

DENMARK V. NORWAY

A Case Summary for the
Maritime Dispute Resolution Project
Round II



U.S.-ASIA LAW INSTITUTE
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Maritime Dispute Resolution Project

Maritime Delimitation in the Area
between Greenland and Jan Mayen
(*Denmark v. Norway*)

Case Summary by Jonathan Odom*



A research project of the
U.S.-Asia Law Institute

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The views expressed herein are those of the author and do not necessarily represent the position of the U.S. Government, the U.S. Department of Defense, or any of its components.

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Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

Maritime Delimitation in the Area between Greenland and Jan Mayen (Den. v. Nor.) 1993 I.C.J. 38 (Jun. 14).

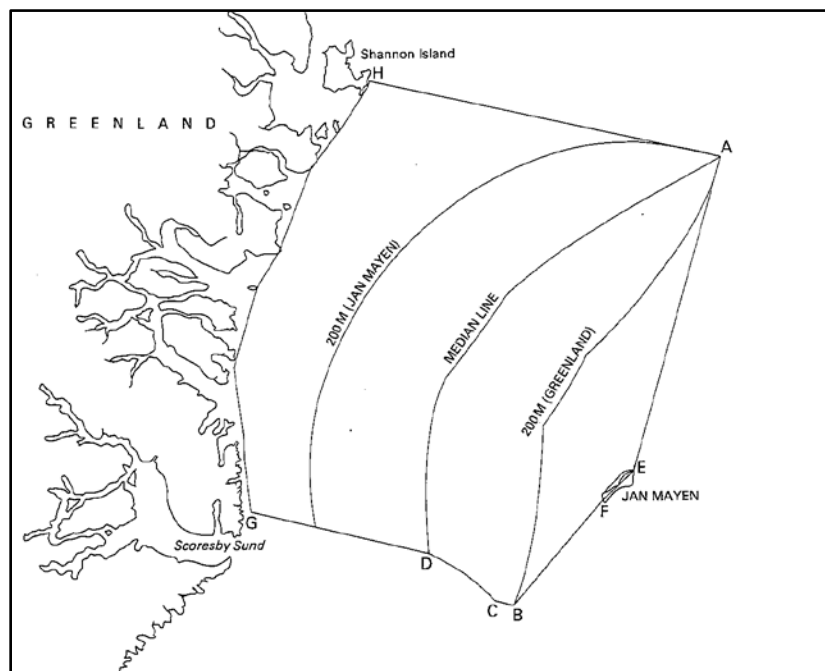
Section I – Summary of the Case

In this case, the International Court of Justice (ICJ) adjudicated a maritime dispute between the two European states of Denmark and Norway.¹ The dispute involved the portion of the Atlantic Ocean lying between the eastern coast of Greenland (Danish territory) and the remote island of Jan Mayen (Norwegian territory), which are located approximately 250 nautical miles (nm) from one another. Within these waters, these two states sought a maritime delimitation between their respective continental shelves and fishing zones. Regarding the maritime dispute, Denmark requested a single line of delimitation between Greenland and Jan Mayen, to be measured 200 nm from Greenland's baseline.² In response, Norway sought a median line between Greenland and Jan Mayen. In contrast to many other international boundary cases, this dispute was purely maritime in nature and did not involve a territorial element; Denmark has undisputed sovereignty over Greenland and Norway has undisputed sovereignty over Jan Mayen.³

¹ Maritime Delimitation in the Area between Greenland and Jan Mayen (Den. v. Nor.) 1993 I.C.J. 38, (Jun. 14), <https://www.icj-cij.org/files/case-related/78/078-19930614-JUD-01-00-EN.pdf> (hereinafter, Denmark-Norway Judgment).

² *Id.* para. 9.

³ *Id.* para 13.



*Map 1: Disputed area between Denmark/Greenland and Norway/Jan Mayen.
Source: ICJ judgment.*

This case was not decided under the legal regime reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).⁴ Denmark initiated this case in August 1988, and the ICJ issued its judgment on the matter in June 1993. But the UNCLOS did not come into force for any state-party until November 1994. Norway did not become a party to the UNCLOS until June 1996, while Denmark acceded in November 2004. Hence, the court referred occasionally to the text of the UNCLOS in its judgment, but it reached all legal conclusions in this matter based upon application of the treaty and customary law that

⁴ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 (hereinafter, UNCLOS).

preceded the UNCLOS.⁵ Following the settled international jurisprudence to adjudicate maritime delimitations for continental shelf boundaries and fishery zones, the court applied the “equidistance-special circumstances” rule to this maritime dispute.⁶ First, the court drew the median line as a provisional line. Second, it evaluated several “juridically relevant” factors and adjusted that provisional line accordingly for equitable reasons. Ultimately, the court delimited a boundary line between Greenland and Jan Mayen that was located between the median line (Norway’s preference) and the 200-nm line measured from the baselines of eastern Greenland (Denmark’s preference). Additionally, for the water space lying between the median line and the 200-nm line, the court identified three “zones” and declared “equitable access” for both states to the “fishing resources” in those zones.

Section II – Summary of Key Procedural Steps

The procedural history of this case is relatively straightforward compared to the resolution of other international maritime boundary disputes.

During the late 1970s and early 1980s, these two states established maritime claims in the water space between eastern Greenland and Jan Mayen through national legal instruments. In January 1977, Denmark extended its fishing zone from the eastern coast of Greenland out to 200 nm,⁷ but on May 14, 1980, declared that

⁵ Denmark-Norway Judgment, *supra* note 1, paras. 48, 55.

⁶ *Id.* para. 50.

