

BELGIUM AND THE NETHERLANDS SETTLE THEIR LAST FRONTIER DISPUTES ON LAND AS WELL AS AT SEA

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SUMMARY

I. INTRODUCTION

II. THE LAND FRONTIER

1. *The Past (19th Century)*
2. *The Present (20th century)*
3. *The Future (21st Century)*

III. THE MARITIME BOUNDARY

1. *Regional Context*
2. *Bilateral Context*
 - A) Early bilateral negotiations (1960 onwards)
 - B) Related law in force
 - a) Belgium
 - b) The Netherlands
 - c) Evaluation
 - C) International fora
 - a) Belgium
 - b) The Netherlands
3. *Areas of disagreement*
4. *Agreements of 1996*
 - A) Scheldt closing line
 - B) The Wielingen question
 - C) Rassen
 - D) The port of Zeebrugge
 - E) Relation between territorial sea and continental shelf agreement

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on the land frontiers (Part II) and maritime boundaries (Part III). The main emphasis will moreover be placed on the latter aspect reflecting that way, at least to some extent, the difference in importance between both kind of boundaries if the length of the line agreed upon is taken as point of reference.

II. — THE LAND FRONTIER

During the month of October 1995, one of the most complicated land frontiers presently in existence on a world-wide basis, was finally settled. It concerns the state border between the Belgian municipality of Baarle-Hertog, an enclave located about 5 km north of the land frontier between both countries, and the Dutch municipality of Baarle-Nassau. Unlike other enclaves, this one is characterized by the fact that it represents a kind of intricate jigsaw puzzle with twenty-two little Belgian enclaves on Dutch territory, two of which themselves contain seven Dutch enclaves, i.e. small pieces of Baarle-Nassau surrounded by Baarle-Hertog (3).

The issue received international attention in 1959, when the International Court of Justice rendered its decision on a specific part of the dispute (4), submitted to it by the parties because of necessity (5). As a result of that decision, the Belgian territory increased by 14 ha 37 a 80 ca (6). This historical curiosum has even an internet site of its own, where a brief historical explanation as well as different illustrative maps can be consulted (7).

Only the legal aspects relating to the manner in which this boundary was finally arrived at will be addressed. This appears to be a useful exercise for the press releases issued at the time of the final settlement of this frontier

faits à Charleville-Mézières le 26 avril 1994, April 6, 1995, *Moniteur belge* du 22 juin 1995, pp. 17919-17920.

(3) An eighth Dutch enclave, named Vossenbergh, is located south of the state border of the Netherlands.

(4) Case concerning Sovereignty over Certain Frontier Land (Belgium/The Netherlands), 1959 *I.C.J. Reports* 209.

(5) Tradition has it that the crux of the dispute concerned ten houses located in a place called Molenriet. After having been bought by a Belgian pig-farmer, the latter was confronted by the fact that the prevailing rent charges in the Netherlands were much lower than in Belgium. Convinced that the houses were located on Belgian soil, the man began to wage a one-man guerilla against the Dutch authorities which lasted for about six years. During that time a wide variety of methods were used, the most striking of which was certainly the blocking of the main road between Turnhout (Belgium) and Breda (the Netherlands) by means of trees which he himself had cut down. See the lead story which appeared in *De Standaard Magazine*, August 18, 1995, p. 2, 4.

(6) Dissenting opinion of M. ARMAND-UGON, « Case concerning Sovereignty over Certain Frontier Land », *supra* note 4, p. 233.

(7) As accessible on Internet at « <http://wings.buffalo.edu/philosophy/faculty/smith/baarle.htm> » on February 4, 1999.

dispute did not always reflect juridical realities in a correct manner. Belga, for instance reported on October 31, 1995 :

« Officiellement depuis mardi [31 octobre 1995], 17 h, le territoire de la Belgique s'est agrandi au détriment de la Hollande de 26,23 ares, soit environ la superficie d'un demi terrain de football. Cette modification... est le résultat de dix années de mesures et d'arpentages, commencés en 1975, des enclaves 'contestées' le long du tracé de la frontière belgo-néerlandaise. Il a ensuite encore fallu dix années pour arriver à la signature d'un traité sur le tracé de la frontière » (8).

When questioned about this press release, however, it turned out that the Treaty Department of the Belgian Ministry for Foreign Affairs could find no trace of the said document... for the simple reason, as will be seen below, that no treaty was concluded at that date.

