

## CASE CONCERNING MARITIME DELIMITATION IN THE AREA BETWEEN GREENLAND AND JAN MAYEN (DENMARK v. NORWAY)

Judgment of 14 June 1993

In its Judgment on the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen, the Court, by 14 votes to 1, fixed a delimitation line for both the continental shelf and the fishery zones of Denmark and of Norway in the area between Greenland and Jan Mayen.

The Court was composed as follows: 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.

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The full text of the operative paragraph is as follows:

“94. For these reasons,

THE COURT,

By fourteen votes to one,

Decides that, within the limits defined

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

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

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

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

AGAINST: Judge *ad hoc* Fischer.”

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Vice-President Oda and Judges Evensen, Aguilar Mawdsley and Ranjeva appended declarations to the Judgment of the Court.

Vice-President Oda and Judges Schwebel, Shahabuddeen, Weeramantry and Ajibola appended separate opinions to the Judgment of the Court.

Judge *ad hoc* Fischer appended a dissenting opinion to the Judgment of the Court.

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*Review of the proceedings and summary of facts*  
(paras. 1-21)

The Court outlines the successive stages of the proceedings as from the date the case was brought before it (paras. 1-8) and sets out the submissions of the Parties (paras. 9-10). It recalls that Denmark, instituting proceedings on 16 August 1988, had asked 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”; and had, in the course of the proceedings, made the following submissions:

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

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

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

and that Norway had asked the Court to adjudge and declare that the median line constituted the boundary for the purposes of delimitation of the relevant areas of both the continental shelf and the fisheries zone between Norway and Denmark in the region between Jan Mayen and

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Greenland. The Court then describes the maritime areas, which have featured in the arguments of the Parties (paras. 11-21).

*The contention that a delimitation already exists*  
(paras. 22-40)

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

*The 1965 Agreement*  
(paras. 23-30)

On 8 December 1965, Denmark and Norway concluded an Agreement concerning the delimitation of the continental shelf. Article 1 of that Agreement reads:

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

Article 2 provides that “in order that the principle set forth in article 1 may be properly applied, the boundary shall consist of straight lines” which are then defined by eight points, enumerated with the relevant geodetic coordinates and as indicated on the chart thereto annexed; the lines so defined lie in the Skagerrak and part of the North Sea, between the mainland territories of Denmark and Norway. Norway contends that the text of article 1 is general in scope, unqualified and without reservation, and that the natural meaning of that text must be “to establish definitively the basis for all boundaries which would eventually fall to be demarcated” between the Parties. In its view article 2, which admittedly relates only to the continental shelves of the two mainlands, “is concerned with *demarcation*”. Norway deduces that the Parties are and remain committed to the median line principle of the 1965 Agreement. Denmark on the other hand argues that the Agreement is not of such general application and that its object and purpose is solely the delimitation in the Skagerrak and part of the North Sea on a median line basis.

The Court considers that the object and purpose of the 1965 Agreement was to provide simply for the question of the delimitation in the Skagerrak and part of the North Sea, where the whole seabed (with the exception of the “Norwegian Trough”) consists of continental shelf at a depth of less than 200 metres, and that there is nothing to suggest that the Parties had in mind the possibility that a shelf boundary between Greenland and Jan Mayen might one day be required, or intended that their Agreement should apply to such a boundary.

After examining the Agreement in its context, in the light of its object and purpose, the Court also takes into account the subsequent practice of the Parties, especially a subsequent treaty in the same field concluded in 1979. It considers that if the intention of the 1965 Agreement had been to commit the Parties to the median line in all ensuing shelf delimitations, it would have been referred to in the 1979 Agreement. The Court is thus of the view that the 1965 Agreement did not result in a median line delimitation of the continental shelf between Greenland and Jan Mayen.

