

*Jan Mayen*  
Student Materials

---

- Decided by the International Court of Justice in June 1993
- Key topics: law of the sea (resolving maritime boundary disputes)

Learning Objectives

- Understand and apply:
  - how states make legal claims based on entitlements
  - how delimitation law varies across water and seabed zones
  - the procedure used by the Court in this case
- Analyze and evaluate:
  - how and why the Court's procedure in this case differed from the procedure used in the *North Sea* case
  - circumstances that can affect the equity of a median line

Background Information

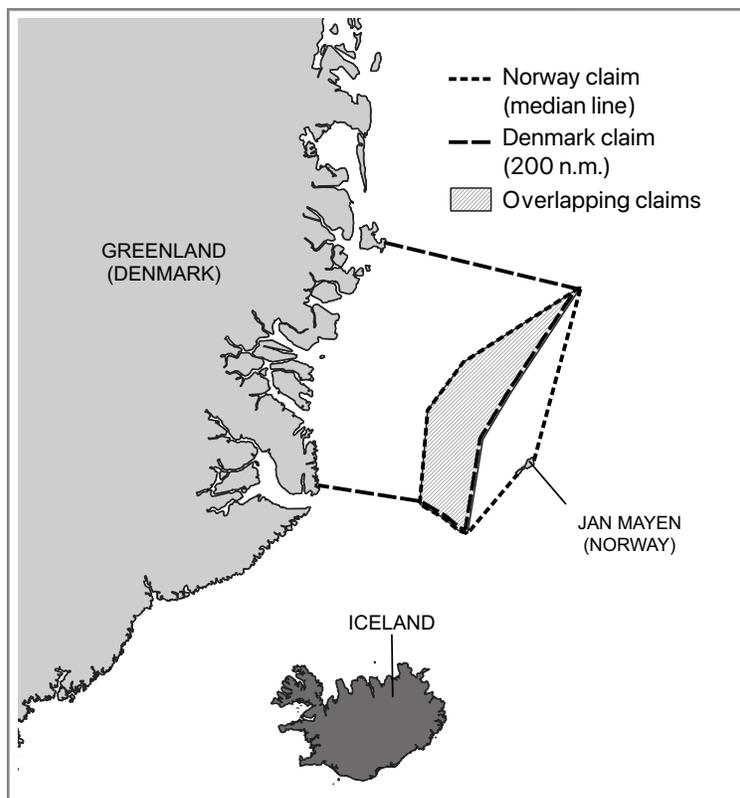
This dispute involved the maritime borders between Greenland and Jan Mayen, a small island in the northern Atlantic Ocean. Denmark represented Greenland at the ICJ, while Norway claimed Jan Mayen as its territory.<sup>1</sup> These claims meant that the lawsuit was litigated by Denmark and Norway. These states asked the ICJ to decide borders for both the continental shelf and a fishery zone. Both Denmark and Norway had ratified the 1958 Geneva Convention on the Continental Shelf, but neither state had (yet) ratified the 1982 UN Convention on the Law of the Sea. Therefore, the Court had to rule using a combination of customary international law and treaty law.

---

<sup>1</sup> Denmark's legal relationship with Greenland is complex and has changed over time. For the purposes of this case, Denmark had the right to make claims involving Greenland.

Denmark and Norway each believed that it had a legal entitlement to a continental shelf and EEZ that were 200 n.m. wide from the baselines of Greenland and Jan Mayen. However, Greenland and Jan Mayen are separated by only about 250 nautical miles. This closeness ensure that the asserted legal entitlements of Denmark and Norway overlapped. Because Iceland—another neighboring island—was not part of the lawsuit, Denmark and Norway asked the ICJ to consider only the area that did not overlap with Iceland’s only entitlement. The lines in Figure 1 thus stop approximately 200 n.m. from Iceland.