In order to fully understand the legal developments which took place during the present century (section 2), one has to go back well into the previous one (section 1) where the historic roots of this disputes are to be found.

1. — *The Past (19th Century)*

The whole issue dates back to the Belgian struggle for independence which succeeded in 1830 and found its reflection in the peace treaty concluded between Belgium and the Netherlands on April 19, 1839 (9). This treaty, which divided the respective territories in the most general of terms, stipulated in this respect that a boundary commission had to be established to draw the actual borderline (10). In 1842 the work of the latter commission had reached a point where the two governments felt it necessary to intervene in a direct manner in its proceedings, namely by clarifying a few

(8) BELGA press release of October 31, 1995. It should be noted that this is not exceptional in Belgium. Also issues relating to maritime boundaries have been more than once misreported in the national press. On July 6, 1996, for instance, the Flemish newspaper *De Morgen* ran an article on page 3, entitled « Oppervlakte van België aanzienlijk stuk groter » (the area of Belgium significantly enlarged), with as catch-eye subtitle in the middle of the article reproduced in large characters « Territoriale wateren worden uitgebreid » (territorial waters are being enlarged). The article in fact only addressed the issue of the announced establishment of a Belgian exclusive economic zone. By trying to attract the reader's attention in this manner, the article completely misleads the layman who clearly remains the main addressee of these kind of writings.

(9) « Traité de paix entre la Belgique et la Hollande (Pays-Bas) », April 19, 1839, *Bulletin Officiel* n° 27, as reprinted in DE BUSSCHERE, A., *Code de traités et arrangements internationaux intéressant la Belgique*, Tome 1^{er}, Lebègue, J. & Cie, Bruxelles, pp. 42-46 (1896). Hereinafter cited as Treaty of 1839.

(10) Art. 6 of the agreement states : « Moyennant les arrangements territoriaux arrêtés ci-dessus, chacune des deux parties renonce réciproquement pour jamais à toute prétention sur les territoires, villes, places et lieux situés dans les limites des possessions de l'autre, telles qu'elles se trouvent décrites dans les art. 1, 2 et 4. Lesdites limites seront tracées, conformément à ces mêmes articles, par des commissaires-démarcateurs belges et hollandais, qui se réuniront le plus tôt possible en la ville de Maestricht ». See *ibid.*, pp. 43-44.

ambiguities of the Treaty of 1839 (11). One of the bones of contention ran into by the commission and tackled by the respective governments by means of this agreement was exactly the state border in the area of Baarle-Hertog and Baarle-Nassau. On this point, the Additional Treaty of 1842 stated in its Art. 14 :

« Le *statu quo* sera maintenu, tant à l'égard des villages de Baarle-Nassau (Pays-Bas) et Baarle-Duc (Belgique), que par rapport aux chemins qui les traversent » (12).

When the commission finished its work 10 months later (13), the frontier between the marker 214 in the east, dividing the Belgian municipality of Poppel and the Dutch municipality of Alphen, and marker 215 in the west, dividing the Belgian municipality of Meerle and the Dutch municipality of Chaam (14), i.e. where the frontier runs into the territories of Baarle-Hertog and Baarle-Nassau, was left open. The commission remarked in this respect :

« Considérant que l'état actuel des lieux, maintenu par la disposition de l'art. 14 précité (15), ne permet pas de procéder à la délimitation régulière des deux communes dont il est question ;

Considérant néanmoins qu'il peut être utile de constater ce qui a été contradictoirement établi par le procès-verbal du 29 novembre 1836, arrêté et signé le 22 mars 1841 par les autorités locales des deux communes ;... » (16).

It was therefore decided to include the said *Procès-verbal* of 1836, word for word in its original language, i.e. Dutch, in the text finally adopted by the commission (17).

The work of the above-mentioned commission formed the crux of a treaty signed on the same day fixing the land frontier between the two

(11) Traité entre la Belgique, les Pays-Bas et le grand-duché de Luxembourg, complétant le traité du 19 avril 1839, November 5, 1842, *Moniteur* du 9 février 1843, as reprinted in DE BUSSCHERE, A., *supra* note 9, pp. 50-59. Hereinafter cited as Additional Treaty of 1842. Apparently this had become necessary because Belgium refused to accept a Dutch proposal to settle the issue by means of a mutual exchange of territories. See « Case concerning Sovereignty over Certain Frontier Land », *supra* note 4, p. 214.

