REVUE BELGE DE DROIT INTERNATIONAL
1992/2 — Éditions BRUYLANT, Bruxelles

MARITIME BOUNDARY AGREEMENTS: THE CASE OF BELGIUM

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On January 22 the Belgian legislator adopted two draft laws concerning the approval of a number of maritime boundary delimitation agreements entered into by the executive : (1) A first one relates to two agreements concluded with France more than two years ago. These agreements delimit the lateral boundary of territorial sea (2) and the continental shelf (3) between the parties. A second one relates to a more recently concluded continental shelf boundary agreement with the United Kingdom (4). At the time of writing, no publication in the *Moniteur belge* had occured yet.

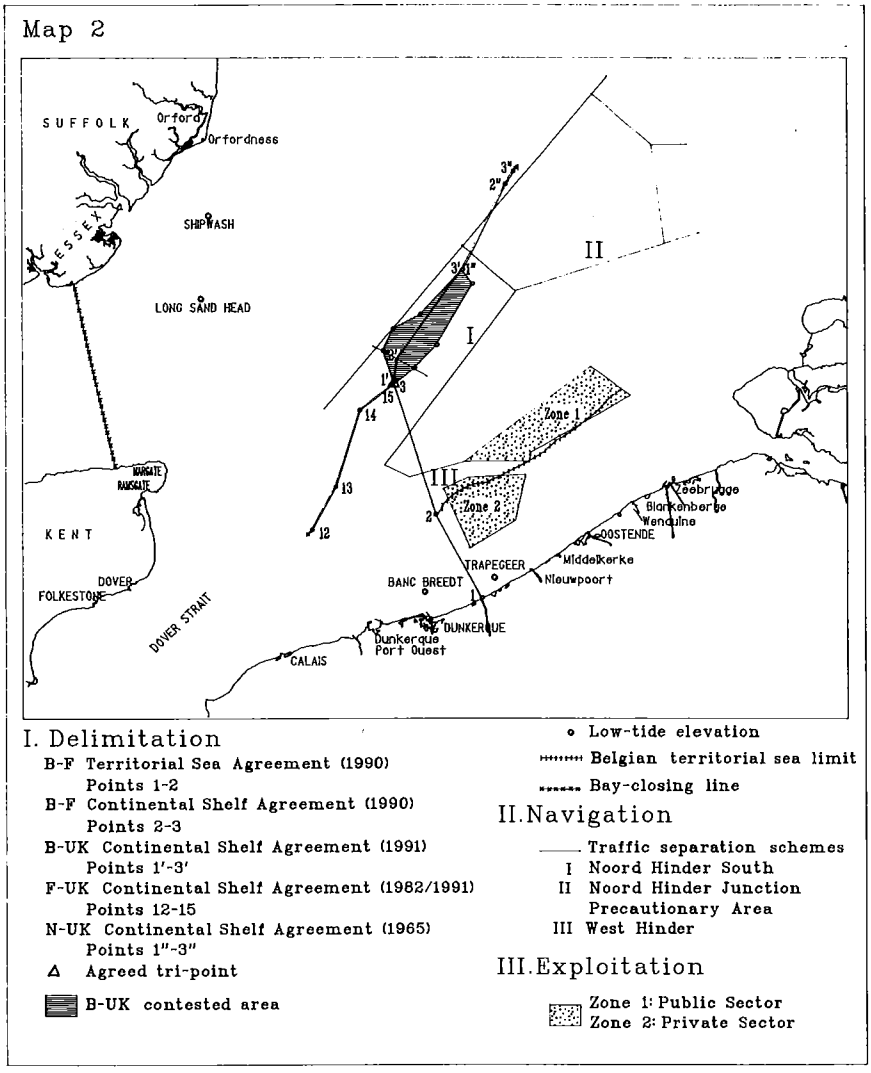
(*) The author wishes to thank P. GAUTIER, Adjunct Advisor, Ministry of Foreign Affairs, J. PARÉE, Head Engineer-Director of Mines, Ministry of Economic Affairs and C. VAN CAUWENBERGHE, Head of the Hydrographic Department (Belgium) ; D. ANDERSON, Foreign & Commonwealth Office (United Kingdom) ; and J.-P. QUÉNEUDEC, Professor at the Université de Paris I Pantheon — — Sorbonne (France) for the help received while preparing this article. The maps were only possible thanks to the kind cooperation of Prof. R. Paepe of the Vrije Universiteit Brussel, Head Geologist-Director of the Belgian Geological Survey, who allowed me to make use of his sophisticated computer facilities to produce these illustrations.

(1) The Senate was the last chamber to give its approval. See *Ann. parl.* Sénat N° 49, p. 1438 (1992-1993). About a month earlier the House of Representatives had already done so. See *Ann. parl.* Chambre N° 48, pp. 13/428-429.

(2) Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation de la mer territoriale (Agreement Between the Kingdom of Belgium and the French Republic Concerning the Delimitation of the Territorial Sea), October 8, 1990. Authentic French text, as kindly provided by the Ministry of Foreign Affairs, to be found in Annex I. For an English translation, see for instance 19, *Law of the Sea Bulletin,* pp. 27-28 (October 1991). Hereinafter cited as B-F Territorial Sea Agreement.

(3) Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation du plateau continental (Agreement Between the Kingdom of Belgium and the French Republic Concerning the Delimitation of the Continental Shelf), October 8, 1990. Authentic French text, as kindly provided by the Ministry of Foreign Affairs, to be found in Annex II. For an English translation, see for instance 19, *Law of the Sea Bulletin,* pp. 29-30 (October 1991). Hereinafter cited as B-F Continental Shelf Agreement.

(4) Agreement Between the Government of the Kingdom of Belgium and the Government of the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf Between the Two Countries, May 29, 1991. Authentic English text, as kindly provided by the Ministry of Foreign Affairs, to be found in Annex III. Hereinafter cited as B-UK Continental Shelf Agreement.



Belgium normally awaits the entry into force of international agreements to do so. All three agreements provide for the exchange of notifications as method of entry into force (5).

(5) B-F Territorial Sea Agreement, *supra*, note 2, Art. 3 ; B-F Continental Shelf Agreement, *supra*, note 3, Art. 3 ; and B-UK Continental Shelf Agreement, *supra*, note 4, Art. 2. According to the former two agreements, the date of reception of the last notification will be determining. The latter only mentions the exchange of notifications as such. France was the first country to do so by means of a notification dated November 29, 1990. Belgium notified France and the

This article analyzes the tortuous road by which Belgium, sometimes more than 20 years after initial talks on the subject started, finally arrived at a maritime boundary settlement with two of its maritime neighbors. As was the case with the extension of the territorial sea from 3 to 12 nautical miles (n.m.) (6), these recent steps taken by Belgium can certainly not be qualified as representing an *avant-garde* position. The following statement by a commentator illustrates this point fairly well :

> « (I)l y a des pays qui ... se sont abstenus de collaborer au développement de la délimitation maritime. La Belgique, par exemple, bien que participant d'un ensemble géographique où sont déjà nombreuses les délimitations, n'a pas nullement progressé dans la fixation des limites maritimes avec les pays voisins, l'Angleterre, la Hollande et la France » (7).

Before turning to these agreements, however, their broader context must be highlighted. Indeed, taken into account the rather late date of their conclusion, these recent agreements entered into by Belgium cannot be understood without reference to the chain of previously established maritime boundaries in the area, of which they appear to form a closing link. An international and regional context will therefore precede the analysis of the Belgian boundary agreements proper.

I. — International setting

Maritime boundary delimitations have received increased attention during the last couple of years. This submission can be substantiated by reference to a whole list of indications pointing in that direction. First of all, governments have been trying to settle maritime boundaries with their neighbors at a steady pace lately (8). A very substantial amount of the

United Kingdom on April 6, 1993. At the time of writing (April 22, 1993), however, France had not yet acknowledged receipt of this Belgian notification. As far as the United Kingdom is concerned, this country had been waiting since 1991 (see *infra,* note 294) for Belgium to fulfil its constitutional requirements in order to be able to exchange notifications on the same date. The unilateral action of Belgium in this respect will now urge the United Kingdom to act in a similar way in the near future.

(6) See Franckx, E., « Belgium Extends its Territorial Sea up to 12 Nautical Miles », 20, *Revue Belge de Droit International,* pp. 41-71 (1987/1). About the timeliness, see especially p. 60. See also the conclusion reached at that time that the negotiation of delimitation agreements was the next item on the agenda (*ibid.*, p. 71).

(7) Rufino, G.d'A., « Délimitation maritime en droit international », 6, *Espaces et Ressources Maritimes, 1992,* pp. 85, 91 (1993).

(8) As may be illustrated by the following recent publications of the United Nations Office on the Law of the Sea : United Nations, *The Law of the Sea : Maritime Boundary Delimitations (1970-1984)*, United Nations, Office for Ocean Affairs and the Law of the Sea (1987) ; United Nations, *The Law of the Sea : Maritime Boundary Delimitations (1942-1969)*, United Nations, Office for Ocean Affairs and the Law of the Sea (1991) ; and United Nations, *The Law of the Sea : Maritime Boundary Delimitations (1985-1991)*, United Nations, Office for Ocean Affairs and the Law of the Sea (1992).

cases were moreover brought before the International Court of Justice (9) for third party settlement during the last couple of decades which relate to maritime delimitation disputes (10). This is still so today (11). In fact, it were law of the sea cases, many of which related to maritime boundary delimitation questions, which granted the I.C.J. a second life after a period of quasi inactivity during the second half of the 1960s (12). But also arbitration has been frequently resorted to by states as a peaceful means of settlement of maritime boundary disputes if diplomatic means proved to be of no avail (13). These juridical means relied upon by states in order to solve their lingering boundary disputes have in turn generated a considerable quantity of literature on the subject. It will suffice in this respect to point at the interest aroused in the legal literature by the recent arbitration between Canada and France relating to St. Pierre and Miquelon (14).

(9) Hereinafter cited as I.C.J.

(10) These cases are : North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark, Federal Republic of Germany/The Netherlands), 1969 I.C.J. Reports 3 ; Aegean Sea Continental Shelf (Greece/Turkey), 1976 I.C.J. Reports 3 ; Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), 1982 I.C.J. Reports 18 ; Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine (Canada/United States), 1984 I.C.J. Reports 246 ; Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 I.C.J. Reports 13 ; Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), 1985 I.C.J. Reports 191 ; Case Concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau/Senegal), 1991 I.C.J. Reports 53 ; Land, Islands and Maritime Frontier Dispute (El Salvador/Honduras ; Nicaragua Intervening), 1992 I.C.J. Reports 351.

(11) See for example DECAUX, E., « Chronique du plateau continental et des délimitations », 6, *Espaces et Ressources Maritimes, 1992*, pp. 113, 119-122 (1993).

(12) The adverse influence of the I.C.J. decision in the South West Africa cases cannot be overlooked in this respect. Since 1969, it has been stated, the I.C.J. has established its primacy in law of the sea matters. See HIGHET, K., « The Peace Palace Heats Up : The World Court in Business Again ? », 85, *American Journal of International Law*, pp. 646, 653-654 (1991), who stressed moreover that two-thirds of the cases pending before the I.C.J. at that time related directly to the law of the sea.

(13) It will suffice to browse through the International Legal Materials-series to illustrate this point : Beagle Channel Arbitral Award of February 18, 1977 (Argentina/Chile), 17, *International Legal Materials*, pp. 632-679 (1978) ; Delimitation of the Continental Shelf of June 30, 1977 (France/United Kingdom), 18, *International Legal Materials*, pp. 397-494 (1979) ; Report and Recommendations to the Governments of Iceland and Norway of the Conciliation Commission on the Continental Shelf Area Between Iceland and Jan Mayen of May 1981, 20, *International Legal Materials*, pp. 797-842 (1981) ; Maritime Boundary Between Guinea and Guinea-Bissau of February 14, 1985, 25, *International Legal Materials*, pp. 252-307 (1986) ; Delimitation of Maritime Areas Between France and Canada of June 10, 1992 (St. Pierre and Miquelon), 31, *International Legal Materials*, pp. 1145-1219 (1992).

(14) See for instance MCDORMAN, T., « The Canada-France Maritime Boundary Case : Drawing a Line Around St. Pierre and Miquelon », 84, *American Journal of International Law*, pp. 157-189 (1990) ; DAY, A., « The Saint Pierre & Miquelon Maritime Boundary », International Boundaries Research Unit — Boundary Briefing No. 5, Durham (1990) ; CHARNEY, J., « Canada-France (St. Pierre and Miquelon), Report Number 1-2 Addendum », in *International Maritime Boundaries*, Vol. 1, *infra*, note 20, pp. 399 — 400 ; DE LA FAYETTE, L., « The Award in the Canada-France Maritime Boundary Arbitration », 8, *The International Journal of Marine and Coastal Law*, pp. 77-103 (1993) ; POLITAKIS, G., « THE FRENCH — CANADIAN ARBITRATION AROUND ST. PIERRE AND MIQUELON : UNMASKED OPPORTUNISM AND THE TRIUMPH OF THE UNEXPECTED », 8, *The International Journal of Marine and Coastal Law*,pp. 105-134 (1993) ; SCOVAZZI, T., « L'affaire de la délimitation des espaces maritimes entre le Canada et la France :

But besides these exhaustive analyses of decisions of the I.C.J. or arbitration tribunals, scholars have also devoted due attention to the different elements of state practice in this respect to be found in the many delimitation agreements concluded so far between states (15).

Despite this wealth of information, authoritative voices in this particular field of law have drawn attention to the fact that an exhaustive study, or even a *ditto* compilation, of all existing maritime boundaries was simply lacking (16).

In an attempt to bridge this gap, the American Society of International Law set up a large-scale project during the late 1980s the object of which was exactly to provide an in depth examination of state practice in this field arising from more than 100 existing ocean boundary delimitations (17). Two meetings, gathering all participants, were organized in order to outline (18) and subsequently discuss the results of the project (19). The final outcome of this project is a two volume book entitled *International Maritime Boundaries* (20). This book consists of three main parts. First of all regional experts gathered and analyzed data on settled maritime boundaries (21). Individual reports were drawn up based on these findings accor-

exagérer, mesurer ou nécessiter ? », 6, *Espaces et Ressources Maritimes, 1992*, pp. 61-83 (1993). A complete French text of the award was published in 96 Revue Générale de Droit Interantional Public, pp. 672-751 (1992).

(15) For a general bibliography on the subject published during the early 1980s, see McDORMAN, T., BEAUCHAMP, K. & JOHNSTON, D., *Maritime Boundary Delimitation (An Annotated Bibliography)*, Lexington, Heath & Co., 207 pp. (1983). Useful listings of such agreements can also be found in materials presented to the I.C.J. by the parties involved in maritime delimitation disputes around that same time period. See International Court of Justice, Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine (Canada/United States), Annexes to the Reply Submitted by Canada, Volume I, State Practice, December 12, 1983 and International Court of Justice, Continental Shelf (Libyan Arab Jamahiriya/Malta), Annex of Delimitation Agreements Submitted by the Socialist Peoples Libyan Arab Jamahiriya, Counter-Memorial, Volume II, Parts 1 and 2, October 26, 1983. This tendency still continues as can be inferred from a quick glance at the Max Planck Bibliography of Public International Law.

(16) WEIL, P., *Perspectives du droit de la délimitation maritime*, Paris, Pedone, p. 166 (1988).

(17) Funding was provided by primary grants from the Ford and Mellon Foundations, as well as grants from the Amoco and Mobil Foundations and Exxon Corporation.

(18) Washington, D.C., December 13-14, 1988.

(19) Airlie, Virginia, December 13-16, 1989.

(20) (CHARNEY, J. & ALEXANDER, L., eds.), 2 Vols., Dordrecht, Martinus Nijhoff, 2138 pp. (1993). Hereinafter cited as *International Maritime Boundaries*.

(21) The world was divided in 10 regions for this purpose, resulting in a same number of regional experts being involved in the project :

North America — L. ALEXANDER ;
Middle America and Caribbean — K. NWEIHED ;
South America — E. JIMENEZ DE ARECHAGA ;
Africa — A. ADEDE ;
Central Pacific/East Asia — C.-H. PARK ;
Indian Ocean and South East Asia — V. PRESCOTT ;
Persian Gulf — R. PIETROWSKI AND L. ALEXANDER ;
Mediterranean and Black Seas — T. SCOVAZZI ;
Northern and Western Europe — D. ANDERSON ; AND
Baltic Sea — the present author.

ding to a rigid, 9-point outline (22). This information then formed the basis for the analytical part of the project, which itself consisted of two separate parts. First the regional experts prepared regional papers synthesizing the results of their findings (23). Secondly, subject experts analyzed the boundaries from a global perspective, according to the nine considerations which served as outline for the individual reports (24). This book was only recently presented to the press (25).

One *caveat* should nevertheless be added with respect to this new publication. Even if it can be stated to provide a comprehensive source of present-day boundary settlements, arrived at by agreements as well as by means of third party settlement, one should not try to find in it the final exposition of a firm substantive rule of international law to be strictly adhered to in future boundary delimitations. Indeed, one of the most striking conclusions of the study is that, despite this wealth of state practice, no rule of customary international law seems to have crystallized yet. Or to use the words of the director of the project :

> « In my opinion these global and regional papers and the individual boundary reports support the conclusion that no normative principle of international law has developed that would mandate the specific location of any maritime boundary line. The state practice varies substantially. Due to the unlimited geographic and other circumstances that influence the settlements, no binding rule that would be sufficiently determinative to enable one to predict the location of a maritime boundary with any degree of precision is likely to evolve in the near future » (26).

Even though the *opinio juris* is clearly not present according to this author, trends and practices have nevertheless emerged that are substantial (27).

