

International Court  
of Justice  
THE HAGUE

Cour internationale  
de Justice  
La HAYE

YEAR 1993

*Public sitting*

*held on Monday 11 January 1993, at 10 a.m., at the Peace Palace,*

*President Sir Robert Jennings presiding*

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

*(Denmark v. Norway)*

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VERBATIM RECORD

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ANNEE 1993

*Audience publique*

*tenue le lundi 11 janvier 1993, à 10 heures, au Palais de la Paix,*

*sous la présidence de sir Robert Jennings, Président*

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

*(Danemark c. Norvège)*

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COMPTE RENDU

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*Present:*

President Sir Robert Jennings

Vice-President Oda

Judges Ago

Schwebel

Bedjaoui

Ni

Evensen

Tarassov

Guillaume

Shahabuddeen

Aguilar Mawdsley

Weeramantry

Ranjeva

Ajibola

Judge *ad hoc* Fischer

Registrar Valencia-Ospina

—

*Présents:*

Sir Robert Jennings, Président

M. Oda, Vice-Président

MM. Ago

Schwebel

Bedjaoui

Ni

Evensen

Tarassov

Guillaume

Shahabuddeen

Aguilar Mawdsley

Weeramantry

Ranjeva

Ajibola, juges

M. Fischer, juge *ad hoc*

M. Valencia-Ospina, Greffier

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*The Government of Denmark is represented by:*

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

Mr. John Bernhard, Ambassador, Ministry of Foreign Affairs,  
*as Agents;*

Mr. Per Magid, Attorney,  
*as Agent and Advocate;*

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

Mr. Derek W. Bowett, C.B.E, Q.C., F.B.A., Emeritus Whewell Professor of International Law in the University of Cambridge,  
*as Counsel and Advocates;*

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

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

Mr. Milan Thamsborg, Hydrographic Expert,  
*as Counsel and Experts;*

Mr. Jakob Høyrup, Head of Section, Ministry of Foreign Affairs,

Ms. Aase Adamsen, Head of Section, Ministry of Foreign Affairs,

Mr. Frede Madsen, State Geodesist, Danish National Survey and Cadastre,

Mr. Ditlev Schwanenflügel, Assistant Attorney,

Mr. Olaf Koktvedgaard, Assistant Attorney,  
*as Advisers, and*

Ms. Jeanett Probst Osborn, Ministry of Foreign Affairs,

Ms. Birgit Skov, Ministry of Foreign Affairs,  
*as Secretaries.*

The Government of Norway is represented by :

Mr. Bjørn Haug, Solicitor General,

Mr. Per Tresselt, Consul General, Berlin,  
*as Agents and Counsel;*

Le Gouvernement du Danemark est représenté par :

M. Tyge Lehmann, ambassadeur, conseiller juridique, ministère des affaires étrangères,

M. John Bernhard, ambassadeur, ministère des affaires étrangères,

*comme agents;*

M. Per Magid, avocat,

*comme agent et avocat;*

M. Eduardo Jiménez de Aréchaga, professeur de droit international à la faculté de droit de l'Université catholique de l'Uruguay,

M. Derek W. Bowett, C.B.E., Q.C., F.B.A., professeur émérite de droit international à l'Université de Cambridge (chaire Whewell),

*comme conseils et avocats;*

M. Finn Lynge, consultant spécialisé pour les affaires du Groenland, ministère des affaires étrangères,

Mme Kirsten Trolle, consultant spécialisé, autorité territoriale du Groenland,

M. Milan Thamsborg, expert hydrographique,

*comme conseils et experts;*

M. Jakob Høyrup, chef de section, ministère des affaires étrangères,

Mme Aase Adamsen, chef de section, ministère des affaires étrangères,

M. Frede Madsen, expert en géodésie de l'Etat, service topographique et cadastral danois,

M. Ditlev Schwanenflügel, avocat auxiliaire,

M. Olaf Koktvedgaard, avocat auxiliaire,

*comme conseillers, et*

Mme Jeanett Probst Osborn, ministère des affaires étrangères,

Mme Birgit Skov, ministère des affaires étrangères,

*comme secrétaires.*

Le Gouvernement de la Norvège est représenté par :

M. Bjorn Haug, procureur général,

M. Per Tresselt, consul général, Berlin,

*comme agents et conseils;*

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

Mr. Keith Highet, Visiting Professor of International Law at The Fletcher School of Law and Diplomacy and Member of the Bars of New York and the District of Columbia,

Mr. Prosper Weil, Professor Emeritus at the Université de droit, d'économie et de sciences sociales de Paris,

*as Counsel and Advocates;*

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

Mr. Peter Gullestad, Director General, Fisheries Directorate,

Commander P. B. Beazley, O.B.E., F.R.I.C.S., R.N. (Ret'd),

*as Advisers;*

Ms. Kristine Ryssdal, Assistant Solicitor General,

Mr. Rolf Einar Fife, First Secretary, Permanent Mission to the United Nations, New York,

*as Counsellors;*

Ms. Nina Lund, Junior Executive Officer, Ministry of Foreign Affairs

Ms. Juliette Bernard, Clerk, Ministry of Foreign Affairs,

Ms. Alicia Herrera, The Hague,

*as Technical Staff.*

M. Ian Brownlie, Q.C., D.C.L., F.B.A., professeur de droit international public à l'Université d'Oxford, titulaire de la chaire Chichele; *Fellow* de l'All Souls College d'Oxford,

M. Keith Highet, professeur invité de droit international à la Fletcher School of Law and Diplomacy et membre des barreaux de New York et du District de Columbia,

M. Prosper Weil, professeur émérite à l'Université de droit, d'économie et de sciences sociales de Paris,

*comme conseils et avocats;*

M. Morten Ruud, directeur général de la division des questions polaires au ministère de la justice,

M. Peter Gullestad, directeur général de la direction des pêcheries,

Capitaine de frégate P. B. Beazley, O.B.E., F.R.I.C.S., R.N. (en retraite),

Mme Kristine Ryssdal, procureur général adjoint,

M. Rolf Einar Fife, premier secrétaire à la mission permanente de la Norvège auprès de l'Organisation des Nations Unies à New York,

*comme conseillers;*

Mme Nina Lund, fonctionnaire administratif au ministère des affaires étrangères,

Mme Juliette Bernard, agent administratif au ministère des affaires étrangères,

Mme Alicia Herrera, La Haye,

*comme personnel technique.*

The PRESIDENT: Please be seated.

The sitting is open.

The Court meets today to begin the public hearings in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*.

The proceedings were begun on 16 August 1988 when the Kingdom of Denmark filed an Application instituting proceedings against the Kingdom of Norway in respect of a dispute concerning maritime delimitation between the Danish territory of Greenland and the Norwegian island of Jan Mayen; and requesting the Court "to decide, in accordance with international law, where a single line of delimitation shall be drawn between Denmark's and Norway's fishing zones and continental shelf areas in the waters between Greenland and Jan Mayen".

By Orders made by the Court on 14 October 1988 and by the President of the Court on 21 June 1990, time-limits were fixed for a Memorial and Counter-Memorial, and a Reply and Rejoinder, respectively; these pleadings were duly filed within the relevant time-limits. After ascertaining the views of the Parties, the Court has decided, pursuant to Article 53, paragraph 2, of the Rules of Court, that copies of those pleadings and documents annexed shall be made accessible to the public with effect from this opening of the present oral proceedings.

Since the Court includes upon the Bench a judge of Norwegian nationality, Judge Evensen, but no judge of Danish nationality, the Government of Denmark, in exercise of its right under Article 31, paragraph 2, of the Statute chose Dr. Paul Henning Fischer, formerly Permanent Under-Secretary of State for Foreign Affairs of Denmark, Ambassador and Member of the Permanent Court of Arbitration, to sit as judge *ad hoc*. This is not the first time Judge Fischer has sat as a judge in this courtroom; the Government of Denmark also chose him to sit as judge *ad hoc* in the case concerning *Passage through the Great Belt* brought by Finland against Denmark. That case was discontinued before the oral proceedings on the merits were held, but Judge Fischer participated in the proceedings, including the public hearings, leading to the Court's Order of 29 July 1991 on the request made by Finland for the indication of provisional measures. Under Article 20 of the Statute of the Court, made applicable to judges *ad hoc* by Article 31, paragraph 6,

of the Statute, "Every Member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously"; and it is established in the practice of the Court that a judge *ad hoc* makes such a declaration in each case in which he sits in that capacity.

I therefore call upon Judge Fischer to make, in the present case, the solemn declaration provided for in the Statute and Rules of Court, and I request all present to stand while this is done.

Judge FISCHER: I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.

The PRESIDENT: Please be seated.

I place on record the solemn declaration just made by Judge Fischer and declare him duly installed as judge *ad hoc* in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*.

Much to the regret of his colleagues, Judge Lachs is unable, because of the state of his health, to be present at these hearings.

I note the presence in Court of the Agents and counsel of the Parties and in accordance with the usual practice, and with the agreement of the Parties, Denmark as Applicant will address the Court first, and I therefore give the floor to Mr. Lehmann, one of the three Agents of Denmark.

Mr. LEHMANN: Mr. President, distinguished Members of the Court,

1. We have finally come to the last round of pleadings in the case concerning the Maritime Delimitation in the area between Greenland and Jan Mayen. I believe it is fair to say that the delay in the proceedings has been due to circumstances beyond the control of the Danish Government. As is well-known, proceedings were instituted against Denmark before this Court in the Great Belt case in May 1991. The particular character of that case led the Court to accord priority to its consideration indicating at the same time that a negotiated settlement would be welcomed. That indication proved helpful in reaching an out-of-court settlement. Though out-of-court the settlement was still reached under the Court's auspices. As you have stated yourself, Mr. President, last year

before the United Nations General Assembly on the occasion of the Annual Report of the International Court of Justice: "Whenever the Court or its procedures can help in this way, the Court is, in an important sense, still productively at work." We fully agree with that statement.

I wish to add that it is a matter of great satisfaction to the Danish Government - and I believe to all States of the United Nations - that the International Court of Justice has proved itself capable of handling the increasing number of cases in both a flexible and efficient manner. This is particularly satisfying seen in the context of the United Nations Decade of International Law, 1990-1999, during which special attention will be given to the role of this Court both in settling interstate disputes and as an instrument of preventive diplomacy through its advisory functions. Through the jurisprudence of the Court the rule of law is gaining further ground within the international community of States and that is exactly one of the main objectives of the Decade - and beyond.

