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**Maritime Boundaries in the Baltic Sea:
Past, Present and Future**

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Maritime Boundaries in the Baltic Sea: Past, Present and Future

Erik Franckx

1. Introduction

By the early 1990s, maritime boundary delimitation in the Baltic Sea had reached a rare degree of completeness (see Figure 1). Since then, however, the littoral states lapsed into a period of rather low activity in this field, something which has largely been due to the profound political changes taking place in the area. Recently, however, the Baltic Sea has witnessed a renewed interest in maritime delimitation issues. This resulted in the conclusion of a new maritime delimitation agreement, the first in about half a decade.¹ The latter was concluded between two traditional Baltic Sea powers. However, the emergence of new entities, or indeed the disappearance of old ones, has refocused the attention of many governments on the delimitation issue in the Baltic Sea area. Other agreements can therefore be expected to follow in the near future.

This *Maritime Briefing* intends, firstly, to stress the importance of the recent political changes in the area. Secondly, an overview will be sketched of what has already been accomplished. Three chronological periods, all possessing their own particular characteristics, will be distinguished. Subsequently, before reaching conclusions, recent political developments, and especially their impact on the maritime delimitation issue, will be analysed. Special attention will be given to *perestroika*, German reunification and, most importantly, the regained independence of Estonia, Latvia and Lithuania.

Increased scientific interest seems to have accompanied these new developments. A growing number of international conferences appear to include maritime boundary delimitation issues on their agenda,² or are even completely devoted to these issues.³ Legal writings normally follow

¹ This contrasts sharply with the preceding five-year period, the most productive one ever in the Baltic Sea area from a maritime delimitation point of view. See Section 3.3.

² See, for instance, the following contributions by the present author to recent international conferences: 'The New United Nations Law of the Sea Convention and the Problem of the Maritime Delimitation in the Baltic Sea' (in Latvian) (Bergholcs, 1995: 18-19); 'The New United Nations Law of the Sea Convention and the Problem of the Maritime Delimitation in the Baltic Sea' (in Russian) (Bergholcs, 1995: 16-17) (these are abstracts of a paper presented at a conference devoted to the 50th anniversary of the United Nations on the following topic: 'Baltic Sea: Yesterday, Today, Tomorrow', held at Riga, Latvia, 20-22 September 1995); and 'The Maritime Boundaries in the Baltic Sea: *Status iuris* and Future Prospects' (this was a paper submitted at the occasion of the conference 'The 50th Anniversary of the United Nations Organization and International Law' held at Moscow, 2-6 October 1995).

³ Within the framework of a larger project, entitled 'Strengthening Democracy in Societies in Transition', for which funding was provided by the Flemish Region (Belgium), a joint cooperation project was established between the Chair of International Law of the Vrije Universiteit Brussel and the Chair of International Law of the University of Gdansk. This agreement, *inter alia*, provided for the convening of a conference during the month of May 1996 at the University of Gdansk, Poland, where people from the academic world of Denmark, Estonia, Finland, Latvia, Lithuania, Poland, Russia and Sweden were invited to address contemporary delimitation issues relating to their particular country.

Figure 1: Post-World War II Maritime Delimitations in the Baltic Sea



such developments. Viewed from a more general perspective, the most ambitious initiative in this respect was most certainly a large-scale project undertaken by the American Society of International Law during the late 1980s which intended to provide an in-depth examination of state practice arising from more than one hundred existing ocean boundary delimitations worldwide. In this project, the present author was involved as regional expert for the Baltic Sea.⁴ The results of this project saw the light of day in 1993.⁵ The present article is based to a large extent on the different reports and regional analysis prepared by the author for this purpose (Franckx, 1993a, 1993b). New developments, of course, had to be taken into account in order to update the materials included in that study.⁶

One *caveat* should nevertheless be kept in mind. It is not the intention of this *Briefing* to provide an in-depth, comprehensive discussion of all the various maritime delimitation agreements in existence in the Baltic. For this, reference can simply be made to the results of the above-mentioned project. As indicated above, only a concise, but nevertheless complete, chronological overview of the different delimitation agreements arrived at in the Baltic region since the end of the Second World War will be provided.

2. Background

The importance of the political changes which took place in the region during the early 1990s can hardly be overestimated. Indeed, the disintegration of the former Socialist bloc, an evolution in which the disappearance of the Union of Soviet Socialist Republics (USSR) from the political map of the world during December 1991 constituted a key-stone, drastically reshuffled the cards in the Baltic area. If in the past this region had been characterised by a fundamental East-West division among its coastal states, with Finland and Sweden positioning themselves somewhere in between, the early 1990s introduced a totally new era in this respect.

Immediately after Estonia, Latvia and Lithuania had become new members of the United Nations during the month of September 1991,⁷ all three states introduced a formal demand to join the Council of Europe.⁸ All three countries subsequently became full members.⁹ Negotiations also started with the European Economic Community.¹⁰ These demarches finally resulted on 11 May 1992 in the signing by the EEC and the newly-independent Baltic states of three separate treaties

⁴ Two meetings, gathering all participants, were organised in order to outline and subsequently discuss the results of the project. The first was held at Washington, DC, 13-14 December 1988, the second took place at Airlie, Virginia, 13-16 December 1989.

⁵ Charney, J. and Alexander, L. (eds.) (1993) *International Maritime Boundaries*, 2 Vols., Dordrecht: Martinus Nijhoff. Hereinafter cited as *International Maritime Boundaries*.

⁶ *Status iuris* of the present article: December 1995. The above-mentioned project of the American Society of International Law has received funding to update the work so far accomplished. A first amendment is planned for publication in 1996. To this first supplement, the present author will contribute two articles. See *infra* notes 68 and 128.

⁷ See resolutions A/46/4-6 adopted by the General Assembly of the United Nations on 17 September 1991.

⁸ Latvia filed its demand to the Council of Europe a few days before being officially admitted to the United Nations, namely on 13 September 1991. Estonia and Lithuania followed suit on 17 and 18 September respectively. All three received special guest status on 18 September of that same year. Russia received a similar status on 14 January 1992.

⁹ Estonia did so on 14 May 1993, Latvia on 10 February 1995, and Lithuania on 14 May 1993.

¹⁰ As it was then called. Hereinafter cited as EEC.

on commerce and cooperation,¹¹ to be followed two years later by free trade agreements.¹² At present, the parties involved are finalising a third step, namely the conclusion of association agreements.¹³ Furthermore, all three countries officially introduced their request for accession to the European Community by the end of 1995.¹⁴

Moreover, if one takes into consideration the fact that even Russia, which claims to be the continuing state of the former Soviet Union,¹⁵ made it understood during the early 1990s that at some future date it may well apply for membership of the North Atlantic Treaty Organisation,¹⁶ it can be readily understood that little remained in these early years of the 1990s of the former East-West confrontation and rivalry in the Baltic Sea area.¹⁷ This evolution, moreover, allowed Finland¹⁸ and Sweden¹⁹ to make overtures toward the European Union which finally resulted in their fully-fledged membership in early 1995.²⁰

¹¹ *Agreement between the European Economic Community and the Republic of Estonia on Trade and Commercial and Economic Cooperation, Official Journal (hereinafter cited as OJ) L, 403/2 of 31 December 1992; Agreement between the European Economic Community and the Republic of Latvia on Trade and Commercial and Economic Cooperation, OJ, L, 403/11 of 31 December 1992; and Agreement between the European Economic Community and the European Atomic Energy Community, on the One Part, and the Republic of Lithuania on the Other Part, on Trade and Commercial and Economic Cooperation, OJ, L, 403/20 of 31 December 1992.*

¹² *Agreement on Free Trade and Trade-related Matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, on the One Part, and the Republic of Estonia, on the Other Part, OJ, L, 373/2 of 31 December 1994; Agreement on Free Trade and Trade-related Matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, on the One Part, and the Republic of Latvia, on the Other Part, OJ, L, 374/2 of 31 December 1994; and Agreement on Free Trade and Trade-related Matters between the European Community, the European Atomic Energy Community and the European Coal and Steel Community, on the One Part, and the Republic of Lithuania, on the Other Part, OJ, L, 375/2 of 31 December 1994.*

¹³ These agreements were formally signed on 12 June 1995 in Luxembourg (see *Le Monde*, 14 June 1995: 4) and recently received the green light from the European Parliament (see *Le Monde*, 17 November 1995: 5).

