table V. Table V should be compared with Table IV on page 45 depicting the same ratio in the period up to the extension of the Greenland fishery zone in 1977.

TABLE V Greenland and Foreign Fishing, Norway Separately Noted, in the Greenland Fishery Zone in 1978 - 1989. Thousand Tonnes.



Source: 1978-1984, the Ministry for Greenland; 1985-1989, the Home Rule Authority.

122. In its negotiations for fishery agreements with third States, the Home Rule Authority has been primarily concerned with the welfare of Greenland fishermen, and the fishing for the most valuable species, namely shrimp, has mainly been reserved

for local vessels, see Table VI below. As a result, Greenland's 75 per cent. share of the total catches in the Greenland zone in 1989 is estimated to account for approximately 90 per cent. of the total first-hand catch value. Table VI below lists the total quantities of fish and shellfish taken by Greenland and foreign vessels in the Greenland fishery zone in 1989. Shrimp and cod are the most valuable species per weight unit.

TABLE VI Total Catch of Fish and Shellfish in the Greenland Fishery Zone in 1989. Tonnes.

	Greenland Vessels	Foreign Vessels
Shrimp	65,063	5,018
Cod	87,116	27,896
Greenland halibut	7,440	1,903
Redfish	159	4,308
Wolf fish	981	198
Capelin [11]	239	12,601
Other fish	1,127	184
In total	162,125 (76%)	52,108 (24%)

Source: Greenland Home Rule Authority, figures published in Report on the Economic Development in Greenland in 1989, submitted by the Advisory Committee on the Economy of Greenland, the Prime Minister's Department, Copenhagen.

THE RATIONALE FOR LICENCE FISHING IN GREENLAND WATERS

123. Tables V and VI above demonstrate that the Home Rule Authority has not phased out all foreign fishing in Greenland waters subsequent to Greenland's withdrawal from the EC in 1985. The reasons for the continued existence of licence fishing in Greenland waters must be sought *inter alia* in the limited investment capabilities of an economy as small as

[11] The capelin figure includes catches taken outside the Greenland fishery zone in accordance with the tripartite capelin Agreement concluded in 1989 between Denmark/Greenland, Iceland and Norway. The figure only includes catches taken on the quota allotted to Greenland under the Agreement.

Greenland's. The resources of the Greenland fishery zone are to the widest extent possible utilised by Greenland vessels. However, the modern Greenland fishing fleet is neither sufficiently large nor sufficiently specialised to allow Greenland to exploit itself the full potential of the resources of Greenland waters. In accordance with the principles embodied in Article 62 of the 1982 Convention on the Law of the Sea, Greenland has allowed third States to fish the surplus resource that Greenland is not currently capable of exploiting itself.

124. A shortage of private capital in Greenland has made the development of the fishing fleet and the fishing industry in general dependent on public support and investments. The largest operation within the Greenland fisheries sector is Royal Greenland, a limited company owned by the Home Rule Authority. Royal Greenland owns its own trawler fleet, practically all fish processing plants in Greenland and an export unit in Denmark. Expansion and development of the privately owned Greenland fishing fleet also depends on subsidies and other forms of public support.

125. The fishery policy of Greenland has focused on local exploitation of the most profitable species, and the Home Rule Authority has acquired a number of industrial trawlers as well as extensively supported the private purchase of fishing vessels in general. However, rendering the Greenland fishing fleet capable of fishing all available resources in the Greenland zone requires such substantial investments in the fishing industry that these must necessarily be undertaken over a period of years. Finally, Greenland derives a considerable income from the issuance of fishing licences to third States, and the revenues constitute an important contribution to the development of Greenland's economy, including the fisheries sector. The reasons for allocating particularly the capelin fishing to third State vessels will be addressed below on pages 64 - 65, paragraphs 159 - 161.

GREENLAND'S FISHERY AGREEMENT WITH THE EEC

126. Greenland's most important fishery agreement is the ten-year Fishery Agreement concluded with the EEC in 1984 on the eve of Greenland's withdrawal from the European Community (Annex 21 to the Memorial). The Agreement is described in the Memorial, page 47, paragraph 177. Suffice it here to point out that the EEC Agreement is more complex than a regular third State licence arrangement. The EEC is allotted annual quotas for the different species and pays a fixed yearly fee irrespective of whether the quotas are exploited. In addition to the receipt of a yearly payment from the EEC, Greenland products are exempted from EEC duty. Under the Agreement, the EEC may reallocate quotas to the individual EC member states according to EEC fishery policy and also to non-EC nations. The EEC has reallocated quotas to Norway and the Faroe Islands. The Faroe Islands have had Home Rule since 1948 and have never been a member of the EC.

127. The conditions of the second five-year term of the Fishery Agreement with the EEC were negotiated in 1989. In this Second Protocol (1990 - 1994) the quotas and payment have been reviewed and adjusted according to the biological status of the different fish stocks (Annex 63). As a result, the EEC cod quota was substantially cut, and the European access to shrimp fishing shifted from West Greenland waters to East Greenland. Greenland's yearly remuneration increased from ECU 26.5 million (approximately USD 28 million)[12] to ECU 34.25 million (approximately USD 36 million).

NORWAY'S ACCESS TO GREENLAND WATERS UNDER THE EEC AGREEMENT

128. Under the reciprocal Fishery Agreement between Norway and the EEC of 1980, Norway is reallocated part of the EEC quotas in Greenland waters. The Counter-Memorial omits

[12] According to the rate of exchange ruling at 1 June 1989 when 100 ECU equalled 104,73 USD.

direct mention of Norway's negotiated access to the Greenland fishery zone. The access obtained through the EEC is Norway's only basis for operating inside the Greenland fishery zone, a fact that should be kept in mind when examining e.g., the Norwegian shrimp catches off West Greenland and East Greenland in Appendix 5, Table 5.11 of the Counter-Memorial.

129. Under the new 5-year Protocol of the Fishery Agreement between Greenland and the EEC, Norway has been allotted most of the EEC share of the lucrative shrimp fishing off the East Coast of Greenland, see Table VIII below on page 57. In addition, Norway is entitled to fish Greenland halibut off both the West and the East Coast of Greenland, and (Atlantic) halibut off the West Coast.

130. The EEC has developed a common denominator for comparing the value of different species of fish, namely the "cod equivalent". This denominator has been employed by the EEC and Greenland in the EEC Fishery Agreement. Based on the EEC cod equivalent, the value of the Norwegian quotas in the Greenland fishery zone may be calculated to 7.9 per cent. of the total value of the quotas allotted to the EEC under the Fishery Agreement with Greenland. The Norwegian "share" of the total EEC access fee under the Fishery Agreement thus amounts to USD 2.8 million. It should be noted that Norway has not compensated the EEC for the quotas granted to Norway in the Greenland fishing zone in cash, but by reciprocal fishing rights for EC vessels in the Norwegian fishery zone.

F. The Resources off the East Coast of Greenland

1. The Importance of East Coast Fishing to the Economy of Greenland

131. In the Counter-Memorial, Norway has attempted to belittle the importance to the Greenland economy of the fishing activities off the East Coast of Greenland.

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132. Norway states that "the activities of the modern Greenland fishing fleet have been almost exclusively confined to Greenland West Coast waters" and that "Greenland's interest in east coast fishing is of a very recent date". Norway further maintains that available resources in the East Coast waters have mainly been allocated to third States through licences, with Greenland vessels participating to a limited extent only in the cod and shrimp fishing off the southeast coast. Finally, emphasis is put on the fact that out of a total of 310 modern Greenland fishing vessels, only five had their registered home port in East Greenland (the Counter-Memorial, p. 12, para. 45).

GREENLAND IS A GEOGRAPHICAL, POLITICAL AND ECONOMIC UNITY

133. The Government of Denmark wishes to point out that by continually emphasising the differences between West Greenland and East Greenland with respect to e.g., the number of inhabitants, the level of activity by Greenland vessels, the occurrence and magnitude of fish stocks, the registered home ports of the Greenland vessels, etc., Norway fails to recognise the unity of Greenland.

134. Greenland is an autonomous territory within the Danish Realm, a geographical, political and economic whole. Variations in physical and cultural geography within Greenland, e.g., the geographical location of registered home ports of Greenland vessels fishing in national (Greenland) waters, are an irrelevant factor in the settlement of the present delimitation dispute.

135. Greenland is entitled to a 200-mile fishery zone and vested with the exclusive right of exploiting the resources within this zone. The freedom of the competent political organs, the Home Rule Authority, to decide how these resources should be exploited is unrestricted. The Home Rule Authority has found that for the time being the interests of Greenland are served better by exploiting part of the resources of the Greenland waters through fishing agreements with third States. The fact that these

third State agreements grant foreign vessels access mainly to East Greenland waters should not be viewed as evidence that Greenland takes less interest in these waters than in the western fishing grounds. The exploitation of the resources of the East Greenland fishery zone, including the area in dispute, is of considerable importance to the economy of Greenland. The background for the continued existence of licence fishing in Greenland waters is outlined above on pages 48 - 49, paragraphs 123 - 125.

PREVALENCE OF FOREIGN FISHING VESSELS IN EAST GREENLAND WATERS

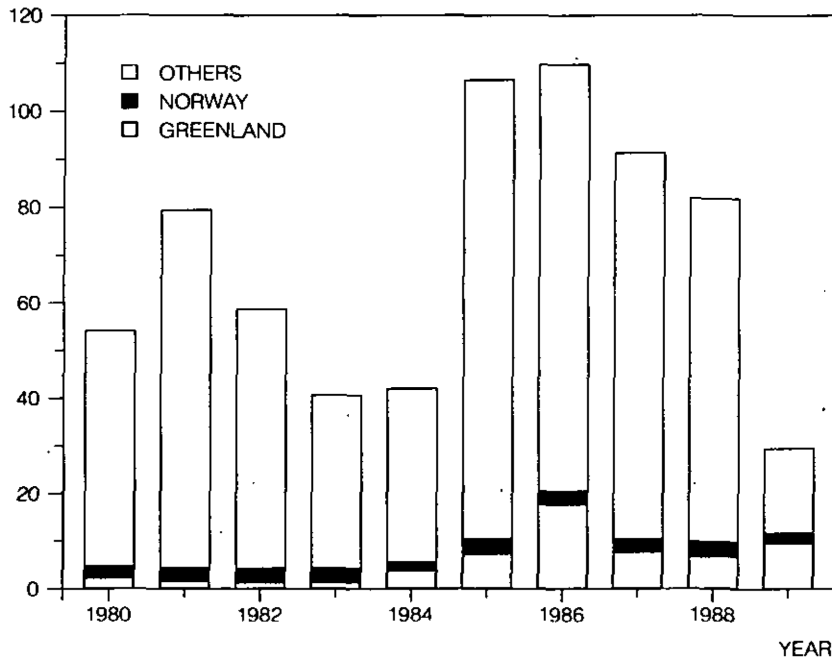
136. It is correct that large-scale *commercial fishing* by Greenland vessels was first developed off the West Coast of Greenland, and that the activities of the modern Greenland fishing fleet in East Greenland waters are of a fairly recent date (*the Counter-Memorial, p. 12, para. 45*), although the fishing in East Greenland waters by small boats from Tasiilaq/Ammassalik and Ittoqqortoomiit/Scoresbysund preceded by many decades the fishing by Norwegian vessels, which did not commence until the mid-1970s (see the catch figures in the Counter-Memorial, Appendix 5, Table 5.2). The concentration of the bulk of the Greenland population on the West Coast and the absence of a Greenland tradition for distant-water fishing were determinative of this development of the Greenland fishing pattern as was the fact that the large shrimp banks were first discovered in West Greenland. Committed to promoting the interests of the Greenland fishing industry, the Home Rule Authority has to a very large extent reserved the shrimp fishing on the plentiful banks off Northwest and West Greenland for Greenland vessels. In general, most of the quotas allotted to Greenlanders have been granted off West Greenland, and the majority of the Greenland vessels operate off the West Coast of Greenland.

137. The Counter-Memorial, page 12, paragraph 45, highlights the fact that out of a total of 310 Greenland fishing vessels of more than five gross registered tonnes, only five have *registered* Tasiilaq/Ammassalik in East Greenland as their home

port. The absence of more registrations in Tasiilaq is merely indicative of Tasiilaq's status as only the tenth-largest town in Greenland. The westerly location of the registered home ports is without relevance to Greenland's possibilities for exploiting the resources of the East Greenland waters, since modern fishing vessels are perfectly capable of making the voyage - through national Greenland waters - from the west to the east coast as they indeed do already.

138. Under the existing third State fishing agreements, foreign vessels are mainly granted access to East Greenland waters. Greenland vessels now take three fourths of all fish caught in the Greenland fishery zone as a whole, but despite an increasing Greenland participation in the fishing off the East Coast of Greenland, foreign vessels still outnumber Greenland vessels. Table VII below graphically illustrates the Greenland share of the total catch of fish and shellfish off the East Coast of Greenland in the period 1980 - 1989.

TABLE VII Total Catch of Fish and Shellfish by Greenland and Foreign Vessels, Norway Separately Noted, in the East Greenland Fishery Zone in 1980 - 1989. Thousand Tonnes.[13]



Source: 1980 - 1984: The Ministry for Greenland, 1985 - 1989: The Home Rule Authority.

IMPORTANCE OF EAST COAST RESOURCES TO THE ECONOMY OF GREENLAND

139. The distribution of quotas in the Greenland fishery zone for 1990 with separate listings for West Greenland and East

[13] *The yearly catches by Greenland vessels reflected in Table VII above exceed the corresponding figures of the Counter-Memorial, Appendix 5, Table 5.2. The Norwegian table does not include catches of shrimp,the most important species to Greenland fishing on the East Coast. Table VII above is limited to catches within the Greenland zone.*

Greenland is given below in Table VIII. In addition to the allocation of quotas to the different foreign states, Table VIII demonstrates that the quotas established for East Greenland account for more than half of the total quotas fixed for all Greenland waters. Although the quotas may not be fully exploited, the figure indicates that the resources of East Greenland waters are of considerable economic importance to Greenland, contrary to what might be inferred from the statement in the Counter-Memorial "that the most important and most exploited fish stocks are concentrated along the west coast" (p. 14, para. 53). The East Coast waters host large resources, and e.g., the occurrence of redfish is much larger than on the West Coast, a fact reflected in the allotment of quotas, see Table VIII below.

140. Table VIII also demonstrates that almost one third of the aggregate quota established for East Greenland for 1990 has been retained by Greenland. This retention of the fishing rights reflects Greenland's determination to enhance the domestic exploitation of the East Coast resources.

TABLE VIII Distribution of Fish Quotas between Greenland, the Faroe Islands, EEC and Norway for 1990. West and East Greenland Fishery Zones. Tonnes.

	Greenland	The Faroe Islands	EEC	EEC quota allocated to Norway
West Greenland				
Cod	94,000	0	16,000	0
Shrimps	43,500	270	730	0
Redfish	13,700	0	5,500	0
Greenland halibut	5,000	150	1,650	200
Other fish	11,400	0	2,000	200
Total	167,600	420	25,880	400
East Greenland				
Cod	0	0	15,000	0
Shrimps	9,600	880	1,120	2,500
Redfish	18,880	500	46,820	0
Greenland halibut	4,500	150	3,550	200
Capelin	26,000	10,000	30,000	0
Blue whiting	10,000	0	30,000	0
Total	68,980	11,530	126,490	2,700

Source: The Greenland Home Rule Authority.

141. Table VIII above illustrates that under Greenland's current Fishery Agreement with the EEC, the overwhelming part of the total EEC quota has been allocated to the East Greenland fishery zone; on basis of the above figures the East Coast share may be calculated to approximately 85 per cent. of the total EEC quota. Thus, most of EEC's payment to Greenland under the Fishery Agreement, in 1990 USD 36 million, may be considered remuneration for access to fishing on the East Coast. In weight, the EEC capelin quota accounts for approximately one fourth of

the total EEC East Greenland allotment. These figures clearly demonstrate that Greenland derives a substantial income from exploitation of the resources of the East Coast waters, including the capelin-rich disputed area, through receipt of EEC licence revenues.

EXPLOITATION OF THE CAPELIN RESOURCE

142. Norway has chosen a very broad approach to the description in the Counter-Memorial of Norwegian fishing in the North Atlantic Ocean, including past and present activities and catch statistics on a wealth of species that are not caught in the disputed or even in the relevant area between Greenland and Jan Mayen. Denmark has thus been encouraged to submit the above general remarks on the Greenland fisheries sector. The Norwegian approach should not, however, obscure the fact that - save a currently modest seal hunt - the capelin is presently the only resource of commercial importance in the disputed area.

143. The Government of Norway has noted that Denmark has failed to demonstrate that "fishing boats from Greenland fish now, or have ever fished, in the areas near Jan Mayen" (the Counter-Memorial, p. 167, para. 581). It is further contended that "(t)he Danish Memorial offers no evidence of the dependence of Greenland fisheries on the area in dispute" (*ibid.*, p. 167, para. 584).

144. The Government of Denmark refutes the inference from the Norwegian statements that Greenland has no economic interest in the resources of the disputed area. It is correct, but irrelevant, that Greenland's capelin resource in the disputed area has been caught by foreign vessels under third State fishery agreements. The extensions of the Greenland fishery zone have ensured that, today, Greenland benefits economically from all fishing within the Greenland zone, either directly through Greenland vessels catching the resources or through issuance of fishing licences to third States against payment.

145. In addition to the general comments on the rationale for Greenland's issuance of fishing licences above on pages 48 - 49, paragraphs 123 - 125 it seems appropriate to explain why the relevant resource of the disputed area, the capelin, is not presently caught by Greenland vessels. Further it will be demonstrated how the Greenland fisheries sector is indeed dependent upon the area in dispute. Capelin is commercially utilised for the production of fish meal and fish oil and the fishing of capelin requires large specialised vessels. The summer season for capelin fishing in the disputed area is very brief, and until the Icelandic-Norwegian-Greenland Capelin Agreement of 1989 Greenland had no access to winter capelin fishing in the Icelandic zone. In addition, the capelin has in the 1980s proven an unreliable, albeit potentially lucrative source of income; all of which has led the Home Rule Authority to postpone the requisite substantial investments in the capelin purse seiners that would enable Greenland shipowners to participate in the capelin fishing. The Home Rule Authority has also been negatively influenced by the fact that Greenland's exclusive right to the prime fishing ground for summer capelin is disputed by Norway.

146. The Home Rule Authority has further decided to license most of the fishing for redfish in the East Greenland zone to the EEC. The occurrences of redfish are very large, but the economically viable fishing season is very short. In weight, capelin and redfish account for more than half the total quota allotted to third States in the East Greenland fishery zone in 1990.

147. The fishing of capelin by chartered Faroese vessels, which is described in greater detail below on pages 64 - 65, paragraphs 159 - 161 is not merely a vehicle for generation of income. To the extent possible, the Faroese are required to man the vessels with Greenland crew for training as well as employment purposes. Even more important, the licensing offers the Home Rule Authority an opportunity to monitor the profitability and reliability of the capelin fishing over a period of years before making the decision on whether to undertake the

substantial investments in the requisite purse seiners or subsidise the private purchase by Greenlanders of such vessels.

148. Unlike Norway, the Greenland economy will within the foreseeable future remain inseparably tied to the ability of the fishing industry to generate income. The Greenland community is not less dependent on its fishing industry today than it was in 1958 when 67 countries adopted the Resolution dated 26 April 1958, acknowledging that Greenland (together with the Faroe Islands and Iceland) were "overwhelmingly dependent upon coastal fisheries for their livelihood or economic development", see page 32, paragraph 82 above and the Memorial, page 98, paragraph 305. Greenland must consequently rely on utilisation of all its marine resources, especially one that has proved as potentially rewarding as the capelin. The fact that the Greenland capelin quota is presently fished by foreign vessels should not distract attention from the fact that the resource migrates through Greenland waters and that the developing economy of Greenland is in need of all income that may be derived from the fishing of the capelin.

149. Greenland's issuance of licences to third States should not be viewed as a permanent arrangement. Greenland has an aspiration to become capable itself of exploiting more, if not all, of the resources in the Greenland waters. The opportunity of creating new jobs both at sea and in the processing plants on shore weighs heavily in favour of shifting the fishery policy from the issuance of licences to local fishing and processing of the catch. However, the vulnerability and relatively small scale of the Greenland economy makes it necessary to build up the capacity of the Greenland fishing fleet gradually, and the licensing arrangements will in the years to come continue to constitute a necessary and welcome supplement to Greenland's own fishing income.

Contention of Paucity of Resources in East Greenland Waters

150. Norway has cited the "(in)capacity of inshore east coast waters for biomass production" as a reason for the absence of modern fishing operations based in East Greenland (the Counter-Memorial, pp. 12 - 13, paras. 46). Norway further assumes there is agreement between Norway and Denmark as to the paucity of fishing resources in East Greenland inshore waters, referring to the Memorial, page 14, paragraph 41, as the basis for this assumption. Denmark refutes both assumptions.

151. In the Memorial (p. 14, para. 41) Denmark cited potential delimitation difficulties in the areas vis-à-vis Iceland and Jan Mayen as well as the relative paucity of fish stocks in those waters as the reasons for not extending the Danish 200-mile fishery zone north of 67° N. The statement in the Memorial explicitly referred to the *relative* paucity of fish stocks in the waters *north* of 67° N (as opposed to the East Greenland waters south of 67°N).

152. Norway, thus, misrepresents the Danish view in para. 46 of the Counter-Memorial by omitting the qualification "relative" and the geographical scope "north of 67° N". It follows from Table VIII that the quotas allocated to Greenland and third State vessels in East Greenland waters for 1990 account for around 50 per cent. of the aggregate quotas for Greenland as a whole in 1990. It is thus erroneous to describe the East Greenland waters in general as characterised by a paucity of fishing resources.

153. If the Norwegian assertion of a paucity of fishing resources is merely concerned with East Greenland inshore waters, the Norwegian assumption of an agreement between Denmark and Norway on the basis of paragraph 41 of the Memorial is incomprehensible. No views are expressed in paragraph 41 of the Memorial as to the abundance or paucity of fishing resources in East Greenland *inshore* waters, but merely as to the relative paucity of fish stocks in the East Greenland waters

north of 67°N. Nevertheless, the Norwegian assumption of an absence or insignificant occurrence of inshore fishing resources in East Greenland is incorrect. Inshore small-boat fishing in summer - coupled with hunting for marine and land mammals - has for centuries sustained the populations of the settlements of East Greenland and still represents an important contribution to the economy and diet of the local population. One example is the native Greenland inshore capelin stock that is fished intensively in coastal waters by the inhabitants of Tasiilaq/Ammassalik municipality in the summer months, see Annex 24 to the Memorial "The Role of Capelin in the Traditional Greenland Society". Ice conditions render this coastal fishing impractical for the remainder of the year. The dependence of the Inuit population on the exploitation of the resources of the East Coast of Greenland is further addressed below on pages 73 - 78, paragraphs 181 - 199.

2. Fishing for Capelin

The First Year of the Tripartite Capelin Agreement

154. On 12 June 1989 Denmark/Greenland, Iceland and Norway entered into an agreement on conservation and management of the capelin stock migrating between the maritime zones of the parties. The Agreement is commented upon in the Memorial, page 24, paragraphs 90 - 91 and in the Counter-Memorial, pages 47 - 48, paragraphs 151 - 153. In 1989, the first year of the Capelin Agreement, the marine biologists of the International Council for the Exploration of the Sea (ICES) again advised a relatively low level of fishing activity to ensure an adequate spawning stock. The capelin constitutes a decisively important link in the food chains of seals and larger fish species of the Northeast Atlantic Ocean. Observance of appropriate and adequate measures for the conservation of the capelin stock is imperative, not only to maintain the lucrative capelin fishing in the years to come, but also - and much more importantly - to secure the preservation of the ecological equilibrium of the area and thereby an exploitable multi-species resource base. Obviously,

a dedicated and rational conservation effort is particularly called for in the case of a volatile fish stock such as the capelin migrating between the maritime zones of three jurisdictions, see Article 63 of the 1982 Convention on the Law of the Sea.

155. In the course of 1989, the Parties agreed on a total allowable catch of 900,000 tonnes for the first fishing season under the Agreement, running from 1 July 1989 to 30 April 1990. Under the terms of the Agreement, the total allowable catch is to be divided between the Parties in the ratio of 78:11:11 for Iceland, Norway and Greenland, respectively. The Agreement entitles the Parties to fish their allotted quotas irrespective of zone limits, however with the proviso that Greenland and Norwegian vessels are not allowed to fish in the Icelandic zone south of 64°30'N. This geographic restriction became relevant in 1989 when the migratory pattern of the capelin proved atypical.

156. The summer capelin stock was very difficult to locate in the 1989 summer season, and according to available information none of the Greenland fishing for capelin took place in Greenland's zone, but rather far south within the Icelandic zone. In accordance with the Agreement, the Greenland capelin fishing had to stop when the resource migrated south of 64°30'N. Iceland declined to suspend the geographical limitation of the Agreement, and as a consequence only a fourth of the Greenland quota was utilised.

THE MIGRATORY PATTERN OF THE CAPELIN STOCK

157. The first year of the capelin agreement clearly demonstrated that the migratory pattern of the capelin is susceptible to *inter alia* climatic variations and difficult to predict with any degree of certainty, a fact recognised in the Memorial, pages 48 - 49, paragraph 182. The sketch figures accompanying paragraph 182 of the Memorial depicting the migratory pattern of the capelin stock, have been said by Norway to "give a misleading view of the recorded migratory pattern of this capelin stock" (the Counter-Memorial, p. 44, para. 145).