Mr. President,

2. As far as the present case is concerned the maritime area in dispute in the waters between Greenland and Jan Mayen is still in dispute between the two Parties - and very much so as appears from my letters to the Court of 26 September 1991 (with Annexes 90-94) and 1 July 1992 (with Annex 95) concerning Norway's continued activities in and around the disputed area. I wish, though at the same time to draw the Court's attention to the conclusion of the tripartite agreement of 12 June 1989 between Greenland/Denmark, Iceland and Norway on the capelin stock in the waters between Greenland, Iceland and Jan Mayen (Annex 17 of the Memorial). The agreement was concluded first for a period of three years, i.e., until April 1992 when the judgment in the present case was supposed to have been delivered. The agreement has now been extended for another two years until the 30 April 1994 (Annex 104 in the Norwegian list of Annexes). Furthermore, recent agreements have been entered into between the Parties on Mutual Fisheries Relations and Marine Mammals (Annexes 97, 98 and 99 in the Norwegian list of Annexes). I mention these agreements, Mr. President, because they all bear witness to the fact that there exists in the region a strong desire between the countries concerned to cooperate in a constructive manner towards preserving and

utilizing the economic resources of the sea. Fish stocks and marine mammals do not as we all know respect man-made maritime boundaries. Therefore, joint management agreements are necessary irrespective of legal boundaries. But - and this is an important "but" - legal boundaries are conducive to the achievement of stability and finality in a given area (*Temple of Preah Vihear case, Merits, I.C.J. Reports 1962*, p. 34). Without such boundaries the exercise of jurisdiction and the enactment of national conservation measures become difficult operations. Even the conclusion of joint management agreements becomes difficult because one is unable to argue for an allocation of the catch which relates to the maritime area to which a party may be entitled by law. Thus, the disputed area in the present case represented for many years a stumbling block to a tripartite agreement on the capelin stock - and still causes trouble in that respect. So, that is what Denmark/Greenland is seeking in the present proceedings; a final and stable boundary in the waters between Greenland and Jan Mayen which will render justice to the Greenland community. We are confident that the settlement of that basic legal question once and for all by this Court will be a major contribution towards a constructive and - we hope - prosperous co-operation between the countries of the region.

In fostering joint co-operation among the countries in the region stable maritime boundaries are, as I have just explained, of great importance. In this respect it is quite amazing to read in the Norwegian Counter-Memorial - at paragraph 685 - that the claims of Denmark in the present case: "constitute a threat to legal stability". Was it not Norway who created instability in the area through its illegal occupation of part of East Greenland on 10 July 1931. Indeed it was. The occupation took place a few years after the annexation of Jan Mayen which according to the Norwegian Constitution may not be separated, ceded or otherwise transferred (paragraph 97 of the Rejoinder). What applied to Jan Mayen did not apparently hinder Norway from attempting to separate part of East Greenland from the whole of Greenland. This provocative act created instability in the area until the Permanent Court of International Justice handed down its judgment and put the dispute as to the *land territory* to rest. The sea area between East Greenland and Jan Mayen did not at the time give rise to a dispute because Greenland and Jan Mayen were divided by high seas. Not until the

broad maritime zones were introduced in 1976/77 did a potential dispute arise in the area. Again an aggressive Norwegian attitude is apparent in the way Norway extended its fishery zone in May 1980 around Jan Mayen, adding that it would exercise jurisdiction in the whole of that area, though Norway was fully aware that Denmark/Greenland claimed its full 200-mile fishery zone in the same area and had promised in the first instance not to exercise jurisdiction in the disputed area. The Norwegian position led to a serious incident on 31 August 1981 when a Norwegian coastguard ship boarded two Danish fishing vessels. That line of conduct by Norway certainly did not contribute to stability in the area. On the contrary. Finally, on top of these developments come Norwegian hunting activities for seals during the present proceedings in undisputed Greenland waters and in the disputed area - as described in my letters to the Court of 26 September 1991 and 1 July 1992. Does that contribute to stability in the area? It does not. So let me be clear, Denmark and Greenland are uncomfortable - to put it politely - with the highly self-praised Norwegian interests in the Jan Mayen maritime region which do not respect Greenland's legitimate rights under international law. Therefore, Denmark and Greenland ask the Court to draw a final line of delimitation in the waters between Greenland and Jan Mayen, and to do so in a manner which leads to an equitable solution.

Mr. President, before dealing with the main arguments of the present dispute, I wish to address briefly a preliminary point raised by Norway.

3. Norway has taken issue with the Danish vocabulary of referring to Greenland's rights, interests and claims instead of speaking about the Kingdom of Denmark as the holder of these rights, interests and claims. The point is spelled out in the very first chapter of the Norwegian Rejoinder (paragraphs 18-20). It is alleged that Denmark in this way is trying to convey the impression that the present proceedings relate to a dispute between Greenland and Norway. These assertions are in our view pure semantics. It is correct that the case has been instituted by the Kingdom of Denmark against the Kingdom of Norway in accordance with the declarations made by Denmark and Norway under Article 36 (2) of the Statute of the Court. But the subject-matter of the case - as also reflected in the title given to it by the Court - concerns the maritime delimitation in the area between Greenland and Jan Mayen. Thus the dispute concerns Greenland and Jan Mayen, and it is these two

land territories which dominate the maritime area in dispute. It is certainly not a dispute between Greenland and mainland Norway as there exists no factual or legal relationship between these two territories. Denmark acts in defence of Greenland's rights in the area just as Norway defends Jan Mayen's entitlement to a full maritime zone. There is no attempt on the part of Denmark to introduce - through the back door so to speak - a special status to Greenland during these proceedings. The constitutional status of Greenland within the Danish realm has been clearly spelled out in the Memorial and it is a fact of life that Greenland - and it is a fact of life - acts on its own in matters relating to fisheries. This fact is particularly evident in the Agreement on Co-operation in Research, Conservation and Management of Marine Mammals in the North Atlantic, signed on 9 April 1992 by the Ministers for Fisheries from Norway, Iceland, The Faroe Islands, and Greenland (Annex 99 to the Norwegian pleadings). The Kingdom of Denmark is not a signatory to that agreement.

Mr. President, I shall now turn to my presentation of the main arguments of the case - as Denmark sees them.

4. The fundamental goal of any maritime delimitation be it by agreement or through third party settlement, is to secure an equitable solution. In that respect it seems to the Danish side that Norway during these pleadings has completely lost sight of that ultimate goal. In its persistent attempts to demonstrate that the island of Jan Mayen generates a full maritime zone, and consequently a median line vis-à-vis Greenland, Norway fails to realize that in order to secure an equitable result one has to enter into a more nuanced evaluation of all relevant circumstances or factors which may have a bearing on the particular case in question. It is not enough to state - as Norway does - that Jan Mayen is an area of land territory to which Norway has unquestioned title (paragraph 444 of the Counter-Memorial) and that Jan Mayen occupies a position of geographical independence (paragraph 484 of the Counter-Memorial). Title does not in itself endow a land territory with full maritime zones vis-à-vis a competing coastal front or even with zones limited by a median line. The reason why Denmark did not object to the extension of the fishery zone and the corresponding shelf area to the east of Jan Mayen as opposed to the westward extension was due to

the simple fact that in that direction Denmark had "no competing coasts that could require a curtailed reach" - to borrow a phrase used by the Court of Arbitration in the recent case concerning the Delimitation of Areas between Canada and France (paragraph 45 of the Award of 10 June 1992). Whether the International Sea-Bed Authority to be established under the 1982 United Nations Convention on the Law of the Sea will raise an objection on behalf of mankind with regard to Jan Mayen's continental shelf area towards the east, i.e., towards the high seas remains to be seen.

It must be Norway's obsession with the entitlement of Jan Mayen which leads Norway to see ghosts. But entitlement and delimitation are two different legal institutions. From the fact that a maritime delimitation situation cannot arise unless there are two coasts under different titles, generating overlapping claims, one cannot infer that such title governs the delimitation. The fundamental norm of delimitation consists in reaching an equitable solution in the light of factors considered to be relevant in the circumstances of the particular case, seen in the context of the applicable legal rules and principles.

First and foremost Norway cannot escape the fact that it is the coastal front which constitutes the basis of title to the adjacent sea (*I.C.J. Reports 1982*, p. 61, para. 73). So, the coastal relationship between Greenland and Jan Mayen is the most essential geographic feature in the present case and leads in the Danish view prima facie to a different approach than the median line method.

However, geography is not the only relevant factor in a maritime delimitation case. It is submitted that the factor of population stands at the root of any delimitation case in the sense that law, including international law, has been developed to serve human societies, not to accommodate landscapes. The population factor is so obvious that one tends to forget it, but without populations there would be no States and consequently no international law. The Court has of course been aware of this point as can be seen from its Judgment in the Fisheries case where it says:

"there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage" (*I.C.J. Reports 1951*, p. 133).

This dictum clearly refers to the population factor in the region, i.e., the population along the northern coast of mainland Norway which was also at the heart of the Norwegian pleadings in that case. The fact that the island of Jan Mayen does not sustain a population and has never done so whereas Greenland has been the home of an Inuit population for more than 4,000 years appears to Denmark to be a most relevant factor in the present case. It is equally obvious that Norway should try to dismiss completely this basic factor given the character of the island of Jan Mayen (e.g., paragraphs 551-564 of the Rejoinder). But Norway completely misses the point when it suggests that delimitation has nothing to do with counting the numbers of citizens in two given populated territories. This is not the point Denmark is making. In the same way as it is not relevant in a delimitation case to compare the gross national products (GNPs) of the two parties - "A country might be poor today and become rich tomorrow" to use the phrase from the *Tunisia/Libya* case (*I.C.J. Reports 1982*, p. 77, para. 107) - so, too, a comparison of population figures is not, as such, relevant. But here, in the present case, it is not simply a question of comparing two population figures. The point is, of course, that when a delimitation issue arises between a populated territory forming a viable human society on the one side and a barren island sustaining no human society of its own on the other, then in our view the population factor becomes decisive. And it does so for the very fundamental reason that a maritime zone of economic potential has no rationale in a delimitation case when it attaches to a territory devoid of population.

5. If we can agree that the ultimate goal is to secure an equitable solution - and I suppose our Norwegian colleagues agree with us on that ultimate goal - I believe there are a number of other points which we may also be able to clarify at this stage of the proceedings so as to assist the Court in its deliberations. Instead of confusing matters it should be our common task to narrow down our differences.

The following attempt in the direction to narrow down our differences may sound somewhat optimistic, but I do believe, Mr. President, that the Parties in actual fact have come closer to a common approach for deciding the present case - even though the written pleadings appear to be pointing in different directions, accentuated, if I may say so, by the Norwegian habit of using a

number of derogatory adjectives to describe the Danish position.