(12) DE BUSSCHERE, A., *supra* note 9, p. 51.

(13) Procès-verbal descriptif de délimitation entre la Belgique et les Pays-Bas, arrêté à Maestricht par les commissaires démarcateurs belges et néerlandais, August 8, 1843, *Moniteur* du 15 avril 1887, as reprinted in DE BUSSCHERE, A., *supra* note 9, pp. 218-264. Hereinafter cited as *Procès-verbal* of 1843.

(14) Representing about 36 km of frontier.

(15) I.e. of the Additional Treaty of 1842, as reprinted *supra* note 12 and accompanying text.

(16) Art. 90 para. 1 of the *Procès-verbal* of 1843, *supra* note 13, p. 240.

(17) The commission decided the following : « Ledit procès-verbal [i.e. of 1836], constatant les parcelles dont se composent les communes de Baarle-le-Duc et Baarle-Nassau, est transcrit, mot à mot, dans le présent article. Un plan spécial, en quatre feuilles, comprenant le parcellaire tout entier des deux communes, est dressé à l'échelle de 1/10.000 et à ce plan sont annexées deux feuilles détachées représentant, à l'échelle de 1/2.500, les parties de ces communes qu'une échelle plus petite ne permet pas d'exprimer avec clarté ». *Ibid.*, p. 241. The entire text of that document was appended. See *ibid.*, pp. 241-247. Hereinafter cited as *Procès-verbal* of 1836.

states (18). This treaty confirmed the findings of the commission with respect to the state border between Baarle-Hertog and Baarle-Nassau by stating :

« Arrivée aux dites communes de Baar-le-Duc et Baar-le-Nassau, la limite est interrompue par suite de l'impossibilité de l'établir entre ces deux communes, sans solution de continuité, en présence des dispositions de l'art. 14 du traité du 5 novembre 1842, article dont la teneur suit :

Le statu quo sera maintenu, tant à l'égard des villages de Baar-le-Nassau (Pays-Bas) et Baar-le-Duc (Belgique), que par rapport aux chemins qui les traversent.

Le partage de ces communes, entre les deux royaumes, fait l'objet d'un travail spécial » (19).

2. — *The Present (20th century)*

These remaining issues were tackled in two separate documents. Most of the remaining gap was covered in 1974, by means of a first *procès-verbal* (20) drawn up by a boundary commission especially set up for that purpose during the early 1970s (21). Only the border between the totality of

(18) Convention de limites entre la Belgique et les Pays-Bas, August 8, 1843, *Bulletin Officiel* n° 97, as reprinted in DE BUSSCHERE, A., *supra* note 9, pp. 211-218. Hereinafter cited as Agreement of 1843. Art. 1 of this agreement stated that the frontier, although as a rule established by means of a descriptive minute, was exceptionally determined by way of four maps to a scale of 1/10.000 and two of a scale of 1/2.500 with respect to the communes of Baarle-Nassau and Baarle-Hertog « à l'égard desquelles le statu quo est maintenu, en vertu de l'article 14 du traité du 5 novembre 1842 » (*ibid.*, Art. 1). These maps were annexed to the agreement and were to have, together with the *Procès-verbal* of 1843, the same force and effect as though they had been inserted in their entirety (*ibid.*, Art. 3). This element, as well as the statement that the *Procès-verbal* of 1836 was to be transcribed word for word in the *Procès-verbal* of 1843 (see *supra* note 17 and accompanying text), formed the essence of the above-mentioned case before the International Court of Justice, since a clear discrepancy existed between the text of the original *Procès-verbal* of 1836, which allocated the disputed plots to the Netherlands, on the one hand, and the text, as well as the annexed maps attached to the *Procès-verbal* of 1843, on the other hand. See COCATRE-ZILGIEN, A., « Cour internationale de Justice : Affaire relative à la souveraineté sur certaines parcelles frontalières (Belgique contre Pays-Bas), Arrêt du 20 juin 1959 », 5 *Annuaire Français de Droit International* p. 284, 286 (1959).

(19) Art. 14 para. 5 of the Agreement of 1843, *supra* note 18, pp. 214-215.