⁷ Act No. 597 on the Fishing Territory of the Kingdom of Denmark (Dec. 17, 1976) (Den.), https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DNK_1976_Act.pdf; and Executive Order No. 629 on the Fishing Territory of Greenland (Dec. 22, 1976) (Den.),

“fishery jurisdiction will not for the present be exercised beyond the line which is everywhere equidistant from the nearest points on the baselines on the coasts in question (the center line) between Greenland and Jan Mayen.”⁸ Less than two weeks later, on May 23, 1980, Norway established by royal decree a fishing zone of 200 nm around Jan Mayen. However, in the western direction towards Greenland, Norway limited that fishing zone to the median line between Jan Mayen and Greenland.⁹

Subsequent to these respective national actions, the two states attempted to negotiate a resolution to their boundary dispute but encountered incidents that aggravated the situation. Six months after issuing these battling legal instruments, in November 1980, the two governments started negotiations. But in the middle of 1981, Norway’s maritime law enforcement authorities inspected a number of Danish-flagged fishing vessels in the disputed area. In August 1981, Denmark issued a supplementary order.¹⁰ Thereafter, the two states maintained provisional arrangements about either

https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DNK_1976_Order629.pdf.

⁸ Executive Order No. 176 on the fishing territory of Northern Greenland (May 14, 1980) (Den.), para. 4,

https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DNK_1980_Order.p

⁹ Application Instituting Proceedings, Maritime Delimitation in the Area between Greenland and Jan Mayen (Den. v. Nor.), I.C.J. Application Instituting Proceedings (Aug. 16, 1988), <https://www.icj-cij.org/files/case-related/78/6613.pdf> (hereinafter, Denmark Proceedings Application).

¹⁰ *Id.*

state inspecting fishing vessels of the other state in the disputed area.

During the 1980s, the two states attempted to resolve the maritime dispute through non-judicial means. In 1981, Denmark proposed to resolve the dispute through arbitration,¹¹ but Norway expressed a preference to resolve the dispute through bilateral negotiations. Therefore, the two states continued to negotiate. Efforts to negotiate ended in July 1987, when negotiators for the two governments “found that the possibilities of reaching a negotiated solution had been exhausted.” In April 1988, Denmark renewed its efforts to resolve the dispute through arbitration. But after several bilateral meetings, “it became clear” to the two governments that “no arbitration agreement would be concluded in foreseeable future.” Consequently, several months later, on August 16, 1988, Denmark filed an application with the ICJ Registry to institute proceedings against Norway. As an aside, after these proceedings were initiated before the ICJ in 1988, but before the court rendered its judgment in 1993, Denmark and Norway also concluded a bilateral agreement concerning “mutual fishery relations.”¹²

The ICJ had jurisdiction over this matter as a result of formal declarations made by each state pursuant to article 36 of the ICJ Statute. In 1956, Denmark declared that it recognized the

¹¹ *Id.*

¹² See discussion *infra* Section IV.

compulsory jurisdiction of the court¹³ and in 1976, Norway made the same declaration.¹⁴

When Denmark brought the case before the ICJ, the membership of the court happened to include a judge of Norwegian nationality, but it did not include a judge of Danish nationality among its membership. Consequently, Denmark exercised its right under the Statute of the ICJ to appoint a judge *ad hoc* for these proceedings.¹⁵ Specifically, Denmark chose Mr. Paul Henning Fischer,¹⁶ a Danish national whose 40-year career to that point had included legal academia, various ambassadorships and diplomatic postings for Denmark's government, and membership on the Permanent Court of Arbitration.¹⁷ The ICJ reached an overwhelming 14-1 consensus in its final judgment in this case, and the sole dissenting judge was

¹³ PERMANENT REP. OF DENMARK TO THE U.N., DECLARATION RECOGNIZING THE JURISDICTION OF THE COURT AS COMPULSORY, AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY (Dec. 10, 1956), <https://www.icj-cij.org/en/declarations/dk>.

¹⁴ PERMANENT REP. OF NORWAY TO THE U.N., DECLARATION RECOGNIZING THE JURISDICTION OF THE COURT AS COMPULSORY (Apr. 2, 1976), <https://www.icj-cij.org/en/declarations/no>

¹⁵ Statute for the International Court of Justice art. 31(2), 33 U.S.T.S. 993 (stating, “[i]f the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.”).

¹⁶ Denmark-Norway Judgment, *supra* note 1, para. 4.

¹⁷ A biographical profile of Mr. Fischer was included as an annex to an ICJ press release for an unrelated case. Press Release, International Court of Justice, Passage through the Green Belt (Finland v. Denmark) (Jul. 1, 1991), <https://www.icj-cij.org/files/case-related/86/10215.pdf>.

the *ad hoc* judge appointed by Denmark.¹⁸ Of note, his dissenting opinion adopted Denmark's argument for a 200-nm boundary measured from Greenland's eastern coast.

Section III – Summary of the Key Substantive Issues

The ICJ in this case addressed one fundamental legal issue—namely, the delimitation of the maritime boundary between Denmark's eastern coast of Greenland and Norway's island of Jan Mayen. But that one issue involved several steps of substantive legal analysis. First, the court identified the applicable legal test. Second, the court analyzed the special circumstances in this situation. Third, the court drew the actual boundary line. Fourth, the court defined several zones in the vicinity of that line. Below is a summary of each of those steps of legal analysis.

1. Applicable Legal Test

Before undertaking the analytical process for delimiting the maritime boundary in this case, the ICJ first determined the proper legal test to apply. Since, at the time, the UNCLOS was not applicable to either state involved in this matter, the court considered otherwise existing international law. One of the key elements of this maritime dispute was the delimitation of the parties' continental shelves, so the court turned to the 1958 Geneva Convention on the Continental Shelf (GCCS).¹⁹ Both states were parties to that treaty at the time, with Denmark joining in June 1963

¹⁸ Denmark-Norway Judgment, *supra* note 1, para. 94.