It is the intention of this paper, therefore, to rely on this valuable and up to date source of information. Certainly not as the ultimate exposition of a golden rule against which the recently concluded agreements by

(22) Nine considerations were to be addressed by each and every individual boundary report : 1) Political, strategic and historical considerations ; 2) legal regime considerations ; 3) economic and environmental considerations ; 4) geographic considerations ; 5) islands, rocks, reefs and low-tide elevations considerations ; 6) baseline considerations ; 7) geological and geomorphological considerations ; 8) method of delimitation considerations ; and finally 9) technical considerations. All reports provide the text of the delimitations. Illustrative maps were moreover drawn up and annexed to each one of them.

(23) Resulting in 10 regional papers. See *supra*, note 21.

(24) For these considerations see *supra*, note 22. These subject experts were (in the same order) : 1) B. OXMAN ; 2) D. COLSON ; 3) B. KWIATKOWSKA ; 4) P. WEIL ; 5) D. BOWETT ; 6) L. SOHN ; 7) K. HIGHET ; 8) L. LEGAULT & B. HANKEY ; and 9) P. BEAZLEY.

(25) On Wednesday March 3, 1993 a briefing for the public and press representatives was held at the headquarters of the American Society of International Law, Washington, D.C. A similar briefing will be organized for the European press on July 27, 1993 at The Hague.

(26) CHARNEY, J., « Introduction », in *International Maritime Boundaries*, Vol. 1, *supra*, note 20, p. XLII.

(27) *Ibid.*

Belgium ought to be measured and judged, but rather as an accurate description of the general background against which the recent Belgian practice in this particular field has to be understood. Especially the reports drawn up by the subject experts will be extremely helpful in this respect in order to provide this general framework, together of course with the regional report on the Northern and Western European Maritime Boundaries (28) as prepared by D. Anderson (29). But also the individual boundary reports prepared by the latter author on the agreements recently entered into by Belgium, will be relied upon (30).

Before concluding the international part of this article, a few words must be said on the relevant rules of international law concerning maritime boundary delimitation as they are relevant for the Belgian situation in its relation to France and the United Kingdom. Three conventions should be mentioned in this respect. First of all the Convention on the Territorial Sea and the Contiguous Zone (31) and the Convention of the Continental Shelf (32), both concluded at Geneva in 1958 as a result of the first United Nations Conference on the Law of the Sea (33). Reference should also be made to the 1982 United Nations Convention on the Law of the Sea (34). Even though this latter convention has not yet entered into force (35), its influence on the emerging principles of the law of sea contained therein cannot be denied (36).

Starting point for any territorial sea or continental shelf delimitation is the baseline. The latter can take two forms, either what is called a normal

(28) ANDERSON, D.,« Northern and Western European Maritime Boundaries », in *International Maritime Boundaries*, Vol. 1, *supra*, note 20, pp. 331-341.

(29) D. ANDERSON is Second Legal Adviser in the Foreign and Commonwealth Office of the United Kingdom.

(30) *International Maritime Boundaries*, Vol. 2, *supra*, note 20, pp. 1891-1912 (Reports Number 9-16 and 9-17).

(31) Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 516 U.N.T.S. 205. This convention entered into force on September 10, 1964. Hereinafter cited as 1958 Territorial Sea Convention.

(32) Convention on the Continental Shelf, April 29, 1958, 499 U.N.T.S. 311. This convention entered into force on June 10, 1964. Hereinafter cited as 1958 Continental Shelf Convention.

(33) Hereinafter cited as UNCLOS I.

(34) United Nations Convention on the Law of the Sea, opened for signature on December 10, 1982, reprinted in United Nations, *The Law of the Sea : United Nations Convention on the Law of the Sea* (U.N. Pub. Sales No. E.83.V.5) 224 pp. (1983). Hereinafter cited as 1982 Convention. This Convention was the result of almost 10 years of negotiation at the third United Nations Conference on the Law of the Sea (hereinafter cited as UNCLOS III).

(35) According to the latest report of the Secretary-General on the law of the sea 52 of the required 60 instruments of ratification or accession had been deposited (situation as at October 1, 1992). See *Law of the Sea*, Report of the Secretary-General, U.N. Doc. A/47/623 of November 24, 1992. By February 1993, this list had increased to 54. St. Kitt & Nevis was the last state to join. See 10, *Oceans Policy News*, p. 1 (February 1993).

(36) *Law of the Sea*, Report of the Secretary-General : Progress Made in the Implementation of the Comprehensive Legal Regime Embodied in the United Nations Convention on the Law of the Sea, U.N. Doc. A/47/512 of November 5, 1992, 24 pp. Concerning the delimitation aspect, see especially p. 13.

baseline, i.e. the low-water line (37), or a straight baseline (38). The latter method is only indirectly of importance in the area here under discussion in as far as it relates to juridical bays (39). Of special importance here, as will be seen below, are the provisions on low-tide elevations (40) as well as those relating to permanent harbor works (41) which both can be included in the baseline (42). As far as the delimitation itself is concerned, the 1958 and 1982 law of the sea conventions provide a general framework which is, however, rather difficult to apply in practice because the rules contained therein are indeterminate and may not even reflect customary international law. The territorial sea received a similar treatment in 1958 and 1982, namely an equidistance — special circumstances rule (43). But if one turns to the delimitation provisions concerning the continental shelf, one cannot but conclude that the already indeterminate equidistance-special circumstances rule, to be found in the 1958 Continental Shelf Convention (44), was replaced by an even vaguer construction which merely

(37) See 1958 Territorial Sea Convention, Art. 3, and 1982 Convention, Art. 5.

(38) See 1958 Territorial Sea Convention, Art. 4, and 1982 Convention, Art. 7.

(39) See 1958 Territorial Sea Convention, Art. 7, and 1982 Convention, Art. 10. The Thames estuary is a juridical bay, enclosed by a strait line. See map 2. According to Anderson, this bay-closing line was not taken into account. Its location prevents it from influencing a possible equidistance line. It had no influence on the agreed boundary with Belgium either. See ANDERSON, D., « Report Number 9-17 », *supra,* note 30, p. 1901, 1904.

(40) See 1958 Territorial Sea Convention, Art. 11, and 1982 Convention, Art. 13.

(41) See 1958 Territorial Sea Convention, Art. 8, and 1982 Convention, Art. 11.

(42) Low-tide elevations, however, have to be located wholly or partly at a distance not exceeding the breadth of the territorial sea measured from the mainland or an island.

(43) See 1958 Territorial Sea Convention, Art. 12, and 1982 Convention, Art. 15. Even though the formulation is not exactly the same, the essential rule contained therein remained unchanged. Only the 1982 Convention will therefore be cited here : « Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured. The above provision does not apply, however, 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 therewith ».

(44) 1958 Continental Shelf Convention, Art. 6. This article states : « 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. »

refers to equitable solutions based on international law (45). Moreover, the 1958 delimitation rule concerning the continental shelf was found not to reflect customary international law by the I.C.J (46). It might be added, finally, that the delimitation provision concerning the newly created exclusive economic zone in the 1982 Convention is a copy of the just-mentioned continental shelf article (47).

Having analyzed this international legal framework, its should come as no surprise that state practice is so diverse on the subject. Because of the extremely fact intensive nature of delimitation law, these rules do not seem to be able to provide firm guidance either for negotiators, arbitral tribunals or courts (48). Nevertheless they create the basic structure, however broad it may be, according to which delimitation questions have to be settled.

II. — Regional setting

It is not the intention of this regional section to give a detailed survey of all the boundary delimitation agreements so far concluded in the North Sea area (49). This has already been done by the present author else-

(45) 1982 Convention, Art. 83. Here one can read : « 1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution. 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV [third party dispute settlement]. 3. Pending agreement as provided for in paragraph 1, the States concerned, in the spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation. 4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement ». Because of its vagueness, this new approach has been labeled as a « 'décodification' de la matière ». See Treves, T., « Codification du droit international et pratique des états dans le droit de la mer », 223, *Recueil des Cours* (IV 1990), Dordrecht, Martinus Nijhoff, p. 11, 104 (1991).

(46) North Sea Continental Shelf cases, *supra,* note 10, p. 45.

(47) 1982 Convention, Art. 74. Because of the identical wording used by Arts 74 (exclusive economic zone) and 83 (continental shelf), the former is not reproduced here in full. Reference can be made to Art. 83, *supra,* note 45.

(48) Charney, J., « Maritime Jurisdiction and the Secession of States : The Case of Québec », 25, *Vanderbilt Journal of Transnational Law,* pp. 343, 374-375 (1992).

(49) The North Sea has been defined by the International Conference on the Protection of the North Sea as the area comprised by 62° north, Skagerrak and the English Channel east of longitude 5° west. See Addendum to the Declaration of the First International Conference on the Protection of the North Sea (Bremen, 1984), as reprinted in *The North Sea : Basic Legal Documents on Regional Environmental Co-operation* (Freestone, D. & IJlstra, T., eds.), Dordrecht, Martinus Nijhoff, p. 78 (1991). For the purpose of this paper, which focuses on delimitation aspects, only the latter element will be adapted : Instead of « east if longitude 5° west, » including the whole English Channel, only the area « east of longitude 0° 30′ west » will be taken into account, which excludes most of the English Channel but does include the Straits of Dover. The latter limit was preferred because it has been used in the delimitation practice between France and the United Kingdom to distinguish between different areas to be delimited (see for

where (50). Instead, because of the pivotal position occupied by Belgium in this article, the delimitation practice of all its maritime neighbors will be analyzed. Not only *inter se*, but also in their relation to other countries, at least in as far as these agreements relate to the North Sea (51). The recent agreements concluded by Belgium, which will be discussed in detail later on, are left out of the picture in this regional survey. Because of a clear difference in importance, a distinction will be made between the continental shelf, territorial sea and, finally, fishery and exclusive economic zone delimitations.

A. — *Continental shelf*

The essence of the early delimitation history of the North Sea is closely related to the continental shelf notion, and more particularly to the coming into force of the 1958 Continental Shelf Convention on June 10, 1964 (52). North Sea countries, in other words, waited until international law had provided them with a sound basis for this rather novel concept (53) before they started delimitation negotiations. It should not come as a surprise, therefore, that the parties strongly relied on the equidistance principle which Art. 6 of the 1958 Continental Shelf Convention seemed to attribute a special status during those early years (54). At that time, as remarked by D. Anderson, no detailed knowledge was available concerning the exact location of the mineral resources of the North Sea (55).

instance *infra*, note 72). Finally, Denmark will be included in the picture in its relation with Germany in as far as it concerns the 1969 I.C.J. decision.

(50) For a global North Sea overview see FRANCKX, E., « Maritime Boundaries and Regional Cooperation », in The North Sea : Perspectives on Regional Environmental Co-operation (FREESTONE, D. & IJLSTRA, T., eds.), London, Graham & Trotman, pp. 215-227 (1990). See also the following more updated article by the same author limited to the practice of the E.C. member states *inter se* : « EC Maritime Zones : The Delimitation Aspect », 23, *Ocean Development and International Law Journal*, pp. 239-258 (1992), and more specifically the part on the North Sea (pp. 243-245).

(51) The instant section of this article, unless otherwise indicated, is based on previously written articles by the present author, as mentioned *supra*, note 50. Even though the bilateral agreements cited in this part can all be found in *International Maritime Boundaries*, *supra*, note 20, reference its made to more readily available sources such as L.N.T.S., U.N.T.S and the like.

(52) ANDERSON, D., *supra*, note 28, pp. 333-334.

(53) The origin of this notion is usually traced back to the 1945 Truman Proclamation on the Continental Shelf. See Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, September 28, 1945, 10 Fed. Reg. 12303 (October 2, 1945). About a decade later this notion was already codified by the 1958 Continental Shelf Convention.

(54) See LEGAULT, L. & HANKEY, B., « Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation », in *International Maritime Boundaries*, Vol. 1, *supra*, note 20, p. 203, 205, who are of the opinion that before the 1969 I.C.J. decision « most policy-makers assumed the existence of a binding legal presumption in favor of the equidistance method, whether under treaty law or customary law. The equidistance method therefore tended to predominate in boundary agreements concluded before 1969 ».

(55) ANDERSON, D., *supra*, note 28, p. 334.

The Federal Republic of Germany and The Netherlands were the first countries to delimit a, be it short (56), segment of their continental shelf in 1964 (57). This was the first agreement within the framework outlined above to be signed in the area.

The first continental shelf agreement to enter into force, however, was agreed upon between Norway and the United Kingdom (58). Special about this agreement is that the parties involved totally ignored the existence of the Norwegian Trench, which is well over 200 m deep and runs parallel to the Norwegian coast in its immediate vicinity. The I.C.J. later remarked, *obiter dicta*, that the shelf on the other side of the trench, that is up to the equidistance line, could not be considered as adjacent continental shelf according to international law (59). Nevertheless, the extension of this line to the north arrived at by the parties in 1978 (60), that is well after this decision of the I.C.J., once again disregarded the particular geologic and geomorphologic features of the region. Equidistance as a rule of delimitation, in order words, immediately found some strong supporters in the North Sea area.

Because Denmark, The Netherlands and the United Kingdom were moreover of the opinion that, based on this strict application of the equidistance principle, they were the only countries (61) whose continental shelves would reach the center of the North Sea, three agreements were concluded in the period 1965-66. First the longest segment was defined between The Netherlands and the United Kingdom (62), followed by similar agreements based on the equidistance principle between Denmark

(56) The segment measured only 26 n.m.

(57) Agreement Between the Federal Republic of Germany and the Kingdom of The Netherlands Concerning the Lateral Delimitation of the Continental Shelf in the Vicinity of the Coast, December 1, 1964, 550 U.N.T.S. 123. This agreement entered into force on September 18, 1965. A similar step was taken by Denmark and the Federal Republic of Germany shortly afterward. Agreement Between the Kingdom of Denmark and the Federal Republic of Germany Concerning the Delimitation, in Coastal Regions, of the Continental Shelf of the North Sea, June 9, 1965, 570 U.N.T.S. 91. This agreement entered into force on May 27, 1966.

(58) Agreement Between the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf Between the Two Countries, March 10, 1965, 551 U.N.T.S. 214. This agreement entered into force on June 29, 1965.

(59) North Sea Continental Shelf Cases, *supra,* note 10, p. 32.

(60) Protocol Supplementary of the Agreement of March 10, 1965, Between the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf Between the Two Countries, December 22, 1978, as reprinted in *Atlante dei Confini Sottomarini* (Conforti, B. & Francalanci, G., eds.), Vol. 1, Milan, Dott. A. Giuffrè Ed., p. 30 (1979). This agreement entered into force on February 20, 1980.

(61) Together with Norway, as mentioned above. See *supra,* note 58.

(62) Agreement Between the Kingdom of The Netherlands and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf Under the North Sea, October 6, 1965, 595 U.N.T.S. 113. This agreement entered into force on December 23, 1966.

and the United Kingdom on the one hand (63) and Denmark and The Netherlands on the other (64). The I.C.J., however, was to decide otherwise.

On February 2, 1967 an agreement had been signed between Denmark and the Federal Republic of Germany in order to submit their maritime delimitation dispute to the I.C.J. On the same day, the Federal Republic of Germany and The Netherlands had signed an exact similar agreement. In simple terms the problem centered around the particular physical geography of the area : Denmark and The Netherlands possessed convex coastlines, whereas that of the Federal Republic of Germany, located in between, had a concave form. The result was that the former two countries favored the application of the equidistance principle. The Federal Republic of Germany, on the other hand, pretended that its continental shelf extended to the center of the North Sea. The Court's decision of February 20, 1969, satisfied this basic German contention (65). This dictum totally enervated the legal presumption in favor of equidistance, if the latter had ever existed (66). However, since the Court was not asked to draw the actual boundary line, separate agreements were concluded between the interested parties soon afterward. Early 1971 Denmark and The Netherlands concluded an agreement with the Federal Republic of Germany (67) based on the principles enunciated by the Court's ruling. Since Denmark, The Netherlands and the United Kingdom had already delimited their respective boundaries in the center of the North Sea, all of them had to be redrawn (68). Because the Federal Republic of Germany obtained a 9.4 n.m. continental shelf boundary with the United Kingdom (69), new

(63) Agreement Between the Kingdom of Denmark and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf, March 3, 1966, 592 U.N.T.S. 209. This agreement entered into force on February 6, 1967.

(64) Agreement Between the Kingdom of Denmark and the Kingdom of The Netherlands Concerning the Delimitation of the Continental Shelf Under the North Sea, March 31,1966, 604 U.N.T.S. 209. This agreement entered into force on August 1, 1967.

(65) North Sea Continental Shelf, *supra,* note 10, p. 3 *et seq.*

(66) OXMAN, B., « Political, Strategic, and Historical Considerations », in *International Maritime Boundaries*, Vol. 1, *supra,* note 20, p. 3, 16.

(67) Agreement Between the Kingdom of Denmark and the Federal Republic of Germany Concerning the Delimitation of the Continental Shelf Under the North Sea, January 28, 1971, 857 U.N.T.S. 109 (this agreement entered into force on December 7, 1972) and Agreement Between the Federal Republic of Germany and the Kingdom of The Netherlands Concerning the Delimitation of the Continental Shelf Under the North Sea, January 28, 1971, 857 U.N.T.S. 130 (this agreement entered into force on December 7, 1972).

(68) The boundary between Denmark and The Netherlands (see *supra,* note 64) for the simple reason that both countries no longer possessed a common boundary. The agreements between Denmark and the United Kingdom (see *supra,* note 63) and between The Netherlands and the United Kingdom (see *supra,* note 62) were changed either by means of a new agreement or an amending protocol. See *infra,* notes 70 and 71.

(69) Agreement Between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf Under the North Sea, November 25, 1971, 880 U.N.T.S. 185. This agreement entered into force on December 7, 1972.

agreements were to be concluded between the United Kingdom on one hand, and Denmark (70) and The Netherlands (71) on the other.

In order to be complete, one should add one later continental shelf delimitation between France and the United Kingdom, arrived at during the early 1980s. This agreement delimited their maritime boundary east of 0° 30' west of Greenwich (72). The line stopped short of the tri-junction point with Belgium (73). Because of the geographical balance between the opposite coasts facing each other in the Straits of Dover area, simplified equidistance was thought to result in an equitable solution (74).