As a point of departure it might be helpful to look at the "Conclusion" contained in paragraph 411, at page 120 of the Norwegian Rejoinder, summing up Chapters V and VI in the Law Part. In these chapters Norway describes the general character of the Danish Reply and the inequitable character of the Danish criteria - as Norway sees it. In the "Conclusion" on page 120 we are confronted with eight considerations which purport to summarize the essence of Denmark's position, but which in fact say almost exactly the opposite of what is the Danish position - and that is indeed confusing. If we examine these considerations one by one (about the alleged Danish position), we may actually discover a large area of common ground.

So let me start with the first consideration (*a*) which reads: "The persistent tendency to deny that Jan Mayen has a normal entitlement as a land territory." We may clear up this point simply by stating as I have already done: Denmark does not deny that Jan Mayen as a land territory has entitlement to a maritime zone. We do not deny that.

So, this becomes the first element of common ground.

The second consideration (*b*) reads: "The endemic confusion of the issue of entitlement and the issue of delimitation."

My answer is: No confusion exists. Both Parties are well aware of the differences between the legal concepts of entitlement and the issue of delimitation. Both Parties have in this respect referred to the dictum in 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; Counter-Memorial, para. 414 and Reply, para. 410.)

So we agree it is a delimitation case, and nothing but, and that this legal institution has its own distinct rationale.

That represents a second important element of common ground.

Now, the third consideration (*c*) states: "The insistence on the eccentric criterion consisting of the outer limit of a 200-mile zone."

This statement is explained further in Chapter V of the Rejoinder (paras. 366-367) where the outer limit of the 200-mile zone is said to be a legal principle which Denmark invokes as the basis of delimitation.

Well, eccentric or not, Mr. President, Denmark has never invoked the 200-mile distance criterion as a legal principle governing the present or any other maritime delimitation. From the very outset we have stated that the legal norm governing the delimitation between Greenland and Jan Mayen is that the delimitation must produce an equitable result based upon an evaluation of those factors which in the circumstances are considered to be relevant in achieving that result (paragraph 293 of the Memorial). In balancing up those factors we come to the conclusion that they all operate in favour of Greenland only (paragraphs 372-373 of the Memorial).

Consequently, the equitable delimitation line corresponds to the 200-mile limit of Greenland's fishery zone and continental shelf area, not because all these factors magically coincide to produce a 200-mile limit, but because this is the maximum limit which Denmark can claim under contemporary international law. Thus the application of the 200-mile distance criterion becomes the method which can best secure an equitable solution (paragraph 377 of the Memorial). It is simply beyond comprehension how Norway could construe this approach as one where "[n]o balancing up of relevant factors in accordance with equitable principles is envisaged: only a legal prevalence of Greenland's 200-mile zone" (paragraph 376 of the Rejoinder). The Danish Memorial deals extensively with the relevant factors in the present case (paragraphs 294-356) and concludes that whole presentation with a chapter (Chapter II) on the method of delimitation seen in light of the concrete circumstances. The Danish Reply is based on the same approach of balancing up the factors considered to be relevant in reaching an equitable solution, given the particular factual and legal circumstances of the present case (paragraphs 459-466).

So, there ought to be no disagreement or confusion as to the operation of the 200-mile criterion as the method to secure an equitable solution in the present case.

Thus, more common ground has been discovered, namely that the delimitation issue, as repeatedly stated by Denmark and now conceded by Norway in paragraph 376 of the Norwegian

Rejoinder, must be based on a balancing up of relevant factors in accordance with equitable principles and that Greenland's 200-mile zone has no legal prevalence independent of those factors.

I should think Norway is satisfied with this statement so we can regard also this matter as settled.

The fourth consideration (*d*) reads: "The substantial failure to identify the relevant geographical framework and the consequent misuse of terms such as 'mainland', 'detached island', and 'opposite'".

What a conclusion, to accuse Denmark of having made a substantial failure in identifying the relevant geographical framework. We - as opposed to our Norwegian opponents - have produced concrete and scientific reliable maps of the disputed and the relevant area and we shall continue to deal with the geography of the area in the most objective way possible in our next intervention. And to assert, as Norway does, that "Denmark insists that the relevant oppositeness is between Norway and Greenland" (paragraph 391 of the Rejoinder) is contradicted by these very same maps.

The Norwegian Rejoinder does, however, I must say, contain some encouraging statements like: "delimitation is related to real geography and to the area within which the actual coastal relationships are meaningful" (paragraph 383 of the Rejoinder), "delimitation should be assessed in the context of the geographical area 'directly concerned' in the delimitation" (paragraph 392 of the Rejoinder), "[t]he State practice and the well-developed jurisprudence establish beyond any doubt that it is the geography of coasts, including their relationships, from which the respective entitlements flow ..." (paragraph 379 of the Rejoinder). Denmark could not agree more, as can be seen from our substantial efforts - in the Memorial as well as in the Reply - to establish the correct area in order to assist the Court in evaluating the relevance of the geographical factors in the present case and to make sure that no third State's rights are interfered with when passing judgment in the present dispute. So, from having stated - as Norway did in its Counter-Memorial - that the construction of the relevant area is "wholly irrelevant to any delimitation in accordance with legal principles" and "an artificiality" (Counter-Memorial, paragraphs 437 and 505-506), Norway is now moving closer to accepting the relevance of establishing such an area. Map VI in the Rejoinder,

which is a new map produced by Norway, calculating the 200 nautical miles zones from the respective base lines of Greenland and Jan Mayen, including an indication of a median line, bear witness to this changed attitude of Norway, which is to be welcomed. An important element, however, is lacking in Map VI, namely the exact position, as far as Norway is concerned, of the southern limit of the relevant area towards Iceland. I suppose you are aware of that.

Nevertheless, still more common ground is thus emerging with Norway's acceptance of the importance of establishing the exact geographical area within which the delimitation is to be effected.

As to the so-called consequent misuse of the terms "mainland", "detached island" and "opposite", I believe that it is nothing but a question of terminology.

I think that Denmark has made it abundantly clear that the coastal relationship in the present case consists of the relevant opposite-lying coastlines of Greenland and Jan Mayen, respectively. Mainland Norway - if I may use that expression - is not a coastal State in relation to Greenland and to the present delimitation dispute.

There is no relevant "oppositeness" between Norway and Greenland.

Finally, the island of Jan Mayen is indeed a detached island, in the sense that it has no connection with the coast of mainland Norway, whereas it is situated so close to Greenland - within 250 nautical miles - as to create an overlapping maritime area, through its claim of a median line. And it doesn't matter in this respect if one calls Greenland the world's largest island, a continent or a mainland: it is the direct coastal relationship between Greenland and Jan Mayen which counts as far as the geographical factor is concerned.

These simple facts ought not to have given rise to any confusion on the Norwegian side. If they have, then I trust that the confusion in the Norwegian minds has by now been dispelled.

The next and fifth consideration (*e*) has a more emotional connection. It reads: "The visualization of Greenland as a mainland and of Jan Mayen as a small island detached from its mainland coast." I believe it is to some extent a matter of perspective how one visualizes the relationship between Greenland and Jan Mayen. If - for a moment - we look at the general map of the region, I personally do see a small island detached or isolated from its parental territory to the

east and facing a huge territory to the west. A closer look, as provided in the Danish maps of the relevant area, as well as Map VI in the Norwegian Rejoinder - to which I referred a little while ago - show the exact proportions of the direct coastal relationship between the two land territories.

I believe there is no real difference in the so-called "visualization".

The sixth consideration (*f*) contains the following assertion: "The failure to recognize that Jan Mayen and Greenland are the only features relevant to the dispute."

I suppose that by now this assertion can simply be dismissed as a lapse. The whole Danish pleading is based on a recognition that Jan Mayen and Greenland are indeed the only features relevant to the present dispute.

The seventh consideration (*g*) states: "The assertion that Denmark should be the beneficiary of the same delimitation as Iceland." It is correct that Denmark considers the two agreements between Norway and Iceland concluded in 1980 and 1981 concerning the boundary of, respectively, the fishery zones and the continental shelf area in the waters between Iceland and Jan Mayen as the most relevant precedent of State practice in the region. Norway has very little to say about this precedent except to dismiss it altogether as an item of State practice of a purely political nature, and then to assert that Denmark claims a most favoured nation treatment (paragraph 384 of the Counter-Memorial). Denmark, however, does not claim most favoured nation treatment. We believe the Norwegian-Icelandic Agreements represent a legally valid precedent under contemporary international law.

So on this score we do indeed disagree and I shall revert to that issue later this week during the Danish presentation.

Finally, the eighth and last consideration (*h*) reads: "The repeated attempts to compare the delimitation area with the geographical and legal framework of the *Anglo-French* case, with particular reference to the Channel Islands region."

As already stated in the Danish Memorial: "The present case is unique in *judicial practice* ... One looks in vain for similar cases in the practice of international courts." (Paragraph 365 of the Memorial). So, obviously Denmark does not regard the *Channel Islands* case as comparable to the

present case. But that doesn't mean that part of the legal reasoning in that case may not be relevant when considering certain particular aspects of the present dispute. This applies for instance to the reasoning by the Court of Arbitration with regard to the rôle of the "special circumstances" condition in Article 6 of the 1958 Geneva Convention on the Continental Shelf (paragraph 215 of the Memorial). It also applies - in our view - to the adoption by the Court of Arbitration of a *prima facie* view of facts which appear to be creative of inequity, thereby calling for a method of delimitation other than the median line approach (paragraph 279 of the Memorial).

Mr. President, distinguished Members of the Court, this short analysis based upon Norway's own presentation appears to us to reveal a considerable *convergence* of views of the two Parties as to certain essential elements of the present delimitation dispute. First and foremost in regard to the area where the delimitation is to be carried out, and to the relevance of the coastal fronts of Greenland and Jan Mayen respectively.

6. However, it is also apparent that we do not agree on the effect which under international law is to be accorded to Jan Mayen in that delimitation. Norway asserts that full effect must be given to Jan Mayen as it forms an independent geographical feature in the area and the 1958 Geneva Convention does not *appear* to cover any such thing as a self-defining special circumstance *per se*; in other words Jan Mayen cannot as such and of itself be considered as a special circumstance (paragraphs 225-227 of the Rejoinder). Denmark holds the opposite view that the island of Jan Mayen, because of its small size and the fact that it sustains no population or economic life of its own and has never done so, indeed would constitute a special circumstance *per se* in a delimitation with Greenland subject to Article 6 of the 1958 Convention; and as a relevant circumstance for the purposes of customary international law, which is the law applicable to the present case. The consequence is that Jan Mayen can only be accorded partial effect in the delimitation. Denmark does not take issue with Norway's analysis of the notion of incidental special features within a geographical situation of quasi-equality as contained in the Judgment of the *North Sea Continental Shelf* cases (paragraphs 493-497 of the Counter-Memorial and paragraphs 589-593 of the Rejoinder). The island of Jan Mayen is not, we agree, an incidental special feature in a delimitation

context of Greenland and mainland Norway, because Norway is not a coastal State in relation to the present delimitation dispute.