**Figure 1: Overlapping Claims in the Jan Mayen Case**

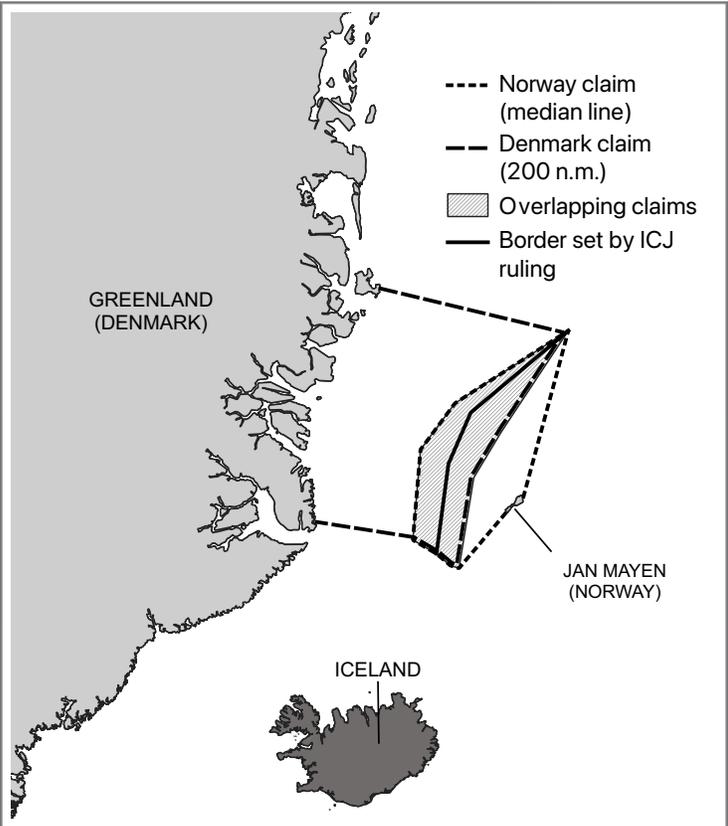


Norway asked the ICJ to use the median line as the maritime boundary between Greenland and Jan Mayen. Norway’s legal claim is thus shown by the dotted lines shown in Figure 1. However, Denmark argued that this outcome was inequitable because the equidistance method ignores the location of natural resources and differences between states, like the sizes of their economies, populations, and territory. Denmark sought a full 200 n.m. miles of maritime territory, as shown by the dashed line in Figure 1. The

line gray polygon in Figure 1 therefore shown. The overlapping claims of the two states. The ICJ was effectively asked to use international law to draw a line that divided up this polygon.

After carefully considering the legal arguments of both states, the ICJ ultimately set the final boundary shown in Figure 2. This boundary was a compromise between the claims of Denmark and Norway that is explained in the majority judgment below

**Figure 2: Final Boundary in the *Jan Mayen* Case**



Relevant Legal Text

Geneva Convention on the Continental Shelf (1958)

Article 6, para. 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 ...

### Majority Judgment

The Court began by summarizing the relevant law for deciding the case. Note that the relevant law for the continental shelf was different from the relevant law for the fishery zone.

In the present case, both States are parties to the 1958 Convention and ... the 1958 Convention is applicable to the delimitation of the continental shelf between Greenland and Jan Mayen.<sup>2</sup>

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

the combined “equidistance-special circumstances rule”, in effect, gives particular expression to a general norm that, failing agreement, the boundary between states abutting on the same continental shelf is to be determined on equitable principles ...

If the equidistance-special circumstances rule of the 1958 Convention is ... to be regarded as expressing a general norm based on equitable principles, it must be difficult to find any material difference—at any rate in regard to delimitation between opposite coasts—between the effect of Article 6 and the effect of the customary rule which also requires a delimitation based on equitable principles. [In a prior case involving a] continental shelf boundary, [the Court] expressed the view that:

---

<sup>2</sup> Editor’s Note: The Court is referring here to the 1958 Geneva Convention on the Continental Shelf.

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

[and] that “the two institutions—continental shelf and exclusive economic zone—are linked together in modern law” ...

The question was raised during the hearings of the relationship of [fishery] zones to the concept of the exclusive economic zone as proclaimed by many states and defined in ... the 1982 United Nations Convention on the Law of the Sea. Whatever that relationship may be, the Court takes note that the parties adopt in this respect the same position, in that they see no objection, for the settlement of the present dispute, to the boundary of the fishery zones being determined by the law governing the boundary of the exclusive economic zone, which is customary law; however the parties disagree as to the interpretation of the norms of such customary law.