*The 1958 Geneva Convention on the Continental Shelf*  
(paras. 31-32)

The validity of the argument that the 1958 Convention resulted in a median line continental shelf boundary already “in place” between Greenland and Jan Mayen is found to depend on whether the Court finds that there are “special circumstances” as contemplated by the Convention, a question to be dealt with later. The Court therefore turns to the arguments which Norway bases upon the conduct of the Parties and of Denmark in particular.

*Conduct of the Parties*  
(paras. 33-40)

Norway contends that, up to some ten years ago at least, the Parties by their “conjoint conduct” had long recognized the applicability of a median line delimitation in their mutual relations. The Court observes that it is the conduct of Denmark which has primarily to be examined in this connection.

The Court is not persuaded that a Danish Decree of 7 June 1963 concerning the Exercise of Danish Sovereignty over the Continental Shelf supports the argument which Norway seeks to base on conduct. Nor does a Danish Act of 17 December 1976 or an Executive Order of 14 May 1980, issued pursuant to that Act, commit Denmark to acceptance of a median line boundary in the area. An Agreement of 15 June 1979 between the Parties concerning the delimitation between Norway and the Faroe Islands does not commit Denmark to a median line boundary in a quite different area. Danish statements made in the course of diplomatic contacts and during the Third United Nations Conference on the Law of the Sea had also not prejudiced Denmark’s position.

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

*The applicable law*  
(paras. 41-48)

The Court notes that the Parties differ on the question whether what is required is one delimitation line or two lines, Denmark asking for “a single line of delimitation of the fishery zone and continental shelf area”, and Norway contending that the median line constitutes the boundary for delimitation of the continental shelf, and constitutes also the boundary for the delimitation of the fishery zone, i.e., that the two lines would coincide, but the two boundaries would remain conceptually distinct.

The Court refers to the Gulf of Maine case in which it was asked what was “the course of the single maritime boundary that divides the continental shelf and fishery zones of Canada and the United States of America”. It observes that in the present case it is not empowered—or constrained—by any agreement for a single dual-purpose boundary and that it has already found that there is not a continental shelf boundary already in place. It therefore goes on to examine separately the two strands of the applicable law: the effect of article 6 of the 1958 Convention if applied at the present time to the delimitation of the continental shelf boundary, and then the effect of the application of the customary law which governs the fishery zone.

The Court further observes that the applicability of the 1958 Convention to the continental shelf delimitation in this case does not mean that article 6 of that Convention can be interpreted and applied either without reference to customary law on the subject, or wholly independently of the fact that a fishery zone boundary is also in question in these waters. After examining the case-law in this field and the provisions of the 1982 United Nations Convention on the Law of the Sea, the Court notes that the statement (in those provisions) of an “equitable solution” as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of continental shelf and of exclusive economic zones.

*The provisional median line*  
(paras. 49-52)

Turning first to the delimitation of the continental shelf, the Court finds that it is appropriate, both on the basis of article 6 of the 1958 Convention and on the basis of customary law concerning the continental shelf, to begin with the median line as a provisional line and then to ask whether “special circumstances” require any adjustment or shifting of that line. After subsequent examination of the relevant precedents with regard to the delimitation of the fishery zones, it appears to the Court that, both for the continental shelf and for the fishery zones in this case, it is proper to begin the process of delimitation by a median line provisionally drawn.

*“Special circumstances” and “relevant circumstances”*  
(paras. 54-58)

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

The concept of “special circumstances” was included in the 1958 Geneva Conventions on the Territorial Sea and the Contiguous Zone (art. 12) and on the Continental Shelf (art. 6, paras. 1 and 2). It was and remains linked to the equidistance method there contemplated. It is thus apparent that special circumstances are those circumstances which might distort the result produced by an unqualified application of the equidistance principle. General international law has employed the concept of “relevant circumstances”. This concept can be defined as a fact necessary to be taken into account, in the delimitation process, to the extent that it affects the rights of the Parties over certain maritime areas. Although it is a matter of categories which are different in origin and in name, there is inevitably a tendency towards assimilation between the special circumstances of article 6 of the 1958 Convention and the relevant circumstances under customary law, and this if only because they both are intended to enable the achievement of an equitable result. This must be especially true in the case of opposite coasts where, as has been seen, the tendency of customary law, like the terms of article 6, has been to postulate the median line as leading *prima facie* to an equitable result.