158. The two figures in the Memorial, pages 49 - 50, were recognised as indicative of the migration routes of the capelin in a Report on the Distribution of the Capelin published by a joint Icelandic/Greenland/Norwegian expert committee of marine biologists on 29 May 1986. The Report was commissioned by representatives of Iceland, Greenland and Norway. To the knowledge of the Government of Denmark, this represents the latest available multi-annual capelin distribution survey, and the Norwegian designation of the sketch figures of the Memorial as "misleading" must therefore be refuted. While the Government of Denmark recognises that the migratory routes of the capelin may be difficult to synthesise into a consistent pattern, it does not seem appropriate to base a depiction of the "recorded migratory" pattern of the capelin exclusively upon catches taken by Norwegian vessels as Norway has done on page 44, paragraph 145, with accompanying figures on pages 45 - 46 in the Counter-Memorial. Norway notoriously did not have access to capelin fishing inside the uncontested Greenland zone until 1989, and the Norwegian sketches naturally show a more easterly occurrence of the stock than what would have been the case had catches inside the Greenland zone been included.

GREENLAND'S EXPLOITATION OF THE CAPELIN BY FOREIGN VESSELS

159. Iceland, Norway and Greenland agreed in May 1990 on the establishment of a preliminary total allowable catch of 600,000 tonnes for the fishing season from 1 July 1990 until 20 April 1991. Greenland's quota is 66,000 tonnes. As of 15 January 1991 a final TAC has not yet been fixed.

160. As Greenland vessels are not yet capable of large-scale capelin fishing, the Greenland quota will be fished by foreign vessels as has been the case since the commencement of capelin fishing in the waters between Greenland and Jan Mayen.

161. The fishing of the Greenland capelin quota by foreign vessels is effected in two different ways. Under the existing Fishery Agreement with the EEC, Greenland is required to allocate annually 40,000 tonnes of capelin to the EEC, including 10,000 tonnes to be reallocated by the EEC to the Faroe Islands. This is licence fishing proper, although the complex character of the EEC Fishery Agreement distinguishes it from standard licensing arrangements. The remainder of the Greenland capelin quota is allotted to Greenland shipowners who then charter Faroese vessels to fish the capelin against a fee per kilo fish taken. Technically speaking, this is not licence fishing but exploitation of a Greenland quota even if the fish is caught by foreign vessels. In the Memorial, the Government of Denmark listed the total catch of capelin taken on Greenland quota within the Greenland fishery zone instead of breaking the catch down according to flag state, see the Memorial, page 51, Table VI.

ESTABLISHMENT OF TAC'S AND QUOTAS PRIOR TO THE CAPELIN AGREEMENT

162. In its account of the inter-state cooperation on capelin management, the Norwegian Government contends that the issuance of third State capelin licences by the Greenland authorities in 1980 "automatically authorise(d) an element of overfishing in relation to the recommended TAC" (the Counter-Memorial, p. 47, para. 149). The Government of Denmark refutes the Norwegian statement.

163. First, it should be emphasised that Norwegian capelin fishing in the area between Greenland and Jan Mayen did not commence until 1978. Secondly, in 1980 the Norwegian Government was fully aware that Denmark/Greenland took a serious interest in the exploitation of the capelin resource. The Danish Minister of Foreign Affairs had in August 1979 advised his Norwegian colleague that Denmark contemplated an extension of Greenland's fishery zone north of 67°N precisely because of the newly discovered capelin stock, part of the fishing of which had been carried out within 200 nautical miles of the Greenland coast, see the Memorial, pages 14 - 15, paragraphs 46 - 47. It

must be reiterated that in 1980 Greenland was still a member of the EC, and the EEC the competent body in matters of fishery policy in Greenland. In 1980 Norway and Iceland unilaterally agreed on a capelin TAC and how that TAC should be divided between the two countries. EEC/Greenland was not invited to these negotiations, nor was EEC/Greenland allotted a capelin share, according to the Counter-Memorial, page 47, paragraph 149, because "no Greenland catch had occurred previously". The failure to include EEC/Greenland in the Icelandic and Norwegian negotiations on the management of the capelin stock left EEC/Greenland with no alternative but to establish its own, very modest capelin quota for 1980. The quota was fished by Faroese and EC vessels.

164. The developments of 1981 expose the fallacy of the Norwegian justification for why Norway and Iceland did not allot a capelin share to Greenland. Despite knowledge that Faroese and EC vessels had fished capelin on an EEC/Greenland quota in the Greenland fishery zone in 1980, Iceland and Norway again in 1981 shared the bilaterally established capelin TAC between them without providing for an EEC/Greenland quota. Again, EEC/Greenland was forced to establish its own capelin quota.

165. Thus, EEC/Greenland establishments of capelin quotas were clearly prompted by the exclusive nature of the strictly bilateral Icelandic/Norwegian management of the migratory capelin stock. The Norwegian application of the term "overfishing" is not warranted. The fact was that Iceland and Norway had attempted to exclude Greenland from any capelin quota. Greenland, as a coastal State, insisted on a quota, as it had every right to do. To describe EEC/Greenland's use of this quota as "overfishing" is a travesty of the term. It was rather Norway and Iceland that introduced the risk of overfishing by sharing a migratory resource between them. As the capelin indisputably migrates through the uncontested Greenland fishery zone, the Norwegian/Icelandic exploitation of the capelin and the attempted exclusion of EEC/Greenland from the management negotiations are contrary the principle of multi-state management

of migrating fish stocks embodied in Article 63 of the 1982 Convention on the Law of the Sea.

PERMANENT DELIMITATION OF THE DISPUTED AREA NECESSARY

166. The Government of Norway has called it a "misconception" when it is assumed in the Memorial, page 24, paragraphs 90 - 91, that the settlement of the delimitation issue would have an influence on the management of the capelin stock to be agreed upon between Greenland, Norway and Iceland (the Counter-Memorial, pp. 48 - 49, para. 154). Norway goes on to stress that "the exact location of the boundary line is therefore not a decisive factor in determining national allotments". Nowhere in the Memorial is it stated that the size of the national maritime zones is the *decisive* factor for the sharing of the capelin resource. It would seem difficult, however, for Norway to deny all correlation between the geographical distribution of the resource between the national zones and the national quotas. Thus, the fact that the Icelandic percentage of the total allowable catch (78 per cent.) under the tripartite capelin Agreement reflects *inter alia* that the occurrences of capelin are much larger inside the Icelandic zone than outside.

167. The coming into existence of the interim tripartite capelin Agreement between Greenland/Denmark, Iceland and Norway does not render a permanent delimitation of the fishery zones superfluous. Delimitation of fishery zones and joint management of fish stocks are distinct legal concepts and should not be viewed as alternatives or mutually exclusive. The tripartite capelin Agreement is temporary in nature and covers only one type of resource, whereas the establishment of definite jurisdictional lines will provide a lasting framework for conservation and exploitation of all resources of the area.

168. A joint management agreement will in many cases be a most useful and natural supplement to a maritime delimitation, but without an established delimitation of the maritime areas under consideration, no solid basis exists for coming to terms on a joint management of the relevant resources. In the Icelandic-

Norwegian Agreement of 28 May 1980 concerning Fishery and Continental Shelf Questions, the need for a fixed boundary between the fishery zones was duly acknowledged by the Parties as a prerequisite for joint management arrangement in the waters between Jan Mayen and Iceland (Annex 16 to the Memorial, Annex 70 to the Counter-Memorial). In the preamble to the Agreement, Norway recognised Iceland's right to a full 200-mile economic zone opposite Jan Mayen. That recognition formed the basis of the operative provisions of the Agreement concerning *inter alia* joint management by Iceland and Norway of the fish stocks.

169. Greenland remains committed to a responsible exploitation and conservation of the migratory capelin resource to be agreed upon between the parties concerned in accordance with Article 63 of the 1982 Convention on the Law of the Sea. Only clear jurisdictional lines will ensure, however, that the highest possible level of efficiency is reached with respect to conservation and exploitation of the resource as well as policing of the activities in the area. The Government of Denmark considers it essential that the renegotiation of the tripartite capelin Agreement in 1992 is conducted on the basis of a permanent delimitation of the maritime area between Greenland and Jan Mayen. As pointed out by Norway in the Counter-Memorial, pages 47 - 48, paragraph 151, the tripartite capelin negotiations leading up to the 1989 Agreement proved uncommonly lengthy and complex. In the opinion of the Government of Denmark this was to a large extent attributable to the existence of overlapping maritime claims.

VALUE TO GREENLAND OF THE CAPELIN RESOURCE

170. Norway has emphasised that Greenland's "income derived from the licensing of capelin fishing off the East Greenland coast north of 68° N constitutes less than one per cent. of the value of fisheries in the whole Greenland zone" (the Counter-Memorial, p. 167, para. 584). The Norwegian assertion is not correct. In 1988, Greenland's income derived from exploitation of the capelin resource accounted for 1.6 per cent. of

the total first-hand value of fishery products landed in Greenland. Greenland's capelin income includes payment for EEC access to capelin fishing under the EEC Fishery Agreement as well as charter fees from Faroese vessels according to quantities caught.

171. According to information available to the Danish Government, the value of the Norwegian capelin catches taken in the Jan Mayen area has accounted for less than 1 per cent. of the total first-hand value of Norwegian catches in the period 1987 - 1989.[14] It would thus seem that the relative dependence of the Greenland economy on the capelin resource in the waters between Greenland and Jan Mayen, including the disputed area, at least equals that of Norway, even assuming Norway's dependence to be a relevant factor.

172. It must be reiterated that whereas the fisheries sector is the decisive component of Greenland's economy (78 per cent. of total exports in 1989) it accounts only for a minor part of the Norwegian economy (5.5 per cent. of total export value in 1989). In this perspective, Greenland's reliance on its capelin income clearly exceeds that of Norway, let alone that of Jan Mayen.

173. Part of the Greenland quota is allocated to EC and Faroese vessels against payment of a substantial lump sum under the Fishery Agreement between Greenland and the EEC, and another part of the Greenland quota is allocated to Greenland shipowners but fished by chartered Faroese vessels in return for a licence fee calculated on the basis of the quantity taken. Despite the above comparison of the relative importance of the capelin resource to the Greenland and Norwegian economies, it should not be overlooked that the value of the capelin resource to the Greenland community cannot be measured exclusively by income figures. Most importantly the capelin resource represents an economic potential to the Greenland society. This potential will hopefully be harvested within the foreseeable future by Greenland vessels to the benefit of the Greenland society.

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[14] Calculated on the basis of figures made public in *Norwegian Fisheries* 1987 - 1989 and *Fiskets Gang* No. 2, 1990, published by the Norwegian Directorate of Fisheries.

3. Sealing and Whaling in the East Greenland Fishery Zone

174. Norwegian sealing and whaling activities in "the Jan Mayen Region" have been described in great detail in the Counter-Memorial, pages 35 - 40, paragraphs 119 - 131, as well as in the lengthy Appendix 3. The portrait painted by Norway calls for comment and a more detailed review of select topics.

HISTORICAL OVERVIEW OF SEALING AND WHALING IN GREENLAND WATERS

175. The general tenor of the Counter-Memorial leaves the impression that from historical times until the present the Norwegians have exercised a virtual monopoly over the exploitation of marine resources in the North Atlantic. This is especially the case when it comes to Norwegian hunting for marine mammals. One cannot help assuming that Map I attached to the Counter-Memorial reflects a Norwegian conception of the North Atlantic Ocean - including the adjacent Barents Sea and the Davis Strait - as historically a Norwegian *mare nostrum*. The Norwegian Map I is addressed in more detail on pages 34 - 36, paragraphs 87 - 96 above.

176. This impression is reinforced by the unequivocal and erroneous statement in the Counter-Memorial, page 15, paragraph 56, that the resources of the East Greenland waters north of 68°N have been exploited exclusively by Norwegians (save some Soviet sealing activity). This statement omits all reference to the hunt for seals and whales carried out by the Inuit inhabitants of the settlements of East Greenland.

177. Unlike the Norwegian activities, the Inuit subsistence hunt for marine mammals has for many centuries and to this day supported indigenous human settlements on the East Coast of Greenland. In historical retrospect, the numbers taken by the subsistence hunters of East Greenland are not comparable to the toll inflicted upon the marine mammal stocks by the industrial

European sealers and whalers, but the fact remains that seals and whales continue to constitute the mainstay of the livelihood of the East Greenland communities. Indeed, in the most recent years the number of seals and whales caught by Inuit hunters in East Greenland even exceeded the Norwegian catches in the maritime area between Greenland and Jan Mayen, see below page 73, paragraph 183 and Table IX on page 78. Without attempting to belittle the Norwegian activities within the field of industrial whaling and sealing, the historical approach of the Counter-Memorial, in particular Appendix 3 on Norwegian sealing activities, induces the Government of Denmark to comment upon certain historical aspects of North Atlantic sealing and whaling.

178. Commercial whaling in the North Atlantic was the invention of the Basques in the Middle Ages. In the early 17th century Basque supremacy was challenged by British, Dutch and Danish whaling vessels. The newcomers relied heavily on the expertise of the Basque on board the vessels and engaged in multispecies exploitation (whale/seal/walrus). The seemingly inexhaustible hunting grounds in the waters around Spitsbergen was the prime field of contest between the whaling nations. The primary hunting prey was the Greenland right whale (bowhead), used for the production of train oil. A number of Norwegian vessels also took part in the Arctic whaling. It should be kept in mind that Denmark and Norway were united in one kingdom until 1814. Denmark/Norway exerted considerable effort but did not attain supremacy in the North Atlantic, as Holland and particularly the United Kingdom became the dominant whaling nations in the 17th and 18th centuries. The presence of the British whalers and their modern technology also affected the daily life of the inhabitants of Greenland, and in the 1790s the harpoon canon and field glasses were introduced into Inuit whaling through the British.

179. In the 19th century the stock of the Greenland right whale had become seriously depleted, and large-scale commercial whaling in Greenland waters by and large ceased as economically unviable. Only by the end of the 19th century did Norway establish itself as a major whaling nation in the North Atlantic.

180. The Government of Denmark does not dispute that Norway has dominated the industrial seal hunt in the West Ice [15] and the Denmark Strait for more than a century. When contemplating the Norwegian catch figures listed in Table 3.3 of Appendix 3 to the Counter-Memorial, it should be noted that the massive Norwegian sealing efforts have not been without detrimental effects on the Inuit population of East Greenland. In particular, the Norwegian hunt for hooded seals in the moulting grounds of the Denmark Strait that commenced in 1876 caused a severe depletion of the stock or possibly a shift in breeding grounds. Whether it was an altered migratory pattern of the hooded seal or a mere depletion of stock that came into play, the fact remains that the subsistence seal hunt carried out by the Inuit of East and South West Greenland was detrimentally affected. Contemporary eye witness accounts speak of serious famine afflicting the hunting tribes in the Tasiilaq/Ammassalik area in the 1880s owing to the shortage of hooded seal in the traditional hunting grounds. The Inuit sealing of East Greenland continued to be adversely affected well into the 20th century. Norway's industrial sealing activities in the West Ice and in particular in the Denmark Strait caused the surplus-reaping seal hunt of the Inuit to deteriorate to the point where it became necessary in several instances in the 1920s and 1930s to resettle groups of families from the Tasiilaq/Ammassalik tribes to new, far-off locations in order to secure the livelihood of the Inuit hunters.

PRESENT-DAY SEALING IN GREENLAND

181. The Counter-Memorial fails to recognise the existence of Greenland sealing in the maritime areas between East Greenland and Jan Mayen, implying that Norway and the Soviet

[15] Throughout the Counter-Memorial Norway has referred to the polar drift ice off the East Coast of Greenland as the "West Ice", a name probably originating in the fact that the ice lies to the west of Norway. Although the term "polar ice" has been employed in the Memorial, see Ice Map on p. 41, and the drift ice in question lies to the east of Greenland, Denmark has adopted the Norwegian terminology in this Reply to avoid any risk of confusion.

Union exercise a sealing monopoly in the area. The truth is very different.

182. The 1984 Home Rule Act on Commercial Hunting (Annex 64) regulates sealing within the Greenland fishery zone and reserves the hunt for any of Greenland's five species of seal for the inhabitants of Greenland. None of the Greenland seal species are endangered, and, at present, TAC's and quotas have not been established in Greenland. In the absence of quota regulations, Greenland's sealing activities are not subject to mandatory reporting of catch figures to the competent Greenland authorities, and seal catch figures in the Greenland fishery zone are given by the Greenland Fisheries Research Institute mainly as estimates based on reports submitted by the hunters.

183. In the 1980s, the hunters of East Greenland north of 68°N, mainly from Ittoqqortoormiit/Scoresbysund, are estimated to have taken an annual average catch of 5,000 - 10,000 specimen whereas the hunters south of 68°N, mainly from Tasiilaq/ Ammassalik, have taken an estimated annual average of 10,000 - 15,000 specimen. The estimated catch figures demonstrate that in the period 1980 - 1989 the East Greenland Inuit seal catch has exceeded Norway's average annual catch in the West Ice between Greenland and Jan Mayen, see the Counter-Memorial, Table 5, page 40.

184. The Greenland sealing activities are in many ways different from the seal hunt carried out by Norwegian vessels. The Norwegian sealing takes place at the edge of the West Ice. The location of the edge of the drifting West Ice shifts from year to year between the Jan Mayen fishery zone, the disputed area, and the undisputed Greenland fishery zone. The Norwegian sealing operations are industrial in character employing large specialised sealing vessels and utilising by and large only the valuable skin of the seal.

185. All the settlements of East Greenland are essentially hunting communities depending primarily on sealing, and to a lesser degree on whaling and fishing for nourishment and

generation of income. Inuit sealing is very much a subsistence activity, hunting only the surplus of the stock. The hunt for seals is carried out close to the East Greenland Coast. In the traditional fashion, all parts of the seal are used. Most of the meat from seals taken by the Inuit is used locally for human and animal consumption whereas the majority of the seal skins are sold as a by-product. The adverse public opinion and the ensuing recession of the world seal skin market in the 1970s have caused the hunting communities of East Greenland to suffer great economic hardships. The Greenland export of seal skin has been detrimentally affected to the extent that the Home Rule Authority has found it necessary to introduce a sealing subsidy scheme in order to secure the livelihood of the hunting communities, *inter alia* in East Greenland.

186. The Home Rule Authority of Greenland remains convinced that continued exploitation of the five seal species of Greenland, none of which is threatened with extinction but rather counted in millions, is possible and appropriate within a framework of responsible management and conservation of the stocks.

187. After the extension of the Greenland fishery zone to 200 nautical miles off the East Coast of Greenland in 1980, Norwegian sealing in the West Ice became dependent upon permission from the Danish and subsequently Greenland authorities in those years when the edge of the West Ice would drift inside the Greenland fishery zone. As a token of solidarity with a fellow sealing nation, Greenland granted Norway seal hunting privileges in the West Ice in the period 1981 through 1988. Greenland has never claimed any compensation for these privileges.

188. The figures on pages 222 - 223 in the Counter-Memorial depict the occurrences, and consequently the probable catch locations, of seals in the maritime area between Jan Mayen and Greenland in the period of 1975 - 1986. From these figures it seems that the undisputed Greenland fishing zone

as well as the disputed area have been important hunting grounds for the Norwegian sealing vessels.

189. The permissions for Norwegian sealing inside the Greenland fishery zones were issued annually in the form of letters from the Danish Ministry of Foreign Affairs. Upon request from the Home Rule Authority Norway's permission to hunt seals inside the Greenland fishery zone was not renewed in 1989 and 1990. Enforcement considerations, as well as a wish to safeguard the public image of Greenland's subsistence sealing, prompted this decision by the Greenland Home Rule Authority. Greenland is committed to a continuation of international cooperation with Norway and other countries on the management and conservation of the seal stocks. Rational management and conservation measures, and in particular the enforcement of such, are, however, intrinsically dependent on a delimitation of the relevant national fishery zones and the ensuing division of inspection authority.

PRESENT-DAY WHALING IN GREENLAND

190. In the opinion of the Government of Denmark the Norwegian description in the Counter-Memorial, pages 35 - 37, paragraphs 120 - 123, of the international regulation of whaling as well as the extent of and legal basis for Norwegian whaling in the area between Greenland and Jan Mayen is incomplete. In addition, a few comments on Inuit whaling in East Greenland are warranted.

191. The hunt for larger whales, e.g., blue whale, Greenland right whale (bowhead), humpback, sperm, fin, sei and minke whales, is regulated by the International Whaling Commission. The International Whaling Commission has banned the hunting of endangered whale species and established catch quotas for others. Due to the Greenland hunting communities' traditional dependence on whaling, the International Whaling Commission has recognised Greenland whaling as "aboriginal subsistence whaling", eligible for preferential treatment with

respect to the allotment of quotas. Norwegian whaling is considered commercial by the International Whaling Commission.

192. The Counter-Memorial fails to recognise the existence of Greenland whaling as well as the fact that sealing and whaling are the dominant sources of income to the inhabitants of the municipalities of Tasiilaq/Ammassalik and Ittoqqortoormiit/Scoresbysund, the two largest towns on the Greenland East Coast.

193. Since 1976 the International Whaling Commission has allowed only the minke whale of the Central North Atlantic Stock to be caught in the waters off East Greenland, Iceland and Jan Mayen. In the period 1976 - 1985 Norway was allotted approximately a third of the annual total allowable catch of the Central North Atlantic Stock established by the International Whaling Commission, whereas Iceland was allotted the remaining two thirds of the annual catch quota. Subsequent to the extension of the fishery zone off the East Coast of Greenland north of 67°N in 1980, the Home Rule Authority granted Norway the right to catch its minke whale quota inside the Greenland fishery zone subject to submission of catch figures to Greenland authorities. Greenland has never claimed any compensation for this concession to Norway.

194. Effective as of 1 January 1986 the International Whaling Commission agreed upon a moratorium on commercial whaling, including the minke whale in the waters off the East Coast of Greenland. The moratorium was not binding upon those countries that protested against it, *inter alia* Norway. Norway continued to catch minke whales in the waters between Greenland and Jan Mayen in 1986 and 1987, see the Counter-Memorial, page 241, Table 5.12, despite the statement in the Counter-Memorial, page 37, paragraph 122, that "Norwegian commercial small-type whaling was temporarily suspended in 1987".

195. Greenland's consent to Norwegian whaling within the East Greenland fishery zone, which had been notified in the form of yearly letters between the relevant ministers, was not renewed

in 1986 (or subsequent years) as Greenland felt bound by the International Whaling Commission's moratorium on commercial whaling. The locations of the Norwegian minke whale catches in 1984 - 1987 are illustrated in the Counter-Memorial, page 36. When contemplating the westerly location of a large number of the Norwegian whale catches, it should be borne in mind that Norwegian vessels have not been allowed to take minke whales within the East Greenland fishery zone since 1985.

196. These facts underscore the inaccuracy and misleading character of Map I attached to the Counter-Memorial. At the time of the submission of the Counter-Memorial, Norway did not have access to whaling in the fishery zones of West and East Greenland. Neither was Norway allowed to hunt seals within the Greenland fishery zone. Despite this fact, Map I prominently depicts these areas as Norwegian sealing and whaling grounds.

197. When the International Whaling Commission - apprehensive of a possible depletion of the stocks - decided to issue a total moratorium on commercial whaling effective as of 1986, the dependence of the East Greenland hunting communities on whaling was recognised through the Commission's adoption of an aboriginal subsistence quota of 12 annual minke whales to be taken in the area between Greenland and Jan Mayen.[16]

198. The East Greenland Inuits' landing of minke whales has always been modest, but the whale take is of vital nutritional and economic importance to the inhabitants of the municipalities of Tasiilaq/Ammassalik and Ittoqqortoormiit/Scoresbysund. Table IX shows the minke whale catches by Greenland, Norway and Iceland in the waters off East Greenland, Iceland and Jan Mayen in the period 1980 through 1989.

[16] A similar, albeit larger, Greenland aboriginal subsistence quota exists in West Greenland for minke and fin whales.

TABLE IX Greenland, Norway and Iceland's Minke Whale Catch in the Waters off East Greenland, Iceland and Jan Mayen (Central North Atlantic Stock) in the Period 1980 - 1989.

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Greenland	2	0	1	9	11	14	2	4	10	10
Norway	120	45	100	113	104	85	50	50	0	0
Iceland	201	201	212	204	178	145	0	0	0	0

Source: The Greenland Fishery Research Institute.

199. As the small-boat whalers of East Greenland take their catch close to the coast of East Greenland and Norway has suspended its commercial whaling activities, minke whales are not, at present, a resource exploited in the disputed area. Whaling should therefore be of no consequence to the delimitation issue at stake in the present case, although Greenland's incapacity to enforce the International Whaling Commissions moratorium on commercial whaling within the disputed part of the Greenland fishery zone once again exposes the difficulties created by the absence of a clear line of delimitation.

G. Marine Research in Greenland Waters

200. The Counter-Memorial's account of marine research carried out in the waters around Greenland and Newfoundland/ Labrador is concerned exclusively with Norwegian activities, see page 50, paragraph 160; page 169, paragraph 594; and Appendix 4 of the Counter-Memorial.

201. In order to provide a more comprehensive review of the scientific research undertaken in the waters around Greenland, the Government of Denmark has found it appropriate to briefly outline these activities, with particular emphasis on East Greenland waters, see Annex 65.

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202. Annex 65 offers in Table II a presentation of the Danish/Greenland oceanographical and fisheries-related biological research conducted in East Greenland waters since 1957.

203. Table III in the Annex lists research programmes undertaken jointly with third States in Greenland waters in general since 1963. Finally, a list of permission for foreign oceanographical and marine biological expeditions in Greenland waters in 1989 and 1990 is provided in Table IV.

PART II

THE LAW

CHAPTER I

The Status of Islands in Maritime Delimitation

A. General Remarks

204. Norway asserts that Denmark has misunderstood the role of islands in maritime delimitation by treating them as a separate legal category (the Counter-Memorial, p. 134, paras. 446 - 448). In the view of the Government of Denmark this assertion is not warranted. Ever since the question of maritime delimitation between States first emerged in the preparations leading to the First United Nations Conference on the Law of the Sea in 1958, islands have been given special attention.