Denmark and Norway are both signatories of the 1982 United Nations Convention on the Law of the Sea, though neither has ratified it, and it is not in force. There can be no question therefore of the application, as relevant treaty provisions, of that Convention. The Court however notes that [UNCLOS provides] for the delimitation of the continental shelf and the exclusive economic zone between states with opposite or adjacent coasts to be effected “by agreement on the basis of international law ... in order to achieve an equitable solution.” That statement of an “equitable solution” as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of continental shelf and of exclusive economic zones.

The Court then described the process that it would use in deciding the case. First, the Court would start by using the median line—which was produced by the equidistance method—as a provisional boundary. Then, the Court would decide whether to adjust this boundary based on “special” or “relevant circumstances.”

Turning first to the delimitation of the continental shelf, since it is governed by Article 6 of the 1958 Convention, and the delimitation is between coasts that are opposite, it is appropriate to begin by taking provisionally the median line between the territorial sea baselines, and then enquiring whether “special circumstances” require “another boundary line”. Such a procedure is consistent with the words in Article 6 ...

Denmark has, it is true, disputed the appropriateness of drawing an equidistance line even provisionally as a first step in the delimitation process; and to this end it has recalled previous decisions of the Court ... These cases were ... not governed by Article 6 of the 1958 Convention, which specifically provides that the median line be employed “unless another boundary line is justified by special circumstances”.

Turning now to the delimitation of the fishery zones, the Court must consider ... the law applicable to the fishery zone, in the light also of what has been said above ... as to the exclusive economic zone. Of the international decisions concerned with dual-purpose boundaries, [a prior] case—in which the Chamber rejected the application of the 1958 Convention, and relied upon the customary law—is here material ... The Chamber [questioned] the adoption of the median line “as final without more ado”, and drew attention to the “difference in length between the respective coastlines of the two neighbouring states which border on the delimitation area” and on that basis affirmed “the necessity of applying to the median line as initially drawn a correction which, though limited, will pay due heed to the actual situation” ... It thus appears that, both for the continental shelf and for the fishery zones in this case, it is proper to begin the process of delimitation by a median line provisionally drawn.

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

The concept of “special circumstances” was discussed at length at the First United Nations Conference on the Law of the Sea, held in 1958. It was included both in the Geneva Convention ... on the Territorial Sea and the Contiguous Zone ... and in the Geneva Convention ... on the Continental Shelf ... It was and remains linked to the equidistance method there contemplated ... It is thus apparent that special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle. General international law, as it has developed through the case-law of the Court and arbitral jurisprudence ... has employed the concept of “relevant circumstances”. This concept can be described as a fact necessary to be taken into account in the delimitation process.

Although it is a matter of categories which are different in origin and in name, there is inevitably a tendency towards assimilation between the special circumstances of Article 6 of the 1958 Convention and the relevant circumstances under customary law, and this is only because they both are intended to enable the achievement of an equitable result ... It cannot be surprising if an equidistance-special circumstances rule produces much the same result as an equitable principles-relevant circumstances rule in the case of opposite coasts, whether in the case of a delimitation of continental shelf, of fishery zone, or of an all-purpose single boundary ...

There has been much argument in the present case ... as to what circumstances are juridically relevant to the delimitation process. It may be useful to recall the much-cited statement from the Court's judgment in the *North Sea* [case]:

In fact, there is no legal limit to the considerations which states may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case ...

It is to be noted that the Court in 1969 was addressing the task of states in negotiation; indeed the entire 1969 judgment was necessarily thus as a result of the terms of the special agreement by which the cases were taken to the Court. In [a later] case the Court added the following caveat:

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

A court called upon to give a judgment declaratory of the delimitation of a maritime boundary ... will therefore have to determine “the relative weight to be accorded to different considerations” in each case; to this end, it will consult not only “the circumstances of the case” but also previous

decided cases and the practice of states. In this respect the Court recalls the need ... for “consistency and a degree of predictability” ...

