COUNTER-MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

(Federal Republic of Germany/Netherlands)

INTRODUCTION

1. This Counter-Memorial is submitted to the International Court of Justice in pursuance of the Order of 8 March 1967 by the Judge discharging the duties of President of the Court under Article 12 of the Rules of Court, and in pursuance of Article 2, paragraph 1, subparagraph 2, of the Special Agreement of 2 February 1967 between the Kingdom of the Netherlands and the Federal Republic of Germany for the submission to the International Court of Justice of their difference concerning the delimitation, as between the Parties, of the continental shelf in the North Sea.

2. The dispute has arisen because the German Federal Government has thought fit to lay claim to areas of the continental shelf beneath the North Sea which lie nearer to the coast of the Kingdom of the Netherlands than they do to that of the Federal Republic and which, naturally, are considered by the Netherlands Government to form part of its continental shelf. The dispute has come to the Court because the Federal Republic, while invoking the recognition by the Geneva Conference in the Continental Shelf Convention of the rights of a coastal State over the submarine areas adjacent to its coast, has declined to acknowledge the right of the Netherlands to delimit her continental shelf in accordance with the principles recognized as applicable by that same Conference in that same Convention. And now the crux of the dispute before the Court is that the Federal Republic demands an apportionment of the continental shelf beneath the North Sea according to the Federal Government's own notion of what is due to the Federal Republic *ex aequo et bono*, whereas the Netherlands asks for the delimitation of her continental shelf in accordance with the generally recognized principles and rules of international law.

3. For the convenience of the Court, and having regard to Article 42 of the Rules of Court, the present Counter-Memorial is divided into the same main parts as the Memorial submitted on 21 August 1967 by the Agent for the Government of the Federal Republic of Germany.

When framing the chapters into which these main parts are divided, it has appeared necessary to observe two guiding principles. On the one hand the present pleading, being a counter-memorial, seeks to comply with the second paragraph of Article 42 of the Rules of Court, which prescribes that a counter-memorial shall contain, among other things, an admission or denial of the facts stated in the memorial, and observations concerning the statement of law in the said memorial.

On the other hand the present pleading affords the first opportunity to set forth before the Court the opinion of the Kingdom of the Netherlands on the

matter in dispute. This results from Article 2 of the above-mentioned Special Agreement, wherein the Parties to the dispute, pursuant to the provisions of Article 37 of the Rules of Court, have agreed that, without prejudice to any question of burden of proof, a Memorial shall be submitted to the Court only by the Federal Republic of Germany, and a Counter-Memorial only by the Kingdom of the Netherlands.

Consequently, the present Counter-Memorial contains:

in Part I, an exposition of the relevant facts and of the history of the dispute, supplementing and correcting the exposition given in the Memorial of the German Federal Government;

in Part II, the legal considerations which in the opinion of the Government of the Kingdom of the Netherlands are of importance for the present case, and the Netherlands observations on the legal position taken by the German Federal Government in Part II of the Memorial;

in Part III, the submissions to the Court as to what principles and rules of international law are applicable to the delimitation, as between the Parties, of the areas of the continental shelf in the North Sea which appertain to each of them.

4. The Memorial contains numerous references to writers, which references will only occasionally be commented upon in this Counter-Memorial. Several quotations, however, appear out of context. Annex 16 will illustrate a number of instances where quotations seem to be incomplete.

PART I. FACTS AND HISTORY OF THE DISPUTE

CHAPTER 1

THE CONTINENTAL SHELF BENEATH THE NORTH SEA

5. The geographical description of the North Sea as given in paragraph 7 of the Memorial of the Federal Republic of Germany does not call for any particular comment. It should, however, be noted that, contrary to the statement in paragraph 7 of the Memorial, test drillings in the subsoil under the North Sea had been made before 1963 and were not carried out directly or merely as a result of the discovery of the natural gas field near Slochteren. This subject will be reverted to in detail in Chapter 2 of this Part of the Counter-Memorial (see *infra*, para. 11).

In order to provide the Court with a convenient geographical view of the North Sea the map enclosed inside the back cover of the Counter-Memorial (Annex 17) shows, among other things, those continental shelf boundaries on which agreement has already been achieved—in all cases on the basis of equidistance—as well as the boundaries of the North Sea under the North Sea Fisheries Convention of 1882 [1].

6. With reference to paragraph 8 of the Memorial, it must be remarked that the Geneva Convention on the Continental Shelf of 29 April 1958 does *not* embody the concept of *a single* continental shelf to be divided among the coastal States, but, on the contrary, recognizes the exclusive sovereign rights of every single State over the seabed and subsoil of the submarine areas adjacent to its coast, the boundaries of these areas being determined by Articles 1 and 6 of the said Convention. It would, therefore, seem somewhat misleading to use the terminology "the continental shelf *of* the North Sea"; the title of the present Chapter, accordingly, refers to the continental shelf *beneath* the North Sea.

7. Admittedly, the delimitation of continental shelf areas by application of the equidistance principle results, as far as the continental shelf beneath the North Sea is concerned, in different total areas appertaining to the various States adjacent to the North Sea. Indeed, the very legal basis of the sovereign rights of a coastal State over the continental shelf area adjacent to its coast being the concept of contiguity or propinquity, it is only to be expected that some States, by reason of their geographic location, are in a better position in this respect than other States. Thus, while *all* States have an equal right to use the high seas for the purposes of navigation, fishing and other lawful activities, only States that border on the sea can have sovereign rights (which are exclusive) in respect of the natural resources of the seabed and subsoil adjacent to their coasts. Furthermore, while the submarine areas adjacent to some coastal States are, or, very near the coast, become, so deep that they are, for the time being, not exploitable, other coastal States border on large areas of shallow sea. Finally, some submarine areas, shallow or not, are richer in natural resources than others. But then again, geographical location, including the

[1] Convention for regulating the police of the North Sea Fisheries, concluded at The Hague, 6 May 1882; text printed in De Martins' *Nouveau Recueil Général de traités*, Second Series, Vol. 9, p. 556.

configuration of the coast, always brings benefits *and* disadvantages. For a small and densely populated country like the Netherlands, almost 50 per cent. of whose *terra firma* lies below sea-level, it is certainly not an undivided blessing to have a very long coastline and a direct "frontage" with the North Sea!

8. Furthermore, the statement in paragraph 8 of the Memorial to the effect that "the North Sea represents a special case" is unfounded. Chapter 4 of the Second Part of the Counter-Memorial will go further into this subject (see *infra*, paras. 127 *et seq.*).

9. With regard to paragraph 9 of the Memorial the following facts are submitted:

(a) The angle of the German North Sea coast is approximately 100°.

(b) Neither the Federal Republic of Germany nor the Kingdom of the Netherlands have, so far, established straight base-lines along those parts of their coasts which are involved in the determination of the boundary on the continental shelf. There is no dispute between the Parties on this particular aspect of the delimitation.

(c) The Island of Heligoland is of no significance to the present dispute, since it exercises no material influence, if indeed any influence at all, on the equidistance line.

CHAPTER 2

THE ATTITUDE OF THE KINGDOM OF THE NETHERLANDS IN RESPECT OF THE CONTINENTAL SHELF

10. Not only does the Netherlands border on the North Sea, but a considerable part of her territory has even, in the course of time, been reclaimed from the sea. The history of the "Low Countries by the Sea" has been marked by constant and multifarious contacts with the sea. On the one hand, there is the incessant struggle to reclaim land, to protect it against the water and to prevent salt water from causing salinization of the soil. A few figures will illustrate the relative position of land and water in the Netherlands:

	acres
total area of the Netherlands (1967)	10,090,000
total water area (water surfaces more than 6 m. in width)	1,840,000
total land area	8,250,000
land subject to flooding if there were no sea or river dykes	4,200,000
land lost since the 13th century	1,400,000
land reclaimed since the 13th century (up till 1900)	1,280,000
land reclaimed since 1900 (up till 1967)	300,000

On the other hand, there are the unrelenting efforts to make the sea and its resources serve the national economy—through shipping, fishing, etc.—so that this country, which, after such miniature States as Monaco and Vatican City, is the most densely populated country in the world, may provide its population with the necessary means of subsistence, which are not to be found in its own soil and subsoil.

The foregoing may explain the considerable interest in such matters as the structure of the seabed and subsoil of the North Sea, which the Netherlands has had from earliest times and must needs have in the future if she is to continue to exist. Sedimentological investigations in the North Sea were begun in 1933 with the assistance and financial backing of the Netherlands Ministry of "Waterstaat". On government instructions gravimetric research in the North Sea was conducted for the first time in 1938 from a Netherlands submarine by Professor F. A. Vening Meinesz. A general gravimetric survey of the whole North Sea area was carried out from 1955 to 1957 with the assistance of the Royal Netherlands Navy.

11. Apart from one well in 1938 (which demonstrated for the first time the presence of oil in the western part of the Netherlands), Netherlands and foreign oil companies have drilled some 30 deep boreholes with a total drilled footage of 185,875 feet, on Netherlands territory, namely in a strip along the North Sea coast and in the Wadden Islands. In 1956 the *Nederlandse Aardolie Maatschappij* (N.A.M.) started detailed gravity measurements in the North Sea, outside territorial waters. Since 1959 the N.A.M. has been exploring with the seismic method in the North Sea throughout the area which, on the basis of the equidistance principle, constitutes the Netherlands part of the continental shelf; since 1960, these activities have been especially concentrated on the northern part and up to the median lines which separate the Netherlands part from the German and Danish parts of the shelf. The above-mentioned exploration has continued to date.

In 1961 the first well was drilled in the North Sea. The operation was carried out by the N.A.M. in the Netherlands territorial sea off Kijkduin. It should be noted that, besides other borings in territorial waters, the N.A.M. in 1962 made three borings on the continental shelf, representing a total drilled footage of 23,302 feet.

Particularly after the discovery in 1959 of the "Slochteren" natural gas field in the province of Groningen, expectations grew that the continental shelf in the North Sea might contain this mineral in commercial quantities. In anticipation of the entry into force of Netherlands legislation concerning the continental shelf (see *infra*, para. 15), requests from various companies for permission to conduct seismic operations have been granted. In addition to two licences granted to the N.A.M., in virtue of which the said Netherlands company has been able to carry out the above-mentioned exploration activities since 1959, a total of 24 licences have been granted during the period from August 1962 to 1966 to about 19 companies or groups of companies representing mainly foreign interests (American, Belgian, British, French, German and Italian), which have thus been given the opportunity to prepare for drilling activities on the Netherlands part of the continental shelf. The licences in question cover all of that part of the continental shelf which comes under the jurisdiction of the Netherlands on the basis of the equidistance principle.

After the Netherlands legislation in respect of the continental shelf had come into effect in early 1967, reconnaissance licences were granted on the basis of the new Act on seven occasions. The licences went to three American, one Netherlands and one French applicants.

Under the said legislation 20 applicants, representing 63 companies, submitted applications for prospecting licences on 15 November 1967.

12. In October 1957 the Netherlands Government, in a letter addressed to the Secretary-General of the United Nations, commented on the draft articles of the Law of the Sea, drawn up by the International Law Commission at its eighth session (1956). The following passage from the Netherlands comments may be cited here:

> "*Continental Shelf*
> Article 72
>
> As in the case of the boundaries of the territorial sea . . . the Netherlands Government supports the principles embodied in article 72 with regard to the delimitation of the continental shelf. The Netherlands Government would like to emphasize the necessity of an internationally accepted rule for these delimitations, together with adequate safeguards for impartial adjudication in the case of disputes, as it will not be sufficient simply to express the hope that the States concerned will reach agreement on this matter."

13. During the Geneva Conference on the Law of the Sea in 1958, the Netherlands delegation voted in favour of, *inter alia*, Article 6 (Art. 72 of the draft) of the Convention on the Continental Shelf.

14. The Convention on the Continental Shelf was ratified by the Kingdom of the Netherlands on 18 February 1966 without any reservation. Seeing that certain other States had for their part made reservations, the Government of the Kingdom deemed it necessary to comment on some of those reservations. In this connection mention should be made of the Venezuelan and French reservations to Article 6, the contents of which are reproduced in Annex 3 of this Counter-Memorial. The Netherlands Government declared, when depositing their instrument of ratification, *inter alia*:

"... that they do not find acceptable ... the reservations made by the Government of the *French Republic* to Articles ... 6, paragraphs 1 and 2.

The Government of the Kingdom of the Netherlands reserve all rights regarding the reservations in respect of Article 6 made by the Government of *Venezuela* when ratifying the present Convention" (full text in Annex 3 III).

It should here be stated that, contrary to the supposition expressed in the last sentence of paragraph 55 of the Memorial (p. 58, *supra*), under general international law the declaration cited, like other declarations rejecting a reservation made to an international convention, does indeed have legal effect. Firstly, the declaration has an incontestable effect upon the conventional relation between the party that formulated the reservation and the party that objected to it. Secondly, the declaration deprives the reservation of the effect which an express or implied acceptance of the reservation otherwise could have upon the interpretation of the conventional provision affected by it.

15. In paragraphs 10 and 15, the Memorial of the Federal Republic correctly mentions the Netherlands "Continental Shelf Mining Act" (Act of 23 September 1965 regulating the exploration for and the production of minerals in or on the part of the continental shelf situated under the North Sea) as the first Netherlands legislative measure pertaining to the exercise of sovereign rights over the continental shelf. However, this Act did not "claim" any rights, as is stated in paragraph 10 of the said Memorial, but simply enacted regulations for the realization of the sovereign rights already vested in the Kingdom under international law.

Nor is paragraph 15 of the Memorial entirely correct without further explanation. It is true that the Continental Shelf Mining Act does not define the boundaries of the Netherlands part of the shelf, but it defines the Netherlands shelf as follows in Article 1, paragraph 1:

"For the purposes of the provisions laid down in or pursuant to this Act, the following expressions shall have the meanings hereby respectively assigned to them:

'continental shelf' means that part of the seabed and the subsoil thereof situated under the North Sea in respect of which the Kingdom has sovereign rights in accordance with, *inter alia*, the Convention on the Continental Shelf concluded at Geneva on 29 April, 1958 (Netherlands Treaty Series 1959, No. 126) and which lies seawards of the line determined in pursuance of para. 2." (Translation.)

(The dividing line determined under para. 2 approximately coincides with the outer limits of the territorial sea.)

Moreover, when this Act was in the preparatory stage, a map of the North Sea showing the boundaries of the Netherlands continental shelf (see fig. 1) was submitted to the States General on 19 February 1965 and reproduced in the Parliamentary Documents (1964/65-7670, nr. 7). Apart from some additions it is this same map, showing the same outer-limits of the Netherlands continental shelf, that was reproduced later in the Bulletin of Acts, Orders and Decrees, together with the Royal Decree (not a Government Resolution) of 27 January 1967 referred to in the Memorial (see fig. 2).

16. In the absence of special circumstances the Netherlands Government, when preparing or taking measures relating to the continental shelf under the North Sea, has been able to bound the area of application of these measures

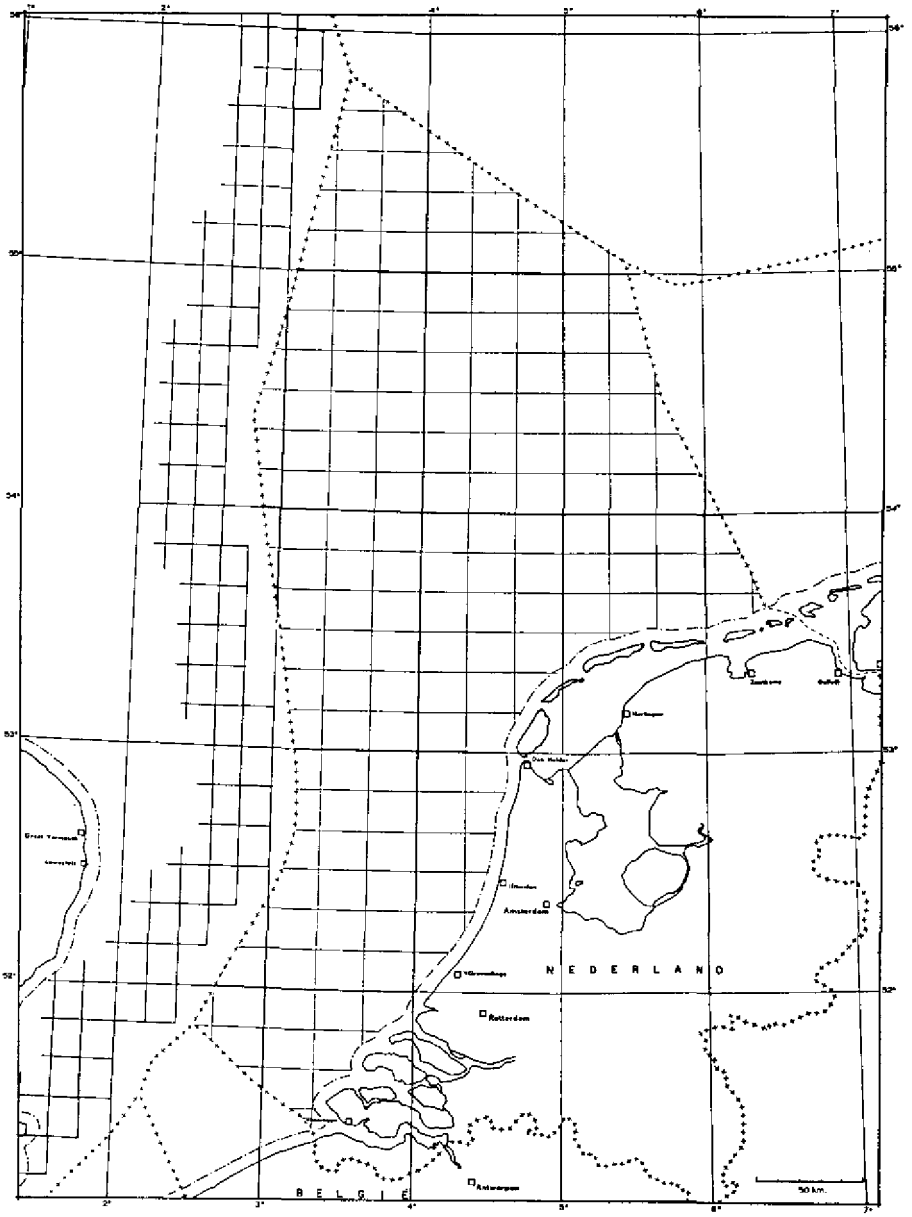

Figure 1 (February 1965)

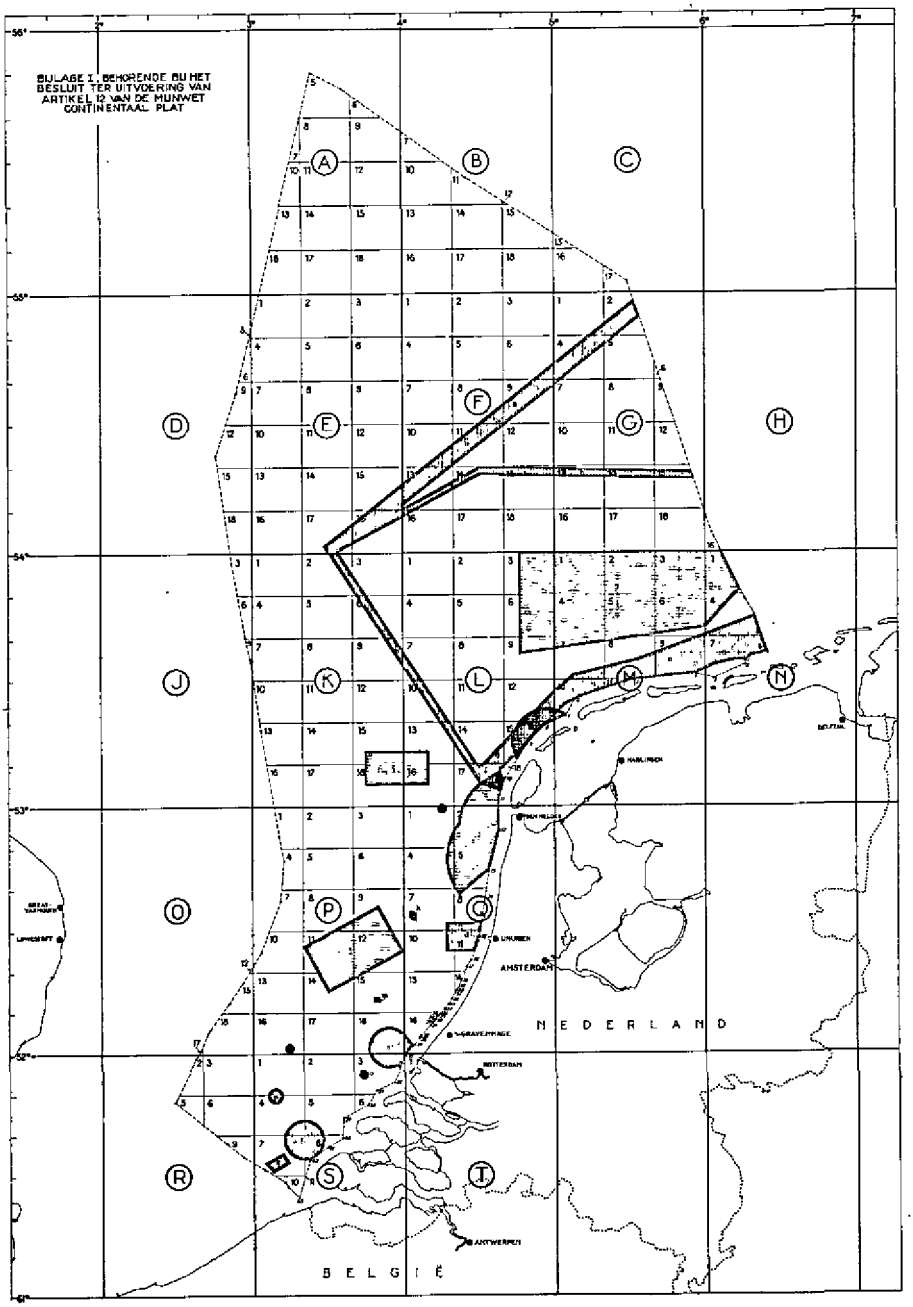

Figure 2 (January 1967)

by the lines which, drawn on the basis of the principle of equidistance, form the delimitation in space of the sovereign rights which the Kingdom, by virtue of international law, has over that shelf. As already stated in this Chapter, the Netherlands Government has adopted that basis in particular when granting licences (see *supra*, para. 11) and when preparing the Bill, submitted to the States General in June 1964, that was later to become the Continental Shelf Mining Act (see *supra*, para. 15).

At one place, however, a special circumstance does in fact prevail that, in the opinion of the Netherlands Government, affects the position of the boundary line dividing the continental shelf: at the place where the Ems, flowing into the North Sea, forms the boundary between the territory of the Kingdom and that of the Federal Republic, there is, for historical and other reasons, no agreed boundary line between the two States. This circumstance has an effect on the starting-point of the line that constitutes the eastern boundary of the Netherlands part of the continental shelf. This special circumstance, which will be reverted to in Chapter 4 of this Part (see *infra*, para. 29), prompted the Netherlands Government to make known its standpoint on the said starting-point to the German Federal Government in a Note Verbale on 21 June 1963. The text of the Note Verbale is reproduced in Annex 2 to the Memorial of the Federal Republic. The English translation, embodied in Annex 2 A to the Memorial (p. 97, *supra*), is not entirely correct, namely where the words "Hoheitsrechte zur Geltung bringt" have been translated as "(it) *claims* sovereign rights". The Netherlands Government did not *claim* sovereign rights; its statement concerned the part of the continental shelf where it *exercises* the sovereign rights enjoyed in virtue of international law. A corrected translation of the Netherlands Note Verbale is attached to this Counter-Memorial as Annex 8 (p. 378, *infra*).