¹⁹ Apr. 29, 1958, 449 U.N.T.S. 311.

and Norway in September 1971.²⁰ Specifically, the court quoted article 6, paragraph 1 of the GCCS, which states:

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.²¹

The court deconstructed this treaty provision into several elements for application. First, the court must determine whether a special agreement exists between the two states. Second, if a special agreement does not exist, then the court must use the median line as the starting point for a boundary between the continental shelves between two states. Third, the court must evaluate whether any “special circumstances” exist, which would justify it to adjust that median line.

The court then applied these three elements of article 6(1) of the GCCS. First, the court evaluated whether there was a special agreement between Denmark and Norway for this portion of their respective maritime boundary. In fact, the two states had entered a

²⁰ *See id.* list of dates of participant signature and ratification, [https://treaties.un.org/doc/Publication/MTDSG/Volume II/Chapter XXI/ XXI-4.en.pdf](https://treaties.un.org/doc/Publication/MTDSG/Volume%II/Chapter%XXI/XXI-4.en.pdf)

²¹ *Id.* art. 6(1).

bilateral agreement in 1965, article 1 of which generally set the continental shelf boundary between them to be a median line.²² But the court found that the 1965 agreement was focused solely on the continental shelf boundary between their mainland coasts along the North Sea.²³ Therefore, since the parties requested a single boundary delimiting both their continental shelves and fisheries zones, the court concluded that no special agreement existed.²⁴

Moving along to the other two elements of the boundary delimitation rule, the court assimilated international jurisprudence regardless of the sources of law that might apply to the two parties. The court cited the landmark cases for continental shelf delimitation: the *North Sea Continental Shelf* cases (1969), the *Tunisia-Libya* case (1982), the *Gulf of Maine* case (1984), and the *Libya-Malta* case (1985).²⁵ It then highlighted that either one or both of the states involved in each of those landmark cases was not a state-party to the GCCS when their case was before the court. The court also observed that no prior cases had delimited a fishery zone boundary between two states.²⁶ Lastly, the court invoked the UNCLOS provisions for delimiting exclusive economic zone and continental shelf boundaries via “equitable solution,” and declared those provisions to reflect customary law.²⁷ The court found that,

²² Denmark-Norway Judgment, *supra* note 1, para. 24.

²³ *Id.* para. 27-30.

²⁴ *Id.* para. 32.

²⁵ *Id.* para. 45.

²⁶ *Id.* para. 47.

²⁷ *Id.* para. 48.

regardless of the source of law, all of these types of boundary disputes follow the same two-step approach: (i) regarding the median line as a provisional line and (ii) adjusting that line to ensure an “equitable result.”²⁸ Quoting from the award in the Anglo-French Arbitration (1977), the court labelled this process as the “equidistant-special circumstances” rule and characterized it as a “general norm based on equitable principles.”²⁹

2. Analysis of “Special Circumstances”

Given that determining the existence of a special agreement and drawing a median line are relatively straightforward tasks, the court in this case focused more of its attention on identifying and analyzing the “special circumstances” that might warrant adjusting the provisional line to achieve an equitable result.³⁰ At the outset, the court explained it should examine “every particular factor of the case which might suggest an adjustment or shifting” of the provisional line.³¹ The court understood that its purpose was to “achieve an equitable result.” Of note, the court in this case unified the GCCS concept of “special circumstances” with the UNCLOS concept of “relevant circumstances,” and described that “there is inevitably a tendency towards assimilation” of these two juridical concepts.³² Through this brief explanation, the court arguably improved the shelf life of this judgment and began to lay the

²⁸ *Id.* para. 50.

²⁹ *Id.* paras. 46, 55.

³⁰ *Id.* paras. 54-86.

³¹ *Id.* para. 54.

³² *Id.* para. 56.

foundation for boundary delimitation cases to be decided thereafter, most of which would involve the application of UNCLOS concepts and rules.

The court made several valuable observations about the analysis of “special circumstances.” Quoting from both the *North Sea Continental Shelf* cases and the *Libya-Malta* case, the court emphasized, “[I]here may be no legal limit to the considerations which States may take account of.”³³ But judges must determine “the relative weight to be accorded to” each of these considerations,³⁴ or what the court elsewhere described as “juridically relevant” circumstances.³⁵ This should involve judges consulting the specific circumstances of the case, cases previously decided, and the practice of states.³⁶ Quoting again from the *Libya-Malta* case, the court explained that such deliberate analysis will ensure “consistency and a degree of predictability” in this recurring issue of international law. The court then identified and analyzed six “special circumstances” that were potentially present in this case.

The first factor considered by the court was “the disparity or disproportion between the lengths of the relevant coasts.”³⁷ Relative to the other five factors considered by the court, this factor yielded the most attention and analysis. The court observed that

³³ *Id.* para. 57.

³⁴ *Id.* para. 58.

³⁵ *Id.* para. 57.

³⁶ *Id.* para. 58.

³⁷ *Id.* paras. 61-71.

delimitation should drive an equitable distribution of the area: “The task of a tribunal is to define the boundary line between the areas under the maritime jurisdiction of two States; the sharing-out of the area is therefore the consequence of the delimitation, not vice versa.”³⁸ The court further recognized that exceptional situations can arise, 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.”³⁹ Quoting from the *Gulf of Maine* case, the court explained that “substantial disproportion to the lengths of those coasts that resulted from a delimitation effected on a different basis would constitute a circumstance calling for an appropriate correction.”⁴⁰ The court noted that a coastline ratio of 1 to 1.38 in the *Gulf of Maine* case was “sufficient to justify correction.” By comparison, the court in this case found the relevant coastlines to be as follows: 54.8 kilometers for Jan Mayen and 504.3 kilometers for Greenland, which calculated to a coastline ratio of 1 to 9.2.⁴¹ The court found that “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.”⁴² Thus, the court concluded that the “disparity” between the lengths of Greenland and Jan Mayen coastlines

³⁸ *Id.* para. 64.