205. In the commentary of the International Law Commission to Article 72 on the delimitation of the continental shelf in the final version of the Commission's Articles on the Law of the Sea, it was stated that "provision must be made for departures [from the median line] necessitated by any exceptional configuration of the coast, as well as the presence of *islands* or of navigable channels. This case may arise fairly often, so that the rule adopted is fairly elastic" (emphasis added), see 1956 *I.L.C. Yearbook*, Vol. II, page 300.

206. At the 1958 Conference islands were included among the features which might constitute "special circumstances".

207. During the Third United Nations Conference on the Law of the Sea, a group of African States tabled a proposal concerning the entitlement of islands to maritime zones.[17] According to the proposal factors such as an island's size, population and distance to its mainland or to the mainland of another State should be taken into account when deciding the

[17] DOCUMENT A/CONF.62/C.2/L-62/Rev.1 of 27 August 1974 (Annex 66).

maritime spaces to be allocated to the island. The role of islands proved one of the central issues that complicated the negotiations on the question of delimitation of maritime zones at UNCLOS III.[18]

208. Many bilateral delimitation agreements disclose a recognition by both parties that the presence of islands creates special problems, and a variety of solutions to such problems has been adopted. It is of course difficult to extract from State practice the exact reasoning leading to a delimitation agreement because the negotiating history is seldom made public. State practice provides numerous examples of islands belonging to one or both of the parties which have been either totally disregarded or given either full or partial effect in the delimitation even though no possibility exists of discerning any particular reason for the solution chosen.

209. In a recent publication on the law of maritime delimitation the role of islands in delimitation cases is said to present a kaleidoscopic picture, scarcely explained in case law, and is characterized as one of the most difficult aspects of the subject of delimitation.[19]

210. In the most recent survey exclusively on the regime of islands in international law the following is stated:

> "In State practice, islands have constantly emerged as natural features warranting special solutions...In the maritime limits sphere, islands have recently emerged as one of the most troublesome features. A wide body of

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[18] For documentation of the issue of islands at the various Law of the Sea Conferences, see Hiran W. Jayewardene, *The Regime of Islands in International Law*, p. 306 - 310 (Dordrecht 1990).

[19] Prosper Weil, *The Law of Maritime Delimitation - Reflections*, p. 233 (Cambridge 1989)

> State practice has developed, but considerable refinement of legal technique is required." [20]

211. In order to ascertain any trend concerning the effect of islands in maritime delimitations, focus must be on those situations where the effect of one or more islands has been in dispute in connection with the drawing of the line of delimitation. Of particular importance to the present case are, of course, those situations where islands are situated far from the mainland of the State exercising sovereignty over those islands and close to an *opposite mainland of another State* (detached islands). If such situations are to be found in the same region as in the present delimitation case, their importance is further enhanced, see pages 100 - 108, paragraphs 277 - 298 and Chapter II below.

212. In the Report of the Conciliation Commission appointed by the Governments of Iceland and Norway to consider the delimitation of the continental shelf area between Jan Mayen and Iceland, the following was said about the effect of islands in general:

> "...Islands belonging to a state and lying in the vicinity of its coasts are ordinarily given full weight for delimitation purposes. Where both coastal states have islands along their coasts, examples are found where a "trade-off" takes place by *ignoring the islands on both sides* when drawing the boundary line. Where islands are situated within the 200-mile economic zone of another state, the "enclave principle" has sometimes been utilized to give them territorial seas. There are other examples *in* which islands have been given limited weight, particularly in straits and other narrow areas. ..." (*I.L.M.* Vol. XX, 1981, pp. 824 - 825).[21]

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[20] Hiran W. Jayewardene, *The Regime of Islands in International Law*, p 192.

[21] The different categories of islands listed by the Conciliation Commission correspond to the structure chosen by Hiran W. Jayewardene in his comprehensive study on the regime of islands in international law.

213. In response to the Counter-Memorial, an analysis will be made in the following sections of State practice and international case law involving islands. First the delimitation agreements mentioned in the Counter-Memorial, pages 176 - 181, paragraphs 619 - 648, will be addressed (B 1). Then delimitation practice and case law in which islands have been given partial or no effect will be reviewed (B 2). Finally the importance of the delimitation of the exclusive economic zone off mainland Norway and the fishery protection zone around Svalbard, including Bear Island, will be explained (B 3). The case of Jan Mayen will be dealt with separately in Chapter II below.

B. Analysis of the Effect of Islands in Maritime Delimitation

1. State Practice Relied on in the Counter-Memorial

214. In the Counter-Memorial (pp. 176 - 181, paras. 618 - 648), Norway refers to a number of examples of State practice in order to identify

> "a substantial sample of geographical situations which, in its view, are comparable to the relationship between Greenland and Jan Mayen and which have been the subject of international agreement" (p. 176, para. 618).

215. However, closer analysis shows that the examples chosen by Norway are not comparable to the relationship between Greenland and Jan Mayen. The examples do not support the Norwegian claim that Jan Mayen should be allowed to impinge upon Greenland's full 200-mile fishery zone and continental shelf area.

(1) UNITED KINGDOM - NORWAY (1965)

216. Norway has emphasised that this Agreement gave full effect to the Shetland Islands (the Counter-Memorial, p. 176,

para. 621). Norway, however, fails to acknowledge the fact that the Shetland Islands notoriously have a sizeable indigenous population and an economic life of their own.

(2) JAPAN - REPUBLIC OF KOREA (1974)

217. The Norwegian contention with respect to this Agreement is that it "gives full effect to the Japanese islands of Tsushima" (the Counter-Memorial, p. 177, paras. 623 - 624).

218. The Counter-Memorial ignores the fact that the Tsushima islands are large islands of about 708 square kilometres, and that they have a population of approximately 47,000 who derive their livelihood essentially from fishing, forestry and tourism. Thus there is no similarity between the Tsushima islands and Jan Mayen.

(3) INDIA - INDONESIA (PHASE 1) (1974)

219. The Counter-Memorial mentions this Agreement attempting to demonstrate "that the Indian island of Great Nicobar is given full effect" (see p. 177, para. 625).

220. However, a look at the map shows that in this case the modified equidistance line was selected for two reasons; first, because both the opposite coasts consisted of narrow ends of linear island chains, and secondly, because there was not a great disparity between the lengths of the relevant coasts, the coastal front on the Indian side being about 16 miles, and on the Indonesian side about 20 miles in length. These factors are not comparable to but clearly distinguishable from those existing in the present case.

221. It is also relevant that the Great Nicobar is a large, densely populated island that has its own economy consisting of agriculture, forestry, fishing and tourism. It is in fact larger than many island States.

(4) PANAMA - COLOMBIA (1976)

222. The Counter-Memorial asserts that the above Agreement "delimiting maritime boundaries in the Caribbean Sea and the Pacific Ocean", in its Article 1 "expressly adopts the principle of equidistance" (p. 177, para. 627).

223. However, while Article 1 refers to the median line, the median line (as expressed in the text) is only applied, with minor modifications, along those segments of both frontages *which involve a relationship of adjacency.*

224. Norway asserts (p. 177, para. 628) that "the result is that the very small islands and cays on which Colombia's entitlement is based have been given full effect". But this is not so; as explained in an analysis of maritime boundary agreements presented to the Court by the Government of Canada in the *Gulf of Maine* case: "The boundary provided for an equal exchange of areas in relation to a modified equidistance line drawn to give half-effect to the Colombian Albuquerque and Southeast Cays, and full effect to the islands of San Andrés and Providencia, while disregarding Roncador...". (*Gulf of Maine* case, Annexes to the Reply submitted by Canada, Vol.I, State Practice, p.12, para. 11).

225. It is also important to note that the Colombian islands of San Andrés and Providencia have a population of about 22,000.

226. In the Pacific, the same method was followed with an equidistant boundary where the relationship is one of adjacency, but where the coasts tend to become opposite, the delimitation line is constituted by a parallel, that of 5°N, a boundary which operates to the detriment of Colombia.

(5) INDIA - THE MALDIVES (1976)

227. The Counter-Memorial invokes this Agreement to show that "the modest and isolated Indian island of Minicoy was

allowed full effect" despite being 210 nautical miles from the Indian mainland (p. 178, para. 630).

228. This comparison ignores the fact that Minicoy Island has a population of about 7,000 who are supported by coconut cultivation and fishery, and Minicoy thus cannot be compared to Jan Mayen. Apparently, Minicoy was seen by India, not as an isolated island but as the most southerly island in the Laccadive Islands, a group of islands in many ways comparable to the Maldives. It is also worth noting that the Maldives obtained a favourable delimitation line from points 1 to 10 of the boundary.

(6) INDIA - INDONESIA (PHASE 2) (1977)

229. The Counter-Memorial invokes the 1977 Agreement between India and Indonesia extending the boundary established in 1974 in the Andaman Sea and the Indian Ocean between Great Nicobar and Sumatra (p. 178, para. 631).

230. The Counter-Memorial is silent as to the inferences it wishes to draw from this Agreement. It must be emphasised that the extension of the original boundary was drawn in such a way that India and Indonesia received comparable compensations in different segments of the boundary line.

(7) COSTA RICA - COLOMBIA (1977)

231. The Counter-Memorial invokes this Agreement, asserting that although it does not adhere to any particular principle of delimitation, it "gives more or less full effect to the small islands and cays in the Caribbean which form the basis of Colombian entitlement". Norway adds that "the alignment is related predominantly to the Cayos de Albuquerque" (p. 178, para. 632).

232. However, the Counter-Memorial fails to mention that this Agreement, while ratified by Colombia within seven months of its signature, has caused strong opposition in Costa Rica for the very reason that it gives too much weight to Colombia's

archipelagic and insular territory. Opposition to ratification in Costa Rica caused the ratification process to be withdrawn in 1983.

233. In an attempt to solve the impasse, Colombia negotiated with Costa Rica, on 6 April 1984, another delimitation treaty, this time in the Pacific, and the Parties linked the ratification of both instruments by providing that the exchange of instruments of ratification should take place on the same date. Article 1 of this second Treaty recognises the baselines established around the Costa Rican Isla del Coco and specifically provides that the delimitation line "will continue for the margin of the 200 miles of maritime areas of the island del Coco". No such margin of 200 nautical miles is attributed to the opposite smaller Colombian island of Malpelo. The distance between the islands is about 335 nautical miles, so Malpelo gets less than 200 nautical miles, thus adopting a solution similar to the one requested in the present case by Denmark. The maritime area thus recognised to Costa Rica is considered to be rich in migratory species, especially tuna (Annex 67).

234. There has been no Costa Rican ratification of the two Treaties. Colombia ratified the second Treaty in 1985.

(8) UNITED STATES - VENEZUELA (1978)

235. Norway invokes in support the treatment given in this Treaty to the Venezuelan Aves Island (Isla Aves) as the basis for an equidistance boundary opposite the United States island of Saint Croix (the Counter-Memorial, pp. 178 - 179, para. 633).

236. There are, however, special historical and economic reasons for the treatment accorded to Aves Island.

237. A dispute between the United States and Venezuela concerning Aves Island arose in the 1850s. By a Treaty dated 1859 the United States, after receiving compensation for the damages suffered by its nationals who had been exploiting rich guano deposits in the island, waived all claims over Aves Island,

abandoning in favour of Venezuela all the rights they might have over the island".[22] The Treaty from 1859 shows the economic importance of Aves.

238. In early 1977 the United States informed Venezuela of its intention to enforce a limit based on the equidistant line giving full effect to all islands. This was a policy choice by the United States to be applied to all boundary areas. In the Venezuela - United States context this had the practical effect that the United States would recognise full effect to Aves Island, but this is a reflection of a general policy aim of the United States, divorced from the intrinsic merits of Aves Island, and as such, is not a reflection of the Court's approach which is to consider the individual characteristics of each case.

(9) THE NETHERLANDS - VENEZUELA (1978)

239. The Counter-Memorial cites this Agreement as giving full effect to offshore islands (p. 179, para. 635).

240. A proper analysis of this Agreement leads to conclusions fully in support of the Danish claim in the present case. The delimitation concerned relates to two separate areas in the Caribbean Sea which are represented in the two sketch maps on pages 246 and 247 in Volume II of the Counter-Memorial.

241. This Agreement is very complex covering both the territorial waters, the continental shelves as well as the economic zones between, on the one hand, the Dutch islands of Aruba, Curaçao and Bonaire and the northeasterly situated Leeward Islands, Saba and St. Eustatius, and on the other hand the Venezuelan mainland and the Venezuelan islands Los Monjes, Islas de Aves and Aves Island. It should be pointed out that this Agreement is not an equidistance agreement, the Preamble stating that the Parties' "desire to delimit the maritime and underwater areas ... in a fair, precise and equitable manner".

[22] Lapradelle et Politis, *Recueil des Arbitrages Internationaux*, Vol. II., p. 407.

242. The islands of Aruba, Curaçao and Bonaire are situated at an average distance of only 30 nautical miles from the Venezuelan mainland coast. The delimitation line between them and the Venezuelan mainland is near an equidistance line but is in fact in favour of Venezuela, and in the major delimitation area on the seaward side of these islands, their effect on the boundary line to the Venezuelan economic zone is further reduced by tilting the lateral boundary lines towards each other. In fact the reduction in sea area for these three islands amounts to 56 per cent. compared to a hypothetical equidistance delimitation.

243. In the minor sea area to the north between the relatively small Dutch islands of Saba and St. Eustatius and the Venezuelan Aves Island it was logical to apply an equidistance delimitation.

(10) UNITED STATES - MEXICO (1978)

244. The Counter-Memorial invokes this Treaty on the ground that "full effect is given to three very small insular features some distance off the coast of Yucatan: Arenas Cay, Isla Desterrada and Arrecife Alacran" (p. 179, para. 636).

245. The description in the Counter-Memorial, is, however, incomplete. As shown on pages 250 and 251 in Volume II of the Counter-Memorial, this Treaty applies to two delimitations, one in the Gulf of Mexico, the other, in the Pacific Ocean. And in the Pacific the boundary penetrates deeply to the south, towards the Mexican side, giving full effect to the US islands of San Clemente and San Nicolas. In this way there is a "trade-off" with the Mexican islands off the coast of Yucatan.

(11) INDIA - THAILAND (1978)

246. Norway refers to this Agreement, stressing the fact that it accords full effect to the Nicobar Islands (the Counter-Memorial, p. 179, para. 637).

247. This Agreement does not provide an analogy that deserves to be taken into account by the Court when deciding the present case. Full effect to the Nicobar Islands between point 2 and 7 of the delimitation line should be seen as the equitable result of according full effect to all the relevant Thai islands, some of which lie up to a distance of 32 nautical miles from the mainland coast of Thailand.

248. The delimitation line between point 1 and 2, clearly in favour of Thailand, has to be seen, not in isolation but in the context of the boundaries established by the 1975 Agreement between Thailand and Indonesia and the 1977 Agreement between India and Indonesia (phase 2).

(12) THE UNITED KINGDOM - NORWAY (PHASE 2) (1978)

249. The above comments to the Agreement between the United Kingdom and Norway (Phase 1) are equally applicable to this Supplementary Protocol, see pages 86 - 87, paragraph 216 above.

(13) DOMINICAN REPUBLIC - VENEZUELA (1979)

250. Norway describes the alignment contained in the Agreement between the Dominican Republic and Venezuela of 3 March 1979 as "an equidistant line between the Dominican Republic and the Netherlands Antilles islands...". Norway goes on to describe the size of these islands, concluding that they are given full effect (the Counter-Memorial, p. 180, para. 639 - 640).

251. This presentation of the Agreement is based on a misunderstanding. The Agreement, concluded between Venezuela and the Dominican Republic, does not apply to the Netherlands Antilles Islands. What the Agreement applies to is, of course, the delimitation between the two Parties, Venezuela and the island State of the Dominican Republic. And the outcome of the Agreement was that the delimitation line was drawn somewhat closer to the Dominican Republic than to the Venezuelan mainland, one of the reasons being that the Dominican Republic

accepted that Venezuela utilised the Netherlands Antilles Islands as basepoints. It remains to be seen what effect the Netherlands Antilles Islands will be given vis-à-vis the Dominican Republic in a future delimitation between those parties.

(14) DENMARK - NORWAY (1979)

252. In this Agreement concerning the delimitation of the continental shelf and the fishery zones between the Faroe Islands and Norway, full effect was given to the Faroe Islands and an equidistance boundary was established between them and Norway (the Counter-Memorial, p. 180, para. 641). This Agreement represents an equitable solution considering the fact that these islands enjoy an independent political status within the Kingdom of Denmark, that the islands have a population of 47,000, and that they have their own economy which is overwhelmingly dependent on fisheries. Moreover, given that a median line boundary had been agreed between the Norwegian coast and the United Kingdom coast (including the Orkneys and the Shetlands which were given full effect) the same equitable solution was called for with respect to the Faroe Islands, lying slightly farther to the north.

(15) VENEZUELA - FRANCE (1980)

253. The Counter-Memorial invokes this Treaty in order to show that it "treats the small Venezuelan island (Aves) and the very large French islands (Guadeloupe and Martinique) on a basis of parity" (pp. 180 - 181, paras. 642 - 643).

254. This is not actually the case. The meridian delimitation line mentioned by Norway is far from being an equidistance line. In fact, the two segments of the indicated meridian give only some 80 per cent. effect to Aves Island.

(16) FRANCE - AUSTRALIA (1982)

255. Norway relies on this Agreement which establishes two boundaries between Australia and the French territories in the

Indian Ocean and the southwest Pacific Ocean (the Counter-Memorial, p. 181, paras. 644 - 645).

256. Article 1 of the Agreement, referring to the southwest Pacific Ocean, establishes the boundary between "...Australian islands in the Coral Sea, Norfolk Island, and other Australian islands on the one hand and New Caledonia, the Chesterfield Islands and other French islands on the other hand..." Thus, the boundary is essentially a median line between two sets of broadly comparable islands, with each set of islands being backed by long coastlines - the Australian mainland on the one side and New Caledonia on the other.

257. The above argument of broadly comparable islands also applies to the delimitation in the Indian Ocean between the French Kerguelen Islands and the Australian McDonald and Heard Islands.

(17) INDIA - MYANMAR (BURMA) (1986)

258. Norway states that the Agreement accorded full weight to the Indian Andaman and Nicobar Islands in relation to Myanmar (the Counter-Memorial, p. 181, para. 648). The Indian Narcodam Island and Barren Island were given half effect in this delimitation.

259. As a general comment, it should be noted that in its description of India's Agreements with Indonesia, Thailand, and Myanmar regarding the delimitation of the Andaman and Nicobar Islands vis-à-vis the coasts of the three States (Agreements 3, 6, and 11 above) the Counter-Memorial omits to mention the fact that the Andaman and Nicobar Islands consist of about 300 islands with a total area of approximately 8,250 square kilometres. The total population of the islands is about 1.88 million, and the islands have a very flourishing economy deriving from agriculture, fishing, forestry and tourism.

2. Other Islands Accorded Partial or No Effect

260. It is convenient, at this stage, to include a more extended commentary with respect to the methods that have been employed in the practice of States and in case law in order to correct the inequitable and distorting effects that certain islands may produce on a boundary based on equidistance. Two different methods have been used for achieving the necessary corrections, and both of them would in the present case lead to solutions which are much more radical with respect to Jan Mayen than the one requested in Denmark's Submissions.

PARTIAL EFFECT

261. The first method is to give partial effect to the island in question when drawing an equidistant boundary. In several cases the approach has been the "half effect" solution, first used in the Iran - Saudi Arabia Agreement of 13 December 1965, for the large Iranian island of Kharg, lying 17 nautical miles off Iran's mainland. This Agreement was later superseded by the Agreement of 24 October 1968 (Annex 68).

262. In the Greece - Italy Agreement of 24 May 1977, the solution adopted was to give varying effect to certain Greek islands: full effect for the large islands of Corfu, Kefallinia and Zakynthos; three quarters effect for the islands in the Channel of Otranto (Othonoi and Mathraki); and half effect for the Strofadhes group (Annex 69).

263. A *similar flexibility* is displayed in the Indonesia - Malaysian Agreement of 27 October 1969 (Annex 70). The boundary between the adjacent coast of Borneo (Indonesia) and Sarawak (Malaysia) is a modified equidistant line, with less and less effect being given to the Indonesian islands the further they lie offshore (there are no Malaysian islands to balance them). The effect declines from full effect through 0.86, 0.74, 0.68 to 0.56, avoiding any rigid adherence to "three quarters" or "half effect".

264. In the Iran - Oman Agreement of 25 July 1974, the island of Umm al Faiyarin was given half effect for turning point 18 (Annex 71).

265. In the recent United Kingdom - Ireland Agreement of 7 November 1988, the Scilly Isles were given half effect for purposes of the southern boundary projecting into the South West Approaches (Annex 72).

266. Denmark has already mentioned the Agreements of Sweden with the USSR and Poland, in which three quarters effect was given to the Swedish island of Gotland (the Memorial, p. 93).

267. Denmark has also referred to the Treaty of 14 September 1988 between Denmark and the German Democratic Republic, where the Danish island of Bornholm was not given full effect (the Memorial, pp. 92 - 93).

268. The International Court of Justice has attributed less than full effect to several islands in its Judgments: half effect to the Kerkennah islands and no effect to the island of Jerba in the *Tunisia-Libya* case (*I.C.J. Reports 1982*, p. 89, para. 129; pp. 63 - 64, para. 79); half effect to the Canadian Seal Island in the *Gulf of Maine* case (*I.C.J. Reports 1984*, pp. 336 - 337, para. 222) and reduced effect to Malta in the *Libya-Malta* case (*I.C.J. Reports 1985*, p. 56, para. 78). Finally, the Anglo-French Arbitration Tribunal in the *Channel Island* case awarded half effect to the Scilly Isles (*Reports of International Arbitral Awards*, Volume XVIII, p. 117, para. 251).

ENCLAVING OF ISLANDS

269. A second method to avoid the distorting effect of certain islands, is to attribute to these islands a limited territorial sea or a 12-mile zone. Endowing a mid-way island with a 12-mile arc of territorial sea, displacing by that arc the equidistance line, is another method for reducing the effect of certain islands causing inequity. This method invariably accords a

reduced maritime area to the State whose island is enclaved compared to what would have been the result if the island had been given full effect.

270. In the delimitation of the Adriatic Sea between Italy and Yugoslavia of 8 January 1968 two Yugoslav islands (Pelagosa Islands) were only given a 12-mile zone (Annex 73).

271. In the Mediterranean Sea between Italy and Tunisia four quite small Italian islands, Lampedusa, Pantelleria, Lampione and Linosa, lie closer to Tunisia than to Sicily. In the Agreement of 20 August 1971 the Parties accorded to these islands a maritime area similar to that attributed to Pelagosa Islands, i.e., an arc of 13 nautical miles around Pantelleria, Lampedusa and Linosa, and 12 nautical miles around Lampione which is uninhabited (Annex 74).

272. In the Iran - Saudi Arabia Agreement of 24 October 1968, the Iranian island of Farsi was faced by the Saudi island of Arabi (Annex 68). The solution adopted was to have a median line between the two islands and then to allow to each a 12-mile territorial sea limit, causing a "bulge" in the otherwise continuous median line between the two mainland coasts.

273. In the Qatar - Abu Dhabi Agreement of 30 March 1969, the modified equidistance boundary between the two adjacent States is displaced to allow Dayyinah, an island belonging to Abu Dhabi, a 12-mile limit (Annex 75).

274. Also the Iran and United Arab Emirates Agreement of 13 August 1974 allows a 12-mile arc around the Island of Sirri (Annex 76).

275. In the Australia - Papua New Guinea Agreement of 18 December 1978, the problem was that the Australian inhabited islands Boigu and Sabai, in the Torres Strait, lie within very few miles of the coast of Papua New Guinea (Annex 77). On the landward side, facing the mainland coast, they were given a territorial sea of 3 miles only and, on the seaward side they

were, in effect, ignored for purposes of the maritime boundary which runs well to the south of these islands. According to a recent study the result is in some respects similar to that arrived at in the Anglo - French arbitration.[23] The author adds that "from the point of view of proportionality, the line achieves a reasonable balance between the rights of Papua New Guinea, based on its mainland coast, and the rights of Australia, based on its ownership of numerous islands scattered throughout the Strait".

276. Another example of an island receiving only 12-miles of territorial sea but was not enclaved is the island of Abu Musa, according to the 1981 Award in the *Sharjah-Dubai Continental Shelf Arbitration*. The Tribunal rejected Sharjah's submission that Abu Musa should be given half effect with respect to an equidistant boundary. The Tribunal pointed out that half effect would have attributed 460 square kilometres to the island in addition to the area of 1,870 square kilometres represented by its 12-mile territorial sea. This result, in the Tribunal's opinion, would have been disproportionate. Abu Musa was therefore granted a 12-mile territorial sea but disregarded as a basepoint in the drawing of the equidistance line, see the sketch map in Annex 78.[24] Since the island was on the "right side" of the equidistance line, the decision did not result in a total enclave, but rather a displacement of the equidistance line by the 12-mile arc of territorial sea. In other respects the approach was similar to that accorded to the Channel Islands in the 1977 Award, see the Memorial, pages 84 - 86, paragraphs 278 - 282.

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[23] H. Burmester in *A.J.I.L.* 1982, p. 336.

[24] Dipla: *Le régime juridique des îles dans le droit international de la mer*, Publications de l'institut universitaire de hautes études internationales, Genève, Paris Presses Universitaires de France, 1984, pp. 195 - 202.

3. Bear Island

277. Denmark has referred to the delimitation between the fishery protection zone around Svalbard, including Bear Island, and the economic zone off the mainland of Norway as an example of State practice in the area supporting the Danish request for a 200-mile continental shelf zone and a 200-mile fishery zone off the East Coast of Greenland opposite Jan Mayen (the Memorial, p. 94).

278. Norway has argued that the case of Bear Island "is not in point at all". The separation between the fishery protection zone around Svalbard and the Norwegian mainland economic zone is not a "jurisdictional boundary", but an "administrative distinction" and "no delimitation in international law has been effected" because both areas are under the jurisdiction of the same State (the Counter-Memorial, p. 137, para 459).