Except for the continental shelf boundary between Belgium and The Netherlands (75), a complete continental shelf boundary delimitation has in other words been arrived at in the area.

B. — *Territorial sea*

Of much more recent nature is the territorial sea boundary between France and the United Kingdom (76). In fact, this was no new boundary for it only relabeled part of a previously concluded continental shelf agree-

(70) Agreement Between the Kingdom of Denmark and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf Between the Two Countries, November 25, 1971, as reprinted in *United Nations Legislative Series : National Legislation and Treaties Relating to the Law of the Sea* (ST/LEG/SER.B/16) p. 431 (1974). This agreement entered into force on December 7, 1972.

(71) Protocol Amending the Agreement Between the Kingdom of The Netherlands and the United Kingdom of Great Britain and Northern Ireland of October 6, 1965, Relating to the Delimitation of the Continental Shelf Under the North Sea Between the Two Countries, November 25, 1971, as reprinted in *ibid.*, p. 430. This protocol entered into force on December 7, 1972.

(72) Agreement Between the French Republic and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf in the Area East of 30 Minutes West of the Greenwich Meridian, June 24, 1982, as reprinted in *Atlante dei Confini Sottomarini* (CONFORTI, B., FRANCALANCI, G., LABELLA, A. & ROMANO, D., eds.), Vol. 2, Milano, Dott. A. Giuffrè Editore, pp. 13-15 (1987). This agreement entered into force on February 4, 1983.

(73) See Art. 2.

(74) According to Lt. Cdr. Carleton of the Hydrographic Department of the U.K. Ministry of Defence, « (t)his was the first bilateral negotiation where it could be said that the UK began to think in terms of an equitable solution, as opposed to pure equidistance ». See CARLETON, C., « The Evolution of the Maritime Boundary — — The UK Experience in the Southern North Sea and Channel », 7, *International Journal of Estuarine and Coastal Law*, p. 99, 104 (1992). He furthermore argues that equitable result considerations allowed the United Kingdom to proceed with the delimitation as if she also claimed at 12 n.m. territorial sea, *quod non* at that time (see *infra*, note 174), just like France (see *infra*, note 158). The line obtained by this exercise, according to Carleton, was then simplified on an area-compensated basis.

(75) See FRANCKX, E., *supra*, note 6, pp. 64-65 and 69-71 for a general discussion.

(76) Agreement Between the French Republic and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Territorial Sea in the Straits of Dover, November 2, 1988, as reprinted in 4, *International Journal of Estuarine and Coastal Law*, pp. 155-157 (1989). This agreement entered into force on April 6, 1989.

ment (77) as territorial sea agreement (78). This became necessary after the United Kingdom had extended its territorial sea to 12 n.m. in 1987 (79).

Two other lingering territorial sea boundaries have to be mentioned here, if the Belgian-French boundary is discounted as mentioned above. A first non-settled territorial sea boundary still exists between Belgium and The Netherlands involving the unresolved historical Wielingen-problem (80). A second one relates to the territorial sea between Germany and The Netherlands where a century-old boundary dispute concerning the Ems-Dollard region still prevents parties to arrive at an agreed boundary delimitation (81).

Apparently the territorial sea was not a priority area in the minds of governments when they started to negotiate the settlement of their maritime boundaries in the 1960s.

C. — *Fishery and exclusive economic zone*

Not one single fishery or exclusive economic zone boundary has so far been delimited in the area here under consideration. Reference is usually made to the Common Fishery Policy established by the European Communities (82) in 1983, which removed the need for negotiating common fisheries boundaries between member states, in order to explain the absence of any fishery boundary between them (83).

With only *one* state claiming an economic zone in that area (84), it appears moreover difficult to arrive at a *bi*lateral economic zone delimitation. As explained elsewhere, however, state practice in other parts of the

(77) See *supra*, note 72.

(78) Such a technique is quite novel in the international state practice. See COLSON, D., « The Legal Regime of Maritime Boundary Agreements », in *International Maritime Boundaries*, *supra*, note 20, p. 41, 47. The line was defined by means of six points. When excluding the two terminal points, the coordinates of the remaining four turning points correspond with those used by the 1982 agreement (see *infra*, note 72). The two terminal points of this 1988 agreement are located on the line between the first and last of these just-mentioned remaining four turning points and the next turning point of the previously concluded continental shelf boundary of 1982.

(79) See *infra*, note 174.

(80) The Wielingen constitutes a major access route to the river Scheldt. Although located off the Belgian coast, The Netherlands claim the Wielingen based on historie title. For recent literature, see for instance SOMERS, E., « The Problem of the Wielingen : The Delimitation of the Belgian Territorial Sea with Respect to The Netherlands », 3, *International Journal of Estuarine and Coastal Law*, pp. 19-36 (1988) and ROOS, D., « Zeeuws territoriaal water en de Wielingenkwestie in historisch perspectief », 4, *Zeeuws Tijdschrift*, pp. 124-132 (1985).

(81) In simple terms, it can be said that the Federal Republic of Germany pretends that the entire Ems estuary forms part of German territory whereas The Netherlands claim that the maritime boundary follows the thalweg of the principal navigational channel.

(82) Hereinafter cited as E.C.

(83) See nevertheless, FRANCKX, E., « Maritime Boundaries and Regional Cooperation », *supra*, note 50, pp. 223-224. See also CHURCHILL, R., *EEC Fisheries Law*, Dordrecht, Martinus Nijhoff, p. 79 n. 79 (1987).

(84) Namely France. See *infra*, notes 165 and 168.

world indicates that delimitation agreements can include the exclusive economic zone in their purview even though only one of the parties actually claims such a zone at the time of signature (85). Examples even exist of agreements which *expressis verbis* include the economic zone to be included in the delimitation process even though none of the parties involved claimed such a zone at the time of the conclusion of the agreement (86).

D. — *Final remarks*

This wraps up this brief survey of the past delimitation practice of the countries surrounding Belgium in the North Sea. It is clear from the above that delimitation efforts in the area here under consideration centered around the continental shelf notion. Most of them were concluded during the second half of the 1960s, early 1970s. The delimitation of the territorial sea only followed much later. Fishery and exclusive economic zone boundaries are even totally absent.

This sub-regional practice fits perfectly well into the overall practice of the states bordering the North Sea. Indeed, it were these early continental shelf delimitation agreements which for a long time made the North Sea area as a whole stand out as a model region in this respect (87). As time passed by, however, the few remaining lacunae in the continental shelf delimitation and the quasi-absence of territorial sea delimitations made

(85) See FRANCKX, E., « EC Maritime Zones : The Delimitation Aspect », *supra*, note 50, p. 245. The example provided there relates to the practice of the former U.S.S.R. in the Baltic Sea. Although this country was for many years the only coastal state claiming an exclusive economic zone in this area, all its delimitation agreements concluded after the establishment of such a zone in 1984 included the exclusive economic zone as zone to be delimited.

(86) Treaty Between the German Democratic Republic and the People's Republic of Poland concerning the Delimitation of the Sea Areas in the Oder Bight, May 22, 1989. An English translation, together with a legal analysis, can be found in FRANCKX, E., « The 1989 Maritime Boundary Delimitation Agreement between the GDR and Poland », 4, *International Journal of Estuarine and Coastal Law*, pp. 237, 249-251 (1989). See especially Art. 5(2). This agreement entered into force on June 13, 1989. Poland only established an exclusive economic zone about two years later. See KWIATKOWSKA, B., « 1991 Polish Legislation on the Exclusive Economic Zone and Other Maritime Spaces », 6, *International Journal of Estuarine and Coastal Law*, pp. 364-370 (1991). The text of this law was later also reproduced in 21, *Bulletin du Droit de la Mer*, pp. 71-75 (août 1992). Because of the impact of the German unification on this boundary (for a discussion, see FRANCKX, E., « International Cooperation in Respect of the Baltic Sea », in *The Changing Political Structure of Europe : Aspects of International Law* (LEFEBER, R., FITZMAURICE, M. & VIERDAG, E., eds.), Dordrecht, Martinus Nijhoff, pp. 245, 262-267 (1991)), this agreement forms now an example where only one of the parties to an agreement delimiting the economic zone is actually claiming such a zone.

(87) See for instance PRESCOTT, V., *The Maritime Political Boundaries of the World*, London, Methuen, p. 291 (1985).

other regions, like the Baltic, take over this leading role (88). Belgian state practice, as typified above (89), may not pass unnoticed in this respect.

Before concluding this survey it appears appropriate to refer to the fundamental observation made by D. Anderson when looking for regional practices in his contribution to the maritime boundary project of the American Society of International Law. One of the most salient features remarked by this author is a distinction which has to be noted between the delimitation method generally adhered to before and after the I.C.J. delivered its judgement in the North Sea Continental Shelf cases. If before the 1969 I.C.J. decision maritime delimitation had been guided by a rather strict equidistance rule, this totally changed afterward :

> « All these agreements [i.e. concluded after the 1969 I.C.J. judgement] were based to a greater or lesser extent upon equitable principles other than equidistance » (90).

It is submitted that this fundamental observation applies with the same vigour to the practice of Belgium's maritime neighbors in the North Sea, as illustrated above.

With this basic rule of thumb to be discerned in previous regional practice in mind, we will now turn to the Belgian practice.

III. — Belgian practice

It has been stated above that the rules of international law with respect to the delimitation of maritime spaces have undergone quite substantial changes over a relatively short period of time, elapsed since these rules became in the spotlight of public attention. Indeed, modern delimitation practice only emerged after the 1945 Truman proclamation on the Continental Shelf (91) when resource development stimulated the international interest in the issue. This development was foremost triggered by the pressure felt by states to delimit their newly acquired resource zones in the years to follow (92), be it continental shelf or even fishery zones as some countries, not interested in the mineral resources but rather in the living

(88) Statement first made by the present author at a Conference on Ecology and Law in the Baltic Sea Area : Sources and Developments, held in Riga, Latvia, on August 26-31, 1990. Summary reproduced in Franckx, E., « Maritime Boundaries and Regional Cooperation in the Baltic », 20, *International Journal of Legal Information,* pp. 18-23 (1992). See also by the same author, « Maritime Boundaries and Regional Cooperation », *supra,* note 50, pp. 225-227.

(89) See *supra,* note 7 and accompanying text.

(90) Anderson, D., *supra,* note 28, p. 335. For the elaboration of this particular submission in further detail, see pp. 333-336.

(91) See *supra,* note 53.

(92) 1940 was the starting date chosen by the project leaders for maritime boundary settlements to be included in the *International Maritime Boundary* project . In this respect, see also Charney, J., *supra,* note 26, p. xxvi.

resources of the superjacent waters, had come to interpret the Truman Proclamation on the Continental Shelf.

A. — *Early practice*

This does not imply that no maritime boundaries were settled before that date or that the issue had not been on the agenda of international fora. It simply means that the previous practice relates to a time that the notion of maritime boundary delimitation did not arouse the same general interest it generates today. Belgium, for instance, made an official statement on the matter, as far as the territorial sea was concerned at least, at the time of the 1930 Hague Codification Conference. In a belated reply to a questionnaire concerning the territorial waters (93), Belgium stated with respect to the delimitation question :

> « La mer territoriale se mesure à partir de la laisse de basse mer ; d'autre part, la limite entre les mers territoriales contiguës de deux pays voisins doit être tracée par une perpendiculaire à la côte, à l'extrémité de la frontière terrestre, ce tracé donnant seul aux Etats une mer territoriale correspondant aux besoins de la défense de leurs côtes respectives » (94).

Reference to the construction of a perpendicular line as method of delimitation has of course to be viewed in its historical context. At a time where only short segments had to be delimited (95) and in absence of the modern technologies for fixing basepoints, the perpendicular must have looked like an attractive rule because of its simplicity (96).

Viewed in retrospect, perpendiculars have actually been used only in very few cases and do not appear to have found general acceptance in international practice (97). Where this method has been used, reference is normally made to the general direction of the coast which, however, includes an important element of arbitrariness (98).

(93) The questionnaire was sent out by Committee of Experts. This body preceded the Preparatory Committee, established in 1929, which had to prepare the preliminary documents for the Conference. The Belgian reply, dated December 19, 1928, only figured in the latter compilation. See Lettre du 19 décembre 1928, reprinted in « Bases de discussion établies par le comité préparatoire à l'intention de la conférence », Volume II : *Eaux territoriales*, League of Nations Doc. C.74.M.39.1929.V (L.N. Pub. n° 1929.V.2), pp. 119-121 (1929).

(94) *Ibid.*, p. 120.

(95) At that time a territorial sea of 3 n.m. was generally adhered to by Belgium and its maritime neighbors.

(96) Especially with respect to the delimitation with France this method might have looked attractive. The coast in the area is fairly straight. Nevertheless, there would always remain an arbitrary element in the lengths of coastline parties should take into account to determine this general direction of the coast.

(97) This is the conclusion reached by L. Legault and B. Hankey in their recent analysis of the methods that have been used in maritime boundary delimitation so far. See LEGAULT, L. & HANKEY, B., *supra*, note 54, p. 221.

(98) *Ibid.*, pp. 213-214. One can easily understand the intricacies of this point if one were to apply this method in the delimitation between Belgium and The Netherlands.

B. — *Contemparory practice*

A study of the post-1940 policy of Belgium with respect to maritime delimitation matters necessarily leads to the conclusion that two periods have to be distinguished in this respect. The negotiations at UNCLOS III played a crucial rule in this change of policy which moved Belgium from the camp of the supporters of strict equidistance to the opposite one favoring equitable results.

a) Equidistance-period

If the period 1940 to present is taken as point of reference, it cannot be denied that Belgium started out as a fervent adherent of the equidistance principle. This can clearly be illustrated by analyzing the peculiar Belgian position with respect to the 1958 Contention on the Continental Shelf, and its Art. 6 in particular (99). Even though Belgium actively participated in the negotiations of UNCLOS I, which resulted in the signing of four conventions on the law of the sea in 1958 (100), this country refused to sign any of them. Parliament at regular times had urged the government to reconsider its position (101). But it was only 14 years later that a law appeared in the *Moniteur belge* by means of which Belgium acceded to three of them (102). Even then, the 1958 Continental Shelf Convention did not form part of the list. Belgium has always considered this convention to be an imperfect legal construction and foremost objected to the definition of the continental shelf which was found to be much too flexible and inaccurate and as such could harm Belgian fishing interests in sedentary species (103).

(99) See *supra*, note 44.

(100) 1958 Territorial Sea Convention, *supra*, note 31 ; 1958 Continental Shelf Convention, *supra*, note 32 ; Convention on the High Seas, April 29, 1958, 450 U.N.T.S. 11 (this convention entered into force on September 30, 1962) ; and Convention on Fishing and Conservation of the Living Resources of the High Seas, April 29, 1958, 559 U.N.T.S. 285 (this convention entered into force on March 20, 1966).

(101) *Bull. Q.R.*, Sénat, N° 14, pp. 309-310 (1962-1963) ; *Bull. Q.R.*, Sénat, N° 20, pp. 504-505 (1962-1963) ; *Doc. parl.*, Sénat N° 143, pp. 49-50 (1964-1965) ; and *Ann. parl.* Sénat N° 63, pp. 1746-1747 (1966-1967).

(102) Loi portant approbation des actes internationaux suivants : 1. Convention sur la mer territoriale et la zone contiguë ; 2. Convention sur la haute mer ; 3. Convention sur la pêche et la conservation des ressources biologiques de la haute mer ; 4. Protocole de signature facultative concernant le règlement obligatoire des différends, faits à Genève le 29 avril 1958 ; 5. Convention internationale sur l'intervention en haute mer en cas d'accident entraînant ou pouvant entraîner une pollution par les hydrocarbures et annexe, faites à Bruxelles le 29 novembre 1969, du 29 juillet 1971, *Moniteur belge* du 2 février 1972, pp. 1246 *et seq.*

(103) As expressed by the government at the time of the adoption of municipal legislation on the issue (see *infra*, note 106) : Exposé des motifs, *Doc. parl.*, Chambre N° 471-1, pp. 1-2 (1966-1967). Similar remarks were also made by the government at the time of accession to three of the four 1958 Geneva conventions (see *supra*, note 100) : Exposé des motifs, *Doc. parl.*, Chambre N° 750-1, pp. 1-2 (1969-1967).

In the mean time, however, in response to mounting internal (104) as well as external pressure (105), the Belgian government had reacted in 1969 by enacting a national law on the continental shelf (106). This law solved the problem of the unsatisfactory definition included in the 1958 Continental Shelf Convention by not providing a definition at all. Because the Belgian continental shelf is « shelf-locked » and less than 200 m deep, the way out for the Belgian government was to include a very concrete delimitation article instead. This law (107), as a consequence, can be regarded as a first firm exposition of the Belgian position toward the delimitation question. Art. 2, which is explicitly devoted to this issue, states :

> « La délimitation du plateau continental belge vis-à-vis du plateau continental du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est constituée par la ligne médiane dont tous les points sont équidistants des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de la Belgique et du Royaume-Uni. Cette délimitation peut être aménagée par un accord particulier.
>
> La délimitation du plateau continental vis-à-vis des pays dont les côtes sont adjacentes aux côtes belges, c'est-à-dire la France et les Pays-Bas, est déterminée par application du principe de l'équidistance des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacune des puissances intéressées. Cette délimitation peut être aménagée par un accord particulier avec la puissance intéressée ».

Even though one commentator classified this Art. 2 as one derived from the 1958 Continental Shelf Convention (108), one cannot overlook the fundamental differences to be discerned when both texts are compared more closely. First of all, the primary rule of Art. 6 of the 1958 Continental Shelf Convention, namely that delimitations are to be effected by agreement, is downgraded to a mere possible exception in the Belgian law. Secondly, the special circumstances exception, which formed an integral part of the equidistance rule of that Art. 6, is totally lacking in municipal law. If it is generally accepted today that the Art. 6 provision of the 1958 Continental Shelf Convention is a rather indeterminate rule, one is left with the impression that the Belgian law, in an attempt to be as precise as possible with respect to the physical extent of this zone, attributed to the equidistance rule an importance out of proportion with the actual meaning

(104) See *supra*, note 101 and accompanying text.