³⁹ *Id.* para. 65.

⁴⁰ *Id.* para. 66 (quoting *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.)*, Judgment, 1984 I.C.J. Rep. 246, para. 185 (Oct. 12)).

⁴¹ *Id.* para. 61.

⁴² *Id.* para. 68.

“constitutes a special circumstance” and the median line “should be adjusted or shifted in such a way as to effect the delimitation closer to the coast of Jan Mayen.”⁴³ But at the same time, the court also made one final point in its discussion of this first factor, in that Denmark should not be entitled to a full 200-nm boundary. Continuously mindful of an equitable solution, the court declared, “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.”⁴⁴

The second factor considered by the court was “access to the resources of the area of overlapping claims.”⁴⁵ The court identified two types of natural resources at issue: sea-bed resources and fisheries. Quoting from *Libya-Malta* case, the court acknowledged that sea-bed resources “might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation.”⁴⁶ In this case, however, the court found that neither party had devoted much attention to accessing such non-living resources.⁴⁷ By contrast, the parties focused primarily upon their respective interests in exploiting the fishery resources present in the

⁴³ *Id.* para. 68-69.

⁴⁴ *Id.* para. 70.

⁴⁵ *Id.* para. 72-76.

⁴⁶ *Id.* para. 72 (quoting *Continental Shelf (Libya v. Malta)*, Judgment, 1985 I.C.J. 13, para. 50 (June 3)).

⁴⁷ *Id.* para. 72.

disputed water space, in particular fish stocks of capelin.⁴⁸ Thus, the court examined the need for sharing fishery resources. Citing the *Gulf of Maine* case, the court “recognized the need to take account of the effects of the delimitation on the Parties’ respective fishing activities by ensuring that the delimitation should not entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned.”⁴⁹ Based upon the evidence presented in this case, the court found that capelin fishery resources tend to congregate in the southern portion of the disputed area and to the east of the median line. Consequently, the court concluded that the median line should be adjusted or shifted eastwards in order to assure that Denmark would have “equitable access” to the capelin fish stock.⁵⁰

The third factor considered by the court was “the presence of ice in the waters of the region.”⁵¹ Of note, the court appears to have identified this factor on its own, stating that “[n]either 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.”⁵² The court highlighted, “Perennial ice may significantly hinder access to the resources of the region, and thus constitute a special geographical feature of it.”⁵³ Additionally, the

⁴⁸ *Id.* para. 73.

⁴⁹ *Id.* para. 75.

⁵⁰ *Id.* para. 76.

⁵¹ *Id.* para. 77-78.

⁵² *Id.* para. 77.

⁵³ *Id.* para. 78.

court recognized that ice can constitute “a considerable seasonal restriction on access” to waters. But, in this case, the evidence showed that the capelin fish stock is found in the southern portion of the disputed area during the seasonal periods when the ice retreats north-westwards and access is not impeded. Consequently, the court concluded that the presence of ice “does not materially affect access to migratory fishery resources in the southern part of the area of overlapping claims” to warrant adjusting or shifting the median line.

The fourth factor considered by the court was “differences” between the two states “as regards [to] population and socio-economic factors.”⁵⁴ The court stated, “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.” Given that this case was decided under the treaty law and customary law that preceded the UNCLOS, the provisions of the UNCLOS did not apply.⁵⁵ Based upon evidence presented in the proceedings, the court found that the island of Jan Mayen “has no settled population, as only 25 persons temporarily inhabit the island for purposes of their employment.”⁵⁶ Notwithstanding this minimal habitation on Jan Mayen, however, the court made no effort to apply any legal standard akin to the “sustain human habitation or economic life” criteria.⁵⁷ By comparison, Greenland has a population of approximately 55,000, and approximately 6

⁵⁴ *Id.* paras. 79-80.

⁵⁵ *Id.* para. 80.

⁵⁶ *Id.* para. 79.

⁵⁷ UNCLOS, *supra* note 5, art. 121.

percent of that population resides in eastern Greenland.⁵⁸ Notwithstanding these significant disparities, the court favorably quoted the *Libya-Malta* case, stating it “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.”⁵⁹ Likewise, the court in this case concluded, “[I]n 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.”

The fifth factor considered by the court was security concerns of the states.⁶⁰ Of the six factors considered by the court in this case, this one received the briefest analysis. One of the arguments proffered by Norway was that delimiting a boundary “closer to one State than to another” could impede that State’s ability to “protect interests which require protection.” Quoting from the *Libya-Malta* case, the court acknowledged that “security considerations are of course not unrelated to the concept of the continental shelf.” But quoting that previous judgment further, the court in this case disposed of Norway’s argument, concluding that the delimitation is “not so near to the coast of either Party as to make questions of security a particular consideration in the present case.”

⁵⁸ Denmark-Norway Judgment, *supra* note 1, para. 79.

⁵⁹ *Id.* para. 80.

⁶⁰ *Id.* para. 81.

The sixth and final factor considered by the court in this case was the “conduct of the parties.”⁶¹ Denmark had argued to the court that the conduct of parties in disputes involving other states can be “highly relevant.”⁶² In particular, Denmark introduced evidence about the methodology that Norway had utilized in delimiting its boundary with Iceland to show it was “likely to produce an equitable result.” The court considered a 1980 bilateral agreement between Norway and Iceland.⁶³ But then the court declared, “[T]here can be no legal obligation for a party to a dispute to transpose, for the settlement of that dispute, a particular solution previously adopted by it in a different context.”⁶⁴ It explained further:

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. The conduct of the parties will in many cases therefore have no influence on such a delimitation.⁶⁵

⁶¹ *Id.* paras. 82-86.