(20) Convention fixant les limites entre le Royaume de Belgique et le Royaume des Pays-Bas, signée à Maestricht le 8 août 1843. *Procès-verbal* de délimitation de la frontière entre les Royaumes des Pays-Bas et de Belgique passant entre la commune néerlandaise de Baarle-Nassau et les communes belges de Poppel, Weelde, Baerle-Duc, Turnhout, Baerle-Duc, Merksplas, Baerle-Duc, Wortel, Minderhout, Baerle-Duc, Minderhout et Meerle, à l'exception de toutes les enclaves de la commune de Baerle-Duc, situées à l'intérieur de la circonscription communale de Baarle-Nassau, signé à Turnhout le 26 avril 1974, April 26, 1974, *Moniteur belge* du 5 mars 1975, pp. 2575-2581. The French text is qualified as a translation. Hereinafter cited as *Procès-verbal* of 1974.

(21) For the composition of the Belgian delegation, see Arrêté royal portant désignation des commissaires belges chargés de la délimitation entre la commune néerlandaise de Baarle-Nassau et les communes belges de Poppel, Weelde, Turnhout, Merksplas, Wortel, Minderhout, Minderhout, Meerle et Baerle-Duc, pour autant qu'il s'agisse de la partie de des communes située à proximité de la gare de Weelde, exception faite pour toutes les enclaves de la commune de Baerle-Duc, situées sur le territoire de la commune de Baarle-Nassau, September 17, 1971, *Moniteur belge* du 9 juin 1972, pp. 6853-6855. Also to be inferred from the *Procès-verbal* of 1974,

the Belgian enclaves of Baarle-Hertog on the one hand and Baarle-Nassau on the other remained outstanding, i.e. all parts of Baarle-Hertog not touching Belgian territory (22).

On October 31, 1995 a second, and final, *procès-verbal* was arrived at (23). A newly established Royal Boundary Commission (24) took about one year to finish the job. Not by means of an agreement, but simply, as in 1974, by means of a *procès-verbal* based on the old border agreement of 1843 (25), the provisions of which had not yet been totally exhausted (26).

What the Belga statement was therefore referring to was not the conclusion of a fulfilled inter-state agreement, but simply the signature of a *procès-verbal* by the members of the 1994 Royal Boundary Commission. Nine months later the text of this *Procès-verbal* of 1995 found its way into the *Moniteur belge* (27).

The fact that 29 pages of small print in the *Moniteur belge* proved necessary to publish the agreed settlement indicates the intricacy of the whole issue. In order to divide 249 ha 55 a 25 ca of land, a little bit more than 35 km of frontier had to be fixed and this by means of not less than 960 turning points, resulting in an average segment length of 36.67 meters. For one Belgian enclave, for instance, exceeding by little 1 ha, the average segment length measures not more than 17.29 meters. In none of the enclaves, moreover, the average segment length exceeds 102 meters. Because of this complexity, the members of the 1994 Royal Boundary Commission decided not to apply the regulation accompanying the Agreement of 1843 concerning the placing of frontier markers (28) to this part of

supra note 20, p. 2575. The latter document also contains the composition of the corresponding Dutch delegation (see *ibid.*).

(22) The remaining part of the land boundary having thus been settled by the *Procès-verbal* of 1974. See *supra* note 20.

(23) Convention fixant les limites entre la Royaume de Belgique et le Royaume des Pays-Bas, signée à Maastricht le 8 août 1843. *Procès-verbal* de delimitation de la frontière des enclaves de la commune de Baarle-Duc, situées sur le territoire de la commune de Baarle-Nassau et des enclaves de la commune de Baarle-Nassau, situées sur le territoire de la commune de Baarle-Duc, signé à Baarle le 31 octobre 1995, October 31, 1995, *Moniteur belge* du 26 juin 1996, pp. 17565-17594. Hereinafter cited as *Procès-verbal* of 1995.

(24) For the composition of the Belgian delegation, see Arrêté royal portant désignation des Commissaires belges chargés de la délimitation entre la commune néerlandaise de Baarle-Nassau et les enclaves de la commune de Baarle-Duc, situées sur le territoire de la commune de Baarle-Nassau, December 16, 1994, *Moniteur belge* du 14 février 1995, p. 3301. Also reprinted as annex 2 to the *Procès-verbal* of 1995, *supra* note 23, pp. 17593-17594. The latter document also contains the corresponding Dutch Royal Decree as annex 1. See *ibid.*, p. 17593. Hereinafter cited as 1994 Royal Boundary Commission.