279. The Norwegian argument that the separation between the economic zone off the mainland of Norway and the fishery protection zone around Svalbard does not constitute an international delimitation but a domestic measure cannot be accepted.

280. Norway claims that its Decree of 3 June 1977 (Annex 35 to the Memorial) has legal effects vis-à-vis third States, in particular with respect to the Parties to the Svalbard Treaty. This makes the delimitation an international delimitation and its validity subject to the control of international law. As the Court said in the *Fisheries* case between Norway and the United Kingdom "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law" (*I.C.J. Reports 1951*, p. 132).

281. The Norwegian attempt to discount the Bear Island delimitation as an important precedent of a maritime delimitation in the area obliges the Government of Denmark to give a full account of the facts.

282. The main islands of the Svalbard Archipelago are situated some 250 nautical miles from the northeast coast of Greenland and some 350 nautical miles north of the North Cape of mainland Norway. Spitsbergen is the largest island of the Archipelago. The southernmost island of the Archipelago, Bear Island, is situated 130 nautical miles from the southernmost point of the island of Spitsbergen in isolation from the rest of the Svalbard Archipelago. The distance from Bear Island to the Norwegian mainland is 215 nautical miles, see the sketch map on page 103. Bear Island is 178 square kilometres and is, like Jan Mayen, a small rocky island with no population and unable to sustain economic life. There is a radio station and a meteorological station on the island.

283. In the Treaty of Spitsbergen of 9 February 1920 (Annex 79) the Contracting Parties recognised, subject to certain stipulations in the Treaty, the full and absolute sovereignty of Norway over the Archipelago of Svalbard, including Bear Island, see Article 1 of the Treaty. Under Article 2 of the Treaty ships and nationals of all the Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters. At the time of the Treaty Norway's territorial waters extended to 4 nautical miles from the coast.

284. The Spitsbergen Treaty contained a *quid pro quo*. Norway acknowledged that all the Contracting Parties had an equal right to exploit the resources of the Archipelago of Svalbard and its territorial waters. The other Contracting Parties acknowledged that Norway had sovereignty over the islands. Under the Treaty, Norway is obliged to exercise its sovereign rights in the interests of all the Contracting Parties.

285. At the time of the conclusion of the Treaty, territories bordering the sea were only entitled to territorial waters. Contiguous zones, continental shelf rights and exclusive economic zones were unknown concepts at the time. Later development in international law has entitled coastal States to such zones.

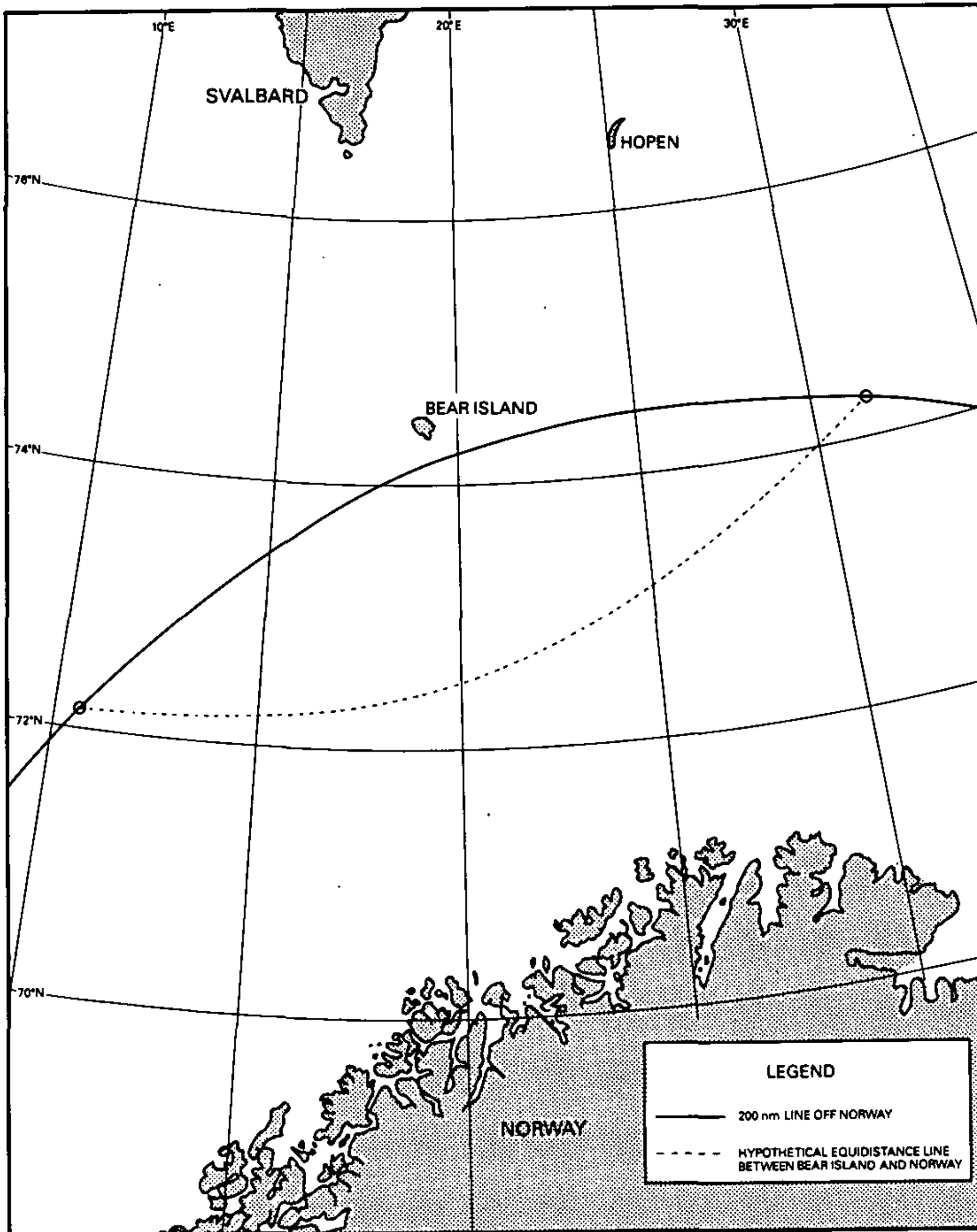
286. With the development in international law, the question arose whether the Treaty of Spitsbergen only applies to the islands and the territorial waters extending 4 nautical miles from the coast as recognised at the time of the conclusion of the Treaty or whether the Treaty, applies to the continental shelf and the 200-mile exclusive economic zone appertaining to the Archipelago under current international law.

287. The Government of Norway has taken the position that the Spitsbergen Treaty does not confer any rights concerning the continental shelf outside the territorial waters of Svalbard on the other Parties to the Treaty. The Government of Norway has taken the same position in relation to the economic zone.

288. Prior to Norway's establishment of the exclusive economic zone off mainland Norway and a non-exclusive fishery protection zone around Svalbard, a number of the States that are Parties to the Spitsbergen Treaty had advised Norway that the Treaty applied to the continental shelf off Svalbard and to a 200-mile economic zone around the Archipelago. Other Contracting States including Denmark have made their reservation to the Norwegian interpretation of the Spitsbergen Treaty known to the Norwegian Government.

289. An official Norwegian account of the Norwegian position and other States' reaction to the Norwegian position is given in a Report on Svalbard submitted by the Norwegian Ministry of Justice to the *Storting* in 1986. In Section 3 of the Report, Legal Issues, it is said that the Norwegian legislation on the continental shelf applies "until the outer limit of the territorial sea" of Svalbard. It is further stated:

Sketch Map of the Delimitation between Mainland Norway and Bear Island.



> "Some of the Parties to the Svalbard Treaty have contended, however, that the provisions of the Treaty are also applicable to the shelf outside the territorial sea. The Soviet Union voiced this point of view in 1970. Other States have subsequently reserved their position to this issue. The Norwegian Government has maintained that the sphere of application of the Treaty must be determined by the wording of the Treaty....The Soviet Union has raised objections to the basis for establishing a fishery protection zone, and other States have reserved their position or claimed that their fishermen are fully entitled to fish in the zone pursuant to the provisions of the Svalbard Treaty." (*St. Meld. nr. 40*, Section 3.3; Annex 80).

290. Among the considerable number of States who had either informed Norway that the Spitsbergen Treaty applied to the continental shelf off Svalbard and a 200-mile economic zone around the Archipelago or reserved their position to the Norwegian interpretation, no State has publicly disclosed its disagreement with Norway. Apart from the information given by the Norwegian Government the existence of disagreement was made public by the Government of the United Kingdom in 1978 through the Government's written reply to questions posed by a member of the House of Lords. The Government was asked whether in their view the Spitsbergen Archipelago generated a continental shelf and whether the regime established under the Spitsbergen Treaty operated on such a continental shelf. The Member of the House of Lords further asked whether the islands of the Spitsbergen Archipelago generated an exclusive fishery zone, and to whom such a zone would be exclusive. The questions were answered by the Minister of State, Foreign and Commonwealth Office, who replied:

> "(a) It is the view of Her Majesty's Government that the Spitsbergen Archipelago has its own continental shelf. Whether or not the economic regime established for the islands by the 1920 Treaty of Paris should also apply to the continental shelf areas appertaining to the

Spitsbergen Archipelago is an unresolved question between Norway and the other Treaty Powers.

(b) It is the view of Her Majesty's Government that the islands of the Spitsbergen Archipelago are entitled to fishery rights in the surrounding waters on the same basis as any other island archipelago. Any suggestion that the fisheries rights in a Spitsbergen zone should be exclusive to Norway would raise issues very similar to those relating to the continental shelf mentioned above." (The *Hansard*, the House of Lords, 14 March 1978; Annex 81).

291. The wish of the Norwegian Government to benefit from the new development within the field of the law of the sea created a dilemma for Norway. The establishment of an economic zone around Svalbard with exclusive rights for Norwegian nationals would cause a confrontation with some of the Contracting States, a fact acknowledged by the Norwegian Foreign Minister in the *Storting* in 1977, see pages 106 - 107, paragraph 295 below. The Norwegian Government decided to avoid such confrontation and abstained from establishing an exclusive economic zone around Svalbard. The Norwegian Government limited itself to the establishment of a non-exclusive fishery protection zone around Svalbard.

292. It was the declared policy of the Norwegian Government to avoid confrontations with other States over the interpretation of the Spitsbergen Treaty in connection with the establishment of broad maritime zones in the area. Other Contracting States would regard the delimitation of the economic zone off mainland Norway and any broad maritime zones around Svalbard as an international delimitation precisely because they regarded the two zones as different jurisdictional regimes. In order to avoid confrontation with these States, Norway had to effect the establishment of such zones in accordance with international law. The actual delimitation effected unilaterally by the Government of Norway demonstrates how Norway perceived

the effect of an uninhabited island in a maritime delimitation opposite a populated mainland.

293. Norway established a 200-mile economic zone in the waters off the Norwegian mainland by Royal Decree dated 17 December 1976 (Annex 25 to the Counter-Memorial). The 200-mile limit of the economic zone also applied in the maritime area between the mainland of Norway and Bear Island bringing the outer limit of the Norwegian economic zone to a distance of less than 20 nautical miles from Bear Island, see the sketch map on page 103 above. The sketch map depicts the boundary of the Norwegian economic zone opposite Bear Island and an hypothetical median line between the Norwegian mainland and Bear Island. It is interesting to note that in its establishment of the 200-mile economic zone off the Norwegian mainland, Norway also paid no heed to the presence of the main islands of the Svalbard Archipelago lying some 350 nautical miles to the north of mainland Norway (North Cape).

294. Shortly after establishing an economic zone off the mainland of Norway, the Government of Norway decided to establish a fishery protection zone around Svalbard. By Royal Decree of 3 June 1977, issued pursuant to the 1976 Act relating to the Economic Zone of Norway, the Norwegian Government established a 200-mile fishery protection zone in the maritime areas around Svalbard (Annex 35 to the Memorial). The fishery protection zone was delimited by the outer limit of the economic zone off the Norwegian mainland (Section 2 (3) of the Royal Decree). Under Section 3 of the 1976 Act relating to the Economic Zone of Norway persons who are not nationals or placed on an equal footing with Norwegian nationals pursuant to Norwegian legislation may not engage in fishing within the Norwegian economic zone. This restriction was not made applicable to the fishery protection zone around Svalbard, see Section 2 of the Royal Decree.

295. Norway's reasons for not establishing an economic zone around Svalbard was explained to the *Storting* by the Norwegian Minister for Foreign Affairs, Mr. Knut Frydenlund,

during a parliamentary foreign policy debate held on 6 June 1977, shortly after the establishment of the fishery protection zone. During the debate Mr. Knut Frydenlund stated that in the view of the Norwegian Government, Norway was undoubtedly entitled to establish an economic zone around Svalbard with exclusive rights for Norwegian fishermen. The Norwegian Minister for Foreign Affairs cited two reasons why the Norwegian Government had decided for the time being to refrain from establishing an exclusive zone around Svalbard. First, the object of the implemented legislation was primarily to supervise and reduce the fishing activities in the area. For that purpose it was not necessary to discriminate between Norwegian and foreign fishermen. Secondly, Mr. Frydenlund stated:

> "...we must assume that Norway's fundamental view according to which the provision of equal fishing rights under the Svalbard Treaty will not apply to the zone will be disputed, and that the immediate establishment of a zone with exclusive rights for Norwegian fishermen could have led to a confrontation with other Contracting Parties. This would hardly be in the interest of Norway." (Annex 82)[25]

296. Norway knew that other Parties to the Spitsbergen Treaty were of the opinion that the exploitation rights in any broad maritime zones around Svalbard would be vested jointly in the Contracting States. As Norway wanted to avoid an open dispute with these Contracting States on the applicability of the Spitsbergen Treaty to the broad maritime zones around Svalbard, Norway had to make sure that the establishment of an economic

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[25] As stated above, certain States have disputed Norway's right to establish the fishery protection zone. At the question time of the Norwegian Parliament on 31 May 1989, reported violation of fishing regulations applicable to the fishery protection zone around Svalbard prompted a Member of Parliament to ask what measures the Minister for Foreign Affairs intended to take to ensure compliance with the existing regulations. The question was answered by the Minister of Defence who pointed out that when evaluating what measures could be taken, it should be kept in mind "that not all States share the Norwegian view of the fishery protection zone around Svalbard and that some of them do not recognise the zone" (Annex 83).

zone off the mainland of Norway opposite the maritime areas around Svalbard was done in accordance with international law, and that the regulation of maritime areas around Svalbard was carried out in a non-discriminatory way.

297. If Bear Island had been entitled under international law to any effect in such a maritime delimitation opposite mainland Norway, those rights would have had to be respected by Norway when the exclusive economic zone was established off the Norwegian mainland. This would have implied that in the area between Bear Island and the Norwegian mainland, the economic zone off the Norwegian mainland would have been less than 200 miles. This was not so. Bear Island was notoriously deprived of effect in the delimitation of the exclusive economic zone.

298. It is thus evident that the Government of Norway took the view that under international law Bear Island could not impinge on the maritime zone of mainland Norway.

CHAPTER II

The Case of the Island of Jan Mayen

A. Prelude

299. Jan Mayen falls into the category of islands which may be depicted as detached islands in the sense of islands lying so far from their parent mainland that they are situated on the "wrong side" of an equidistance line measured between the respective mainlands *in casu* Greenland and Norway.[26] The median line between mainland Norway and Greenland is of course only illustrative as there is no common continental shelf or other maritime zone to be delimited. But that does not change the fact that Jan Mayen is totally detached from Norway (approximately 550 nautical miles) and so close to Greenland (approximately 250 nautical miles) that a boundary line between Greenland and Jan Mayen has to be established in isolation from Norway. It is therefore misleading when Norway claims that Jan Mayen is geographically independent of Greenland (the Counter-Memorial, p. 147, para. 497).

300. The development and acceptance during UNCLOS III of the establishment of 200-mile fishery or exclusive economic zones as well as the contemplated regime for islands suddenly placed Norway in a situation where doubt was raised as to Jan Mayen's entitlement to generate such broad maritime zones. Would Jan Mayen fall within the concept of a rock, because it has never sustained human habitation or any economic life of its own, in which case it would only be able to generate a 12-mile zone of territorial sea and maybe an additional 12-mile contiguous zone? Or could Jan Mayen obtain recognition as an island entitled to the new broad maritime zones, at least to the

[26] See the illustrative examples in Hiran Jayewardene, *The Regime of Islands in International Law*, pp. 368 - 69. In the same treatise the Iceland-Norway Agreements with regard to Jan Mayen are reviewed under the heading: Detached islands on "the Wrong Side" (p. 391, cf. pp. 457 - 461).

extent where these zones would not encroach upon the maritime zones belonging to other States, *in casu* Iceland and Denmark/Greenland?

301. When Norway in December 1976 passed Act No. 91 enabling the Government to establish economic zones around the Kingdom, the Norwegian Government was well aware of the problem which Jan Mayen might create vis-à-vis Iceland and Greenland, if a broad maritime zone was established unilaterally. It was considered most prudent to try to secure in advance the acceptance by Iceland of such a zone. In his presentation to the *Storting* of the first Agreement with Iceland dated 28 May 1980 concerning Fisheries and Continental Shelf Questions between Iceland and Jan Mayen, the Norwegian Foreign Minister at the time, Mr. Knut Frydenlund, said the following about the origin of that Agreement:

> "This whole issue also originated in unanimity. There was agreement, for one thing that Norway should establish an economic zone around Jan Mayen, so that stocks could be protected from uncontrolled exploitation. But secondly, there was also agreement in this chamber that such a zone [an economic zone around Jan Mayen] should be established by agreement with Iceland, and that Norway was prepared to have due regard for Iceland's interests in the area.
>
> Thus far it was all plain sailing.
>
> But as the subsequent negotiations between Norway and Iceland showed, it was not so easy to reach an understanding with Iceland. On the one hand, Iceland argued on the basis that Jan Mayen had no right to such a zone, a view which, incidentally, other countries shared. On the other hand, Iceland maintained that it ought to be possible to base measures to conserve the stocks in the area on an agreement between the two countries and not on Norwegian jurisdiction. ...

> The Icelandic point of departure for the first round of negotiations was thus that Jan Mayen is not an island of such a nature that it can form the basis of an economic zone or a continental shelf. The subsidiary line of argument was that Norway had no right to establish a zone around the island on its own. ..." (The Counter-Memorial, Annex 11, p. 52)

302. During the same debate in the Parliament, one of the members, Mr. Jakob Aano, expressed the same theme in the following way:

> "And as for Jan Mayen, I don't suppose anyone imagined, when Norway obtained sovereignty over that uninhabited volcano in the middle of the Atlantic, that it would result only a couple of generations later in our sovereignty over a sea area as big as the whole Norwegian mainland. I repeat: Norway acquired this *without either* working or paying for it. Where the extension around Jan Mayen is concerned, that has now also been acknowledged by virtue of the agreement with Iceland. I *think it is important to emphasize that we had* no such acknowledged right before we reached this agreement. ..." (*Ibid.*, p. 73)

303. To secure agreement with Iceland before establishing an economic or fishery zone around Jan Mayen would also strengthen the hand of Norway vis-à-vis Denmark/Greenland. This was stated during the parliamentary debate by Kåre Willoch (who later became Prime Minister of Norway):

> "Nor could one expect, should this agreement be rejected, any support from Iceland for the Norwegian demand that the line of delimitation between the zones between Jan Mayen and Greenland must follow the median line. If, on the other hand, the agreement between Norway and Iceland is approved by the Storting, with the rights that Iceland thus obtains, that will make it in Iceland's interest for Norway to maintain

> its zone in its entirety up to the median line opposite Greenland, because for Iceland that would also mean the exclusion of EC vessels from the zone, which is to Iceland's advantage, too. Icelandic support for Norway's diplomatic defence of the median line towards Greenland could be of genuine and positive significance." (*Ibid.*, p. 42)

304. The delimitation vis-à-vis Greenland was seen as a diplomatic - not a legal - fight primarily against Denmark and the European Community. The Chairman of the Enlarged Standing Committee on Foreign Affairs and the Constitution, Mr. Arvid Johanson, explained it in the following way:

> "Permit me to recall that the agreement with Iceland is not the last of the set of agreements that lie ahead of us in this region. I am thinking of the Danish establishment of a zone off East Greenland which extends into both Jan Mayen's and Iceland's zone. This will confront us with new problems, but they are different in many respects. Iceland is a small country and overwhelmingly dependent on its fisheries. Special circumstances have led to our acceptance of an agreement which recognizes its zone in full. There is no question of such circumstances in connection with negotiations concerning the East Greenland zone. The latter is a matter, not of a small separate island community on its own, but of a State on the continent of Europe, and indeed of the European Communities, the EC. It is a fundamentally different situation. ...
>
> With a disagreement with the Danes looming on the horizon, knowing that we have an unsolved problem in relation to the Soviet Union concerning delimitation in the Barents Sea, knowing that many have refused to recognize our fishery protection zone around Svalbard - who needs an unresolved dispute with Iceland to add to the list? There are limits to how many sea area delimitation disputes Norway can handle. That is another

reason for satisfaction at the resolution of at least one of these issues." (*Ibid.*, pp. 39 - 40).

305. Thus a clear picture of Norwegian thinking in the years 1977 - 1980 with regard to the status of Jan Mayen in relation to the newly accepted broad maritime zones reveals itself. When Norway on 17 December 1976 established an economic zone off its *mainland*, the Government felt a genuine worry - and rightly so - as to what would be the status of Jan Mayen with regard to a 200-mile economic zone and corresponding continental shelf area. If Norway could secure Iceland's recognition of Jan Mayen's entitlement to a continental shelf area and a fishery zone, the door would be open to the establishment of a full 200-nautical mile zone off Jan Mayen towards the open sea and a line up to Iceland's 200-mile economic zone which would give to Jan Mayen an additional zone of almost 100 nautical miles to the south. Then the stage would be set to launch a diplomatic offensive in favour of a median line towards Greenland/Denmark/EEC. A first step was taken by the Icelandic - Norwegian negotiations on the management of the capelin stock in the area, by leaving EEC/Greenland out of these negotiations and basing the division of quota on *inter alia* a median line between Greenland and Jan Mayen (see paras. pp. 65 - 67, paras. 163 - 165 above).

306. Since then, more than ten years have elapsed. Greenland has celebrated its 10 year anniversary of Home Rule and is no longer a member of the European Communities.

307. In the following sections the delimitation situations facing Jan Mayen will be dealt with one by one.

B. Delimitation vis-à-vis the Open Sea

308. The Government of Denmark does not wish to comment upon Jan Mayen's entitlement to a full 200-mile fishery zone in the open sea to the east, in so far as it is not directly relevant to the Danish submission in the case before the Court.

But, it is not irrelevant to point to out that, even with full respect for Iceland's and Greenland's claims, Jan Mayen will command an extremely large maritime zone when the size and character of the island are taken into consideration. The Jan Mayen fishery zone, depicted on Map IV of the Memorial and Map IV of the Counter-Memorial, has an expanse of some 255,000 square kilometres, even if full respect is accorded to Greenland's 200-mile zone. This should be related to the size of Jan Mayen, which is only about 380 square kilometres. Such a maritime area may be considered exorbitant compared to the land area on which it is based.

C. Delimitation vis-à-vis Iceland

309. It was from the outset made clear to Norway by both Iceland and Denmark that they could not accept that a 200-mile fishery zone around Jan Mayen would cut into their respective zones of 200 nautical miles.

310. At the very beginning of the negotiations with Norway, which led to the conclusion of the Agreements of 1980 and 1981, Iceland did not recognise that Jan Mayen was entitled to broad maritime zones in accordance with the new developments in the law of the sea, see pages 110 - 111, paragraph 301 above. In many of the interventions during the debate in the *Storting* on the consent to the 1980 Agreement between Norway and Iceland, it was stressed that a unilaterally declared Norwegian economic or fishery zone around Jan Mayen would not have been respected by other countries, i.e., Iceland, Denmark/Greenland and the Soviet Union. Thus the Minister for Foreign Affairs, Mr. Knut Frydenlund, stated:

> "But we must also face the fact that it would have been a zone which other countries would not have respected and which Iceland would probably actively have opposed. ..." (The Counter-Memorial, Annex 11, p. 54)

As described in paragraph 301 above Iceland based its rejection of Norway's right to establish a broad maritime zone around Jan Mayen on the fact that an island of such a nature as Jan Mayen cannot generate an economic zone and a corresponding continental shelf.[27]

311. In the Agreement of 28 May 1980 between Iceland and Norway concerning Fishery and Continental Shelf questions, Iceland has given in to the Norwegian claim to accord island status to Jan Mayen, but only to the extent that it be recognised that Jan Mayen should not be allowed to infringe upon Iceland's full 200-mile economic zone. The reasons for that recognition are found in the Preamble to the Agreement, where separate paragraphs mention respectively Iceland's overwhelming dependence on fisheries (paragraph 4) and the special circumstances of importance for the drawing of the dividing line (paragraph 6). The same emphasis on Iceland's economic interests and special circumstances is to be found in Article 9 of the Agreement concerning the dividing line for the shelf. It thus seems clear that the special circumstances involved were those created by the nature, size and position of Jan Mayen, as seen in relation to Iceland. The same delimitation result would appear to follow from a direct application of the equidistance/special circumstances rule contained in Article 6 of the 1958 Convention on the Continental Shelf.

312. In the Counter-Memorial it is stressed repeatedly, e.g., the Counter-Memorial, page 195, paragraph 700, that the Agreements with Iceland are political in nature and therefore provide no basis as a legal precedent. The Agreements are said to represent "generous political concessions" on the part of the Norwegian Government (the Counter-Memorial, p. 161, para. 559). However, as can clearly be seen from the debate in the

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[27] According to an article by Willy Østreng published by the Press Service of the Norwegian Institute for Foreign Policy (NUPI), No. 37 of 15 September 1981, Iceland found the grounds for its rejection of Norway's right to establish a broad maritime zone around Jan Mayen "in Article 121 of the Negotiating Text of the UN Conference on the Law of the Sea which makes a distinction between *islands* which are entitled to zone as well as shelf, and *rocks* which lack such entitlement. Jan Mayen was a rock, according to Iceland" (Unofficial translation).