17. However, also at places where no special circumstances entail a departure from the principle of equidistance, there are advantages to be had in establishing the boundary line in agreements with the other States whose rights over the continental shelf adjoin, territorially, those of the Kingdom. Article 6 of the Geneva Convention of 1958 (Counter-Memorial, Annex 1, p. 377, *infra*) intimates that the establishment of boundaries by agreement is to be preferred; furthermore, it is desirable to avoid uncertainty as regards the exact course of the boundary and to prevent the course of the boundary from being subject to automatic displacements should natural or artificial changes be made in the baselines that determine the equidistance line. The Netherlands Government has, therefore, shown itself prepared to collaborate in the realization of agreements with each of the other States whose part of the continental shelf adjoins the Netherlands part. These endeavours have had the following results:

(a) With the Federal Republic of *Germany*, a partial delimitation: Treaty concerning the lateral delimitation of the continental shelf near the coast, concluded at Bonn on *1 December 1964*. (Text and translation in Memorial, Annexes 3 and 3A, pp. 98-101, *supra*.) For the significance of this Treaty and the negotiations which led up to its conclusion, reference should be made to paragraphs 28, 29 and 30 below.

(b) With the United Kingdom of *Great Britain and Northern Ireland*: Agreement relating to the delimitation of the continental shelf under the North Sea between the two countries, concluded at London on *6 October 1965*. (Text in Memorial, Annex 9, pp. 116-120, *supra*.) The dividing line agreed upon is based on the principle of equidistance.

(c) With the Kingdom of *Belgium*, negotiations were conducted during 1965.

These led, in the first instance, to a statement by the Belgian Government, in which it affirmed:

"the concurrence of opinion between the two countries on the principle of equidistance and the practical application thereof" (translation),

and in which it further declared that it had no objections to the point of intersection of the dividing lines between the Belgian, Netherlands and British parts of the continental shelf, as calculated on the basis of the principle of equidistance by the Netherlands and the British Government. The statement in question is contained in a Note dated *15 September 1965* from the Belgian Embassy at The Hague, the text and translation of which are appended to the Counter-Memorial as Annexes 13 and 13A (pp. 385-387, *infra*).

The negotiations with Belgium also resulted, at *the end of 1965*, in agreement, in principle, as to the exact course of the dividing line between the two parts of the continental shelf. This lateral delimitation is based on the principle of equidistance. For reasons connected with Belgian domestic legislation, as has already appeared from the above-mentioned Note of 15 September 1965, the conclusion of this Agreement has so far been deferred [1].

(d) With the Kingdom of *Denmark*: Agreement concerning the delimitation of the continental shelf under the North Sea between the two countries, concluded at The Hague on *31 March 1966*. (Text and translation in Memorial, Annexes 14 and 14 A, pp. 133-138, *supra*.) The dividing line agreed upon is based upon the principle of equidistance.

18. The Netherlands Government, in its domestic legislation as well as in its agreements with other States, takes into account the possibility of the presence of single geological structures extending across the dividing line between parts of the continental shelf under the North Sea. Article 11 of the Continental Shelf Mining Act mentioned in paragraph 15 above provides in subparagraph 2 *(b)*:

"2. To a production licence for a mineral may also be attached the conditions that, if in making use of that licence or a prospecting licence the holder has proved the presence of that mineral in an economically producible quantity, the holder shall:

(a) ...

(b) if that mineral is present in a deposit which, in the opinion of Our Minister, extends beyond the boundary of the relevant part of the continental shelf, render the co-operation requested by Our Minister in concluding an agreement between the holder and the party entitled to produce that mineral in an adjoining area, under which agreement production shall be effected in joint consultation." (Translation.)

On the same subject an Agreement was concluded with the United Kingdom of Great Britain and Northern Ireland on 6 October 1965. This Agreement gives rules for cases in which the part of a geological structure or field which is situated on one side of the dividing line proves to be exploitable from the other side of the line. The English text of the Agreement is appended to this Counter-Memorial as Annex 12.

[1] In the meantime, on 23 October 1967, a Bill has been submitted to the Belgian Parliament. The Bill and Exposé des Motifs, which illustrate once again that the Belgian Government bases itself upon the principle of equidistance, are reproduced in Annex 14.

CHAPTER 3

THE ATTITUDE OF THE FEDERAL REPUBLIC OF GERMANY IN RESPECT OF THE CONTINENTAL SHELF

19. At the 1958 Geneva Conference the Federal Republic of Germany submitted a memorandum to the Fourth Committee (the Continental Shelf Committee) advocating free utilization for everyone of the natural resources of the continental shelf, reserving only certain controlling rights to the coastal State closest to the installations in question.

20. The Federal Republic's proposal received no support, however, from the other States participating in the Conference, the preponderant view being that an exclusive right to the natural resources of the shelf was vested in the coastal State.

21. The position of the Federal Republic at the various votes taken during the Conference presents the following picture:

(a) at the vote taken in the Fourth Committee (the Continental Shelf Committee) on Article 6 (at that time Art. 72) the Federal Republic voted in favour thereof (*United Nations Conference on the Law of the Sea*, Vol. VI, p. 98).

After the vote the representative of the Federal Republic said: "that, in view of the inexact nature of the outer limit of the continental shelf as defined by Article 67, his delegation would have preferred the adoption of the Venezuelan amendment [1]. When that amendment was rejected, the delegation of the Federal Republic of Germany had accepted the views of the majority of the Committee, subject to an interpretation of the words 'special circumstances' as meaning that any exceptional delimitation of territorial waters would affect the delimitation of the continental shelf" (*ibid.*, para. 38).

(b) At the ninth plenary meeting on 22 April 1958, Article 6 (at that time still Art. 72) was adopted. The Federal Republic of Germany did not vote against the Article and it seems reasonable to assume that she was not among those abstaining.

(c) At the eighteenth plenary meeting on 26 April 1958 the Convention as a whole was adopted. The Federal Republic of Germany voted against for reasons not connected with Article 6, a matter that will be further dealt with below (see *infra*, para. 73) (*United Nations Conference on the Law of the Sea*, Vol. II, p. 57).

Having thus voted against the adoption of the Convention on the Continental Shelf, the Federal Republic of Germany nevertheless signed the Convention

[1] Under this amendment Article 6 would read as follows:

"1. Where a continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them or by other means recognized in international law.

"2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined in the manner prescribed in paragraph 1 of this Article."

on 30 October 1958—which was the last day but one on which it was open for signature—making a reservation only in respect of Article 5 on fishing rights.

22. When replying to the Netherlands Note Verbale of 21 June 1963 (see *supra*, para. 16), the German Federal Government confirmed its intention to ratify the Geneva Convention on the Continental Shelf. As the reply of the German Federal Government, contained in a Note Verbale dated 26 August 1963, has not been reproduced in the Memorial of the Federal Republic, the text and a translation of that reply are annexed to the present Counter-Memorial (Annex 9). The significant passage in this connection reads:

> "The Ministry of Foreign Affairs (at Bonn) has the honour also to inform the Netherlands Embassy that the Federal Government, too, is preparing for the ratification of the Convention on the Continental Shelf." (Translation; words between brackets added.)

23. About the turn of the year 1963-1964, it was reported in the press that an American oil company had announced its plans to carry out drillings off the German territorial sea. It would have been no more than a natural reaction on the part of the Federal Republic of Germany to take adequate measures to protect its national interests, and this, apparently, was what prompted it to issue the Government Proclamation of 20 January 1964.

24. Only fragments of the text of this Proclamation appear in the German Memorial. In view of the relevance of this document, the full text has been reproduced as Annex 10.

As will be seen, the Government of the Federal Republic of Germany states in this Proclamation:

(1) that "the Federal Government will shortly submit to the Legislature an Accession Bill on this Convention" with a view to German ratification;
(2) that it deems exploration and exploitation of the seabed and subsoil to be the sovereign right of the Federal Republic, and that this right is based on "the development of general international law as expressed in recent State practice and, in particular, in the signing of the Geneva Convention on the Continental Shelf".

25. No accession bill was, however, presented to the Legislature by the Federal Government. On 15 May 1964 a Bill was submitted with a view only to establishing a statute relating to the activity in the German shelf area.

But, in the motivation to the Bill (Annex 11), the Federal Government stated that the statute was to be "the municipal supplement to the effects of the Proclamation in the field of international law". It will further be seen from the text that once again the Federal Government of Germany acknowledges the Geneva Convention as an expression of customary international law.

26. The Parliament ("Bundestag") of the Federal Republic of Germany responded favourably to the Government Bill, adopting it unanimously at the third reading on 24 June 1964. In its report as well as in its recommendation, the Parliamentary Committee concerned advocated an early German ratification of the Geneva Convention, and this recommendation was endorsed by Parliament.

27. Why, then, was the ratification of the Convention never carried out by the Federal Republic of Germany? The Government announced it in its Note Verbale to the Netherlands Government and advocated it in its Proclamation, and Parliament recommended it. But the Federal Republic never proceeded

to ratification and when the Netherlands-German and the Danish-German agreements on delimitation of the continental shelf in the North Sea near the coast were placed before Parliament in December 1964 and October 1965 respectively, no reference whatsoever was made to ratifying the Geneva Convention.

CHAPTER 4

THE NEGOTIATIONS BETWEEN THE PARTIES TO THE DISPUTE RELATING TO THE DELIMITATION OF THE CONTINENTAL SHELF BENEATH THE NORTH SEA

Section A. Bilateral Negotiations

28. To the Netherlands Note Verbale of 21 June 1963, mentioned at the end of Chapter 2 (see *supra*, para. 16), the Government of the Federal Republic of Germany replied in a Note Verbale dated 26 August 1963, claiming that—

> "sowohl historische Gründe als auch weitere besondere Umstände eine in mehrfacher Hinsicht von der Auffassung der Königlich Niederländischen Regierung abweichende Grenzziehung rechtfertigen".
>
> (Translation: "there are historical reasons and other special circumstances that justify adoption of a delimitation line, the position of which differs in more than one respect from that claimed by the Royal Netherlands Government.") (Full text and translation in Annexes 9 and 9 A to this Counter-Memorial.)

29. In this connection mention should be made of the special situation which exists in the Mouth of the Ems in respect of the boundary—in the *internal and territorial waters*—between the Kingdom of the Netherlands and the Federal Republic of Germany. The course of the international frontier in this area has been disputed for centuries. On 8 April 1960 the two States concluded the Ems-Dollard Treaty [1] the purpose of which was to eliminate all questions that existed or might arise on account of the absence of an agreed frontier. Article 46, paragraph 1, of this Treaty provides:

> "The provisions of this Treaty shall not affect the question of the international frontier in the Ems Estuary. Each Contracting Party reserves its legal position in this respect." (Translation by the United Nations Secretariat.)

When it appeared that the subsoil of the Ems Estuary might contain mineral resources, the two States concluded on 14 May 1962 a Supplementary Agreement in order to provide for the regulation of this question too, again without fixing the course of the international frontier. The text and a translation of the Supplementary Agreement are reproduced as Annexes 16 and 16 A of the Memorial of the German Federal Government.

This special situation in the Ems Estuary and its particular effect upon the delimitation of the parts of the adjacent continental shelf appertaining to the one and the other State, are clearly demonstrated by the chart reproduced on page 100, *supra*, of the Memorial. The shading on the southern part of the chart indicates the area where, failing an agreed frontier, conventional rules on co-operation between the Parties are applicable.

As there is no agreed frontier between the Parties in this area, there is in consequence no agreed point of intersection of such a frontier with the outer limits of the territorial sea, i.e., no starting point for the delimitation of the parts of the continental shelf appertaining to the one and the other State.

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[1] Text printed in *United Nations Treaty Series*, Vol. 509.

30. Following the exchange of the Notes Verbales of 21 June and 26 August 1963, bilateral discussions took place between representatives of the Kingdom of the Netherlands and representatives of the Federal Republic of Germany on 3 and 4 March 1964. During these discussions it emerged for the first time that the Federal Republic of Germany not only disagreed with the Kingdom of the Netherlands in respect of the point on the outer limit of the territorial waters from which the boundary line on the continental shelf should be drawn *(punctum a quo)* but also in respect of the method of determining that boundary line.

In the course of the same discussions, the representatives of the Kingdom of the Netherlands declared with regard to the method of determining the boundary line that, since Article 6 of the Geneva Convention was to be regarded as an expression of existing rules of international law, they were not in a position to negotiate a contractual arrangement determining a boundary line which would not be based on the equidistance principle. Accordingly, further discussions and, later on, negotiations were conducted on the subject of the *punctum a quo* and these eventually resulted in the initialling, on 4 August 1964, of the text of the Treaty concerning the lateral delimitation of the continental shelf near the coast [1]. As stated in the Joint Minutes of that date [2], this Treaty was based on Article 6 of the Geneva Convention on the Continental Shelf and took into account the "special circumstances" prevailing in the Mouth of the Ems. As stated in the Memorial, paragraph 16 (p. 21, *supra*), the partial boundary line agreed upon does in fact follow between the last three seaward points the equidistance line and deviates from the equidistance line only as regards the points nearer to the coast-line where the disputed frontier in the territorial sea comes into question.

Section B. Tripartite Negotiations

31. Only after these bilateral talks and the conclusion of the bilateral Treaty of 1 December 1964, did tripartite talks take place, at the instigation of the Federal Republic of Germany, between representatives of Denmark, of the Federal Republic and of the Netherlands. The first round took place on 28 February 1966 in The Hague. Second and third rounds of tripartite talks were held in Bonn and Copenhagen in May and August 1966 respectively. Since the Netherlands delegation stated at the beginning of these talks that its legal standpoint was still the same as that recorded at the end of the bilateral discussions (Joint Minutes of 4 August 1964 [2]), the negotiations were concerned with finding a method for the settling of the dispute. They resulted eventually in the initialling, on 1 August 1966 in Copenhagen, of the two bilateral Special Agreements and the tripartite Protocol, which were, after signature, transmitted to the Court in February 1967.

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[1] Treaty signed on 1 December 1964; Annexes 3 and 3 A of the Memorial, pp. 98-101, *supra*.

[2] Annexes 4 and 4 A of the Memorial, pp. 102-104, *supra*.

PART II. THE LAW

CHAPTER 1

THE QUESTION SUBMITTED TO THE COURT

32. The question which, under the terms of the Compromis (the "Special Agreement" of 2 February 1967), the Court is called upon to decide is:

> "what principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary determined by the (Netherlands-German) Convention of 1 December 1964".

The Federal Republic, in its Submissions and in Part II of the Memorial, asks the Court in effect to declare that the only applicable principle or rule of law is an alleged principle that each coastal State is entitled to a just and equitable share; and that neither the equidistance method nor any other method is a fit and proper method of delimitation in any circumstances, unless it is established by agreement, arbitration or otherwise that the particular method will "achieve a just and equitable *apportionment* among the States concerned".

33. The claim thus formulated by the Federal Republic seems to the Netherlands Government to be nothing less than a request to the Court to lay down that, as between the Netherlands and the Federal Republic, the delimitation of the continental shelf in the North Sea should be settled *ex aequo et bono*. Without a framework of legal criteria to determine what is "just and equitable", the concept of a "just and equitable apportionment" lacks any legal content. Indeed, as the very terms of the Compromis show, it was precisely in order to obtain the Court's directions regarding the applicable framework of legal criteria that the Netherlands and the Federal Republic have submitted the dispute to the Court. Accordingly, the claim formulated by the Federal Republic appears to the Netherlands Government not to fall within the terms of the question put to the Court in the Compromis.

34. In any event, the thesis put forward by the Federal Republic reflects a concept of the coastal State's rights in the continental shelf which has no basis either in the terms of the Compromis or in the applicable rules of international law.

35. The Compromis does not request the Court to decide what principles and rules of international law should govern the *sharing out* between the Netherlands and the Federal Republic of areas of the continental shelf in the North Sea. It requests the Court to decide the principles and rules applicable to the *delimitation as between the Netherlands and the Federal Republic of the areas of the continental shelf in the North Sea which appertain to each of them beyond the partial boundary already fixed by the 1964 Treaty*. In short, the question put to the Court in the Compromis concerns the principles and rules applicable for completing the *delimitation* of the *boundary* running between the areas of continental shelf which *appertain* to each of two adjacent coastal States.

36. The manner in which the question for the Court's decision is framed in the Compromis also corresponds to the way in which the question of delimitation presents itself in State practice, in the proposals of the International Law

Commission and in the provisions of the Geneva Convention of 1958 on the Continental Shelf.

37. All the pre-1958 texts of Proclamations or Decrees given in paragraph 31 (p. 31, *supra*) of the Memorial view the question as one of *boundary delimitation* in accordance with equitable principles. The proposals of the International Law Commission in both paragraphs of Article 72 of the draft submitted by it to the General Assembly were also framed entirely as rules for *delimiting the boundaries of the areas of continental shelf appertaining to coastal States* (*Yearbook of the International Law Commission*, 1956, Vol. II, p. 300). Article 6 of the Geneva Convention on the Continental Shelf, which reproduces the Commission's texts almost word for word, is similarly couched entirely in terms of the delimitation of continental shelf boundaries. Thus, the text of Article 6 reads:

> "1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, *the boundary of the continental shelf appertaining to such States* shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, *the boundary is the median line*, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
>
> 2. Where the same continental shelf is adjacent to the territories of two adjacent States, *the boundary of the continental shelf* shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, *the boundary shall be determined by application of the principle of equidistance* from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
>
> 3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land." (Italics added).

38. The same is true of the State practice after the 1958 Geneva Conference, and especially that relating to the North Sea itself, as clearly appears from the terms of the unilateral acts and bilateral agreements cited in Chapter II of Part I of the Memorial. Thus, the Norwegian Proclamation and Decree, of 1963, speak of Norway's submarine areas having a *boundary* midway between Norway and other countries. The Danish Decree and Note Verbale, both also of 1963, echoing the language of the Convention, speak in terms of *boundary delimitation*. The Federal Republic's own Proclamation of 20 January 1964 (Counter-Memorial, Annex 10) speaks of the *delimitation* of the German part of the continental shelf in relation to the parts of the continental shelf of foreign States. The United Kingdom's Continental Shelf (Designation of Areas) Order of the same year refers to certain areas as subject to the exercise of its continental shelf rights "pending agreement with other Powers on the *boundaries of the continental shelf appertaining to the United Kingdom*". As to Belgium, its Bill of 23 October 1967 speaks in Article 2 of the *delimitation* of the Belgian continental shelf (Counter-Memorial, Annex 14, p. 388, below).

Lastly the Netherlands, in its Note Verbale of 21 June 1963 (Counter-Memorial, Annex 8), notified the Federal Republic that *the part of the continental shelf of the North Sea over which the Netherlands exercises sovereign rights* in conformity with the Convention—

"*is delimited* to the east by the equidistance line beginning at the point where the thalweg in the mouth of the Ems reaches the territorial waters". (Italics added.)

39. Particularly striking is the fact that all the bilateral agreements hitherto concluded between North Sea Powers are expressed as *delimitations of boundaries* between the parts of the continental shelf appertaining to the respective countries, not as agreements for *sharing out* the continental shelf. Thus, the *United Kingdom-Norway Agreement* of 10 March 1965 (Memorial, Annex 5) has a preamble which proclaims that the two States—

"Desiring to establish the *boundary between the respective parts of the continental shelf*

Have agreed as follows." (Italics added.)

And then the operative clause of Article 1 of the Agreement reads—

"The *dividing line* between *that part of the continental shelf which appertains to the United Kingdom* of Great Britain and Northern Ireland and *that part which appertains to the Kingdom of Norway* shall be based . . .", etc. (Italics added.)

The same forms of preamble and operative clause appear also in the *Netherlands-United Kingdom Agreement* of 6 October 1965 (Memorial, Annex 9). Similarly, the *Denmark-United Kingdom Agreement* of 3 March 1966 (Memorial, Annex 12) has a preamble in the terms that the two States—

"Have decided to establish their common boundary between the parts of the continental shelf over which the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark respectively exercise sovereign rights for the purpose of the exploration and exploitation of the natural resources of the continental shelf."

And the operative clause of Article 1 of the Agreement then takes the same form as in the United Kingdom-Norway and the Netherlands-United Kingdom Agreements. The *Denmark-Norway Agreement* of 8 December 1965 (Memorial, Annex 11 A) has a preamble and operative clause which, if the wording is slightly different, are inspired by precisely the same concept of the purpose and effect of the Agreement.

40. The Treaties of the Federal Republic itself with the Netherlands of 1 December 1964 (Memorial, Annex 3 A) and with Denmark of 9 June 1965 (Memorial, Annex 6 A) for the delimitation of the continental shelf near the coast are equally expressed in terms of the partial delimitation of the *boundary of the continental shelf adjacent to the territories of the States concerned.* Moreover, even the Joint Minutes and the Protocol (Memorial, Annexes 4 A and 7 A) accompanying those Treaties and reserving the position of the Parties with regard to the further course of the boundary recognized that the question at issue was the determination of the *common boundary* between the respective Parties. True, the delegation of the Federal Republic in the Joint Minutes accompanying the Treaty with the Netherlands announced that the Federal Government was—

"seeking to bring about a conference of States adjacent to the North Sea with a view to arriving at an appropriate division of the continental shelf situated in the middle of the North Sea".

But it referred to a division in accordance with the first sentences of paragraphs 1 and 2 of Article 6 of the Geneva Convention which speak expressly of the determination of the *boundary* of the continental shelf appertaining to the States concerned. Nor did the Federal Government pursue the idea of a conference. On the contrary, in identic Aide-Mémoires of 25 May 1966 (Memorial,

Annex 15 A) addressed simultaneously to the Netherlands and Danish Governments concerning their Agreement for the delimitation of their respective parts of the North Sea, the Federal Republic contented itself with underlining that the arrangement made in that Agreement—

> "cannot have any effect on the question of the *delimitation* of the German-Netherlands or the German-Danish parts of the continental shelf in the North Sea" (italics added).

Furthermore, in its two identic Aide-Mémoires of 12 July 1966, addressed by the Embassy of the Federal Republic to the United Kingdom Government with reference to the conclusion of the United Kingdom-Netherlands and the United Kingdom-Denmark Agreements for the delimitation of the continental shelf, the Federal Government reserved its position expressly in terms of the delimitation of its boundaries with the Netherlands and Denmark (Memorial, Annexes 10 A and 13 A):

> "the Federal Government wishes to point out to the British Government that *the final settlement of the question of the lateral delimitation of the continental shelf* in the North Sea between the Federal Republic of Germany, the Kingdom of Denmark and the Kingdom of the Netherlands is still outstanding. The Federal Government would moreover bring the Aide-mémoire of 25th May 1966, a copy of which is attached, to the attention of the British Government and would add that the arrangement made in the aforementioned Agreement cannot prejudice *the question of the delimitation of the continental shelf between the Federal Republic of Germany and the Netherlands (Denmark)* in the eastern part of the North Sea" (italics added).