(105) One may not forget that many delimitation agreements had already been concluded in the North Sea (see *supra*, notes 56-64 and accompanying text) and that 1969 was also the year when the I.C.J. rendered its judgement in the North Sea Continental Shelf cases. See *supra*, note 10.

(106) Loi sur le plateau continental de la Belgique du 13 juin 1969, *Moniteur belge* du 8 octobre 1969, pp. 9479-9480. Hereinafter cited as 1969 law.

(107) For an analysis, see SMETS, P.-F., « La loi du 13 juin 1969 sur le plateau continental de la Belgique », in *Mélanges Ganshof van der Meersch*, Bruxelles, Bruylant, pp. 269-295 (1972).

(108) *Ibid.*, pp. 283-285. And moreover despite the obvious desire of the *Conseil d'Etat* at that time to have the text of the 1969 law correspond as closely as possible with the 1958 Continental Shelf Convention. See *Doc. parl.*, Chambre N° 471-1, pp. 4-7 (1966-1967).

of the 1958 Continental Shelf Convention but nevertheless in line with the attitude of over-confidence in the equidistance method which characterized the 1960s (109). Apparently, this strict interpretation was also the understanding of the executive on the subject. This can be inferred from a statement made by the Minister of Foreign Affairs in 1975 in which he clearly discarded the special circumstances exception for the Belgian coast :

> « La côte belge, étant rectiligne, ne présente aucune indentation profonde ni aucune incurvation qui permettraient d'invoquer des circonstances spéciales » (110).

However, a few days later the Minister of Economic Affairs added before the same chamber of the House of Parliament :

> « Il résulte de cet article 2 que la loi a prévu la possibilité d'adapter les limites du plateau continental de la Belgique moyennant des accords particuliers avec les puissances limitrophes. Toutefois, il n'y a pas à l'heure actuelle des faits pouvant justifier une telle adaptation » (111).

Less than a year later the Minister of Foreign Affairs once more made a strong equidistance plea :

> « Ce principe d'équidistance est le seul qui soit applicable, la côte belge étant rectiligne, ne comportant donc pas d'indentations profondes et ne présentant pas de circonstances spéciales qui puissent justifier une autre délimitation. La convention de 1958 sur le plateau continental, par son article 6, précise de plus qu'à défaut d'accord le principe de l'équidistance s'applique » (112).

When Belgium prepared itself for UNCLOS III, its official position on the subject remained basically unehanged as can be inferred from a scholarly article written by the Head of the Belgian delegation which was published in 1975. Here it was stated that the Belgian continental shelf, being enclaved between France, The Netherlands and the United Kingdom, only extends over an area of 800 square n.m (113). The author then continues :

> « et [le plateau continental belge] n'est pas susceptible d'extension, quels que soient les critères de délimitation qui pourraient être retenus à l'avenir » (114).

Belgium adopted a clearly resigned attitude when it prepared negotiations on the subject during the 1970s.

(109) See *supra*, notes 54, 58-60 and 90, and *infra*, note 298 and accompanying text.

(110) *Bull. Q.R.*, Sénat N° 53, pp. 2032-2033 (1974-1975).

(111) *Bull. Q.R.*, Sénat N° 1, pp. 44-45 (1975-1976). In this respect, see also *infra*, note 140 and accompanying text.

(112) *Bull. Q.R.*, Chambre N° 38, pp. 2699-2670 (1975-1976).

(113) VAN DER ESSEN, A., « La Belgique et le droit de la mer », 11, *Revue Belge de Droit International*, p. 103, 104 (1975/1).

(114) *Ibid.*

A last official exposition of this equidistance rule can finally be found in the Belgian legislation establishing a fishing zone in 1978 (115). Once again, the field of application of this law was defined by means of a specific delimitation clause :

> « Il est établi, au-delà de la mer territoriale de la Belgique, une zone de pêche nationale couvrant la partie de la mer du Nord située entre les lignes médianes dont tous les points sont équidistants des lignes de base de la mer territoriale de la France, du Royaume Uni et des Pays-Bas, d'une part, et de la ligne de base de la mer territoriale de la Belgique, d'autre part » (116).

It will be noted that even the possibility to deviate from this principle by means of bilateral agreements, still to be found in the 1969 law (117), disappeared (118).

These few official observations sufficiently indicate that Belgium had to be categorized as a staunch supporter of the equidistance rule from the 1960s onward and remained so well into the 1970s.

a) Equitable result-period

As mentioned above, UNCLOS III thoroughly reshuffled the delimitation cards (119). If the rule on the territorial sea delimitation remained unchanged, the one on the continental shelf received a totally new content. This proved no easy compromise, for the conference was fundamentally divided between proponents of the equidistance-special circumstances rule on the one hand, and the adherents of an equitable result formula on the other. This resulted in the emergence of two new special interest groups

(115) Loi portant établissement d'une zone de pêche de la Belgique du 10 octobre 1978, *Moniteur belge* du 28 décembre 1978, pp. 15992-15993. About the context in which this zone was established, see *infra*, notes 147-149 and accompanying text.

(116) *Ibid.*, Art. 1. From a delimitation point of view, it might be interesting to note that even though the law itself remained silent on the issue, an annex which accompanied the parliamentary documents relating to this draft proposal, included a map depicting this fishery zone by means of precise coordinates : « Le schéma ci-joint délimite la zone de pêche telle qu'elle est définie à l'article 1 du projet de loi en fonction des points géographiques mentionnés ci-dessous ». A study of the coordinates listed in this document indicates that the turning points used reflect the outcome of the continental shelf negotiations held between Belgium and its maritime neighbors during the 1960s, with some uncertainties remaining as far as the lateral boundary with France was concerned. The eight points listing the boundary with The Netherlands, for instance, are also to be found in a note from the President of the Belgian delegation for the delimitation of the continental shelf between Belgium and The Netherlands to the President of the Dutch delegation, dated December 8, 1967, as reprinted in 1968 I.C.J. Pleadings, Oral Arguments, Documents, Vol. 1, pp. 546-549, including a map and an English translation of the original French text. The turning points relating to the United Kingdom, on the other hand, served as point of departure for the Belgian position during the negotiations which preceded the conclusion of the B-UK Continental Shelf Agreement. This position, in turn, was based on the draft line of 1966. See *infra*, notes 260 and 268 and accompanying text.

(117) See *supra*, note 106 and accompanying text.

(118) About the downgraded importance of fishery boundaries in E.C. perspective, see *supra*, notes 82-83 and accompanying text .

(119) See *supra*, notes 44-47 and accompanying text.

during UNCLOS III, namely the so-called Delimitation Group Supporting the Median Line and the Delimitation Group Supporting Equitable Principles (120).

It was during these UNCLOS III negotiations that Belgium changed its policy on the subject. From a fervent supporter of the equidistance rule *tout court* when the conference started in 1973, Belgium turned out to be an even more dedicated believer of the equitable result doctrine when UNCLOS III closed its doors in 1982. When his country signed the result of these protracted negotiations, namely the 1982 Convention, at the eleventh hour (121), it made a rather long declaration at that time in which it raised as first substantial element the delimitation issue. In this declaration Belgium expressed the regret that the rule governing the delimitation of the continental shelf and exclusive economic zone, had not been withheld to govern also the delimitation of the territorial sea (122). Belgium could hardly have thought of a more elegant way to express its full support of this new equitable result rule.

1984 was also the year that the government informed parliament that the equidistance method as provided by the Belgian law on the Continental Shelf had not yet been used to settle an official boundary between Belgium and any of its neighbors. At the same time it was admitted that an exchange of non-official coordinates had taken place between the parties involved in order to fix the respective exploration and exploitation zones. The latter were only technical arrangements which allowed to delimit rights and responsibilities on a provisional basis (123). Due attention was also paid to the changed rules of international law on the subject. The long discussions which had accompanied this change within the framework of UNCLOS III were also suggested as one of the reasons why no official delimitation had yet taken place (124). Later declarations usually stressed this new emphasis placed by international law on the equitable result rule (125).

(120) As discussed in KOH, T. & JAYAKUMAR, S., « The Negotiating Process of the Third United Nations Conference on the Law of the Sea », in *United Nations Convention on the Law of the Sea*, 1982 (Nordquist, M., ed.), Vol. 1, Dordrecht, Martinus Nijhoff, pp. 29, 78-79 (1985).

(121) Belgium signed on December 5, 1984. It was the 150th country or entity to do so. See *Bull. Q.R.*, Sénat N° 11, p. 425 (1984-1985).

(122) « En ce qui concerne néanmoins le statut des espaces maritimes, il regrette que la notion d'équité, adoptée pour la délimitation du plateau continental et de la zone économique exclusive, n'ait pas été reprise dans la disposition relative à la délimitation de la mer territoriale ». See Nations Unies, *Droit de la mer : Etat de la Convention des Nations Unies sur la droit de la mer*, New York, Nations Unies, Bureau du Représentant spécial du Sécretaire général pour le droit de la mer, p. 8 (1986).

(123) *Bull. Q.R.*, Sénat N° 8, p. 296 (1984-1985) and *Bull. Q.R.*, Sénat N° 15, p. 786 (1985-1986).

(124) *Ibid.*

(125) See for instance *Bull. Q.R.*, Sénat N° 11, pp. 425-426 (1987-1988).

When Belgium enlarged its territorial sea from 3 to 12 n.m. in 1987 (126), this country employed a totally different approach to the delimitation aspect than the one used in 1969 with respect to the continental shelf (127) or in 1978 concerning the fishery zone (128). The original draft proposed by the government did include a specific provision on the subject which made reference to the conclusion of bilateral agreements in order to settle the lateral boundaries (129). The *Conseil d'Etat* was of the opinion that such a provision lacked legal force unless the executive intended to request an anticipated approval from the legislator. Taking into account the observations made by the *Conseil d'Etat*, a revised draft was then submitted to the House of Representatives. As had been the case in 1969, this new draft once again did mention the countries by name, but this time the method of delimitation to be followed did not figure in the text. Instead, the latter merely stated in its Art. 2 :

> « Les accords que le Roi conclut aux fins de déterminer les limites latérales de la mer territoriale de la Belgique avec celles de la France, d'une part, et des Pays-Bas, d'autre part, sortiront leur plein et entier effet » (130).

But this particular article did not survive parliamentary scrutiny. The Foreign Affairs Commission of the House of Representatives deleted draft Art. 2 altogether. The argument put forward in this respect was that such an article would impair the constitutional prerogatives of the legislator. It tended to allow the executive to fix the territorial boundaries of Belgium all by itself and not by law as required by the constitution (131). This is apparently a highly sensitive issue in the Belgian constitutional system of division of powers. Indeed, already in 1969 the *Conseil d'Etat* had clearly stressed that the less specific clauses to be found in the Belgian legislation on the continental shelf (132), were subject to the approval of parliament (133). It will be remembered that in this latter zone a coastal state may not even claim sovereignty but only certain sovereign rights.

(126) Loi fixant la largeur de la mer territoriale de la Belgique du 6 octobre 1987, *Moniteur belge* du 22 octobre 1987, p. 15290. Hereinafter cited as 1987 Territorial Sea Law. For an analysis see FRANCKX, E., *supra*, note 6.

(127) See *supra*, note 106.

(128) See *supra*, note 116.

(129) Avis du Conseil d'Etat, *Doc. parl.*, Chambre N° 653/1, p. 3 (1986-1987).

(130) Projet de loi, *Doc. parl.*, Chambre N° 653/1, p. 5 (1986-1987).

(131) *Doc. parl.*, Chambre N° 635/2, p. 2 (1986-1987).

(132) « Cette délimitation peut être aménagée par un accord particulier ... ». See Art. 2, paras. 1 and 2 of the 1969 law.

(133) « Ces accords particuliers, encore qu'ils n'auront pas pour objet de modifier les frontières de l'Etat, seront de nature à lier individuellement les Belges par les effets qu'ils impliqueront sur le plan administratif et juridictionnel et, à ce titre, ils devront être soumis à l'assentiment des Chambres législatives conformément au prescrit de l'article 68 de la Constitution ». See *Doc. parl.*, Chambre N° 471/1, p. 6 (1966-1967).

b) Final remarks

This elementary survey of Belgian state practice with respect to the rules of international law governing the delimitation of maritime spaces amply illustrates that the official position of this country has not been as rectilinear as its proper coast has often been claimed to be. It started out by being based on the codified rules of international law without, however, being identical. In the heyday of equidistance as a rule of delimitation in the North Sea area, Belgium purified this rule of its special-circumstances exception which formed nevertheless an integral part of it according to the 1958 conventional system. Moreover, the impact of bilateral agreements to settle maritime boundaries was downgraded in importance. This was done by means of municipal legislation. In this period when most of the continental shelf boundaries were settled in the area, Belgium did not enter into any official agreements on the subject. Non-official arrangements were worked out in order to avoid practical difficulties.

It was only after UNCLOS III that a clear change in policy became discernable. From a purified equidistance rule, Belgium evolved toward a system where the equitable result of the delimitation became the central element to be taken into account.

Before turning to the three recently concluded agreements by Belgium, it appears worthwhile to compare this Belgian state practice with the international and regional developments on the subject. All three indicate that a fundamental change of accent occurred somewhere down the line. Essential factor influencing this change on the international (134) and regional level (135) was beyond the shadow of a doubt the I.C.J. decision of 1969 in the North Sea Continental Shelf cases (136). By explicitly stating that the equidistance — special circumstances rule did not form part of customary international law (137), totally new perspectives were opened.

Belgian state practice, however, indicates that this country's official position was largely left untouched by this particular fact. Even though this country waited to enact its municipal legislation on the continental shelf (138) until after the I.C.J. had rendered its decision (139), the latter apparently had no influence whatsoever on the Belgian belief in strict equidistance as the most appropriate rule of delimitation. Questioned in the House of Representatives as well as in the Senate during the months of March and April of that same year, i.e. between the two above-mentioned

(134) See OXMAN, B., *supra*, note 66, p. 16.
(135) See *supra*, note 90 and accompanying text.
(136) This change, therefore, was only codified on the international level by means of the 1982 Convention.
(137) See *supra*, note 46 and accompanying text.
(138) June 13, 1969.
(139) February 20, 1969.

events, the government put on record that the I.C.J. decision did not have any bearing on the delimitation of the Belgian continental shelf. Crucial element in distinguishing between the two situations, as advanced by the Belgian government, was the rectilinear character of the Belgian coast (140).

It was only much later that the importance of this particular I.C.J. decision on the Belgian situation was revisited. In an answer to a parliamentary question in 1988 for instance, i.e. well after the official position of the country had been adapted, reference was made to content of this court decision by stressing first of all that equidistance was not considered to be an obligatory method of delimitation between adjacent states, and secondly that the application of this method in the North Sea would have resulted in inequities (141).

When Belgium finally sat down at the negotiating table to delimit its territorial sea and continental shelf with France, on the one hand, and its continental shelf with the United Kingdom on the other in an official manner, the content of international law, regional practice as well as its national policy on delimitation matters had drastically changed when compared to the period when non-official technical arrangements were worked out with its neighbors during the 1960s. As will be demonstrated below, these changed had a direct influence on the outcome of these negotiations.

IV. — 1990 AND 1991 DELIMITATION AGREEMENTS (142)

Before analyzing the agreements themselves, a few preliminary remarks will be made with respect to the different maritime zones claimed by the

(140) See Q.R. Chambre N° 17, p. 623 (1968-1969). To the concrete question of Glinne as to the implications of the just rendered I.C.J. decision on the policy of the Belgian government on the subject, the minister answered : « La côte belge étant rectiligne, l'arrêt ne saurait avoir d'implication pour la Belgique. » The report of the Commission of Foreign Affairs of the Senate on the 1969 law, which was drafted after the I.C.J. decision of February 1969, stated in this respect : « (L)a nouvelle jurisprudence intervenue avec l'arrêt de la Cour internationale de Justice de La Haye, rendu le 20 février 1969 ... ne paraît pas affecter dans son opportunité le projet qui vous est soumis. Si cet arrêt a dérogé au principe des limites fixées par les équidistances, principe adopté par la Convention de Genève et suivi par l'actuel projet de loi du Gouvernement belge, c'est en raison d'une clause de la Convention qui excepte le cas de circonstances exceptionnelles. Ces circonstances géographiques spéciales ne se retrouvent pas dans la région de la mer du Nord où la Belgique entend manifester ses droits sur une partie du plateau continental. » See *Doc. parl.*, Sénat N° 327, p. 2 (1968-1969).

(141) *Bul. Q.R.* Sénat N° 11, p. 425-426 (1987-1988).

(142) The information on the agreements contained in this section is based on the following sources, unless otherwise indicated : ANDERSON, D., « Report Number 9-16 » and « Report Number 9-17 », *supra*, note 30, pp. 1891-1900 and 1901-1912 respectively, and by the same author « The Strait of Dover and the Southern North Sea — — Some Recent Legal Developments », 7, *International Journal of Estuarine and Coastal Law*, pp. 85-98 (1992) and « Recent Boundary Agreements in the Southern North Sea », 41, *International and Comparative Law Quarterly*,

three countries involved in these delimitations. Also their attitude with respect to the different law of the sea conventions will briefly be mentioned.

A. — *Related law in force*

a) Belgium

At the time of the negotiations Belgium thus claimed a 12 n.m. territorial sea (143). As mentioned above, no delimitation clause was included even though this had been the original intention of the drafters of this law (144).

This country did established a contiguous zone of 10 km immediately following its independence (145). However, when this country decided to enlarge its territorial sea in 1987, this customs zone became totally absorbed by the extended territorial sea.

As far as the continental shelf is concerned, reference is made to the 1969 law and its specific delimitation provision which have already been analyzed in some detail above (146).

Belgium enacted a fishery zone in 1978 (147) in response to an E.C. Council resolution of early November 1976 (148). The latter requested member states to establish such a zone in concert before January 1, 1977. Belgium was the last country to follow suit (149). A delimitation clause similar to the one to found in the 1969 law was included (150).