However, the concept of "special circumstances", we submit, is not limited to abating the effects of certain incidental geographic circumstances within an otherwise comparable geographical context. In the words of the Court of Arbitration in the *Channel Islands* case: "the rôle of the 'special circumstances' condition in Article 6 is to ensure an equitable delimitation..." (paragraph 70 of the Award). This dictum corresponds to the requirements under customary international law. In the view of the Danish Government the special character of Jan Mayen is creative of inequity with regard to the delimitation vis-à-vis Greenland. It would therefore fall within the concept of special circumstances "as such and of itself" (paragraph 227 of the Rejoinder) and certainly qualifies as a relevant circumstance or factor under customary international law.

Even though this consideration concerning the concept of "special circumstances" only applies *sensu stricto* to a shelf delimitation under the 1958 Convention, it could be regarded as valid also in relation to a fishery zone delimitation which according to customary international law must be effected in such a way as to result in an equitable solution. Given the special character of Jan Mayen an equidistance line would not lead to an equitable solution.

Whatever may be said about the concept of "special circumstances" that concept, however, is not according to contemporary international law directly relevant in the present dispute, which is concerned with a delimitation of both the continental shelf and the fishery zones.

We shall of course later during this presentation elaborate in detail on the applicable legal norms governing the present dispute.

Mr. President, distinguished Members of the Court,

7. If we look for a moment at the individual relevant factors of the present case in order to identify the differences between the two Parties, I think it is fair to conclude that the factor of *geography* is considered relevant by both Parties though the more detailed evaluation of this factor differs. We shall address that issue in detail in our next intervention.

However, other factors also operate in a delimitation process. In the view of the Danish

Government the *population* factor is relevant in particular in situations where one of the territories involved in the delimitation is populated and overwhelmingly dependent on the surrounding sea for its survival, whereas the other territory is without any population which depends for its livelihood on that territory and its surrounding sea. And such are the facts with regard to population in the present delimitation case. "Population" in this sense covers the economic, cultural and constitutional aspects of the society in which the population in question lives. Tomorrow we shall deal with all these aspects seen in relation to Greenland. The 20 or more Norwegian personnel manning the meteorological station on Jan Mayen are not a population in this sense.

Norway for its part does not share this point of view and dismisses the population factor in its narrow as well as in its broad sense as irrelevant (paragraphs 551-565 of the Rejoinder). The reason for this rejection is of course related to the fact that there exists no population on Jan Mayen. Instead of that factor Norway invents a new factor called "the substantial interests of Norway in the Jan Mayen maritime region". That factor is dealt with at great length both in the Counter-Memorial and in the Rejoinder. These interests are of course related to a population, namely, the people of Norway. So, in actual fact Norway relies heavily on the population factor though in a more remote way, through the economic interests of the people of mainland Norway in the maritime region of Jan Mayen - because, as you know, no economic activities emanate from Jan Mayen itself. It is our submission that this factor of economic interests in a faraway region is not a relevant factor in the present dispute which concerns Greenland and Jan Mayen.

As Jan Mayen does not sustain a human society, Norway has to invent other factors supporting its claim to accord full effect to the island vis-à-vis Greenland. Two such factors are said to be those of *security* and *protective interests*, dealt with in an exceptionally short Chapter X of Part II of the Rejoinder (paragraphs 541-546). The Danish Government does not, as stated in the Rejoinder (paragraph 541), "appear to" accept the Norwegian position as to the relevance of *security* considerations. These considerations, we submit, have no bearing outside the 12-mile territorial sea or, in a more restricted sense, outside the 24-mile contiguous zone around Jan Mayen. As to the protective interests in relation to fisheries and future continental shelf exploitation, it is submitted

that those protective interests derive from the primary interests of fishing and shelf activities which exist within the maritime area to which Jan Mayen is entitled. The secondary protective interest must therefore follow the delimitation line established for the fishing and shelf activities. The protective interest certainly does not determine that line, which depends on quite different factors.

So that was geography, population, security, protective interests.

Following the Court's own jurisprudence, the factors of *geology and geomorphology* may also be dismissed as they do not have a role to play in a delimitation situation where the distance between the relevant coasts is less than 400 nautical miles - as is the case in the present dispute.

That leaves us with the factor of the *conduct* of the Parties. This factor is considered relevant by both Parties and will therefore be the subject of particular interventions later this week. Suffice it at this stage to state that Denmark, for its part of course, stands by the attitude we have adopted over the years concerning maritime delimitation. Thus it is well known that Denmark defended the median line approach before this Court in the *North Sea Continental Shelf* cases, but both then, during UNCLOS III and today we have adhered to the concept of reaching an equitable result. To that end we have regarded the clauses in Article 6 of the 1958 Geneva Convention concerning "agreement" and "special circumstances" as sufficient to secure such a result where the median line would not be able to render justice in a particular situation. Allow me in this respect to refer to the ninth and latest edition of Oppenheim's International Law where, in paragraph 325 at page 780, the following is stated in relation to Article 83 of the 1982 United Nations Convention on the Law of the Sea: "It is not free from irony that the rejected text of Article 6 of the Geneva Convention was one which nicely combines both equity and equidistance."

So, seen in retrospect the heated debates about equidistance versus equity may look somewhat artificial. As stated by the Court in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, there is "impressive evidence that the equidistance method can in many different situations yield an equitable result" (*I.C.J. Reports 1985*, p. 38, para. 44). In such situations the Parties will see no reason for submitting the case to international adjudication. That also explains the marked difference between the use in State practice of the equidistance method and the jurisprudence of this

Court and international courts of arbitration which have been presented with special delimitation situations that have required a more nuanced analysis of all the relevant circumstances involved in order to reach an equitable result. With more than 15 different delimitation situations surrounding the realm of the Kingdom of Denmark, I believe we are able to speak with some authority in the matter.

In considering the conduct of the Parties Denmark submits that any conduct which relates directly to Jan Mayen must of course be of particular importance. Norway's assertion that it was "Denmark which challenged a well-established status quo based upon the long-existing recognition of the median line as the basis of delimitation" (paragraph 701, subparagraph 4, of the Counter-Memorial) is a complete distortion of the facts. It was not Denmark, but the international community's recognition of the new broad maritime zones in the late 1970s which raised a challenge to the median line approach in situations such as the present one, where a small unpopulated island like that of Jan Mayen would exercise a distorting effect upon the broad maritime zones accorded to coastal States (see paragraph 461 of the Danish Reply). Faced with this challenge Norway was the first to abandon the median line approach through its agreements with Iceland in 1980 and 1981 on fisheries and continental shelf questions, respectively.

It is furthermore submitted that the fact that Denmark has shown a considerable degree of restraint in imposing its claim upon Norway should not, we believe, cause Denmark to suffer any prejudice from such correct diplomatic behaviour.

Finally, there is the element or factor of proportionality, as to which the views of the Parties do not coincide - to put it mildly - though there is agreement as to the relevance of proportionality as a test of the equitable character of a delimitation. We shall deal at the end of our presentation with this issue and the more so because Norway has had very little to say on this score, apart from underlining, even in this context, the economic interests of Norway.

To *conclude* this exposé of the relevant factors in the present case, as Denmark sees these factors, we believe that it would be of assistance to the Court to develop further the thinking of the Parties in regard to the factors of *geography*, *population*, *conduct*, and *proportionality* seen both in

their factual and their legal contexts. This thinking will be supplemented by a thorough analysis of the *applicable legal norms* and the actual *method* of drawing a single line of delimitation in the waters between Greenland and Jan Mayen.

We shall start out with a presentation by Mr. Thamsborg of the relevant geographical factors because "[g]eographical features are at the heart of the delimitation process" - to borrow a phrase used by the Court in the Saint Pierre and Miquelon case of Arbitration (paragraph 24 of the Award). Not that geographical facts exclusively and in themselves determine the line of delimitation to be drawn, but they are an important tool for the Court to determine in accordance with the applicable rules and equitable principles under international law the relevance and weight of the geographical features. Thus the delimitation process, which is a process based on legal rules and principles, begins by identifying what this Court in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case has called "the geographical context of the dispute before the Court, that is to say the general area in which the ... delimitation, which is the subject of the proceedings, has to be effected" (*I.C.J. Reports 1982*, p. 34, para. 17).

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Following the outline of the Danish presentation, which we have already distributed to the Court and to the Norwegian delegation, I shall now with your permission, Mr. President, leave the floor to our hydrographic expert and counsel, Mr. Thamsborg, who is known to the Court from the assistance he has rendered it in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case. Mr. Thamsborg will address the question of the geography in the region, the disputed area as well as the relevant area.

I thank you, Mr. President.

The PRESIDENT: Thank you very much Mr. Lehmann. I think that will be a convenient time to take our short break of 10 minutes or so and then we will return to hear the second part of the Danish presentation. Thank you very much.

*The Court adjourned from 11.05 to 11.25 a.m.*

The PRESIDENT: Mr. Thamsborg please.

Mr. THAMSBORG:

The General Geographical Context, the Disputed Area  
and the Relevant Area

*Introductory remarks*

Mr. President, honourable Members of the Court. It is a great honour and a privilege for me to appear before this distinguished Court on behalf of the Government of Denmark.

With your permission, Mr. President, I shall today address the Court upon aspects of the regional geography and, in natural continuation of that issue, also upon our suggested identification of the disputed area and the area within which the delimitation is to be effected, the so-called relevant area.

Towards the end of the Danish presentation this week, I shall speak again, very briefly, on the Danish method of the actual drawing of the 200-nautical-mile line off East Greenland in the area concerned.

During the presentation under this heading I will be referring to the enlarged, overhead projected map behind me. Though slightly extended to the north and the east, the map is in principle the same as Map I in the Danish Memorial.

A small copy of the projected map is inserted as Figure 1 in the folder distributed this morning to the Members of the Court and the Norwegian delegation.

The map is on the polar stereographic projection which ensures a reasonably conformal (true) coverage of the main area concerned. Please observe that the meridians - or lines of equal longitude - are straight lines converging towards the North Pole. The north-south direction follows that of the local meridian. The parallels of latitude - or lines of equal latitude - are small circle arcs centred at the pole and perpendicular to the meridians. The east-west direction follows that of the curvilinear parallels of latitude. [The north-south direction follows that of the local meridian.]