41. Lastly, it is noteworthy that in the Protocol of 9 June 1965 on the delimitation of the continental shelf in the Baltic Sea the Federal Republic together with Denmark again dealt with the question purely and simply as one of the *delimitation of boundaries*, not of the *sharing out* of areas between the littoral States of that sea (Memorial, Annex 7 A):

> "With respect to the continental shelf adjacent to the coasts of the Baltic Sea which are opposite each other, it is agreed that the *boundary* shall be the median line. Accordingly, both Contracting Parties declare that they will raise no basic objections to the other Contracting Party's *delimiting its part of the continental shelf* of the Baltic Sea on the basis of the median line." (Italics added.)

42. Accordingly, the practice of States—in their unilateral acts, their bilateral agreements and in the Geneva Convention on the Continental Shelf—affords no support whatever for the conclusion which the Federal Republic seeks to draw from it in paragraph 38 of its Memorial (p. 36, *supra*):

> "Where the same continental shelf is adjacent to the territories of several States, each of these States is entitled to a *just and equitable share of that continental shelf, irrespective of the method used for the determination of the boundaries between the States concerned.*"

On the contrary, that conclusion is in direct contradiction both with the existing practice of a large number of States and with the rules adopted in the Geneva Convention on the Continental Shelf.

43. Nor is the Federal Republic's thesis made any more compatible with State practice or with the Geneva Convention by framing it in the truncated form in which it appears in the Federal Government's first Submission (p. 91, *supra*):

> "The delimitation of the continental shelf between the Parties in the North Sea is governed by the principle that each coastal State is entitled to a just and equitable *share*." (Italics added.)

This proposition starts from the inadmissible basis of *sharing out the continental shelf like a cake* instead of from the basis of determining, as between opposite or adjacent States, what are the boundaries of the areas of continental shelf appurtenant to the coasts of each State and delimiting the boundary accordingly. When the Federal Republic states in paragraph 30 of the Memorial (p. 30, *supra*) that—

> "if, by virtue of their geographic position, two or more coastal States can claim that a continental shelf 'appertains' to each of them, the necessity arises of apportioning that common continental shelf between them"

this is a manifest misrepresentation of the legal situation under positive international law. In the first place, this statement confuses the *geological* concept of the continental shelf with the entirely different *legal* concept of sovereign rights of a State over the continental shelf. There are, perhaps, reasons for considering a continental shelf as a "unit" from the *geological* point of view. There is, however, no more reason to regard that geological unit as a *legal* entity than there is to consider the "continent of Europe" or the "low countries" as such. From the legal point of view the continental shelf, like land, sea and air, is primarily "space" wherein activities take place and objects are found, and space is *a priori* susceptible to any limitation or division. Secondly, the mere fact that two or more States each lay a claim (or even "*can*" lay a claim) to the same space does not make that space *common* space to be divided between them. Indeed the normal legal situation in respect of, for instance, a disputed territory is not that the territory is divided but that the better claim prevails. Nor have any of the other North Sea States sought to treat the continental shelf beneath that sea as legally a unity. On the contrary, every single one of them—with the exception of the Federal Republic of Germany—has demonstrably regarded its claim as limited to that part of the continental shelf every point of which is nearer to its coast than to that of any other State.

Equally, the reference in paragraph 35 of the Memorial to the use of the waters of international rivers is entirely beside the point. The régime for the utilization of the waters of international rivers is a quite different question which does not concern the delimitation of boundaries.

44. No doubt, when the determination of the boundaries of the areas of continental shelf appertaining to each coastal State has been made, the result may be spoken of as constituting an "apportionment" of the continental shelf among the States concerned or as a determination of their "shares". But there is a fundamental difference between a principle which starts from the basis that the continental shelf is the common property of the littoral States, each of whom is entitled to an "equitable and just *share*" of the common property, and one which starts from the basis that each littoral State is entitled to the areas which appertain to its territory and that the *boundaries between these appurtenant areas* are to be delimited on equitable principles. If these two principles may not always have been clearly distinguished by some writers, there can be no doubt that it is the latter principle which is found in State practice and expressed in the Geneva Convention, not the principle formulated in the Federal Government's first Submission.

45. Furthermore, the Federal Republic's submission that the delimitation of the continental shelf in the North Sea as between the Netherlands and the Federal Republic should be governed by the principle that each coastal

State is entitled to a just and equitable share, is one which by its very nature cannot give an adequate answer to the question put to the Court in the Compromis. In the first place, a delimitation of the boundary as between the Netherlands and the Federal Republic would not *by itself* determine the *total* area appertaining to either or both of them, since the total area of each would be dependent upon their other boundary lines with third States not parties to the present dispute. In the second place, and consequently, the question whether such a delimitation would produce a "just and equitable share" for the Netherlands and the Federal Republic *would necessarily also be dependent on the delimitation of their boundaries with third States*. Thus, the alleged principle formulated by the Federal Republic simply cannot constitute a principle or rule of international law applicable to the delimitation of the continental shelf boundary *as between the Parties to the Compromis*.

46. If there were such a principle or rule of positive international law, it would follow logically that the delimitation of the continental shelf of each and every North Sea coastal State could be effected only through a *multilateral* agreement concluded between all of them. The Federal Republic did, indeed, at one stage in the negotiations speak of an intention to convene a multilateral "conference of States adjacent to the North Sea with a view to arriving at an appropriate division of the continental shelf situated in the middle of the North Sea" (Joint Minutes of 4 August 1964, Memorial, Annex 4 A, penultimate paragraph). But it made no effort to carry the matter further. No doubt, this was because the Federal Government soon came to realize that not only the Netherlands but all the States concerned would automatically demand the application of Article 6 of the Geneva Convention and that the only result of such a conference must be the delimitation of the North Sea continental shelf in accordance with the equidistance principle. At any rate, it never adverted to the idea of a multilateral conference again.

47. Now, however, the Federal Government shifts its ground and demands that the boundary between the Netherlands and itself should be determined bilaterally in isolation from the other North Sea States but in such a way as to provide the Federal Republic *with a share of the total continental shelf beneath the North Sea* that it considers "just and equitable". In short, the Federal Republic now seeks to put the burden of providing for itself what it considers a just and equitable share of the North Sea shelf not on all, but on one or at most two of the North Sea States. The very nature of this demand, in the view of the Netherlands, is incompatible with the existence of the supposed principle which the Federal Republic invokes.

48. On this point, there is a certain consistency in the position taken up by the Federal Republic. Prior to the Geneva Convention it advocated that the continental shelf outside territorial waters should be regarded as common to all States and should be exploited in the interests of all. That concept of the continental shelf was, however, in total conflict with the practice of States and was completely and finally rejected at the Geneva Conference of 1958. The principle formulated in the Federal Republic's first Submission seems to be essentially a relic of that very "community" concept of the continental shelf which the Federal Government has itself now abandoned. Be that as it may, the principle is certainly in conflict with the practice of States and with the concept of the continental shelf which was adopted in the Geneva Convention and animates the provisions of Article 6 concerning the delimitation of boundaries of the continental shelf.

49. If it is necessary to look for the general concept underlying the modern

law regarding the delimitation of continental shelf boundaries, this is that each State has *ipso jure* sovereign and *exclusive* rights of exploration and exploitation over the areas of continental shelf *adjacent* to its coast and that, in the case of two States fronting upon the same continental shelf, the areas which are to be considered as appertaining to one or to the other are to be delimited on equitable principles. However, State practice and the Geneva Convention have translated this general concept into the more concrete criteria for the delimitation of continental shelf boundaries which are examined in the next Chapters of this Counter-Memorial. In the view of the Netherlands Government, it is in these more concrete criteria that the answer to the question put to the Court in the Compromis has to be found.

CHAPTER 2

THE PRINCIPLE THAT A DELIMITATION OF A MARITIME AREA IN ACCORDANCE WITH GENERALLY RECOGNIZED RULES OF INTERNATIONAL LAW IS PRIMA FACIE VALID AND OPPOSABLE TO OTHER STATES

50. The Federal Republic, as pointed out in the previous Chapter, asks the Court in its submissions to recognize only one alleged principle of law as governing the delimitation of the continental shelf between the Parties in the North Sea, namely the principle that "each coastal State is entitled to a just and equitable share". By way of clearing the ground for its alleged principle of law, however, the Federal Republic also asks the Court expressly to deny the status of a rule of customary law to the "equidistance" principle—the principle applied by the Netherlands and Denmark as well as by other North Sea States in the delimitation of their respective continental shelf boundaries. The Federal Republic's second Submission reads:

> "The method of determining boundaries of the continental shelf in such a way that every point of the boundary is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured (equidistance method), is not a rule of customary international law and is therefore not applicable as such between the Parties [1]."

This Submission has to be read in the light of the Federal Republic's discussion of the equidistance line in Chapter II of Part II of the Memorial where, after dealing with the genesis of the equidistance method and its introduction into Article 6 of the Geneva Convention on the Continental Shelf, the Federal Government asserts:

> "Thus Article 6 is not a codification of already existing international law, but it is the outcome of an effort to develop the existing legal situation, with its demand for an equitable solution, by the establishment of a method which it was assumed would, under normal geographical conditions, lead to an equitable and just apportionment of the continental shelf between the States concerned. Article 6 must be interpreted in this sense, *with the consequence that an equidistance boundary may not be imposed upon a State which has not acceded to the Convention*, so long as it has not been proved that it would be the best method of apportioning the continental shelf between the adjacent States in a just and equitable manner, having regard to the special geographical situation of the individual case [2]." (Italics added.)

51. The Federal Government's contentions regarding the status of the equidistance method are believed by the Netherlands to be based on a misconception no less fundamental than that which underlies its first Submission. In the present instance the fundamental misconception concerns the position of the Parties in relation to the principles and rules of law expressed in the Geneva Convention.

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[1] P. 91, *supra*, of the Memorial.
[2] Para. 53 (p. 57, *supra*) of the Memorial.

52. The Court itself, in its judgment in the *Fisheries* case (*I.C.J. Reports 1951*, p. 116) has stated authoritatively the position of a coastal State with regard to the delimitation of sea areas (at p. 132):

> "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that *the act of delimitation is necessarily a unilateral act*, because only the coastal State is competent to undertake it, *the validity of the delimitation with regard to other States depends upon international law*." (Italics added.)

The Court did not in that passage say that the validity of a delimitation by a coastal State vis-à-vis another State depends on the *will of that other State*. It said that the validity of the delimitation with regard to other States *depends upon international law*.

53. The situation in the present case is that, exercising the competence which they have under their respective systems of municipal law, the Netherlands and Danish Governments, by unilateral acts and by bilateral agreements concluded both between themselves and separately with other North Sea coastal States, have delimited the boundaries of the areas which they believe properly to appertain to their respective coasts under the principles and rules of delimitation generally recognized by States. In doing so they have sought to base their delimitations directly on the principles and rules adopted by a very large number of States at the Geneva Conference of 1958 and embodied in Article 6 of the Geneva Convention on the Continental Shelf. In short, the Netherlands and Denmark having delimited their continental shelf boundaries specifically on the basis of generally recognized principles and rules of law, these delimitations are prima facie not contrary to international law and are valid with regard to other States. Accordingly, if the Federal Republic considers that the delimitations are invalid, the onus is on it to show why the Netherlands or Denmark should not be entitled to apply the generally recognized principles and rules of delimitation in delimiting their respective continental shelf boundaries. In the present case it is not a question of the Netherlands or Denmark seeking to impose a principle or rule upon the Federal Republic; it is rather a question of the Federal Republic's seeking to prevent the Netherlands and Denmark from applying in the delimitation of their continental shelf boundaries the principles and rules of international law generally recognized by States. Neither the Netherlands nor Denmark has entered into any international engagement or otherwise placed itself under any international obligation vis-à-vis the Federal Republic which might preclude either State from delimiting its maritime areas in accordance with the generally recognized principles and rules of international law.

CHAPTER 3

THE STATUS OF THE PRINCIPLES EMBODIED IN ARTICLE 6 OF THE CONVENTION ON THE CONTINENTAL SHELF AS GENERAL RULES OF LAW

54. The Federal Republic's principal contention in Chapters I and II of Part II of the Memorial appears to be that, as between the Parties to the present case, delimitation on the basis of equidistance is not to be regarded as a principle of law but merely as one of several possible methods of delimitation which may come under consideration in aiming at an "equitable and just apportionment". This contention, which seeks to deprive the "equidistance" principle of all legal force for the purposes of the present case, conflicts with the general recognition of the equidistance principle as a legal rule by States as well as with the attitude adopted towards that principle by the Federal Republic itself otherwise than in the case of the particular boundaries now in dispute before the Court.

55. In the State practice prior to the Geneva Conference of 1958 the tendency admittedly was to refer in general terms to the delimitation of continental shelf boundaries on "equitable principles" without mention of the "equidistance" principle in particular. But the concept of a delimitation on "equitable principles", as already mentioned in Chapter I of this Part, was afterwards converted first through the work of the International Law Commission and then through the Geneva Conference of 1958 into the rules set out in Article 6 of the Geneva Convention on the Continental Shelf, which accept the equidistance principle as a rule of law. In addition, as is shown in Section C of this Chapter (pp. 340, *et seq.*, *infra*), the equidistance principle adopted in Article 6 of the Geneva Convention as applicable to the delimitation of the continental shelf was a principle which had already received wide recognition in the practice of States in connection with the delimitation of other forms of both maritime and fresh-water boundaries. Moreover, since then no less than 37 States have ratified or acceded to the Geneva Convention and a number of States have already applied the rules contained in Article 6 in their practice. Finally, the Federal Republic itself, although not yet a party, has not only placed its signature on the Convention but has also employed the equidistance principle in delimiting its continental shelf boundaries with the Netherlands and with Denmark near the coast and again in delimiting its continental shelf boundary with Denmark in the Baltic.

Section A. The International Law Commission

56. When the International Law Commission first took up the question of delimitation in 1950 it is true that, as indicated in paragraph 48 of the Memorial, the discussions showed "a great deal of uncertainty regarding the way to solve the problem of delimitation and regarding any rules which might be applied". But the suggestion which also seems to be made in that paragraph that the Commission viewed the matter as a question of *apportioning a common* area of continental shelf is quite untrue. The question put by the Special Rapporteur to the Commission was (*Yearbook*, 1950, Vol. II, p. 31): "Where the continental shelves—or contiguous zones, as the case may be—overlap,

how should they be *delimited*?" This question, the record shows, had not yet been gone into very deeply by members of the Commission, and the discussion was of a preliminary character. Indeed, the State practice up to that date was not regarded by the Commission as sufficiently consistent to establish any customary rule as already in existence with respect to the continental shelf, and its whole discussion of the nature and extent of the rights of a coastal State over the continental shelf was still somewhat tentative and exploratory. It is therefore scarcely surprising that the Commission should not at that session have had any very clear ideas about the criteria for delimiting continental shelf boundaries; or that some members, such as Amado and Hudson, should have doubted whether there was any general principle applicable and should have simply fallen back upon "arbitration" or "agreement".

57. In 1951 the Commission reverted to the problem. The Special Rapporteur now proposed that delimitation of continental shelf boundaries should in the first place be left to the agreement of the parties but that:

> "Faute d'accord, la démarcation entre les plateaux continentaux de deux Etats voisins sera constituée par la prolongation de la ligne séparant les eaux territoriales et la démarcation entre les plateaux continentaux de deux Etats séparés par la mer sera constituée par la ligne médiane entre les deux côtes." (*Yearbook*, 1951, Vol. II, at p. 102.)

The discussion that followed was again somewhat confused: various suggestions were made and it is true that again no majority was obtained for any general principle of delimitation to determine continental shelf boundaries between "*adjacent*" States. The principle mainly discussed was that of "prolonging" the territorial sea boundary. But members of the Commission doubted whether any general principle had yet been established for delimiting the boundary between the territorial waters of adjacent States. Indeed, in discussing this problem at its 1950 and 1951 sessions the Commission was in the difficulty that it had not yet begun its study of the territorial sea. As a result, in its 1951 Report the Commission could do no more than advocate that the continental shelf boundary between "adjacent" States should be established by "agreement" and, failing agreement, by compulsory recourse to arbitration *ex aequo et bono*. On the other hand, in that same report the Commission did express itself in favour of the "equidistance" principle—in its median line form—for "*opposite*" States whose territories are separated by an arm of the sea. It conceded that in these cases the configuration of the coast might sometimes give rise to difficulties in drawing a median line and recommended that such difficulties should be referred to arbitration. But it recognized that the boundary "would generally coincide with some median line between the two coasts".

58. The 1953 session of the Commission was a turning-point in the development of the law regarding the delimitation of continental shelf boundaries. In commenting upon the Commission's 1951 Report, numerous governments—and particularly those of some of the smaller States—had raised strong objections to the proposal that disputes concerning the delimitation of continental shelf boundaries should be settled *ex aequo et bono*; and these governments had urged the Commission to formulate rules of law as a basis for the settlement of disputes regarding the delimitation of continental shelf boundaries. (*Yearbook*, 1953, Vol. II, pp. 241-269.) In addition, at the wish of the Commission, a Committee of experts had been convened by the Special Rapporteur shortly before the 1953 session to consider technical questions connected with the delimitation of the territorial sea. This Committee had presented a report

endorsing the use of the "median line" in the case of "opposite" States and recommending that the lateral boundary between the territorial seas of adjacent States should be traced according to the "principle of equidistance".

Furthermore, in doing so, the Committee had stressed the importance of finding "a formula for drawing the international boundaries in the territorial waters of States which could also be used for the delimitation of the respective continental shelves of two States bordering the same continental shelf [1]". True, the experts had conceded that the equidistance method might not *always* give an equitable result, and that in such a case a solution by negotiation might be necessary. But this had not deterred them from coming down firmly in favour of the equidistance principle as the generally applicable rule for the continental shelf as well as for the territorial sea.

59. Accordingly, at the 1953 session the Special Rapporteur submitted a new draft article (Art. 7 of his draft) providing that:

(1) in the case of opposite States, the boundary should be "the median line every point of which is equidistant from the two opposite coasts";
(2) in the case of adjacent States, the boundary "should be drawn according to the principle of equidistance from the respective coast-lines";
(3) disputes regarding the application of these principles should be submitted to arbitration.

Paragraph 3 was eliminated from this article by reason of the inclusion of a general provision for arbitration applying to all the articles. As to paragraphs 1 and 2, their essential principle—an equidistance boundary—was accepted by the Commission. But these paragraphs were amended so as: (1) to make the application of the equidistance principle subject to any agreement concluded between the States concerned; (2) to allow for cases where "special circumstances" justify another boundary; and (3) to define more precisely the "coast" from which the equidistance line should be measured by substituting "the baselines from which the width of the territorial sea of each country is measured".

60. The Federal Republic in paragraph 32 of the Memorial seeks to interpret the proceedings of the Commission as showing that the equidistance method was suggested by the Rapporteur and accepted by the Commission as a *subsidiary* rule; and also that the Commission regarded the question essentially as one of equitable *apportionment* rather than of determining boundaries. Indeed, in paragraph 50 it gives the impression that the Commission's acceptance of the equidistance principle at the 1953 session was very half-hearted. These interpretations of the Commission's attitude are, however, in plain contradiction with the Commission's own explanations of its views in paragraphs 81-85 of its Report to the General Assembly (*Yearbook*, 1953, Vol. II, p. 216).

61. The Commission's commentary begins as follows:

> "*In the matter of the delimitation of the boundaries of the continental shelf* the Commission was in the position to derive some guidance from proposals made by the committee of experts on the delimitation of territorial waters. . ." (Italics added.)

And throughout the remaining paragraphs the Commentary speaks, not of apportionment, but of the delimitation of boundaries. Then, in paragraph 82, the Commission expressly designates the "principle of equidistance" as the "*general* rule" and as the "*major principle*":

> "Having regard to the conclusions of the committee of experts referred

[1] Annex 7 of this Counter-Memorial, *Remark*, see p. 377, *infra*.

> to above, the Commission now felt in the position to formulate a *general rule*, based on the principle of equidistance, applicable to the boundaries of the continental shelf both of adjacent States and of States whose coasts are opposite to each other. The rule thus proposed is subject to such *modifications* as may be agreed upon by the parties. Moreover, while in the case of both kinds of boundaries *the rule of equidistance is the general rule*, it is subject to *modification* in cases in which another boundary line is justified by *special* circumstances. As in the case of the boundaries of coastal waters, provision must be made for departures *necessitated* by any *exceptional* configuration of the coast, as well as the presence of islands or of navigable channels. To that extent the rule adopted partakes of some *elasticity*. In view of the general arbitration clause . . . no special provision was considered necessary for submitting any resulting disputes to arbitration. Such arbitration, while expected to take into account the *special* circumstances calling for *modification* of the *major principle* of equidistance, is not contemplated as arbitration *ex aequo et bono*. That *major principle must constitute the basis of the arbitration, conceived as settlement on the basis of law*, subject to reasonable *modifications* necessitated by the *special* circumstances of the case." (Italics added.)

In the light of that paragraph in the Commission's Report, it seems to the Netherlands quite misleading to suggest that it accepted the "equidistance principle" either half-heartedly or merely as a purely "subsidiary" rule.

62. When the Commission adopted the equidistance principle in 1953 for the continental shelf it had still not begun its study of the régime of the territorial sea. However, like the committee of experts, it recognized that the delimitation of the territorial sea and the continental shelf should be governed by the same principles. Paragraph 83 of the Commission's 1953 Report thus records:

> "Without prejudice to the element of elasticity implied in article 7, the Commission was of the opinion that, where the same continental shelf is contiguous to the territories of two adjacent States, the delimitation of the continental shelf between them should be carried out in accordance with the same principles as govern the delimitation of the territorial waters between the two States in question."

Conformably with this opinion, when the Commission did come to deal with the régime of the territorial sea at its 1954 and 1955 sessions, it adopted the equidistance principle as the general rule both for opposite and for "adjacent" States. As in the case of the continental shelf, it made the application of the principle subject to any agreement reached between the States concerned and made allowance for "special circumstances". But both for "opposite" and "adjacent" States the general rule which it proposed was a boundary determined by application of the principle of equidistance from the respective baselines of the States concerned. In doing so, it recalled the opinion of the Committee of Experts and underlined that it was following the same method of delimitation for the territorial sea as for the continental shelf. (See Arts. 15 and 16 of the Commission's draft articles for 1954 on the Régime of the Territorial Sea, *Yearbook*, 1954, Vol. II, pp. 157-158, reproduced without material change as Arts. 14 and 15 of its 1955 draft, *Yearbook*, 1955, Vol. II, p. 38.)

63. At its 1956 session the Commission completed its work on the law of the sea, re-examining the texts of all its articles. In the meantime a number of governments had submitted comments on the Commission's drafts. Neither in the case of the territorial sea nor of the continental shelf did any of these

governments oppose the adoption of the equidistance principle as the general rule for delimiting the boundary both as between opposite States and as between adjacent States, should they not agree upon the boundary. Only three States made comments on the delimitation proposals, and one of these, Yugoslavia, did so for the purpose of advocating the strengthening of the equidistance rule by omitting the words "in the absence of agreement between those States, or unless another boundary line is justified by special circumstances" (*Yearbook*, 1956, Vol. II, p. 100). Norway's comment sought only to call attention to the problem of delimiting the boundary of the territorial sea in cases where the States concerned claim territorial seas of different breadths. Having declared her support for the "median line" principle, she suggested that the problem might be solved by formulating the rule for the territorial sea negatively: "in the absence of special agreement, no State is entitled to extend the boundary of its territorial sea beyond the median line" (*ibid.*, p. 69). This suggestion, although not followed up by the Commission, in fact formed the basis of the solution afterwards arrived at by the Geneva Conference (see *infra*, para. 117).