The Court then applied the process for maritime delimitation. The Court considered six different circumstances that might justify adjustments to the median line.

The Court now turns to the question of whether the circumstances of the present case require adjustment or shifting of [the median] line ... Both Parties have brought to the Court's attention various circumstances which they each regard as appropriate to be taken into account for the purposes of the delimitation ...

*(i) Disparity between coastlines and maritime area*

A first factor of a geophysical character ... is the disparity or disproportion between the lengths of the “relevant coasts” ... The lengths of the coastal fronts of Greenland and Jan Mayen, defined as straight lines between G and H, and between E and F, are: Greenland, approximately 504.3 kilometres; Jan Mayen, approximately 54.8 kilometres ... Thus the ratio between the coast of Jan Mayen and that of Greenland is 1 to 9.2 ...

Denmark argues that the disparity between the two relevant coastal lengths is obvious, and that ... a disparity of this nature should lead to a delimitation line which respects Greenland's right to a maritime zone of 200 miles. Denmark has observed in this respect that a geographical proportionality line which took into account the relationship between the relevant coastal lengths of Greenland and Jan Mayen, and allocated maritime areas in the same proportion, would be drawn more than 200 miles from the coast of Greenland. Denmark did not however suggest that such a line, which it considered to be “equitable in its result”, could be adopted, because it would be incompatible with the international legal regime governing the right of states to claim sea areas off their coasts, the maximum permissible Danish claim thus being a delimitation line 200 miles from the baselines of Greenland ...

Norway contends that a comparison of coastal lengths would result in the present case in an arbitrary refusal to give full weight to the relevant circumstances which form part of the process of evolving an equitable solution, and that such a comparison is irrelevant to the achievement of equality of treatment of the parties in delimitation. Referring to the jurisprudence of the Court,

Norway also argues that proportionality (in the form of a factor based on the ratio of the lengths of the respective coasts) is not an independent principle of delimitation, but a test of the equitableness of a result arrived at by other means. Furthermore, in Norway's view, there is no reason to require that the ratio of coastal lengths should be taken into consideration in delimitation as a relevant determinative circumstance, or even as a relevant circumstance ... Norway takes the view finally that differences in the length of coasts have never qualified as special circumstances for the purposes of Article 6 of the 1958 Convention ...

The application of [the equidistance] method to delimitations between opposite coasts produces, in most geographical circumstances, an equitable result. There are however situations—and the present case is one such—in which the relationship between the length of the relevant coasts and the maritime areas generated by them by application of the equidistance method, is so disproportionate that it has been found necessary to take this circumstance into account in order to ensure an equitable solution. The frequent references in the case-law to the idea of proportionality—or disproportion—confirm the importance of the proposition that an equitable delimitation must, in such circumstances, take into account the disparity between the respective coastal lengths of the relevant area ...

A delimitation by the median line would, in the view of the Court, involve disregard of the geography of the coastal fronts of eastern Greenland and of Jan Mayen. It is not a question of determining the equitable nature of a delimitation as a function of the ratio of the lengths of the coasts in comparison with that of the areas generated by the maritime projection of the points of the coast ..., nor of “rendering the situation of a state with an extensive coastline similar to that of a state with a restricted coastline”... Yet the differences in length of the respective coasts of the parties are so significant that this feature must be taken into consideration during the delimitation operation ...

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

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

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

*(ii) Access to resources*

The Court now turns to the question of whether access to the resources of the area of overlapping claims constitutes a factor relevant to the delimitation. So far as sea-bed resources are concerned, the Court would recall what was said in [a prior] case:

The natural resources of the continental shelf under delimitation “so far as known or readily ascertainable” might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation ... Those resources are the essential objective envisaged by states when they put forward claims to sea-bed areas containing them ...

Little information has however been given to the Court in that respect ...