Throughout my presentation distances on land are given in kilometres (km), distances at sea in

nautical miles (nm), soundings and elevations in metres (m) (1 nm equals 1.852 km according to international standards). Areas, whether on land or at sea, are given in square kilometres (km<sup>2</sup>).

### Regional Geography

#### *Characteristics of the water body within which the delimitation is to be effected*

It is of importance to note that at present we find ourselves in the high arctic region where the average temperature in July is less than +5° centigrade, and, at the same time, north of the Arctic Circle at 66°33' N latitude. The rectangular-shaped area or water expanse, which includes the geographical nucleus of the present case, is constituted by the ensemble of the Greenland Sea and the Norwegian Sea. It measures about 1000 nm north-south and 800 nm east-west, thus covering an area of about the same size as the Mediterranean Sea proper - roughly 2.5 million km<sup>2</sup>. According to Special Publication No. 23, *Limits of Oceans and Seas*, edited by the International Hydrographic Organization (IHO) in Monaco, the Greenland Sea and the Norwegian Sea are separated by a line joining the southernmost tip of Svalbard (Sørkapp) and the easternmost point of Iceland (Gerpir) via the island of Jan Mayen.

The more restricted water area between East Greenland and Jan Mayen, just referred to as the nucleus of the present case, deserves a brief mention as to bathymetry and sea-bed topography.

In general, the depths are rather moderate, i.e., not exceeding 2,000 m, in comparison with the average depth of all oceans, including marginal seas, of about 3,800 m. Depths slightly more than 2,000 m are registered in a trough immediately west of Jan Mayen Ridge. North of Jan Mayen the depths generally exceed 2,000 m reaching a maximum of about 3,600 m some 200 nm north of the island.

The sea-bed topography east of Greenland's slope reflects the stormy geological history of the entire delimitation area over more than 50 million years. A number of basins, ridges, rises, escarpments, troughs and sea mountains are spread over the area.

#### *Adjacent waters*

The above-mentioned water expanse is connected with the Arctic Ocean by two major links. To the northwest of the centre of the area, i.e., between Northeast Greenland and the Archipelago of Svalbard, we have the relatively narrow, yet rather deep Fram Strait, whose minimum width is slightly less than 250 nm; to the northeast, between Svalbard and Norway, we find a wide opening to the shallow Barents Sea which is semi-encircled by the Russian islands of Novaya Zemlya and Zemlya Frantsa Iosifa, and the combined Russian and Norwegian polar facade. The Barents Sea is considered to form part of the Arctic Ocean.

The southern flank of the water expanse is bounded by the North Atlantic Ocean. The two water bodies are in direct communication in part via the about 240 nm wide, rather shallow gap between the Faroe Islands and Iceland, and in part via the relatively narrow Denmark Strait (about 150 nm wide) situated between East Greenland and Iceland.

To the southeast an approximately 300 nm wide opening, split by the British Isles into two major passages, is situated between the Faroe Islands and Norway; the easternmost of these passages is connected to the North Atlantic Ocean through the marginal basin of the North Sea.

#### *Adjacent land territory*

##### Greenland as a whole

As an introduction to a brief survey of the land territories facing the water element between Greenland and Jan Mayen it seems appropriate to recapitulate briefly earlier statements in our Memorial on Greenland and Jan Mayen.

Greenland was once part of a vast megacontinent known as Laurasia, which included most of North America, Greenland, Europe north of the Alps, and Asia north of the Himalaya. The break-up of this megacontinent, which ultimately led to the formation of the North Atlantic Ocean, the Norwegian Sea, the Greenland Sea, the Labrador Sea, the Davis Straits and Baffin Bay, began about 250 million years ago, and Greenland finally became a separate continental entity about 50 million years ago.

Greenland lies between Cape Farewell at 59°46' N and Cape Morris Jesup at 83°39' N and here we are disregarding two islets a few nautical miles further north of the cape - that is a span of

about 24° of latitude or the same as 2,670 km in a north-south direction. On a world-wide scale, Greenland thus is the territory extending furthest northwards, the shortest distance to the North Pole being nearly 380 nm.

In an east-west direction, Greenland measures at its maximum about 1,300 km from Nordostrundingen (11°21' W) to the Carey Islands (73°15' W).

The area of all Greenland is about 2,200,000 km<sup>2</sup> of which some 342,000 km<sup>2</sup> are ice-free land. 1,858,000 km<sup>2</sup> of the land area is covered by permanent ice, the so-called inlandsis, reaching a maximum thickness of more than 3,000 m.

The acreage of Greenland approximates to that of the earlier mentioned rectangular water expanse or, to give another comparison, is almost seven times the area of Norway proper. The total coastline of Greenland is estimated to be 40,000 km, taking into account the shorelines of the multitude of fiords and islands in the coastal region; as measured according to a "coastal front" principle, the Greenland facade toward the open sea is roughly 7,000 km of which some 2,100 km are facing eastwards.

Along the coast there is a belt of ice-free land which attains its maximum width of some 300 km in the Scoresbysund area on the east coast.

By far the greater part of the ice-free coastal region is mountainous; the highest point, which is called Gunnbjörn Fjeld, with an elevation of 3,733 metres, is situated some 350 km southwest of Scoresbysund.

### *Jan Mayen*

The elongated, volcanic island of Jan Mayen, which is approximately 380 km<sup>2</sup> and still tectonically active, is situated at about 71°N 8°30'W, that is a little to the west of the centre of the combined waters of the Greenland Sea and the Norwegian Sea.

It stretches in a northeast to southwest direction for a distance of some 54 km. The total length of Jan Mayen's coastline is of the order of 125 km of which the west facing part amounts to some 57 km depending upon the principle of measurement. The coast is fairly straight with only a

few minor creeks, islets and rocks. The breadth of the island varies roughly between 2 and 16 km.

The northern part is dominated by the ice-covered volcano Beerenberg, the elevation of which is 2,277 m, while the area south of the marked contraction in the middle of the island presents a varying arctic landscape with elevations up to about 800 m.

#### Marginal landmasses

To the northeast, as already indicated, we find a group of arctic islands under the generic term of Svalbard, they are approximately 63,000 km<sup>2</sup> together.

The indented west coast of Svalbard, more specifically that of the main island of Spitsbergen, stretches for about 400 km in an approximate north-northwest/south-southeast direction. The territory of Svalbard includes two small solitary islands: Hopen and Bear Island. The latter measures some 180 km<sup>2</sup>, situated way south towards mainland Norway.

To the east-southeast, at a distance of round 350 nm from Svalbard proper, and 215 nm from Bear Island, we encounter the mainland of Norway, stretching for a further 1,500 km south-southwestwards within the region concerned.

Due west of the westernmost part of Norway we have the Faroe Islands which form an oceanic archipelago of a rather compact structure.

The north-south and east-west extension of this group of islands amounts to about 110 km and 80 km respectively. The total area of the islands is slightly less than 1,400 km<sup>2</sup>.

Nearly halfway between the Faroe Islands and Greenland lies the island State of Iceland. It measures about 500 km east-west and 350 km north-south. Its surface area is approximately 103,000 km<sup>2</sup>.

In total isolation, about 55 nm north of Iceland's northern coastal front, the rock of Kolbeinsey sticks out of the water. The area of the rock does not exceed a few hundred square metres, and its elevation amounts to about 6 m above mean sea level and that was in 1991, about a century ago the rock had an elevation of 35 m.

The western limitation of the water expanse is made up of part of the northern segment of the

coast of East Greenland from about Scoresbysund Fjord at approximately 70° N to the island of Ile de France, at approximately 78° N, a coastal stretch of some 900 km.

The greater part of the coastal region is mountainous; the coast as such is highly indented and cut into. Scoresbysund Fjord forms the world's largest network of fiords reaching a maximum extension inland of some 300 km. Part of the coast is masked by a fringe of islands, islets and rocks.

This concludes, Mr. President, my presentation on the relevant geographical facts of the region.

With your permission, I shall now pass on to the issues of the disputed area and the relevant area of the actual case.

#### Identification of the Disputed Area (I) - and the Relevant Area (II)

##### Introduction

In its Counter-Memorial (paras 503-506) and Rejoinder (paras 612-626) Norway questions the need for identification of a disputed area and a relevant area as propounded by Denmark, first in its Memorial, and later, slightly amended, in its Reply. One can understand Norway's reluctance to encourage calculations leading to a direct confrontation between the coastal fronts of Greenland and Jan Mayen, respectively.

In the view of the Danish Government, however, it is a normal, even required, task in a delimitation dispute to try to identify, in the most objective way possible, the disputed and the relevant areas.

I, therefore, find myself obliged to explain to the Members of the Court in some degree of detail, the basis upon which Denmark identifies those two areas.

During the presentation I shall make use of overhead projection pictures, copies of which are inserted in chronological order in the Judges' folder distributed this morning.

## The disputed area

### *Terminology*

General terminology within the field of maritime delimitation includes such synonymous designations as "area of overlapping claims", "area in dispute between the Parties" or just "disputed area" which all stand for zone and shelf areas lying between the ultimate claim lines of the Parties concerned with due regard to existing or prospective bilateral boundaries, or even claims of third States in that area.

### *Approach to the identification of the disputed area*

The present case is favoured by a rather simple geography (here I refer to figure 2 which is on the Mercator projection): the extensive, well defined, slightly undulated, fringed coast of East Greenland confronting the equally well defined, but much smaller west coast of the island of Jan Mayen, the two territories being separated by a maritime area of considerable size. Furthermore, the two claim lines: East Greenland's 200 nm line (that is Denmark's position) and the median line between Greenland and Jan Mayen (which is Norway's position) are drawn by pure geometry, in terms of distance and direction from the uncontroversial territorial sea baselines of the territories involved.

In my opinion this situation makes it feasible, inter alia, to approach the identification of both the disputed area and the relevant area in an objective way, reflecting the notions, principles and rules established in jurisprudence.

The claim lines meet to the north at point A, i.e., the 200 nm point equidistant from Greenland and Jan Mayen. To the south, the two claim lines would meet in an equidistant point A' similar to point A, if they were free to do so. However, to ensure that the maximum zone and shelf area claimed by Iceland is left out of the dispute, the Parties to the present case are in agreement to cut off the area to the south along the line BC<sub>1</sub>D<sub>1</sub> which forms part of Iceland's claim to a 200 nm line as measured from its territorial sea baseline including Kolbeinsey.