64. The third State, the United Kingdom, had no criticism to make of the Commission's proposals for the delimitation of the territorial sea and continental shelf boundaries in the case of *adjacent* States. Its comments were directed at the rules proposed for "opposite" States in Articles 14 and 7 of the Commission's draft, which provided that, in the absence of agreement and unless another boundary is justified by special circumstances, "*the boundary is the median line every point of which is equidistant* . . .", etc. In substance, the United Kingdom proposed that instead of stating "the boundary is the median line" the texts should read: "the boundary . . . *is usually determined*, unless another boundary line is justified by special circumstances, *by the application of the principle of the median line every point of which is equidistant* . . .", etc. This proposal it explained as follows (*Yearbook*, 1956, Vol. II, pp. 85 and 87):

> "The application of an exact median line, which is a matter of considerable technical complexity, would in many instances be open to the objections that the geographical configuration of the coast made it inequitable, and that the base-lines (i.e., the low-water mark of the coast) were liable to physical change in course of time.
>
> In the experience of the United Kingdom Government, the most satisfactory course will usually be to apply *the principle of the median line*: that is an approximate or simplified median line based as closely as circumstances allow on an exact median line and drawn on a specific chart of a specific date." (Italics in the original.)

After a brief discussion, the Commission concluded that the existing wording of the text already met the situation sufficiently on this point.

65. In its final revision the Commission slightly modified the wording of the provisions concerning the territorial sea and continental shelf boundaries of "opposite" States so as to specify that, in the first instance, they should be determined by agreement. But after weighing the comment of Governments it reaffirmed, without any hesitation and almost without discussion, its support for the principle of equidistance as the *general* rule of delimitation in the absence of agreement both in the case of "opposite States" and in that of "adjacent States".

66. Throughout the period during which the codification and progressive development of the law of the sea was under consideration by the International Law Commission the whole doctrine of the coastal State's rights over the

continental shelf was still in course of formation. The unilateral claims which had been made by individual States varied in their nature and extent; and many coastal States, including all the Parties to the present dispute, had not yet promulgated any claim. The work of the Commission both helped to consolidate the doctrine in international law and to clarify its content. This it did no less in regard to the delimitation of boundaries between States on the continental shelf than it did in regard to the nature and extent of the legal rights of coastal States over the continental shelf. The provisions drafted by the Commission regarding the delimitation of boundaries were part and parcel of its consolidation and clarification of the continental shelf doctrine.

Thus, just as the work of the Commission and the contribution to that work made by governments were important factors in developing a consensus as to the acceptability of the doctrine and its nature and extent, so also were they important factors in developing a consensus as to the acceptability of the equidistance principle as the general rule for the delimitation of continental shelf boundaries.

67. The Netherlands Government participated in the work of the International Law Commission by commenting upon the Commission's proposals as and when requested by the Secretary-General. On the question of delimitation the Netherlands Government, in particular, expressed its support for the principle embodied in Article 6, as has been noted in paragraph 12 (p. 312, *supra*) above.

68. The Federal Republic was not among the States invited to comment upon the Commission's proposals and did not, therefore, participate in any way in its work. On the other hand, the proceedings of the International Law Commission were published by the United Nations and the Federal Republic can hardly have failed to know of them and to follow the growth of the consensus among States regarding both the continental shelf and the equidistance principle.

Section B. The 1958 Geneva Conference on the Law of the Sea

69. At the Geneva Conference of 1958 the International Law Commission's draft articles formed the basis of the work of the Conference. In the Fourth Committee, the Committee concerned with the continental shelf, the main focus of interest was the nature and extent of the rights to be attributed to coastal States. On this question the Federal Republic submitted a memorandum opposing "the whole conception" of the rules proposed by the Commission and advocating a system which would preserve the character of the continental shelf as part of the high seas (*Official Records*, Vol. VI, pp. 1, 71 and 125). This memorandum attracted very little notice at the Conference, which concentrated its attention on the proposals of the Commission. Apparently recognizing that it was swimming against an overwhelming current, the Federal Republic participated fully in the discussion of the Commission's draft articles.

70. If the main focus of interest at the Conference was the nature and extent of the coastal State's rights, there was also, as paragraph 52 of the Memorial indicates, some discussion and revision of the text of Article 72 of the Commission's draft concerning the delimitation of continental shelf boundaries. The Federal Republic in that paragraph summarizes the proceedings at the Conference as follows (p. 56, *supra*):

> "Some attempts were made to replace the flexible system contained in Article 72 by more rigid rules. But all amendments proposed in this direc-

tion met with overwhelming opposition both in the Fourth (Continental Shelf) Committee (8-9 April 1958) and in the Plenary Session (22 April 1958), and were rejected.

The proposal of the Yugoslav delegate, that the equidistance method should be declared determinant, without reservations, for the apportionment of the continental shelf, was rejected by the Plenary Session of the Conference by 45 votes to 5 (with 11 abstentions). A very large majority of the States was not prepared to make the equidistance method a solely applicable rule. Rather did the Conference recognize very clearly that *the equidistance method was suitable for the drawing of boundaries only under certain circumstances.*" (Italics added.)

This summary, if in large measure true, gives a somewhat misleading impression as to the outcome of the debate. If a Yugoslav proposal to delete the reference to special circumstances and to leave the equidistance principle standing alone was rejected by the Conference, so also was a Venezuelan proposal to delete the reference to the equidistance principle and to leave the whole matter to the agreement of the States concerned. What the Conference in fact did was to endorse the text proposed by the International Law Commission, subject only to minor revisions. Under this text, in the absence of an agreement, *the equidistance principle is laid down as the general rule* unless another boundary line is justified by special circumstances.

71. The Federal Republic, it is interesting to note, ultimately voted with the majority and in favour of the Commission's text, as revised in discussion (*Official Records*, Vol. VI, p. 98). In an "explanation of vote" the delegate of the Federal Republic stated:

"in view of *the inexact nature of the outer limit of the continental shelf as defined by Article 67*, his delegation would have preferred the adoption of the Venezuelan amendment. When that amendment was rejected, the delegation of the Federal Republic of Germany had accepted the views of the majority of the Committee, subject to an interpretation of the words 'special circumstances' as meaning that *any exceptional delimitation of territorial waters* would affect the delimitation of the continental shelf[1]." (Italics added.)

This "explanation of vote" is illuminating in two respects. First, the Federal Republic's delegation voted for the Venezuelan amendment not because of any doubts as to the merits of the equidistance principle but *because of the inexact definition of the outer limit of the continental shelf* which had been adopted by the Conference. Secondly, the delegation's *caveat* as to its understanding of the words "special circumstances" related only to any "*exceptional delimitation of territorial waters*". That *caveat* made no reference at all to any implications to be drawn from the lengths of coastlines or to any special considerations affecting the "apportioning" of "common areas".

72. No particular significance can be attached to the fact, underlined in paragraph 52 of the Memorial, that the Yugoslav proposal to make the equidistance principle the sole rule was rejected in the Plenary Meeting of the Conference by 47 votes to 5 (with 11 abstentions). The provisions proposed by the Commission and contained in Article 6 of the Convention do not, however, make the equidistance principle the sole criterion. They make it the *general*

[1] See also note on p. 318, *supra*, above.

rule unless another boundary is justified by special circumstances. More significance is, therefore, to be attached to the fact that in that Plenary Meeting the text (Art. 72) containing these provisions was finally adopted by 63 votes to none with only 2 abstentions (*Official Records*, Vol. II, p. 15).

73. It is true that, when at the eighteenth Plenary Meeting the Conference voted upon the adoption of the Convention as a whole, the Federal Republic cast its vote against the text of the Convention; for the Convention was adopted by 57 votes to 3 with 8 abstentions, and one of the three negative votes was that of the Federal Republic. But each of the three States rejecting the Convention explained its vote and it does not seem that any of them was motivated by opposition to Article 6. Japan said that she had voted against the Convention because no reservations were admitted to Articles 67 and 68 (now Arts. 1 and 2) and because Article 74 (compulsory arbitration) had been rejected by the Conference. Belgium and the Federal Republic explained that they had voted against the Convention because they objected to the criterion of exploitability in Article 67 (now Art. 1) and equally could not support the Convention without Article 74. Thus, at the final vote not a single voice was raised against Article 6. Moreover, if for other reasons the Federal Republic did on 26 April 1958 cast its vote against the Convention, its rejection of the Convention was short-lived because on 30 October of the same year it put its signature to the text.

74. In paragraph 52 of the Memorial, however, emphasis is also given by the Federal Republic to the fact that Article 12, paragraph 1, of the Convention allows any State to make reservations to all the Articles of the Convention other than Articles 1-3, and so permits reservations to Article 6. This shows, says the Federal Republic, that "the substance of Article 6 was neither regarded as part of customary international law nor accorded any sort of fundamental significance". The conclusion thus drawn by the Federal Republic from the reservations clause in Article 12 seems much too sweeping for the following reasons.

75. A wide freedom to formulate reservations is normally permitted in general multilateral treaties, and that even in the case of codifying conventions largely concerned with the reformulation of the existing law. But this is only for the purpose of facilitating the maximum number of acceptances of the Convention by allowing States having special problems to make reservations, provided that these are compatible with the object and purpose of the Convention. Accordingly, a freedom to make reservations is perfectly consistent with the acceptance of the provisions of the Conventions as stating the generally recognized rules of international law applicable in the matters in question. Neither the Convention on the Territorial Sea and Contiguous Zone nor the Convention on the High Seas has any clause prohibiting or restricting the making of reservations, and a number of reservations have in fact been made to each Convention. Yet no one could deny the fundamental significance of many of the provisions of these Conventions or the essential character of many of their other provisions. The same observations may be made with reference to the Vienna Convention on Diplomatic Relations.

76. A reservations clause is introduced primarily when for particular reasons it is desired to prohibit altogether reservations to specific provisions of the Convention. That this was the case with regard to Article 12 of the Continental Shelf Convention is clear from the record of the ninth Plenary Meeting of the Geneva Conference. Reservations to Articles 1-3 were excluded because some

States considered that reservations to these Articles would really deprive the doctrine of the continental shelf of most of its meaning and destroy the very basis of the Convention (*Official Records*, Vol. II, pp. 16-18). But the fact that reservations to Articles 4-7 were not excluded by the Conference in no way implies that these Articles were not considered to be an integral and important part of the Convention. The records of the Conference and of the proceedings of the International Law Commission themselves suffice to contradict any such implication.

77. Furthermore, as appears from paragraphs below, none of the States which have become a party to the Convention—already 37 in number—has formulated a reservation questioning the validity of the rules set out in Article 6. A few States have made declarations of their understandings regarding the application of "special circumstances" in their own cases. But there is nothing in the practice of States since the Geneva Conference to support the idea that Article 6 has not been generally accepted as an integral and important part of the Convention.

Section C. The Provisions of Article 6 Are in Harmony with State Practice in the Delimitation of Other Maritime and Fresh-Water Boundaries

78. The equidistance principle, proposed by the Committee of Experts and the International Law Commission and adopted by the Geneva Conference, was far from being a novelty invented by the Committee of Experts in 1953. In paragraph 41 of the Memorial (p. 38, *supra*) the Federal Republic indeed admits that the "equidistance principle" in its median line form has long been known in international law:

> "*Median lines* as sea, lake or river boundaries have existed for a long time past. In most cases—leaving out of account irregularities in the geographical configuration of the coasts opposite each other and provided no islands lie between them—they effectuate a just and equitable apportionment of the waters between the two States concerned."

It is true that later, in paragraph 46 (p. 50, *supra*), the Federal Republic seems rather less generous when it asserts that—

> "the *occasional* division of rivers, lakes, or inland seas between two States lying opposite each other by median lines is no proof of a general recognition of the so-called principle of equidistance also for other geographical situations than those of opposite coasts" (italics added).

But an examination of the relevant State practice amply justifies the Federal Republic's first statement that "median lines as sea, lake or river boundaries have existed for a long time past", and shows that the use of median line boundaries has been much more than occasional.

79. In this connection the Court is asked to refer to Annex 15 which, without attempting to be exhaustive, sets out a very considerable number of cases in which the equidistance principle, chiefly in its median line form, has been employed in the delimitation of sea, lake or river boundaries. The list of cases is impressive enough even if "thalweg" boundaries are left out of account. But in many cases, as the *Dictionnaire de la Terminologie du Droit International* points out (p. 602), the term Thalweg is used in treaties as denoting the median line of the navigable channel or, where the river is not navigable, simply the median line of the river.

80. As to the Federal Government's contention in paragraph 46 that any practice in regard to the use of median lines as boundaries between "*opposite*" States would be no proof of a general recognition of the principle of equidistance also for other geographical situations, this does not seem to be to the point. It is not here a question of establishing the "equidistance principle" as a principle universally binding in boundary delimitation and, as such, binding on the Parties to the present dispute. Between 1945 and 1958 a new doctrine developed in international law vesting new rights in coastal States over the continental shelf adjacent to their coasts. The question here is of the general recognition, as part of the development of this doctrine, of the rule that, in the absence of agreement, inter-State boundaries on the continental shelf are to be delimited by application of the principle of equidistance unless another boundary is justified by special circumstances. In the view of the Netherlands the relevance of the practice set out in Annex 15 is this: it shows that the rules, proposed by the Committee of Experts and the International Law Commission and adopted by the general body of States at the Geneva Conference, *were rules which were in harmony with the existing practice of States in the delimitation of boundaries*. This fact—that the rules set out in Article 6 of the Geneva Convention on the Continental Shelf are not in conflict, but in clear harmony, with existing principles of boundary delimitation—cannot fail to reinforce and consolidate the character of those rules as generally recognized rules of international law.

81. The Federal Republic, however, makes a special point of the novelty of *lateral* equidistance boundaries. Contrasting these in paragraph 41*(b)* with median lines between opposite coasts, it states (p. 38, *supra*):

> "*Lateral equidistance boundaries* are, in contrast, a novel method of drawing water boundaries; they had not been put to the test before the Geneva Conference on the Law of the Sea of 1958."

Reverting to the question in paragraph 46, the Federal Republic states (p. 50, *supra*):

> "Only relatively recently has the equidistance line been adopted as a technique for the drawing of maritime boundaries . . . The drawing of a maritime boundary between two coasts lying opposite each other is, by the very nature of the circumstances, different from drawing of a *lateral* boundary between two neighbouring States into the open sea. For the drawing of *lateral* boundaries the equidistance method has hardly been practised at all. If among the existing boundaries a small number of median lines are to be found which *grosso modo* correspond to an equidistance line, it does not follow therefrom that the equidistance line has been generally recognized as the principal rule for the drawing of maritime boundaries."

Both these statements seem to need considerable qualification.

82. In the first place, it may be doubted whether *lateral* equidistance boundaries are quite the complete novelty which the Federal Republic suggests. There is a substantial body of practice, as the Federal Republic itself concedes, which is of respectable antiquity and applies the equidistance principle in delimiting lake boundaries. In the nature of things, an equidistance line in a lake is a lateral, as well as median line, boundary. Certainly, at each end of the boundary where it approaches the shore an equidistance line in a lake has all the characteristics of a lateral equidistance boundary. Furthermore, although it may be true that there is little evidence in treaties or in the legislation of individual States before 1958 of lateral equidistance boundaries in sea areas, it

does not follow that the principle was not acted on in practice when occasion arose. An equidistance boundary is an expression of the concept that each State should exercise jurisdiction over the areas which are closer to its coast than to that of the other State, and States have always tended to regard propinquity as a basis for asserting their jurisdiction over maritime areas. The truth seems to be that in most cases States did not find it necessary to conclude treaties or legislate about their *lateral* sea-boundaries before the question of exploiting the mineral resources of the seabed and subsoil arose. But even in regard to treaties, it is not strictly speaking correct that lateral equidistance boundaries "had never been put to the test before the Geneva Conference on the Law of the Sea". One instance is the Agreement of 28 April 1924 between Norway and Finland, which prescribed an equidistance line as their boundary in the Varangerfjord (Annex 15, p. 388, *infra*). Another is the Treaty of Peace of 1947 concluded between the Allied and Associated Powers and Italy, which provided in Article 4 that the boundary between Italy and the Free Territory of Trieste from the shore to the high seas should be a line equidistant from the coastlines of Italy and the Free Territory; and again in Article 22 that the seaward boundary between the Free Territory and Yugoslavia should likewise be a line of equidistance. The Court may find it significant that in this major collective treaty, when it was necessary to define a sea-frontier, the equidistance principle was the solution adopted.

83. Secondly, the use of the equidistance principle in its median line form for delimiting *maritime* boundaries seems to have been more widely recognized than the Federal Republic's second statement might imply. Quite apart from the fact that a number of treaties provided expressly for a median line boundary in certain straits and channels (see Annex 15 D), the replies of governments to the questionnaire for the Hague Codification Conference, 1930, were unanimous in endorsing the median line as the boundary between overlapping territorial seas in straits. Point VII of the questionnaire asked for information concerning:

> "Conditions determining what are territorial waters within a strait connecting two areas of open seas or the open sea and an inland sea:
>
> *(a)* when the coasts belong to a single State;
>
> *(b)* when they belong to two or more States."

Nineteen States replied, of which 15 without any hesitation or qualification specified the median line as the boundary in cases under *(b)* when the territorial seas overlap; the other 4 did not deal with the point (*Proceedings of the Conference*, Vol. II, *Bases of Discussion*, pp. 55 to 59). Among the States which thus endorsed the median line were Germany, Denmark and the Netherlands. Furthermore, the draft Convention submitted to governments by the League of Nations Committee of Experts in connection with the questionnaire also provided for a median line boundary in straits; and the Rapporteur of this Committee was the distinguished German international lawyer, M. Schücking (*ibid.*, p. 193).

84. No doubt, there are elements of novelty in the provisions of Article 6 of the Geneva Convention on the Continental Shelf. Not only was the doctrine of the continental shelf itself still new in 1958, but the practice on which it was based still dealt with the problem of boundaries in entirely general terms. The provisions of Article 6 were admittedly a new element grafted on to the continental shelf doctrine at the Geneva Conference. But this element, as already pointed out, was not novel in the sense of being a new concept or one out of harmony with existing principles for the delimitation of maritime boundaries.

On the contrary, it was an expression of a principle already known and accepted in State practice in relation to maritime boundaries. That the provisions of Article 6 are not only in accord with previous practice and principle but are generally accepted today as the modern law governing continental shelf boundaries is amply confirmed by the practice of States since the Geneva Conference of 1958.

Section D. The State Practice Since the Geneva Conference of 1958

85. In paragraph 54 of the Memorial (p. 57, *supra*) the Federal Republic asserts that the equidistance principle cannot be considered as having been generally accepted as a rule of law by the international community:

> "This is excluded not only by the fact that the Convention has, up to now, been accepted only by a minority of the States (to date 37), and that reservations to Article 6 have been made by some States, but above all by the fact that state practice necessary for the development of such a customary rule is up to now still lacking."

The reasons there given by the Federal Republic for its assertion, as will be shown, are wholly unconvincing. But it is necessary first to point out that the assertion itself presents the issue incorrectly. It is not the equidistance rule pure and simple which is generally accepted by the international community as the applicable law today; it is the "equidistance rule *unless another boundary is justified by special circumstances*".

86. The argument that "the Convention has, up to now, been accepted only by the minority of the States (to date 37)" is a little surprising. The number of acceptances [1]—37 in under ten years—is decidedly impressive by any standards in the light of the past record of the dilatoriness of States in carrying out the process of acceptance. This number, moreover, exceeds by four the number of acceptances so far given to the Territorial Sea and Contiguous Zone Convention, and is only three short of the number of acceptances of the High Seas Convention, a Convention recognized to be primarily declaratory of customary law. In short, the fact that 37 States have already taken the formal steps necessary to establish definitively their acceptance of the Convention can only be regarded as very solid evidence of the general acceptance of the Geneva Convention on the Continental Shelf by the international community.

87. Nor is the evidentiary value of the 37 acceptances of the Continental Shelf Convention materially weakened by the so-called "reservations" to Article 6. Only four Governments have made observations relating to Article 6, when signing or accepting the Convention. The Iranian observation, made at the time of signature, which the Federal Republic considers to be "without interest", reads:

> "*Article 6:* With respect to the phrase 'and unless another boundary is justified by special circumstances' included in paragraphs 1 and 2 of this Article, the Iranian Government accepts this phrase on the understanding that one method of determining the boundary line in special circumstances would be that of measurement from the high-water mark."

This observation, which reflects a position already taken by Iran at the Conference, is by no means without interest; for it shows that Iran gave special attention to Article 6 and, having done so, fully accepted the "equidistance-

[1] For convenience, the word "acceptances" is here used, not as a technical term, but as covering ratifications, accessions and "notifications of succession".

special circumstances" provisions of the Article, subject only to an understanding as to a particular interpretation of "special circumstances".

88. Yugoslavia's observation, which is not mentioned in the Memorial, and which also reflects a position taken by her at the Conference, reads:

> "Subject to the following reservation in respect of Article 6 of the Convention:
>
> In delimiting its continental shelf, Yugoslavia recognizes no 'special circumstances' which should influence that delimitation."

This observation, whether it be regarded as a "reservation" or as an interpretative "declaration", certainly does nothing to weaken the authority of the Convention or of Article 6 as the generally accepted law. On the contrary, it assumes the general validity of the provisions of Article 6 and *for that reason* declares Yugoslavia's understanding as to the application of the "special circumstances" clause to her own continental shelf.

89. Venezuela, when signing the Convention, made the following observation:

> "The Republic of Venezuela declares with reference to Article 6 that there are special circumstances to be taken into account in the following areas: the Gulf of Paria in so far as the boundary is not determined by existing agreements, and in zones adjacent thereto; the area between the coast of Venezuela and the island of Aruba; and the Gulf of Venezuela."

Her instrument of ratification, however, simply said:

> "Reservation made upon ratification . . . with express reservation in respect of Article 6 of the said Convention."

This reservation is interpreted in the Memorial—no doubt correctly—not as a general rejection of Article 6 but as a reservation with respect to its application "in certain areas off the Venezuelan coast". Because of the implications of the reservation for the parts of the Kingdom of the Netherlands situated in the Caribbean Sea, the Kingdom, when ratifying the Convention, filed a formal objection to the Venezuelan reservation[1].

90. The last of the four observations containing a reference to Article 6 is the "Declaration" made by France on the occasion of her ratification of the Convention:

> "In the absence of specific agreement, the Government of the French Republic will not accept that any boundary of the continental shelf determined by application of the principle of equidistance shall be invoked against it:
>
> if such boundary is calculated from base-lines established after 29 April 1958;
>
> if it extends beyond the 200-metre isobath;
>
> if it lies in areas where, in the Government's opinion, there are special circumstances within the meaning of Article 6, paragraphs 1 and 2, that is to say, the Bay of Biscay, the Bay of Granville, and the sea areas of the Straits of Dover and of the North Sea off the French coast."

The first two of these conditions relate to special points which are of no interest in the present connection. As to the third condition, which is clearly of interest, the Federal Republic comments (p. 58, *supra*):

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[1] Annex 3 III.