Norwegian Parliament on the two Agreements of 1980 and 1981 with Iceland (see Annex 11 and Annex 15 of the Counter-Memorial) the "generous political concessions" offered by Norway had nothing to do with the acceptance of Iceland's 200-mile economic zone - which for Iceland was simply not negotiable - but concerned the significant additional rights Iceland obtained in relation to fisheries and the continental shelf area in the Norwegian zone.

313. As to fisheries, Iceland was given the right to fix capelin quotas off Iceland and Jan Mayen as well as the right to catch as much capelin as Norway in the fishery zone around Jan Mayen, whereas Norway was not allowed to catch any of its quota in Iceland's zone.

314. With regard to the continental shelf questions, the Norwegian "generous political concessions" did not relate to the 200-mile line measured from Iceland's baselines, because by virtue of the Agreement of 28 May 1980 Norway had already accepted an Icelandic continental shelf of at least 200 miles towards Jan Mayen (see Annex 14 to the Counter-Memorial, p. 82). In the Report of the Conciliation Commission appointed by the Governments of Iceland and Norway, the Conciliators presented the problem in the following way:

> "In the preamble of the Agreement it was recognized that Iceland should have an economic zone of 200 miles pursuant to the Icelandic Law on Territorial Sea, Continental Shelf and Economic Zone of June 1, 1979. The shortest distance between Iceland and Jan Mayen is about 290 nautical miles. During the negotiations of the aforementioned agreement the Icelandic Government advanced the view that Iceland was entitled to a continental shelf area extending beyond the 200-mile economic zone. ..." (*I.L.M.* Vol XX, 1981, p. 798)

315. Again the concessions on the part of Norway related to Iceland's special rights in the *Norwegian zone.* Thus the cooperation area on the Norwegian side of the dividing line is

considerably larger than the cooperation area on the Icelandic side of the dividing line (see Articles 5 and 6 of the 1981 Agreement).

316. As expressed by one of the Members of Parliament during the debate in the *Storting*, the recognition by Iceland of Norway's right to establish an economic zone around Jan Mayen was Norway's main prize for these concessions (Annex 11 to the Counter-Memorial, p. 51, last paragraph but one). The importance of that recognition was described by the Chairman of the Foreign Affairs Committee:

> "At the risk of being too bold, let me point out that on the day before our seventy-fifth anniversary celebrations of the 7th of June, the Storting has learned of the international recognition of the expansion of our territories by some 330,000 square kilometres: equal to the total area of Mainland Norway." (The Counter-Memorial, Annex 11, p. 40)

317. The conclusion to be drawn from this analysis is that Norway, *from the very outset when the question of according* broad maritime zones to Jan Mayen arose in 1977, was ready to accept a situation where Jan Mayen, because of its special character, could not generate maritime zones which would cut into another State's economic or fishery zone. The bilateral Agreements between Norway and Iceland of 28 May 1980 and 22 October 1981 represent a recognition of this fact and are at the same time seen by the Parties to represent an equitable and just solution in the area. The Agreements take into account the developments in the law of the sea. This is stated explicitly in the 8th preambular paragraph of the 1980 Agreement. With respect to the 1981 Agreement, which is based on the Report of the Conciliation Commission it should be noted that the Conciliation Commission consisted of three outstanding lawyers and scholars within the field of the law of the sea, each of them occupying the post as head of delegation of their respective Governments to UNCLOS III. In their Report the Conciliators state that "(a)lthough not a court of law, the Commission has

thoroughly examined state practice and court decisions in order to ascertain possible guidelines for the practicable and equitable solution of the questions concerned." (*I.L.M.* Vol. XX, p. 823).

318. Thus, the single line boundary between Iceland and Jan Mayen is clearly based upon legal considerations, in the light of developments in the law of the sea at the time, and cannot be dismissed as political compromise. It may also be worth noting in this connection that the literature on maritime delimitation tends to treat the settlement of the Iceland-Jan Mayen boundary among the precedents created by case law, i.e., legal settlement through third party involvement.[28]

319. Against this background it is only natural that the Norwegian Parliament, in its deliberations on the proposed Agreements, paid particular attention to the question of the precedent which these Agreements might create in respect of future delimitations concerning Jan Mayen, i.e., the delimitation vis-à-vis Greenland (Annex 11 and Annex 15 to the Counter-Memorial). The Norwegian Parliament and Government had no wish for the Agreements to form a precedent. But the precedent was nevertheless created by the ratification of the two Agreements.

D. Delimitation vis-à-vis Greenland

320. The Government of Denmark feels bound, as a matter of propriety, to make the following initial remark.

321. Norway has stated that "the present case concerns the delimitation of maritime areas in relation to *two* island territories, each located at some distance from the administrative centres of the two Parties, not between one continental territory and an island." (the Counter-Memorial, p. 133, para. 443). This statement is contradicted by the facts of the case.

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[28] See e.g., Hiran W. Jaywardene *The Regime of Islands in International Law*, p. 314 and p. 332 cf. pp. 457 - 460, and *Encyclopedia of Public International Law* Vol. 11 p. 214.

322. In *geological* terms Greenland can best be described as a continent dating back more than 2,500 million years. The normal notion of Greenland as the world's largest island stems from the fact that it was discovered around 1900 that Greenland does not in fact form part of the American continent but constitutes a separate entity. This discovery gave rise to the designation of Greenland as the world's largest island.

323. In *constitutional* terms, as described in detail in the Memorial, pages 28 - 35, paragraphs 112 - 145, Greenland has steadily moved towards a society governed by its own population through a popularly elected local government which has its seat in the capital of Nuuk.

324. Nor is the statement in harmony with the content of paragraph 265 of the Counter-Memorial, where it is said that the Norwegian side throughout the period of negotiations with Denmark has been conscious of the long-range interest in maintaining a friendly and constructive basis for the relationship between the Norwegian authorities and the Greenland Home Rule Authority. The interest in upholding good relations is shared by the authorities of Greenland. However, in relation to Jan Mayen Greenland has not been presented with an explanation, which can make the striking difference between the Norwegian attitude to Greenland and to Iceland acceptable or understandable to Greenland.

325. It is difficult to see how the position of Jan Mayen vis-à-vis Iceland could be different from that towards Greenland. The Icelandic and the Greenland cases are for all practical purposes very similar, see the Resolution adopted at the 1958 Conference on Fishing and Conservation of the Living Resources of the High Seas which in particular singles out Iceland, the Faroe Islands and Greenland as overwhelmingly dependent on fisheries (the Memorial, p. 98, para. 305). The special dependency upon the living resources of the sea is furthermore recognised in Article 71 of the 1982 Convention on the Law of the Sea which states that "(t)he provisions of Articles 69 [Right

of land-locked States] and 70 [Right of geographically disadvantaged States] do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone". In the Agreement of 28 May 1980 between Norway and Iceland on Fishery and Continental Shelf Questions a direct reference to "Article 71 in the text of the Conference on the Law of the Sea" is contained in the 4th preambular paragraph to the Agreement thereby indicating Norway's recognition of "strong economic dependence on the fisheries" as a specific relevant factor operating in favour of Iceland as no fishery emanates from Jan Mayen.

326. It is also worth noting that Iceland, when issuing its regulations concerning the fishery limits off Iceland, has drawn the 200-mile line in a way which assumes that Jan Mayen would not be allowed to encroach upon a 200-mile zone off Greenland (see the Icelandic Chart in Annex 14 to the Memorial).

327. These facts must weigh heavily in favour of not allowing the island of Jan Mayen to infringe upon Greenland's 200-mile fishery zone and corresponding continental shelf area. This would be in line with the dictum in the *North Sea Continental Shelf* cases to the effect that among the factors to be taken into account when negotiating a maritime delimitation line are "the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region" (*I.C.J. Reports 1969*, pp. 53 - 54, para. 101 (D)(3)). The same dictum is to be found in the *Tunisia/Libya* case (*I.C.J. Reports 1982*, pp. 92 - 93, para. 133 B (5)). In the *Guinea/Guinea-Bissau* case, 1985, paragraph 93, the point is expressed in the following way: "A delimitation designed to obtain an equitable result cannot ignore the other delimitations already made or still to be made in the region." (*I.L.M.*, Volume XXV, No. 2, March 1986).[29] This point of view lay behind the immediate reaction of

[29] Original text: "Une délimitation visant à obtenir un résultat équitable ne peut ignorer les autres délimitations déjà effectuées ou à effectuer dans la région." See also Malcolm D. Evans, *Relevant Circumstances and Maritime Delimitation* (Oxford 1989), pp. 234 - 237.

the Government of Denmark when it learned about talks having been initiated between Norway and Iceland concerning the delimitation of the maritime area between Iceland and Jan Mayen (see the Memorial, p. 14, paras. 43 and 44).[30]

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328. To conclude this presentation concerning the case of Jan Mayen the Government of Denmark concurs with the unanimous view expressed by the Conciliation Commission on the continental shelf area between Iceland and Jan Mayen that Jan Mayen must be considered an island within the meaning of Article 121, paragraphs 1 and 2 of the 1982 Convention on the Law of the Sea (then a draft), but on the other hand Articles 74 and 83 (as then drafted) concerning delimitation are also applicable (*I.L.M.* Vol. XX, 1981, pp. 803 - 805). The fundamental norm governing maritime delimitation is to achieve an equitable solution, see the 1982 Convention on the Law of the Sea, Articles 74 and 83, and the *Gulf of Maine* case, *I.C.J. Reports 1984,* pages 299 - 300, paragraph 112. It follows that Jan Mayen's entitlement to a fishery zone and a continental shelf does not automatically endow Jan Mayen with an equal position in a delimitation dispute vis-à-vis an island State (Iceland) or a mainland (Greenland) - not even as a starting point. The entitlement towards the open sea cannot be compared to an entitlement which, if accepted, would encroach upon the legitimate rights of other States.

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329. Norway has tried to belittle the presentation in the Memorial of State practice "...a markedly brief account of examples..." (the Counter-Memorial, p. 137, para. 457) and "...

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[30] To characterise the Danish objection which was made *before* the conclusion of the first Icelandic-Norwegian Agreement as "a bizarre notion approximating to a claim to "most favoured nation" treatment", as done in the Counter-Memorial, p. 111, para. 384, is nothing but (another) attempt to substitute legal reasoning with polemics.

the oddities of the "examples" recounted..." (*ibid.*, p. 137, para. 458) while at the same time trying to minimise the importance of Norway's own conduct in relation to the Agreements with Iceland concerning Jan Mayen and to the boundary between the economic zone off the Norwegian mainland and the fishery protection zone around Svalbard, including Bear Island (the Counter-Memorial, p. 161, para. 559).

330. It is submitted, however, that the closer one moves towards the actual area of delimitation, the more relevant State practice in that region becomes (see the Court's *dicta* in the cases referred to in paragraph 327 on pages 120 - 121 above), and State practice relating to the very same territory, which is the subject of the dispute *in casu* the island of Jan Mayen, becomes of particular relevance. Analogies from one ocean to another are difficult given the distinct characteristics of each region.

331. Norway seems to admit this point of view in dismissing totally the relevance of State practice in the Baltic Sea, even though that area and the States involved are closer both in geographical and political terms to the North Atlantic region than the Caribbean, the Indian Ocean, the Sea of Japan and other far-away waters (the Counter-Memorial, p. 182, para. 654). In actual fact the Parties may concur in the view that *the* relevant State practice is that of the North Atlantic region with particular emphasis on State practice related to the island of Jan Mayen. That practice is clearly illustrated by both Parties, see Map IV in the respective Memorials (except that the Norwegian Map is cut off to the east in a way which leaves out Bear Island and the Norwegian mainland). As will be seen from these Maps, most delimitation lines, actual or potential, are median lines corresponding to what the respective parties have found to represent an equitable solution. The human societies which sustain themselves in this harsh part of the world are placed on an equal footing - and rightly so - when it comes to delimiting the surrounding waters which do represent the life-line to survival and prosperity of these communities. Thus a median line has been applied from west through east covering the delimitation situations between Canada and Greenland, Greenland and Iceland,

Iceland and the Faroe Islands, the Faroe Islands as well as the Shetland Islands and Norway.

332. The delimitation line between Greenland and Svalbard is laid down by Denmark in Section 1 (4) of Executive Order No. 176 of 14 May 1980 on the Fishing Territory in the Waters surrounding Greenland (Annex 6 to the Memorial). The Executive Order applies the method of equidistance, in the absence of special agreement to the contrary, because of the size and character of Svalbard.

333. The only delimitation situations which have deviated from the median line do so because a median line would not render an equitable result, see e.g., the boundary line between Iceland and Jan Mayen and that between the Norwegian mainland and Bear Island. In neither of these situations are human societies in jeopardy - as far as these two desolated islands are concerned - and therefore these islands have not been allowed to encroach upon the 200-mile economic zone established by Iceland and mainland Norway, respectively. Denmark fully agrees with the attitude adopted by Iceland and Norway. International law has been created and developed to serve the needs of human societies, not to accommodate landscapes.

CHAPTER III

The Rule Applicable to the Present Dispute

A. Norwegian Contentions

334. In contrast to the line of reasoning developed in the Memorial with regard to the rules and principles applicable to maritime delimitation (pp. 59 - 111, paras. 208 - 356) Norway argues as if the Court should deliver a judgment on historical grounds, based on the legal situation which prevailed before the present dispute materialised in 1979/1980 (the Counter-Memorial, p. 73, para. 258, and pp. 86 - 89, paras. 302 - 316).

335. Such an argument completely overlooks the fact that *treaties must be interpreted in the light of developments in* international law up to the time of the close of any negotiations or proceedings. The International Court of Justice has declared in the *Namibia Advisory Opinion* that "*an international instrument* has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation", (*I.C.J. Reports 1971*, p. 31, para. 53) and in the *Gulf of Maine* case, the Chamber stated that codification conventions such as the 1958 Convention on the Continental Shelf must "be seen against the background of customary international law and interpreted in its light" (*I.C.J. Reports 1984*, pp. 290 - 291, para. 83). This position corresponds well with the general rule of interpretation contained in the Vienna Convention on the Law of Treaties which calls for any subsequent practice to be taken into account, see Article 31, paragraph 3(2).

336. The line of reasoning in the Counter-Memorial will be dealt with in the following three sections dealing with (1) the 1965 Agreement between Denmark and Norway, (2) Conduct of the Parties, and (3) General International Law.

1. The 1965 Agreement

337. The primary argument in the reasoning of the Norwegian Government (the Counter-Memorial, pp. 81 - 89, paras. 279 - 316), can be summarised as follows: The 1965 bilateral Agreement between Denmark and Norway relating to Delimitation of the Continental Shelf adopts a median line; this being so, the 1965 Agreement, as a specific treaty, takes precedence over the general 1958 Geneva Convention on the Continental Shelf; accordingly the concept of "special circumstances" in the 1958 Convention is no longer operative as between Denmark and Norway; the 1965 Agreement being still in force, the delimitation provision contained in the 1982 Law of the Sea Convention has no legal force as between Denmark and Norway (see Article 83, para. 4) - and *mirabile dictu* - the median line adopted in the 1965 Agreement emerges as the boundary required by law in the waters between Greenland and Jan Mayen and has in fact been in place since 1965.

338. As an exercise in legal reasoning, the Norwegian argument is indeed astonishing. First of all it must be recalled that Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties requires that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty *in their context* and in the light of its object and purpose" (emphasis added). Norway's interpretation of the 1965 Agreement does not fulfil that requirement. The 1965 bilateral Agreement, in line with normal practice, addresses a specific area of delimitation in the North Sea and the Skagerrak shown on the chart annexed to the Agreement and indicated by relevant geographical co-ordinates set out in Article 2 of the Agreement. Norway attempts to isolate Article 1 and separate it from the rest of the Agreement alleging that Article 2 deals with a different subject, namely, that it "is concerned with *demarcation*" (the Counter-Memorial, p. 82, para. 283).

339. But this is wrong. According to established definitions,[31] the delimitation of a frontier is a juridical operation which fixes a boundary, in this case by means of imaginary straight lines (compass lines) drawn on a chart through points determined by geographical coordinates. In contrast, demarcation is a material and technical operation which consists in carrying out the terms of the delimitation which has been established, by means of boundary markers in the case of a land frontier and by lights and buoys in a maritime boundary.

340. Articles 2 and 3 of the 1965 Agreement are those which specifically set out the maritime boundary between the Parties and consequently, they are the provisions establishing the *delimitation of the Continental Shelf* announced in the title of the 1965 Agreement. The dividing line established by the Agreement was drawn on a hydrographic chart annexed to the Agreement "which constitutes an integral part of the Agreement" (Art. 2). Furthermore, it should be noted that Article 1 of the Agreement uses the definite article "the" in describing the boundary, which corresponds to the fact that the Agreement addresses the specific area indicated in Article 2.

341. All this shows that the object and purpose of the 1965 Agreement, considered in its context, is clearly the delimitation in the North Sea and the Skagerrak between the Parties, according to the method of equidistance, on the basis that the median line produced an equitable division of the seabed between and off the coasts. Looking at the *travaux préparatoires*, there is nothing to support the Norwegian contention that the 1965 Agreement covers more than the area in the North Sea and the Skagerrak specifically addressed by the coordinates of Article 2 of the Agreement and depicted in the chart.

342. In the Norwegian *travaux préparatoires* to the subsequent delimitation Agreement of 15 June 1979 between the

[31] See Basdevant, *Dictionnaire de la Terminologie du Droit International*, Paris, 1960.

Faroe Islands and Norway, it is expressly stated that the 1965 bilateral Agreement does *not* cover this maritime area. This is said in the summary of the Norwegian Proposition to the Norwegian Parliament concerning the 1979 Agreement and further explained in Part I of the Proposition in the following way:

> "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 in the area between Norway and the Faroe Islands. One of the reasons for this was that the Norwegian Government did not at that time wish to give access to exploitation of the continental shelf areas north of 62°N" (*St.prp. No. 63* (1979 - 80), Annex 84, emphasis added).

343. Consequently, the 1979 Agreement does not contain any reference to the 1965 Agreement. The Preamble states that the Parties conclude the Agreement of 1979 "(h)aving decided to delimit the continental shelf in the area". If the Norwegian contention in the Counter-Memorial were correct, the Parties should have recalled in that phrase of the preamble that they had already decided in 1965 to delimit also this particular shelf area on the basis of the median line principle. Moreover, the presence of Article 3 in the 1979 Agreement is also difficult to reconcile with the Norwegian thesis. This Article foresees the possibility that "natural resources on the sea-bed or in the subsoil thereof extend on both sides of the boundary". This provision formed part already of the 1965 Agreement, specified there as Article 4. If the 1965 Agreement already established the delimitation in respect of the Faroe Islands, as Norway contends, to repeat the same provision in the 1979 Agreement would be redundant and serve no useful purpose.

344. Likewise, according to the next paragraph in the Preamble of the 1979 Agreement, the Parties decided that "for the time being, they will not establish the boundary farther north

than" a certain point. If in 1965 they had already decided to apply the median line to the whole boundary, and without limitations, it cannot be explained why they abstained from delimiting beyond a certain point. The truth is that in accordance with normal practice of settling delimitation issues on a case by case basis, solving each dispute on its own merits, the 1979 Agreement addresses exclusively the maritime area between the Faroe Islands and Norway.

345. A further point to be mentioned relates to the fact that Norway was not a party to the 1958 Geneva Convention at the time of the conclusion of the 1965 Agreement, and no reference was made to that Agreement when Norway acceded to the Geneva Convention in 1971. No generally accepted rule of treaty interpretation could therefore be invoked to demonstrate that the 1965 Agreement modifies the basic concept of equidistance contained in the Convention so as to eliminate "special circumstances" from Article 6. On the contrary, the 1958 Convention is the *later* treaty between the two Parties and, consequently, the reference to special circumstances in Article 6 of the Convention prevails between the Parties and continues to be relevant.

346. During the debate in the *Storting* on the Agreements with Iceland of 28 May 1980 on Fishery and Continental Shelf Questions and 22 October 1981 relating to the delimitation of the Continental Shelf, the Norwegian Foreign Minister never suggested that the boundary with Greenland was already settled by the 1965 Agreement. On the contrary, Mr. Knut Frydenlund said *inter alia*: "... Clearly there is a potential source of conflict here with Denmark ..." (Annex 11 to the Counter-Memorial, p. 55). That statement could only mean that the boundary with Greenland remained to be settled.

347. Even *if* the 1965 Agreement had been formulated as a *general* agreement applying to *all* parts of the continental shelf as between the Kingdoms of Denmark and Norway, no common shelf existed between Greenland and Jan Mayen within the meaning of the 1958 Geneva Convention seen at the time of the

conclusion of the 1965 Agreement (see p. 40, para. 158 of the Memorial and pp. 23 - 28, paras. 58 - 71 above).

348. The Norwegian reasoning based on the 1965 bilateral Agreement is thus both incompatible with Norway's own position and legally unfounded.

349. In passing it should be noted that in paragraph 7 of the Counter-Memorial the words "all parts" in the third line do not represent a correct quotation from the 1965 Agreement as these words do not appear in the Agreement. The word "general" in paragraph 182, first line of the Counter-Memorial, and the word "supplemented" in the first line of paragraph 183 are likewise incorrect.

350. The line of reasoning adopted by the Respondent State leads to the conclusion in paragraph 290 of the Counter-Memorial that "Norway was fully prepared to enter into negotiations with Denmark with a view to reaching agreement as to the details of the demarcation", because the shelf boundary was already in place. This conclusion not only makes a mockery out of eight years of serious and difficult negotiations, which were never concerned with the "details of the demarcation". It is also contradicted by the Counter-Memorial in paragraph 258, which correctly makes no reference to the 1965 bilateral Agreement. During the eight years of negotiations no mention was ever made by Norway - let alone Denmark - of the 1965 bilateral Agreement (the Counter-Memorial, p. 73, para. 258). Neither has Denmark for its part referred to that Agreement in its Memorial since the Agreement has no bearing on the present case.

2. The Conduct of the Parties

351. Norway argues that Denmark has expressly recognised and accepted a median line boundary applicable to continental shelf delimitations and fishery zone delimitations between Denmark and Norway (the Counter-Memorial, pp. 114 -

116, paras. 390 - 398); that the consistent pattern of Danish conduct constitutes a tacit recognition of or acquiescence in the median line boundary between Greenland and Jan Mayen in respect of continental shelf rights and in respect of fisheries (*ibid.*, p. 116, paras. 399 - 402); that the Danish conduct together with the knowledge of Norway's position in maritime delimitations prevents Denmark from challenging the existence and validity of the median line boundary between Greenland and Jan Mayen (*ibid.*, pp. 117 - 118, paras. 403 - 409); that the Danish claim of a 200-mile zone cannot be opposable to Norway in view of Denmark's previous conduct and the relationships established between the Parties (*ibid.*, p. 119, para. 410) and, finally, that the principle of estoppel precludes Denmark's claim (*ibid.*, p. 119, para. 411).

352. In support of these far-reaching conclusions, Norway refers to Danish legislative acts, delimitation agreements between Denmark and Norway, Denmark's position during the negotiations at UNCLOS III, the exchanges and negotiations between the Parties, and the delimitation practice concerning fishery zones.

353. The so-called "evidence" brought forward by Norway does not support the Norwegian conclusions. Each of the elements of the Norwegian "evidence" will now be dealt with in turn.

DANISH ROYAL DECREE OF 7 JUNE 1963 CONCERNING THE CONTINENTAL SHELF

354. It is Norway's understanding that according to the Danish Royal Decree of 7 June 1963 (Annex 85) the boundary of the Danish continental shelf is the median line (the Counter-Memorial, pp. 95 - 97, paras. 328 - 333, and p. 155, para. 532). This is not correct. The Norwegian reading of the last part of Article 2, paragraph 2, of the Decree leads Norway to this erroneous conclusion.

355. The Royal Decree of 7 June 1963 concerning the Exercise of Danish Sovereignty over the Continental Shelf does

not establish a median line delimitation in the absence of special agreements. This clearly follows from the text of the Royal Decree. The *travaux préparatoires* of the Royal Decree also show that Denmark had no intention of derogating from the delimitation rules of international law applicable at the time of the Royal Decree.

356. The Preamble to the Royal Decree states that the Decree has been promulgated in accordance with the Convention on the Continental Shelf opened for signature at the Conference on the Law of the Sea in Geneva in 1958.[32]

357. Article 1 of the Royal Decree stipulates that Danish sovereignty shall be exercised over that portion of the continental shelf which under the Convention on the Continental Shelf "belongs to the Kingdom of Denmark".

358. Under the 1958 Continental Shelf Convention, a coastal State is entitled to a continental shelf. The entitlement is not conditioned upon a declaration. The declaration made by the Kingdom of Denmark in Article 1 of the Royal Decree does not claim any portion of the continental shelf other than the one which Denmark is entitled to under international law, but expressly extends the Danish claim as far as the Convention allows.

359. Article 2, paragraph 2, of the Royal Decree incorporates the equidistance/special circumstances provision of Article 6 of the Convention by stating that "(t)he boundary of the continental shelf...shall be determined in accordance with Article 6 of the Convention...". The Counter-Memorial recognises that the Royal Decree "expressly incorporates the provisions of Article 6 of the Convention" (the Counter-Memorial, p. 114, para. 390).

360. The reference in the Royal Decree to Article 6 of the Convention incorporates all of Article 6, including the concept of

[32] The Preamble to the Royal Decree has been omitted from Norway's translation of the Royal Decree in Annex 29 to the Counter-Memorial.

"special circumstances" and therefore makes a specific reference to special circumstances superfluous.