Though not included in the Icelandic straight baseline system, the rock of Kolbeinsey, used as

a single basepoint, is responsible for a considerable shift to the north of the 200 nm line claimed by Iceland within the area concerned, i.e., the partial line  $C_1D_1$ . For the purposes of this case Denmark accepts this line as the southern limit of the disputed as well as the relevant area. It means that the Court can proceed with the delimitation between Greenland and Jan Mayen without the risk of prejudice to Icelandic claims. Likewise, the acceptance of said line is without prejudice to Denmark's position on the quite separate matter of the effect of Kolbeinsey on any future delimitation between Greenland and Iceland.

*Delimitation of the disputed area*

The area  $ABC_1D_1$  thus constitutes the disputed area between Denmark/Greenland and Norway. Measuring about 300 nm north-south and 75 nm east-west at its maximum, the area of figure  $ABC_1D_1$  amounts roughly to 65,000 km<sup>2</sup>.

According to the Norwegian Rejoinder paragraphs 22 and 23, and Annex 83, the Jan Mayen baseline, unchanged in principle, has been repositioned and recomputed in WGS 84 (World Geodetic System 1984) and stated approximately to the same formal accuracy as the equivalent East Greenland baseline which is also given in WGS 84.

Successive points along the median line between the two territories, i.e., the line  $AD_1$ , can now be computed accurately since the respective baselines are commensurable and correct by definition.

The final computation of a sequence of points along Greenland's 200 nm line as proposed by Denmark, i.e., the line  $AB$ , is presented in a separate booklet (dated January 1991), which is available to the Court and the Respondent State as announced in the Danish Reply, paragraph 479.

Let me add a final comment on the third side in figure  $ABC_1D_1$ , namely the line  $BC_1D_1$ . Whatever delimitation line may be drawn by the Court, the line, eventually, will be cut short to the south by Iceland's 200-mile exclusive economic zone, the exact junction point (tripoint) to be negotiated between Denmark/Greenland, Norway and Iceland. As I have said, Denmark has defined the southern limit of the disputed area in this case so as not to prejudice the position of any Party in those future negotiations.

The suggested geographical co-ordinates of points  $A, B, C_1, D_1$  and other particulars on the

disputed area are presented in an addendum to this presentation, so I will not read it out.

In its Counter-Memorial, paragraph 15, and Rejoinder, paragraph 10, Norway has indicated 70°12'04" N as the appropriate latitude for point D<sub>1</sub>, thereby apparently making a certain allowance for the outcome of Iceland's definition of its own economic zone. In case Norway insists on the above latitude, Denmark has no difficulty in accepting this value provisionally instead of its own suggestion: 70°12'50"5 N, considering that the latitudinal distance between them is of the order of 1,440 m. However, 70°12'50"5 N has been used by Denmark in all subsequent computations involving D<sub>1</sub>.

### *Concluding remarks*

Since the geodetic definition of all lines and points in figure ABC<sub>1</sub>D<sub>1</sub> is uncontroversial in principle, it follows that the above identification of the disputed area is unambiguous and objective.

I shall now turn to the issue of the relevant area. The presentation is divided into two parts. First, a view of the general principles and rules, and second, the actual identification procedure.

## II.

### The relevant area

#### 1. A general view

### *Terminology*

What does "relevant area" in the context of maritime delimitation actually stand for?

Not until about a decade ago did the term gradually come to prevail in common usage as the designation of the geographical area to be delimited between two Parties; "relevant area", so to speak, became the name used to describe the geographical frame within which the material process of delimitation in accordance with international law has to be carried out.

### *General scope*

According to the decisions of international tribunals, the requirement for identification of a relevant area in a particular case is not only needed for the delimitation process as such, but more specifically also for the *ex post facto* test of proportionality.

In some cases, often characterized by a straight forward geography, the relevant area forms a single continuous whole. The area of delimitation identified by the Court in the *North Sea Continental Shelf* cases in 1969 in which I had the privilege to participate on the Danish side, serves as a good example of the homogeneous type of relevant area.

It should, however, be observed that the total area to be delimited between the Parties in a complex geographical situation may divide up into two or more relevant areas of differing scope. Such partial areas may be put to separate proportionality tests, geography and other pertinent circumstances permitting.

The adjective "relevant" simply indicates within which area the delimitation is to be effected - neither more nor less.

#### *Approach to the identification of the relevant area*

Unfortunately, there is no set of formulas leading to the unambiguous and objective determination of the relevant area in a particular case, nor does there exist any conclusive list of pertinent criteria or prerequisites, derived from the decisions of international tribunals or from other recognized legal sources, as to the definition of such area. Any attempt to evolve a generally applicable solution to the problem at issue apparently is bound to fail in so far as each case must be determined on its own merits.

This means conversely that the identification of the relevant area is necessarily subject to a meticulous examination and evaluation of the geographical characteristics of the specific case in question. But in principle, it should be an area containing all the relevant, geographically identifiable factors of the case.

Before a detailed discussion on the geographical essentials of the present case is initiated, it seems natural, however, to call attention to a few general notions, principles and rules which in one

way or another are attached to or control what Denmark ventures to call an objective determination of the relevant area.

*Proportionality. Coastal length - coastal front relationship*

The concept of proportionality in maritime delimitation was first introduced by the Court in the North Sea Continental Shelf cases in 1969 and was brought into play technically by the Parties during the subsequent tripartite negotiations prescribed by the Court.

Since then the factor or element of proportionality has been firmly established and adapted to a variety of geographical situations through a number of cases brought before the Court.

As we all know, proportionality aims at the approximate congruence between the ratio of the lengths of the Parties' relevant coastlines and the ratio of the areas of shelf attributed to each Party by a given boundary line, all within the geographical frame of the relevant area.

It goes without saying that the objective identification of the relevant area and the appurtenant coasts is a *conditio sine qua non* to a reliable and meaningful proportionality assessment.

In the perspective of the present case it is interesting to note that the Court since the 1969 Judgment makes no distinction between zone and shelf within the distance of 200 nm from the coast nor between lateral and opposite delimitation situations as regards the applicability of the proportionality test.

Following the decision of the Court in 1969 the lengths of the coastlines, in the context of the proportionality test, should be assessed according to their general direction. It is further stated that one possible course of action, referred to as the principle of coastal fronts, consists in drawing a straight line between the extreme point at either end of the coast concerned, or, in some cases, a series of such lines.

Admittedly, there are cases where the local geography precludes an objective determination - or any determination at all - of a relevant area and relevant coasts, and consequently excludes meaningful proportionality assessments.

This may for instance happen where areas of overlap and convergence of natural

prolongations cannot be objectively identified or in instances where delimitation vis-à-vis a third Party is pending or prospective.

*Relevant area - relevant coasts relationship*

The relevant area of a particular case is dependent upon the appurtenant relevant coasts of the Parties involved. Since the basis of title to zone and shelf emanates from the coast of the landmass, often referred to as the coastal front, it seems logical that these coasts should control the relevant area. That area consists of the areas of overlap and convergence of the natural prolongations of the respective coasts abutting on it.

In view of the correlation between the relevant coastlines and the corresponding relevant area, it is not surprising that the identification procedure often takes the form of a repeated geographical-geometrical operation.

*Natural prolongation - distance/direction relationship*

According to the Judgment in the Libya-Malta case from 1985, legal title to areas of sea-bed (within a distance of 200 nm) depends solely on distance and direction from the coast of the coastal State - the so-called distance criterion - the physical characteristics of such areas being immaterial. In other words, the scope of natural prolongation is narrowed down to a purely geometric one, where the technical mechanism of producing the 200 nm limit of the continental shelf is exactly the same as that of producing the outer limit of the exclusive economic zone.

It is worth observing that the term natural prolongation is still co-existent with other conventional expressions such as "seaward extension" or "seaward projection" of the landmass.

I now want to show how the elements of the distance criterion, and that is distance and direction, operate together in a single State perspective.

*Single State aspects of the distance criterion*

To substantiate our understanding of the relationship between distance and direction within the scope of the distance criterion, it might be helpful, as a first step, to let one's eye dwell briefly on the formation of the outer limit of the territorial sea.

Originating in the well-known "cannon-shot" rule, territorial rights project in all seaward directions from every single point along the coastline. I refer first to figure 3, which in a simplified way depicts a geographical situation, the characteristics of which are met fairly frequently in practice: we have a curvilinear coastline, in this case with only one indentation, we have a couple of salient points and two small islands close to the coastline - all belonging to the same State A. To the right the coast of State A terminates at the frontier with another State B; to the left the coast of A continues so to speak "open ended". For ease of presentation the competing claims of State B are not shown.

In order not to clutter-up the general picture, only eight "elements" on the coast together with their respective systems of radial projection lines are shown.

In figure 4 the eight projection systems are removed and replaced by seaward facing arcs of circles centred in a sequence of closely spaced points on the coastline, the radius of the arcs being the cannon-shot distance or, to comply with current usage, the breadth of the territorial sea.

Supposing a(n) (infinitely) great number of intermediate points along the coast, the tangentially fitting curve relatively to the respective arcs of circles, known as the envelope of arcs of circles (in this presentation just called envelope) forms the outer limit of the territorial sea (see figure 5). And I can add that in mathematics "envelope" is defined as a continuous curve joining a sequence of limiting intersection points of a single infinity of system curves generated by a parameter which runs through a given interval. In this context the system curves obviously are arcs of circles centred at infinitesimal intervals along the coastline with a radius equal to the breadth of the territorial sea.

As will appear from the figure, salient points generally control the envelope over a considerable length, since the appropriate projection lines form a *divergent* pattern, while recessed points, though also a question of scale and of the actual breadth of the territorial sea, have little or no

influence at all, since the pertinent projection lines form a *convergent* pattern.

Despite the fact that every single point on the coastline projects in all seaward directions, it is obvious that the major part of the pattern of overlapping projection lines cancel out, except for those which are in a position to "attain", so to speak, and, therefore, to contribute to the formation of the envelope, see figure 6. All "controlling" projection lines - in the following called "generatrices" indicating just those projection lines which actually "generate" the envelope - are at right angles to their respective infinitesimal coastal "element" or radiating from such (protruding) element; they represent the lines of shortest distance from the envelope to the coast, thus constituting the dividing lines with respect to the proximity criterion.

Evoking the original "cannon-shot" idea, some authors, in their endeavours to explain how the outer limit of the territorial sea is actually conceived of, take advantage of the analogy with the continuous line formed by the most advanced splashes of cannon balls, fired from every single point along the coast over a fixed range. The same basic idea is, of course, applicable in order to explain figuratively, how the envelopes corresponding to other ranges or distances are produced. The traversing of the cannon in a given position is coinciding with the direction of the respective generatrix, and the projection of its (non-ballistic) trajectory on the surface of the Earth is precisely that very generatrix.