The Court then turns to the question whether the circumstances of the present case require adjustment or shifting of that line, taking into account the arguments relied on by Norway to justify the median line, and the circumstances invoked by Denmark as justifying the 200-mile line.

*Disparity of length of coasts*  
(paras. 61-71)

A first factor of a geophysical character, and one which has featured most prominently in the argument of Denmark, in regard to both continental shelf and fishery zone, is the disparity or disproportion between the lengths of the “relevant coasts”.

*Prima facie*, a median line delimitation between opposite coasts results in general in an equitable solution, particularly if the coasts in question are nearly parallel. There are, however, situations—and the present case is one such—in which the relationship between the length of the relevant coasts, and the maritime areas generated by them by application of the equidistance method, is so disproportionate that it has been found necessary to take this circumstance into account in order to ensure an equitable solution.

In the light of the existing case-law, the Court comes to the conclusion that the striking difference in length of the relevant coasts in this case (which had been calculated as approximately 9 (for Greenland) to 1 (for Jan Mayen)) constitutes a special circumstance within the meaning of article 6, paragraph 1, of the 1958 Convention. Similarly, as regards the fishery zones, the Court is of the opinion that the application of the median line leads to manifestly inequitable results.

It follows that, in the light of the disparity of coastal lengths, the median line should be adjusted or shifted in such a way as to effect a delimitation closer to the coast of Jan Mayen. It should, however, be made clear that taking account of the disparity of coastal lengths does not mean a direct and mathematical application of the relationship between the length of the coastal front of eastern Greenland and that of Jan Mayen. Nor do the circumstances require the Court to uphold the claim of Denmark that the boundary line should be drawn 200 miles from the base-

lines on the coast of eastern Greenland, i.e., a delimitation giving Denmark maximum extension of its claim to continental shelf and fishery zone. The result of such a delimitation would be to leave to Norway merely the residual part of the "area relevant to the delimitation dispute" as defined by Denmark. The delimitation according to the 200-mile line calculated from the coasts of eastern Greenland may from a mathematical perspective seem more equitable than that effected on the basis of the median line, regard being had to the disparity in coastal lengths; but this does not mean that the result is equitable in itself, which is the objective of every maritime delimitation based on law. The Court observes in this respect that the coast of Jan Mayen, no less than that of eastern Greenland, generates potential title to the maritime areas recognized by customary law, i.e., in principle up to a limit of 200 miles from its baselines. To attribute to Norway merely the residual area left after giving full effect to the eastern coast of Greenland would run wholly counter to the rights of Jan Mayen and also to the demands of equity.

At this stage of its analysis, the Court thus considers that neither the median line nor the 200-mile line calculated from the coasts of eastern Greenland in the relevant area should be adopted as the boundary of the continental shelf or of the fishery zone. It follows that the boundary line must be situated between these two lines described above, and located in such a way that the solution obtained is justified by the special circumstances confronted by the 1958 Convention on the Continental Shelf, and equitable on the basis of the principles and rules of customary international law. The Court will therefore next consider what other circumstances may also affect the position of the boundary line.

#### *Access to resources* (paras. 72-78)

The Court then turns to the question whether access to the resources of the area of overlapping claims constitutes a factor relevant to the delimitation. The Parties are essentially in conflict over access to fishery resources, the principal exploited fishery resource being capelin. The Court has therefore to consider whether any shifting or adjustment of the median line, as fishery zone boundary, would be required to ensure equitable access to the capelin fishery resources.