¹⁴ Latvia was the first country to sign an official demand for admission to the European Community on 13 October 1995. See *Le Monde*, 15-16 October 1995: 4. Estonia acted in a similar manner on 4 December 1995. See *Le Monde*, 6 December 1995: 4. Lithuania finally followed on 11 December 1995. See ELTA (Lithuanian Telegraph Agency), 12 December 1995, as provided by Internet.

¹⁵ See Circular Note of 13 January 1992 of the Ministry of Foreign Affairs of the Russian Federation, as referred to and stressed by the President of the Russian Association of International Law – Kolodkin, 1992/3: 553.

¹⁶ Hereinafter cited as NATO. It should be made clear that this was not a formal application. Nevertheless, in a meeting of 20 December 1991 of the North Atlantic Cooperation Council, the Soviet ambassador read a message from Boris El'tsin [Yeltsin] in which the latter put on record: "Today we are raising a question of Russia's membership in NATO however regarding it as a long-term political aim". It should be remembered that the Soviet Union had previously applied for NATO membership in a formal manner, namely on 31 March 1954. In the cold war atmosphere of that time, it can easily be understood that this request was rejected on 7 May 1954. The 1991 statement of B.El'tsin, therefore, certainly appeared to create more perspectives than its 1954 predecessor.

¹⁷ Even though today this initial 'honeymoon' between East and West appears to be definitively over, certainly as far as Russia's relations with NATO are concerned, these changes nevertheless remain fundamental when compared with the situation which existed before the disintegration of the USSR.

¹⁸ Formal request to join the EEC was dated 18 March 1992.

¹⁹ Formal request to join the EEC was dated 1 July 1991.

²⁰ This happened on 1 January 1995. See *Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden*

It goes without saying that these developments did not leave maritime boundary issues unaffected. Right from the start it should be kept in mind, however, that the great majority of these delimitation agreements in the Baltic Sea had already been concluded before these political changes occurred. The Baltic coastal states, in other words, have not been able to profit from this particular development when settling the bulk of their maritime boundaries. Even though it certainly constituted an additional obstacle for the parties involved, the role of this particular factor must not be over-estimated. One should indeed not be tempted by the easily made submission that maritime boundaries are more easily arrived at in areas of so-called political cooperation, particularly when compared with areas characterised by political confrontation.²¹

Other obstacles, of a typically geographical nature, are present in the Baltic, which have further burdened delimitation negotiations in the area in the past and still do so at present with respect to the outstanding delimitation disputes. These are:

- **the restricted size of the area** obliging coastal states not only to settle their lateral boundaries but also to enter into negotiations with countries lying opposite. This produces a multitude of maritime boundaries as well as tripoints to be agreed upon.
- **a number of geographical features** are present in the Baltic which normally complicate negotiations on the issue. A quick look at the map of the Baltic will suffice to notice the many islands present in the area, large as well as small. Special attention in this respect must be given to those sizeable islands, appertaining to the sovereignty of one country, but located at a considerable distance from the mainland of that particular country. International law does not appear very well developed on this point as reflected in the wide variety of solutions endorsed by state practice in this field.²²

Notwithstanding these theoretical difficulties, by the late 1980s and early 1990s it could be stated that a maritime boundary had been agreed upon in all areas of the Baltic Sea, at least if one disregarded a relatively short segment south and southeast of Bornholm (Denmark-Poland), and most tripoints connecting these different delimitation lines (Franckx, 1991). Of course, with the emergence of three 'new' coastal states in the Baltic, this statement has to be adjusted, as will be elaborated later. First, however, a brief chronological overview of these boundary agreements will be provided.

concerning the Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, OJ, C, 241/9 of 29 August 1994, and Decision of the Council of the European Union of 1 January 1995 Adjusting the Instruments Concerning the Accession of New Member States to the European Union, OJ, L, 1/1 of 1 January 1995.

²¹ It will suffice to compare the North Sea and the Baltic Sea in this respect before the political changes of the early 1990s. As stressed by Franckx, 1990a: 225-227.

²² If the Baltic is taken as point of reference, several islands can be named to which different treatment was given in consecutive delimitation agreements. Examples are the Swedish island of Utklippan, the Danish island of Bornholm and the (former East) German island of Greifswalder Oie. The latter is moreover noteworthy because that island received different treatment in two consecutive agreements concluded between the same parties.

3. Existing Maritime Boundaries

Three main periods can be distinguished when classifying the Baltic Sea delimitation agreements.²³

3.1 1945-1972

During the first, post-war, period it was clearly the Soviet Union, later followed by its allies, which took the lead. A first agreement was concluded by this country with Poland relating to the territorial sea delimitation in 1958.²⁴ Finland, the only non-communist country which took part in this early delimitation movement,²⁵ delimited a first segment of its maritime boundary²⁶ with the Soviet Union in 1965.²⁷ This was followed two years later by an agreement between the same parties on an additional continental shelf segment²⁸ to be added to the western terminal point of the 1965 agreement just mentioned.²⁹ The German Democratic Republic and Poland established the first continental shelf boundary to enter into force in the southern Baltic in 1968.³⁰ To this list one should finally add the 1969 agreement between Poland and the USSR,³¹ by means of which both countries established a complete maritime boundary between them for a continental shelf boundary was added to the territorial sea boundary agreed upon in 1958.³²

The fact that this first period of activity was dominated by countries belonging to the former Eastern bloc has to be understood against the background of the political advantage which most of these countries tried to obtain through the conclusion of these agreements. The 1958 protocol

²³ This section is based on Franckx (1991: 255-261) as complemented.

²⁴ *Protocol Concerning the Delimitation of Polish and Soviet Territorial Waters in the Gulf of Gdansk of the Baltic Sea*, signed on 18 March 1958, 340, *United Nations Treaty Series (UNTS)*, 94. The protocol entered into force on 29 July 1958.

²⁵ It is true that on 9 June 1965, Denmark and the Federal Republic of Germany signed a protocol concerning the delimitation of their continental shelf in the Baltic Sea. This apparently contradicts the submission just made. See *Protocol (Relating to the Continental Shelf Adjacent to the Coasts of the Baltic Sea) to the Agreement Concerning the Delimitation, in Coastal Regions, of the Continental Shelf of the North Sea*. The latter instrument was signed on 9 June 1965 and published in 570, *UNTS*, 91. However, this is the only delimitation agreement in the Baltic Sea where the date of signature was not followed by the date of entry into force within a reasonable period of time. The latter only occurred more than a decade later. For more details, see Franckx, 1992a: 242. It seems therefore more appropriate to treat this agreement as a 1977 agreement. See *infra* notes 42-44 and accompanying text.

²⁶ This agreement not only delimited the territorial sea and continental shelf, but also "sea areas" in general.

²⁷ *Agreement Concerning the Boundaries of Sea Areas and of the Continental Shelf in the Gulf of Finland*, signed on 20 May 1965, 566, *UNTS*, 31. The agreement entered into force on 25 May 1966.