"A point of particular interest in this reservation is that it is based on the view that the equidistance line, as far as it is to be applied at all, should be used as a method of apportioning submarine areas only near the Atlantic coast (to a depth of 200 metres) and should in particular not be used for the apportionment of the North Sea."

This comment appears to place much too large an interpretation on the French declaration.

91. Here also it seems clear that the declaration is not a general objection to or reservation in respect of Article 6. The declaration, by its very terms, assumes the application of the provisions of Article 6. Its object is only to state the French Government's views as to the existence of "special circumstances" in a number of areas off the French coast. The French declaration respecting Article 6, it may be added, gave rise to formal objections on the part of the Netherlands, the United Kingdom, the United States and Yugoslavia[1].

92. In short, the four observations which contain references to Article 6, so far from weakening the authority of Article 6 as an expression of the generally recognized rules of law governing continental shelf boundaries, only serve to confirm it. By invoking the exception of "special circumstances" included in Article 6, the four States concerned expressly recognized the validity, and claimed the benefits, of the provisions of that Article.

93. The Federal Republic itself, as already mentioned, voted against the adoption of the Convention at the Geneva Conference and has not since ratified or acceded to the Convention. It is, however, very far from being the case that the Federal Republic has persisted in its opposition to the Convention or to the principles which the Convention contains. On the contrary, as pointed out in Part I (para. 21 above), the Federal Republic signed the Convention on 30 October 1958, only one day before the Convention ceased to be open for signature. In other words, having reconsidered the matter and having fully studied the provisions of the Convention, the Federal Republic decided to associate itself with the Convention adopted at Geneva by attaching its signature to the text. After 30 October 1958 the Federal Republic, without any prior signature, would still have been free to become a party to the Convention by "accession": so that there can be no doubt that on that date the Federal Republic very deliberately chose to associate itself with the Convention.

Furthermore, when signing the Convention, the Federal Government evidently gave every attention to the question of the acceptability to the Federal Republic of the individual provisions of the Convention; for it did accompany its signature of the Convention with a special declaration recording its understanding of one Article. This was Article 5, with regard to which it declared that, in its opinion, paragraph 1 "guarantees the exercise of fishing rights in the waters above the continental shelf in the manner hitherto in practice" [2]. The Court may think it somewhat significant that, whereas the Federal Republic considered it necessary with respect to Article 5 to reserve its position in regard to freedom of fisheries in the high seas above the continental shelf, *it made no reservation nor any other form of declaration with respect to the provisions of Article 6 concerning the delimitation of continental shelf boundaries.*

The significance of this circumstance is reinforced by the fact that the Federal Republic did not voice any objection or misgivings in regard to Article 6 of the

[1] Annex 3 III.
[2] Annex 3 I.

Convention either in its Continental Shelf Proclamation of 20 January 1964[1] or in the "Exposé des Motifs" accompanying the Bill to give effect to the Proclamation[2]. It is further reinforced by the fact that subsequently the Federal Republic entered into no less than three treaties providing for delimitations which are in full conformity with the principles set out in Article 6 (see *infra*, paras. 97 and 99).

94. If the acceptances of the Convention by States since 1958 testify, by their number and character, to the general recognition by the international community of Article 6 as expressing the rules of international law governing continental shelf boundaries, so also does the practice of States in *applying* the Convention. In appreciating that practice it is again necessary to keep in mind—as the Federal Republic does not do in its Memorial—that the rule laid down in Article 6 is not the application of the equidistance principle pure and simple, but its application "unless another boundary is justified by special circumstances". When that point is kept in mind, it at once becomes apparent that the practice of States since 1958, with the single exception of the Federal Republic's position in the present case, gives solid support to the recognition of Article 6 as the expression of the general rules of international law governing continental shelf boundaries today.

95. In paragraph 57 of the Memorial the Federal Republic lists three precedents in which States not yet parties to the Convention have applied the principle of equidistance, making a great point of the fact that each of them was a case of "opposite coasts". The first is the *Island of Malta Act 1960*, making provision as to the exploration and exploitation of the continental shelf, which states that, in the absence of agreement, the boundary is to be—

> "the median line, namely, a line every point of which is equidistant from the nearest points of the base-lines".

Malta being a mid-Mediterranean island, the Malta Act was necessarily limited to "median lines" between "opposite" coasts. It may, however, be noted that subsequently Malta, on 21 September 1964, became a party to the Convention and thus subscribed to the provisions of Article 6 *in toto*.

96. The second example mentioned in the Memorial is the *Soviet-Finnish Agreement of May 1965* regarding the Boundaries of Sea Waters and the Continental Shelf in the Gulf of Finland, although it would appear that in fact both the Soviet Union and Finland had already become parties to the Geneva Convention before they concluded this Agreement. On this Agreement the Federal Republic comments (p. 59, *supra*):

> "This treaty, in establishing the boundary near the coast (Article 1), where it may be regarded as a lateral boundary between adjacent States, does not follow the principle of equidistance. Only on its seaward extension where it becomes a boundary between two opposite coasts, it is based on the principle of the median line which is referred to in the treaty (Articles 2 and 3)."

If it may be true that under Article 1 the inshore boundary between the two States does not in all respects follow the equidistance line, the Agreement itself supplies the explanation (Annex 15, p. 388, *infra*). That part of the boundary is governed by the provisions of the Peace Treaties of 1940 and 1947, so that Article 1 reflects a special circumstance already existing when the Agreement

[1] Annex 10.
[2] Annex 11.

of 1965 was concluded. In the areas to seaward of the Peace Treaties boundary, on the other hand, Articles 2 and 3 of the Agreement prescribe the median line. If in these areas the Soviet and Finnish coasts assume the appearance of "opposite" coasts, it is no less true that the median line boundary through these areas is a continuation of a lateral boundary dividing two "adjacent" States. Nor does the Federal Republic mention that in the recitals to the Agreement the two States make an express reference to their reliance upon the 1958 Geneva Convention on the Continental Shelf.

97. The third example mentioned in the Memorial is the *Protocol to the Treaty between Denmark and the Federal Republic of 9 June 1965*. This Protocol, after noting the existence of divergent views between the Parties concerning the principles applicable to the delimitation of the continental shelf of the North Sea, provides with regard to the Baltic (according to p. 59, *supra*, of the Memorial):

> "With respect to the continental shelf adjacent to the coasts of the Baltic Sea which are opposite each other, it is agreed that the median line shall be the boundary. Accordingly, both Contracting Parties declare that they will raise no basic objections to the other Contracting Party *delimiting its part of the continental shelf of the Baltic Sea on the basis of the median line*." (Italics added.)

Here also the sharp distinction drawn by the Federal Republic between "opposite" and "adjacent" coasts seems somewhat strained. Any delimitation by Denmark or by the Federal Republic of "its part of the continental shelf of the Baltic Sea on the basis of the median line" must at its western end merge into the lateral "equidistant" line drawn from the shore through first the territorial seas and then the continental shelves of the two countries. To make a sharp distinction at this western end between "adjacent" and "opposite" coasts and between the "lateral" and the "median" character of the equidistant line seems altogether arbitrary.

98. In paragraphs 58 and 60 the Federal Republic turns its attention to the practice, which it evidently finds somewhat embarrassing, of a number of North Sea coastal States, including itself. This practice, with which the Court will already be largely familiar, consists in the first place of five treaties in which the continental shelf boundaries between five different pairs of North Sea States are delimited purely and simply by application of the equidistance principle:

(a) United Kingdom-Norway of 10 March 1965;
(b) Netherlands-United Kingdom of 6 October 1965;
(c) Denmark-Norway of 8 December 1965;
(d) Denmark-United Kingdom of 3 March 1966;
(e) Netherlands-Denmark of 31 March 1966.

These Agreements were all separately negotiated and concluded. Moreover, Norway, who is a party to two of these Agreements, acted on the basis of the equidistance principle, although she is not herself yet a party to the Geneva Convention—a point not mentioned in the Memorial. Indeed, it may be added in passing that the Netherlands also adopted the equidistance principle in its Agreement with the United Kingdom at a time when the Netherlands had not yet ratified the Geneva Convention.

In addition, Belgium has recently adopted the equidistance principle for the delimitation of her continental shelf boundaries, although she too is not a party to the Continental Shelf Convention. On 23 October 1967 the Belgian Government introduced in the Belgian Parliament a "Projet de Loi", Article 2

of which provides that Belgium's boundary with the United Kingdom is determined by the median line and her boundaries both with France and the Netherlands by the line of equidistance (Annex 14, p. 388, *infra*). Furthermore, the "Exposé des Motifs" explaining the Bill expressly states that these provisions were adopted in conformity with Article 6, paragraphs 1 and 2, of the Geneva Convention.

99. The North Sea practice also comprises two treaties concluded by the Federal Republic itself concerning the lateral delimitation of the continental shelf near the coast:

(a) Federal Republic-Netherlands of 1 December 1964;
(b) Federal Republic-Denmark of 9 June 1965.

The Federal Republic maintains that these treaties cannot be considered precedents for the recognition of the equidistance method in the North Sea (p. 61, *supra*):

> "It is true that in the treaty between Germany and the Netherlands the boundary line, to some extent, follows in fact the equidistance line, without however referring to the equidistance method, and that the seaward terminus of the German-Danish partial boundary is equidistant from the German and the Danish coasts. These boundaries, however, had been agreed upon only because both sides were interested in a speedy determination of the boundary, and because the boundary line, even if it in fact followed the equidistant line to some extent in the vicinity of the coast, was not considered inequitable."

These explanations only serve to underline the difficulty in which the Federal Republic finds itself in regard to the North Sea practice.

100. The real point at issue is not whether the two "partial boundary" treaties may be considered as precedents for the recognition of the "equidistant method" in the North Sea, though the Netherlands thinks that they clearly are such precedents. It is whether they constitute yet further instances of the recognition of the rules contained in Article 6 of the Geneva Convention as the generally accepted law regarding the delimitation of continental shelf boundaries; and both treaties seem to fall squarely within the provisions of Article 6, paragraph 2, of the Convention. In each case the treaty takes account of the special circumstance that an inshore boundary line has already been fixed under a previous treaty between the Parties concerned. In each case, starting from the most seaward point of the already existing line, the treaty proceeds to delimit for a considerable distance out to sea a continental shelf boundary which in fact follows the equidistance line. Both treaties are therefore in perfect harmony with the "equidistance-special circumstances" rules found in Article 12 of the Territorial Sea and Contiguous Zone Convention and in Article 6 of the Continental Shelf Convention.

101. As to the value of these North Sea treaties as precedents, what difference can it make that they do not refer expressly to the "equidistance principle" if in fact they determine the boundary by application of that principle? Furthermore, if the Federal Republic did not then recognize the general character of the provisions of Article 6 of the Geneva Convention, why in the case of its Treaty with the Netherlands did it in the Joint Minutes of 4 August 1964 (Memorial, Annex 4) speak of the Treaty as constituting "an agreement in accordance with the first sentence of paragraph 2 of Article 6 of the Geneva Convention on the Continental Shelf, dated 29 April 1958"? And why did it in those same Joint Minutes underline that the boundary was being determined

"with due regard to the *special circumstances* prevailing in the mouth of the Ems", if it did not have in mind the language of Article 6, paragraph 2, of the Geneva Convention? These questions are all the more pertinent when it is recalled that both in its Continental Shelf Proclamation of 20 January 1964 and in the Exposé des Motifs of the Law giving effect to the Proclamation the Federal Republic emphasized the significance of the Geneva Convention of 1958 in the development of general international law regarding the continental shelf (Counter-Memorial, Annexes 10 and 11).

102. Again, what difference can it make that in each case both sides were "interested in a speedy determination of the boundary" if in fact, after due consideration of their interests, they determined the boundary by applying the principle of equidistance in the light of the special circumstances—the very solution contemplated by Article 6 of the Convention?

103. And what is the Court to understand by the final explanation given by the Federal Republic: "Because the boundary line, even if it in fact followed the equidistant line to some extent in the vicinity of the coast, *was not considered inequitable*"? (italics added). Presumably that the Federal Republic recognizes that a determination of the lateral boundaries of her continental shelf in the North Sea *in accordance with the principles envisaged in Article 6 of the Geneva Convention* gives a perfectly equitable result at any rate for a certain distance out to sea. If such is the meaning of the Federal Republic's explanation, it is pertinent to point out that the statement that the boundaries fixed in the two treaties in fact follow "the equidistance line to some extent *in the vicinity of the coast*" is a little misleading. In the vicinity of the coast the boundaries in fact give effect to special circumstances. For the special situation in the Ems Estuary between the Netherlands and the Federal Republic the Court may refer to paragraph 29 above. *It is in extending the line over the continental shelf of the open North Sea that these two treaties concluded by the Federal Republic determine the boundary by application of the principle of equidistance in the manner envisaged by Article 6 of the Convention.*

104. The Federal Republic, however, claims that the two "partial boundary" treaties cannot be invoked against it as precedents for the application of the principle of equidistance in the North Sea because it "stated clearly when signing that it did not recognize the equidistance method as determining the extended seaward course of the boundaries in the North Sea". It is true that in its Joint Minutes with the Netherlands of 4 August 1964 and in its Protocol with Denmark of 9 June 1965 the Federal Republic reserved its position with regard to the further—seaward—course of the boundary; and from this it may follow that the "partial boundary" treaties cannot be invoked *as themselves imposing a contractual obligation* on Germany to complete its continental shelf boundaries seawards by application of the equidistance principle. But it does not at all follow that these two treaties cannot be invoked as precedents—which they manifestly are—of the determination of continental shelf boundaries in the North Sea *by application of the principles contained in Article 6 of the Geneva Convention.* In short, the solemn fact is that all the continental shelf boundaries, including those of the Federal Republic, so far established in the North Sea as well as in the Baltic reflect the principles of Article 6 of the Geneva Convention.

105. Two further arguments of the Federal Republic in relation to the State practice require brief notice. One is a general argument in paragraph 56 of the Memorial to the effect that the practice does not show such a consistency and uniformity of usage as would suffice to establish the "equidistance principle"

as a rule of customary law. This argument, as the foregoing review of the practice shows, is highly questionable merely on the facts. But it is in any event beside the point since, as already emphasized, it is not the equidistance principle pure and simple which is in issue but the "equidistance principle-special circumstances" rule of the Geneva Convention. For the general recognition of this rule there is abundant evidence in the State practice since 1958.

106. The other argument—in paragraph 59—is to the effect that the North Sea practice cannot be regarded as showing that "the equidistance method has been promoted to the status of a rule of regional customary law valid for the North Sea". This argument is supported by the contentions that: *(a)* any such view is precluded by the fact that France in her reservation to Article 6 expressly excluded the equidistance method for the drawing of boundaries in the North Sea; and *(b)* no such regional rule can be established without the concurrence of Germany. The whole of this argument is again vitiated by its concentration on "the equidistance method" instead of on the "equidistance-special circumstances" rule. Nor, as pointed out in paragraph 90 above, is it correct to say that France's declaration seeks to negative altogether the application of the provisions of Article 6, including the equidistance principle, in the North Sea. On the contrary, her declaration admits the application of the Article and claims the benefit of the "special circumstances" provision. In any event, the question is not one as to the establishment of a particular regional custom. It concerns rather the recognition of the rules set out in Article 6 of the Convention as the generally accepted rules of international law governing the delimitation of the continental shelf. This, as already pointed out, the practice of States, including that of the Federal Republic, since 1958 abundantly shows.

107. A final argument put forward by the Federal Republic in paragraph 61 of the Memorial must now be noticed: namely that Article 6 cannot be said to have become general international law merely because this is what has happened in the case of Articles 1 to 3 of the Geneva Convention. It argues that the provisions of Article 6 are not so indissolubly bound up with the basic principles in Articles 1 to 3 as necessarily to go with them (p. 61, *supra*):

> "It is true that a necessary, logical consequence of the recognition of the right of the coastal State over the continental shelf is that, in the case of conflicting claims of several coastal States adjacent to the same continental shelf, an apportionment must be made between them, and that the international legal order must provide methods and standards for the apportionment. There is, however, no cogent reason that this apportionment must be made according to the equidistance method. The drafting of Article 6 shows that the equidistance method was only one method among others of attaining a just and equitable apportionment, and that the objections against making the equidistance method the exclusive rule were so strong that the equidistance method was adopted only under the condition that it would not apply in the presence of any 'special circumstances'. The apportionment of a continental shelf shared by several States has not been made easier by Article 6. Even when Article 6 is applied, the question remains open whether the equidistance method is suitable or whether in a concrete case 'special circumstances' exist which would justify another boundary line."

108. This argument is again misdirected by reason of its concentration on the "equidistance principle" pure and simple instead of on the equidistance-special circumstances rule. In the context of Article 6 it is both irrelevant and inadmissible to say that "the equidistance method is only one method among

others of attaining a just and equitable apportionment". It is irrelevant because the Article itself admits the possibility of another boundary line if such is justified by "special circumstances". It is inadmissible because Article 6 nevertheless makes the equidistance principle the *general* rule *unless special circumstances justify* another boundary. Under the provisions of Article 6—the authoritative statement of the generally recognized principles—the equidistance principle is not just one method among others; it is the general rule.

109. Moreover, there were cogent reasons why Article 6 should state the equidistance principle as the general rule—reasons which are linked to the *ratio legis* of Articles 1 and 2. Under Articles 1 and 2 each coastal State is now recognized to possess *ipso jure* sovereign rights of exploration and exploitation over the seabed and subsoil of the submarine areas *adjacent* to its coast. Inherent in the concept of a coastal State's title *ipso jure* to the areas adjacent to its coast is the principle that areas nearer to one State than to any other State are to be presumed to fall within its boundaries rather than within those of a more distant State. Clearly, it is this principle which also underlies the delimitation of "median line" and "equidistant line" boundaries in other maritime and fresh-water contexts. In other words, this principle establishes a direct and essential link between the provisions of Article 6 regarding the equidistance principle and the basic concept of the continental shelf recognized in Articles 1 and 2 of the Geneva Convention of 1958.

110. Accordingly, under Articles 1 and 2, as well as under Article 6, of the Geneva Convention it is incumbent on any State which lays claim to areas of continental shelf which are nearer to the coast of another State to establish the legal grounds on which its title should be preferred to that of the nearer State.

CHAPTER 4

THE APPLICABLE PRINCIPLES STATED IN ARTICLE 6 OF THE CONVENTION ON THE CONTINENTAL SHELF

111. Article 6 of the Geneva Convention, as the Court knows, has two principal paragraphs, the first of which applies to States whose coasts are opposite each other and the second of which applies to States whose territories are adjacent to each other. The present case between the Netherlands and the Federal Republic of Germany manifestly relates to the delimitation of the continental shelf between adjacent States, as does also the other case before the Court between Denmark and the Federal Republic. Accordingly, it is paragraph 2 of Article 6 which primarily interests the Court.

112. Paragraph 2 of Article 6, like paragraph 1, contains two main provisions, one stating that the boundary shall be determined by agreement between the States concerned and the other laying down the rule for cases where no agreement is reached. In the present instance, negotiations for a determination of the boundary by agreement have taken place in each of the two cases before the Court, and have resulted in a deadlock; and in each case the "Special Agreement", *in its fourth recital*, expressly records the existence of a "disagreement between the Parties which could not be settled by detailed negotiations". It follows that in the two cases in which the Court is now called upon to decide the applicable "principles and rules of international law", it is only the second provision of paragraph 2 of Article 6 which is pertinent:

> "In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

113. Before examining the meaning of this provision, the Netherlands finds it necessary to draw the Court's attention to certain points touching the provisions of both paragraphs 1 and 2 of Article 6.

First, quite apart from the close similarity of the language, the substantive rules stated respectively for "opposite" and "adjacent" States in the two paragraphs are precisely the same. Each paragraph opens with a provision for determination of the boundary by agreement and then provides, in the absence of agreement and unless another boundary is justified by special circumstances, for the determination of the boundary by application of the principle of equidistance. No doubt, paragraph 1 states that "the boundary is the *median line* every point of which is equidistant from the nearest points", etc., whereas paragraph 2 states simply that "the boundary shall be determined by application of the principle of equidistance from the nearest points", etc. But this difference is purely one of terminology and in each paragraph the rule—the principle of equidistance from the nearest points of the baselines of the territorial sea, unless another boundary is justified by special circumstances—is the same. Accordingly, Article 6 furnishes no basis whatever for the theme which recurs more than once in the Memorial that "median lines" between opposite States are both more generally recognized and more generally equitable than lateral equidistance lines. On the contrary, Article 6 does not distinguish in any way between the treatment of the two cases.

114. Secondly, there is not the slightest trace in Article 6 of the idea put forward in paragraphs 63-67 of the Memorial that, whereas the application of the equidistance principle may be equitable and appropriate in the case of median lines between opposite States and also of lateral lines between adjacent States *near the coast*, it is altogether unsuitable for the delimitation of "*larger submarine areas*" out in the open sea. In those paragraphs the Federal Republic argues that in the larger submarine areas out to sea "the equidistance principle lends disproportionate significance to special configurations of the coast". In support of this argument it cites an observation of Mr. S. Hsu in the International Law Commission in 1951 opposing the solution of prolonging the territorial sea boundary over the continental shelf:

> "The dividing-line would be relatively unimportant in the case of territorial waters, which were a narrow belt, but might take on great significance and cause injustice if applied to continental shelves which were sometimes of considerable extent."

It is a sufficient commentary on this argument that the Federal Republic can only base it on an observation, made with reference to extending the dividing line of territorial waters seawards in 1951, before the Commission had obtained the advice of the Committee of Experts and before it had even begun its study of the territorial sea (see *supra*, paras. 56-58). The Federal Republic passes over the fact that, notwithstanding the observation of Mr. S. Hsu, the Committee of Experts in its report in 1953 and the International Law Commission in its reports of 1953 and 1956 not only adopted the same principles of delimitation for the continental shelf as for the territorial sea but underlined the importance of doing so. The Committee of Experts, the Commission and the Geneva Conference were well aware of the existence of large expanses of continental shelf in the North Sea, Baltic, West Atlantic, China Seas and other areas. Yet in none of these three bodies was any distinction drawn between large or small areas of continental shelf or between near-shore or distant areas. The equidistance principle was deliberately adopted by the Commission and the Conference as the *general* rule *everywhere* except only where another boundary is justified by "*special circumstances*".

115. Again, the Federal Republic seeks in paragraph 67 (p. 65, *supra*) to justify its distinction between near-shore and more distant areas by an argument which attempts to reduce the application of the equidistance principle to absurdity:

> "The fact that the equidistance method is unsuitable for the apportionment of extensive sea areas far from the coast has become obvious since exploitation of the sea-bed at greater depths and at greater distances from the coast calls for a legal settlement."

And then, in figure 15 it presents a dramatic diagram of the whole North Atlantic Ocean divided among its littoral States by equidistance boundaries. Leaving aside any question as to the particular boundaries shown on the diagram, the Netherlands considers that this argument is completely fallacious. The problem thrown up by technological advances in the exploration and exploitation of the ocean deeps—a problem already raised by Malta in the United Nations—concerns the limit to be placed on the very concept of the continental shelf, having regard to its indeterminate definition in Article 1 of the Convention. It does not concern the principles of delimitation already accepted for areas which undeniably fall within the concept of the continental shelf; and its irrelevance in the present case is underlined by the fact that none of the submarine areas in dispute are more than 55 metres below the surface of the sea or more than 160 sea miles from land.