361. The absence of an explicit reference to "special circumstances" in Article 2, paragraph 2, of the Decree cannot be construed to exclude Denmark's application of the well-established delimitation criterion in Article 6 of the Convention on the Continental Shelf. If Article 2, paragraph 2, - as suggested by Norway - were viewed as derogation from the Convention by disallowing the application of the special circumstances criterion, one would assume that such derogation would have been mentioned in the *travaux préparatoires* to the Royal Decree and made the subject of an express reservation by Denmark when it ratified the Convention. This is not the case.

362. If Article 2, paragraph 2 were construed as suggested by Norway, the reference to Article 2 in Article 1 (stating that Denmark shall exercise sovereignty over that part of the continental shelf which belongs to Denmark under the Continental Shelf Convention) should have read "but see Article 2" instead of "see Article 2".

363. The inference drawn in the Counter-Memorial that in the legislative process prior to the promulgation of the Royal Decree the geographical situation of the Kingdom of Denmark had been examined, and no special circumstances had been found calling for delimitation on any other basis than the median line (the Counter-Memorial, p. 96, para. 330) is not warranted by the wording of the Royal Decree and is also contradicted by the *travaux préparatoires* to the Royal Decree.

364. In the *travaux préparatoires* to the Royal Decree (Written Comments on a proposal submitted to the *Folketing* for ratification of the Convention on the Continental Shelf) the Minister for Foreign Affairs stated: "Article 6 [of the Geneva Convention on the Continental Shelf] lays down provisions on the delimitation of the continental shelf between adjacent States and States whose coasts are opposite each other. The boundary shall be determined by agreement. In the absence of agreement, unless

justified by special circumstances, the boundary is the median line between the baselines appertaining to the States concerned." (Annex 86)

365. Nothing in the *travaux préparatoires*, the records of the parliamentary debate or the Report submitted by the Parliamentary Standing Committee, suggests that derogation from the convention rule on delimitation of the continental shelf vis-à-vis third States was intended with the promulgation of the Royal Decree.

ACT NO. 259 OF 9 JUNE 1971 ON THE CONTINENTAL SHELF

366. Act No. 259 of 9 June 1971 on the Continental Shelf (Annex 87) vests the resources of the Danish continental shelf in the Danish State. The Act further contains conditions for the granting of concessions on the continental shelf, extends Danish jurisdiction to shelf installations and safety zones, and enables competent ministers to issue detailed regulations.

367. In the *travaux préparatoires* to Article 1 (providing that the natural resources on the Danish Continental Shelf belongs to the Danish State) it is stated as follows:

> "In those cases where the Danish continental shelf borders portions of the shelf appertaining to other States, the delimitation must - in accordance with the [Continental Shelf] Convention - primarily be sought effected through agreement between the neighbouring States. In the absence of agreement, the delimitation must be effected in accordance with the principle of equidistance unless special circumstances dictate an alternate line of delimitation". (Annex 88).

368. Nothing in the legislative history of the 1971 Continental Shelf Act suggests that the Act should represent a deviation from the legal position under the 1963 Royal Decree concerning the Continental Shelf. The Act applies to all of

Denmark with the exception of the Faroe Islands, see Article 8 of the Act.[33]

THE AGREEMENT BETWEEN NORWAY AND DENMARK OF 1965 ON THE DELIMITATION OF THE CONTINENTAL SHELF

369. Norway has invoked the 1965 Continental Shelf Agreement between Denmark and Norway as evidence of Denmark's *commitment to an unconditional and universal* application of a strict median line principle (the Counter-Memorial, pp. 97 - 98, paras. 337 - 339 and p. 114, para. 391). It has been demonstrated on pages 126 - 130, paragraphs 337 - 350 that this interpretation of the 1965 Agreement propounded by Norway is without foundation.

ACT OF 17 DECEMBER 1976 ON THE FISHING TERRITORY OF THE KINGDOM OF DENMARK

370. Norway contends that the Act No. 597 of 17 December 1976 on the Fishing Territory of the Kingdom of Denmark (Annex 1 to the Memorial) does not authorise Denmark to establish a 200-mile fishery limit between Greenland and Jan Mayen (the Counter-Memorial, pp. 104 - 105, paras. 358 - 360). The basis of the Norwegian contention is the wording of Section 1, paragraph 2 of the Act. This provision states:

> "Failing any agreement to the contrary, 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)."

371. The legislative history of the 1976 Act on Fishing Territory of the Kingdom of Denmark shows that, at the reading

[33] Article 8 has been deleted from the Norwegian translation of the Act in Annex 30 to the Counter-Memorial.

of the Bill, the extension of the fishing territory in the area between Greenland and Jan Mayen was discussed.

372. After the tabling of the Bill on 9 November 1976 by the Prime Minister, the Parliamentary Committee established to hear the Bill had a consultation with the Minister for Greenland on 9 December 1976. The Minister was asked by the Committee why the Government did not intend to enact an immediate extension of the fishing territory around the whole of Greenland. In his written reply the Minister for Greenland stated *inter alia* that in East Greenland the full 200-mile fishery zone was enacted up to the point where a delimitation problem vis-à-vis Iceland arose. The Minister for Greenland informed the Parliamentary Committee that Denmark and Iceland were in agreement on the applicability of the median line principle. However, Denmark had reserved its position with respect to the unilaterally drawn Icelandic fishery limit owing to the fact that the small rock of Kolbeinsey had been accorded full weight in the delimitation. The Minister for Greenland further stated:

> "Extending the limit vis-à-vis Iceland northward, a delimitation problem vis-à-vis the Norwegian island of Jan Mayen will arise. According to information available Norway has no intention, at this point in time, to extend the fishery limit around Jan Mayen, and since it is not quite clear to what extent an island with the characteristics of Jan Mayen (the island is uninhabited, except for a few scientists and meteorologists) may under international law generate maritime zones, it would be inexpedient to raise the question of delimitation now."

373. The Minister for Greenland finally informed the Parliamentary Committee that the Government of Denmark had agreed with the Greenland authorities that for the time being the fishery limit should not be extended beyond 67°N off the East

Coast of Greenland.[34] The full text of the reply is reproduced in Annex 89.

374. The legislative history evidences that, at the time of the enactment of the Fishing Territory Act, it was envisaged by the Government of Denmark that a delimitation issue would arise in relation to Jan Mayen and that the Parliamentary Committee established to hear the Bill was advised on this issue. The issue was to what extent an island with the characteristics of Jan Mayen was entitled to maritime zones under international law. From the above-mentioned written reply submitted by the Minister for Greenland to the Parliamentary Committee it appears that in so far as Denmark was justified under international law, a full 200-mile fishery zone around Greenland would be claimed.

375. It is Denmark's position that the 1976 Act on the Fishing Territory of the Kingdom of Denmark cannot be construed as acceptance of a departure from international law to the detriment of Denmark. There is a presumption against a State's unilateral limitation of its rights under international law through domestic legislation. Norway has not invalidated this presumption. On the contrary, the legislative history of the Act makes it clear that the Act entitled the Government of Denmark to unilaterally establish a 200-mile fishery zone east of Greenland vis-à-vis Jan Mayen.

THE POSITION OF DENMARK DURING THE NEGOTIATIONS AT UNCLOS III

376. Norway claims that the position taken by Denmark in the course of the Third United Nations Conference on the Law of the Sea shows a firm and consistent adherence to the median line (the Counter-Memorial, pp. 99 - 103, paras. 345 - 353). The Norwegian argument seems to be that by virtue of its position during this conference, Denmark is barred from claiming a

[34] The Executive Order of 22 December 1976 extended the Greenland fishery zone from 12 nautical miles to 200 nautical miles. Off the East Coast of Greenland the extension only applied up to 67°N latitude (the Memorial p. 14, para. 40).

200-mile continental shelf area and a 200-mile fishery zone in the area between Greenland and Jan Mayen.

377. There is no incompatibility between the stance adopted by Denmark during the Third United Nations Conference on the Law of the Sea and the position taken by Denmark towards Norway on the delimitation of Jan Mayen's maritime zones and those of Greenland. Denmark agrees with the Norwegian contention that, at UNCLOS III, Denmark expressed its preference for the "median line" in lieu of "equitable principles" as the primary criterion for delimiting the continental shelf and the economic zone. However, the rule of law advocated by Denmark and a number of other states (Norway among them) at UNCLOS III was not a strict application of the equidistance method in any delimitation situation, but the well-known equidistance/special circumstances formula adopted in the 1958 Convention on the Continental Shelf.

378. It follows clearly from Doc. NG7/2 of 20 April 1978, entitled "Informal Suggestions Relating to Paragraphs 1, 2 and 3 of Articles 74 and 83, ICNT" (Annex 2 to the Counter-Memorial), that the co-sponsors did not simply propose a median line delimitation as an absolute or invariable rule. Paragraph 1 of the said document proposes that the delimitation of the Exclusive Economic Zone/Continental Shelf between opposite states "...shall be effected by agreement employing as a general principle the median or equidistance line, *taking into account any special circumstances where this is justified*" (emphasis added).

379. The statements made by the Danish delegation to the Conference on 29 April 1978 and 8 September 1978 expressly refer to the importance of special circumstances. In the statement made on 29 April 1978 it is said "...in the view of my delegation, the principle of median line *taking into account special circumstances* would lead to equitable solutions" (emphasis added). Similarly, in the statement delivered on 8 September 1978 (the Counter-Memorial, p. 100 - 102, paras. 349 - 351) it is said "...I think it is important to reiterate that in our

view the median line principle *taking due account of special circumstances* would lead to equitable results" (emphasis added).[35]

380. The consistency of the Danish position during UNCLOS III and Denmark's position towards Norway in the Jan Mayen dispute is further demonstrated by the fact that Denmark maintained its sponsorship of the proposal in document NG7/2 as this document was reissued with additional sponsors on 25 and 28 March 1980 (see the Counter-Memorial, p. 103, para. 353) and at the same time advised Norway that a median line delimitation in the waters between Greenland and Jan Mayen would not be acceptable to Denmark. It would be recalled that a statement to this effect was made by the Danish Minister for Foreign Affairs, Mr Henning Christophersen, to the Norwegian Minister for Foreign Affairs, Mr Knut Frydenlund, at the Session of the Nordic Ministers for Foreign Affairs held in Copenhagen

[35] The Norwegian quotations in the Counter-Memorial from the Danish statements made at UNCLOS III are correct. It is not, however, correct when it is said in the Counter-Memorial, p. 102, para. 352, that the Danish statements are contained "in the official reports on Danish participation in UNCLOS III". The reports in question have been made for internal use in the Danish Ministry of Foreign Affairs and circulated to other relevant authorities. They have never been made public or handed over officially to other States.

on 29 - 30 March 1979; see the Memorial, page 14, paragraph 44.[36]

DANISH-NORWEGIAN DELIMITATION AGREEMENT CONCERNING THE FAROE ISLANDS

381. Norway has also invoked the Agreement between Denmark and Norway, signed on 15 June 1979, concerning the Faroe Islands as evidence of Denmark's commitment to an unconditional and unmodified application of a strict median line principle (the Counter-Memorial, p. 103, para. 354).

382. As explained on page 94, paragraph 252 above, this Agreement is not relevant to the present dispute.

THE DANISH EXECUTIVE ORDER OF 14 MAY 1980

383. Norway attaches special importance to the Danish Executive Order No. 176 of 14 May 1980 (Annex 6 to the Memorial) on the Fishing Territory in the Waters surrounding Greenland in its attempt to demonstrate the alleged Danish

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[36] Norway has maintained that Denmark has adopted the view that "the 1958 Convention continues in force, undisturbed by the 1982 Convention" (the Counter-Memorial, p. 88, para. 313). This is wrong. In support of this contention Norway has referred to an article written in *Danish Foreign Policy Yearbook 1983* by a Danish civil servant in his personal capacity. That is of academic interest only. The following excerpt from Denmark's statement in the Plenary on 31 March 1982 at the last session of UNCLOS III is more pertinent:

> "The compromise proposed by you, Mr. President, on the delimitation criterion, as now contained in paragraph 1 of Article 74 and of Article 83, is acceptable to my delegation. According to paragraph 1 of Article 311 the new convention shall prevail over the Geneva Convention on the Law of the Sea of 1958. In identifying the maritime area to be delimited between countries, which are parties to both Conventions, the provisions contained in the new Convention on natural prolongation and on rocks, which cannot sustain human habitation or economic life of their own, must, in our understanding, prevail over the obsolete exploitability-criterion and the provision on islands, contained in the Geneva Convention on the Continental Shelf. My delegation's acceptance of the proposed delimitation criterion with its reference to Article 38 of the Statute of the International Court of Justice is based upon this understanding of the relationship with paragraph 1 in Article 311 in the Draft Convention."

commitment to a strict application of the so-called median line principle (the Counter-Memorial, pp. 103 - 105, paras. 355 - 360.) In this Executive Order Denmark extended the fishery zone off East Greenland north of 67°N from 12 nautical miles to 200 nautical miles.

384. Norway claims that the Executive Order "not only disregards the clear provisions of the enabling Act but also seeks to establish the zone beyond the scope of the authority granted under the Act" (*ibid.*, p. 104, para. 359). As explained on pages 135 - 137, paragraphs 370 - 375 above, the Norwegian claim is not correct. The wording of the enabling Act does not exclude special circumstances from being taken into account in the delimitation of the fishery zones of Denmark. The legislative history of Act No. 597 of 17 December 1976 on the Fishing Territory of the Kingdom of Denmark shows that at the time of the enactment it was envisaged that the delimitation in the waters between Greenland and Jan Mayen would extend beyond the median line (see p. 136, para. 372 above).

385. It will be recalled that prior to the issuance of the Executive Order on 14 May 1980, the Danish Minister for Foreign Affairs had advised his Norwegian colleague that Denmark would extend its fishery zone off East Greenland north of 67° N to 200 nautical miles (the Memorial, p. 15, para. 48). This information was given at the Session of the Nordic Ministers for Foreign Affairs in Helsinki, held on 27 - 28 March 1980. At this session the Danish Minister for Foreign Affairs also told the Norwegian Foreign Minister that in order to avoid difficulties Denmark would not, for the time being, exercise jurisdiction beyond the median line. The Executive Order issued on 14 May 1980 stipulated in Article 1, paragraph 4, that until further notice the fisheries jurisdiction would not be exercised beyond the median line between Greenland and Jan Mayen.

386. The Norwegian Government has chosen to describe this restraint shown by Denmark as Danish recognition of the fact "that it would be inappropriate to carry this attempt to the point of implementation" and to see the restraint as another

expression of Denmark's alleged adherence to a strict application of a median line principle (the Counter-Memorial, pp. 104 - 105, para. 360).

387. As explained by the Danish Minister to his Norwegian colleague prior to the issuance of the Executive Order, Denmark's reason for showing restraint in the enforcement of Danish fishing regulations was to avoid difficulties with Norway. In exercising this restraint, Denmark relied on Norway's readiness to exercise a similar prudence until the delimitation issue was resolved. When Norway decided the following year to escalate the dispute with Denmark by sending an armed vessel to the disputed area, with instructions to board Danish fishing vessels, the Government of Denmark issued on 31 August 1981 an Executive Order rescinding the temporary restraint on the exercise of jurisdiction in the disputed area (the Memorial, p. 17, para. 54). This decision did not reflect a changed perception of Denmark's rights under international law or a change in Denmark's general maritime policy. The decision was a necessary response to Norway's actions at the time.

DIPLOMATIC EXCHANGES IN THE PERIOD 1979 - 1980

388. In the Norwegian attempt to support the contention that Denmark has departed from a conduct of consistent adherence to the median line in maritime delimitations, the Counter-Memorial surprisingly refers, on page 105, paragraph 362, to the content of a letter of 3 July 1979 from the Danish Minister for Foreign Affairs, Mr Henning Christophersen, to his Norwegian colleague (Annex 3 to the Memorial) as "the somewhat tentative expression of misgivings on the part of the Government of Denmark". It should be recalled that prior to the 3 July 1979 letter, the Danish Minister for Foreign Affairs advised his Norwegian colleague at the Session of the Nordic Ministers for Foreign Affairs held in Copenhagen on 29 - 30 March 1979 that an equidistance line delimiting the waters between Greenland and Jan Mayen would not be acceptable to Denmark (the Memorial, p. 14 para. 44). The Foreign Minister's letter was sent to his Norwegian colleague after the Government

of Denmark in June 1979 had learned through the news media of the commencement of negotiations between Norway and Iceland on fishing in the waters between Jan Mayen and Iceland and on the delimitation of those waters (*ibid.*, p. 14, para. 45). In the second paragraph of the 3 July 1979 letter it is plainly stated that "Denmark would make reservations if Norway established for Jan Mayen an economic zone delimited by a median line in relation to Greenland".

389. The letter of 4 July 1979 from the Norwegian Minister for Foreign Affairs (Annex 4 to the Memorial) did not respond to the repeated Danish reservation to a median line delimitation between Greenland and Jan Mayen.

THE NEGOTIATIONS IN 1980 - 1983

390. In the opinion of the Government of Denmark, the Norwegian account of, and conclusions drawn from, the negotiations between Denmark and Norway on the delimitation of the maritime area between Greenland and Jan Mayen that opened in December 1980 are not fully in accordance with the facts (the Counter-Memorial, p. 108, paras. 371 - 372). The Norwegian Government states that it "maintained its position on the issues of legal principle involved" contrary to the Government of Denmark who "for the first time began to assert that Denmark should receive, as a matter of legal entitlement, what Norway had granted to Iceland as a political concession unrelated to legal principle" (*ibid.*, p. 108, para. 372).

391. When it is contended in the Counter-Memorial, page 108, paragraph 372 that Denmark did not claim a full 200-mile fishery zone off East Greenland opposite Jan Mayen until December 1980, the Norwegian Government ignores the well-established fact that as early as March 1979 Denmark had made it clear to Norway that a median line delimitation in the maritime areas between Greenland and Jan Mayen would not be acceptable to Denmark, see the Memorial, page 14, paragraph 44.

392. Norway's apparent wish to stress its adherence to an absolute application of the median line principle is contradicted by Norway's actual conduct in 1976 when a 200-mile exclusive economic zone off the mainland of Norway was established opposite the maritime areas of the Svalbard Archipelago. Here Bear Island was not allowed to impinge upon the Norwegian 200-mile limit. Norway's argument of an unwavering endorsement of the principle of equidistance is also inconsistent with Norway's Agreement with Iceland dated 28 May 1980 concerning Fishery and Continental Shelf Questions, where Jan Mayen was equally not allowed to impinge upon Iceland's 200-mile zone.

PRACTICE CONCERNING DELIMITATION OF FISHERY ZONES

393. Norway has addressed the relationship between the delimitation of the continental shelf area and the delimitation of the exclusive economic zone and the practice of other coastal States in the Counter-Memorial, pages 108 - 111, paragraphs 373 - 381. The Government of Denmark has found it difficult to understand the meaning of the Norwegian argument and fails to see the relationship between the argument and the conduct of Denmark. It would appear that the Norwegian argument may be summarised as follows: the median line delimitation between Greenland and Jan Mayen is in place so far as the continental shelf is concerned; State practice shows that existing continental shelf limits are normally adopted for subsequent delimitations of exclusive economic zones or fishery zones; this is also Danish and Norwegian practice; since the 1965 Agreement between Denmark and Norway delimits not only the continental shelf in the North Sea but also all other continental shelf areas between Denmark and Norway including the Faroe Islands and Greenland, by the median line, the fishery zones between Greenland and Jan Mayen must also be delimited by the median line.

394. It is Denmark's submission that the interpretation of the 1965 Agreement advocated by Norway is manifestly wrong (see pp. 126 - 130, paras 337 - 350 above).

395. It appears difficult to reconcile Norway's reasoning on pages 108 - 111 in the Counter-Memorial with Norway's claim that in absence of any agreement between the Parties, Denmark's request for a single-line delimitation is not admissible (the Counter-Memorial, p. 197, para. 703).

THE LEGAL EFFECTS OF THE CONDUCT OF DENMARK

396. The Norwegian arguments with regard to the actual Danish conduct in maritime delimitation described in the preceding sections leads Norway through the use of concepts such as "recognition", "tacit recognition", "opposability" and "estoppel" to assert that Denmark is precluded from claiming anything but a median line as boundary between Greenland and Jan Mayen (the Counter-Memorial, pp. 114 - 119, paras. 390 - 411). This assertion is not warranted.

397. Under international law the question of *estoppel* arises in the event a State has made representations and another State has relied on these representations to such an extent that the acceptance of a change in the position of the former State would cause prejudice to the latter State. In the *North Sea Continental Shelf* cases, the Court observed that only a situation of estoppel could suffice to lend substance to the contention that the Federal Republic was bound by the Geneva Convention on the Continental Shelf "...that is to say if the Federal Republic were now precluded from denying the applicability of the conventional régime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that régime, but also had caused Denmark or the Netherlands, in reliance on such conduct, detrimentally to change position or suffer some prejudice" (*I.C.J. Reports 1969*, p. 26, para. 30).

398. In the present case the principle of estoppel does not preclude Denmark from bringing forward its claim. The conduct of Denmark, prior to the finalisation of UNCLOS III, has evidenced a clear adherence to the equidistance/special circumstances rule in maritime delimitation. The Government of Denmark has not in its implementation of legislation, general

conduct or by any other means expressed an acceptance of a median line delimitation of the maritime areas between Greenland and Jan Mayen.

399. Nothing in the conduct of the Government of Denmark evidences an acceptance of a median line delimitation of the maritime areas between Greenland and Jan Mayen. The review carried out on pages 131 - 134, paragraphs 354 - 365; page 135, paragraph 369 cf. pages 126 - 130, paragraphs 337 - 350; and pages 135 - 137, paragraphs 370 - 375 above of the three episodes, which according to the Norwegian Government, involves an acceptance of the median line boundary, makes it clear that such acceptance has not taken place.

400. The Government of Denmark must point out that, whatever Norway may have understood about the Danish conduct, the fact remains that Norway has not changed its position vis-à-vis Greenland or suffered any prejudice as a consequence of that conduct. The second condition which must be satisfied in applying the concept of estoppel is thus not present.

401. In support of its contention that *recognition* may constitute a root of title, Norway refers in the Counter-Memorial, page 115, paragraph 394, to the late scholar, Sir Gerald Fitzmaurice, *British Year Book of International Law*, Vol. 32 (1955 - 56), pages 58 - 62. Commenting on the Court's judgment in *the Minquiers and Ecrehos* case, Fitzmaurice writes that "a failure by one party claiming title to territory to protest against acts that would be encroachments on its sovereignty if title existed, may be evidence of the non-existence of such title". It is evident that "the three separate episodes" referred to by Norway cannot be regarded as a failure to claim title or a failure to protest against a title claimed by Norway. The examples referred to in Whiteman, *Digest of International Law*, Vol. 2 (Department of State Publication 7553, released December 1963), pages 1082 - 1084 illustrate that recognition estops the State which has recognised the title from contesting its validity. The undertakings by Norway recognising Danish sovereignty over Greenland in the *Eastern Greenland* case (1933 P.C.I.J., Sec. A/B no. 53) provide

a true illustration of the effect of recognition for the series of undertakings by Norway constituted a recognition of Danish sovereignty over the specific territory in dispute. But in the present dispute Norway is unable to point to any express or tacit recognition by the Government of Denmark of a median line delimitation of the maritime areas between Greenland and Jan Mayen. The Norwegian Government also refers to Suy, *Les Actes Juridiques Unilatéraux en Droit International Public*, Paris, 1962, pages 189 - 214. Suy rightly points out that recognition presupposes "une manifestation de volonté". But in this case such manifestation is clearly lacking in relation to the specific delimitation in question. Rousseau, *Droit International Public*, I Paris, 1970, page 426, paragraph 344, referred to in the Counter-Memorial does not appear to support the Norwegian claim.

402. The Norwegian claim that Danish legislation contains a recognition of the median line delimitation in the maritime areas between Greenland and Jan Mayen cannot be sustained. The Danish legislation cannot support the interpretation claimed by Norway. Even if this were not so, Denmark could not be barred from benefiting from developments in international law subsequent to the enactment of the legislation. For when a State legislates in conformity with a given rule of customary international law at a particular stage of the law's development and the rule of international law then evolves, it cannot be said that the State is barred from benefiting from evolution of the customary rule. Moreover, this cannot be the result in a situation where Denmark, prior to Norway's establishment of a fishery zone around Jan Mayen, had informed Norway that a median line delimitation would not be acceptable to Denmark (the Memorial, pp. 14 - 15, paras. 44 - 47). An express statement of position cannot be overturned by a mere inference.

403. Norway claims that the consistent pattern of Danish conduct constitutes a *tacit recognition* of, or *acquiescence* in, a median line boundary between Greenland and Jan Mayen, first in respect of continental shelf rights and subsequently in respect of fisheries (the Counter-Memorial, p. 116, paras. 399 - 402).

Norway refers *inter alia* to the description of acquiescence given by the Chamber in the *Gulf of Maine* case as "equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent..." (*I.C.J. Reports 1984*, p. 305, para. 130).

404. The Government of Denmark respectfully submits that no evidence has been brought forward by Norway indicating any Danish conduct which could give the Norwegian Government any reason to believe that the Government of Denmark had consented to or would accept a median line delimitation of the continental shelf area and the fishery zones between Greenland and Jan Mayen. Act No. 597 of 17 December 1976 on the Fishing Territory of the Kingdom of Denmark could not reasonably be understood by the Norwegian Government as a consent by the Government of Denmark to a median line delimitation between Greenland and Jan Mayen (see pp. 135 - 137, paras. 370 - 375 above).