(25) Agreement of 1843, *supra* note 18.

(26) More specifically the last sentence of Art. 14 para. 5, as reprinted *supra* note 19 and accompanying text.

(27) See *supra* note 23.

(28) Règlement arrêté à Maastricht entre les commissaires de Belgique et des Pays-Bas pour l'abornement entre les deux royaumes, August 8, 1843, as reprinted in DE BUSSCHERE, A., *supra* note 9, p. 218.

the state border (29). Not only the prohibitive costs attached to such an operation, but also the material impossibility to erect many of them, because of already existing constructions, were advanced as arguments to deviate from the normal procedure (30). Moreover, contrary to the *Procès-verbal* of 1974, no topographic or geographic description of the boundary accompanied the delimitation, but simply a sequence of numbers which were then defined in the geographic coordinate system of Belgium and the Netherlands respectively.

Also this time, as duly stressed by the Belgian press (31), the territory of Belgium was enlarged, be it to a lesser extent than in 1959 (32). The disputed area in question, called « De Withagen », already figured in the *procès-verbal* of 1836 in which it was stated :

« Door het bestuur der gemeente Baar-le-Hertog wordt beweerd dat in de parcellen nr 302 en 303, 80 roeden plaatselyke maat, behoorende aen de gemeente Baar-le-Hertog, begrepen is en waar van aan hunne zyde de lasten altyd zijn betaald ; deze voordragt tot nog toe niet volkomen bewezen zynde, zoo worden deze parcellen, by het sluiten van dit proces-verbaal, tot nadere justificatie, voor onafgedaan gehouden » (33).

Unlike the 1959 dispute before the International Court of Justice, therefore, this particular issue had clearly been recognized by both parties, as well in 1836 as 1843, as an outstanding problem still to be settled at some later date. More than 130 years later, the above-mentioned 1994 Royal Boundary Commission settled the matter in a definitive manner by agreeing on the following text :

« Le terrain litigieux de 80 perches carrées, situé dans 'De Withagen', actuellement enregistré au cadastre néerlandais comme parcelle entière Baarle-Nassau A 3789 d'une superficie de 26 a 32 ca, tombe sous la souveraineté du Royaume de Belgique et est décrit au procès-verbal comme l'enclave H 22 » (34).

(29) *Procès-verbal* of 1995, *supra* note 23, p. 17566. A somewhat similar provision could already be found in point 2 of the decision of the commission included in the *Procès-verbal* of 1974, *supra* note 20, p. 2575.

(30) *Procès-verbal* of 1995, *supra* note 23, p. 17566. For a picture of a house divided in two by one of these lines, see the internet site mentioned above, *supra* note 7. The reasons advanced in 1974 were however different. Not so much the quantity, but the quality seems to have played a determinant role in 1974 not to construct granite or iron boundary markers, since concrete ones were envisaged. See *Procès-verbal* of 1974, *supra* note 20, p. 2575.

(31) See for instance *Het Volk*, October 31, 1995, under the heading : « België wordt vandaag een half voetbalveld groter » (Belgium increases today by half a soccer field).

(32) By 23 a 32 ca to be precise, i.e. only a small fraction (1.6 %) of the territory gained in 1959. See *supra* note 6 and accompanying text.

(33) *Procès-verbal* of 1836, *supra* note 17, p. 241. This authentic text can be translated as : « The local authorities of the municipality of Baarle-Hertog pretend that in lot number 302 and 303, 80 roods local measure are included belonging to the municipality of Baarle-Hertog for which the duties have always been paid by the latter ; this submission has until now not been completely sustained by evidence, and as a consequence these lots are considered at the time of the drafting of the present *procès-verbal* as unsettled until further justification ».

(34) *Procès-verbal* of 1995, *supra* note 23, p. 17567.