²⁸ *Agreement Concerning the Boundary of the Continental Shelf Between Finland and the Soviet Union in the Northeastern Part of the Baltic Sea*, signed on 5 May 1967, 640, *UNTS*, 111. The agreement entered into force on 15 March 1968.

²⁹ See *supra* note 27.

³⁰ *Treaty Concerning the Delimitation of the Continental Shelf in the Baltic Sea*, signed on 29 October 1968, 768, *UNTS*, 253. The treaty entered into force on 16 April 1969.

³¹ *Treaty on the Continental Shelf in the Gulf of Gdansk and the Southeastern Part of the Baltic Sea*, signed on 28 August 1969, 69, *UNTS*, 82. This treaty entered into force on 13 May 1970.

³² See *supra* note 24.

between Poland and the USSR³³ was important for the latter because it confirmed its territorial sea claim of 12 nautical miles (nm) which, at that time, was very much contested in the Baltic.³⁴ The 1968 agreement between the German Democratic Republic and Poland³⁵ on the other hand was at least of similar political importance for the German Democratic Republic. Indeed, in a period of history when this country was excluded from participating in the law of the sea negotiations as well as from becoming party to any of the 1958 Geneva Conventions relating to the law of the sea, the German Democratic Republic saw its right to a proper continental shelf contested by the Federal Republic of Germany.³⁶ This resulted in the fact that territorial sea and continental shelf boundaries were established between all of the countries participating in this first period of delimitation efforts.³⁷

Before turning to the post-1972 period, reference has to be made to an agreement which holds the balance between the first and second periods, namely the 1972 Finland-Sweden continental shelf boundary.³⁸ Measuring 420nm, this represents the longest boundary in the Baltic Sea.

3.2 1973-1985

A second period starts with the conclusion of the *Treaty on the Basis of Intra-German Relations*,³⁹ which allowed the parties to enter into formal treaty commitments with one another. The agreement between the Federal Republic of Germany and the German Democratic Republic of 1974⁴⁰ is, therefore, to be considered as a milestone in the wider Baltic Sea delimitation effort.⁴¹ As explained above, this second period is also the most appropriate place to mention the agreement between Denmark and the Federal Republic of Germany, which came into effect in 1977.⁴² Indeed, on the basis of an exchange of notes (26 May-28 December 1976), Denmark

³³ *Ibid.*

³⁴ For a useful overview, see de Hartingh, 1960: 20-23. The protocol emphasised this particular aspect by the fact that Poland only claimed a 3-mile territorial sea at that time. The agreement, as a result, had two different terminal points.

³⁵ See *supra* note 30.

³⁶ The Federal Republic of Germany issued a continental shelf proclamation on 22 January 1964 (see 5, *Bundesgesetzblatt*, II: 104 (1964), as reprinted in Münch, 1964: 169-170), which was interpreted by authors in the German Democratic Republic as denying the latter country a continental shelf of its own. See for instance Jaworski, 1977: 140-141; and Gelberg, 1975: 524. The German Democratic Republic reacted by issuing a similar proclamation later during the same year (*Proclamation of May 26, 1964, On the Continental Shelf Adjacent to the Baltic Coast of the German Democratic Republic, Gesetzblatt der DDR*, I: 99 (1964)).

³⁷ Strictly speaking, the German Democratic Republic and Poland had only delimited their continental shelf.

³⁸ *Agreement Concerning the Delimitation of the Continental Shelf in the Gulf of Bothnia, the Bothnian Sea, the Åland Sea and the Northernmost Part of the Baltic Sea*, signed on 29 September 1972, as reprinted in *Limits in the Seas* 71 (16 June 1976). This agreement entered into force on 15 January 1973.

³⁹ Signed on 21 December 1972. Reprinted in *International Legal Materials*, 12 (1973): 16-17. This normalisation resulted in the UN membership of both Germanys in 1973. It also opened new perspectives with respect to maritime delimitation matters.

⁴⁰ *Protocol Note Concerning the Boundary in Lübeck Bay*, signed on 29 June 1974, reprinted in English translation in *Limits in the Seas*, 74 (5 October 1976). The protocol note entered into force on 1 October 1974.

⁴¹ In reality the boundary agreed upon was very short, only measuring about 8nm. The parties were never able to settle the remaining part.

⁴² See *supra* note 25.

subsequently delimited its continental shelf in 1977 on a unilateral basis.⁴³ Doubts apparently still exist as to whether this boundary also delimits the respective fishery jurisdiction of both countries.⁴⁴ The first comprehensive continental shelf boundary between the German Democratic Republic and a western state, namely Sweden, was settled in 1978.⁴⁵ Finally, another agreement within this second period concerns the third Finland-USSR agreement,⁴⁶ which adds one more segment to the boundary previously arrived at by these two countries.⁴⁷ This agreement also marked the introduction of fishing zone boundaries in the Baltic.

A typical feature of this second period is that agreements were concluded between countries belonging to different blocs. Again the political significance of these particular boundary agreements, as stressed above, does not reflect their importance from a delimitation point of view. The agreement between the two Germanys⁴⁸ was very short,⁴⁹ the one between the German Democratic Republic and Sweden⁵⁰ rather easy to determine.⁵¹

3.3 1985-1990s

From a delimitation point of view, this third period has been the most important and productive of all. Most of these later agreements, concluded between the middle of the 1980s and the early 1990s, relate to areas where islands or other special circumstances significantly complicated the negotiations. Nevertheless, about the same number of agreements has been concluded in this short period of time as during the preceding forty years.

Two treaties concluded during this period have to be distinguished from the others in that they only brought some order to previously concluded delimitation agreements, without adding any new segment to the already existing boundaries. Both of these agreements, arrived at in 1985, were concluded by the Soviet Union,⁵² with Finland⁵³ and Poland respectively.⁵⁴ Both agreements resulted in single maritime boundaries. They are, however, not identical since the former merely

⁴³ For a Danish text, see Durante and Rodino, 1980-1983: 181-183. This enactment entered into force on 1 July 1977.

⁴⁴ See Franckx, 1992a: 242 and further reference to be found there.

⁴⁵ *Agreement About the Delimitation of the Continental Shelf*, signed on 22 June 1978, as reprinted in English translation in United Nations (1987) *The Law of the Sea: Maritime Boundary Agreements (1970-1984)*: 22-24. Hereinafter cited as United Nations. This agreement entered into force on 20 December 1978.

⁴⁶ *Agreement Regarding the Delimitation of the Areas of Finnish and Soviet Jurisdiction in the Field of Fishing in the Gulf of Finland and the Northeastern Part of the Baltic Sea*, signed on 25 February 1980, as reprinted in United Nations, 1987: 35-37. The agreement entered into force on 9 July 1980.

⁴⁷ See *supra* notes 27 and 28. Contrary to those previous agreements, this one only delimited fishery jurisdiction.

⁴⁸ See *supra* note 40.

⁴⁹ See *supra* note 41.

⁵⁰ See *supra* note 45.

⁵¹ No special features such as islands located far from the mainland are to be noted in the area. Again, the boundary is fairly short, namely 29nm.

⁵² For more details on these two agreements, see Franckx, 1988: 143-158.

⁵³ *Agreement on the Delimitation of the Economic Zone, the Fishery Zone and the Continental Shelf in the Gulf of Finland and the Northeastern Part of the Baltic Sea*, signed on 5 February 1985. English translation to be found in Franckx, 1988: 154-155. This agreement entered into force on 24 November 1986.