With regard to fishing, both parties have emphasized the importance of their respective interests in the marine resources of the area. The Court is informed that the principal exploited fishery resource of the area between Greenland and Jan Mayen is capelin. This is a migratory species, and its migratory pattern varies with climatic conditions ... Norwegian records of capelin catches ... show concentrations of stocks generally in the southern part of the area of overlapping claims, though sometimes as far east as the waters round Jan Mayen itself; no geographical data for catches in areas to the west of the median line (where Norwegian vessels do not fish) have been produced, but it is agreed that capelin stocks generally extend also west of the southern part of the area of overlapping claims ...

Denmark has ... stressed the dependence of the Inuit population of Greenland on the exploitation of the resources of the east coast of Greenland, particularly where sealing and whaling are concerned. Norway has indicated that the waters between Jan Mayen and Greenland have long been the scene of Norwegian whaling, sealing and fishing, and that the various fishing activities in the Jan Mayen area account for more than 8 per cent of the total quantity of Norwegian catches, and that they contribute to the fragile economy of the Norwegian coastal communities.

As has happened in a number of earlier maritime delimitation disputes, the parties are essentially in conflict over access to fishery resources: this explains the emphasis laid on the importance of fishing activities for their respective economies and on the traditional character of the different types of fishing carried out by the populations concerned ... The Court has to consider whether any shifting or adjustment of the median line, as fishery zone boundary, would be required to ensure equitable access to the capelin fishery resources for the vulnerable fishing communities concerned.

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

*(iii) Location of ice*

In this context the Court has to consider another factor of a geophysical character brought to its attention, namely the presence of ice in the waters of the region. The waters off the northern segment of the east coast of Greenland are permanently covered by compact ice, and the East Greenland Current runs south along that coast, carrying with it enormous quantities of drifting polar ice ... It is common ground between the Parties that a 40 per cent cover of drift ice renders ordinary navigation and all fishing activities impossible. Denmark argues accordingly that the 200-mile zone off the Greenland coast which it claims would not in fact provide Greenland with 200 miles of exploitable sea, and that the median line proposed by Norway would in effect leave to Denmark only 10 per cent of the waters in which fishing is made possible by the absence of ice. Neither party has commented on the possible significance of the presence of ice for the practical exploration and exploitation of the sea-bed of the area of overlapping claims ...

Perennial ice may significantly hinder access to the resources of the region, and thus constitute a special geographical feature of it. However, in the present case, the Court is informed that capelin, if found in a given year in fishable quantities in the southern part of the area of overlapping claims, are so found at the time of year ... when the drift ice cover has retreated ... When the ice cover is most extensive, there is no capelin and no other known fishable species in the waters between Jan Mayen and Greenland. The Court is therefore satisfied that while ice constitutes a considerable seasonal restriction of access to the waters, it does not materially affect access to migratory fishery resources in the southern part of the area of overlapping claims.

*(iv) Population and socio-economic conditions*

Denmark considers as also relevant to the delimitation the major differences between Greenland and Jan Mayen as regards population and socio-economic factors. It has pointed out that Jan Mayen has no settled population, as only 25 persons temporarily inhabit the island for purposes of their employment ... In Denmark's view, Jan Mayen cannot sustain and has not sustained human habitation or economic life of its own ... The total population of Greenland is 55,000, of which some 6 per cent live in East Greenland. As regards socio-economic factors, Denmark has emphasized the importance for Greenland of fishing and fisheries-related activities, which constitute the mainstay of its economy; Norwegian fishing interests in the waters surrounding Jan

Mayen are however the interests of mainland Norway, not of Jan Mayen as such, where there are no fishermen. Denmark has also relied on what it refers to as the “cultural factor”, the attachment of the people of Greenland to their land and the surrounding sea, in the light of which it would, Denmark contends, be difficult if not impossible for the Greenlanders to accept that the sea area within the 200-mile zone off their coast should be curtailed in deference to the interests of the people of a remote and highly developed industrial state.