No exclusive economic zone has so far been enacted. But reference must be made at this point to a Dutch initiative (151) which finally resulted in the adoption at the Third Conference on the Protection of the North Sea

pp. 414-421 (1992) ; and CARLETON, C., *supra,* note 74, pp. 99-122. Also the following personal communications were relied upon : Letter of D. ANDERSON, Foreign & Commonwealth Office, London, dated November 21, 1991 ; letter of J.-P. QUÉNEUDEC, Professor at the Université de Paris I Pantheon — — Sorbonne, dated October 6, 1991 ; and private meeting with VAN CAUWENBERGHE, C., Hoofd Hydrografische Dienst, Dienst der Kusthavens, on November 13, 1991 and telephone conversations of April 8, 13, and 22, 1993.

(143) See *supra,* note 126.

(144) See *supra,* notes 129-130 and accompanying text.

(145) Loi qui établit un rayon unique de douane du 7 juin 1832, Bulletin Officiel des Lois et Arrêtés Royaux de la Belgique, Tom. XLV, N° 443, pp. 542-545. This legislation used the notion of « myriamètre ».

(146) See *supra,* notes 106-107 and accompanying text.

(147) See *supra,* note 115.

(148) This resolution was only published much later. See O.J. 1981, C 105/1.

(149) This delay was justified by the Minister of Foreign Affairs by the fact that a declaration had been inserted in the records of the Council's meeting which subordinated this date to the fulfillment of the constitutional requirements of each country, which in Belgium meant the approval of parliament. See *Bull. Q.R.* Chambre N° 16, p. 902 (1976-1977).

(150) See *supra,* note 116.

(151) IJLSTRA, T. & YMKERS, P., « The Netherlands and the Establishment of the Exclusive Economic Zone », 4, *International Journal of Estuarine and Coastal Law,* pp. 224-229 (1989).

in The Hague in March 1990 of a special paragraph in which the participants to this conference agreed to coordinate their action with respect to the possibility of establishing exclusive economic zones in the areas of the North Sea where they did not yet exist (152). It should be stressed in this respect that it was at the request of Belgium that a closing sentence was added to this particular paragraph in which it was explicitly stated that this coordination should not prejudice the completion of the delimitation of the continental shelves in the area and the rights to be derived therefrom (153). This initiative finally resulted in a joint declaration issued by the North Sea Ministers on September 22, 1992 in which it was stated that the participating states

> « undertake to initiate the process either of establishing Exclusive Economic Zones in the areas of the North Sea where they do not exist for the purpose of protecting and preserving the marine environment, or of increasing coastal state jurisdiction for that purpose ... » (154).

Some new Belgian initiatives in this direction may therefore be expected in the near future.

As already mentioned above, Belgium acceded to the 1958 Territorial Sea Convention (155) but not to the 1958 Continental Shelf Convention (156). This country signed, but did not yet ratify the 1982 Convention.

b) France

Like most coastal states, France for a long time adhered to a 3-mile territorial sea limit (157). Of Belgium's maritime neighbors, this was the

(152) For the text of this paragraph 36, see *The North Sea : Basic Legal Documents on Regional Environmental Co-operation* (FREESTONE, D. & IJLSTRA, T., eds.), *supra*, note 49, p. 1, 17.

(153) As mentioned by IJLSTRA, T., « Development of Resource Jurisdiction in the EC's Regional Seas : National EEZ Policies of EC Member States in the Northeast Atlantic, the Mediterranean Sea, and the Baltic Sea », 23, *Ocean Development and International Law*, p. 165, 174 (1992). As stated by Anderson, the lack of agreed boundaries in the North Sea area was seen by Belgium as a possible impediment for this initiative to be successful. See ANDERSON, D., « Report Number 9-16 », *supra*, note 30, p. 1891, 1892.

(154) Declaration of the Coordinated Extension of Jurisdiction in the North Sea, September 22, 1992, as reprinted in 8, *International Journal of Marine and Coastal Law*, pp. 173-175 (1993).

(155) See *supra*, note 102.

(156) See *supra*, note 103 and accompanying text.

(157) This 3-mile territorial sea limit as such was never proclaimed by any French legislation. Instead different zones were claimed for different purposed over the years. See for instance BERMES, A., « Les espaces maritimes sous juridiction nationale », in *La France et le droit de la mer* (Dupuy, R.J., ed.), Nice, Institut de Droit de la Paix et du Développement, p. 45, 55 (1974) and QUÉNEUDEC, J.-P., « France », in *New Directions in the Law of the Sea* (CHURCHILL, R., SIMMONDS, K. & WELCH, J., eds.), Vol. 3, New York, Oceana, pp. 257, 257-259 (1973). The Belgian situation at the time of the 3-mile rule was very similar. See FRANCKX, E., *supra*, note 6, pp. 49-50.

first country to enlarge its territorial zone to 12 n.m. in 1971 (158). This law included a delimitation provision which relied on the principle of the median line (159).

This country also enacted a customs zone during the late 1980s specifically aimed at drug prevention (160). In this zone, France also claims certain rights with respect to maritime cultural property (161). The field of application of both laws between 12 and 24 n.m. was merely subjected to delimitation agreements with neighboring states without reference to any particular method (162).

With respect to the continental shelf France took a rather reluctant attitude (163). Its national legislation on the subject was not very precise with respect to its field of application (164). Reference was simply made to the 1958 Continental Shelf Convention. No delimitation provision was included.

France was also the first E.C. member state to enact an exclusive economic zone in the North Sea in 1976 (165). It had therefore no trouble to comply with the E.C. Council resolution of 1976 to extend the fishery zones to 200 n.m as of 1 January 1977 (166). No delimitation provisions were to be found in this very concise law on the exclusive economic zone which only stated that the conditions and dates of entry into force off the

(158) Loi N° 71-1060 du 24 décembre 1971, *Journal Officiel* du 30 décembre 1971, p. 12899. Reprinted in *Western Europe and the Development of the Law of the Sea* (Durante, F. & Rodino, W., eds.), Vol. 1, New York, Oceana, France, pp. 91-92 (1980).

(159) Art. 2 states : « Sauf convention particulière, la largeur des eaux territoriales ne s'étend pas au-delà d'une ligne médiane dont tous les points sont équi-distants des points les plus proches des lignes de base des côtes françaises et des côtes des pays étrangers qui font face aux côtes françaises ou qui leur sont limitrophes ».

(160) Loi N° 87-1157 du 31 décembre 1987, *Journal Officiel* du 5 janvier 1988, p. 159. As reprinted in 12, *Bulletin du Droit de la Mer*, pp. 11-12 (décembre 1988). For a commentary, see Quéneudec, J.-P., « Chronique du droit de la mer », 33, *Annuaire Français de Droit International*, p. 639, 645 (1987).

(161) Loi N° 89-874 du 1er décembre 1989, *Journal Officiel* du 5 décembre 1989, p. 15033. As reprinted in 16, *Bulletin du Droit de la Mer*, pp. 12-16 (décembre 1990). For a commentary see Quéneudec, J.-P., « Chronique du droit de la mer », 36, *Annuaire Français de Droit International*, pp. 744, 753-755 (1990).

(162) Arts. 9 and 12 respectively.

(163) See also *infra*, note 170 and accompanying text. But even then, the French enactment preceded the Belgian law of 1969. See *supra*, note 106.

(164) Loi N° 68-1181 du 30 décembre 1968, *Journal Officiel* du 31 décembre 1968, pp. 12404-12407. Reprinted in Western Europe and the Development of the Law of the Sea (Durante, F. & Rodino, W., eds.), Vol. 1, *supra*, note 158, France, pp. 43-49.

(165) Loi N° 76-655 du 16 juillet 1976, *Journal Officiel* du 18 juillet 1976, p. 4299. Reprinted in Western Europe and the Development of the Law of the Sea (Durante, F. & Rodino, W., eds.), Vol. 1, *supra*, note 158, France, pp. 161-162. An English translation can be found in United Nations, *The Law of the Sea : National Legislation on the Exclusive Economic Zone, the Economic Zone and the Exclusive Fishery Zone*, New York, Office of the Special Representative of the Secretary-General for the Law of the Sea, pp. 101-102 (1986). This law entered into force on July 18, 1976.

(166) See *supra*, note 148.

various coasts of the territory of the Republic would follow later (167). When France did create an economic zone off its western metropolitan coast in 1977 (168), the delimitation aspect was touched upon, but only by stating that the boundaries of that zone were subject to delimitation agreements with neighboring states (169).

France is not a party to the 1958 Territorial Sea Convention. This country did accede to the 1958 Continental Shelf Convention, but only in 1965 (170). This ratification, however was subject to reservations, of which some related to the North Sea.

> « Le Gouvernement de la République française n'acceptera pas que lui soit opposée, sans un accord exprès, une délimitation entre des plateaux continentaux appliquant le principe de l'équidistance : Si celle-ci est calculée à partir de lignes de base instituées postérieurement au 29 avril 1958 ; .... Si elle se situe dans des zones où il considère qu'il existe des 'circonstances spéciales', au sens des alinéas 1 et 2 de l'article 6, à savoir : .... les espaces maritimes du Pas-de-Calais et de la mer du Nord au large des côtes françaises » (171).

Contrary to the Belgian position at that time (172), France was apparently of the opinion that special circumstances did exit in the North Sea area. France moreover signed, but did not yet ratify the 1982 Convention. With the above reservations in mind, one can easily understand that France joined the Delimitation Group Supporting Equitable Principles during the UNCLOS III negotiations (173).

c) United Kingdom

This country extended its territorial sea to 12 n.m. about the same time as Belgium by means of its Territorial Sea Act 1987 (174). No delimitation method was included. But in case this country was not able to claim the full breadth of territorial sea for geographical reasons, as for instance in the Channel, provision for amendment was provided for (175).

Even though the 18th century hovering legislation of this country provided the very basis from which the contiguous zone concept later

(167) Loi N° 76-655 du 16 juillet 1976, *supra*, note 165, Art. 5.

(168) Décret N° 77-130 du 11 février 1977, as reprinted in *Western Europe and the Development of the Law of the Sea* (DURANTE, F. & RODINO, W., eds.), Vol. 1, *supra*, note 158, France, pp. 163-164. An English translation can be found in SMITH, R., *Exclusive Economic Zone Claims : An Analysis and Primary Documents*, Dordrecht, Martinus Nijhoff, pp. 148-150 (1986).

(169) *Ibid.*, Art. 1.

(170) June 14, 1965. See also *supra*, note 163.

(171) Annexe au Décret du 29 novembre 1965, *Journal Officiel* du 4 décembre 1965, p. 10860.

(172) See *supra*, notes 110-118 and accompanying text.

(173) See *supra*, note 120 and accompanying text.

(174) Territorial Sea Act 1987 (May 15, 1987). For a commentary and further references see KASOULIDES, G., « The Territorial Sea Act 1987 », 3, *International Journal of Estuarine and Coastal Law*, pp. 164-166 (1988). See also FRANCKX, E., *supra*, note 6, pp. 57-58.

(175) See Art. 1 (2).

developed in international law (176), this country does not claim such a zone at present (177).

Compared with the other two countries mentioned above, the United Kingdom was the first country to enact continental shelf legislation in 1964 (178), i.e. the year in which exploration for mineral resources in the North Sea really took off (179). No delimitation clause was to be found in this enactment.

This country acted in complete accord with the E.C. Council resolution by establishing a 200 n.m. fishery zone in 1976 (180) which entered into force on January 1, 1977 (181). The median line was put forward as method of delimitation if no other line was specified by Order in Council (182).

With respect to the exclusive economic zone, it can be stated that this country has not yet proclaimed such a zone at present. But referring to the initiative launched within the framework of the Conference on the Protection of the North Sea, as mentioned above (183), some changes may be forthcoming in this respect.

The United Kingdom finally is party to the 1958 Territorial Sea Convention (184) as well as the 1958 Continental Shelf Convention (185). This country never made any declaration or reservation itself concerning the delimitation provisions contained in both conventions. But with respect to both documents just mentioned, the United Kingdom thought it necessary to formulate objections to declarations or reservations made by other states concerning delimitation aspects. If the objection raised with respect to the 1958 Territorial Sea Convention is of less importance here (186), the one relating to the 1958 Continental Shelf Convention deserves special attention

(176) CHURCHILL, R. & LOWE, V., *The Law of the Sea*, Manchester, Manchester University Press, p. 112 (2nd ed. 1988).

(177) The Customs Consolidation Act of 1876 definitively repealed all these previous acts. Since then the United Kingdom has consistently adhered to this policy. See COLOMBOS, J., *The International Law of the Sea*, London, Longman, pp. 137-138 (6th ed. 1972).

(178) Continental Shelf Act of 1964 (April 15, 1964), as reprinted in Western Europe and the Development of the Law of the Sea (DURANTE, F. & RODINO, W., eds.), Vol. 4, *supra*, note 158, United Kingdom, pp. 13-19 (1980).

(179) Even in a more general perspective, the United Kingdom should be qualified as a *primus inter pares* in this respect. See CHURCHILL, R., « United Kingdom », in *New Directions in the Law of the Sea* (CHURCHILL, R., SIMMONDS, K. & WELCH, J., ed.), Vol. 3, *supra*, note 157, p. 281, 289. As remarked by the latter author, 1964 was also the year in which the United Kingdom acceded to the 1958 Continental Shelf Convention. See *ibid.* See also *infra*, note 259.

(180) Fishery Limits Act 1976 (December 22, 1976), as reprinted in *Western Europe and the Development of the Law of the Sea* (DURANTE, F. & RODINO, W., eds.), Vol. 4, *supra*, note 158, United Kingdom, pp. 345-362 (1980).

(181) As requested by the E.C. Council, see *supra*, note 148 and accompanying text.

(182) Fishery Limits Act 1976, *supra*, note 180, Art. 1 (3).

(183) See *supra*, note 151-154 and accompanying text.

(184) Ratified on March 14, 1960.

(185) Ratified on May 11, 1964.

(186) It concerned an enumeration of special circumstances within the meaning of Art. 12 by Venezuela.

since it concerns the above-mentioned reservation made by France with respect to the continental shelf delimitation (187). The United Kingdom formally put on record that it was unable to accept these reservations made by France with respect to Art. 6 (188). Of the three countries under consideration here, only the United Kingdom did not sign the 1982 Convention. Reasons behind this reluctant attitude have primarily to do with Part XI of that Convention, namely the Area.

d) Final remarks

When compared with one another, it becomes clear that the state practice of these three countries with respect to the law of the sea in general, and delimitation matters in particular, as reflected in their municipal legislation, is quite divergent.

If the element time is taken as point of departure, one must conclude that even if some maritime zones were established around the same time (189), a major time lapse occurred with respect to the establishment of extended territorial seas (190). In the past, this had created special problems to be taken into account by negotiators during negotiations (191). By the time the present agreements were negotiated, however, the three countries had tuned their policies in this respect.

If the maritime zones are focused upon, one cannot ignore the fact that even though a great similarity exists, France was the only country claiming a contiguous zone when the present delimitation talks started. This is still so today.

If the method of delimitation is focussed upon, finally, state practice indicates that many different rules can be adhered to. But the solutions proposed do seldom correspond. If one common element can possibly be discerned in this wide variety, it appears to be that the practice of the states involved has shown a tendency to move from a system where reference is made to a specific method of delimitation toward a system where mere reference is made to the conclusion of delimitation agreements (192).

(187) See *supra*, note 171.

(188) As reprinted in United Nations, *Multilateral Treaties Deposited with the Secretary-General : Status as at 31 December 1990*, New York, United Nations, p. 764, 767 (1991).

(189) All continental shelves, for instance, were claimed between 1964 (United Kingdom) and 1969 (Belgium). Extension of the coastal state's competence with respect to fisheries to 200 n.m. was reflected in municipal legislation dating between 1976 (France and United Kingdom) and 1978 (Belgium).

(190) France did so in 1971, Belgium and the United Kingdom only in 1987.

(191) See *supra*, note 74.

(192) This is true for France (1971 : Median line — — 1976, 1987 and 1989 : Delimitation agreements) as well as the United Kingdom (1976 : Median line — — 1987 : By agreement). The Belgian situation appears to indicate that the same method was always relied upon. Indeed the Belgian laws on the continental shelf (1969) and on fisheries (1978) are very similar in this

But also the policy adhered to by these three countries with respect to the international treaties on the subject indicates little coherence. None of the three relevant international treaties is adhered to be ail three states (193). Leaving the 1982 Convention, which did not yet enter into force, aside for a moment, only the continental shelf between France and the United Kingdom was concluded between two parties bound by a relevant international instrument. But even then one should be very careful, because reservations (194) and objections to reservations (195) made concerning the delimitation provision of that convention, especially as it related to the area in question, showed that there was not really much common ground between the parties.

B. — *B-F Territorial Sea Agreement* (196).

This was most probably the easiest of the three agreements to be delimited. First of all because of its rather short distance (12 n.m.), but also because Belgium and France had rather similar national policies on the subject. Belgium was a party to the 1958 Territorial Sea Convention (197) and France had reworded the content of the delimitation provision contained therein by means of national legislation (198). Both countries did later join the Delimitation Group Supporting Equitable Principles during the UNCLOS III negotiations, but Belgium went one step further by declaring at the time of signature that it regretted that the same equitable principles were not applied to the territorial sea (199).

When negotiations started in 1986, it seemed therefore a fairly easy task for cartographers to draw a line every point of which would be equidistant from the nearest points on the baselines on this rather smooth coastline (200). But both parties soon found out that they were in fact looking at different charts. Not that the territorial coasts of the parties were represented differently on the Belgian or French nautical charts, but the low-water mark relied upon when drawing these charts did not correspond at all.

respect. One could however argue that also Belgian practice follows the above mentioned tendency. Even though the 1987 law on the territorial sea is silent on the issue, the idea behind it was also to make simple reference to the conclusion of agreements. Because of constitutional objections however, as mentioned above, this clause was deleted and does no longer appear in the final text of the law. See *supra*, notes 129-131 and accompanying text.