⁵⁴ *Treaty on the Delimitation of the Territorial Sea (Territorial Waters), the Economic Zone, the Fishery Zone and the Continental Shelf in the Baltic Sea*, signed on 17 July 1985. English translation to be found in Franckx, 1988: 155-157. This agreement entered into force on 13 March 1986.

referred to existing agreements while at the same time indicating that the delimitation of the economic zone will be governed by the same principle as that of the fishery zone and the continental shelf. The latter, in contrast, explicitly replaced the provisions of the previously concluded treaties between the parties.

The other agreements concluded since the middle of the 1980s add new pieces to the maritime delimitation puzzle of the Baltic.⁵⁵ As mentioned above, most of them were burdened by so-called 'special circumstances'. The agreement, concluded in 1984 between Denmark and Sweden,⁵⁶ clearly illustrates this point,⁵⁷ as does the agreement between Sweden and the USSR signed in 1988.⁵⁸ Here the crucial question related to the exact weight to be given to the Swedish islands of Gotland and Gotska Sandön. The political compromise finally reached divided the disputed area, created by the difference in opinion between Sweden arguing that the islands should be given full effect and the Soviet Union sustaining that they should be totally ignored, according to a 75 % (Sweden): 25 % (USSR) ratio. Islands were also involved in the negotiations between Denmark and the German Democratic Republic. These countries also reached an agreement in 1988.⁵⁹ The eastern part in particular, with its indentation into part of Adler Grund, appears to represent a mere politically-negotiated line. A year later Poland and Sweden arrived at a compromise.⁶⁰ Being confronted with the same basic problem as to the exact effect to be attributed to the Swedish island of Gotland, this agreement adopted a similar solution as the one retained by the Swedish-USSR agreement of 1988,⁶¹ for it divided the disputed zone by attributing 25 % to Poland and 75 % to Sweden.

The German Democratic Republic and Poland also redesigned their maritime boundary in the Oder Bight in 1989.⁶² This agreement distinguishes itself from all the other maritime boundaries delimited so far in the Baltic area in that it totally disregarded a previously concluded continental shelf boundary⁶³ when adapting that agreement to new circumstances at a later stage. It is moreover noteworthy for the fact that the island of Greifswalder Oie, which had been given full

⁵⁵ For more details on these agreements, see Franckx, 1992b: 18-23. The latter article reproduces the text of a paper presented by the present author at the 'Ecology and Law in the Baltic Sea Area: Sources and Developments' conference, held in Riga, Latvia, 26-31 August 1990.

⁵⁶ *Agreement on the Delimitation of the Continental Shelf and Fishing Zones*, signed on 9 November 1984, as reprinted in United Nations, 1987: 20-21. This agreement entered into force on 3 September 1985.

⁵⁷ To be noted here are the Danish islands of Laesø, Anholt and Hesselø in Kattegat, and Bornholm, Christiansø and Fredriksø in the Baltic Sea proper. For Sweden, the uninhabited Utklippan has to be mentioned.

⁵⁸ *Agreement on the Delimitation of the Continental Shelf and of the Swedish Fishing Zone and the Soviet Economic Zone in the Baltic*, signed on 18 April 1988, as reprinted in *International Legal Materials*, 27 (1988): 295. This agreement entered into force on 22 June 1988. It was facilitated by an agreement on fisheries concluded at the same time, as reprinted in *Revue Générale de Droit International Public*, 92 (1988): 1,050. For more details on the influence of the latter on the boundary delimitation, see Churchill, 1993: 54.

⁵⁹ *Treaty on the Delimitation of the Continental Shelf and the Fishery Zone*, signed on 14 September 1988. English translation to be found in *Law of the Sea Bulletin*, 22 (January 1993): 3-5. The agreement entered into force on 14 June 1989.

⁶⁰ *Agreement on the Delimitation of the Continental Shelf and the Fishery Zones*, signed on 10 February 1989. English translation kindly provided by the Swedish Ministry of Foreign Affairs. This agreement entered into force on 30 June 1989.

⁶¹ See *supra* note 58.

⁶² *Treaty Concerning the Delimitation of the Sea Areas in the Oder Bight*, signed 22 May 1989. English translation to be found in Franckx, 1989: 249-251. This agreement entered into force on 13 June 1989. For more details on this agreement, see the above-mentioned article.

⁶³ See *supra* note 30.

effect in the 1968 continental shelf delimitation agreement between both parties,⁶⁴ was totally discarded when determining this new line which was largely influenced by shipping interests.⁶⁵

Before turning to the impact of recent political changes on the delimitation issue in the Baltic, a final agreement has to be mentioned by which coastal states recently started to fill in the gaps they had intentionally left open for later settlement. Contrary to the (rather unsuccessful) North Sea practice where tripoints were by and large arrived at by means of bilateral agreements, the coastal states of the Baltic Sea proper *ab initio* stopped short of the tripoints in their bilateral agreements, leaving this particular area to be determined by later multilateral agreements, i.e. between all states concerned.⁶⁶ The tri-lateral 1989 agreement between Poland, Sweden and the USSR⁶⁷ is the first, and as to date only, such treaty to have been concluded within the Baltic.

4. Recent Political Developments and their Impact⁶⁸

The political developments which took place during the late 1980s and early 1990s in the Baltic Sea area are unprecedented in the recent history of this area. Three different issues having a direct influence on the delimitation issue in the Baltic will be addressed next. First of all the influence of *perestroika* on these delimitation negotiations has to be mentioned briefly. Secondly, the impact of the German reunification on this issue will be analysed. Thirdly, a few concluding remarks will be made on the impact of the recently gained independence of the three former Baltic republics on the maritime delimitation issue in general.

4.1 *Perestroika*

The influence of *perestroika* has been stressed with respect to the political agreement between Sweden and the USSR finally reached in 1988⁶⁹ after about 20 years of negotiations.⁷⁰ The conclusion about a year later of an agreement based on the same principles between Poland and Sweden⁷¹ can also be mentioned here. It could be added in this respect that the Norwegians expected some kind of breakthrough around this period of time in their delimitation negotiations with the Soviet Union over the common maritime boundary shared in the Barents Sea, but this hope proved to be unfounded.⁷²

Today, it must be admitted, not much remains of this positive tendency generated by *perestroika*. On the contrary, political forces in Russia at present seem to preclude the making of any concessions whatsoever as far as Russian territory or jurisdiction is concerned.

⁶⁴ *Ibid.*

⁶⁵ As already alluded to before. See *supra* note 22.

⁶⁶ About this discrepancy, see Franckx, 1990a: 226-227.

⁶⁷ *Agreement Concerning the Junction Point of the Maritime Boundaries in the Baltic Sea*, signed on 30 June 1989. English translation to be found in Franckx, 1990b: 396-397. This agreement entered into force on 10 May 1990. For more details on this agreement, see the above-mentioned article.

⁶⁸ For a more comprehensive analysis, see Franckx, E., 'Baltic Sea Update (Report Number 10-14)'. Regional update for a first supplement to the book *International Maritime Boundaries*, *supra* note 5, as already alluded to *supra* note 6.

⁶⁹ See *supra* note 58.

⁷⁰ See Franckx, 1991: 267 and further references to be found there.

⁷¹ See *supra* note 60.

⁷² See Churchill and Ulfstein, 1992: 68-69. In this book the delimitation issue receives special attention.

It is believed that these extraordinary political circumstances surrounding the conclusion of these agreements of 1988 and 1989 resulted in a similarly unusual political compromise, namely the division of the disputed area created by the sizeable Swedish island of Gotland along a 75:25 % ratio. The basis of the latter solution can hardly be said to have been found in the existing maritime delimitation law of that time period. Precedents of such a 75:25 % division cannot readily be found in state practice. The latter rather illustrates a wide variety of possible techniques to adjust the link between islands which might otherwise distort the equidistant line (Bowett, 1993: 143-44), all based on the specificities of the case.⁷³ It also appears difficult to imagine how this specific rule, generated as it was under the very special circumstances just described, can create a new norm of international maritime delimitation law.