It appears to the Court that the seasonal migration of the capelin presents a pattern which, north of the 200-mile line claimed by Iceland, may be said to centre on the southern part of the area of overlapping claims, approximately between that line and the parallel of 72° north latitude, and that the delimitation of the fishery zone should reflect this fact. It is clear that no delimitation in the area could guarantee to each Party the presence in every year of fishable quantities of capelin in the zone allotted to it by the line. It appears, however, to the Court that the median line is too far to the west for Denmark to be assured of an equitable access to the capelin stock, since it would attribute to Norway the whole of the area of overlapping claims. For this reason also the median line thus requires to be adjusted or shifted eastwards. The Court is further satisfied that while ice constitutes a considerable seasonal restriction of access to the waters, it does not materially affect access to migratory fishery resources in the southern part of the area of overlapping claims.

#### *Population and economy* (paras. 79-80)

Denmark considers as also relevant to the delimitation the major differences between Greenland and Jan Mayen as regards population and socio-economic factors.

The Court observes that the attribution of maritime areas to the territory of a State, which, by its nature, is destined to be permanent, is a legal process based solely on the possession by the territory concerned of a coastline. The Court recalls in the present dispute the observations it had occasion to make, concerning continental shelf delimitation, in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, namely, that a delimitation should not be influenced by the relative economic position of the two States in question, in such a way that the area of continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources.

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

#### *Security* (para. 81)

Norway has argued, in relation to the Danish claim to a 200-mile zone off Greenland, that "the drawing of a boundary closer to one State than to another would imply an inequitable displacement of the possibility of the former State to protect interests which require protection".

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

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

#### *Conduct of the Parties* (paras. 82-86)

Denmark has contended that the conduct of the Parties is a highly relevant factor in the choice of the appropriate method of delimitation where such conduct has indicated some particular method as being likely to produce an equitable result. In this respect, Denmark relies on the maritime delimitation between Norway and Iceland, and on a boundary line established by Norway between the economic zone of mainland Norway and the fishery protection zone of the Svalbard Archipelago (Bear Island/Bjørnøya).

So far as Bear Island is concerned, this territory is situated in a region unrelated to the area of overlapping claims now to be delimited. In that respect, the Court observes that there can be no legal obligation for a party to a dispute to transpose, for the settlement of that dispute, a particular solution previously adopted by it in a different context. As for the delimitation between Iceland and Norway, international law does not prescribe, with a view to reaching an equitable solution, the adoption of a single method for the delimitation of the maritime spaces on all sides of an island, or for the whole of the coastal front of a particular State, rather than, if desired, varying systems of delimita-

tion for the various parts of the coast. The conduct of the parties will in many cases therefore have no influence on such a delimitation. For these reasons, the Court concludes that the conduct of the Parties does not constitute an element which could influence the operation of delimitation in the present case.

*The definition of the delimitation line*  
(paras. 87-93)

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

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

[Para. 91] The delimitation line is to lie between the median line and the 200-mile line from the baselines of eastern Greenland. It will run from point A in the north, the point of intersection of those two lines, to a point on the 200-mile line drawn from the baselines claimed by Iceland, between points D (the intersection of the median line with the 200-mile line claimed by Iceland) and B (the intersection of Greenland's 200-mile line and the 200-mile line claimed by Iceland) on sketch-map No. 2. For the purposes of definition of the line, and with a view to making proper provision for equitable access to fishery resources, the area of overlapping claims will be divided into three zones, as follows. Greenland's 200-mile line (between points A and B on sketch-map No. 2) shows two marked changes of direc-

tion, indicated on the sketch-map as points I and J; similarly, the median line shows two corresponding changes of direction, marked as points K and L. Straight lines drawn between point I and point K, and between point J and point L, thus divide the area of overlapping claims into three zones, to be referred to, successively from south to north, as zone 1, zone 2 and zone 3.