(193) Belgium is not a party to the 1958 Continental Shelf Convention, France is not a party to the 1958 Territorial Sea Convention and the United Kingdom refused to sign the 1982 Convention.

(194) See *supra*, note 171 and accompanying text.

(195) See *supra*, notes 187-188 and accompanying text.

(196) See *supra*, note 2.

(197) See *supra*, note 102.

(198) Namely the median line. See *supra*, note 159 and accompanying text.

(199) See *supra*, note 122.

(200) No straight baselines are present on either side of this boundary area.

This low-water line, which is designated by the 1958 Territorial Sea Convention (201) as well as by the 1982 Convention (202) as the normal baseline for measuring the breadth of the territorial sea and which is moreover explicitly relied upon by the Belgian (203) as well as French (204) legislation, is however not a very precise point of reference. D. O'Connell, for instance, in his standard work on the law of the sea distinguishes not less than 8 different methods to determine this low-water mark (205). The fundamental option to choose between these different possibilities was left to the discretion of the coastal state. This results in possible discrepancies between neighboring countries, entailing maritime boundary difficulties (206). Belgium and France provide a good example of the latter situation.

Belgium adheres to the local mean lower low-water spring (207), which means that « the height of mean lower low water is the mean of the lower of the two daily low waters over a long period of time. When only one low water occurs on a day this is taken as the lower low water » (208). For Oostende the internationally used tidal period of 18 2/3-year was used. For Nieuwpoort and Zeebrugge shorter periods were taken into consideration due to a lack of available data. About every 10 years these figures are compared with newly obtained data and adjusted if necessary. The latest adjustment took place in 1991 and some changes were made with respect to the Dunkerque area (209).

(201) Art. 3.

(202) Art. 5.

(203) 1987 Territorial Sea Law, *supra,* note 126, Art. 1.

(204) « Les lignes de base sont la laisse de basse mer ... ». See *supra,* note 158, Art. 1.

(205) O'Connell, D., *The International Law of the Sea,* Vol. 1, Oxford, Clarendon Press, pp. 173-174 (1982).

(206) See Beazley, P., « Technical Considerations in Maritime Boundary Delimitations », in *International Maritime Boundaries,* Vol. 1, *supra,* note 20, p. 243, 247 and Sohn, L., « Baseline Considerations », in *ibid.,* p. 153, 155 note 6.

(207) See chart *Noordzee Vlaamse Banken,* Hydrografische Dienst der Kust, published by the Ministry of Public Works, Brussels, January 1991. This section is based on Franckx, E., *supra,* note 6, pp. 64-65 as adapted and updated.

(208) Definition provided by United Nations, *The Law of the Sea — — Baselines : An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea,* New York, Office for Ocean Affairs and the Law of the Sea, p. 42 (1989).

(209) Even though this adjustment relates to the Belgian French boundary area, it remained a merely internal Belgian affair in order to have a smoother transition form the Nieuwpoort to the Dunkerque datum. It was accomplished after the negotiations with France had finally resulted in an agreed boundary line. This adjustment resulted in the lowering of the chart datum by 16 cm. Some more adjustments, be it of a lesser scale, will probably follow in the not too distant future. See Van Cauwenberghe, C., « Overzicht van de tijwaarnemingen langs de Belgische kust : Periode 1981-1990 voor Nieuwpoort, Oostende en Zeebrugge », Oostende, Rapport N° 40 van de Hydrografische Dienst der Kust, bijlage 4 (1993), listing the differences of datum between Dunkerque, Nieuwpoort, Oostende, Zeebrugge, Kadzand, Westkapelle and Vlissingen (situation as of August 31, 1992).

France, on the other hand, uses the lowest astronomical tide as its so-called « OCM » (210), i.e. « the lowest level which can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions ; this level will not be reached every year. LAT [Lowest Astronomical Tide] is not the lowest level that can be reached, as storm surges may cause considerably lower levels to occur » (211).

The latter method will result in a line which lies at a lower level than if a method were to be used based on the actual measured daily low-waters. In the case at hand, this results in a difference of about 30 cm between the French low-water line and the Belgian one.

By itself such a difference may cause difficulties with respect to the location of the point from which to start the maritime delimitation (212). But if low-tide elevations are present in the area, chart data may have a profound effect on the charted existence or non-existence of such features. This in turn, will then have a crucial influence on the baseline which will be taken into account to arrive at a delimitation in the area.

The shallowness of the coastal area and the presence of many sandbanks is the only noteworthy geophysical feature which characterizes the border area between Belgium and France (213). Moving seaward from the coast up to a distance of 12 n.m. the following banks are encountered in this area : Hills, Trapegeer, Smal, Breedt, Kwinte, Inner Ratel, Outer Ratel, Oost Dyck and Bergues Bank.

Both just-mentioned difficulties actually did end up on the negotiating table. As far as the starting point of the maritime boundary is concerned, Belgium and France proposed coordinates which differed by 1 second of longitude and latitude, i.e. respectively 20 and 30 m apart (214).

Much more important from a delimitation point of view, however, were the low-tide elevations. According to Belgian charts, Trapegeer and banc Smal were the only existing low-tide elevations in the area. The former is located 1.3 n.m. off the Belgian coast west of Nieuwpoort, the latter 1.6 n.m. off the French coast north of Dunkerque (215). According to the

(210) Zéro (O) Côte Marine. This replaces the previously used terminology « Zéro des cartes ».

(211) United Nations, *The Law of the Sea — — Baselines : An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, *supra*, note 208, p. 42.

(212) The use of different methods (mean low-water spring as opposed to mean low-water neap tides) in the area of the mouth of the Thames, for instance, could result in a difference of 1.24 km in the location of the boundary position. See Aurrecoechea, I. & Pethig, J., « The Coastline its Physical and Legal Definition », 1, *International Journal of Estuarine and Coastal Law*, p. 29, 35 (1986).

(213) The so-called Flemish Banks. Highet in his study on the use of geophysical factors in maritime delimitations, qualifies the area as a « neutral » fact situation resulting in a delimitation having no reliance on geological or geomorphological factors. See Highet, K., « The Use of Geophysical Factors in the Delimitation of Maritime Boundaries », in *International Maritime Boundaries*, Vol. 1, *supra*, note 20, p. 163, 193. See also his Annex A, section 4, p. 200, 201.

(214) See maps 1 and 2.

(215) See map 1.

French charts, on the contrary, also banc Breedt dried at chart datum. This low-tide elevation is located 2.5 n.m. north of Dunkerque (216). It will be easily understood that these different positions fundamentally influenced the position of a possible boundary line to be drawn in the area, resulting in a contested area of 15,48 km^2.

The way out of this dispute has been clarified by the agreement itself, which is a rather unusual thing to do if this agreement is placed in a broader perspective (217). Art. 2 provides that the application of different methods for calculating heights resulted in two distinct dividing lines and that the parties agreed to divide the area lying between these two dividing lines in two equal parts (218). *In concreto* this meant that the line proposed by Belgium was based on Trapegeer and banc Smal as basepoint, whereas the line proposed by France relied on banc Breedt and Trapegeer. The area located between these two lines was then divided in equal parts (219).

It might be appropriate here to refer to the fact that banc Breedt had already been given full effect (220) in the previous continental shelf delimitation between France and the United Kingdom in that area (221).

The soil and subsoil in this region may not be rich in oil and gas deposits (222), but sand and, to a lesser extent, gravel are extracted in the area in front of the Belgian coast. One of the two geographic areas to which this activity is restricted by law (223) lies adjacent to this boundary line inside the 12 n.m. zone and comprises parts of the Kwinte Bank, Outer Ratel and Oost Dyck (224). This zone has been reserved for the private sector. The most recent concession was granted in 1991 and allows for the exploitation of 300 000 m^3 of sand and gravel on a yearly basis up to a

(216) See maps 1 and 2.

(217) CHARNEY, J., *supra*, note 26, p. xxxiv, indicating that this was exactly one of the major difficulties encountered by the regional and subject experts of the International Maritime Boundary project.

(218) B-F Territorial Sea Agreement, *supra*, note 2, Art. 2. See Annex I.

(219) For a visual perception, see map 1.

(220) See ANDERSON, D., « Report Number 9-3 », in *International Maritime Boundaries*, Vol. 2, *supra*, note 20, p. 1735, 1741.

(221) See *supra*, note 72.

(222) See *infra*, note 232.

(223) Arrêté royal du 16 mai 1977 portant des mesures de protection de la navigation, de la pêche maritime, de l'environnement et d'autres intérêts essentiels lors de l'exploration, et de l'exploitation des ressources minérales et autres ressources non vivantes du lit de la mer et du sous-sol dans la mer territoriale et sur le plateau continental, *Moniteur belge* du 21 juillet 1977, pp. 9442-9445. The geographical coordinates of these two zones are listed in annex to this decree. See *ibid.* pp. 9444-9445.

(224) This zone has been designated as Zone 2 by the legislator. For more details, see FRANCKX, E., *supra*, note 6, pp. 66-67, where a map can be found indicating the location of this zone. For a visual perception, see also map 2.

depth of 30 m (225). In this zone the Kwinte Bank makes up for about two thirds of the total volume of sand extraction (226). In 1989 the Ministry of Economic Affairs ordered a thorough geomorphological study of this area in order to learn more about the impact of this exploitation on the topography, sediment characteristics and dynamics of these sandbanks. Again the Kwinte Bank received special attention (227). Notwithstanding the presence of economic activities in the boundary area, considerations relating to access to these resources do not seem to have played an important role in the territorial sea boundary negotiations between Belgium and France.

C. — *B-F Continental Shelf Agreement* (228).

On the same day as the B-F Territorial Sea Agreement, both parties also signed a convention delimiting their continental shelf in the area, which is also relatively short, namely 18 n.m. The state practice analyzed in *International Maritime Boundaries* indicates that parties normally rely on one single document even when different zones are delimited at the same time. Only when parties delimit different maritime zones at different times (229) does one normally end up with separate delimitation agreements. Confronted with such a situation, parties sometimes even have tried to bring some order in their prior delimitation agreements by concluding a new overall agreement afterward (230).

(225) Arrêté ministériel de concession pour la recherche et l'exploitation de ressources minérales et autres ressources non vivantes sur le plateau continental de la Belgique du 27 mars 1991, *Moniteur belge* du 9 octobre 1991, pp. 22293-22294. Art. 1. About five new applications are at present waiting for approval by the Council of Ministers. Most of the older concessions, moreover, need to be renewed.

(226) LAUWAERT, B. & MOMMAERTS, J., *Sand and Gravel Exploitations on the Belgian Continental Shelf since 1976* (in Dutch), Brussels, Ministerie van Volksgezondheid en van het Gezin pp. 7 and 23 (1986). Since 1986, overall exploitation increased somewhat, reaching a level of about 1 000 000 m^3 on a yearly basis during the last couple of years. LAUWAERT, B., personal communication, April 13, 1993.

(227) For the results of this study, see DE MOOR, G. & LANCKNEUS, J., *Project Westbank I — — Sediment Dynamics on the Flemish Banks : Final Report June 1991* (in Dutch), Ministry of Economic Affairs & University of Ghent, 104 pp. (1991).

(228) See *supra*, note 3.

(229) This very often happens if states delimit maritime zones as they become firmly established in international law (the territorial sea first and only at a later date the continental shelf, fishery zone or exclusive economic zone). As remarked by Colson, most of the agreements concluded prior to the mid-1970s are continental shelf delimitations, while those negotiated afterward have, as a rule, taken the new developments of international law with respect to offshore resource zones (fishery zone, exclusive economic zone) into account. See COLSON, D., *supra*, note 78, p. 44.

(230) See FRANCKX, E., « 'New' Soviet Delimitation Agreements with its Neighbors in the Baltic Sea », 19, *Ocean Development and International Law*, pp. 143-158 (1988). This is done either by replacing the former agreements or by changing the character of the maritime area divided by previously agreed boundary lines. See also COLSON, D., *supra*, note 78, p. 46, who nevertheless remarks that world-wide there are only a handful of such agreements.

In spite of this practice, two separate agreements were concluded between Belgium and France primarily because, as will be explained, Belgium was of the opinion that the methods governing the territorial sea and continental shelf delimitation were different.

But before moving into the substance of the agreement, a few preliminary remarks are at order concerning the geological and geomorphological character of the Belgian continental shelf (231). The latter forms part of the unitary geographical continental shelf of the North Sea, stretching from north of the Shetland Islands to the English Channel. Located south of the Texel-Humber threshold, the part facing Belgium is characterized by its shallow nature and the presence of numerous sandbanks. This part of the continental shelf is located on the so-called London-Brabant Platform which formed a stable massif throughout geological times and remained usually above sea-level when other parts of what is presently known as the North Sea were covered by water. The rich gas and oil-generating sediments to be found to the north of this massif are therefore not present (232). At present, therefore, no exploration is carried out by oil companies on this Belgian continental shelf (233). In the past several requests had nevertheless been addressed to the Belgian government in this respect, but all remained dead letter : One submitted in 1963 and one in 1964, because of a lack of legislation on the subject (234), but also one in 1971, two in 1972 and one during the period 1985-86 (235). Even though some oil or gas may be present on the Belgian continental shelf, these deposits are at present of little economic value. Belgian and Dutch geological departments have moreover conducted a joint seismological study in 1991. Even though the results are still being studied at present, indications exist which confirm that the areas with potential oil and gas deposits are located north of the estuary of the river Scheldt (236).

As mentioned above, however, sand and gravel are actually exploited (237). Even though the area reserved for the private sector (238), has moved almost completely within the territorial sea after the Belgian

(231) See remarks made by Highet on the subject, as already referred to *supra*, note 213.

(232) HENRIET, J.-P., « The Pre-Quaternary Basement of the Belgian Continental Shelf » (in Dutch, with English summary), 31, Water, p. 10, 11 (Nov.-Dec. 1986).

(233) Information provided by the Ministry of Economic Affairs and reproduced as annex to the parliamentary documents of the Senate. See *Doc. parl.*, Sénat N° 571-2 (Annexes), pp. 15-16 (1992-1993).

(234) At that time Belgium did not claim a continental shelf. This only happened in 1969. See *supra*, note 106. About the reluctant attitude of the Belgian government with respect to the continental shelf notion prior to the enactment of municipal legislation on the question, see also *infra*, note 259.

(235) Information provided by the Ministry of Economic Affairs, *supra*, note 233.

(236) *Ibid.*

(237) See *supra*, notes 223-227 and accompanying text.

(238) *Ibid.* Namely Zone 2.

extension of this zone in 1987 (239), about 1/3 of the western boundary of this zone runs about parallel with the southern part of the continental shelf boundary finally agreed between the parties. However, because of the location of the sandbanks in the area, only the exploitation on the northern part of Oost Dyck has to be taken into account here. If considerations relating to the access to these resources did not seem to have played an important role in the determination of the territorial sea boundary, *a fortiori* a similar observation is at hand with respect to continental shelf boundary negotiations between Belgium and France.

These negotiations were dominated partly by factors also encountered in the territorial sea delimitation between the parties, namely the difference in low-water line and the presence of low-tide elevations. It will suffice at this point to refer to back to the discussion of the B-F Territorial Sea Agreement on these particular topics (240).

Partly, however, these talks were further complicated by the fact that Belgium was of the opinion that another method of delimitation was applicable. Based on the outcome of the 1982 Convention, Belgium argued that the parties should try to arrive at an equitable solution. France on the other hand preferred the equidistance principle as incorporated in the 1958 Continental Shelf Convention (241). Especially the French position deserves some comment, because it appears to be at variance with the position taken by this country during the UNCLOS III negotiations where it joined the Delimitation Group Supporting Equitable Principles (242). This position seems moreover difficult to be reconciled with the French reservation made to the 1958 Continental Shelf Convention by means of which this country objected to the application of the equidistance principle in the southern North Sea (243).

This difference resulted in the fact that Belgium contended that the low-water line along the coasts should be decisive. As far as the continental shelf was concerned, this country was of the opinion that the low-tide elevations should be simply ignored (244). France, on the other hand, took

(239) FRANCKX, E., *supra*, note 6, pp. 66-88.

(240) See *supra*, notes 201-216 and accompanying text.

(241) Exposé des motifs, *Doc. parl.*, Chambre N° 708/1, p. 2 (1992-1993).

(242) See *supra*, note 173.

(243) See *supra*, note 171 and accompanying text.

(244) For a legal argumentation sustaining this position, see for instance CAFLISCH, L., « The Delimitation of Marine Spaces between States with Opposite or Adjacent Coasts », in *A Handbook on the New Law of the Sea* (DUPUY, R.-J. & VIGNES, D., eds.), Dordrecht, Martinus Nijhoff, pp. 425, 487-488 (1991). This appears nevertheless to be a rather exceptional position when taking into account the broader delimitation picture of state practice. See BOWETT, D., « Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations », in *International Maritime Boundaries*, Vol. 1, *supra*, note 20, p. 131, 149 note 124. The reasoning behind this particular Belgian position was most probably the rather disproportionate effect of the (contested) French low-tide elevation, namely banc Breedt, located 1.2 n.m. further off the coast than the Belgian low-tide elevation Trapegeer, especially if one moves further off the coast.

as starting point that low-tide elevations should be counted, i.e. that full weight should be given to banc Breedt and Trapegeer.

Because of the unitary character of the underlying continental shelf and the lack of other objective parameters such as for instance the ratio between the length of the coasts and the area attributed to both sides, the parties relied on the equidistance principle as point of departure (245). The compromise finally arrived at is again (246) described in Art. 2 of the agreement : (247) A compromise between the two initial positions in order to arrive at an equitable solution (248). Belgium did not insist that the low-tide elevations should be totally ignored. France, on the other hand, accepted that less than full weight should be attributed to banc Breedt in its relation with Belgium (249). In order to determine exactly what weight should be attributed to this low-tide elevation, banc Breedt was compared with Trapegeer. When using the French low-water line, charts indicated that banc Breedt was 10 cm above chart datum whereas Trapegeer was 40 cm above that datum. Relative weights were therefore attributed of 1 to 4 to the advantage of Belgium (250). The gray zone of 182,36 km^2 created by drawing a line giving full effect to the low-tide elevations on the one hand and one giving no effect at all on the other was divided accordingly, namely 36,46 km^2 on the French side of the boundary line and 145,9 km^2 on the Belgian side.