4.2 German Reunification

Besides the disappearance of the maritime boundary in Lübeck Bay,⁷⁴ the reunification of Germany also focused on the maritime boundary between the former German Democratic Republic and Poland.⁷⁵ Indeed, the land frontier between the former German Democratic Republic and Poland, and the refusal of Bonn to clearly recognise once and for all this land frontier as final, became a major bone of contention during the discussions which paved the way for the reunification.⁷⁶ In an identical resolution, therefore, adopted on 21 June 1990 by the parliaments of both Germanys, the will was expressed that the frontier between the unified Germany and Poland would be definitively confirmed by means of an international treaty based on a certain blueprint. One of the elements explicitly referred to in this blueprint was the 1989 maritime boundary agreement between the German Democratic Republic and Poland.⁷⁷ This proposed agreement was formally signed later the same year.⁷⁸ This agreement, with minor modifications, restates the content of the above-mentioned resolution. It must therefore be concluded that the 1989 maritime boundary, as concluded between the German Democratic Republic and Poland, forms an integral part of this final boundary agreement between the unified Germany and Poland. As a general rule, the Federal Republic of Germany became a party to the delimitation treaties concluded by the former German Democratic Republic as of 3 October 1990 (i.e. since the reunification of both countries).

An indirect result of German reunification can be found in the fact that this country became obliged to reflect upon the harmonisation of the outer limit of its territorial sea. Indeed, Germany inherited from the former German Democratic Republic a 12nm territorial sea⁷⁹ even though it only claimed a 3nm territorial sea itself. Not being considered as a priority issue, Germany

⁷³ See also *supra* note 22, and accompanying text.

⁷⁴ As concluded in 1974. See *supra* note 40.

⁷⁵ See *supra* note 62.

⁷⁶ For a more detailed discussion, see Franckx, 1991: 262-267.

⁷⁷ See *supra* note 62.

⁷⁸ *Treaty Concerning the Confirmation of the Frontier Existing Between Them*, signed on 14 November 1990. English translation kindly received from the German Embassy, Brussels. This agreement entered into force on 16 January 1992.

⁷⁹ Ordinance of 20 December 1984, *Second Ordinance for the Implementation of the Law of the State Frontier of the German Democratic Republic*, *Gesetzblatt der DDR*, 37, I: 441 (1984). For an English translation see *Law of the Sea Bulletin*, 4 (February 1985): 41-42 and *Law of the Sea Bulletin*, 6 (October 1985): 23, listing some corrections.

recently concluded the exercise by extending its territorial sea to 12nm as matter of principle.⁸⁰ This enactment also has delimitation implications. Like many other countries in the Baltic Sea, Germany refrained from claiming a full 12nm territorial sea in areas where this might have burdened the maritime boundaries of other states.⁸¹ It is, however, explicitly stated that such a reserved position does not imply any renunciation of juridical claims reaching beyond the line determined by this municipal enactment.⁸² The lateral delimitation with Denmark, according to this enactment, will be decided by the German government at a later stage.⁸³ Finally, explicit reference is made to the *Treaty between the Federal Republic of Germany and the Republic of Poland Concerning the Confirmation of the Frontier Existing between Them*.⁸⁴

4.3 The Independence of Estonia, Latvia and Lithuania

The presence of three new coastal states in the eastern Baltic Sea can of course only complicate the delimitation issue as just described. As already commented upon by the present author elsewhere,⁸⁵ these new maritime boundaries to be settled between four independent states, formerly forming part of the USSR, are located in areas which more often than not give rise to special delimitation difficulties of a geographical nature.

State practice indicates that, in reality, the situation is more complicated than a mere geographical analysis of the area might reveal at first sight. First of all, in some instances the land frontier is under discussion. If we take Estonia and Latvia as an example, these states decided in early 1991 to open negotiations in order to adjust their common boundary to the situation as it existed in the pre-1941 period. In March 1992 both states signed an agreement on their common land frontier reflecting this approach. At the same time, however, it was stated that the maritime boundary still had to be negotiated.⁸⁶ Later on, by means of national legislation, Estonia tentatively fixed the exact location of its territorial sea and economic zone boundary by means of geographic coordinates.⁸⁷ Between these two countries, also the delimitation inside the Gulf of Riga, considered by the former USSR as an historical bay, is another hotly debated issue between the parties, mainly because of conflicting fishing interests.⁸⁸

⁸⁰ *Bekanntmachung der Proklamation der Bundesregierung über die Ausweitung des deutschen Küstenmeeres*, 11 November 1994, *Bundesgesetzblatt*, I (1994): 3,428-3,429. This enactment entered into force on 1 January 1995 according to its Article II. German text kindly obtained from T. Bruns, Ministry of Foreign Affairs, Germany, 31 May 1995. For an English translation see also *Law of the Sea Bulletin*, 27 (June 1995): 55-57.

⁸¹ *Ibid.*, Article I(2) penultimate para.

⁸² *Ibid.*

⁸³ *Ibid.*, Article I(2) para.6. There is no indication that this will be subjected to negotiations with Denmark.

⁸⁴ As already mentioned *supra* note 78. For a discussion on the maritime boundary implications, see Franckx, 1993c: 2,023-2,028.

⁸⁵ See Franckx, 1991: 267-269.

⁸⁶ *Izvestiia*, 18 May 1991: 2, and 23 March 1992: 1.

⁸⁷ *Law on the Boundaries of the Maritime Tract*, as reprinted in *Law of the Sea Bulletin*, 25 (June 1994): 55-64, Articles 6 and 7. A remark to the list of coordinates defining the boundary of the territorial sea states that the resulting line may be changed after negotiations with the Russians in the Bay of Narva and with the Latvians in the Strait of Irben and the Bay of Riga. Similar remarks were made with respect to the line representing the boundary of the EEZ of which certain parts of concern to Russia and Latvia were also open to change as a result of negotiations still to be held on the subject. See *ibid.*: 62 and 64.

⁸⁸ See for instance *Moscow News*, 18 (12-18 May 1995): 8. For a more detailed analysis of this conflict based on the local press, see Franckx, 1996a. Editor's note: Although the *status iuris* of the present

Moreover, Estonia and Russia have engaged in a dispute over their common land frontier in the area surrounding the Narva river.⁸⁹ Since the outcome of this particular dispute directly affects the terminal point of the land frontier, its importance for the maritime boundary is easily understood. As already remarked, the Estonian municipal legislation provides that this part of the boundary is still subject to changes as a result of negotiations with the Russian Federation.⁹⁰

Also Lithuania deserves special attention in this respect, for the exact territorial status of certain land areas possessing a maritime front appears to be under discussion in some quarters. Klaipeda, the former Memel territory, can be mentioned here, but also in a broader context Kaliningrad, the former Königsberg region.