[Para. 92] The southernmost zone, zone 1, corresponds essentially to the principal fishing area. In the view of the Court, the two Parties should enjoy equitable access to the fishing resources of this zone. For this purpose a point, to be designated point M, is identified on the 200-mile line claimed by Iceland between points B and D, and equidistant from those points, and a line is drawn from point M so as to intersect the line between points J and L, at a point designated point N, so as to divide zone 1 into two parts of equal area. The dividing line is shown on sketch-map No. 2 as the line between points N and M. So far as zones 2 and 3 are concerned, it is a question of drawing the appropriate conclusions, in the application of equitable principles, from the circumstance of the marked disparity in coastal lengths, discussed in paragraphs 61 to 71 above. The Court considers that an equal division of the whole area of overlapping claims would give too great a weight to this circumstance. Taking into account the equal division of zone 1, it considers that the requirements of equity would be met by the following division of the remainder of the area of overlapping claims: a point (O on sketch-map No. 2) is to be determined on the line between I and K such that the distance from I to O is twice the distance from O to K; the delimitation of zones 2 and 3 is then effected by the straight line from point N to this point O, and the straight line from point O to point A.

The Court sets out the coordinates of the various points, for the information of the Parties.

*Declaration of Vice-President Oda*

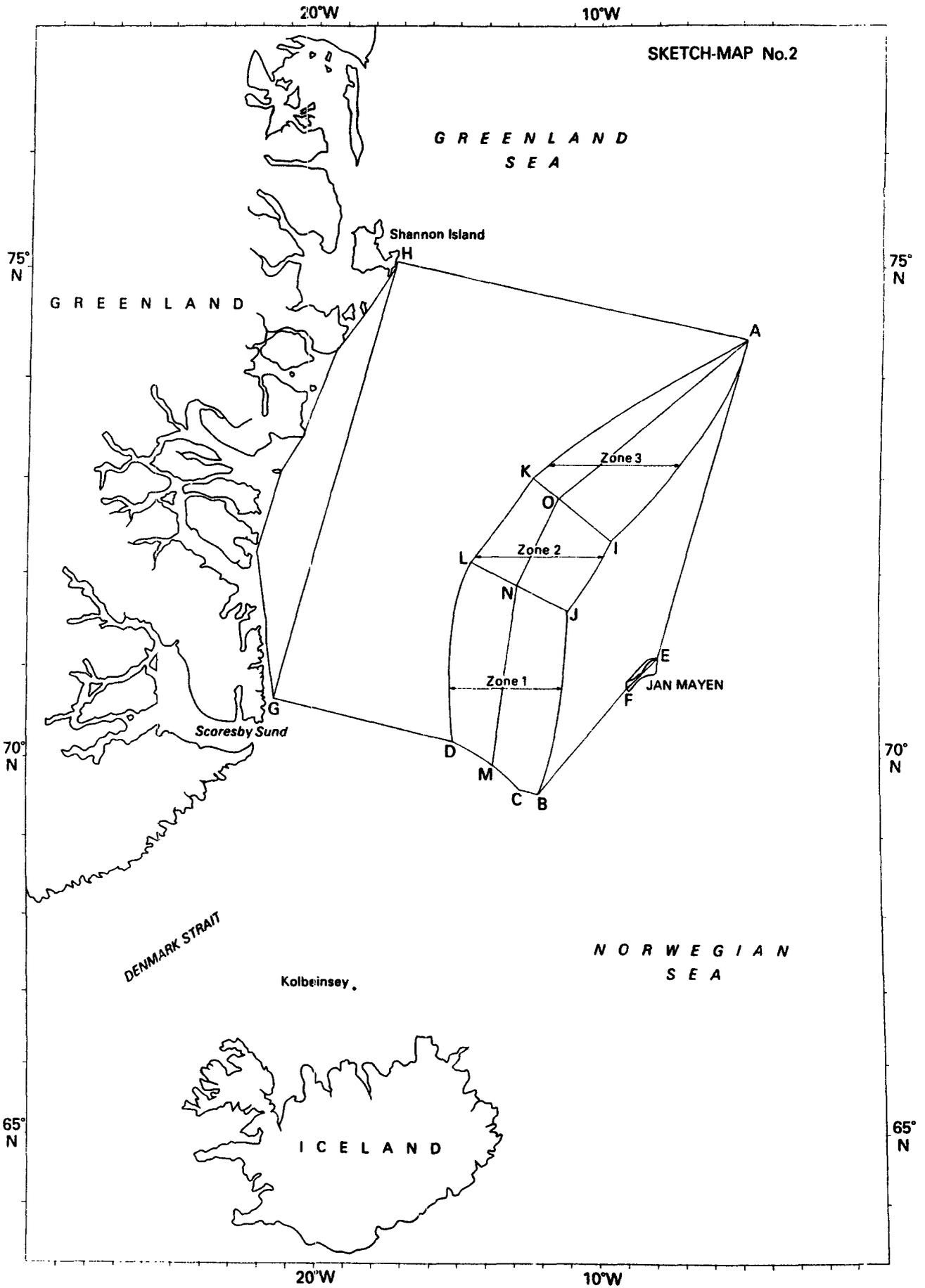
In his declaration, Judge Oda explains that, the Court having taken a decision on the substance of the case despite his own view that the Application should have been dismissed as misconceived, he voted with the majority because the line chosen lay within the infinite range of possibilities open to selection by the Parties had they reached agreement.