⁶² *Id.* para. 82.

⁶³ *Id.* para. 83.

⁶⁴ *Id.* para. 85.

⁶⁵ *Id.* para. 86.

Consequently, the court concluded that the “conduct of the parties” in this case “does not constitute an element which could influence the operation of delimitation.”⁶⁶

3. Drawing of the Delimitation Line

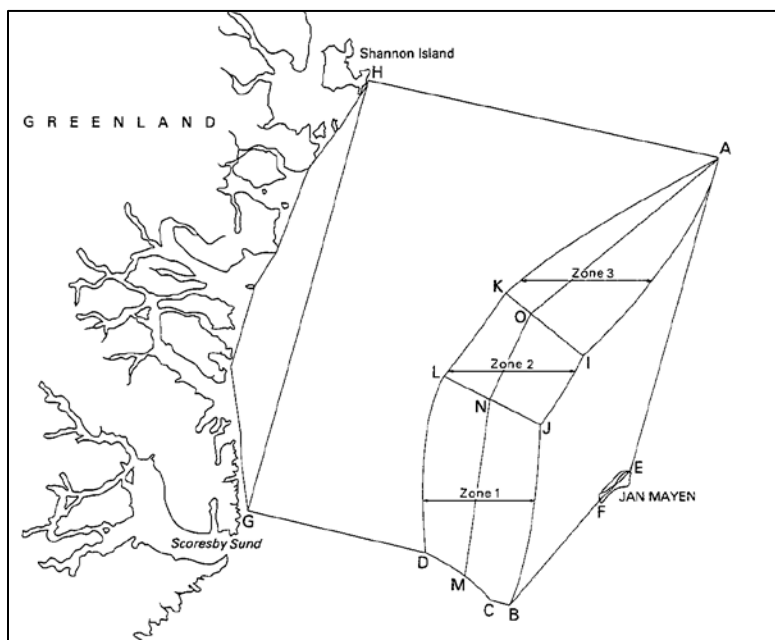
Based upon the examination of these “special circumstances” in this case, the court then proceeded to adjust or shift the median line between Greenland and Jan Mayen. Generally, the court determined that the delimitation line “must therefore be drawn within the area of overlapping claims, between the lines proposed by” Denmark and Norway.⁶⁷ The court found this area of overlapping claims to be “defined by the median line and the 200-mile line from Greenland.”⁶⁸ As the starting point, the court used the baselines and coordinates that the two parties had argued in their pleadings and oral arguments. From the results of analyzing the “special circumstances,” the court decided that the median line “must be adjusted or shifted so as to attribute a larger area of maritime spaces to Denmark.”⁶⁹ Additionally, the court made it clear that the delimitation boundary should be the “identical” for both the continental shelves and the fishery zones of the two parties. As plotted in this map-sketch, the court delimited the boundary to be from points M to N to O to A.

⁶⁶ *Id.*

⁶⁷ *Id.* para. 87.

⁶⁸ *Id.* para. 89.

⁶⁹ *Id.* para. 90.



Map 2: ICJ delimitation and zones of overlapping claims.
Source: ICJ judgment.

What is particularly noteworthy is the abbreviated level of analysis and explanation for these coordinate points. In fact, this portion of the court's judgment is contained in only one paragraph covering one-third of a page, in comparison to a judgment totaling 94 paragraphs and 41 pages.

Judge Shigeru Oda, the vice president of the ICJ at the time of the court's ruling, issued a separate opinion that stated, "[T]he single line drawn in the Judgment (paras. 91-92) does not appear to be supported by any cogent reasoning."⁷⁰ Judge Oda expressed concern that the court:

⁷⁰ *Id.* (separate opinion of Judge Oda) para. 1.

...did not present any convincing statement of its reasons for having drawn the particular single maritime boundary line shown on sketch-map No. 2 attached to the Judgment. The line drawn by the Court may well be one of an infinite number of possibilities which could have been indicated if the Court had thought any one of them would lead to an equitable solution. However, in choosing this line rather than any other, the Court seems to have taken a purely arbitrary decision.⁷¹

For these reasons, Judge Oda concluded that the delimitation drawn by the court was “drawn in an arbitrary manner,” which was “unsupported by any sufficiently profound analysis.”⁷²

4. Dividing the Area into Zones

In addition to deciding what would be the boundary delimitation, the court in this case took an additional action in its judgment. More specifically, it drew a set of three “zones” in the “area of overlapping claims,” and identified the rights that each party enjoyed in those zones.⁷³ The court declared that the intended purpose of these zones was to make “proper provision for equitable access to fishery resources.” Zone 1 was the southernmost of the three zones, which the court described to be “the principal fishing area” of the parties. In this zone, Denmark and Norway “should enjoy equitable access to the fishing resources.” Therefore, the court drew the delimitation line within

⁷¹ *Id.* (separate opinion of Judge Oda) para. 91.

⁷² *Id.* (separate opinion of Judge Oda) para. 100.

⁷³ *Id.* para. 91.

Zone 1 (i.e., point M to point N) in order to divide it into “two parts of equal area.”⁷⁴

For the other two zones, the court did something different. In contrast to Zone 1, the areas in Zones 2 and 3 were not a principal fishing area for the two parties. Thus, for equity purposes, the second factor analyzed above (i.e., equitable access to the resources) was not at issue for Zones 2 and 3. Instead, the court reverted to the first factor analyzed above (i.e., disparity or disproportion between the lengths of the relevant coasts). It invoked the conclusion reached through its analysis of the first factor – that is, the “marked disparity” reflected in the 1 to 9.2 ratio of coastlines between Jan Mayen and Greenland. The court concluded that “an equal division of the whole area of overlapping claims” in Zones 1 and 2 “would give too great a weight to this circumstance.”⁷⁵ The court further explained that the distance between points I and O was twice the distance between points O and K. Yet as one commentator has observed about this element of the judgment, “the Court’s final division of the relevant area did not come close to the ratio of the coastline lengths.”⁷⁶

The court concluded its judgment in the case with a list of specific coordinates for the various points depicted in the sketch map.⁷⁷

⁷⁴ *Id.* para. 92.