The fallacy of the argument in the present case is indeed underlined by the position taken by the Federal Republic in the Memorial in regard to the application of the equidistance principle in the North Sea. In paragraphs 89 and 90 the Federal Republic expressly records its recognition of the appropriateness and equitableness of the median line boundary accruing to the United Kingdom in the North Sea under the equidistant principle, despite the largeness of the "share" of the North Sea which the United Kingdom thus obtains. At the same time, the Federal Republic underlines that this large share is "the consequence of natural geographical conditions". True, it argues that it is the "land mass" of the British Isles which justifies the large British share. Under Article 1 of the Geneva Convention, however, it is not *land mass* but *coast* to which the continental shelf appertains; and under Article 6 it is the configurations of the coast—the baselines of the territorial sea—which constitute the "natural geographical conditions" that determine the boundaries of the shelf and thus the size of the "share".

116. Another argument put forward by the Federal Republic to justify the above-mentioned distinction is that the difference in the language of Article 12 of the Territorial Sea Convention[1] and Article 6 of the Continental Shelf Convention shows the Geneva Conference to have recognized that the equidistance principle *has a wider scope of application in regard to the territorial sea than in regard to the continental shelf.* Having observed in paragraph 64 that, from the point of view of control over the territorial sea, distance from the coast is an indispensable criterion for the apportionment of territorial waters, the Federal Republic observes (pp. 62-63, *supra*):

> (1) Under Article 12 of the Territorial Sea Convention the equidistance method does not apply only "where it is *necessary* by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision";
>
> (2) Under Article 6 in the case of the Continental Shelf Convention "the equidistance method does not apply already where another boundary line is *justified by special circumstances*". (Italics in the Memorial.)

This interpretation of the two Articles, even if it were sound, would not advance the Federal Republic's argument one inch; for it remains the fact that the Geneva Conference and Article 6 of the Continental Shelf Convention made no distinction whatever between near-shore and more distant areas of the continental shelf. But the difference in wording between the two Articles is far from justifying the conclusion drawn from it by the Federal Republic.

117. The International Law Commission, the Court will recall, insisted that the principles for delimiting the boundary of the territorial sea and the continental shelf ought to be the same. In the final draft adopted in 1956 the wording of the Commission's provisions regarding the territorial sea (Art. 12, para. 1, and Art. 14, para. 1) and its provisions regarding the continental shelf (Art. 72) was, in fact, almost indentical and in the form: "In the absence of agreement and unless another boundary is justified by special circumstances, the boundary is drawn by application of the principle of equidistance." The Geneva Conference, it is true, reworded the territorial sea formula (Art. 12, para. 1) to that given in the Memorial. At the same time, however, it completely redrafted the whole paragraph *and it did so for reasons quite unconnected with the considerations adduced by the Federal Republic.* Norway pointed out—as

[1] Annex 4.

indeed she had to the Commission—that a rule simply providing for the application of the principle of equidistance, unless another boundary is necessitated by special circumstances, was not adequate in the case *of the territorial sea because of the possibility that the States concerned might be claiming different breadths of the territorial sea.* Accordingly, what was needed instead for the territorial sea was a negative rule *forbidding each State to extend its territorial sea beyond the equidistance line.* The Conference adopted the Norwegian proposal, at the same time deciding that it was still essential to make allowance for "special circumstances" and, in particular, for historic claims. The new negative form of the Article meant that it had to be completely recast, and this was done in the First Committee, whereas the continental shelf was dealt with in the Fourth Committee. There is no indication in the records of the Conference that the difference in the formulation of the territorial sea and continental shelf provisions was due to anything else than the difficulty brought up by Norway and the vicissitudes of drafting in different Committees.

118. Furthermore, it is only necessary to glance at paragraph 82 of the International Law Commission's Report for 1953 to see how strained is the inference which the Federal Republic seeks to draw from the difference between the word "*necessary*" in the Territorial Sea Convention and the word "*justified*" in the Continental Shelf Convention (*Yearbook*, 1953, Vol. II, p. 216). In that paragraph the Commission actually explains the phrase "unless another boundary is *justified* by special circumstances" by reference to the need to make provision for modifications of the equidistant line "*necessitated*" by the special circumstances of the case.

119. Nor is it possible to attach any weight to the criticism directed against the equidistance principle in paragraph 66 of the Memorial, that this principle does not take into account what might be called the "quality" of the coasts the points of which are taken as a basis for the construction of the equidistance line. The equidistance method, it says on page 63, *supra*, does not take into account ". . . whether . . . uninhabited promontories, harbourless islands, or densely inhabited stretches of coasts with plenty of harbours are involved". And it then argues (p. 64, *supra*):

> "From the point of view of exploitation and control of such submarine areas, the decisive factor is not the nearest point on the coast, but the nearest coastal area or port from which exploitation of the sea-bed and subsoil can be effected. The distance of an oil, gas or mineral deposit from the nearest point on the coast is irrelevant for practical purposes, even for the laying of a pipe line, if this point on the coast does not offer any possibilities for setting up a supply base for establishing a drilling station or for the landing of the extracted product."

This argument is in itself wholly invalid, since experience shows that, if a deposit is exploited, the nearest points on the coast, even if theretofore unused or scarcely inhabited, may be developed into important elements of support for the exploitation, if only as a relay station of a pipe line. Moreover, it is an argument which, if it were valid, would apply equally to "median lines" between opposite States as to which the Federal Republic has little objection.

But, quite apart from that, the argument is irrelevant to the present dispute. There is no difference in "quality" between the North Sea coast of the Federal Republic and the North Sea coast of the Kingdom of the Netherlands. Every single part of both coastlines, relevant for the drawing of the equidistance line, has in principle the same potentialities for being used for the exploitation of the seabed and subsoil.

Section A. The Meaning of the Principal Rule Applicable in the Present Case

120. The principal rule of international law applicable in the present case, as has been pointed out, is the provision in Article 6, paragraph 2, which reads:

> "In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

If this provision is interpreted, as it must be, "in accordance with the ordinary meaning to be given to the terms of the treaty in their context" [1], it can mean only one thing: in the absence of agreement, the *general* rule requires the boundary to be determined by application of the principle of equidistance, but this general rule will be displaced if—and only if—it is shown that another boundary line is justified by special circumstances. In other words, the provision means that the equidistance line is the boundary unless a case of "special circumstances" within the meaning of the Convention is both shown to exist and to justify a boundary other than the equidistance line.

121. In paragraphs 68-73 of the Memorial, however, the Federal Republic contends that the "special circumstances" clause is to be "understood not so much as a limited exception to a generally applicable rule, but more in the sense of an alternative, of equal rank to the equidistance method". In support of this contention it isolates a single statement made in the debate in the International Law Commission in 1953 which hardly seems to bear the weight put upon it by the Federal Republic. At the same time, it passes over the clear evidence in that debate that the Commission adopted the equidistance principle as the *general rule* and introduced the "special circumstances" clause by way of an *exception*. Quite apart from the fact that the very words "unless" and "special" stamp the "special circumstances" clause with the hall-mark of an exception, several passages in the debate indicate that this clause was envisaged as an exception to the equidistance principle (*Yearbook*, 1953, Vol. I, pp. 126-133). For example, Mr. Sandstrom referred to the special circumstances clause as covering "*special* cases where the application of the *normal* rule would lead to *manifest* hardship". Mr. Lauterpacht similarly spoke in terms of providing for exceptions from the equidistance rule when its application would lead to "*undue* hardship". As to the author of the clause, M. Spiropoulos, he also envisaged his proposal as leading to departure from the equidistance rule only where its application would lead to "manifest unfairness".

122. Furthermore, the Federal Republic passes over completely the Commission's clear and considered statement of its understanding of the relation between the "equidistance rule" and the "special circumstances clause" in the Commentary to its 1953 Report. Almost every line of this Commentary, the relevant passage of which has already been brought to the Court's attention (see *supra*, para. 61) rebuts the contention now put forward by the Federal Republic as to the "alternative" character and "equal rank" of the "special circumstances clause". This Commentary, the Court will recall, speaks of the equidistance principle as the "*general rule*" and as the "*major principle*" subject to "reasonable *modifications necessitated* by the *special* circumstances of the case". The Federal Republic—perhaps understandably—refers only to

[1] Cf. Art. 27, para. 1, of the International Law Commission's draft articles on the Law of Treaties, *I.L.C. Reports* 1966 (A/6309/Rev. 1), p. 49.

the heavily abbreviated commentary attached to Article 72 of the Commission's final draft on the law of the sea as a whole. Yet even this abbreviated commentary clearly visualizes the "special circumstances clause" as an exception: "Provision must be made for *departures necessitated* by any *exceptional* configuration of the coast as well as by the presence of islands or of navigable channels" (italics added). True, the commentary also observes: "This case may arise *fairly* often, so that the rule is *fairly* elastic" (italics added). But that guarded observation can hardly be said to modify the very clear impression of the equidistance principle in the work of the Commission as the *general* rule and "the special circumstances" clause as an exception to that rule.

123. Nor is any different impression of the relation between the "equidistance principle" and "special circumstances" clause given in the work of the Geneva Conference itself. On the contrary, the statements of a number of delegations make it clear that the "equidistance principle" was understood by the Conference to be the general rule to which "special circumstances" would constitute an exception; e.g., Colombia, Italy, Venezuela (*Official Records*, Vol. VI, p. 94), the Netherlands, United States (*ibid.*, p. 95), and the United Kingdom (*ibid.*, p. 96).

124. In short, the ordinary meaning of the words of Article 6 and the *travaux préparatoires* alike refute the contention that the "special circumstances clause" is to be understood "more in the sense of an alternative of equal rank to the equidistance method". Moreover, if it were so interpreted, the effect would be largely to denude it of legal content and destroy its value as a criterion for resolving disputes concerning continental shelf boundaries.

125. The Federal Republic further seeks in these paragraphs to undermine the legal force of the "equidistance principle" by so inflating the scope of the "special circumstances" exception as almost to make the "equidistance principle" the exception rather than the rule. Thus, in paragraph 70 it contends (pp. 68-69, *supra*):

> "'*Special circumstances' are always present should the situation display not inconsiderable divergencies from the normal case. The normal case*, in which the application of the equidistance method leads to a just and equitable apportionment, *is a more or less straight coastline*, so that the areas of the shelf apportioned through the equidistance boundary more or less correspond to the shorelines (façades) of the adjacent States. *Should this not be the case*, and should therefore no equitable and appropriate solution result, *the clause of the 'special circumstances' applies.*" (Italics added.)

In the passage the Federal Republic, in effect, equates the principle of equidistance to the principle of a line drawn perpendicular to the coast; for where the coastline is "more or less straight", the equidistance rule necessarily gives a boundary perpendicular to the coast. But the principle of a line perpendicular to the coast was considered by the Committee of Experts in 1953 and deliberately rejected in favour of the principle of equidistance (Counter-Memorial, Annex 7). The Federal Republic's contention is thus in complete contradiction with the legislative history of Article 6, as it is with the Commission's whole concept of the equidistance principle as the "general rule" and "major principle".

126. In any event, it is not very clear to what conclusion this contention is supposed to lead. In the area where the land-boundary between the Netherlands and the Federal Republic meets the sea the coastline is "more or less

straight", so that even on the Federal Republic's view of the matter the equidistance line would seem to be perfectly appropriate for this coast. So much so that, in its agreement of 1 December 1964 with the Netherlands the Federal Republic did, in fact, adopt the equidistance line for the delimitation of the continental shelf boundary near the coast. Moreover, in the area also where the land-boundary between Denmark and the Federal Republic meets the sea, the coast-line is similarly "more or less straight"; and similarly in its agreement of 9 June 1965 with Denmark the Federal Republic did, in fact, adopt the equidistance line for the delimitation of the continental shelf boundary. How and upon what principle, it may be asked, does an equidistance boundary, perfectly appropriate near the coast, cease to be so further out to sea when the coast-line is "more or less straight" *and no geographical factor other than that coastline influences the course of the equidistance line?*

Section B. The North Sea not a "Special Circumstance" or "Special Case"

127. At the very heart of the case presented by the Federal Republic in the Memorial is the thesis that the North Sea is in itself a "special circumstance" or "special case" such that it cannot be dealt with "by the application of methods developed for drawing maritime boundaries in normal geographical situations" (p. 39, *supra*, of the Memorial). This thesis is introduced in Part I (para. 8) in a comparatively modest form:

> "Yet it is necessary to point out already at this stage that the North Sea represents a special case in that, on account of its relative shallowness, its submarine areas constitute a single continental shelf which must be divided up among the surrounding States in its entirety. In this respect, the North Sea is different from other cases of delimitation of continental shelf areas where the continental shelf constitutes but a narrow belt off the coast."

In Part II, however, the thesis assumes a much larger form. Thus, in paragraph 41 (p. 39, *supra*) the Federal Republic states:

> "A very special situation arises when—as in the case of the North Sea—a *continental shelf* which is *surrounded by several littoral States* has to be divided among these States. Here a problem *sui generis* arises which cannot be solved satisfactorily by the application of methods developed for drawing maritime boundaries in normal geographical situations." (Italics in the Memorial.)

And later, in paragraph 72, the Federal Republic boldly asserts the claim that continental shelf areas like that in the North Sea constitute "special circumstances" within the meaning of Article 6 of the Convention (p. 71, *supra*):

> "Another typical category of special coastal configuration under the heading of 'special circumstances' are *gulfs, bays and shallow seas* surrounded by land. The fact that these geographical situations call for special solutions, in order to arrive at an equitable apportionment of the joint sea-bed and subsoil of such waters, has been recognized in the literature on the subject at an early date." (Italics in the Memorial.)

128. Characteristically, the only authority for its thesis cited by the Federal Republic in either paragraph 41 or paragraph 72 of the Memorial is three passages from writers published at an early stage in the development of the doctrine of the continental shelf before the "equidistance principle-special circumstances rule" had seen the light of day in the Commission. The reason,

no doubt, is that no support can be found in the report of the Committee of Experts, the work of the Commission or the records of the Geneva Conference for the view that shallow seas, as such, constitute a "special circumstance" or a "special case". These three bodies, as has already been said in paragraph 114 above, were perfectly well aware of the existence of shallow seas like the Persian Gulf, Baltic and North Sea. Indeed, one of the points singled out for mention in the Commission's Report in 1953 was that shallow seas like the Persian Gulf should be considered as falling within the concept of the continental shelf. If those bodies had considered shallow seas to constitute a special case outside the "application of methods developed for drawing maritime boundaries in normal geographical situations", they would certainly have so provided.

Equally, it seems highly probable that the views of the three writers in question have evolved somewhat since 1953 under the influence of the work of the Commission and the Geneva Conference. This we know for a fact in the case of Richard Young, to whose article in the *American Journal of International Law* for 1951 the Federal Republic gives particular prominence in paragraphs 41 and 72. A recent article published by this writer in the 1965 *American Journal of International Law* and entitled "Off-shore Claims and Problems in the North Sea" goes in a quite opposite direction to the Federal Republic. After mentioning that there now appears to be a consensus between the North Sea States regarding the territorial sea and fisheries, the article proceeds:

> "There appears to be a similar consensus in principle with respect to the continental shelf: none of the five North Sea states having potentially large interests in submarine resources has failed to recognize the exclusive appurtenance of such resources to the coastal state. Nor does it seem likely that any of them will challenge seriously the equity in general of dividing such resources by equidistant boundary lines in the absence of special agreement otherwise, although West Germany in particular may seek some readjustment through such agreements. Even Norway, with its reluctance to accept the Shelf Convention, seems prepared to accept these principles as a guide.
>
> This consensus should provide a sound foundation for the working out in practice of various particular problems concerning the delimitation and control of offshore areas. These problems may be said to be of two general kinds: first, those relating directly to the exploitation of submarine resources in the North Sea, including the delimitation of the respective national areas and the efficient development of resources found; and second, problems arising from conflicts among different uses of the same sea areas. The first group are chiefly technical in nature and, under the circumstances existing in the North Sea, should not present great difficulties. Thus the construction of median lines should not involve any issues of principle: the general acceptance of similar rules for baselines provides a substantially uniform line of departure, and the general absence of important offshore islands beyond the coastal fringe eliminates one potential source of controversy. *The region is perhaps as simple a situation in terms of technical problems of delimitation as can be found in any area where so many different states are involved.*"

There certainly seems to be no trace here of the idea that the North Sea, as such, is a "special case" or "special circumstance" simply by reason of its being a shallow sea on which a number of States have a frontage.

129. The Federal Republic, it is true, also devotes a whole Chapter (Chap. III

of Part II) to what it terms "The Special Case of the North Sea". But in that Chapter the Federal Republic sets out to construct a more general case to justify the substitution of a "sector" for an equidistance boundary; and it will therefore be more convenient to deal with those arguments separately in the next Chapter of this Part. Here it suffices to point out that the Federal Republic's general thesis that, by reason of its being a shallow sea on which a number of States have a frontage, the North Sea is, as such, a "special circumstance", is without any foundation whatever.

CHAPTER 5

THE SPECIAL CIRCUMSTANCES EXCEPTION AND THE FEDERAL REPUBLIC'S SECTORAL CLAIM

Section A. The Absence of any "Special Circumstances"

130. If the Government of the Netherlands is correct in its submission that the principles and rules of international law applicable as between the Parties are those contained in Article 6, paragraph 2, of the Continental Shelf Convention, it follows that in order to arrive at a delimitation other than that which results from the application of the equidistance principle, the Federal Republic must invoke the exception of "special circumstances justifying another boundary line". In the Memorial, however, it proceeds in a quite different manner.

131. The tactics adopted by the Federal Republic, as pointed out in the previous Chapters of this Part, are to try to undermine the value of the equidistance principle as a general rule in order to open the way for its request for an "equitable apportionment" not under the principles of the Geneva Convention but on a thinly disguised basis of *ex aequo et bono*. In character with these tactics, neither the Federal Republic's "Conclusions" regarding the North Sea continental shelf on page 89, *supra*, of the Memorial nor its final "Submissions" on page 91, *supra*, make any mention of the exception of "special circumstances" provided for in Article 6 of the Continental Shelf Convention. Nor does the Federal Republic anywhere in the Memorial expressly invoke the exception of special circumstances as one of the "principles or rules of international law" applicable as between the Parties under the terms of Article 1 of the Compromis.

132. The reason why the Federal Republic shows itself so averse to admitting the authority of the equidistance principle as the general rule and so shy of invoking the exception of special circumstances is, no doubt, that it does not think *that its own case can be brought within the scope of the exception of special circumstances envisaged in Article 6 of the Continental Shelf Convention.* Otherwise, it is difficult to see why the Federal Republic should have gone to such lengths in trying to question the now generally accepted authority of the equidistance principle as the principal rule instead of setting out to persuade the Court, if it can, that in the case of the delimitation of the North Sea continental shelf between the Netherlands and the Federal Republic "another boundary is justified by special circumstances" *within the meaning of the Convention.*

133. Scattered through the Memorial, it is true, are to be found references to the North Sea as a special case (paras. 8 and 75) or a special problem (para. 77). In one place (para. 72 on p. 71, *supra*) the Federal Republic even goes so far as to speak of "gulfs, bays, and shallow seas surrounded by land" as:

> "another typical category of special coastal configuration under the heading of '*special circumstances*'" (italics added).

But the thesis that the shallow North Sea is *as such* a "special circumstance" within the meaning of the Convention is one which, as already pointed out in the previous Chapter, is entirely lacking in foundation. Moreover, it would seem to demand some courage to maintain this thesis in face of the facts that:

(a) the United Kingdom, Norway, Denmark, the Netherlands and Belgium have all treated the delimitation of the continental shelf beneath the North Sea as a perfectly normal case for the application of the equidistance principle;

(b) the Federal Republic itself has treated the shallow Baltic Sea as a normal case for the application of the equidistance principle; and

(c) the Federal Republic never suggested at the Geneva Conference or in its Continental Shelf Proclamation of 20 January 1964 or in the "Exposé des Motifs" of the Law giving effect to the Proclamation or in its negotiations with the Netherlands that, being a shallow sea, the North Sea is a special case.

134. True, in the second part of paragraph 72 the Federal Republic does introduce the question of "gulfs, bays, or other major indentations of the coastline" where "one or even both sides belong to a neighbour State" and this under the general heading "The Special Circumstances in Article 6 of the Continental Shelf Convention". It maintains that this case "corresponds to the problem of islands which lie before the coast but belong to another State" (p. 72, *supra*); and observes that in both cases "the drawing of a boundary line in application of the equidistance method must, by geometrical necessity, cut off the State from the sea". It goes on to illustrate the case of "gulfs, bays or other major indentations" by three small diagrams (figs. 16, 17 and 18), the last of which purports to be a representation of the configuration of the Netherlands-German-Danish coastline "simplified to the base-line of the territorial sea". Then it baldly asserts:

> "It is obvious that a division of the submarine areas between the three States made on these lines cannot be considered as an equitable result. Geographical situations of such a kind, affecting the course of the equidistance line to such an extent, represent a special configuration of the coast which excludes the application of the equidistance method."

The Federal Republic makes no real attempt, however, to examine the actual configuration of the Netherlands-German-Danish coastline in order to establish on what geographical grounds this coastline is to be considered "a special configuration of the coast" amounting to a special circumstance within the meaning of the Continental Shelf Convention. On the contrary, after only a most general reference to "gulfs, bays or other major indentations of the coastline" it proclaims that equidistance lines drawn from the Netherlands-German and Danish-German boundaries give an inequitable result for the Federal Republic and *for that reason* the Court is here confronted with a "special configuration of the coast". This, in the view of the Netherlands Government, puts the cart before the horse.

135. The "special circumstances" clause in Article 6, paragraph 2, of the Convention, as already pointed out in the previous Chapter of this Part, is undoubtedly an *exception* to the *general* rule of delimitation by application of the equidistance principle. Since the Federal Republic has not invoked this exception in its submissions, the Netherlands does not consider that she is called upon to dwell at length upon the question whether the configuration of the Netherlands-German-Danish coastline is such as could be considered a "special circumstance" within the meaning of Article 6, paragraph 2. Nevertheless, there are certain observations which she cannot refrain from making in the light of the contentions in paragraph 72 of the Memorial.

136. First, the vignette of the coastline found in figure 18 of the Memorial

(p. 73, *supra*) gives a somewhat misleading impression of the bend in the German coastline at the centre of the diagram. The Federal Republic does not state whether it regards this bend as an example of a "gulf" or of a "bay" or of a "major indentation". But a glance at even a small-scale chart, or indeed at the small map enclosed with this Counter-Memorial (Annex 17), immediately shows that this bend in the coastline is not a "bay" or a "major indentation" but rather a change in the direction of the coast. The angle of this change of direction is approximately 100 degrees and, if the intervening area of sea may properly be referred to as a "gulf", it is a wide gulf with open shores, such as exists in many parts of the world.

137. Secondly, on both sides of the wide gulf the shores are not merely open but "more or less straight" with only the most normal small protrusions in the coastline.

138. Thirdly, from the angle of the bend the coastline of the Federal Republic runs "more or less straight" for a distance of no less than 135 kilometres to the west before it reaches the Netherlands frontier; and "more or less straight" for a distance of no less than 120 kilometres to the north before it reaches the Danish frontier.

139. Fourthly, no offshore island—other than one forming a normal part of the baseline of the coast—affects in any material way the geographical situation with reference to the delimitation of the equidistance lines. (The influence, if any, of Heligoland on the equidistance lines is altogether insignificant. See *supra*, para. 9, sub *c*.)