The terminal point of the boundary, however, was nevertheless equidistant between banc Breedt and Long Sand Head off the coast of England because France had already given full effect the this bank in its previous delimitation practice with the United Kingdom (251). As provided for in that 1982 agreement between France and the United Kingdom (252), the Belgian and French technical experts located the terminal point of their

(245) Exposé des motifs, *supra,* note 241, p. 2.

(246) For a similar, though unusual, example, see *supra,* note 217.

(247) B-F Continental Shelf Agreement, *supra,* note 3, Art. 2. See Annex II.

(248) Reference to the achievement of an equitable result is also to be found in the preamble of the agreement. See *ibid.*

(249) Concerning its relation to the United Kingdom, see *infra,* notes 251-252 and accompanying text.

(250) For a visual perception, see map 1.

(251) See *supra,* notes 220-221 and accompanying text.

(252) Agreement Between the French Republic and the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf in the Area East of 30 Minutes West of the Greenwich Meridian, June 24, 1982, *supra,* note 72. Art 2 (2) reads : « It has not been possible for the time being to complete the delimitation of the boundary beyond Point N° 14 ; it is however agreed between the Parties that the delimitation from Point 14 to the tri-point between the boundaries of the continental shelf appertaining to the Parties and to the Kingdom of Belgium shall be completed at the appropriate time by application of the same methods as have been utilised for the definition of the boundary line between Points Nos. 1 and 14 ». As remarked by Anderson, between Points 13 and 14 the boundary line is an equidistance line based on low-tide elevations. See ANDERSON, D., « Report Number 9-3 », *supra,* note 220, p. 1743.

continental shelf boundary on a line constructed according to this 1982 agreement.

A final remark to be addressed with respect to this particular agreement, is that at no time during the negotiations did either party raise the issue of a possible contiguous zone delimitation. As mentioned above, France does claim a contiguous zone of 24 n.m. and even included a delimitation clause in its municipal legislation which expressly provided that delimitation agreements ought to be concluded (253). Conventional law is not very clear on this issue (254). The fact that Belgium and France completely disregarded this zone when negotiating their continental shelf boundary is certainly not to be qualified as an exception when looked upon from a broader perspective. One of the general observations made by D. Colson is exactly that reference is seldom made to the contiguous zone in maritime boundary agreements. He explains this phenomenon by the fact that presumably states are of the opinion that the boundary of this particular zone should follow the other agreed boundaries (255). *In casu*, this means the continental shelf boundary. Also the delimitation of the Belgian fishery zone and the French exclusive economic zone are not touched upon by this agreement. As explained above, between two E.C. member states the settlement of such boundaries may not really be necessary (256).

D. — *B-UK Continental Shelf Agreement* (257).

In August 1989 negotiations started with the United Kingdom on the delimitation of the continental shelf. If the first two delimitation agreements concluded by Belgium were with an adjacent state, this was the first such agreement to be arrived at with an opposite state. The coasts of both countries being between 43 and 71 n.m. apart, no territorial sea boundary needs to be delimited in the area. The Belgian coast is slightly concave.

This agreement fits in between two other continental shelf agreements concluded earlier. One between Belgium and France, as just discussed, and

(253) See *supra*, notes 160-162 and accompanying text, also including the French legislation with respect to maritime cultural property in that zone.

(254) The 1958 Territorial Sea Convention did include a special provision on the subject (Art. 24 (3) ; median line principle). This provision is however no longer to be found in the 1982 Convention. About the reasoning behind this intentional omission, see VUKAS, B., « The Law of the Sea Convention and Sea Boundaries Delimitation », in Essays in the New Law of the Sea (VUKAS, B., ed.), Zagreb, Sveučilišna naklada Liber, pp. 147, 156-161 (1985).

(255) See COLSON, D., *supra*, note 78, p. 42.

(256) See *supra*, note 83 and accompanying text.

(257) See *supra*, note 4.

one agreed upon between The Netherlands and the United Kingdom in 1965 (258). About 18 n.m. separate these two terminal points.

When the United Kingdom proposed negotiations with all of its neighbors in 1964, talks were also started with Belgium on the subject. Both parties saw no prohibitive objection in the fact that the two terminal points at that time were still undecided. Since Belgium was still shaping its policy on the issue, as can be illustrated by the fact that this country only formally claimed a continental shelf in 1969 (259), these negotiations did not result in the conclusion of a formal boundary treaty at that time. Nevertheless, a draft boundary line was arrived at in 1966. This line was based on the equidistance principle based on the normal baseline, with the inclusion of low-tide elevations located within 3 n.m. from shore (260). Following this 1969 law, diplomatic exchanges continued and considerable progress was made. Nevertheless these negotiations remained inconclusive mainly because of two factors. First of all, the changes in the field of maritime delimitation taking place in international law, as reflected in the UNCLOS III negotiations, could not be ignored. Secondly, the negotiations were further burdened by the unresolved Belgian-French boundary which, logically, should be settled first (261).

Real progress was therefore only made after Belgium and France agreed on the delimitation of their continental shelf, with the proposed terminal point being acceptable to the United Kingdom as possible tri-point (262).

When at the request of Belgium the negotiations were resumed with the United Kingdom during the month of August 1989, a new factor had arisen which needed to be taken into account. Belgium (263) as well as the United Kingdom (264) were about to extend their territorial sea from 3 to 12 n.m. If this new element did not have any influence on the Belgian basepoints

(258) See *supra,* note 62 According to Carleton, Belgium accepted this tri-point as technically correct by means of a note dated November 5, 1965. See CARLETON, C., *supra,* note 74, p. 109. See in this respect also a Belgian note addressed to the Dutch Ministry of Foreign Affairs dated September 15, 1965, as reprinted in 1968, *I.C.J. Pleadings, Oral Arguments, Documents*, Vol. 1, pp. 385-387, including an English translation of the original Dutch text.

(259) Prior to 1969, Belgium adhered to a policy of refusing to enter into any official agreement or even confirmation of possible turning or tri-points in the absence of municipal legislation on the bases of which such agreements should be reached. As evidenced by a note addressed to the Dutch Ministry of Foreign Affairs of September 15, 1965, *supra,* note 258, p. 386. This position remained even when the municipal legislation on the continental shelf was actually before parliament, but had not yet been passed. See Belgian note of December 8, 1967, *supra,* note 116, p. 546. The English initiative to enter into negotiations with its maritime neighbors of the North Sea has been characterized as a move inspired in part to consolidate the regime established by the 1958 Continental Shelf Convention, which entered into force during the same year. See OXMAN, B., supra, note 66, p. 10.

(260) I.e. within the territorial sea limit claimed by the parties at that time.

(261) Exposé des motifs, *Doc. parl.,* Chambre N° 709/1, p. 2 (1992-1993).

(262) When fixing the terminal point of the Belgian-French continental shelf, due attention was given to Art. 2 (2) of the 1982 France-United Kingdom agreement. See *supra,* note 252.

(263) See *supra,* note 126.

(264) See *supra,* note 174.

to be taken into account, it fundamentally changed the basepoints of the United Kingdom. Influencing the delimitation with Belgium are the coast of Essex, the Thames estuary and the coast of Kent. A bay-closing line has been established in the mouth of the river Thames, which forms a juridical bay. It runs from the coast of Kent in the south, between Resculvers and Burchington, to the coast of Essex in the north, between Jaywick and Clacton on Sea (265). In front of the Thames estuary many sandbanks are present, some of which constitute low-tide elevations. Special about these low-tide elevations, however, is that they are located well beyond 3 n.m. from shore. As a consequence Shipwash, off the coast of Harwich, and Long Sand Head, in the outer Thames estuary, constituted two new basepoints which profoundly influenced the location of the possible equidistance line. Especially Long Sand Head, situated at 11.7 n.m. off the coast of Essex (266), made Belgium double-check the exact location of this basepoint.

The result was that the equidistance line drawn while taking into account these new basepoints, was located overall some 4 n.m. closer to the Belgian coast than the informal draft boundary arrived at in 1966. It allocated 213 km^2 to the United Kingdom, which previously had been situated on the Belgian side of the line (267).

In 1989, therefore, the United Kingdom started out by relying on the equidistance principle, based on a new set of basepoints as established after the extension of their territorial sea from 3 to 12 n.m. This line proved to be unacceptable to Belgium.

Belgium, on the other hand, relied once again on the principle of equity, and started out by claiming an equidistance line based on the draft line of 1966 (268), i.e. measured from the respective coastlines and low-tide elevations located within 3 n.m. from shore.

These conflicting claims resulted in a coffin-shaped area of 213 km^2. It was agreed that this disputed territory should be divided so as to arrive at an equitable solution in accordance with the changed rules of international law on the subject (269). During the negotiations, however, a new element occurred favorable to the Belgian position. A routine survey conducted in the middle of 1990 on the approaches to Harwich indicated that the low-tide elevation of Shipwash no longer dried at low-water. Consequently it

(265) For a visual perception, see map 2.

(266) I.e. only 0.3 n.m. within the limit prescribed by international law. See *supra*, note 42.

(267) Exposé des motifs, *supra*, note 261, p. 2.

(268) See *supra*, note 116.

(269) Contrary to the continental shelf agreement with France where reference to the principle of equity was also to be found in the text of the agreement itself (see *supra*, note 247 and accompanying text), this agreement contained only a similar provision in the preamble : « (T)aking full account of the current rules of international law on international boundaries in order to achieve an equitable solution ». See Annex III.

was discarded by the United Kingdom as a basepoint influencing the equidistance line and replaced by Orfordness on the coast.

The final delimitation, therefore, was determined by the following basepoints : For Belgium one low-tide elevation 1.3 n.m. off the coast, the harbor works of Oostende and Zeebrugge (270), and Wenduine on the coast ; and for the United Kingdom one low-tide elevation 11.7 n.m. off the coast and Orfordness on the coast. It should be added, however, that the latter point only influenced the northernmost extreme of the line, leaving the rest of it being controlled by the low-tide elevation of Long Sand Head. It was exactly this inequality in basepoints, namely one outlying low-tide elevation against several basepoints located on the coast or very near to it, which made the parties look for an equitable result.

A first problem to be settled by the parties involved was the determination of the starting and ending point of the line to be agreed upon. Parties had no difficulty in agreeing that the terminal point in the south was to be the seaward terminal point (Point 3) of the Belgian-French continental shelf boundary (271). The United Kingdom was also bound by the terminal point agreed upon with The Netherlands in 1965 (272). This was not the case for Belgium, however, in the absence of a formal agreement with The Netherlands on the subject. Both terminal points were nevertheless accepted as defining the geographical limits within which the negotiations would have to be conducted. The problem of the lingering tri-point problem in the north was solved by way of an exchange of letters which accompanied the conclusion of this agreement and which forms an integral part of it (273). The content of this exchange of notes is that Belgium reserves its position with respect to the exact location of the northern terminal point, defined in the agreement as Point 3, still to be definitively settled with The Netherlands. Belgium assures the United Kingdom, however, that the adjustment of this point will take place within certain limits and with no prejudice to the United Kingdom, since it will be situated somewhere on

(270) Only the existing harbor works were taken into account, not the works in progress at that time in the port of Zeebrugge. This practice had also been followed at the time of the negotiations between The Netherlands and the United Kingdom which resulted in the agreement of 1965 (see *supra*, note 62). This resulted in a different effect attributed to the harbor works at IJmuiden (completed at the time of signature, even though not charted yet), which were taken into account, and those at the Hook of Holland, i.e. Europoort, which had only just started and were consequently not taken into account. See ANDERSON, D., « Report Number 9-13 », in *International Maritime Boundaries*, Vol. 2, *supra*, note 20, p. 1859, 1863 and CARLETON, C., *supra*, note 74, p. 101. About the influence of harbor works on maritime delimitation, see SOHN, L., *supra*, note 206, p. 155. It can be noted at this point that the harbor works of Dunkerque were apparently not taken into account for the simple reason that the low-tide elevations located north of this port were used as basepoints instead.

(271) See *supra*, note 251-252 and accompanying text.

(272) See *supra*, note 62.

(273) Both letters are reproduced in Annex : The letter from M. EYSKENS, Minister of Foreign Affairs of Belgium at that time, to R. O'NEILL, Ambassador of the United Kingdom, of May 29, 1991 (Annex IV) and response of R. O'NEILL to M. EYSKENS of the same day (Annex V).

the line agreed upon in 1965 between The Netherlands and the United Kingdom (274). This solution as method to settle tri-points appears to be unique in the present day international state practice (275).

With this particular dispute out of the way, the crux of the negotiations then centered around the appropriate ratio according to which the disputed coffin-shaped area mentioned above was to be divided. Ways were sought to remedy the imbalance of basepoints, which was seen as forming an obstacle in order to arrive at an equitable solution. Partially, this problem was already solved by history. Indeed, if the southern tri-point was based on equidistance between banc Breedt on the French side and Long Sand Head in front of the English coast, meaning that full effect was given to it on this side of the line, the northern terminal point was arrived at between The Netherlands and the United Kingdom at a time when both countries still claimed at territorial sea of 3 n.m. This point, therefore, did not take Long Sand Head into account, but was rather based on equidistance between Wenduine on the Belgian coast, the low-tide elevation of Rassen off the Dutch coast (276), and Orfordness on the Essex coast. In other words, on the northern end of the line to be negotiated between Belgium and the United Kingdom, Long Sand Head was given no effect at all. After complex negotiations, the parties finally settled for attributing about 1/3 weight to the low-tide elevation of Long Sand Head overall. Taken into account the adjustment already effected by the northern terminal point in this respect, a turning point was then pragmatically determined which divided the area by attributing 64,65 % to Belgium and 35,35 % to the United Kingdom (277).

The line finally agreed upon makes it clear that the Noord Hinder South traffic separation scheme located between Belgium and the United Kingdom, which forms one of the busiest shipping areas in the world, was not given any particular consideration when delimiting this boundary line. The latter runs almost completely in the middle of the southbound route leading to the Straits of Dover (278).

Reference must finally be made to the Art. 2 of the agreement, which provides for the holding of negotiations in case a straddling mineral

(274) It will in other words never cross that line to the disadvantage of the United Kingdom.

(275) Indeed, it does not appear to fit under any of the six techniques distinguished by Colson in this respect. See COLSON, D., *supra*, note 78, pp. 61-63.

(276) Rassen is located within a distance of 3 n.m. from the Dutch coast.

(277) For a visual perception, see map 2.

(278) For a visual perception, see map 2. Only the southern segment deviates from this general direction and approaches the separation zone, i.e. the zone separating the traffic lanes in which ships are proceeding in opposite directions.

deposit (279) were to be found in the boundary area (280). In the absence of any actual conflict the parties nevertheless acted preventively by including such a clause in the delimitation agreement. It has already been stated before that the chances of discovering oil and gas resources in this London-Brabant Platform do not look too promising (281). Their location underneath one of the busiest navigation routes in the world characterized by numerous sandbanks immediately to the south of it, and similar features to be encountered somewhat to the north of it, would furthermore tend to make actual exploitation a rather uncertain undertaking even if economically interesting discoveries were ever made in that area. As far as sand and gravel is concerned, exploitation does take part on the Belgian side of the continental shelf at present. Reference should be made here to the second area reserved by the Belgian legislator for the public sector which is almost entirely located outside the 12-mile limit (282). It is true that the magnitude of the exploitation taking place there tended to be much greater than in the private sector zone (283). However, since the completion of the extension works of the port of Zeebrugge, exploitation in this zone stopped (284). Moreover, the most seaward boundary of this exploitation zone is roughly located halfway between the Belgian coast and the boundary finally agreed upon between Belgium and the United Kingdom. As in the previous agreements, where this sand and gravel exploitation zone was located much closer to the boundary line, these considerations did not influence the location of the final boundary arrived at.

As was the case with the B-F Continental Shelf Agreement, the delimitation line arrived at does not concern the fishery zones established by both parties during the 1970s (285). The fact that both parties are member of the E.C. helps to explain this absence of agreed fishery boundary (286). The delimitation practice of Belgium, France and the United Kingdom, mainly because of this E.C. membership, does not follow the broad trend to be dis-

(279) Besides oil and gas, which are specifically mentioned, this clause also relates to « any other mineral deposit », with « mineral » defined in its « most general, extensive and comprehensive sense ... ». Sand and gravel therefore are included. Of the latter practice examples can be found in general state practice. See KWIATKOWSKA, B., « Economic and Environmental Considerations in Maritime Boundary Delimitations », in *International Maritime Boundaries*, Vol. 1, *supra*, note 20, pp. 75, 88-89 and more particularly note 52 listing further examples.

(280) The agreement only states that the parties « shall seek to reach agreement ». No dispute settlement provision was included, but that appears to be in accordance with the general practice of states in this respect. See COLSON, D., *supra*, note 78, pp. 51-54.

(281) See *supra*, notes 232-236 and accompanying text.

(282) This zone, designated as Zone 1 by the legislator, comprises the Goote and Thornton Bank. About Zone 2, i.e. the private sector zone, see *supra*, notes 223-227 and 237-239 and accompanying text.

(283) A ratio of about 10 to 1. See LAUWAERT, B. & MOMMAERTS, J., *supra*, note 226, p. 24. These authors furthermore add that, compared again with the private sector zone, information on this public sector zone is much more restricted.

(284) LAUWAERT, B., personal communication, April 13, 1993.

(285) See *supra*, notes 115 and 180 respectively.

(286) See *supra*, note 83 and accompanying text.

cerned in international practice, namely to negotiate single, all-purpose maritime boundaries (287).