Secondly, another set of problems arose when Estonia started to consider the formal adoption of a 12nm territorial sea. This could have turned the Gulf of Finland into a Gulf of Aqaba-type situation. Indeed, if in the past the 12-mile zone claimed by the Soviet Union did not create any problem for Soviet ships to reach Leningrad, as it was then called, such a 12-mile zone claimed by Estonia might well restrict Russian navigation to St. Petersburg, especially if Finland were to consider a similar extension in the area. But even if Finland were not to extend its territorial sea to 12nm, such an Estonian move would push all Russian ships to the Finnish side of the Gulf of Finland, a possibility totally unacceptable to Finland. Thus, when Estonia finally decided to extend its territorial sea, this was preceded by several rounds of negotiations with Finland. The final result was that both parties agreed that neither of them would expand its territorial sea in the Gulf of Finland to infringe a 3nm zone from the centre line, unless prior notice of 12 months is given to the other party.⁹¹ Estonia fully complied with this requirement when it enacted its law on the subject. A special provision was inserted providing that exceptions to the 12nm breadth of the territorial sea were possible.⁹² A closer scrutiny of this text reveals that in the Gulf of Finland the outer limit of the Estonian territorial sea never comes closer than 3nm from the maritime boundary between the two countries (Elferink, 1994: 237). Also, Finland has recently extended

Briefing was December 1995, whilst it was being prepared for publication negotiations between the two sides, with Swedish mediation, continued, resulting in a draft agreement on their maritime boundary being signed by the two countries' prime ministers in Stockholm on 12 July 1996. See *Boundary and Security Bulletin*, 4, 3 (Autumn 1996): 13. In addition, details of Franckx (1996a) have been included in the bibliography.

⁸⁹ These negotiations started in 1992 at the level of intergovernmental work groups. Territorial disputes were, for instance, on the agenda of talks held on 14 April 1992. See *Izvestiia*, 14 April 1992: 2. During the fifth round of these negotiations, held on 22 July 1992, boundary questions were very much focused upon. See *Izvestiia*, 22 July 1992: 2. But these negotiations were not successful. See *Izvestiia*, 24 July 1992: 1. The same fate befell later negotiations at this level. In December 1994 the level of these negotiations was upgraded when senior officials of the Ministry of Foreign Affairs of both countries started to hold direct consultations on this issue. By the end of 1995 negotiations on defining the sea boundary were progressing well and concrete results were expected in the near future. See *Estonia Today* (Estonian Foreign Ministry), 'The Estonian-Russian Border: An Up-date on Current Negotiations', 8 November 1995, as provided by Internet. For a more exhaustive elaboration of this issue, see Franckx, 1996a.

⁹⁰ See *supra* note 87.

⁹¹ As incorporated in an exchange of notes. The Estonian note dates from 6 April 1993, the Finnish reply from 9 May 1994. See *Finnish Parliamentary Papers*, RP, 114 (1994):5-6 and 7. Finnish (and Swedish) text kindly provided by M. Letho, Finnish Ministry of Foreign Affairs. The texts of the Estonian and Finnish notes are reproduced on pages 17 and 18 respectively.

⁹² See *Law on the Boundaries of the Maritime Tract*, *supra* note 87, Article 6.

its territorial sea from 4 to 12nm.⁹³ In this enactment, Finland clearly states that the outer limit of the territorial sea in the Gulf of Finland will always stop at least 3nm from the centre line.⁹⁴

Thirdly, reference can also be made to the presence of non-living seabed resources in the area. Even though unity of resource clauses can be found in certain maritime delimitation agreements concluded in the Baltic so far,⁹⁵ only in two instances had licenses already been granted before the conclusion of the maritime boundary itself. In the case between Denmark and the German Democratic Republic⁹⁶ this problem was resolved by drawing the boundary line in such a way as to keep on the Danish side of the line all those areas where Denmark had already issued licenses.⁹⁷

Only in one instance, namely in the relationship between Denmark and Sweden,⁹⁸ did an actual dispute over a particular zone arise before the conclusion of a delimitation agreement.⁹⁹ Other instances will apparently have to be added to this list.

Indeed, the boundary between Latvia and Lithuania reached headlines in the local press from the spring of 1995 when Latvia intended to grant an off-shore oil concession to an American firm.¹⁰⁰ This issue was revived during November 1995 when Lithuania recalled its ambassador from Riga in order to protest against the conclusion of an agreement between Latvia and an American and a Swedish oil company.¹⁰¹ Latvia reacted by means of a statement from its Minister of Foreign Affairs who declared that no exploration or exploitation activities would be carried out until a maritime delimitation agreement had been reached between both countries.¹⁰² The Latvian government furthermore indicated that it was ready to start negotiations with Lithuania at any time on this particular issue.¹⁰³

The fact that Russian newspapers announced during autumn 1995 that Russian and German firms concluded an agreement to start the offshore exploitation in the boundary area between the

⁹³ *Law on Amending the Law on the Finnish Territorial Sea Border*, 3 March 1995, *Suomen Säädoskokoelma* (Statute Book of Finland) 891/1995. This amendment entered into force on 30 July 1995, as enacted by the Decree of 17 July 1995, *Suomen Säädoskokoelma* 982/1995. Information kindly obtained from E. Kourula, Finnish Ministry of Foreign Affairs. A Finnish and Swedish text were kindly provided by M. Letho, Finnish Ministry of Foreign Affairs.

⁹⁴ *Ibid.*, para.5a.

⁹⁵ Only about one-fourth of the maritime boundary agreements so far concluded in the Baltic contains such a unity of resource clause. These are the 1972 agreement between Finland and Sweden (see *supra* note 38), the 1978 agreement between the German Democratic Republic and Sweden (see *supra* note 45), the 1984 agreement between Denmark and Sweden (see *supra* note 56) and the 1988 agreement between Denmark and the German Democratic Republic (see *supra* note 59). It should be added that the new 1994 agreement between Finland and Sweden (see *infra* note 128 and accompanying text) apparently resulted in the fact that the unity of resource clause added by means of a protocol to the 1972 agreement, as mentioned above, is no longer applicable to the area covered by the new agreement, i.e. south of the Island Märket.

⁹⁶ See *supra* note 59.

⁹⁷ See in more detail Franckx, 1993d: 2,089.

⁹⁸ See *supra* note 56.

⁹⁹ For more details, see Franckx, 1993e: 1,934.

¹⁰⁰ As mentioned in the report written by the present author as legal consultant for the Food and Agriculture Organization of the United Nations, project number TPC/LIT/4452. See Franckx (1995: 16).

¹⁰¹ *Finansovye Izvestiia*, 2 November 1995: 1. Lithuania was of the opinion that the area, in which the exploration activities would have to be conducted, was disputed between the parties. As a consequence, such activities could harm Lithuanian interests.

¹⁰² *Finansovye Izvestiia*, 3 November 1995: 1. The agreement between Latvia and the American and Swedish oil companies, it was stressed, contained an explicit provision exactly for that purpose.

¹⁰³ *Le Monde*, 4 November 1995: 5. For a further elaboration of this particular dispute, based on local news reports, see Franckx, 1996a.

Kaliningrad region and Lithuania, with the intention to build a drilling platform 15km from shore, also points in this direction.¹⁰⁴ The latter submission appears to be justified, especially if one takes into account the strongly-worded protest sent by the Lithuanian government in March 1994 to the Russian Embassy in Vilnius when the Russian side made a similar move.¹⁰⁵ In other words, non-living seabed resources complicate these new delimitation negotiations as well.

These examples suffice to demonstrate that the situation in this part of the Baltic is highly unpredictable at present. What states have therefore been trying to do is to adopt a pragmatic approach. Good examples here are the fishery relations between Sweden on the one hand and Estonia, Latvia, Lithuania and Russia on the other as regulated in 1992.¹⁰⁶ In order to avoid conflicts over fishing vessels operating on the 'wrong' side of a yet to be determined maritime boundary, safety margins have been created in those areas.¹⁰⁷ Since then, international agreements have been concluded between these countries of which the peculiar careful drafting reflects the clear understanding by the parties that these agreements do have maritime boundary delimitation implications.¹⁰⁸

Another instance demonstrating this pragmatic approach is the conclusion of an agreement between Finland and Estonia during the month of March 1992 on the provisional application of certain treaties concluded between Finland and the Soviet Union.¹⁰⁹ Out of a list of 13 agreements, the first four concern previous delimitation agreements between Finland and the USSR: those of 1965,¹¹⁰ 1967,¹¹¹ 1980,¹¹² and 1985.¹¹³ This last agreement, which initially only covered the period until 9 January 1995,¹¹⁴ has been prolonged for another two-year period.¹¹⁵ States, in other words, continue to manage their daily business on an *ad hoc* basis, awaiting further clarification on the part of the three new Baltic States of their exact maritime claims as

¹⁰⁴ *Finansovye Izvestiia*, 12 September 1995: 2.