405. It was the understanding of the Government of Denmark that Norway did not contemplate establishing a fishery zone around Jan Mayen, at least until September 1978 when the Norwegian Minister for Foreign Affairs announced that newly discovered prospects of capelin fishing in the waters around Jan Mayen had led the Government of Norway to consider the establishment of an economic zone around Jan Mayen (the Memorial, p. 14, para. 42). Six months later - in March 1979 - the Government of Denmark learned that the Norwegian and the Icelandic Governments had initiated talks concerning maritime delimitation of the area between Iceland and Jan Mayen. The Danish reaction came immediately. At the end of March 1979 the Danish Minister for Foreign Affairs advised his Norwegian colleague that an equidistance line delimiting the waters between Greenland and Norway would not be acceptable to Denmark (the Memorial, p. 14, paras. 43 - 44). The Danish point of view was reiterated on several occasions in the period from March 1979 until May 1980 (the Memorial, pp. 14 - 15, paras. 45 - 48). On 14 May 1980 the Government of Denmark issued Executive Order No. 176 on the Fishing Territory in the Waters around

Greenland, extending Greenland's fishing territory north of 67°N from 12 nautical miles to 200 nautical miles (the Memorial, p. 15, para. 49 and Annex 6). At the time of the issuance of the Danish Executive Order, the Norwegian Government had not established maritime zones around Jan Mayen. This did not happen until 23 May 1980 when Norway issued a Royal Decree establishing a fishery zone around Jan Mayen. An exchange of Verbal Notes between the Parties followed (the Memorial, pp. 15 - 16, paras. 50 - 52).

406. This sequence of events cannot possibly be understood as expressing a tacit recognition of, or acquiescence in, a median line delimitation of the maritime areas between Greenland and Jan Mayen. It is difficult to believe that the Norwegian Government was at the time acting under the influence of such a gross misconception. One should recall the lucid statement delivered by the Chairman of the Enlarged Standing Committee on Foreign Affairs and the Constitution on 6 June 1980 during the Norwegian parliamentary debate on whether to approve the Agreement between Norway and Iceland concerning Fisheries and Continental Shelf Questions. In his recommendation to the *Storting* to give its consent to the Agreement, the Chairman stated:

> "The main reason why the Committee is in favour of the agreement is clear: without an agreement, there would have been open conflict between Iceland and Norway. Norway would have been obliged to establish its own zone around Jan Mayen unilaterally. Iceland would not have respected it, *nor would any other country.*" (See p. 39, Annex 11 to the Counter-Memorial; emphasis added.)

407. *It is difficult to reconcile this statement with the* notion that the Norwegian Government should have interpreted the conduct of the Government of Denmark as expressing tacit recognition of, or acquiescence in, a median line delimitation between Greenland and Jan Mayen. For the reference to "any other country" must have included Denmark.

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408. To conclude this section on conduct and to place the facts in their proper perspective the Government of Denmark wishes to point out that from the outset when a delimitation situation arose between Greenland and Jan Mayen Denmark made it expressly clear to Norway that a median line delimitation would not be acceptable to Denmark/Greenland. In its conduct concerning the delimitation situations between Jan Mayen and Iceland and between the Norwegian mainland and Bear Island Norway has adopted a similar point of view. Thereby Norway's conduct becomes an essential element in support of a delimitation line respecting Greenland's full 200-mile fishery zone and a corresponding continental shelf area.

3. General International Law

409. The Norwegian submissions are primarily based on a historical approach to the dispute. The Counter-Memorial does, however, almost as a fall-back position, offer some views as to what would constitute an equitable solution under current general international law (Section C of the Counter-Memorial). This presentation mainly takes the form of a repetition of facts and arguments presented earlier in the Counter-Memorial, ignoring completely what cannot be ignored in a maritime delimitation case, namely the establishment of a relevant area within which the delimitation is to be effected and the identification of the relevant factors apt to produce an equitable result. The applicable principles as presented by Norway in that Section of the Counter-Memorial, call for the following comments.

410. First, reference is made to the principle of *title* (pp. 121 - 124, paras. 414 - 420). Not only in this section but in numerous other places in the Counter-Memorial does Norway stress the importance of Jan Mayen's entitlement to maritime zones. At one point it is even stated that "(i)t should be no part of a procedure of "equitable delimitation" to assist in the Danish

attempt substantially to reduce the status and entitlements of Jan Mayen." (the Counter-Memorial, p. 188, para. 672). Norway tries to depict the facts as if this case was concerned with the entitlement of Jan Mayen to maritime zones. It is and remains a maritime *delimitation* case. This is registered in the Court's official records of the present dispute and is also explained in the Memorial at the very outset where the status of islands in maritime delimitations is discussed (the Memorial, p. 81, paras. 271 - 273). *Entitlement* and *delimitation* are distinct legal concepts, as indicated by the Court in the very same passage quoted by Norway from the *Tunisia/Libya* case where it is stated:

> "...Adjacency of the sea-bed to the territory of the coastal State has been the paramount criterion for determining the legal status of the submerged areas, as *distinct from their delimitation, ...*" (*I.C.J. Reports 1982,* p. 61, para. 73 and the Counter-Memorial, p. 122, para. 414).

411. It is, of course, true that although entitlement and delimitation are different concepts, dealt with by different articles both the 1958 and 1982 Conventions, they are complementary. As the Court noted in the *Libya/Malta* case:

> "That the questions of entitlement and of definition of continental shelf, on the one hand, and of delimitation of continental shelf on the other, are not only distinct but are also complementary is self-evident. The legal basis of that which is to be delimited, and of entitlement to it, cannot be other than pertinent to that delimitation." (*I.C.J. Reports, 1985*, pp. 29 - 30, para. 27.)

The fact that a delimitation situation cannot arise without title does not, however, mean that title governs a maritime delimitation situation. Delimitation is governed by the norm of equity as an expression of justice and the rule of law substantiated by a set of factors considered to be relevant in each individual case. Within that norm title is pertinent in rendering the coast - the basis of title - a relevant factor. The adoption of

the 200-mile distance criterion as basis of title has made the factors of geology and geomorphology of the seabed irrelevant within that distance.

412. What is striking about the Norwegian thesis is that it fails to explain how the entitlement of Jan Mayen leads to the selection of one relevant factor, or the rejection of another. Apparently all it leads to is an insistence upon equidistance - irrespective of relevant factors, and despite the clear jurisprudence to the contrary.

413. The Norwegian preoccupation with Jan Mayen's entitlement to broad maritime zones seems to be a reminiscence of the negotiations with Iceland in the late 1970s during which Iceland initially refused to accept Jan Mayen as an island entitled to generate more than a 12-mile territorial sea (see p. 114 - 115, para. 310 above).

414. The Government of Denmark does not, however, question Jan Mayen's status as an island under international law, as is evidenced by the fact that Denmark did not object to the establishment of Jan Mayen's 200-mile fishery zone to the east towards the open sea. This position, however, has nothing to do with the delimitation issue between Greenland and Jan Mayen which involves the weighing of relevant factors in order to achieve an equitable result. The Norwegian attempt to evade the central legal issue in the present dispute leads Norway to state that the delimitation claimed by Denmark is based on an "outer limit of 200-mile zone principle", see page 111, paragraph 384 and page 150, paragraph 512 of the Counter-Memorial. These Norwegian assertions stem from the confusion of entitlement with delimitation. Denmark has nowhere in the Memorial used the expression quoted by Norway: "outer limit of 200 miles zone principle". The Danish contention is that an equitable boundary line in the waters between Greenland and Jan Mayen "should be drawn along the outer limit" of Greenland's fishery zone - to borrow the term used by Norway in describing the delimitation line between Iceland and Jan Mayen, see the Counter-Memorial, page 159, paragraph 551.

415. Denmark bases its legal position in the present maritime *delimitation* dispute on the premise that an island with the characteristics of Jan Mayen may have title to a zone, but as regards the extent of that zone cannot generate a maritime zone which impinges on that of Greenland. A claim of that kind by Norway could not produce an equitable solution as required by the governing international norm for deciding maritime delimitation issues. Consequently, the delimitation in this case must respect Greenland's 200-mile zone, notwithstanding that Denmark/Greenland, for its part, does not question Jan Mayen's entitlement to a territorial sea of 12 miles *and* an additional maritime zone of no less than 32 miles up to the 200-mile limit measured from Greenland's baseline.

416. Secondly, Norway claims that a *principle* of *equal division* is involved (the Counter-Memorial, pp. 124 - 126, paras. 421 - 424). Reference is made to the *North Sea Continental Shelf* cases, but nowhere does that Judgment pronounce a *principle* of equal division. The Court states that "(i)n a sea with the particular configuration of the North Sea, and in view of the particular geographical situation of the Parties' coastlines upon that sea, the methods chosen by them for the purpose of fixing the delimitation of their respective areas may happen in certain localities to lead to an overlapping of the areas appertaining to them." (*I.C.J. Reports 1969*, p. 52, para. 99). In such marginal situation the solution may *inter alia* be "an equal division of the overlapping areas" (*ibid.*, para. 99). Thus, the asserted principle of equal division supposed to be derived from that case was to apply only in those marginal areas of overlap, not in the delimitation as a whole.

417. The reference in the Counter-Memorial, page 126, paragraph 423 to a passage from the *Gulf of Maine* case is likewise besides the point. The Chamber states: "Within this framework [the geography of the coast], it is inevitable that the Chamber's basic choice should favour a criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one

should aim at an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap." (*I.C.J. Reports 1984*, p. 327, para. 195.) No principle of equal division is pronounced by the Chamber. What may be inferred from this passage is that in delimitation situations where no special circumstances exist an equal division of maritime areas which meet and overlap could form a simple and equitable solution. In the present case, however, where a special circumstance exists, *in casu* Jan Mayen, an equal division would run contrary to international law.

418. In the concluding Chapter of Section C of the Counter-Memorial, page 193, paragraph 695 Norway states that its submission in the present case reflects legal principles, whereas Denmark's claims are labelled "eccentric", "opportunistic", "monopolistic" etc., However, one looks in vain in international legal sources to find a "principle of equal division". The Norwegian thesis in reality amounts to regarding equidistance as a mandatory principle. Such a thesis has consistently been rejected both in case law and in treaty law.

419. The third principle invoked by Norway is concealed in the notion of "abating the effects of incidental special features within the appropriate legal and geographical framework" - a notion partly borrowed from the *North Sea Continental Shelf* cases (the Counter-Memorial, p. 126, the title preceding para. 425) . But Norway's use of the Court's *dicta* is, even in that respect, not correct. The relevant passage from the Judgment quoted on page 127, paragraph 428 of the Counter-Memorial, addresses a situation where the coastlines of the respective Parties "are in fact comparable in length". Consequently it would be unacceptable if "a State should enjoy continental shelf rights considerably different from those of its neighbours merely because in the one case the coastline is roughly convex in form and in the other it is markedly concave, although those coastlines are comparable in length.". Given this "geographical situation of quasi-equality" justice requires "abating the effects of an incidental special feature [the concavity of the coastline] from

which an unjustifiable difference of treatment could result." (*I.C.J. Reports 1969*, pp. 49 - 50, para. 91).

420. This statement of the Court supports the reasoning advanced by Denmark to the effect that where no quasi-equality exists in geographical terms, as is the fact in the present case, it does not make sense to talk about abating the effect of Jan Mayen. That would amount to a refashioning of geography, "and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a state with an extensive coastline similar to that of a State with a restricted coastline." (*I.C.J. Reports 1969*, pp. 49 - 50, para. 91).

421. The Norwegian presentation of general international law continues with a chapter on the *significance of islands in maritime delimitation* (the Counter-Memorial, pp. 133 - 137, paras. 442 - 460). Here Norway continues to argue as if the present dispute was concerned with entitlement and not with delimitation (paras. 444 - 445). However, this is a false premise as pointed out in pages 150 - 153, paragraphs 410 - 415 above.

422. In the next Section (paras. 446 - 448) Norway contends that Denmark has misunderstood the role of islands in maritime delimitation. This erroneous assertion has been refuted on pages 83 - 86, paragraphs 204 - 213 above.

423. In the following paragraphs of the Counter-Memorial (paras. 449 - 453) an attempt is being made to place islands in a geographical and legal framework which focuses only on the *general* geographical context of the delimitation situation, leaving aside any reference to the exact area within which the actual delimitation is to be effected. As to the general geographical context of the present dispute Denmark wishes to refer to Map IV of the Memorial and Map IV of the Counter-Memorial which illustrate the use of the median line approach to maritime delimitation in the North Atlantic region *except* in relation to the islands of Jan Mayen and Bear Island.

424. Norway argues that the general geographical context within which the relation of Greenland and Jan Mayen is to be assessed has the consequence that Jan Mayen be accorded full effect as a geographically independent feature (the Counter - Memorial, pp. 186 - 187, paras. 664 - 666). Norway believes that the "key factor" for purposes of maritime delimitation is that the region is "extrovert" (*ibid.*, pp. 143 - 144, para. 483). Since Greenland and Jan Mayen are "two entities at a considerable distance from each other and not forming part of any introverted geographical framework" Norway purports that the lengths of the respective coasts have no relevance (*ibid.*, pp. 186 - 187, para. 666). The conclusion reached by Norway is that full effect has to be accorded to Jan Mayen in the delimitation vis-à-vis Greenland.

425. The Norwegian arguments are not supported by State practice or case law and Norway fails to bring forward the rationale for its conclusions.

426. Norway has referred to decisions where the geographical framework has been described as enclosed and semi-enclosed (the Counter-Memorial, pp. 134 - 136, paras. 449 - 452)

427. In the *North Sea Continental Shelf* cases the Court made the observation that the North Sea to some extent had the general look of an enclosed sea (*I.C.J. Reports 1969*, p.13, para. 3). In the *Libya/Malta* case the Court referred to "the general geographical context in which the islands of Malta appear as a relatively small feature in a semi-enclosed sea" (*I.C.J. Reports 1985*, pp. 52 - 53, para. 73).

428. It appears difficult to deduct from these cases the far-reaching conclusion drawn by Norway.

429. Jan Mayen is not a "geographically independent feature" as maintained by Norway. The very existence of the present dispute contradicts the notion of Jan Mayen as an independent feature. The fact that the distance from Greenland to

Jan Mayen is about 250 nautical miles does not entitle a barren, uninhabited island far away from the mainland of Norway to full effect in a maritime delimitation opposite the mainland of Greenland. State practice and case law, in particular the *Channel Islands* Award suggest that the enclave solution is the one appropriate in the case of distorting islands which are mid-way islands or "wholly detached" from their mainland. If Jan Mayen were closer to Greenland enclaving would be the logical solution; in other terms, full recognition of 200 miles for Greenland and an enclave of 12-mile territorial sea for the island. Fortunately for Norway, the relative long distance between Greenland and Jan Mayen obviates the need for enclaving and allows to Jan Mayen a much larger area.

430. The failure of Norway to make clear why the geographical position of Jan Mayen leads to full effect to Jan Mayen in the present dispute is understandable. It is not easy to explain why the large maritime zones generated by Jan Mayen east of the island towards the open sea should operate in favour of Jan Mayen *extending its broad maritime zone west of* the island at the expense of the maritime zone off the mainland of Greenland.

431. Some remarks are made in the Counter-Memorial about Denmark's interpretation of the existing case law and State practice (the Counter-Memorial, pp. 136 - 137, para. 454 - 460). The fact is, as stated in the Memorial, page 117, paragraph 365, that the present maritime delimitation dispute has no parallel in existing case law, and State practice is almost as meagre in providing relevant precedents comparable to the Greenland - Jan Mayen situation.

432. The one example of State practice which is extremely pertinent, as it relates to the very same island, is the boundary line established between Jan Mayen and Iceland, whereby Iceland's 200-mile economic zone has been fully respected. That solution was found to be equitable both by the Conciliation Commission appointed by the Governments of Iceland and Norway and by the two Governments concerned. To the

knowledge of the Government of Denmark, that bilateral arrangement has never been described as "eccentric", "extravagant", "opportunistic", "monopolistic" with regard to the result achieved by Iceland. And for very good reasons, because it was considered equitable by the two Parties.

433. The other example showing Norway's attitude to the role of an isolated arctic island in a delimitation situation is the boundary line established by the Norwegian Government between the economic zone of mainland Norway and the fishery protection zone of the Svalbard Archipelago. In this delimitation the southernmost island of the Archipelago - Bear Island, which is located at a distance of 215 miles from the Norwegian mainland - was not allowed to impinge on the Norwegian economic zone which was extended fully to 200 miles vis-à-vis Bear Island, see pages 100 - 108, paragraphs 277 - 298 above.

434. Finally, Norway describes the elements which in the view of the Norwegian Government form part of an equitable solution in the present case, (the Counter-Memorial, pp. 139 - 175, paras. 461 - 617). Not surprisingly, this presentation by and large repeats the facts presented in Part I of the Counter-Memorial. This is quite natural in so far as the final stage of the reasoning - for the Parties as well as for the Court itself - is to apply the law to the facts. The Memorial proceeds in the same manner. The divergence of views relates to the fundamental question of which elements or factors must be regarded as relevant with a view to achieving an equitable result.

435. Norway dismisses as irrelevant such basic factors as the establishment of a relevant area, the relevant coasts as well as population, economy and the constitutional status of the respective territories, although these elements form part of the whole legal rationale both for allocating maritime zones to coastal States and for the delimitation of such zones between opposite or adjacent States.

436. Instead of these factors, Norway treats as relevant an element of a political nature, namely "the substantial interest of

Norway in the Jan Mayen maritime region" (the Counter-Memorial, pp. 164 - 170, paras. 567 - 596). Denmark and Greenland do not deny that Norway has indeed shown an interest in exploiting different hunting and fishing grounds far away from its own shores, see Part I, D and F, 2 - 3 above. But an expansionist fishery policy cannot be a relevant circumstance in a maritime delimitation dispute which must be decided on legal grounds and not on power politics. Indeed, a major factor in the international efforts to establish 200-mile exclusive economic zones in favour of coastal States was precisely the need generally felt by the international community to have these States, and among them especially the developing countries, protected against exploitation of the resources in their adjacent waters by long-range fishing fleets from highly developed and industrialised countries - a situation which corresponds well to Norway's activities close to the shores of Greenland. In this respect it must be recalled that no part of "the substantial interests of Norway in the Jan Mayen maritime region" emanates from Jan Mayen, which has no population. The delimitation dispute, however, concerns the maritime zone between Greenland and Jan Mayen and not the sea between Greenland and the Norwegian mainland. Norway, therefore, is not a coastal State in relation to the present delimitation dispute.

437. The factors of geology and geomorphology do not have any independent role in the present dispute, and security considerations and other protective interests of the Parties are sufficiently covered by a 12-mile territorial sea, and a contiguous zone of another 12 miles. The only factor which both Parties appear to agree upon as relevant is their conduct. In this respect Denmark is of the opinion that only conduct which in one way or another relates to the present dispute, or to situations which are comparable to the present dispute, is a relevant factor. This means that attention must primarily be directed towards the Parties' conduct in the North Atlantic region, especially the maritime area around Jan Mayen. While Norway suggests that any conduct over the years in relation to maritime delimitation should be regarded as relevant, it is Denmark's position that the most relevant conduct relates to the region and the area where

the actual delimitation is to be effected. It is furthermore the Danish submission that it is Norway's conduct in respect of Jan Mayen and Bear Island, that demonstrates what would be an equitable and just delimitation in the waters between Greenland and Jan Mayen. The relevant Norwegian behaviour is fully supported by Denmark, which endorses the position taken by Norway to the effect that islands like Jan Mayen and Bear Island are not entitled to maritime zones which would impinge upon the 200-mile zone of Iceland and mainland Norway.

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438. The various Norwegian contentions become a medley of incommensurable elements presented on page 196, paragraph 701, cf. paragraph 16 of the Counter-Memorial, in the form of a "shopping list" from which the Court, in its task to establish a boundary, may pick and choose one *or* the other rule, concept, principle, element offered by the Norwegian Government as the basis for affirming the pre-existence of a median line boundary in the waters between Greenland and Jan Mayen. But how, for instance, can the continental shelf boundary both be in place and not be in place?

439. If Norway indeed believes that a continental shelf boundary is already in place, it violates logic to state at the same time that such a boundary may in actual fact not be in place. According to Norway's reasoning, such contradictions are of no importance because the Court is free to pick one or the other of the concepts mentioned, for instance, that of "opposability" which is said to lead to the same result. However, "opposability" is not a governing norm but simply one way of expressing a result arrived at on the basis of legal norms, to the effect that a certain legal position upheld by one State must be respected by, or is "opposable to", other specific States.

440. In the same paragraph (701) under (2) it is stated that the median line in respect of the fishery zones is based upon "...the express recognition and adoption of the boundary by Denmark; and/or...". In logical terms it means that this

submission alone is decisive. Now, it is evident from the history of the present dispute (see pp. 12 - 16, paras. 36 - 53 of the Memorial) that from the very first moment the island of Jan Mayen presented a problem, namely in relation to the contemplated extension of the Danish and the Norwegian fishery zones to 200 miles, the Government of Denmark made it clear to Norway that a median line would not be an acceptable delimitation in the waters between Greenland and Jan Mayen. Thus, there was no "express recognition and adoption" of a median line boundary by Denmark. On the contrary, there were express communications to Norway that a median line was *not* acceptable in this area, which left the matter to be settled through agreement or adjudication.

441. The Government of Denmark, therefore, invites Norway to state in its Rejoinder which rule of international law it considers to be applicable to the present dispute.

B. The Position of Denmark

442. It is the Danish submission as developed in the Memorial (pp. 59 -111), that the rule applicable to solve the maritime delimitation dispute in question is that which leads to an equitable result through the application of all those factors which are considered to be relevant to the dispute.

443. The rule of equity in relation to disputes concerning maritime delimitations was first developed by the Court in the *North Sea Continental Shelf* cases. This rule should be seen in the context of the "Truman Proclamation" of 28 September 1945, which enunciated the doctrine of "equitable principles" as the basis for solving delimitation issues concerning the continental shelf. It was the International Law Commission which translated this concept of equitable principles into what was apparently seen as a more *practical* equidistance/special circumstances rule which was eventually endorsed by UNCLOS I, 1958. A decade later, the jurisprudence of the Court influenced the thinking of the Member States of the United Nations in the drafting of the

delimitation provisions of the 1982 Law of the Sea Convention as far as the Continental Shelf and the Exclusive Economic Zone are concerned. In these provisions (Articles 74 and 83, respectively), equity based on the rule of law has been adopted without venturing into any assessment of the factors which, in a given delimitation case, would lead to an equitable result. This assessment is left to be decided by the parties concerned or, in the absence of an agreed settlement, by an independent third party such as the International Court of Justice. Equity, as expressed in the 1982 Convention on the Law of the Sea, is imperfect in the sense that it fails to give guidance on the exact contents of that rule. But, on the other hand, this imperfection could have the advantage that future developments in the field of maritime delimitation are best served by a general rule leaving it to State practice and case law to endow it with specific contents. The drafting of Articles 74 and 83 thus may often leave it to the International Court of Justice to promote international law by adapting equitable principles to the specific circumstances of each delimitation case, yet within a general framework of legal predictability.

444. Against this background, the legal situation may probably best be described as one where customary international law is reflected in Articles 74 and 83 of the 1982 Law of the Sea Convention, and based upon State practice as interpreted and developed in the case law of the Court. It is often difficult to discern which source is the primary one: State practice as evidence of an *opinio juris*, treaty law as codified international customary law or the case law of the Court. In the view of the Government of Denmark, the legal sources of maritime delimitation consist of a combination of all these sources of international law in a constructive interplay for furthering the international legal order in a most important field of inter-State activity.[37]

[37] See Rudolf Bernhard, Custom and Treaty in the Law of the Sea, *Recueil des Cours* Volume V, 1987, especially page 276.

445. The precise contents of the rule of equity consists of a weighing of those factors which are considered to be relevant in order to reach an equitable result. As to the concrete factors which, in the view of the Government of Denmark, must be considered relevant in deciding the present dispute, these have been described in detail in the Memorial, pages 95 - 111, paragraphs 294 - 356. Suffice it therefore in this Reply merely to refer to these factors as those relating to: geography - population - constitutional status of the respective territories - the socio-economic structure - cultural heritage - proportionality - the conduct of the parties in regard to the actual dispute - other delimitations in the region. Applying these factors with a view to an equitable solution constitutes the governing rule of the present dispute and leads Denmark to submit that the island of Jan Mayen cannot be accorded an effect in the delimitation which would reduce Greenland's 200-mile fishery zone and corresponding continental shelf.

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446. Denmark submits that the legal reasoning set forth in the Memorial and this Reply is in accordance with contemporary international law as developed and expressed in treaty law and case law.

447. It could also have been considered to develop the legal arguments in respect of the continental shelf and the fishery zone respectively.

448. As the 1958 Geneva Convention on the Continental Shelf is in force between the two Parties (the Memorial, p. 59, para. 210), the equidistance/special circumstances rule contained in Article 6 of the Convention would be the governing norm deciding the boundary line for the shelf. On the basis of the 1958 Convention the Government of Denmark could plead along the same lines as in the Memorial and this Reply in support of a contention 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. As the equidistance/special circumstances rule can be seen as an expression of equity, see the Memorial, page 63, paragraph 218, the same pleading could be advanced to the effect that the relevant factors supporting a rule of equity in the present case lead to a solution whereby Jan Mayen would not be allowed to impinge upon Greenland's 200-mile continental shelf.

449. As to the fishery zones the governing norm of delimitation is that which leads to an equitable solution, cf. Article 83 of the 1982 Convention on the Law of the Sea. The pleading developed in the Memorial and this Reply with particular emphasis on the factor relating to the importance to Greenland of the fishery resource could also be developed in support of the contention that the boundary line must respect Greenland's 200-mile fishery zone. The result would be the same if the equidistance/special circumstances rule were to be applied, by way of analogy, to the fishery zones. That was in actual fact the starting point of the negotiations between the Parties in 1980, see the Counter-Memorial page 73, paragraph 258. The word "both" before Parties in paragraph 258 is, however, not correct. Only Norway adopted the limited historic point of view described in that paragraph, whereas Denmark based its reasoning on the 1958 Convention seen in the light of subsequent developments in case law and treaty law.