3. — *The Future (21st Century)*

Whether the fixing of the state frontier between Baarle-Hertog and Baarle-Nassau secures the former a bright future well into the 21st century remains to be seen. Indeed, about the time the frontier was definitively settled in 1995, Baarle-Hertog rang the alarm bell concerning the proposal of the government in the Hague, to join certain Dutch municipalities in the area, including Baarle-Nassau (35). With only 2072 and 5900 inhabitants respectively, one may not forget the practical difficulties encountered by such small entities under present day circumstances (36). If Baarle-Nassau loses its identity, it is feared that the situation for Baarle-Hertog will become untenable. This may explain the recent initiative of the Belgian and Dutch Ministers of Internal Affairs, together with the governor of the Belgian province of Antwerp, to try to institutionalize the cross-border cooperation between the two municipalities by means of the establishment of a workgroup within the framework of the BENELUX Economic Union (37).

III. — THE MARITIME BOUNDARY (38)

On November 18, 1996, after seven rounds of negotiations held between November 1994 and May 1996 alternatively in Brussels and The Hague, the Ministers for Foreign Affairs of Belgium and the Netherlands signed two separate agreements, one on the delimitation of the territorial sea (39) and one on the delimitation of the continental shelf (40). The authentic text

(35) See for instance the articles in the *Gazet van Antwerpen* of September 30, 1995, entitled « Vechten voor Baarle » (To fight for Baarle) and of October 16, 1995, entitled « Help, minister-president » (Help, Minister-President).

(36) *De Standaard Magazine*, August 18, 1995, pp. 2, 5-6. Baarle-Hertog is not only one of the smallest municipalities of Belgium, it is also one of the poorest running its day-to-day affairs with a considerable deficit.

(37) See *Moniteur belge* du 3 février 1998, p. 3078.

(38) This part is based on a previously published article by the present author in the French language : « La frontière maritime récemment établie entre la Belgique et les Pays-Bas », 2 *Annuaire du Droit de la Mer* 1997 pp. 117-159 (1998).

(39) Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation de la mer territoriale, December 18, 1996, as reprinted in the *Moniteur belge* du 19 juin 1999, p. 23151 and the *Moniteur belge* du 3 septembre 1999, pp. 32843-32845 containing an erratum. The latter concerned two charts on the territorial sea boundary which, apparently by omission, were left out of the earlier publication. This agreement entered into force on January 1, 1999. Hereinafter cited as 1996 Territorial Sea Agreement.

(40) Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation du plateau continental, December 18, 1996, as reprinted in the *Moniteur belge* du 19 juin 1999, pp. 23150 and 23152-23153. This agreement entered into force on January 1, 1999. Hereinafter cited as 1996 Continental Shelf Agreement.

of these agreements can be found in annex (41). Both agreements were moreover accompanied by an Exchange of Notes of the same date, which were also appended to the present article (42).

The primary objective of this part is to take a closer look at the different elements which caused this dispute to remain on the bilateral agenda for such a long time (section 3) and especially to analyze the manner in which both parties were able to settle these differences by means of the 1996 Territorial Sea Agreement and the 1996 Continental Shelf Agreement (section 4).

In order to do so, the regional context in which both agreements have to be understood will be addressed first (section 1). Subsequently, the bilateral prolegomenae will be focused upon. After having mentioned the previous diplomatic initiatives in this respect, relevant municipal enactments of both countries will be highlighted. This section will conclude by looking at the position defended by both countries at the occasion of international conferences which addressed the delimitation issue (section 2), followed by some conclusions (section 5).

1. — *Regional Context*

These agreements fill in the last remaining sizeable gap in the North Sea delimitation (43). If the North Sea proper is taken as point of

(41) Since only the Dutch and French languages have been retained as authentic, as indicated by the concluding formula of both texts, the latter has been reprinted, respectively in annex 1 (territorial sea) and annex 2 (continental shelf).

(42) Since only Dutch versions of this Exchange of Notes have been included in the different parliamentary documents, this Dutch version has been reproduced together with a French translation by the present author. See annex 3 (territorial sea) and annex 4 (continental shelf) respectively.