[Denmark] does not argue that Jan Mayen has no entitlement to continental shelf or fishery zones, but that when maritime boundaries are to be established between that island and the territories of Iceland and Greenland, the island of Jan Mayen cannot be accorded full effect, but only partial effect, a contention which the Court has already found unacceptable ... Nor, in the view of the Court, does the “cultural factor” point to a different conclusion. The question is whether the size and special character of Jan Mayen's population, and the absence of locally based fishing, are circumstances which affect the delimitation. The Court would observe that the attribution of maritime areas to the territory of a state, which, by its nature, is destined to be permanent, is a legal process based solely on the possession by the territory concerned of a coastline. The Court finds relevant in the present dispute the observations it had occasion to make, concerning continental shelf delimitation, in [a prior] case:

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

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

*(v) National security concerns*

Norway has argued, in relation to the Danish claim to a 200-mile zone off Greenland, that “the drawing of a boundary closer to one state than to another would imply an inequitable displacement of the possibility of the former state to protect interests which require protection”. It considers that, while courts have been unwilling to allow such considerations of security to intrude upon the major task of establishing a primary boundary in accordance with the geographical criteria, they are concerned to avoid creating conditions of imbalance ... In the present case the Court has already rejected the 200-mile line. In [a prior] case, the Court was satisfied that

the delimitation which will result from the application of the present judgment is ...not so near to the coast of either party as to make questions of security a particular consideration in the present case ...

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

*(vi) Norway’s prior conduct towards Iceland*

[Denmark argues that] the conduct of the parties is a highly relevant factor in the choice of the appropriate method of delimitation where such conduct has indicated some particular method as being likely to produce an equitable result. In this respect, Denmark relies on the maritime delimitation between Norway and Iceland ...

By an [1980] Agreement between Norway and Iceland ..., a Conciliation Commission was set up to submit recommendations regarding the dividing line for the shelf area between Iceland and Jan Mayen ... By a subsequent [1981] Agreement ..., Norway and Iceland indicated that by entering into the earlier agreement they had agreed

that Iceland's economic zone shall extend to 200 nautical miles also in the areas between Iceland and Jan Mayen where the distance between the baselines is less than 400 nautical miles ...

The Agreement provided further that

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

In this case Norway has denied that the Agreements between Norway and Iceland constitute relevant conduct or a precedent, arguing that they represent a political concession in favour of an island state heavily dependent on its fisheries and moreover enjoying special relations with Norway. It has recalled that Norway protested when Iceland first established its 200-mile zone, and that Iceland has traditionally been very active, particularly where fisheries were concerned, in the waters between its own coasts and Jan Mayen, which has not been the case of Greenland ...

Denmark's argument based on the Agreements concluded between Iceland and Norway for the delimitation of the areas south of Jan Mayen deserves particular consideration, inasmuch as those instruments directly concern Jan Mayen itself. By invoking against Norway the Agreements of 1980 and 1981, Denmark is seeking to obtain by judicial means equality of treatment with Iceland. It is understandable that Denmark should seek such equality of treatment. But in the context of relations governed by treaties, it is always for the parties concerned to decide, by agreement, in what conditions their mutual relations can best be balanced. In the particular case of maritime delimitation, international law does not prescribe, with a view to reaching an equitable solution, the adoption of a single method for the delimitation of the maritime spaces on all sides of an island, or for the whole of the coastal front of a particular state, rather than, if desired, varying systems of delimitation for the various parts of the Coast ... For these reasons, the Court concludes that the conduct of the parties does not constitute an element which could influence the operation of delimitation in the present case ...

The Court then concluded that the provisional median line should be adjusted to give Greenland a larger share of the overlapping area. It drew the specific boundary shown in Figure 2 (above).

The Court has come to the conclusion that the median line adopted provisionally for both, as first stage in the delimitation, should be adjusted or shifted to become a line such as to attribute a larger area of maritime space to Denmark than would the median line. The line drawn by Denmark 200 nautical miles from the baselines of eastern Greenland would however be excessive as an adjustment, and would be inequitable in its effects. The delimitation line must therefore be drawn within the area of overlapping claims, between the lines proposed by each party. The Court will therefore now proceed to examine the question of the precise position of that line ...

To give only a broad indication of the manner in which the definition of the delimitation line should be fixed, and to leave the matter for the further agreement of the parties, as urged by Norway, would in the Court's view not be a complete discharge of its duty to determine the dispute ...