450. The two boundary lines would thus coincide given the existence of the same basic facts, including the fact that there is less than 400 nautical miles between the two territories.

451. Against this background the Government of Denmark has felt justified in this case to start the legal reasoning *in media res* as described in the Memorial and on pages 161 - 163, paragraphs 442 - 445 above and to ask the Court to draw a single line of delimitation.

CHAPTER IV

The Method of Delimitation

A. General Approach

452. In the Memorial, pages 117 - 121, paragraphs 365 - 377, it has been submitted that the method of delimitation in the present case should take as its starting point, the relevant coasts of Greenland and Jan Mayen, respectively. Given the striking disparity in coastal lengths and considering the fact that Jan Mayen has no population and no economic life of its own, this leads directly to applying another method than the median line approach even as the starting point. That should come as no surprise as the method of equidistance is but one method among others, which could lead to an equitable solution in some cases, but produce inequitable results in others.

453. It would seem to follow that a median line can only be the starting point in a delimitation dispute if it would *prima facie* tend to lead to justice. In the present case a median line is *prima facie* creative of inequity, precisely because the lengths of the relevant coasts as well as the size, constitutional status, dependence on fisheries, and the population of the respective territories are not comparable. Therefore, one must fall back on the principle of equity even as a starting point to judge where the line of delimitation should be drawn in order that equity and justice may prevail. This implies the use of a method whereby all relevant factors are weighed against each other - like the scale of Justitia.

454. In case of an agreed settlement, it will be up to the States concerned to weigh the relevant factors against each other. The point being that when there is agreement there is, for all practical purposes, also equity, see the *Libya/Malta* case, 1985, page 39, paragraph 46.

455. If no agreement can be reached it will normally be up to an independent third party, such as the Court, to evaluate the relevance of the factors submitted by the two Parties.

456. In both situations the final result must be equitable. However, a marked difference in the two approaches is seen in the fact that, while the decision by a court reveals which factors have been considered relevant, the same will under normal circumstances not apply to a negotiated settlement where only the result is publicly known and the detailed considerations leading to that result remain in the archives of the respective Parties.

457. To the Government of Denmark it is important to clarify how the delimitation process itself is to be carried out. That represents the essential part of any maritime delimitation. Common sense would appear to suggest that when embarking upon that process one must begin with the idea that the starting line must itself appear to lead towards an equitable result which is the fundamental norm governing maritime delimitation. But how can one know in advance what may lead towards an equitable result? In the words of the Court of Arbitration in the *Channel Islands* case, 1977, a *prima facie* view of the geographical situation may suggest that a particular island or groups of islands represent "a circumstance creative of inequity and calling for a method of delimitation that in some measure redresses the inequity" (para. 196 of the Award). The arbitrators in the *Guinea/Guinea-Bissau* case, 1985 proceeded from an overall view of the geographical context in which the delimitation line was to be drawn (para. 108 of the Award). The International Court of Justice followed similar reasoning when it stated in the *Libya/Malta* case, 1985 that "... (t)he fact that the Court has found that, in the circumstances of the present case, the drawing of a median line constitutes an appropriate first step in the delimitation process, should not be understood as implying that an equidistance line will be an appropriate beginning in all cases, or even in all cases of delimitation between opposite States. ..." (*I.C.J. Reports 1985*, pp. 55 - 56, para. 77).

458. Recognising that the delimitation process in the last analysis is one single complex operation it seems fair to *conclude* that a maritime delimitation process should proceed from a *prima facie* view of the particular case with its most prominent factors.

B. Relevant Factors

459. Approaching now the question of drawing the line of delimitation in the waters between Greenland and Jan Mayen, and weighing the different factors involved, the first consideration to be taken into account is the fact that the dispute relates to a delimitation situation caused by the introduction of broad maritime zones of up to 200 nautical miles by both Denmark and Norway off the coasts of Greenland and Jan Mayen.

460. As mentioned in on pages 83 - 84, paragraph 207, the introduction and adoption by UNCLOS III of the new broad maritime zones had an influence on the entitlement of islands to maritime zones under international law. The provision contained in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, Article 10, had to be reconsidered in the light of the new concept of 200-mile fishery or economic zones and corresponding continental shelf areas. It was not considered to be reasonable to allow such broad zones around small isles, islets or mere rocks unable to sustain human habitation.[38] The result at the Conference was that rocks were singled out as not being entitled to the broad maritime zones, see Article 121 (3) of the 1982 Convention on the Law of the Sea.

461. Article 121 does not, however, address the question of the effect of an island in a delimitation situation. It would be in line with the reasoning underlying Article 121(3), as indeed with the basic philosophy behind the new order governing the regime of the sea-bed outside national jurisdiction as contained in the 1982 Convention on the Law of the Sea, to adopt an

[38] See e.g., Hiran W. Jayewardene, *The Regime of Islands in International Law*, pp. 5 - 6, 15 - 16 and 18.

approach towards delimitation consistent with the one adopted for the singling out of rocks for special treatment as regards entitlement. Otherwise small islands without population would be given a role in international maritime law which is completely out of proportion to the other basic concept contained in the 1982 Convention, namely that of allowing coastal States broad maritime zones. That concept has as its rationale the support of the living conditions of the coastal State population and as far as Greenland is concerned its overwhelming dependency on fishery has been described in Part I under E. and F. It has never been intended that the concept of the new broad maritime zones should turn into a device which could supply a mainland in possession of a far-away island without a natural population with disproportionate maritime zones. Only where a detached island can claim a status more or less similar to that of the mainland it confronts, i.e., a living community which depends for its survival on its surrounding sea, would it be reasonable to regard that island as equal in principle to an opposite-lying mainland. But that is not the case as far as the present dispute is concerned. Though Jan Mayen is not a mere rock, it is certainly not the type of island one would expect to be entitled to broad maritime zones *at the expense* of an opposite-lying mainland.

462. To conclude this first consideration, it would seem to follow from the very nature of the island of Jan Mayen - seen in relation to the delimitation dispute in question, which is concerned with broad maritime zones of an economic character - that the method of drawing a line of delimitation would have to be based on the premise that the island of Jan Mayen could not be accorded a maritime zone which would impinge upon Greenland's right to a 200-mile fishery zone and a corresponding continental shelf area.

463. The second consideration which Denmark believes it is important to take into account when establishing the method for drawing the line of delimitation in the present case, is that of comparing the relevant coastal fronts of the two opposite-lying territories, see the Memorial pages 11 - 12, paragraphs 30 - 35, and pages 11 - 16, paragraphs 19 - 32 above. Such a

geographical comparison based on nature itself is relatively easy to make, given the straight-line character of the respective coasts, and would suggest a method of delimitation reflecting the ratio of the length of the two coasts, i.e., almost 10 to 1. If coastal ratios were the only criterion, the line should be drawn even further from Greenland's coast than 200 nautical miles. An illustration of this line is shown on page 120 in the Memorial. However, geography is not the only factor operating in a delimitation case, especially where the delimitation covers the fishery zone as well as the continental shelf area. In such situations other relevant factors must be given due weight. In the present case factors such as *population, constitutional status, economic structure, cultural heritage* all operate in favour of Greenland alone, adding to the strength of the case for drawing an equitable line beyond the 200-mile mark measured from Greenland's baseline. Under contemporary international law such a line cannot, however, be drawn because the international community for political-legal reasons has decided to restrict the claims of coastal States to a distance of 200 nautical miles as far as fishing zones are concerned, and to apply the same distance criterion with regard to the continental shelf in cases where the maritime area between the opposite-lying territories is less than 400 nautical miles in breadth. Thus a proportionality line, however reasonable in itself, has to be adjusted back to the 200-mile distance mark.

464. Norway's *conduct* with regard to the islands of Jan Mayen and Bear Island points decisively towards a full 200-mile fishery zone and continental shelf for Greenland as an equitable and just settlement in the region.

465. There is yet another factor operating in favour of the 200-mile line measured from the actual baselines of Greenland: the *ice condition* along Greenland's east coast. The heavy flow of pack ice during the year and the permanent portion of ice close to the coast mean that throughout the year only part of Greenland's 200-mile fishery zone is accessible by boat or ship (see the figure on page 41 in the Memorial and Map II in the Counter-Memorial). The disputed area in the present case is non-navigable for part of the year and this fact constitutes another

essential reason for Denmark's insistence upon the 200-mile fishery zone measured from Greenland's straight baselines. In making this point, Denmark does not try to establish a legal position whereby the limit of the ice off this part of Greenland's coast [39] should in the future serve as a baseline for measuring the breadth of the territorial sea and other maritime zones. With the exception of one article (Art. 234), concerning the right of the coastal State to institute measures to control pollution caused by vessels inside her exclusive economic zone in cases where this zone is ice-covered, the Convention on the Law of the Sea contains no particular regulations governing ice formations. Denmark raises this point only as a fact which the Court should bear in mind in the process of determining the boundary line. Greenland's 200-mile zone will not, in fact, provide Greenland with 200 miles of exploitable sea area.

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466. The Counter-Memorial offers no method of delimitation, allegedly because the median line in respect of the continental shelf has been in place since 1965, and the boundary delimiting the fishery zones should then, according to State practice, also follow the line established for the continental shelf. It is, of course, an easy way to solve the problem to state that there is no problem because the line of delimitation is already in place. On pages 126 - 130, paragraphs 337 - 350 above it has been explained why this submission by Norway does not stand up to legal scrutiny. There is no way to avoid addressing the central issue concerning the method of delimitation required under contemporary international law.

C. The Single Line Approach

467. A point on which the Parties appear to be in agreement is that a single line of delimitation is called for.

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[39] The situation may be different in the north-east part of Greenland, see Jørgen Molde, The status of ice in international law, *Nordic Journal of International Law*, 1982 Vol. 51, pp. 165 - 166

468. Denmark does not disagree with the Norwegian point of view as expressed in the Counter-Memorial, page 91 - 92, paragraphs 317 - 322 and page 108 - 111, paragraphs 373 - 381 that existing continental shelf boundaries have normally served as a basis for the delimitation of the new exclusive economic zones or extended fishery zones, where the distance between the States concerned is less than 400 nautical miles. When one boundary already exists, States are inclined to use it also for other purposes whenever feasible, especially taking into account the background and contents of the concept of the exclusive economic zones comprising both a fishery zone and a continental shelf area.

469. That is in line with the reasoning underlying the request for a single line of maritime delimitation, put forward by Denmark in its Memorial on page 113, paragraphs 357 - 360. A single line of delimitation presents the obvious advantage of providing a division of all the natural resources of the zones, living and non-living, on the sea-bed, under its subsoil or in the superjacent waters. It is a sensible and practical choice when as in the present case no specific factors exist which dictate the use of different lines for the shelf and the fishery zone.

470. As indicated in the Memorial (pp. 115 - 117, para. 364), there is a clear tendency for State practice to adopt the single line approach. The latest example is provided by the arbitration to settle the maritime delimitation between Canada and France in the waters surrounding the French islands of St. Pierre and Miquelon where a single line delimitation has also been requested.

471. Denmark and Norway seem to be in agreement about the current legal trend as well as the practical and political advantages in support of the concept of a single line of delimitation. But Denmark cannot agree on the way the tendency towards a single line delimitation is used by Norway in its Counter-Memorial.

472. First, and most important, the Norwegian point of departure is the false argument that the continental shelf boundary between Greenland and Jan Mayen is already in place. That this argument is without legal foundation has been demonstrated on pages 126 - 130, paragraphs 337 - 350 above.

473. Equally untenable is the suggestion that the pattern of median line continental shelf boundaries in the region should almost automatically generate not only continental shelf boundaries of the same kind elsewhere in the area but also identical fishery zone boundaries.

474. It would, indeed, be easy if a whole number of delimitation issues in a region could be solved by following a "pattern" in spite of all kinds of differences involved in the various situations. But, of course, it is not as simple as that. Ironically, Norway itself has provided convincing proof of the importance of judging each delimitation issue on its own merits.

475. Norway has established a full 200-mile economic zone for mainland Norway vis-à-vis Bear Island and has recognised Iceland's 200-mile economic zone vis-à-vis Jan Mayen. Also noteworthy is the fact that no continental shelf boundary was in place before the boundary for the economic and fishery zones was established. On the contrary, in relation to Iceland the latter boundary was established first, and then 17 months later, an identical continental shelf boundary was drawn. In other words, when compared with the pattern of conduct claimed by Norway to be prevailing in the region, the events occurred in exactly the reverse order between Norway and Iceland.

476. Thus, Norway has very convincingly demonstrated that practical life may very well run counter to theoretical "patterns" for both the procedure and the substance of delimitations supposed to reign in the area. This conclusion should not come as a surprise, considering that equitable principles are not intended to lead to equal solutions for unequal situations.

D. Computation of the 200-Mile Delimitation Line

477. Based on the revised baseline mentioned on page 16, paragraph 31 above and described in detail in Annex 58, the Government of Denmark has made a computation of the 200-mile line off the relevant part of East Greenland.

478. Said line is presented as a geodetic traverse between points A and B (Map V) consisting of a certain number of intermediate points at discrete intervals on the some 600 kilometres long line.

479. The actual computer-lists provided with explanatory notes and sketches showing the different modes in which the computation takes place, are available to the Court and the Respondent State.

480. Map VI is an illustration of the computation of Greenland's pertinent 200-mile line based on 96 points, corresponding to an average discrete interval between the points of some 6,300 metres. The red "herring bone" pattern represents the lines (for convenience loxodromes instead of geodesics) along which the geodetic distance of 200 nautical miles is computed to produce the consecutive points on the line.

PART III

SUBMISSIONS

481. 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:[40]

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
14	Arundel Island	73°45'49"4	20°03'28"9

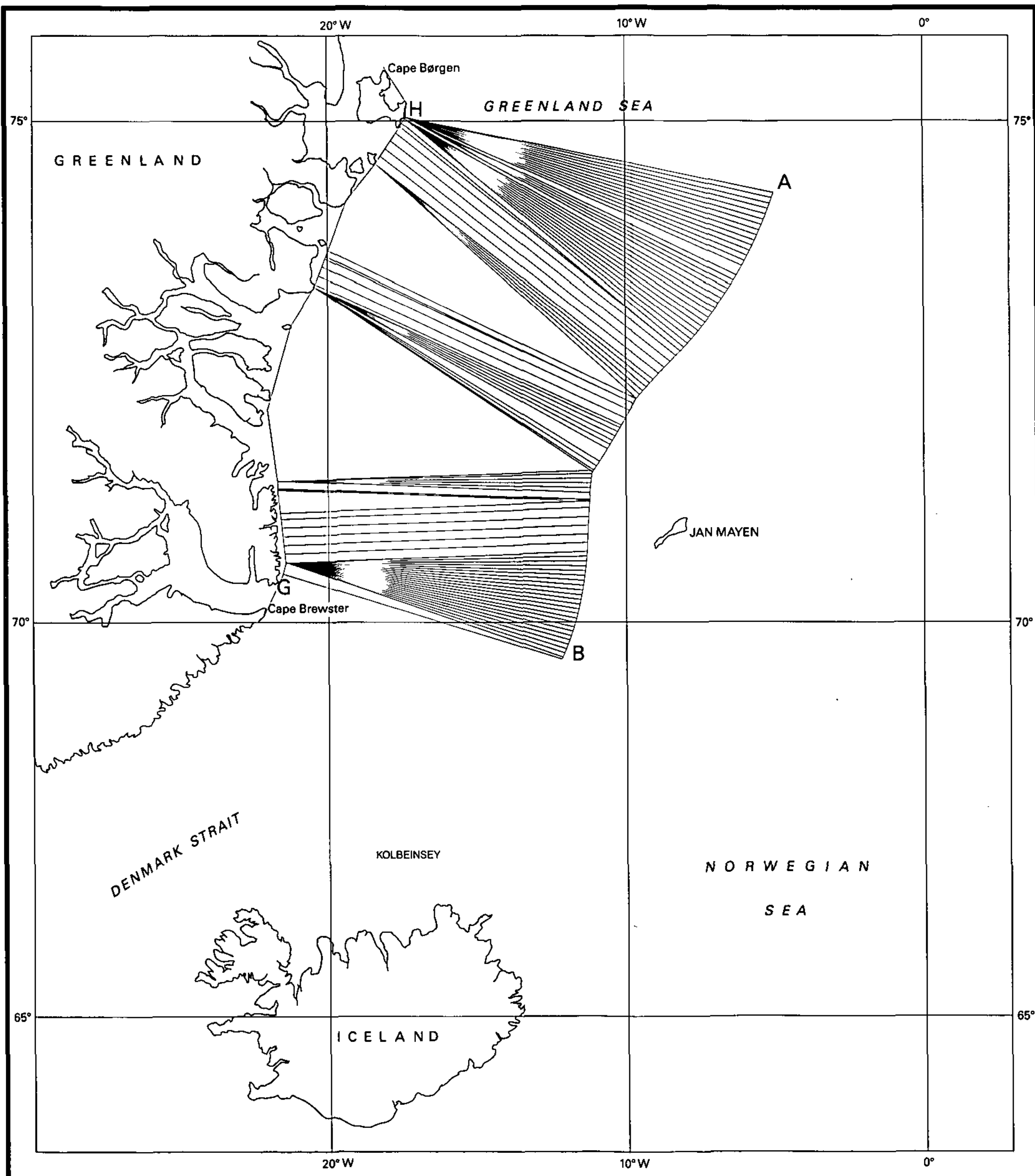
[40] Between points No. 1 and 2, 3 and 4, 12 and 13, and 19 and 20 the baseline follows the low water mark along the coastline. The protrusive points on the above-mentioned parts of the low water mark are presented in the sub-annex to Annex 58. Coordinates of all basepoints are given in *WGS 84*.

Point No.	Designation	Latitude N	Longitude W
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

Copenhagen, 31 January 1991

TYGE LEHMANN (*Signed*) PER MAGID JOHN BERNHARD

Agents of the Government of the Kingdom of Denmark



MAP VI

ILLUSTRATION OF THE COMPUTATION OF EAST GREENLAND'S 200-NAUTICAL MILE LINE

Mercator Projection

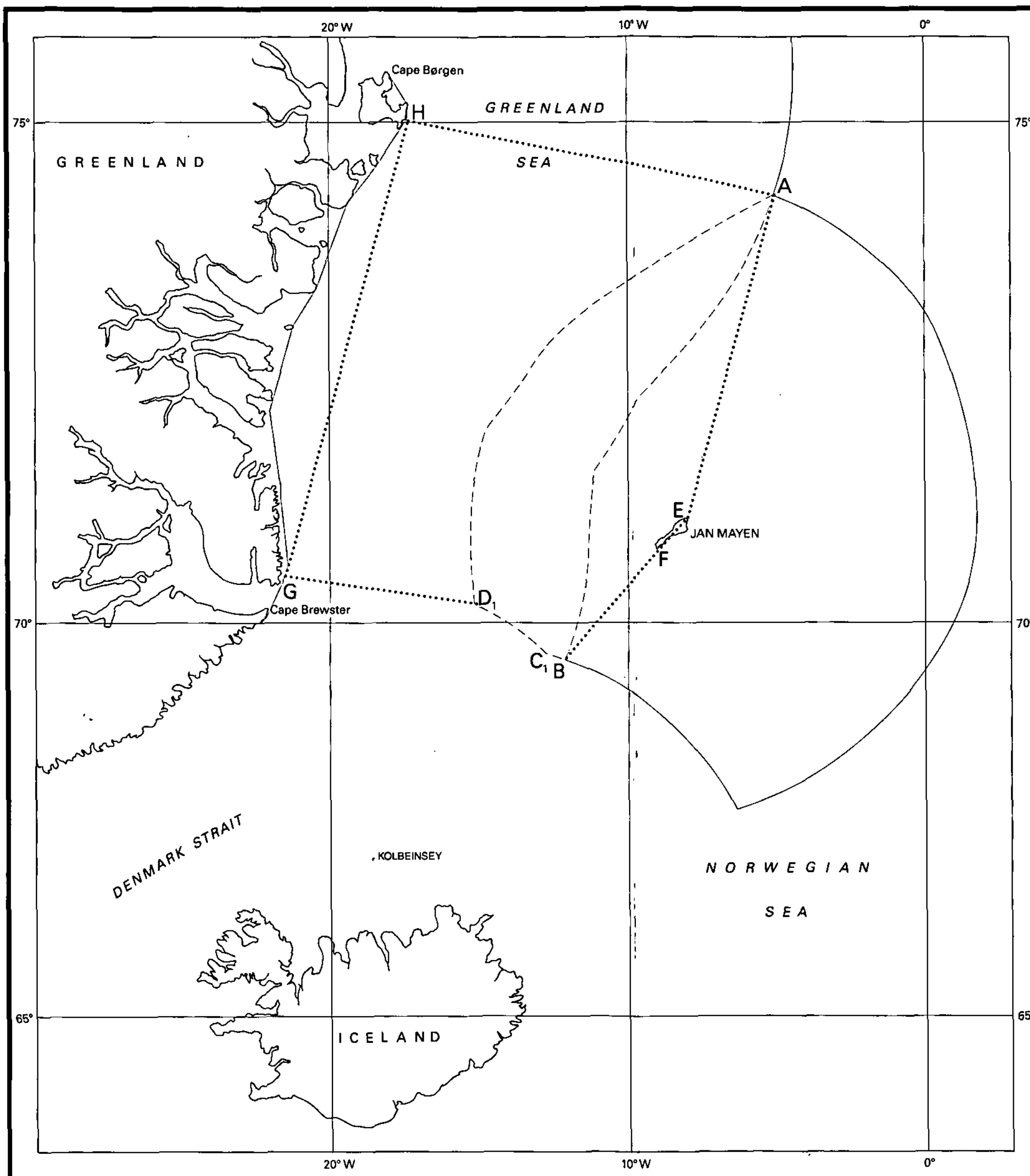
Scale 1:7 000 000

List of Approximate Coordinates:

A: 74°21'9N 5°00'4W
B: 69°34'7N 12°09'4W
G: 70°32'3N 21°28'9W
H: 75°01'6N 17°20'7W

200-nautical mile line off East Greenland.

Straight baselines of East Greenland.



MAP V

DISPUTED AND RELEVANT AREAS IN THEIR GEOGRAPHICAL CONTEXT

Mercator Projection

Scale 1:7 000 000

List of Approximate Coordinates:

A :	74°21'9N	5°00'4W
B :	69°34'7N	12°09'4W
C_1 :	69°38'4N	12°43'4W
D_1 :	70°12'4N	15°10'2W
E :	71°09'7N	7°57'5W
F :	70°49'8N	9°03'5W
G :	70°32'3N	21°28'9W
H :	75°01'6N	17°20'7W

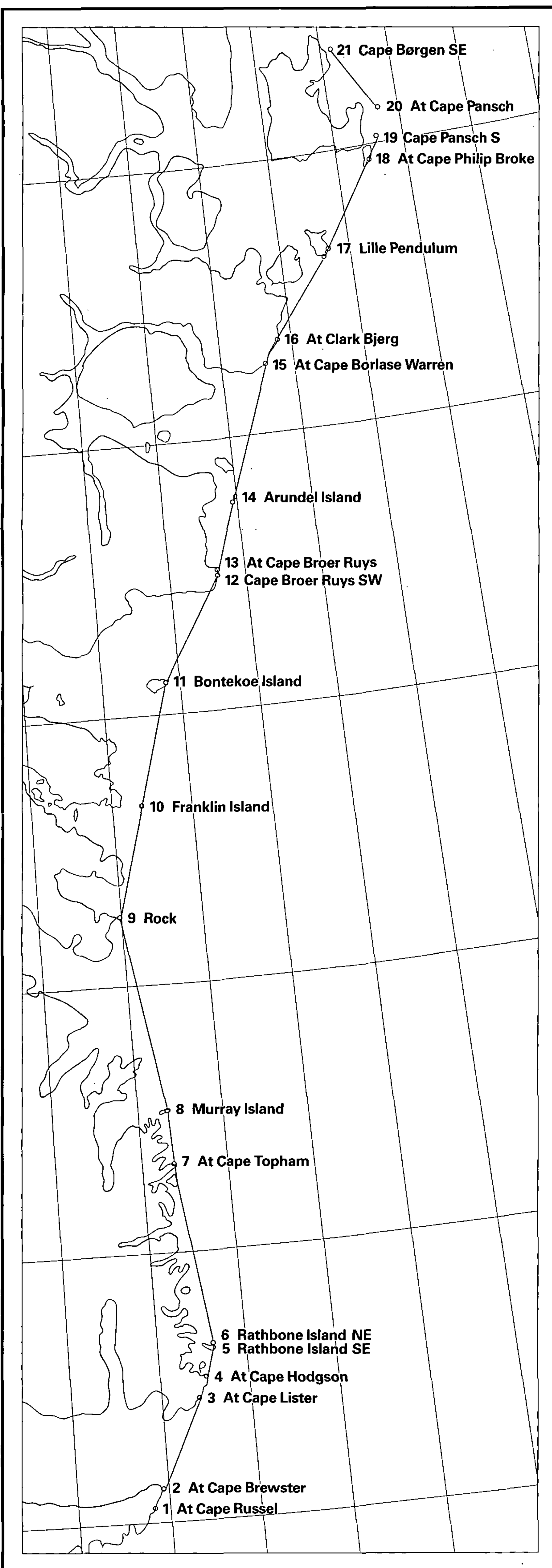
– – – – 200-nautical mile line off East Greenland.

– – – – Median line between Greenland and Jan Mayen. The limiting line BC_1D_1 towards the south.

········· Limiting lines AE, FB D_1G and AH. Coastal fronts GH and FE.

——— Straight baselines of East Greenland.

——— 200-nautical mile lines off Greenland (North of point A), Iceland (East of point B) and Jan Mayen (to the east) respectively.



MAP VII

ILLUSTRATION OF THE REVISED EAST GREENLAND BASELINE

COORDINATES OF THE BASE-LINE POINTS ARE GIVEN IN ANNEX 58