V. — Conclusions

As will have been noted, this article had the privilege of being able to rely on some authoritative foreign sources (288) which had already commented on these boundary agreements which, it will be remembered, were signed in 1990 and 1991. As such this study may appear somewhat belated. Nevertheless, the Belgian Ministry of Foreign Affairs adheres to a policy which grants parliament the primacy of information, before the content of such agreements is further divulged. This may lead to a situation, like in the present case, where particular agreements have already been widely published elsewhere, even in international collections (289), without the text being officially available in Belgium. Indeed, both texts were only introduced to the House of Representatives on November 4, 1992. This delay, especially striking with respect to the agreements with France, had much to do with the government crises which happened in between (290).

When compared with the procedures followed in France and the United Kingdom on the subject, this Belgian practice to submit the text of the agreements as draft laws for approval to parliament is rather the exception. In France (291) the convention of the territorial sea will not be submitted to parliament, because it has been concluded in conformity with Art. 2 of the French law of December 24, 1971 (292). The agreement of the continental shelf will follow the normal state practice of France in this respect, which is not to submit continental shelf or exclusive economic zone agreements to parliament for approval. Also in the United Kingdom (293) no formal bill will be required because no changes in existing legislation are called for by this agreement. It will nevertheless be presented to parliament

(287) See Colson, D., *supra*, note 78, pp. 48-50.

(288) See *supra*, note 142.

(289) The B-F Territorial Sea Agreement was for instance published in United Nations, *The Law of the Sea : Maritime Boundary Agreements (1985-1991)*, *supra*, note 8, pp. 13-14, 19, *Law of the Sea Bulletin*, pp. 27-28 (October 1991) and 7, *International Journal of Estuarine and Coastal Law*, p. 113 (1992) ; the B-F Continental Shelf Agreement in *ibid.*, pp. 15-16, pp. 29-30, and p. 114 respectively ; and B-UK Continental Shelf Agreement in 7, *International Journal of Estuarine and Coastal Law*, pp. 115-117 (1992).

(290) With respect to the agreement with France, the *Conseil d'Etat* had already been consulted on June 25, 1991 and delivered its comments on July 10, 1991. The latter had only to do with style. The agreement with the United Kingdom was deposited on May 6, 1992, and on June 3, 1992 the *Conseil d'Etat* stated that it had no comments.

(291) J.-P. Quéneudec, Professor at the Université de Paris I Pantheon — — Sorbonne, personal communication dated October 6, 1991.

(292) See *supra*, note 158.

(293) D. Anderson, Foreign & Commonwealth Office, London, personal communication dated November 21, 1991.

as a White Paper. The application of the « Ponsonby Rule » makes it possible for such White Papers to receive the tacit approval of parliament (294).

With the constitutional revision taking place in Belgium for the moment, it might well be that many more agreements will have to pass before parliament than is already at present the case. The 'normal' delay of more than two years which passed between the day of signature of the B-UK Continental Shelf Agreement and its approval by parliament may therefore be expected to augment rather than diminish in the future.

With these agreements concluded, a decisive step has been taken in the southern North Sea delimitation toward a final settlement. Belgium, which for a long time had been standing on the sideline, was mainly responsible for the major gap which remained. This gap has been closed now to a considerable extent. By means of an agreement concluded in 1991 (295), France and the United Kingdom formally agreed that the terminal point (Point 3) of the B-F Continental Shelf Agreement and starting point (Point 1) of the B-UK Continental Shelf Agreement with coordinates 51° 33′ 28″ N and 02° 14′ 18″ E also constituted the terminal point of their agreement of 1982 which was left open at that time (296). This constitutes the very first tri-point in the North Sea, arrived at by means of bilateral agreements, which will most probably not be changed anymore (297). Indeed, this overconfidence in the equidistance method had made coastal states in the North Sea use this bi-lateral approach in order to arrive at the

(294) According to a convention of parliament the government does not proceed to ratify a signed convention until 21 sitting days have passed following the presentation of the White Paper. Since parliament made no comments with respect to this particular White Paper, the United Kingdom was in a capacity to exchange notifications by the end of 1991.

(295) Agreement Between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland Relating to the Completion of the Delimitation of the Continental Shelf in the Southern North Sea, July 23, 1991, 19, *Law of the Sea Bulletin*, pp. 31-32 (October 1991) and 7, *International Journal of Estuarine and Coastal Law*, pp. 118-122 (1992). This agreement entered into force on March 20, 1992. A material error concerning the coordinates of banc Breedt discovered at the time of the negotiations with Belgium, and which influenced points 13 and 14 of that 1982 agreement, were also formally corrected by this 1991 agreement.

(296) See *supra*, note 252.

(297) Carleton describes this tri-point as being equidistant between banc Breedt, Trapegeer and Long Sand Head. See CARLETON, C., *supra*, note 74, pp. 108-109. Because banc Breedt was not given full effect when determining the seaward terminal point of the Belgian-French continental shelf (see *supra*, note 250 and accompanying text) the point of view of Anderson has to be preferred who argues that this tri-point is equidistant between banc Breedt and Long Sand Head, on the one hand, and between Long Sand Head and Trapegeer on the other. See ANDERSON, D., « Report Number 9-3 », *supra*, note 220, p. 1743 and by the same author « Report Number 9-17 », *supra*, note 30, p. 1903.

settlement of tri-point disputes (298). However, all former tri-points arrived at that way had to be corrected at some later date (299).

Ariadne's clue to be found in these three rather simple (300) agreements is certainly that even though some form of equidistance was relied upon in all three agreements, the final outcome was in none of the three cases a strict equidistance line. Or to use the words of D. Anderson, the agreements between Belgium and France made use of « pragmatic equidistance », the agreement between Belgium and the United Kingdom of « modified equidistance. » (301) In other words, all of them adapted the strict equidistance rule in order to arrive at an equitable solution. Belgium has been very successful in having reference to the equitable result method included in all continental shelf agreements under consideration here (302), even though its municipal legislation on the continental shelf of 1969 clearly opted for strict equidistance (303) and informal arrangements drawn up during the 1960s had relied on that same principle. The Belgian Minister of Foreign Affairs moreover used the opportunity of the discussion of these agreements in parliament to put formally down on record :

> « A ce propos, l'on précisera que, si la loi belge sur le plateau continental, adoptée en 1969, mentionne le principe de l'équidistance, celle-ci ne fait que refléter l'état du droit international, tel qu'il existait à cette époque et qu'elle est aujourd'hui dépassée sur ce point. » (304)

At the occasion of the discussion before the Commission for External Relations of the Senate, the Secretary of State in his comments again stressed the fact that both continental shelf agreements confirmed the rule of law, as written down in the 1982 Convention, that such agreements needed to achieve an equitable solution (305).

This Belgian preoccupation, which was fully met by its negotiating partners, is moreover firmly anchored in a broader tendency to that effect, discernable not only in the practice of states in the southern North

(298) The present tri-point arrived at between Belgium, France and the United Kingdom is not a perfect example of this bi-lateral approach, for it started out differently. Indeed, the initial French-United Kingdom agreement of 1982 was the first agreement concluded in the North Sea area which stopped short of the tri-point. This latter method has been followed constantly in the Baltic Sea with success. See FRANCKX, E., « Baltic Sea Maritime Boundaries », in *International Maritime Boundaries*, Vol. 1, *supra*, note 20, pp. 345, 352-354.

(299) For a more detailed discussion, see FRANCKX, E., « Maritime Boundaries and Regional Cooperation », *supra*, note 50, pp. 226-227. About the obvious danger of such an approach, see also COLSON, D., *supra*, note 78, p. 62.

(300) These agreements, with only three articles each, fit Colson's classification of « simple » agreements. See COLSON, D., *supra*, note 78, pp. 47-48.

(301) See ANDERSON, D., « The Strait of Dover and the Southern North Sea — — Some Recent Legal Developments », *supra*, note 142, p. 95.

(302) See *supra*, notes 248 and 269 and accompanying text.

(303) See *supra*, notes 108-109 and accompanying text.

(304) Exposé des motifs, *supra*, note 241, p. 2.

(305) Rapport fait au nom de la commission des relations extérieures par M. HATRY, *Doc. parl.*, Sénat N° 571-2, pp. 1, 2-3 (1992-1993).

Sea (306) as well as in a broader Northern and Western Europe perspective (307), but also in the development of international law as such.

At present the continental shelf is almost completely delimited in the North Sea except for the Belgian-Dutch boundary. Also the territorial sea delimitation between these two countries still remains outstanding. Belgium is apparently willing to finish the job. The agreements with France and the United Kingdom, with their strong emphasis on the achievement of an equitable result, may certainly not pass unnoticed in this respect (308). With the technical experts of the hydrographic service having done their homework, the Belgian Minister of Foreign Affairs recently took a concrete initiative (309) which so far, it must be admitted, received little response. But contrary to the situation prevailing during the 1960s, Belgium seems well-prepared this time to take this last maritime delimitation hurdle.

(306) See ANDERSON, D., « Recent Boundary Agreements in the Southern North Sea », *supra*, note 142, p. 421.

(307) See ANDERSON, D., « Northern and Western European Maritime Boundaries », *supra*, note 28, pp. 333-337.

(308) One is left with the impression that the agreements here discussed between Belgium on the one hand and France and the United Kingdom on the other, with their express reliance on equitable principles in the agreements themselves as well as the abundant references to the same principle in official statements surrounding the conclusion of these agreements, could serve as a perfect example of Oxman's thesis that states may regard such explicit reference in a delimitation agreement as a means of reinforcing their negotiating position with respect to a third state. See OXMAN, B., *supra*, note 66, p. 17.

(309) *Bul. Q.R.* Sénat N° 15, p. 613 and N° 17, pp. 703-704 (1991-1992). The Minister of Foreign Affairs referred to his personal initiative in this matter and stated that exploratory talks were scheduled for October 1992. See also *De Morgen*, August 2, 1992.

ANNEX I

Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation de la mer territoriale

LE GOUVERNEMENT DU ROYAUME DE BELGIQUE ET LE GOUVERNEMENT DE LA REPUBLIQUE FRANÇAISE,

Désireux de définir le tracé de la ligne délimitant la mer territoriale du Royaume de Belgique et celle de la République française ;

Sont convenus de ce qui suit :

Article 1

1. La limite entre la mer territoriale du Royaume de Belgique et la mer territoriale de la République française est une ligne loxodromique joignant, dans l'ordre où ils sont énumérés, les points ci-après définis par leurs coordonnées.

Longitude est	*Latitude nord*
Point 1 02° 32′ 37″	51° 05′ 37″
Point 2 02° 23′ 25″	51° 16′ 09″

2. Les coordonnées des points énumérés au paragraphe premier sont exprimées dans le système EUROPE 50.

3. La ligne définie au paragraphe premier est représentée sur la carte annexée au présent Accord, à titre uniquement indicatif.

Article 2

Les points ci-dessus définis résultent de la prise en compte des hauts fonds découvrants aux abords des côtes belge et française. Toutefois, l'application par la Belgique et la France de méthodes différentes pour le calcul de hauteurs, a conduit à deux tracés distincts. Il a donc été convenu que la surface comprise entre ces deux tracés serait divisée en deux parties égales.

Article 3

Chacune des Parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnelles requises pour l'entrée en vigueur du présent Accord. Ce dernier entrera en vigueur à la date de réception de la dernière notification.

En foi de quoi, les soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé le présent Accord.

Fait à Bruxelles, le 8 octobre 1990.

Pour le gouvernement du
Royaume de Belgique

MARK EYSKENS

(Ministre des Affaires étrangères)

Pour le gouvernement de la
République française

COMTE XAVIER MARIE
DU CAUZE DE NAZELLE

(Ambassadeur)

ANNEX II

Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation du plateau continental

LE GOUVERNEMENT DU ROYAUME DE BELGIQUE ET LE GOUVERNEMENT DE LA REPUBLIQUE FRANÇAISE,

Désireux de définir le tracé de la ligne délimitant le plateau continental entre le Royaume de Belgique et la République française ;

Désireux de tenir compte de toutes les règles en vigueur applicables à la délimitation des espaces maritimes, en vue de parvenir à une solution équitable,

Sont convenus de ce qui suit :

Article 1

1. La limite entre le plateau continental du Royaume de Belgique et le plateau continental de la République française est une ligne loxodromique joignant, dans l'ordre où ils sont énumérés, les points ci-après définis par leurs coordonnées.

Longitude est	*Latitude nord*
Point 2 02° 23′ 25″	51° 16′ 09″
Point 3 02° 14′ 18″	51° 33′ 28″

2. Les coordonnées des points énumérés au paragraphe premier sont exprimées dans le système EUROPE 50.

3. La ligne définie au paragraphe premier est représentée sur la carte annexée au présent Accord, à titre uniquement indicatif.

Article 2

Les points ci-dessus définis résultent de la recherche d'une solution équitable fondée principalement sur un compromis entre deux hypothèses, celle consistant à prendre en compte les hauts fonds découvrants aux abords des côtes belge et française et celle prenant en compte la laisse de basse mer sur la côte.

Article 3

Chacune des Parties contractantes notifiera à l'autre l'accomplissement des procédures constitutionnelles requises pour l'entrée en vigueur du présent Accord. Ce dernier entrera en vigueur à la date de réception de la dernière notification.

En foi de quoi, les soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé le présent Accord

Fait à Bruxelles, le 8 octobre 1990.

Pour le gouvernement du Royaume de Belgique	Pour le gouvernement de la République française
MARK EYSKENS	COMTE XAVIER MARIE DU CAUZE DE NAZELLE
(Ministre des Affaires étrangères)	(Ambassadeur)

ANNEX III

Agreement Between the Government of the Kingdom of Belgium and the Government of the United Kingdom of Great Britain and Northern Ireland Relating to the Delimitation of the Continental Shelf Between the Two Countries

THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Desiring to establish the common boundary between their respective parts of the continental shelf, taking full account of the current rules of international law on international boundaries in order to achieve an equitable solution,

Have agreed as follows :

Article 1

1. The boundary 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 Belgium shall be a line composed of loxodromes joining in the sequence given the points defined as follows by their coordinates :

1.	51°	33′	28″	N		02°	14′	18″	E
2.	51°	36′	47″	N		02°	15′	12″	E
3.	51°	48′	18″	N		02°	28′	54″	E

The positions of the points in the Article are defined by latitude and longitude on European Datum (1st Adjustment 1950).

2. The dividing line has been drawn by way of illustration on the chart annexed to this Agreement.

Article 2

1. If any single geological mineral oil or natural gas structure or field, or any single geological structure or field of any other mineral deposit extends across the boundary and the part of such structure or field which is situated on one side of the boundary is exploitable, wholly or in part, from the other side of the boundary, the Contracting Parties shall seek to reach agreement as to the exploitation of such structure or field.

2. In this Article the term 'mineral' is used in its most general, extensive and comprehensive sense and includes all non-living substances occurring on, in or under the ground, irrespective of chemical or physical state.

Article 3

This Agreement shall enter into force on the date on which the two Governments exchange notifications of their acceptance of this Agreement.

In witness thereof the undersigned, being duly authorised thereto by their respective Governments exchange notifications of their acceptance of this Agreement.

Done in duplicate at Brussels the 29th day of May 1991, in the English, French and Dutch languages, the three texts being equally authoritative.

For the Government of the
of the Kingdom of Belgium

MARK EYSKENS

For the government of the United Kingdom
of Great Britain and Northern Ireland

ROBERT JAMES O'NEILL

ANNEX IV

MINISTERE DES AFFAIRES ETRANGERES,
DU COMMERCE EXTERIEUR ET DE LA
COOPERATION AU DEVELOPPEMENT

Bruxelles, le 29-5-1991

Monsieur l'Ambassadeur,

A l'occasion de la signature, ce jour, de l'Accord relatif à la délimitation du plateau continental entre nos deux pays, j'ai l'honneur de vous informer de ce qui suit :

« Le point terminal de délimitation, dans le nord-est, du plateau continental entre la Belgique et le Royaume-Uni est, selon les termes de l'Accord signé ce jour, le point dont les coordonnées sont 51° 48′ 18″ N et 02° 28′ 54″ E.

Les coordonnées de ce point seront éventuellement modifiées lorsque la délimitation du plateau continental entre la Belgique et les Pays-Bas aura été effectuée.

La Belgique s'engage à ce qu'une telle modification ne porte pas atteinte aux droits acquis du Royaume-Uni et précise que ce point se situera sur la ligne de délimitation du plateau continental entre le Royaume-Uni et les Pays-Bas qui a été convenue dans l'accord du 6 octobre 1965.

Le présent échange de lettres fait partie intégrante de l'Accord signé ce jour. »

Je saisis l'occasion de renouveler à Votre Excellence, l'expression de ma très haute considération.

Le Ministre des Affaires étrangères
Mark EYSKENS

A Son Excellence
Monsieur Robert James O'NEILL
Ambassadeur de Grande-Bretagne
Britannia House
rue Joseph II, 28
1040 Bruxelles

ANNEX V

BRITISH EMBASSY
BRUSSELS

29 May 1991

De Heer Mark Eyskens
Minister for Foreign Affairs
BRUSSELS

Your Excellency,

I have the honour to acknowledge receipt of your letter of today's date, which in translation reads as follows :

« Your Excellency

On the occasion of the signature of this day of the Agreement relating to the delimitation of the continental shelf between our two countries, I have the honour to inform you of the following :

'The terminal point of delimitation, in the northeast, of the continental shelf between Belgium and the United Kingdom is, according to the terms of the Agreement signed this day, the point of which the coordinates are 51° 48′ 18″N 02° 28′ 54″E.

The coordinates of this point will be modified, if necessary, once the delimitation of the continental shelf between Belgium and The Netherlands has been effected.

Belgium undertakes that such a modification will not prejudice the acquired rights of the Kingdom and makes clear that this point will be situated on the line of delimitation of the continental shelf between the United Kingdom and The Netherlands which was laid down in the Agreement of 6 October 1965.

This exchange of letters forms an integral part of the Agreement signed today.' »

I have the honour to inform you that my Government has taken note of the contents of your letter.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

R J O'NEILL