⁷⁵ *Id.*

⁷⁶ Jonathan I. Charney, *Maritime Delimitation in the Area Between Greenland and Jan Mayen*, 88 AM. J. INT’L L. 105, 108 (1994).

⁷⁷ Denmark-Norway Judgment, *supra* note 1, para. 93.

Section IV – Implementation of the Court’s Decision

Before describing how the two parties implemented the court’s decision, it is worth highlighting the amicable posture that they both shared before that decision. As mentioned previously, between 1988 (when Denmark initiated the proceedings before the ICJ) and 1993 (when the court rendered its judgment), Denmark and Norway were already demonstrating cooperation on the core issue of fisheries enforcement and management. In June 1992, they concluded a bilateral agreement concerning “mutual fishery relations.”⁷⁸ The preamble to this agreement recognized that Denmark had established a fishery zone off the coast of Greenland and that Norway had established a fishery zone off the coast of Jan Mayen. This agreement authorized the fishing vessels of each party to fish “within the areas under the exclusive fisheries jurisdiction” of the other party within the terms set forth in the agreement.⁷⁹ Both parties agreed to grant fishing permits to the fishing vessels of the other party.⁸⁰ Both parties also agreed to ensure that their respective fishing vessels complied with the rules and regulations established by the other party.⁸¹ This bilateral agreement came into force provisionally with retroactive effect from September 24, 1991, and definitively on March 4, 1994.

⁷⁸ Agreement Concerning Mutual Fishery Relations, Den.-Nor., Jun. 9, 1992, 1829 U.N.T.S. 219, <https://treaties.un.org/doc/Publication/UNTS/Volume1829/v1829.pdf> (hereinafter, Mutual Fishery Relations Agreement).

⁷⁹ *Id.* art. 1.

⁸⁰ *Id.* art. 5.

⁸¹ *Id.* art. 4.

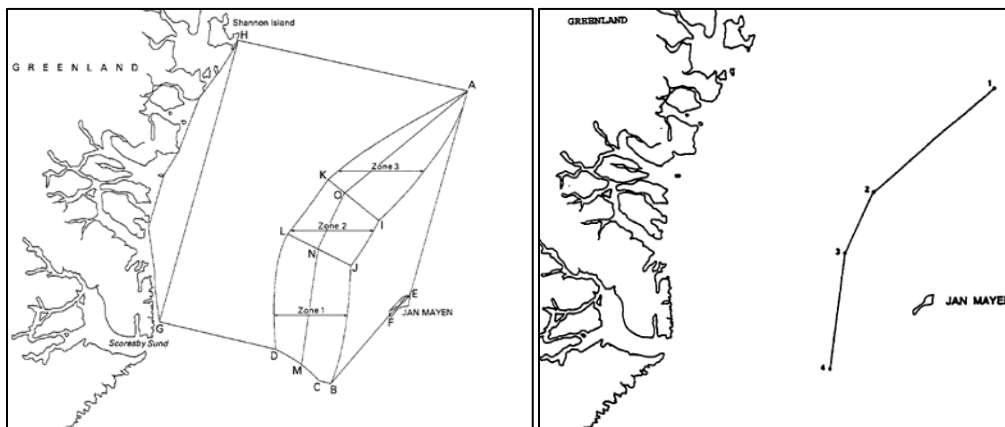
One point of contention between the parties was what should be the extent of the court's role in resolving this maritime dispute. On one side, Denmark sought for the court to "decide...where the line of delimitation shall be drawn" and thereafter "to draw that line."⁸² On the other side, Norway sought for the court to issue a judgment that is "declaratory as to the bases of delimitation," but that "leaves the precise articulation (or demarcation) of the alignment to negotiation between the Parties." Ultimately, the court took both actions of declaring the basis for delimitation and drawing the actual line. Yet it would still require the two parties to take subsequent action to implement the court's judgment.

Two and a half years later, the parties finalized action on implementing the court's decision. In December 1995, Denmark and Norway concluded a bilateral agreement that delimited the continental shelf boundary between Greenland and Jan Mayen.⁸³ The preambulatory paragraphs of their agreement identified the efforts taken by the parties after the court rendered its judgment. In particular, the two states "completed a geodetic calculation of the delimitation" in the court's judgment. In the agreement, the parties plotted four geographic points for the agreed delimitation.

Visually, the shape of the boundary line plotted by the parties (map-sketch on the right) is fairly similar to the line delimited in the court's judgment (map-sketch on the left).

⁸² Denmark-Norway Judgment, *supra* note 1, para. 88.

⁸³ Agreement Concerning the Delimitation of the Continental Shelf Area Between Jan Mayen and Greenland and Concerning the Boundary Between Fishing Zones in the Area, Den.-Nor., Dec. 18, 1995, 1903 U.N.T.S. 171, [https://treaties.un.org/doc/Publication/UNTS/Volume 1903/v1903.pdf](https://treaties.un.org/doc/Publication/UNTS/Volume%201903/v1903.pdf)



Map 2: ICJ delimitation (left)

Map 3: 1995 maritime boundary agreed by the parties (right)

Source: ICJ judgment

Technically, however, the geographic latitude and longitude of these agreed points are slightly different from those adjudged (note: differences of the agreed points have been italicized in the following table):