(43) For an authoritative analysis of all the delimitation agreements concluded so far in this region, see the writings of D. ANDERSON, as assisted by C. CARLETON, in the standard work, initiated by a large-scale project of the American Society of International Law : *International Maritime Boundaries* (CHARNEY, J. & ALEXANDER, L., eds.), 3 Vols., Dordrecht, Martinus Nijhoff, 2616 pp. (1993-1998). Hereinafter cited as *International Maritime Boundaries*. Besides the analysis of each and every single maritime boundary delimitation agreed upon so far in the North Sea (*ibid.*, pp. 1709-1912 and 2463-2525), which always includes the text of the agreement itself, also regional overviews can be found of an area described as « Northern and Western Europe » (*ibid.*, pp. 331-343 and 2527-2536), which covers the Atlantic Ocean from the Strait of Gibraltar in the South to the Varangerfjord in the North, thus including besides the North Sea also the Norwegian Sea and part of the Barents Sea. Since the text of all agreements covered by the present article can be found in this work, except for the 1996 Territorial Sea Agreement and 1996 Continental Shelf Agreement for which negotiations were still in progress at the time the third volume went to press (see ANDERSON, D., « Northern and Western Europe : Update », in *International Maritime Boundaries*, *supra*, p. 2527, 2527) and which have been reproduced in annexes 1 and 2, the present article normally cites other, more traditional sources when referring to these agreements. Only some minor disputes remain at present. See *infra* note 240.

reference (44), Belgium was mainly responsible for the absence of any lines in the southeastern part of the North Sea until the early 1990s (45). This contrasted sharply with the advanced stage of maritime delimitation arrived at in the area as a whole (46). Not that the latter had been completely delimited, for the region was characterized by a complete absence of fishery or exclusive economic zone boundaries (47). But as far as continental shelf boundaries were concerned, and to a lesser extent territorial sea boundaries, an almost complete picture of the interstate maritime boundaries in the North Sea could be drawn on the condition, as indicated above, that Belgium was left out of it.

This situation changed quickly during the early 1990s. On October 8, 1990, two delimitation agreements were concluded between Belgium and France : One relating to the territorial sea (48) and another one relating to

(44) The North Sea is defined for the purposes of this study as the area comprised by 62° North, Skagerrak and the English channel east of longitude 0° 30' West. This definition coincides with the one adopted by the International Conferences on the Protection of the North Sea (see point I (1) of the Annex to the Declaration of the International Conference on the Protection of the North Sea, Bremen, November 1, 1984, as reprinted in *The North Sea : Basic Legal Documents on Regional Environmental Co-operation* (FREESTONE, D. & IJLSTRA, T., eds.), Dordrecht, Graham & Trotman, p. 78 (1991)), except that the southern limit has been changed from 5° West (which includes most of the English Channel) to 0° 30' West (which excludes the English Channel as such, but includes the Straits of Dover). This amendment appears to be justified from a maritime delimitation point of view, since the latter has served as cut off point in the delimitation practice between France and the United Kingdom. See the 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., FRAN-CALANCI, 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.

(45) If with respect to the territorial sea, where half of the boundaries in the North Sea still remained to be settled, Belgium was joined by the Netherlands in this respect (see FRANCKX, E., « Maritime Boundaries and Regional Co-operation », in *The North Sea : Perspectives on Regional Environmental Co-operation* (FREESTONE, D. & IJLSTRA, T., eds.), London, Graham & Trotman, p. 215, 221 (1990)), this country was all by itself responsible for the remaining gaps in the continental shelf delimitation (*ibid.*, p. 222). A quick glance at a map depicting the maritime boundaries relating to the North Sea around that time period will suffice. See *ibid.*, p. 223.

(46) To the extent that one author even wrote : « [I] 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 ». See RUFINO, G.d'A., « Délimitation maritime en droit international », 6 *Espaces et Ressources Maritimes*, 1992 p. 85, 91 (1993).

(47) FRANCKX, E., « EC Maritime Zones : The Delimitation Aspect », 23 *Ocean Development and International Law Journal* p. 239, 245 (1992): This was a thematic issue concerning the European Communities and the notion of exclusive economic zone.

(48) Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation de la mer territoriale, October 8, 1990, as reprinted in the *Moniteur belge* du 1^{er} décembre 1993, pp. 25733-25735. This agreement entered into force on April 7, 1993. For an English translation, see for instance 19 *Law of the Sea Bulletin* pp. 27-28 (October 1991).

the continental shelf (49). Less than a year later, Belgium was also able to settle its maritime boundary with the United Kingdom (50). It does not lie in the intention of the present paper to analyze these three agreements in any detail. This has already been done by the present author elsewhere (51). The same holds true for the subregional North Sea state practice of the countries surrounding Belgium (52), which has remained unchanged since the early 1990s.