¹⁰⁵ *Izvestiia*, 1 March 1994: 3. The Lithuanian government was of the opinion that the delimitation negotiations, which started in 1991, should be successfully completed first before actual exploitation could start. At that time, Lithuania also played the environmental card, arguing against the construction of such a platform which, because of winds and currents, would most certainly have negative consequences on the highly sensitive Lithuanian coast.

¹⁰⁶ For more details, see Elferink, 1992: 232-243.

¹⁰⁷ See for instance the *Protocol Concerning Mutual Fishery Relations*, concluded between Latvia and Sweden, signed on 21 February 1992. *In fine* one can read: "The relevant Latvian authorities warrants to provide before April 1, 1992, the relevant Swedish authorities with the preliminary coordinates of the Latvian exclusive economic zone **taking into account the relevant safety margins related to the relevant zones of the neighbouring states.**" As reprinted in Elferink, 1992: 243. Present author's emphasis.

¹⁰⁸ See Elferink (1994: 101-114) where a text of these agreements can be found. Lithuania only followed suit on 25 November 1993 (text of the agreement on file with the author). Delimitation problems indirectly related to this agreement were apparently a major reason causing this delay for Lithuania. See Franckx, 1995: 13-14 and 16. Regarding the exact impact of the 1988 Sweden-USSR agreement (see *supra* note 58) on the maritime boundaries of Estonia, Latvia and Lithuania, see Franckx, E., *supra* note 68, Baltic Sea Update (Report Number 10-14).

¹⁰⁹ *Agreement on the Provisional Application of Some Treaties between Finland and the Soviet Union in the Relations between Finland and Estonia*, signed on 20 March 1992. Swedish translation kindly provided by M. Koskeniemi, Finnish Ministry of Foreign Affairs.

¹¹⁰ See *supra* note 27.

¹¹¹ See *supra* note 28.

¹¹² See *supra* note 46.

¹¹³ See *supra* note 53.

¹¹⁴ See *Agreement on the Provisional Application of Some Treaties between Finland and the Soviet Union in the Relations between Finland and Estonia*, *supra* note 109, para. 1.

¹¹⁵ Information kindly obtained from M. Letho, Finnish Ministry of Foreign Affairs, 31 May 1995.

well as the outcome of land frontier negotiations.¹¹⁶ Some headway has already been made in this respect. Estonia,¹¹⁷ Latvia¹¹⁸ and Lithuania¹¹⁹ have all formally established a 12nm territorial sea through appropriate internal legislation.¹²⁰ Of these countries, only Estonia appears to be also claiming an EEZ.¹²¹ As demonstrated above, even a thorough analysis of prevailing legislation does not always provide unequivocal answers in this respect.¹²² These elements logically will have to be clarified first. Only then will it be possible to tackle the maritime boundary questions with some confidence.¹²³

¹¹⁶ If we take the example of Lithuania, a thorough analysis by the present author of fishery legislation in that country came to the conclusion that neither municipal legislation, nor international agreements entered into by that country makes it clear whether Lithuania claims an EEZ at present or not. Some national secondary rules and regulations certainly make reference to it, but any primary legislation on this subject is missing. See Franckx, 1995.

¹¹⁷ *Law on the Boundaries of the Maritime Tract, supra* note 87, Article 6.

¹¹⁸ *Law on the Border of the Republic of Latvia*, 10 December 1990, as reprinted in *Law of the Sea Bulletin*, 25 (June 1994): 67-74, para 4..

¹¹⁹ *Law on the State Boundary of the Republic of Lithuania*, 25 June 1992, as reprinted in *Law of the Sea Bulletin*, 25 (June 1994): 75-81, Article 4.

¹²⁰ The intermediary period – predicted by some (see for instance Canfield, 1993: 1, 3) between the newly gained independence, where these countries might well have preferred to return to the 3nm limit which existed before their occupation by the former USSR in order to cut as much ties as possible with this latter period, and the ultimate adoption of a 12nm territorial sea as provided by the 1982 United Nations Convention on the Law of the Sea and international practice – did not last very long.

¹²¹ See for instance the list of national claims over maritime zones, listed in *Law of the Sea Bulletin*, 25 (June 1994): 104, 107 and 109. Latvia and Lithuania are only mentioned as having a 12nm territorial sea, not even a fishing zone. Concerning the claim of Estonia, see also *infra* note 134 and accompanying text.

¹²² See *supra* note 116.

¹²³ When preliminary talks started it appeared that even the most essential materials, such as nautical charts, were missing in some quarters.

5. Conclusions

Since the mid-1980s, the maritime boundary delimitation issue had gained momentum in the Baltic Sea area. The latter phase, as discussed above, clearly demonstrates that this was the period in which many agreements were concluded on this topic. It has also been stressed that these delimitations were usually characterised by the presence of geographical features which normally burden such negotiations. As a result of this development, an almost complete delimitation picture was arrived at in the Baltic. The only remaining boundary to be settled was the area south and southeast of Bornholm between Denmark and Poland, as well as the remaining tripoints.

This period of rapid progress has been overtaken by a period of stagnation. Not one single maritime boundary was agreed upon for half a decade. Today, the pendulum is on its way back. If in 1992 it could be stated that no negotiations were taking place on any of these outstanding boundaries just mentioned,¹²⁴ this situation has somewhat changed today. As far as Denmark and Poland are concerned, the existing deadlock simply remains for the moment with no initiatives taken by either side.¹²⁵ As a consequence, the tripoint between these two countries and Sweden also remains on the back-burner. On the other hand, with respect to the two tripoints between Denmark, Germany and Sweden, considerable progress has been made. An agreement here is expected in the near future.¹²⁶

It is between Finland and Sweden that most headway has been made however. This resulted in the conclusion of the first¹²⁷ new convention after the period of stagnation during the first half of the 1990s, which entered into force on 30 July 1995.¹²⁸ As none of the countries involved possessed a fishing zone during the early 1970s, the 1972 agreement in force between them¹²⁹ only related to the continental shelf.¹³⁰ It was only at a later stage that both countries, in a unilateral manner, established the outer limits of their fishery zones. But the lines arrived at first

¹²⁴ Information based on personal communications with M. Koskenniemi, Finnish Ministry of Foreign Affairs, 9 January and 9 September 1992, and A. Adamsen, Danish Ministry of Foreign Affairs, 14 September 1992.

¹²⁵ Information kindly obtained from Mr. Lilje-Jensen, Danish Ministry of Foreign Affairs, 30 May 1995, and confirmed on 24 January 1996.

¹²⁶ Information kindly obtained from Mr. Lilje-Jensen, Danish Ministry of Foreign Affairs, 30 May 1995, as confirmed on 24 January 1996. Apparently only technical reasons still prevent the agreement from being finalised.

¹²⁷ This study does not take into account an exchange of notes which took place in 1995 between Denmark and Sweden, the purpose of which was simply to update the existing coordinates in the Sound in accordance with modern datum. Information kindly obtained from Mr. Lilje-Jensen, Danish Ministry of Foreign Affairs, 24 January 1996.