Adjudged Delimitation (1993)			Agreed Delimitation (1995)		
Point	Latitude	Longitude	Point	Latitude	Longitude
A	74° 21' 46.9" N	05° 00' 27.7" W	1	74° 21' 46.9" N	05° 00' 27.7" W
O	72° 50' 58.7" N	11° 23' 23.2" W	2	72° 49' 22.2" N	11° 28' 28.7" W
N	71° 50' 00.8" N	12° 50' 48.2" W	3	71° 52' 50.8" N	12° 46' 01.3" W
M	69° 54' 26.9" N	13° 38' 01.0" W	4	69° 54' 34.4" N	13° 37' 46.4" W

Source: ICJ judgment

These slight variations in the geographic coordinates for the delimitation line's points raise an interesting question about the nature of ICJ judgments and implementation of them by the parties involved. More specifically, after the ICJ has issued its ruling in a case, may the parties to that case take actions that depart from the contents of the ruling, so long as the parties mutually agree to do so? Recall that the Statute of the ICJ states clearly: "The decision of the court has no binding force except between the parties and in

respect of that particular case.”⁸⁴ This strongly suggests that parties are obligated to comply with the details of the court’s ruling, which would include specific coordinates for a boundary delimitation set by the court. At the same time, however, the only international entities that would have legal standing to seek additional action by the court on the matter would be the state parties to the original case. For example, the Statute of the ICJ states, “In the event of dispute as to the meaning or scope of the judgment, the court shall construe it *upon the request of any party*.”⁸⁵ In other words, if the parties mutually agreed to depart to any extent from the court’s ruling and neither of those parties returned to the court and made such a “request,” then there is arguably no recourse for any other entity or the court *sua sponte* to retake the matter under its jurisdiction.

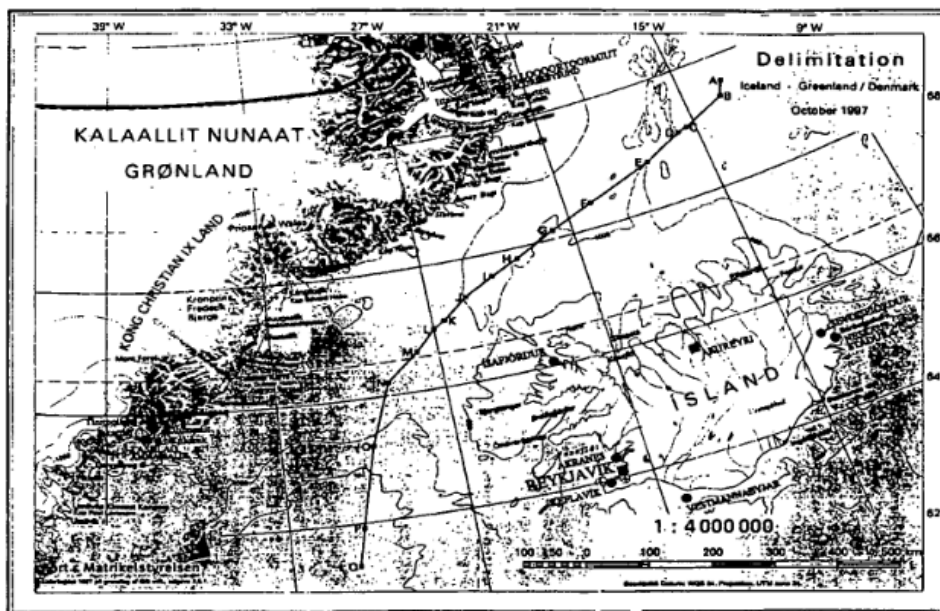
In addition, the 1995 agreement acknowledged that this boundary was not yet finalized. Specifically, the preamble indicated that the two parties had “agreed that a final determination of the further course of the delimitation line south of point No. 4 as specified in the Agreement must be effected in consultation with Iceland.” Thereafter, the two parties engaged in three-way “consultations” Iceland, which “led to agreement” on “where the delimitation lines of the three states intersect.”⁸⁶ Two years later, November 11, 1997, Denmark and Iceland concluded a bilateral agreement in Helsinki,

⁸⁴ Statute of the International Court of Justice art. 59, *supra* note 23.

⁸⁵ *Id.* art. 60.

⁸⁶ Additional Protocol to the Agreement of 18 December 1995 between the Kingdom of Norway and the Kingdom of Denmark concerning the Delimitation of the Continental Shelf in the Area between Jan Mayen and Greenland and the Boundary between the Fishery Zones in the Area, Den.-Nor., Nov. 11, 1997, 2100 U.N.T.S. 180, [https://treaties.un.org/doc/Publication/UNTS/Volume 2100/v2100.pdf](https://treaties.un.org/doc/Publication/UNTS/Volume%202100/v2100.pdf).

Finland, which delimited the continental shelf and fishery zones boundary between southeastern coast of Greenland and Iceland.⁸⁷ Annexed to that agreement was the following map depicting their agreed boundary:

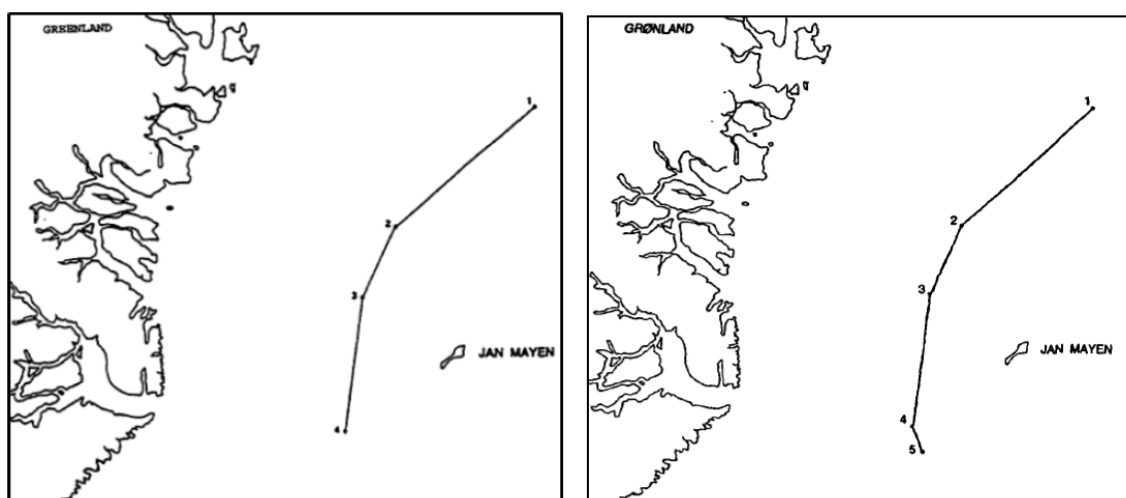


Map 4: Maritime boundary between Iceland and Denmark/Greenland

Also on that same day in Helsinki, Denmark and Norway concluded a protocol to their 1995 bilateral agreement, which

⁸⁷ Agreement Between the Government of the Kingdom of Denmark Along with Greenland Home Rule Government, on the One Hand, and the Government of the Republic of Iceland on the Other Hand, on the Delimitation of the Continental Shelf and the Fishery Zone in the Area between Greenland and Iceland, Den.-Ice., Nov. 11, 1997, 2074 U.N.T.S. 43, [https://treaties.un.org/doc/Publication/UNTS/Volume 2074/v2074.pdf](https://treaties.un.org/doc/Publication/UNTS/Volume%2074/v2074.pdf).

added a Point 5 to the delimited boundary between Greenland and Jan Mayen. This additional point harmonized their bilateral boundary with the Denmark's newly agreed boundary with Iceland. Visually, the shape of the boundary line plotted by the parties in the protocol (sketch-map on the right) was modified slightly from the boundary in the 1995 bilateral agreement (sketch-map on the left), as follows:



Map 3: (As shown above) 1995 Maritime boundary, before protocol (left).

Map 5: 1995 Maritime boundary, after protocol (right).

Source: ICJ judgment.

Section V – Conclusions

There are a number of lessons from this case—some involving the ICJ's handling of the matter, and others involving the behavior of the two parties.

First, the legal standards of delimiting international boundaries for economic-related zones have remained relatively constant. This particular case was considered and decided at a critical juncture for law-of-the-sea jurisprudence. That is, it was decided under the treaty and customary law that preceded the UNCLOS, but it was

decided immediately prior to the UNCLOS taking effect. Consequently, the court attempted to harmonize the jurisprudence of the past (i.e., resolving boundaries for continental shelves and fishery zones) with the jurisprudence for the future (i.e., resolving boundaries for continental shelves and exclusive economic zones). Few cases after this one would be decided under purely pre-UNCLOS law, but the court's ruling maintained the relevance and value of that established body of legal analysis.

Second, the court demonstrated that the critical element of legal analysis for these types of boundary disputes is the identification and analysis of circumstances or factors that might warrant adjusting or shifting the median line. Relatively speaking, more than one third of the judgment (i.e., 15 of 41 pages) was devoted to identifying and analyzing “juridically relevant” factors in this dispute. But the court's detailed analysis of those factors did not necessarily align with the final results of the court's drawing of the line. For example, the court calculated the ratio of disproportionate coastlines between Norway and Denmark to be approximately 1 to 9.2, yet the line drawn by the court was not too different from what it would have been if the ratio had been substantially less disproportionate.

Third, the court provided some insights into issues that were ancillary to this boundary dispute, but which might be more pertinent to unresolved boundary disputes elsewhere in the world, including East Asia. For example, much of the discussion in current boundary disputes focuses on small rocks or non-rock islands with little to no human population. But the court in this case affirmed that “there is no reason to consider ... the limited nature of the population” on the small Norwegian island of Jan Mayen in delimiting this boundary. Additionally, some claimants in East Asia maritime disputes appear to argue for boundaries under one methodology, while arguing for a different methodology in other

disputes. But the court in this case appeared to devalue the relevance of evidence that shows a party has used different methods of boundary delimitation with other geographic neighbors or other portions of a boundary with the same neighbor. Although none of these ancillary discussions by the court in this case were absolute or dispositive, they nonetheless provide judicial ammunition for claimants in other boundary disputes elsewhere to employ in support of unconventional perspectives.

Fourth, the court recognized the key interest of both parties in this case and ensured that the resolution formulated in its judgment balanced those competing interests. That is, this case did not involve a matter of nationalism, nor was there some significant concern about the states threatening each other's security. The fundamental stake of each party in this disputed water space was an economic interest involving where the parties may fish. Additionally, some of that water space was relatively unusable due to the presence of ice. Thus, the court's judgment ensured that both states had equitable access to the fisheries in the particular waters that were accessible for fishing. By focusing on what mattered most to the parties and steering clear of political sensitivities, the court was able to formulate a resolution that the parties were more likely to respect and implement.

Fifth and perhaps most importantly, the parties to this dispute each created or contributed to circumstances that improved the probability they would eventually resolve the boundary dispute together. For example, they each could have asserted maximalist claims over the water space, thereby increasing the areas of overlapping claims and the likelihood of operational incidents and political friction between them. Instead, they unilaterally restricted their government agencies from enforcing national laws and regulations in waters beyond the median line. They also went one significant step further. During the five years spanning the life of

this case before the ICJ, Denmark and Norway negotiated and concluded a bilateral agreement on “mutual fishery relations.” This agreement codified a cooperative arrangement in which the two states could manage the economic interest that mattered most to them, and effectively enforce the laws and regulations designed to manage that shared resource. Therefore, it was no surprise that, when the court issued its judgment, the parties willingly incorporated it into their bilateral treaty.



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