*Declaration of Judge Evensen*

In his concurring declaration, Judge Evensen stresses that the United Nations Convention on the Law of the Sea of 10 December 1982 expresses a number of principles that must be considered governing principles of international law although the Convention has not yet entered into force.

Jan Mayen must be regarded an island and not solely a rock. Article 121, paragraph 2, of the Convention provides that in principle islands shall be governed by the same legal regime as "other land territory". Thus, Jan Mayen must be taken into consideration in the delimitation of the maritime zones vis-à-vis Greenland, a continental-size area.

It lies within the Court's measure of discretion to establish a system of equitable access to fish resources in areas of overlapping claims. In his declaration, Judge Evensen endorses the proposed system for the distribution of these resources of the adjacent seas.



### *Declaration of Judge Aguilar Mawdsley*

Judge Aguilar Mawdsley voted for the Judgment because he concurs with its reasoning. He is, however, not persuaded that the delimitation line as drawn by the Court provides for an equitable result. In his opinion, the difference in the lengths of the coasts of Greenland and Jan Mayen is such that Greenland (Denmark) should have received a larger proportion of the disputed area. Given the importance attached to this factor in the Judgment, it would have been logical at least to make an equal distribution of zones 1, 2 and 3.

### *Declaration of Judge Ranjeva*

Judge Ranjeva appended a declaration to the Court's Judgment indicating that he had voted in favour of the operative part and subscribed to the arguments on which it is based. In his view, the result was an equitable one. He would nevertheless have wished the Court to be more explicit in stating its reasons for drawing the delimitation line adopted. For in the exercise of its discretionary power, the Court could indeed have been more specific as regards the criteria, methods and rules of law applied. Also, he would have preferred the Court to make it clear that it was in relation to the rights of the Parties to their maritime spaces that the special or relevant circumstances could or sometimes should be taken into account in a delimitation operation; for these were facts affecting the rights of States, as recognized in positive law, either in their entirety, or in the exercise of the powers relating thereto. The proper administration of justice and legal security depend on the certainty of the legal rule.

On the other hand, in the view of Judge Ranjeva, although the Court—and rightly so—had no need to explore the legal scope of statements made by a State at the Third United Nations Conference on the Law of the Sea, the Court should not, considering the exceptional procedure adopted on that occasion, have taken account of positions which were unofficial only and entirely non-committing.