140. In short, the geographical configuration with which the Court is confronted in the present case is quite unremarkable and could hardly be less "exceptional".

141. Again, the Netherlands Government must express its strong dissent from the proposition in paragraph 72 of the Memorial that the geographical situation in the present case "corresponds to the problem of islands which lie before the coast, but belong to another State". Neither the Netherlands Government nor the Court is called upon in the present case to express any opinion as to what should be the solution of that particular problem under Article 6 of the Convention. The Netherlands Government contents itself with remarking that the Federal Republic's proposition is demonstrably untrue as a matter of pure facts; and that it is also untrue even from the point of view of the boundaries and areas of continental shelf which result from applying the equidistance principle.

142. The standpoint of the Netherlands is that she is entitled under international law to consider the line of equidistance as constituting the boundary between the continental shelves of the Kingdom and the Federal Republic *unless and until it is established that another boundary line is justified by special circumstances within the meaning of the Convention.* The Netherlands, as explained in the previous Chapter, founds her position, firstly, upon the provisions of Articles 1 and 2 of the Convention under which a coastal State is in principle entitled to the area of the continental shelf which is *adjacent* to its coast; and secondly upon the principles and rules expressed in Article 6 of the Convention under which the equidistance line forms the boundary unless another boundary-line is justified by special circumstances. In other words, the Netherlands maintains that the Federal Republic is bound to respect the equidistance line as their mutual boundary on the continental shelf unless and until the Federal Republic establishes *both* that:

(a) there exists a "special circumstance" within the meaning of Article 6 of the Convention; *and*

(b) this "special circumstance" *justifies* another boundary line within the meaning of that Article.

In the view of the Netherlands Government, the Memorial entirely fails to make good either of these points.

143. If the *travaux préparatoires* of the Geneva Conventions and the actual terms of Article 12 of the Territorial Sea Convention indicate that some not purely geographical circumstances, such as a historic title, may constitute a "special circumstance", it is only geographical configuration with which the Court is concerned in the present case. At any rate, the Memorial does not appear to envisage that in the present case any other form of special circumstance comes into account. True, in attempting to depreciate the equidistance principle and minimize the scope of its application the Federal Republic refers in paragraph 70 on page 69, *supra*, to "special situations of a technical nature—such as navigable channels, cables, safety or defence requirements, protection of fisheries (fish banks), indivisible deposits of mineral oil or natural gas—"; and in connection with them cites selected passages from various writers. But, quite apart from the fact that certain of these matters are the subject of specific safeguards in the Convention (cf. Arts. 3, 4 and 5), none of these so-called "special situations" has been claimed by the Federal Republic in its submissions as constituting a "special circumstance" for the purpose of the application of Article 6 of the Convention. Nor has any of the other North Sea States found any of these matters to constitute an obstacle to delimiting their boundaries strictly by application of the principle of equidistance. In the case of "indivisible deposits of mineral oil or natural gas", for example, the Netherlands, the United Kingdom, Norway and Denmark have delimited their mutual boundaries strictly on the basis of the equidistance principle, merely providing for consultation—and, in the case of the Agreement between the Netherlands and the United Kingdom mentioned in paragraph 18 above, for arbitration—in regard to the exploitation of resources bordering the boundary line. Accordingly, the Federal Republic's reference to these so-called "special situations" would seem to be entirely without relevance for the application of the provisions of Article 6, paragraph 2, of the Convention in the present case.

144. Furthermore, the Federal Republic's numerous references to "island" situations, which it illustrates with a variety of figures (Nos. 4-7 and 11-15), are equally irrelevant for the purposes of the present case. Islands situated outside the territorial sea play no material role in the delimitation of the continental shelf as between the Federal Republic and the Netherlands. The only island outside the territorial sea is Heligoland and, as stated in paragraph 139, the influence of this island, if any, on the equidistance line is altogether insignificant. Nor is there any disagreement between the Parties regarding the islands off the coast which may be taken into account under international law as base-points for the delimitation of their respective territorial seas, contiguous zones and continental shelves.

145. Indeed, so far from there having been any question raised in this part of the North Sea regarding islands as "a special circumstance", even a *low-tide elevation which does exercise a material influence on the equidistance line* has been used by the Federal Republic for delimiting its continental shelf without any objection from the Netherlands (see Danish Counter-Memorial, fig. 2, p. 211, *supra*).[1]

[1] See pocket inside back cover.

This low-tide elevation, the "Hohe Riff", lies near the German island of Borkum but off the mainland of the Netherlands coast. Its presence there causes, in the phrase used in paragraph 71 of the Memorial, a "dislocation in the apportionment" of the continental shelf; and this dislocation operates in favour of the Federal Republic.

Figure 3 shows the actual equidistance line as it now runs, in accordance with the Treaty, up to the 54th degree of latitude, taking into account the presence of this low-tide elevation. To the east thereof it shows the boundary line as this line would have been drawn if the low-tide elevation had *not* been taken into account. If both lines are prolonged beyond the 54th degree of latitude, the difference as regards the continental shelf area amounts to some 670 square kilometres.

The Federal Government, it would seem, never for a moment imagined that the low-tide elevation could be regarded as a "special circumstance" for the purposes of Article 6.

146. Since no islands outside territorial waters play any material role in the delimitation of the boundary of the continental shelf as between the Netherlands and the Federal Republic, *only the geographical configuration of the baselines of the mainland coast* calls for consideration as a possible source of a "special circumstance". But it has already been demonstrated in paragraphs 136-140 above that there is absolutely no exceptional geographical configuration in this part of the North Sea coast which could possibly be regarded as constituting "a special circumstance" within the meaning of Article 6.

147. Even if the bend in the German coast could be regarded as a "special circumstance", it still would not be a "special circumstance" *justifying another boundary line*. The Dutch-German stretch of coast is, as previously emphasized, quite ordinary, and "more or less straight"; and the continental shelf which accrues to the Netherlands under the equidistance principle is perfectly normal, being the area which naturally appertains to the Dutch coast. This can readily be seen from the small map of the North Sea reproduced in figure 4 on page 366. This map picks out Netherlands territory by showing it shaded and depicts the area of continental shelf accruing to it under the equidistance principle as compared with the areas appurtenant to other stretches of the North Sea coastline. The Netherlands "share" of the North Sea shelf is in no way abnormal in relation to the Netherlands coastline and its size cannot be said to be unduly enlarged by the protrusion of any promontary in the Netherlands coast. *The Netherlands, in short, gains absolutely nothing at the expense of the Federal Republic from any unusual disposition or configuration of Netherlands territory.*

148. It follows that what the Federal Republic is really asking from the Court in the present case is that it should lay down a principle which would require the Netherlands, simply on considerations of *ex aequo et bono*, to transfer to the Federal Republic part of the continental shelf which is adjacent and naturally appertains to the Kingdom. Indeed, it may be permissible to wonder whether in 1964 it was considerations of *ex aequo et bono* or a recently acquired knowledge that this part of the continental shelf might hold particularly good prospects as regards oil and gas deposits that led the Federal Republic to challenge the application of the equidistance line. Be that as it may, there does not appear to be any basis for suggesting that the International Law Commission or the Geneva Conference ever contemplated that such a redistribution of areas of continental shelf could legitimately be demanded under the provisions of Article 6.

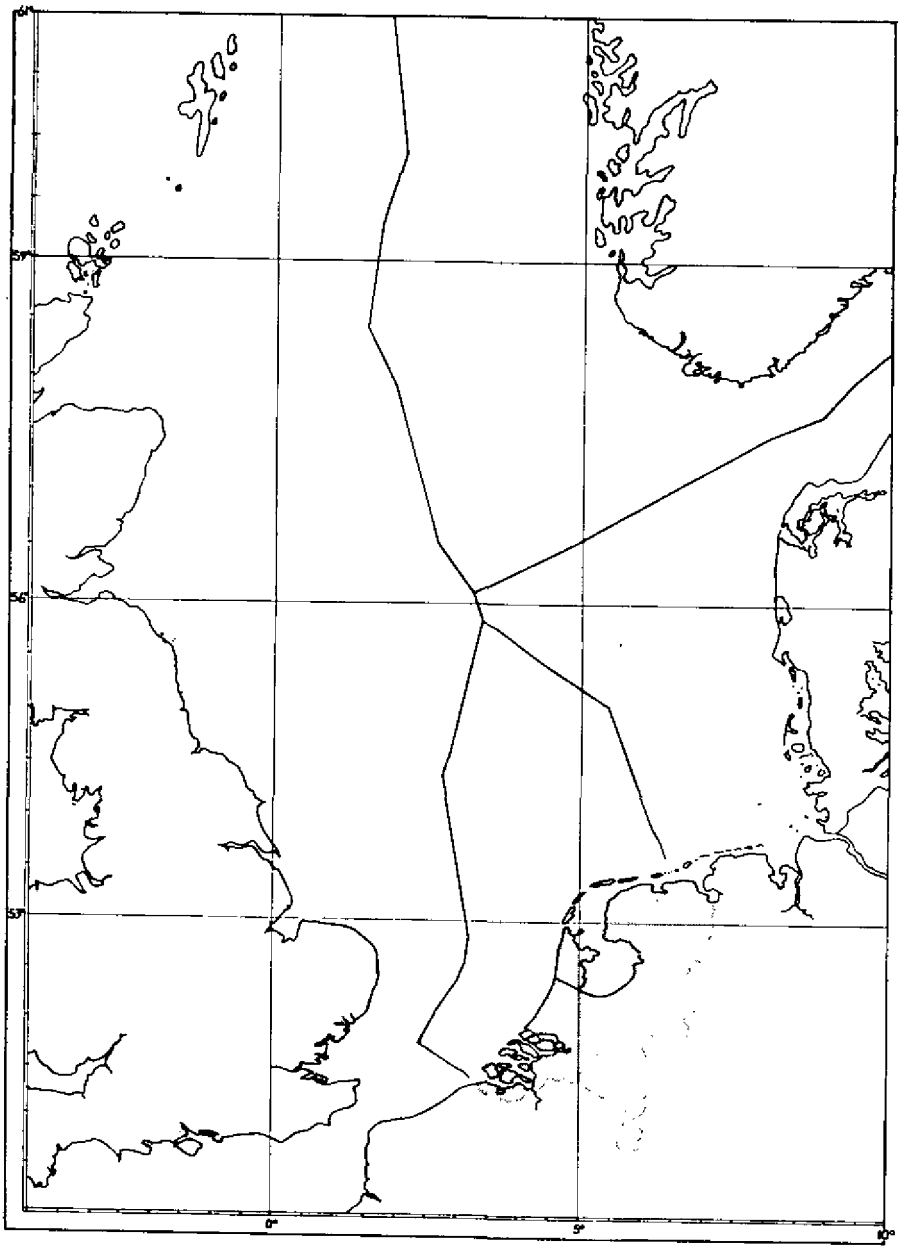

Figure 4

149. The Federal Republic thus seems to overlook the fact that her neighbour, the Netherlands, also has a claim to a share of the continental shelf under international law which is identical to that of the Federal Republic in its legal basis and validity. At any rate, it has provided no reason in the Memorial why this neighbour State should be called upon to renounce part of its normal and natural shelf area merely because the Federal Republic's own coast provides a less satisfying basis for delimiting its continental shelf. There is, in the view of the Netherlands Government, no basis whatever in the Geneva Convention for transferring legitimately claimed continental shelf areas from one State to another merely because the latter State is dissatisfied with its part of the continental shelf for reasons *stemming exclusively from its own coast.*

150. In paragraph 72 of the Memorial (pp. 71-74, *supra*), however, the Federal Republic seeks to draw into the case between the Netherlands and the Federal Republic the equidistance boundary between Denmark and the Federal Republic. Yet in the *travaux préparatoires* of the Convention there is not the slightest indication that it was ever envisaged that a State might be able to combine a boundary question vis-à-vis one adjacent State with a boundary question vis-à-vis another adjacent State and then maintain that "special circumstances justifying another boundary line" exist which manifestly do not exist in relation to either of these adjacent States considered by itself. Furthermore, paragraph 2 of Article 6 of the Convention, in contrast with the wording "two or more States" in paragraph 1 speaks only of cases "where the same continental shelf is adjacent to the territories of *two* adjacent States"; and thus clearly contemplates only questions of delimitation arising between two States alone. Accordingly, in seeking to combine two separate boundary questions between two different adjacent States, the Federal Republic passes completely outside the limits of the "special circumstances" exception recognized in Article 6, paragraph 2.

151. The Federal Republic's whole discussion of the "special circumstances" exception seems to assume that this clause opens up a general liberty to depart from the rule of equidistance whenever a State finds that the application of the general rule does not give a result which satisfies its aspirations. The special circumstances clause, was however, formulated, and intended to be applied, as rule of law. It admits the possibility of a modification of the general rule on the basis of geographical configuration only in cases where a particular coastline, *by reason of some exceptional feature*, gives the State concerned an extent of continental shelf *abnormally large in relation to the general configuration of its coast*. Then a correction is allowed by the clause in favour of an adjacent State whose continental shelf *is correspondingly made abnormally small in relation to the general configuration of its coast by that same exceptional feature.* In short, the modification to the general rule is allowed by the clause only when it is equitable and just with regard to *both* States concerned in relation to the general configuration of their *respective coasts.* The clause neither contemplates nor admits a State's being deprived of areas of continental shelf which are naturally appurtenant to its coast and entirely normal in relation to the general configuration of its coast; for to allow that would be to do inequity and injustice to the State so deprived.

Section B. The Federal Republic's Sectoral Claim

152. The second of the "conclusions" formulated by the Federal Republic in paragraph 96 of the Memorial (p. 89, *supra*) asserts:

"The most equitable apportionment of the continental shelf among the

coastal States would be a *sectoral division based on the breadth of their coastal frontage facing the North Sea.*" (Italics added.)

This "conclusion" the Federal Republic seeks to support by an elaborate argument in paragraphs 75-92 based upon: *(a)* the alleged special character of the North Sea as a shallow sea surrounded by coastal States; *(b)* an interpretation of the principle of equality carefully tailored to meet the needs of the Federal Republic's claim; and *(c)* a supposed analogy with the Polar Sector theory.

153. The Netherlands Government has already amply demonstrated in the previous Chapter (Section B) that neither the geographical character of the North Sea nor the *travaux préparatoires* of the Continental Shelf Convention nor the practice of States provides any basis for treating the continental shelf beneath the North Sea as a "special case" or a "special circumstance" for the purposes of its delimitation under the principles contained in Article 6 of the Convention.

154. The principle of the equality of States is, no doubt, a principle of high importance. But it needs no argument to demonstrate that the equality of States does not mean that every State must have an "equal" area of land, or of territorial sea, or of continental shelf; of that the facts of political geography are sufficient proof. The meaning and content of the principle of equality clearly depend on the context in which it falls to be applied. In the present context it can only mean that each coastal State is entitled to *the even-handed application of the principles and rules of maritime international law governing the delimitation of a coastal State's rights in the sea areas adjacent to its coasts.* These principles and rules of maritime international law prescribe that:

(a) the sea areas, whether territorial sea, contiguous zone or continental shelf, over which the coastal State may claim rights are the areas of sea or continental shelf which are adjacent to, and thereby appertain, to its coast;

(b) for the purpose of determining these areas the "coast" of a State is constituted by the baselines of the shore specified in the Territorial Sea Convention; and

(c) in consequence, the boundaries of a coastal State's territorial sea, contiguous zone or continental shelf are to be delimited by reference to the baselines specified in the Territorial Sea Convention.

The Netherlands, like every other State, is entitled to have her rights determined by the application of these principles and rules. The Federal Republic, however, while invoking the principle of equality of States, urges upon the Court the adoption of a "sectoral" division of the North Sea continental shelf which, as will be shown, denies to the Netherlands her fundamental right to have her continental shelf boundaries delimited in accordance with the above-mentioned principles and rules of maritime international law applicable to other States. It is, therefore, evident that the Federal Republic's "sectoral" claim has nothing whatever to do with the principle of equality of States.

155. The Federal Republic illustrates its "sectoral" theory of the division of the North Sea continental shelf in figure 21 (p. 85, *supra* of the Memorial); and it can be seen at once from this figure that the boundaries proposed by the Federal Republic are not delimited by reference to the baselines of the coast but by reference to the arcs of a circle artificially constructed by the Federal Republic in the southern part of the North Sea. Figure 21, in other words, makes it crystal clear that the theory urged upon the Court by the Federal Republic denies to the Netherlands the delimitation of her continental shelf by reference to the baselines of her coast in accordance with the established rules of international law. Yet even in that same figure the continental shelf boundaries of Norway

and the United Kingdom are delimited by reference to the baselines of their coasts, as indeed also is the boundary of the Netherlands vis-à-vis the United Kingdom. It may, therefore, be asked upon what principle the equal application of these rules of international law could be denied where the boundary of the Netherlands vis-à-vis the Federal Republic is concerned.

156. In addition, the Federal Republic's sectoral theory bears every mark of opportunism, artificiality and arbitrariness. At the negotiating stage, it is true, the Federal Republic did maintain that its continental shelf in the North Sea, measured in relation to the length of its coast, should be comparable with that of its neighbours; and it also made a vague reference to a sector without explaining what this might imply. But at that time it clearly assumed that in this connection the length of the *actual* German coast in the North Sea was the relevant one. That position it has now changed, substituting for its actual coast an artificial line drawn a considerable distance to seawards even of the most liberally estimated baseline of the coast. And this artificial line the Federal Republic now puts forward as corresponding to its "façade" upon the North Sea—a term and a concept alike wholly unknown to maritime international law. Again, at the negotiating stage the Federal Republic, in seeking a basis for justifying its claim, argued that paragraph 1 of Article 6, dealing with "opposite" States, because it precedes paragraph 2, dealing with "adjacent" States, must be given priority so as to entitle the Federal Republic as of right to a continental shelf boundary with the United Kingdom. This argument, in itself altogether untenable and also having certain implications for the Federal Republic with respect to the Netherlands-Danish boundary or even a Netherlands-Norwegian boundary, has been completely abandoned in the Memorial. Instead, the Federal Republic now advances a somewhat nebulous and dogmatic claim to be entitled to reach what it calls the middle of the North Sea.

157. Whatever may be the legal value of the sector theory in Polar areas—a matter quite outside the scope of the present case—it is clear that no basis for the application of the sector theory in the delimitation of the continental shelf can be found in State practice, the debates in the International Law Commission or in the records of the Geneva Conference. A memorandum prepared by the United Nations Secretariat for the International Law Commission in 1950 prior to its discussion of the continental shelf did, admittedly, contain a mention of the sector principle (*Yearbook of the International Law Commission*, 1950, Vol. II, pp. 106-108). But this only makes it all the more significant that no member of the Commission, no government in its comments on the Commission's proposals, and no State at the Geneva Conference ever adverted to the sector principle in discussing the rules of international law which should govern the continental shelf. No doubt, it is precisely because the Federal Republic is aware of the total lack of any legal basis for its sectoral claim that in the Memorial it does not dare to put the sector theory before the Court as a "principle of law" but only as a method of division which would result in "the most equitable apportionment of the continental shelf". The Court, however, may conclude that the absolute lack of any legal authority in maritime law for the method of division advocated by the Federal Republic only serves to confirm that its alleged principle of the "just and equitable share" is indeed nothing more than a thinly disguised demand for a delimitation of the continental shelf *ex aequo et bono*.

158. The Federal Republic's sectoral division of the North Sea is also highly artificial and arbitrary. In order to give its argument some air of plausibility the Federal Republic recognizes that it must have a circular (or elliptical)

area of shallow sea and, by a lucky accident, it believes that it has found such an area in the North Sea which it illustrates in figure 21 of the Memorial. But this figure shows that the Federal Republic's circular area is obtained only by a highly selective and arbitrary process. The "circle" does not cover the whole of the North Sea, nor even a clearly defined or separate part of that sea; it covers only an arbitrarily chosen area in part of the North Sea. If regarded as depicting the southern area of the North Sea shelf, the circle takes no account of the configurations of the French, Belgian, south Netherlands or south English coasts; nor does the arc even touch the Federal Republic's own coast or the Norwegian coast. In short, it is a circle constructed purely *ad hoc* for the purposes of the argument and even with the best of good fortune the Federal Republic is unable to make the arc of its circle touch some of the relevant coasts.

159. Again, as the Court will see from figure 21, the "sectors" of the Federal Republic's circle are not drawn with reference to the extremities of the coasts of the States concerned, *but with reference to the equidistance lines between their territories.*

Denmark's sector is depicted as starting at one end from a point on the median line agreed between Denmark and Norway in the Treaty of 8 December 1965 and at the other end from an arbitrary point on the equidistance boundary near the coast established between Denmark and the Federal Republic by the Treaty of 9 June 1965. *The Federal Republic's* sector starts at one end from that same point on the Danish-German equidistance boundary and at the other end from a similar point on the German-Netherlands equidistance boundary near the shore established by the Treaty of 1 December 1964. The *Netherlands* sector starts at one end from the last-mentioned point on the German-Netherlands equidistance boundary and at the other end from another point in mid-sea on the median line agreed between the Netherlands and the United Kingdom by the Treaty of 6 October 1965. The Federal Republic, presumably in order not to draw too much attention to the geographically meaningless character of its circle, does not complete the northern arc. But the impression is left in figure 21 that comparable sectors attach to the *United Kingdom* between its median line boundaries with the Netherlands and Norway and to *Norway* between its median line boundaries with the United Kingdom and Denmark. It is, to say the least, curious that the hostility to the equidistance principle so frequently evinced by the Federal Republic in the Memorial should have melted away so easily when this principle was found to be very convenient for the construction of its sector claim.

160. The principal way in which the Federal Republic seeks to justify its sectoral claim to a larger area of continental shelf is the proposition in paragraph 78 of the Memorial that in the case of the North Sea the share of each coastal State should be measured by the length of its North Sea coastline. This proposition is expounded in that paragraph as follows (p. 77, *supra*):

> "The degree of the geographic connection between the coast and the submarine areas lying in front of it does not manifest itself by the length of the coastline measured with all its articulations, but by the breadth of contact of the coast with the sea—the country's coastal frontage. The degree of connection of the German coast with the submarine areas of the North Sea would accordingly be measured by the linear distance between Borkum and Sylt, two German islands immediately adjacent to both end points of the German coast between the Danish and Netherlands continental territories. If the breadth of the German coast is evaluated in this fashion, and the breadth of the Danish and Netherlands

coasts were to be ascertained in like fashion, then the shares of these countries would stand in the ratio 6 : 9 : 9 respectively."

From this the Federal Republic concludes:

(1) the areas which accrue to the three States under the equidistance principle, and which it gives as Denmark 61,500 square kms., the Netherlands 61,800 square kms. and the Federal Republic 23,600 square kms., are disproportionate to the ratio of their coastal frontages and, in consequence, inequitable;

(2) the areas which would accrue to the three States under the Federal Republic's sectoral division, and which it gives as the Federal Republic 36,700 square kms., Denmark 53,900 square kms. and the Netherlands 56,300 square kms., do correspond roughly to the ratio of 6 : 9 : 9 and, in consequence, constitute a "just and equitable share".