As already indicated, the above described envelope method or applied distance criterion is of pertinence, whenever a maritime limit is defined in terms of a given distance from the coast or its representatives: the low water mark, a straight baseline system or, in some cases, a coastal front.

Hence, this is true for the outer limit of the contiguous zone and of the exclusive economic zone.

It is noteworthy that the longer the distance, the smoother the envelope and the fewer the number of points actually controlling it.

This is evident from figures 7, 8 and 9 which depict three co-envelopes of arcs of circles, i.e., a family of envelopes referring to the same basic coastline and corresponding in casu to 12, 100 and 200 nm respectively from the coastline. The indicated figures represent the spectrum of distances

usually applied in maritime delimitation within 200 nm. Within the family the generatrices corresponding to envelopes of a given distance so to speak "contain" the respective generatrices of envelopes of *shorter* distances. Conversely, however, it is not necessarily a true statement that generatrices corresponding to envelopes of a given distance coincide with the respective generatrices of envelopes of *greater* distances.

For the sake of simplicity, the system of straight baselines along the east coast of Greenland from Scoresbysund Fjord to Shannon Island has been selected as the "prototype" coastline in the above three figures.

In obedience to the distance criterion, the characteristics of the envelopes of arcs of circles corresponding to a given distance from the coast underly the wording used in a number of articles in the 1958 and 1982 Conventions of the Law of the Sea. As an example, Article 6 of the 1958 Convention on the Territorial Sea defines the outer limit of the territorial sea as "the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea". Thus, the analogous formulation of Articles 4, 33, 57 and 76.1 in the 1982 Convention impose an unambiguous and stringent mathematical approach to the determination of the outer limits of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf respectively, a determination which implies both correct *distance* and correct *direction* from all points along the "active" coastline.

*Special observations on islands with respect to their entitlement to zone and shelf*

Before leaving the general question of natural prolongation of the landmass via the coastline into and under the sea, it seems appropriate to say a few words on the specific role of islands in this connection. As already stated, *islands forming part of a State's coastal region*, but not included in a straight baseline system, generate their own system of projection lines which for obvious reasons project in all directions forming a circular, overall divergent beam. If the distance between the island and the appurtenant continental coastline is shorter than twice the given projection or envelope distance, a certain overlap of projection lines from the coast and the island will result; figures 4 - 6 refer. This means that the island, with respect to its influence on the course of the envelope,

functions merely as a protruding point on the coastline itself.

An *isolated island*, however small it may be, provided it is not a rock in the sense of Article 121.3 of the 1982 Convention, is entitled to a full 200 nm zone and shelf, in the absence of competing claims. And, of course, it benefits from "radial projection" on all sides.

In the light of the fact that the basis of title to zone and shelf emanates from the coast, it gives food for thought to compare, in quantitative terms, the extension of zone and shelf in front of a straight or nearly straight (continental) coastline with that of a relatively small, off-lying island. An example may elucidate the situation (reference is made to figure 10): an island with a total coastline all the way round of, say, a few kilometres, by virtue of the "distance principle", gets a little more than 430,000 km<sup>2</sup> of zone and shelf. To compare this with the zone and shelf accruing to a land mass with a straight coastline, one may ask the question: how long must a straight coastline be in order to generate, at a breadth of 200 nm, the same 430,000 km<sup>2</sup>? The answer is: about 1,165 km which equals more than 10° of latitude, a quite considerable distance compared to the few kilometres of "generating" island coastline.

A few simple conclusions may be drawn from the theory.

1. If we apply radial projection, and the distance criterion, an isolated island attracts a maritime area many times greater than a comparable length of coast on a straight coastline. This is, of course, assuming no competing claims.

2. But even if we assume a competing claim, as when a long mainland coast faces the small island at a distance of less than 400 nm, the island will retain an enormous advantage. For only a part of the island's coast has a reduced effect (i.e., the part facing the mainland), whereas the whole of the mainland coast has its effect reduced.

#### *Single state relationship between coastal length and appurtenant zone and shelf*

As stated above, the effect of the radial projection technique is the formation of a belt of territorial sea, zone or shelf respectively in front of the generating coast of a territory or an island. However, an inevitable consequence of this technique is that, in general, there is not the same relationship or proportion between the extent of the maritime zones and the lengths of the respective

generating coasts. Only in the case of a broadly rectilinear coastal configuration does the ratio between the length of an arbitrary coastal element and the area of the appurtenant belt of zone and shelf of that element hold good for the entire length of the coast in question.

*Radial versus frontal projection technique under the distance criterion*

The reasons underlying the radial technique have already been discussed at length in this presentation.

Denmark has used the radial technique to identify the relevant area in this case because it has technical advantages, particularly when it comes to limiting the relevant area to the south, so as to avoid any overlap with an area relevant to a delimitation with Iceland.

Nevertheless, as the Court is well aware, there is a different technique: the technique of frontal projection, as opposed to radial projection. This may well have its uses, especially at the actual delimitation stage.

It is important for the Court to realise that, in preferring the radial technique, Denmark has not sought to disadvantage Norway. On the contrary, Norway benefits, because the frontal projection technique would limit the relevant area, both in the north and the south. This would produce a coastal ratio more in favour of Greenland namely 10.7:1, rather than 9.2:1 in favour of Greenland. The reason for this discrepancy stems in part from the fact that the two coasts are not directly parallel, but face each other at an angle of some 30°. I will come back to the question of the coastal ratios at a later stage.

*Concluding remarks*

This concludes the first part of the identification procedure, and that was a survey of the basic notions, principles and rules which - in a general sense - control or are attached to the definition of the relevant area and the corresponding relevant coasts of an arbitrary delimitation case.

It remains to be mentioned that the disputed area of a particular case, though exceptions may occur, forms an integral part of the pertinent relevant area.

Now I come to the second part of the identification procedure which is based on the above

legal and theoretical elements as applied to the geographical essentials of the actual case.

## 2. Identification of the Relevant Area and the Relevant Coasts in the Present Case

### *Geographical and cartographical aspects*

Evidently, this is the first time the Court has had to deal with a maritime delimitation case entirely confined to the area north of the Arctic Circle which is at 66°33' N latitude.

There are a few, certainly not insurmountable problems of a purely cartographic nature to be mentioned at this stage.

In the various cases in which the Court has been involved over the years, the basic chart presented by the Parties has nearly always been on the Mercator projection - and that for good reasons, all well-known to the Court:

- the nautical chart contains the proper data material such as bathymetry, sea-bed topography in the form of charted depths, contour lines including the high and low water mark, any existing straight baselines, maritime boundaries and limits and, to some extent, topographical details of the adjacent landmass;
- the nautical chart ensures easy reference between points given by co-ordinates or by distance and bearing, and their charted positions, due to the orthogonal system of straight meridians and parallels of latitude;
- the nautical chart provides for the depiction of loxodromes (compass lines or rhumb lines) as straight lines. We all know that a ship on a constant course follows a loxodrome on the surface of the Earth;
- the nautical chart preserves angular relationships, i.e., that angles are transferred unchanged from the Earth to the chart and vice versa.

Unfortunately, the Mercator chart, due to its mathematical concept, does not ensure conformal or true representation of distances and areas depicted on the chart. At low latitudes, i.e., up to about 15° N/S, the inherent distortion is barely noticeable. Since this effect, however, increases progressively towards the Poles, one reaches at about 80° N/S a level of disproportionate portrayal

of geographical features that makes the Mercator chart unusable as a navigational chart.

The present case which is confined to a latitudinal belt between 69° N and 76° N falls well south of the indicated limit of 80° N, but the chart is nevertheless subject to distortion - note for instance the difference in charted length of 200 nm in the southern as compared to the northern end of Map II in the Danish Memorial and the same effect can be seen from some of the pictures which have been shown here today.

Denmark has used Danish nautical chart No. 2000 which is called East Greenland, as the appropriate template chart for the presentation of the various lines and curves attached to the case. Automatic plots of the accompanying computations are also adjusted to projection and scale of chart No. 2000.

It is strongly emphasized that all computations of a geodetic nature (envelopes, median lines, distances, etc.) have been carried out in principle on the surface of the WGS 84 ellipsoid, i.e., regardless of the characteristics of any projection used for the illustrative presentation of the outcome of such computations.

*Coastal front representation: Greenland vis-à-vis Jan Mayen*

A first quick glance at a map or chart depicting Greenland, Iceland, Jan Mayen, Svalbard and the interjacent watermass might leave the impression that the entire east coast of Greenland is of relevance in relation to Jan Mayen - a sort of visual illusion probably stemming from the fact that the island of Jan Mayen is situated nearly halfway between Greenland's southern and northern extremities at a considerable distance off the coast of Greenland.

This is of course not fair when dealing with coastal lengths to be compared, for instance, in the context of proportionality assessments. A more refined approach to the identification of the appropriate coastal fronts is needed.

A closer look at Map II and Map III in the Danish Memorial favours the view that the east coast of Greenland (Greenland's facade toward the east) north of Kulusuk close to Ammassalik, seems to consist of a sequence of three coastal fronts following the general direction of the respective parts of the coastline (reference is made to figure 11).

The central part of approximately 550 km lies roughly between the entrance to Scoresbysund Fjord - marked G' - and Shannon Island - marked H'. The southern front of approximately 650 km from point G' to the area of Kulusuk makes an angle of some 55° relatively to the central part G'H', while the northern front, forming an angle of some 12° with G'H', stretches for a further 750 km nearly true north from point H' to Nordostrundingen. Due to the not very marked difference of general direction, one could treat the central and northern segments more naturally as a single coastal front of a length of about 1,400 km. In the final analysis, this and similar elements of arbitrariness, however, will have no influence on the ultimate selection of the relevant coast of Greenland.

Considering that the coastal facade of Greenland is slightly convex with the central part jutting out toward the island of Jan Mayen, it seems reasonable in the first place to focus on that part of Greenland's coast.

*The central coastal front of East Greenland*

The southernmost part of that front which is called Liverpool Land, that is the coastal stretch between the entrance to Scoresbysund Fjord and Shannon Island, is distinctly mountainous with a steep slope into the sea; the coastline of Liverpool Land itself is indented and cut into with only a few small rocky islands lying in front of it.

Further north, the coast is characterized by flat diluvial or basaltic forelands on a fringe of large and small islands diversified by protruding hinterland formations often with capes falling almost vertically into the sea.

Nearly the entire coastline opposite Jan Mayen lends itself naturally to the use of straight baselines joining appropriate points along the coast. Though the existing baseline system clearly reflects the concavity of the central part of the coastline, the individual straight baselines do not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines are sufficiently closely linked to the land domain to be subject to the régime of internal waters. But there are a few segments of normal baseline to be found in the otherwise continuous sequence of straight baselines.