### *Separate opinion of Vice-President Oda*

In his separate opinion, Judge Oda emphasizes that the Court can be endowed with the competence to delimit a maritime boundary only by specific agreement of both parties concerned. Denmark's unilateral Application ought, consequently, to have been dismissed. Denmark's submissions furthermore supposed, wrongly, that the exclusive economic zone (EEZ) could coexist with a fishery zone of the kind eliminated from the 1982 Convention on the Law of the Sea. Its request for a single-line boundary also overlooked the separate background and evolution of the continental shelf regime.

In that respect, Judge Oda considers that the Court wrongly followed the Parties in applying article 6 of the 1958 Convention, which relates to a superseded concept of the continental shelf. What applies today to the delimitation of either the continental shelf or the EEZ is the customary law reflected in the 1982 Convention, which leaves the Parties free to reach agreement on any line they choose, since the reference to an "equitable solution" is not expressive of a rule of law.

A third party called upon to settle a disagreement over delimitation may either suggest guidelines to the parties or itself choose a line providing an equitable solution. In

Judge Oda's view the Court, as a judicial body applying international law, is, however, precluded from taking the second course unless mandated by both parties to do so. It should not have so proceeded on an Application which relied on declarations under Article 36, paragraph 2, of the Statute, since such declarations confer jurisdiction only for strictly legal disputes, whereas an act of delimitation requires an assessment *ex aequo et bono*.

Judge Oda further criticizes the Court's concentration on the area of overlap between claims, to the neglect of the whole relevant area, as well as its failure to give any good reason why access to fishing resources should have been taken into account in relation to a boundary applying to the continental shelf.

### *Separate opinion of Judge Schwebel*

Judge Schwebel, in his separate opinion, maintains that the Court's Judgment is questionable with respect to the following three questions:

1. Should the law of maritime delimitation be revised to introduce and apply distributive justice?
2. Should the differing extent of the lengths of opposite coastlines determine the position of the line of delimitation?
3. Should maximalist claims be rewarded?

However, he concluded that, since what is equitable appears to be as variable as the climate of The Hague, ground for dissent from the Court's Judgment is lacking.

### *Separate opinion of Judge Shahabuddeen*

In his separate opinion, Judge Shahabuddeen says that he understands the Judgment to be upholding Norway's view that the 1958 conventional delimitation formula means that, in the absence of agreement and of special circumstances, the boundary is the median line. He gives his reasons for agreeing with this view and for declining to accept that the conventional formula is to be equated with the customary formula. He is not persuaded that the equation suggested by the 1977 Anglo-French arbitral decision should be followed.

He thinks that the concept of natural prolongation, considered in a physical sense, has placed limits on recourse to proportionality. In his view, the movement away from the physical aspect of natural prolongation should be followed by a relaxation of those limits.

Judge Shahabuddeen gives his reasons for holding that the decision of the Court is not *ex aequo et bono*. He has some doubts as to whether a single line is possible in the absence of agreement by the Parties to such a line being established. He agrees that in the state of the technical material before the Court, an actual delimitation line should not be drawn, but considers that, had the material been adequate, the Court could competently have drawn such a line notwithstanding Norway's non-consent to that being done.

Finally, in his view, where Parties have failed to agree on a boundary, the resulting dispute as to what is the boundary is susceptible of judicial settlement via a unilateral Application made under Article 36, paragraph 2, of the Statute of the Court.

### *Separate opinion of Judge Weeramantry*

Judge Weeramantry, in his separate opinion, expresses his agreement with the Judgment of the Court and examines the special role played by equity in the Court's reasoning and conclusions. As the use of equity in maritime delimitation is currently passing through a critical phase, the opinion studies its operation in this case from several angles. It looks at the relevance to the Judgment of equitable principles, equitable procedures, equitable methods and equitable results. The opinion stresses that equity operates, in the Judgment, *infra legem* and not *contra legem* or *ex aequo et bono*, and traces the various routes of entry of equity into maritime delimitation. It distinguishes the *a priori* employment of equity to work towards a result from its *a posteriori* employment, to check a result thus obtained, and sets out the various uses of equity and its various methods of operation in this case. It also analyses the Judgment in the light of the several component elements of an equitable decision.