¹²⁸ *Agreement on the Demarcation in the Åland Sea and the Northern Part of the Baltic Sea Covering the Finnish Continental Shelf and Fishing Zone and the Swedish Economic Zone*, signed on 2 June 1994. Text kindly provided by M. Letho, Finnish Ministry of Foreign Affairs. This agreement entered into force on 30 July 1995. For a more detailed analysis of this agreement, see Franckx, E. 'Finland and Sweden Complete Their Maritime Boundary in the Baltic Sea', accepted for publication by the *Ocean Development and International Law Journal* (December 1995). Editor's note: while this Briefing was under preparation this article was published and is included in the bibliography as Franckx (1996b). See also by the same author 'Finland-Sweden (Report Number 10-13)', regional update for a first supplement to the book *International Maritime Boundaries*, *supra* note 5, as already alluded to *supra* note 6.

¹²⁹ See *supra* note 38 and accompanying text.

¹³⁰ Finland only enacted a 12nm fishing zone in 1974, effective as of 1 January 1975. Sweden was the first country in the Baltic to enact a 200nm fishing zone, but the latter only became operative as of 1 January, 1978. It appears therefore reasonable to submit that fishery considerations did not influence this 1972 delimitation agreement. See Franckx, 1993f: 1946.

of all did not correspond with the 1972 continental shelf boundary line west and south of the Åland Islands, and secondly did not correspond *inter se* in the area west and south of Bogskär.¹³¹ In order to remedy these discrepancies, a single maritime boundary was established in the area, based on the continental shelf line of 1972. With this problem out of the way, the next step will be to try to reach an agreement on the tripoint with Estonia.

Lately, the issue has also been influenced by new developments taking place in the area. First of all, the creation of new maritime zones has to be mentioned. Poland, for instance, proclaimed a 200 nautical mile exclusive economic zone in 1991.¹³² Sweden followed suit towards the end of 1992.¹³³ Estonia enacted economic zone legislation in 1993¹³⁴ and Germany did so early 1995.¹³⁵ These municipal enactments frequently refer explicitly to already existing boundary agreements.¹³⁶

The Polish municipal for instance provides that the limits of the newly-created zone are to be determined by the relevant international agreements where such delimitation agreements exist. Express reference is made in this respect to the 1985 agreement with the Soviet Union,¹³⁷ the 1989 agreement with Sweden,¹³⁸ and the agreement concluded during the same year with the German Democratic Republic.¹³⁹ Unilaterally, in other words, Poland has applied previously concluded delimitation agreements to its exclusive economic zone as established in 1991. It is expected that these changes will in the future lead to additional agreements making the existing boundary between parties applicable to this newly-created zone.

As far as the Estonian EEZ is concerned, the *Law on the Boundaries of the Maritime Tract* gives implicit indications as to the applicability of already existing maritime boundaries.¹⁴⁰

Finally, the German EEZ enactment uses as the outer boundary the same coordinates as those agreed upon by this country and the former German Democratic Republic in their bilateral delimitation agreements with third states.¹⁴¹ It does mention, however, that certain segments still

¹³¹ See Franckx, 1993f: 1,950-1,951 for a more detailed comparison.

¹³² *Act Concerning the Maritime Areas of the Polish Republic and Maritime Administration* (adopted on 21 March 1991; entry into force 1 July 1991). For a good analysis, see Kwiatkowska, 1991: 364-370. The following section is based on this analysis. The text of this law was reproduced in *Law of the Sea Bulletin*, 21 (August 1992).

¹³³ See Mahmoudi (1993: 524-529) who gives a short analysis. The text of the legislation itself has been reproduced in *Law of the Sea Bulletin*, 23 (June 1993).

¹³⁴ As indicated in Kwiatkowska, 1994: 225. This author mentions an Economic Zone Act of 28 January 1993.

¹³⁵ *Proklamation der Bundesrepublik Deutschland über die Errichtung einer ausschließlichen Wirtschaftszone der Bundesrepublik Deutschland in der Nordsee und in der Ostsee*, 25 November, 1994, II, *Bundesgesetzblatt* (1994): 3,770-3,771 (hereinafter German EEZ). This enactment entered into force on 1 January 1995 according to its Article I. German text kindly obtained from T. Bruns, German Ministry of Foreign Affairs, 31 May 1995. For an English translation, see *Law of the Sea Bulletin*, 27 (June 1995): 57-59.

¹³⁶ Of the countries listed, only the legislation of Sweden remains silent on the issue.

¹³⁷ See *supra* note 54.

¹³⁸ See *supra* note 60.

¹³⁹ See *supra* note 62.

¹⁴⁰ See *supra* notes 87 and 90 and accompanying text.

¹⁴¹ Points 1-25 are identical to points 1-25 of the Danish Decree based on the Protocol between Denmark and the Federal Republic of Germany, *supra* notes 43 and 25 respectively, Article 1; points 26-32 are identical to points 1-7 of the Treaty between Denmark and the German Democratic Republic, *supra* note 59, Article 1; points 33-35 appear to be based on points 1-3 of the Agreement between the German Democratic Republic and Sweden, *supra* note 45, Article 2 (as confirmed by D. Granow, German

have to be negotiated with bordering states,¹⁴² concerning the lines connecting the terminal points of the previously concluded delimitation agreements.¹⁴³ The German legislation also provided that the final determination of point 1 will be fixed later on after negotiations.¹⁴⁴ Explicit reference to an existing agreement is only included¹⁴⁵ with respect to the 1989 agreement concluded between the German Democratic Republic and Poland,¹⁴⁶ and more specifically to its Article 5(2) of which the modalities of implementation still have to be agreed upon by means of negotiations with Poland. The latter Article states that the northern approach to the Polish port of Swinoujscie and anchor place number three, both located on the German side of the delimitation line, “do not form part of the continental shelf, the fishery zone and, possibly, of the exclusive economic zone of the German Democratic Republic.”¹⁴⁷ This is a most curious provision since it creates a kind of ‘no-mans land.’¹⁴⁸ Apparently, Germany wants to fill in this legal vacuum.

But it is of course the emergence of three new coastal states which will in the future bring the most drastic changes in this respect since many new delimitation agreements and tripoints will have to be concluded as well as previously concluded agreements relating to this geographical area reassessed. It is clear from the above that several countries are at present addressing the issue. As a result, it is submitted that the conclusion of several new agreements in the Baltic Sea area can be expected in a not too distant future.

Ministry of Foreign Affairs, 28 July 1995. Fax on file with the author); points 36-40 are identical to points 8-12 of the Agreement between Denmark and the German Democratic Republic, as just mentioned above, Article 1; and points 41-46 appear to be based on points M, L, K, J, I and C of the Agreement between the German Democratic Republic and Poland, *supra* note 62, Articles 3 and 4 (as confirmed by D. Granow, German Ministry of Foreign Affairs, 28 July 1995. Fax on file with the author).

¹⁴² German EEZ, *supra* note 135, Article IV para.1.

¹⁴³ It concerns the opening in the line between the Federal Republic of Germany and the German Democratic Republic agreements with Denmark, the tripoints between Denmark, Germany and Sweden, between Denmark (Bornholm), Germany and Sweden and between Denmark (Bornholm), Germany and Poland.

¹⁴⁴ German EEZ, *supra* note 135, Article IV para.2. About this long standing dispute, see Franckx, 1993g: 1916-17.

¹⁴⁵ German EEZ, *supra* note 135, Article IV para.3.

¹⁴⁶ *Agreement between the German Democratic Republic and Poland*, *supra* note 62.

¹⁴⁷ *Ibid.*, Article 5 (2).

¹⁴⁸ As discussed in Franckx, 1989: 247. See also Franckx, 1993h: 2,014.

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