161. The first and immediate objection to the Federal Republic's coastal frontage—façade line—concept is that there is not the slightest basis for it in State practice, the work of the International Law Commission or in the records of the Geneva Conference. In support of it the Federal Republic, it is true, adduces statements by two writers; but these statements—at best only suggestions—were made in papers written before the International Law Commission had even begun its study of the continental shelf. Nor is it clear that even these writers had in mind "coastal frontage" in the form of the "façade" line propounded by the Federal Republic. Be that as it may, the façade concept was never suggested or adverted to in the International Law Commission or by any Government in its comments upon the Commission's proposals or by any State at the Geneva Conference; nor does it appear to have received any mention in State practice other than in the argument of the Federal Republic in the present dispute. The reason is obvious enough. The legal concept and definition of a coast for the purposes of international law is well established: it is the baseline of the coast, i.e., the low-water line along the open coast or straight lines where these are admitted in the case of island fringes, bays, etc. Moreover, international law places specific limits upon the indentations which may be regarded as bays for this purpose and upon the length of the lines which may be drawn across bays. The Federal Republic's concept of a "façade" line and the particular fraçade line between Borkum and Sylt which it claims for its coast violate both the established legal concept of the coast and the specific rules applicable thereto. In short, the Federal Republic invokes a novel concept of the coast completely outside anything contemplated either by the International Law Commission or by States at the Geneva Conference.

162. The "coastal frontage"—"façade line" concept is, in fact, nothing but an artificial construction devised for the purpose of enabling the Federal Republic to escape alike from the consequences of its own geography and from the normal application of the relevant rules of maritime international law. Furthermore, as already pointed out, even the "façade line"—the Borkum-Sylt line—is not enough for the Federal Republic's purpose; for it is impossible to make the arc of the Federal Republic's magic circle come anywhere near the Borkum-Sylt line. In consequence, in order to give its sector even the semblance of plausibility, the Federal Republic has to construct it not with reference to the Borkum-Sylt line but to a purely fictional line joining selected points on its two near-shore continental shelf boundaries established in treaties respectively with the Netherlands and Denmark. Thus, the base of the Federal Republic's sector is still further divorced from the established concept of a coast in international law.

163. The Federal Republic's Memorial (in para. 84 on p. 83, *supra*) states:

> "If the maritime area to be divided is roughly circular, sectoral division, by reason of its geometrical construction, guarantees not only an apportionment proportional to the breath of the 'coastal frontage', but also a division in the middle between the opposite coasts."

Now, obviously, if the maritime area involved were *really* circular (i.e., if there were no sea without nor land within the circle) there would be no distinction between "opposite" and "adjacent" coasts; indeed, the sector lines would be equidistance lines. Furthermore, in such a theoretical situation, the surface of the various sectors would be proportional to the length of each *coastline*.

In actual fact, however, the North Sea "surrounded" by parts of the coasts of Great Britain, of Norway, of Denmark and of the Federal Republic, by the total coast of the Netherlands and Belgium and by part of the coast of France, is not even "roughly" circular. Accordingly the northern part of the equidistance line, forming the boundary of the continental shelf areas appertaining to Great Britain and the Netherlands respectively, does *not* coincide with an imaginary sector line of an imaginary circle, touching points on the coasts of Great Britain, Denmark and the Netherlands. Equally, in view of the *same* factual circumstance that the North Sea coast of the Federal Republic is also considerably removed from the arc of that imaginary circle, the equidistance line between the coasts of the Netherlands and the Federal Republic of Germany (and indeed, the equidistance line between the coasts of the Netherlands and Denmark) does not coincide with the imaginary sector line.

Whether the deviation from the sector line in the first case is only slight and relatively unimportant, as the Memorial (first three lines on p. 86, *supra*) states, is a matter of degree; anyway, if these qualifications apply to the first case, they also apply to the second case, or at least to the *difference* in deviation in the first and the second case.

The point is, that, if the coastlines of the States adjacent to a sea are so far removed from anything resembling the arc of a circle, there is no sense whatsoever in trying to apply a sectoral division. This goes both for the sector line as a boundary line and for the so-called "coastal frontage" as determining the total surface of the continental shelf appertaining to a State. Indeed this "coastal frontage" is a purely fictitious simplification of the actual coastline, whether this "frontage" is construed as linear—as is done in paragraph 78 of the Memorial (p. 77, *supra*: ". . . the linear distance between Borkum and Sylt . . .") —or as circular, as under the sector theory of proportionality between the surface of the sectors and the length of the corresponding parts of the arc. In neither way can "the degree of connection of the coast with the submarine areas" be measured. That the Memorial applies both ways of measurement does not add to the cogency of the "coastal frontage" concept!

164. Another thing which figure 21 shows clearly is that the Federal Republic has no valid reason for claiming that it is entitled to a continental shelf reaching to the middle of the North Sea. The Federal Republic's magic circle, if it touches the coasts of Denmark, the Netherlands and the United Kingdom, falls somewhat short of the Norwegian coast and very far short of that of the Federal Republic. This indicates that, while some of the other North Sea States may be States whose coasts actually border upon the central part of the North Sea, the Federal Republic's coast is situated in an extension of the North Sea to the south-east, as are also the coasts of Belgium and France in an extension to the south-west. The result is that the Federal Republic's coast, like those of Belgium and France, is much more distant from the central part

of the North Sea. In other words, while the distances from the centre of the magic circle to the coasts of Denmark, the Netherlands and the United Kingdom are identical, the distance to that centre from any point on the Federal Republic's coast is considerably greater. In consequence, it is neither surprising nor inequitable nor unjust that the Federal Republic's continental shelf should not reach out to the place which it speaks of as the centre of the North Sea.

165. In addition, both the Federal Republic's addiction to the supposed principle of the "just and equitable share" and its enthusiasm for a sectoral division of the continental shelf as an application of that "principle" seem to be capriciously confined to the coastal States of the south-eastern part of the North Sea. Belgium and France are both "North Sea States" as defined in the North Sea Convention of 1882, and both have limited frontages on the southern part of the North Sea. In some ways, moreover, their positions are analogous to that of the Federal Republic. Yet neither in figure 21 nor in its exposition of the sectoral theory in paragraphs 84-92 does the Federal Republic find any room for these States in its "equitable apportionment of the North Sea". This highly selective application of the alleged principle of the "just and equitable share" and of the concept of a "sectoral division" of the continental shelf serves, once more, to show that it is not a delimitation in accordance with any principle or rule of international law for which the Memorial asks but a delimitation simply *ex aequo et bono* in accordance with the *aspirations* of the Federal Republic.

166. In the final analysis, it is an insuperable objection to the Federal Republic's alleged principle of the "just and equitable share" and to its proposed "sectoral division" of part of the North Sea that both that alleged principle and that method of division are in total conflict with the established principles and rules of international law governing the delimitation of maritime areas. Thus, they misconceive the very nature and the operation of these principles and rules, which are based upon the doctrine "*la terre domine la mer*" and not vice versa. The rules of international law in this sphere take the coast as their starting point, and not the—in any case imaginary—middle of the sea. These principles and rules do not have as their object to share out or distribute the sea, seabed or subsoil by sector or otherwise. They have as their object to delimit in space the extent to which the sovereignty of a State over its land finds continuation in sovereign rights relating to the sea areas adjacent to its land. Moreover, at the root of these rules is the concept that the sovereign rights of a State over sea areas are, in principle, limited in space to areas all points of which are nearer to its coast than to that of any other State, because it is these areas which are truly "adjacent" to its land.

167. The Federal Republic's alleged principle and sectoral method of division depart alike from these fundamental principles of maritime international law and from the detailed rules regarding the delimitation of sea boundaries in which they have their application. Accordingly, in the view of the Netherlands Government, neither the alleged principle of the just and equitable share nor its particular application in the Federal Republic's "sectoral" division possess the characteristics of a "principle or rule of international law" within the meaning of Article 1 of the Compromis.

PART III. SUBMISSIONS

Considering that, as noted in the Compromis, disagreement exists between the Parties which could not be settled by detailed negotiations, regarding the further course of the boundary beyond the partial boundary determined by the Treaty of 1 December 1964;

Considering that under the terms of Article 1, paragraph 1, of the Compromis the task entrusted to the Court is not to formulate a basis for the delimitation of the continental shelf in the North Sea as between the Parties *ex aequo et bono*, but to decide *what principles and rules of international law* are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea *which appertain to each of them* beyond the partial boundary determined by the above-mentioned Treaty of 1 December 1964;

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

May it please the Court to adjudge and declare:

1. The delimitation as between the Parties of the said areas of the continental shelf in the North Sea is governed by the principles and rules of international law which are expressed in Article 6, paragraph 2, of the Geneva Convention of 1958 on the Continental Shelf.

2. The Parties being in disagreement, unless another boundary is justified by special circumstances, the boundary between them is to be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. Special circumstances which justify another boundary line not having been established, the boundary between the Parties is to be determined by application of the principle of equidistance indicated in the preceding submission.

20 February 1968

(Signed) W. RIPHAGEN

Agent for the Government
of the Kingdom of the Netherlands

PART IV. ANNEXES TO THE COUNTER-MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

Annex 1

[See Annex 1 to the Danish Counter-Memorial, p. 223, supra*]*

Annex 2

[See Annex 2 to the Danish Counter-Memorial, p. 227, supra*]*

Annex 3

[See Annex 3 to the Danish Counter-Memorial, p. 230, supra*]*

Annex 4

[See Annex 4 to the Danish Counter-Memorial, p. 234, supra*]*

Annex 5

[See Annex 5 to the Danish Counter-Memorial, p. 235, supra*]*

Annex 6

[See Annex 6 to the Danish Counter-Memorial, p. 236, supra*]*

Annex 7

[See Annex 12 A to the Danish Counter-Memorial, p. 254, supra*]*

Annex 8

TRANSLATION OF THE NOTE VERBALE OF 21 JUNE 1963 FROM THE ROYAL NETHERLANDS EMBASSY AT BONN TO THE MINISTRY OF FOREIGN AFFAIRS OF THE FEDERAL REPUBLIC OF GERMANY [1]

nr. 7099

Note Verbale

The Royal Netherlands Embassy has the honour, following the instruction by its Government, to inform the Ministry of Foreign Affairs of the following:

In connection with the proposed ratification of the Convention on the Continental Shelf signed at Geneva on 29 April 1958, the Royal Netherlands Government wishes to state that the part of the continental shelf of the North Sea over which it exercises sovereign rights in conformity with the said Convention is delimited to the east by the equidistance line beginning at the point where the thalweg in the mouth of the Ems reaches the territorial waters.

The Embassy would request the Ministry of Foreign Affairs to bring the foregoing to the attention of the competent domestic German authorities as far as may be necessary.

The Royal Netherlands Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurance of its highest consideration.

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[1] The German text of the Note is reproduced in Annex 2 of the Memorial.

Annex 9

NOTE VERBALE FROM THE MINISTRY OF FOREIGN AFFAIRS OF THE FEDERAL REPUBLIC OF GERMANY OF 26 AUGUST 1963

Auswärtiges Amt

V 1 - 80/52/3

Durchschlag

V e r b a l n o t e

Das Auswärtige Amt beehrt sich, auf die Verbalnote Nr. 7099 der Königlich Niederländischen Botschaft vom 21. Juni 1963 Bezug zu nehmen, mit der die Auffassung der Königlich Niederländischen Regierung über den Verlauf der östlichen Grenze des niederländischen Festlandsockels der Bundesregierung übermittelt wurde.

In Beantwortung dieser Verbalnote erlaubt das Auswärtige Amt sich, der Botschaft mitzuteilen, daß die Bundesregierung die Auffassung der Königlich Niederländischen Regierung über die Abgrenzung des Festlandsockels zwischen der Bundesrepublik Deutschland und den Niederlanden nicht zu teilen vermag. Die Bundesregierung ist der Ansicht, daß im Bereich des Nordseeschelfs sowohl historische Gründe als auch weitere besondere Umstände eine in mehrfacher Hinsicht von der Auffassung der Königlich Niederländischen Regierung abweichende Grenzziehung rechtfertigen.

Das Auswärtige Amt beehrt sich, der Königlich Niederländischen Botschaft ferner mitzuteilen, daß auch die Bundesregierung die Ratifikation des Übereinkommens über den Festlandsockel vorbereitet.

Die Bundesregierung würde es außerordentlich begrüßen, wenn mit der niederländischen Regierung Verhandlungen über den Abschluß einer deutsch-niederländischen Vereinbarung über die Grenzziehung

n die

öniglich Nieder-
ändische Botschaft

im Bereich des Festlandsockels aufgenommen werden könnten. Das Auswärtige Amt darf die Königlich Niederländische Botschaft bitten, diesen Vorschlag der Königlich Niederländischen Regierung zu übermitteln und deren Rückäußerung herbeizuführen.

Das Auswärtige Amt benutzt diesen Anlaß, die Königlich Niederländische Botschaft erneut seiner ausgezeichneten Hochachtung zu versichern.

Bonn, den 26. August 1963

Annex 9 A

(Translation)

Ministry of Foreign Affairs
V 1-80/52/3

Note Verbale

The Ministry of Foreign Affairs has the honour to refer to the Royal Netherlands Embassy's Note Verbale No. 7099 dated 21 June 1963 informing the Federal Government of the Netherlands Government's views on the position of the Eastern boundary of the Dutch continental shelf.

In reply the Ministry of Foreign Affairs would inform the Embassy that the Federal Government does not share the Royal Netherlands Government's views on the delimitation between the Federal Republic of Germany and the Netherlands. The Federal Republic holds the view that there are historical reasons and other special circumstances that justify adoption in the area of the continental shelf under the North Sea of a delimitation line, the position of which differs in more than one respect from that claimed by the Royal Netherlands Government.

The Ministry of Foreign Affairs has the honour also to inform the Netherlands Embassy that the Federal Government, too, is preparing for the ratification of the Convention on the continental shelf.

The Federal Government would very much appreciate it if arrangements could be made for negotiating an agreement between the Federal Republic and the Netherlands on the position of the boundary-line in the area of the continental shelf. The Ministry of Foreign Affairs would request the Royal Netherlands Embassy to transmit this proposal to the Royal Netherlands Government and to elicit their views thereon.

The Ministry of Foreign Affairs avails itself of the opportunity to renew to the Royal Netherlands Embassy the assurances of its highest consideration.

Bonn, 26 August 1963.
(seal)

To the Royal Netherlands Embassy.

Annex 10

[See Annex 10 to the Danish Counter-Memorial, p. 244, supra*]*

Annex 10 A

[See Annex 10 A to the Danish Counter-Memorial, p. 246, supra*]*

Annex 11

[See Annex 11 to the Danish Counter-Memorial, p. 247, supra*]*

Annex 11 A

[See Annex 11 A to the Danish Counter-Memorial, p. 248, supra*]*

Annex 12

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE EXPLOITATION OF SINGLE GEOLOGICAL STRUCTURES EXTENDING ACROSS THE DIVIDING LINE ON THE CONTINENTAL SHELF UNDER THE NORTH SEA

The Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland;

Having reached agreement on the delimitation of the Continental Shelf under the North Sea between the two countries;

Desiring to regulate certain matters of common interest with regard to the exploitation of single geological structures extending across the dividing line;

Have agreed as follows:

Article 1

If any single geological mineral oil or natural gas structure or field extends across the dividing line and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, the Contracting Parties will seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the costs and proceeds relating thereto shall be apportioned, after having invited the licensees concerned, if any, to submit agreed proposals to this effect.

Article 2

Where a structure or field referred to in Article 1 of this Agreement is such that failure to reach agreement between the Contracting Parties would prevent maximum ultimate recovery of the deposit or lead to unnecessary competitive drilling, then any question upon which the Contracting Parties are unable to agree concerning the manner in which the structure or field shall be exploited or concerning the manner in which the costs and proceeds relating thereto shall be apportioned, shall, at the request of either Contracting Party, be referred to a single Arbitrator to be jointly appointed by the Contracting Parties. The decision of the Arbitrator shall be binding upon the Contracting Parties.

Article 3

The Contracting Parties shall, at the request of either, consult regarding the extension of this Agreement to mineral deposits other than those referred to in Article 1 of this Agreement.

Article 4

(1) This Agreement shall be ratified. Instruments of ratification shall be exchanged at The Hague as soon as possible.

(2) This Agreement shall enter into force on the date of the exchange of instruments of ratification.

(3) Either Contracting Party may terminate this Agreement by giving to the other at least twelve months' notice in writing.

(4) If at the time of the termination of this Agreement a reference to an Arbitrator has been made in accordance with Article 2 of this Agreement, the arbitration shall be completed in accordance with the provisions of this Agreement or of any other Agreement which the Contracting Parties may have agreed to substitute therefor.

IN WITNESS WHEREOF the undersigned being duly authorised thereto by their respective Governments have signed the present Agreement.

DONE in duplicate at London, the 6th October, 1965 in the English and Netherlands languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

(sd.) Walter PADLEY

For the Government of the Kingdom of the Netherlands:

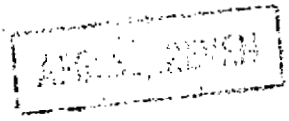
(sd.) D. W. van LYNDEN.

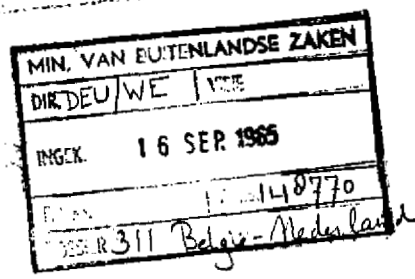
Annex 13

NOTE FROM THE EMBASSY OF BELGIUM AT THE HAGUE OF 15 SEPTEMBER 1965

F 10835/65

AMBASSADE
VAN
BELGIË





No.. 40/7225

De Ambassade van België te 's-Gravenhage biedt haar complimenten aan het Ministerie van Buitenlandse Zaken aan en heeft de eer te verwijzen naar de nota van het Departement No. 135593, Directie Europa, Bureau West-Europa, van 26 augustus 1965, aangaande de begrenzing van het Continentaal Plat.

De Ambassade heeft opdracht gekregen het Departement te laten weten dat de Belgische Regering kennis heeft genomen van het Nederlands voorstel om op korte termijn over te gaan tot het openen van officiele besprekingen tussen beide Regeringen.

Het onderwerp van deze besprekingen lijkt de Belgische Regering vrij eenvoudig en zal haar inziens geen aanleiding geven tot ingewikkelde discussies, gezien de eenstemmigheid van inzicht die er tussen de beide landen bestaat over het principe van de equidistantie en de praktische toepassing ervan.

Wat betreft het tijdstip dezer besprekingen, zou de Belgische Regering er de voorkeur aan geven dat deze begin oktober zouden plaats vinden, dit in verband met de afwezigheid gedurende de laatste week van september van deskundigen waarvan de aanwezigheid gewenst is.

In de hogergenoemde nota No. 135593 stelde het Ministerie van Buitenlandse Zaken aan de Ambassade eveneens de vraag of de Belgische Regering zich officieel akkoord kon verklaren met de coördinaten 51°48'18" N en 2°28'54" O die de Regeringen van Den Haag en Londen hadden aanvaard ter vaststelling van het gemeenschappelijk grenspunt tussen

an het Ministerie van Buitenlandse Zaken
te 's-Gravenhage ./.

Groot-Brittannië, België en Nederland.

Dienaangaande werd aan de Ambassade opgedragen het volgende te preciseren.

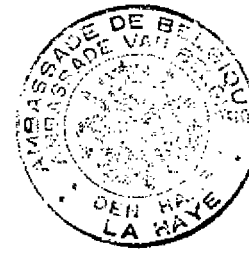
Het Ministerie van Buitenlandse Zaken zal wel op de hoogte zijn van het feit dat er nog geen Belgische wet bestaat betreffende het Continentaal Plat; de Belgische Regering ziet dan ook niet in op welke wijze zij officieel haar instemming met de genoemde coördinaten zou kunnen betuigen zolang het wetsontwerp dat onder de vorige Regering werd uitgewerkt en door het ontbinden van het Belgische Parlement werd tegengehouden, niet de vorm van wet zal hebben aangenomen; naar haar mening zou het een dergelijk akkoord ontbreken aan interne juridische grondslagen.

De Belgische Regering gelooft echter niet dat dit punt van dien aard is dat het enige moeilijkheden zou kunnen teweegbrengen, aangezien het hier een eenvoudige kwestie van tijd betreft.

De Belgische Regering heeft haar Ambassade in Den Haag dan ook opdracht gegeven te preciseren dat zij intussen geen enkel bezwaar zal aanvoeren tegen de coördinaten 51°48'18" N en 2°28'54" O, die als gemeenschappelijk grenspunt tussen de Regeringen van Nederland en Groot-Brittannië overeengekomen zijn en die door de Belgische deskundigen als aanvaardbaar werden beschouwd.

De Ambassade van België benut deze gelegenheid om aan het Ministerie van Buitenlandse Zaken de uitdrukking harer meeste hoogachting te hernieuwen.

's-Gravenhage, 15 september 1965



Annex 13 A

(Translation)

EMBASSY OF BELGIUM
No. 40/7225

The Embassy of Belgium at The Hague presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to the latter's Note No. 135593, Europe Department, Western Europe Section, dated 26 August 1965, concerning the delimitation of the Continental Shelf.

The Embassy has been instructed to inform the Ministry that the Belgian Government has taken note of the Netherlands proposal that official consultations be started at an early date between the two Governments.

The subject of these consultations appears to the Belgian Government to be fairly straightforward and in the latter's opinion should not give rise to complicated discussions in view of the concurrence of opinion between the two countries on the principle of equidistance and the practical application thereof.

As regards the date of these consultations, the Belgian Government would prefer them to take place at the beginning of October, this in connection with the absence during the last week of September of experts whose presence is desired.

In the above-mentioned Note No. 135593, the Ministry of Foreign Affairs also asked the Embassy whether the Belgian Government could officially declare itself to be in agreement with the co-ordinates 51°48′18″ *N* and 2°28′54″ *E* which the Governments at The Hague and London had accepted in determination of the common point of delimitation between Great Britain, Belgium and the Netherlands.

On this subject the Embassy was instructed to state the following.

The Ministry of Foreign Affairs will certainly be aware of the fact that there is as yet no Belgian Act of Parliament in respect of the Continental Shelf; the Belgian Government is therefore unable to see in what way it could officially express its approval of the said co-ordinates as long as the Bill that was elaborated under the former Government and was held up on account of the dissolution of Parliament has not passed into law; in the opinion of the Belgian Government, such approval would be without foundation in domestic legislation.

The Belgian Government does not believe, however, that this point is such that it could create any difficulties, seeing that nothing more is involved here than a question of time.

The Belgian Government has therefore instructed its Embassy in The Hague to state that the former will meanwhile raise no objection to the co-ordinates 51°48′18″ *N* and 2°28′54″ *E* which have been agreed upon by the Governments of the Netherlands and Great Britain as determining the common point of delimitation and which have been deemed acceptable by the Belgian experts.

The Embassy of Belgium avails itself of this opportunity to renew to the Ministry of Foreign Affairs the expression of its highest consideration.

The Hague, 15 September 1965.

Annex 14

[See Annex 14 to the Danish Counter-Memorial, p. 280, supra*]*

Annex 14 A

[See Annex 14 A to the Danish Counter-Memorial, p. 290, supra*]*

Annex 15

[See Annex 13 to the Danish Counter-Memorial, p. 259, supra*]*

Annex 16

[See Annex 15 to the Danish Counter-Memorial, p. 299, supra*]*

Annex 17

[See Annex 16 to the Danish Counter-Memorial, p. 305, supra*]*