Examining the various uncertainties in the use of equity in maritime delimitation, the opinion seeks to show that these do not constitute a sufficient reason for rejecting the use of equity as an aid both to particular delimitations such as the present and to the general development of the law of the sea.

The opinion also looks at the particular invocations, by treaty and otherwise, of equity in maritime delimitation. It concludes by examining the concept of equity in global terms, showing that a search of global traditions of equity can yield perspectives of far-reaching importance to the developing law of the sea.

### *Separate opinion of Judge Ajibola*

In his separate opinion, Judge Ajibola, while strongly supporting the Court's decision, considers that some areas of the Judgment should be elaborated. He first refers to some procedural issues relating to jurisdiction: Could the Court draw any line, and should the line have been a dual-purpose single line or two lines? Should only a declaratory judgment have been given? Can the Court engage in a delimitation without the agreement of the Parties? However that might be, the Court, once convinced that there is an issue in dispute, ought to proceed to a decision on the merits.

As to the question of whether there should be one line or two, the development of the law of maritime delimitation and the relevant case-law supports the Court's conclusions.

Characterizing the Danish submissions as more a claim of entitlement than a call for delimitation, Judge Ajibola points out that, despite the disparity of size, the entitlement of Norway in respect of Jan Mayen is equally justifiable and recognized in international law.

He then examines the equitable principles in maritime boundary delimitation, coming to the conclusion that they are the fundamental principles which now apply to maritime delimitation in customary international law and that they can be expected to underlie its future development.

Finally, Judge Ajibola examines the concepts of "special circumstances" under the 1958 Convention and of "relevant circumstances" under customary international law, concluding that there is effective equivalence between, on the one hand, the triad of agreement, special circumstances and equidistance and, on the other, that of agreement, relevant circumstances and equitable principles, with the last-mentioned constituting the ultimate rule under modern customary law.

### *Dissenting opinion of Judge ad hoc Fischer*

Judge Fischer has voted against the decision as he considers that the most equitable solution would have been a delimitation at a distance of 200 nautical miles from East Greenland. His main reasons are the following.

He does not think that the Court has sufficiently taken the difference between the relevant coasts of East Greenland (approximately 524 kilometres) and Jan Mayen (approximately 58 kilometres) into consideration. The ratio is more than 9 to 1 in favour of Greenland whereas the ratio of allocated area is only 3 to 1. The delimitation 200 miles from Greenland would have allocated areas to the Parties in the ratio of 6 to 1, which, according to Judge Fischer, would have been in conformity with the generally accepted principle of proportionality.

Contrary to the standpoint of the Court, Judge Fischer considers that the fundamental difference between Greenland and Jan Mayen with respect to their demographic, socio-economic and political structures should have been taken into consideration. He has underlined that Greenland is a viable human society with a population of 55,000 which is heavily dependent on fisheries and with political autonomy whereas Jan Mayen has no population in the proper sense of the word.

Judge Fischer furthermore considers that the Iceland-Jan Mayen delimitation which respects Iceland's 200-mile zone is highly important for the present case. As the relevant factors in the two cases are very similar, it would have been just and equitable to draw the delimitation line in the present case in a manner similar to the Iceland-Jan Mayen delimitation.

Judge Fischer is opposed to the method of using a median line as a provisionally drawn line. Judicial practice is in his opinion ambiguous and no such method can be deduced from article 6 of the 1958 Convention on the Continental Shelf.

Finally, Judge Fischer considers the method of dividing the area of overlapping claims into three zones and of dividing each of these zones according to different criteria to be artificial and without foundation in international law.