It will be recalled that the section of Greenland's baseline corresponding to the central coastal

front segment recently has been adjusted and converted to WGS 84 (see Danish Reply, Annex 58). As of 6 September 1991, the said baseline, somewhat extended to the south, has been officially notified in Royal Decree No. 636 and Order of the Prime Minister's Department No. 637.

Both notifications are of course available to the Court.

*The coastal front of Jan Mayen vis-à-vis Greenland*

Jan Mayen is totally circumscribed by a system of straight baselines between islets and prominent points along the coastline. A straight line, measuring about 54 km, along the island from point No. 9 (Sjuskjera, the southernmost skerry), marked F, to point No. 17 (Nordkapp, skerry to the northeast), marked E, is provisionally considered as the appropriate coastal front of Jan Mayen opposite Greenland with regard to the forthcoming proportionality assessments which will be explained later by Mr. Bernhard. Reference is made to the Norwegian Rejoinder, Annex 83, which contains a list of Jan Mayen's revised baseline points in WGS 84.

*The identification procedure*

Up to now we have only formed an idea of what might be the appropriate coasts and coastal fronts of the Parties with a view to the final determination of the relevant area.

The next step will be to delineate precisely the areas where the seaward prolongations of the selected coastlines of East Greenland and Jan Mayen meet and overlap.

In order to cope with the bulk of complex geodetic computations, existing Danish computer programmes have been utilized.

With the respective baseline co-ordinates inserted, one of the programmes computes - on the WGS 84 ellipsoid - a sequence of equidistant points along the 200 nm lines, or envelopes, off East Greenland and the west coast of Jan Mayen respectively. A connected programme converts the envelope points to Mercator co-ordinates and controls their plotting on the template chart together with the generatrices, i.e., the geodetic link between the envelope points and their respective projection points on the baselines. For ease of presentation the geodetic links are shown as loxodromes ([they should be geodesics] which are straight lines on the Mercator chart, as I said

before). We see on figure 12 that the red and blue patterns of generatrices refer respectively to Greenland and Jan Mayen.

Now let us turn to Iceland's claims in the southern part of the area. As I said earlier, Denmark is confident that the relevant area, to be defined shortly, does not impinge upon Icelandic claims, and the Court will wish to be satisfied on this point. Figure 13 shows in green colour a plot of Iceland's 200 nm envelope towards the north based on available information on the Icelandic baseline system. The basic computer programme just mentioned has also been used for this purpose.

It is worth noting that the rock of Kolbeinsey, due to its prominent position, governs a considerable part of the envelope; only a few more points included in Iceland's straight baseline system are "active" as to the generation of the easternmost part of the envelope within the area concerned.

Figure 14 is a combination of figures 12, 13, and figure 2 depicting the disputed area. The red/blue pattern south of  $BC_1D_1$  and the green pattern west of  $D_1$  and east of B are cut out, so that only the proper area of overlap and convergence between the natural prolongations of Greenland and Jan Mayen, leaving out the area claimed by Iceland, is shown in red and/or blue.

*The lateral bounds of the relevant area*

To the North

To the north the two claim lines: Greenland's 200 nm line and Norway's median line, meet at point A which, as earlier stated, is the junction point of the 200 nm lines of Greenland and Jan Mayen (figure 14 refers).

We now look for the points on Greenland's and Jan Mayen's baseline respectively, which generate point A. These points are readily identified from the red/blue pattern and the accompanying computer lists: (the latter, of course, I cannot show) H on the Greenland side and E on Jan Mayen. H and E are both prominent, radially projecting basepoints which leave no room for doubt as to their function as points of departure for the respective generatrices of the infinitesimal elements of the intersecting 200 nm envelopes.

Generatrices radiating from point A taking a more northerly direction than the geodesic HA, or from points north of H on Greenland's baseline have no influence on the formation of the area south and west of HAE (i.e. the relevant area as it will be defined shortly); they affect only the 200 nm limit of Greenland) vis-à-vis the international sea-bed area, i.e., north of point A.

Similarly, generatrices radiating from point E on Jan Mayen taking a more easterly direction than the geodesic EA, or from points east of E on Jan Mayen's baseline, have no influence on the formation of the area west and south of EAH (i.e., again, the relevant area); they affect only the 200 nm limit of Jan Mayen vis-à-vis the international sea-bed area, i.e., again, north of point A.

It follows from the above that the broken geodesic HAE, while complying with the proximity criterion, forms the northern lateral boundary of the relevant area, and, furthermore, that points H and E (Greenland and Jan Mayen respectively) constitute the northern limitations of the relevant coast of Greenland and Jan Mayen.

#### *To the South*

The lateral boundary of the relevant area to the south is dictated primarily by Iceland's overlapping claims, presented in geographical terms as the line BC<sub>1</sub>D<sub>1</sub>.

That line is determined as the 200 nm envelope relatively to Iceland's baseline.

B is the northern point of intersection between Greenland's and Iceland's 200 nm envelopes. D<sub>1</sub> is the point of intersection between the median line Greenland-Jan Mayen and Iceland's 200 nm envelope. C<sub>1</sub> is the point on Iceland's 200 nm envelope where Kolbeinsey is taking over to the east as the governing point.

F on Jan Mayen is identified from the blue pattern and the accompanying computer lists as a prominent, radially projecting basepoint.

The geodesic FB represents the shortest distance between point B and Jan Mayen's baseline, therefore, it could be conceived as the generatrix of an infinitely small element (near B) of an envelope which corresponds to distance FB (approx. 182 km).

Similarly, the geodesic D<sub>1</sub>G represents the shortest distance between point D<sub>1</sub> and the

prominent, radially projecting point G on Greenland's baseline, therefore, it could be conceived as the generatrix of an infinitely small element (near  $D_1$ ) of an envelope which corresponds to distance  $D_1G$  (approx. 237 km).

Reasoning along the same lines as I did when considering the lateral bounds to the north, and considering that the area claimed by Iceland is now taking the place of the international sea-bed area, I conclude that the geodesics  $GD_1$  and  $BF$ , supplemented by the line  $BC_1D_1$ , form together the southern lateral boundary of the relevant area and, consequently, that point G and F constitute the southern limitations of the relevant coasts of Greenland and Jan Mayen respectively.  
*Assessments of zone and shelf areas, lengths of coastal fronts, ratios, etc.*

We have now established the reciprocal balance between area and coasts relevant to the delimitation process. The relevant area thus takes the form of a geodetic polygon embracing the following reference points (figure 15 refers):

G - the relevant baseline of Greenland (GH) - H - A - E - the relevant baseline of Jan Mayen (EF) - F - B -  $C_1$  -  $D_1$  - G.

Those baselines, as well as Greenland's and Iceland's 200 nm line, and the median line of Greenland and Jan Mayen enter into the polygon as geodetic traverses.

The suggested geographical co-ordinates of points G, H, E, and F are presented in an addendum to this presentation.

The detailed assessment of zone and shelf areas within the bounds of the relevant area is also presented in figure 15, close to the bottom. It is  $T_1$  which is 141,000 km<sup>2</sup>.  $T_2$ : 65,000 km, which is the disputed area.  $T_3$ : 31,000 km<sup>2</sup>.

The shares of the relevant area accruing to the Parties under the respective claims will be the following:

Under Denmark's claim (200 nm line off East Greenland):

- Denmark/Greenland      approximately 206,000 km<sup>2</sup>
- Norway/Jan Mayen           "      31,000 km<sup>2</sup>

Under Norway's claim (median line Greenland - Jan Mayen):

- Denmark/Greenland      approximately 141,000 km<sup>2</sup>

- Norway/Jan Mayen " 96,000 km<sup>2</sup>

The ratios between the Parties' shares of zone and shelf are as follows:

- Areal ratio corresponding to Denmark's claim (200 nm off East Greenland):  $\frac{\text{Greenland}}{\text{Jan Mayen}}$  - 6.7:1
- Areal ratio corresponding to Norway's claim (median line Greenland - Jan Mayen):  $\frac{\text{Greenland}}{\text{Jan Mayen}}$  - 1.5:1

The lengths of the coastal fronts of the Parties are as follows:

Greenland (GH)	approximately	504.3 km
Jan Mayen (EF)	"	54.8 km

Hence, the coastal front ratio:  $\frac{\text{GH}}{\text{EF}}$  - 9.2:1

For reasons of comparison: the lengths of the accumulated relevant baselines of the Parties are the following:

Greenland (GH)	approximately	524.0 km
Jan Mayen (EF)		57.8 km

Hence, the accumulated baseline ratio:

$\frac{\text{GH}}{\text{EF}}$  - 9.1:1 in favour of Greenland.

That is to say, on whatever basis one measures the coastal openings, the ratio is over 9 to 1 in favour of Greenland.

*Conclusion*

Now, it can be seen that the outcome of the process identifying the relevant area and the relevant coasts in the present case is clear and objective.

In so far as the relevant area has been defined in principle as the area of overlap and convergence of the natural prolongations of the relevant coasts abutting on that area, it is clear that the basic criteria, principles and rules governing the detailed delineation of this area, as well as the appurtenant coasts, are soundly based in law. They derive logically either from the provisions of the 1958 and the 1982 conventions, from the decisions of international tribunals or from third Party's claims, leaving no room for distortion by subjective or arbitrary elements.

I hope I may be permitted a final comment on the reservations expressed by the Respondent State. Norway has levelled severe criticisms against the Danish approach as outlined in our

Memorial (paragraphs 18-35 and Reply (paragraphs 19-32).

We trust, however, that the reasoning I have just explained may have convinced Norway of the fairness and objectivity of the Danish approach; if not, we invite Norway to submit its own proposal for the identification of the relevant area in the present case, including the data necessary for the required *ex post facto* proportionality test. It is not unreasonable to expect Norway to do one of two things. *Either* Norway must demonstrate its own concepts of a relevant area and relevant coasts. Or Norway must explain why those concepts are irrelevant to this case. So far, Norway has done neither very clearly.

This concludes my presentation today on the general geographical context, including the identification of the disputed and relevant areas.

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Having thus established the geographical framework within which the delimitation is to be carried out, we shall tomorrow deal with the people in whose interest the present delimitation case is brought before this Court and the natural resources from which those people derive their livelihood. These presentations will be given by Mr. Finn Lynge and Mrs. Kirsten Trolle.

Thank you Mr. President.

The PRESIDENT: Thank you very much Mr. Thamsborg. We shall resume at 10 am tomorrow morning.

*The Court rose at 12.50 pm*

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