Only one particular aspect of these three agreements concluded by Belgium during the early 1990s will be briefly mentioned at present, since it bears directly upon the 1996 Continental Shelf Agreement. It concerns the explicit mentioning of the continental shelf delimitation between Belgium and the Netherlands in an Exchange of Notes (53) which accompanied the 1991 Belgium-United Kingdom Agreement (54). By means of this Exchange of Notes both parties agreed that the northern terminal point of their agreement (55) could later be changed, within certain well-specified limits, as a result of the negotiations still to be conducted between Belgium and the Netherlands. By means of this rather unique method to

(49) Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation du plateau continental, October 8, 1990, as reprinted in the *Moniteur belge* du 1^{er} décembre 1993, pp. 25730-25733. This agreement entered into force on April 7, 1993. Hereinafter cited as 1990 Belgium-France CP Agreement. For an English translation, see for instance 19 *Law of the Sea Bulletin* pp. 29-30 (October 1991).

(50) 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, as reprinted in the *Moniteur belge* du 1^{er} décembre 1993, pp. 25727-25728. This agreement entered into force on May 14, 1993. Hereinafter cited as 1991 Belgium-United Kingdom Agreement.

(51) FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », 25 *Revue Belge de Droit International* pp. 390-447 (1992/2). For a more concise general overview of these agreements, see by the same author, « Belgium and the Law of the Sea », in *The Law of the Sea : The European Union and its Member States* (TREVES, T., ed.), The Hague, Martinus Nijhoff, pp. 37, 72-75 (1997).

(52) FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, pp. 399-406. The main conclusions reached at that time were first of all that special emphasis was placed on the delimitation of the continental shelf. The territorial sea only received attention at a much later stage. Fishery or exclusive economic zone boundaries were even totally absent. This subregional practice fitted perfectly well in the broader North Sea practice, of which a crucial feature appeared to be the gradual change after the decision of the International Court of Justice in 1969 with respect to the delimitation of the continental shelf in the North Sea (North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark ; Federal Republic of Germany/The Netherlands), 1969 *I.C.J. Reports* 3 ; hereinafter cited as North Sea Continental Shelf Cases) from strict equidistance to equitable principles other than equidistance.

(53) For the text of this Exchange of Notes see FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, pp. 446-447. Hereinafter cited as Exchange of Notes of 1991.

(54) 1991 Belgium-United Kingdom Agreement, *supra* note 50.

(55) This point, of which the coordinates are 51° 48' 18" Latitude North and 2° 28' 54" Longitude East, was already agreed upon in the bilateral continental shelf agreement between the Netherlands and the United Kingdom. See Art. 1, Point 1 of the 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.

settle tri-points (56), the United Kingdom agreed beforehand that it would accept any new terminal point that Belgium would be able to obtain from the Netherlands for as long as its own position was not prejudiced. The latter was ensured by including the requirement in the Exchange of Notes that the new terminal point had to be located somewhere on the line agreed upon in 1965 between the United Kingdom and the Netherlands (57).

As a result of these three agreements, the maritime delimitation map of the North Sea area was further completed (58). At that time, the Belgian Minister for Foreign Affairs expressed his clear intention of finishing the job (59), with exploratory talks scheduled for the month of October 1992 (60). As indicated below, one had nevertheless to wait for two more years for real negotiations to start.

2. — *Bilateral Context*

Before moving into the substance of the recently concluded maritime delimitation agreements between Belgium and the Netherlands, it appears appropriate to have a closer look at the past practice of both states with respect to this specific issue. This can be inferred from the way in which municipal legislation was actually drafted over the years as well as from the position taken by both countries during international conferences addressing this very topic. At the same time it should be remembered that the negotiations between Belgium and the Netherlands leading up to the present agreements, and which started in 1994, were preceded by similar bilateral talks which were initiated during the 1960s. Because of its highly relevant nature, the latter point will be addressed first.

(56) Indeed, the procedure followed in this Exchange of Notes does not appear to fit under any of the different methods which can be distinguished in the international practice of states with respect to the manner in which third state interests are usually taken care of in the conventional delimitation process between two parties. See COLSON, D., « The Legal Regime of Maritime Boundary Agreements », in *International Maritime Boundaries*, *supra* note 43, pp. 41, 61-63.

(57) Or as stated in the Exchange of Notes : « Belgium undertakes that such a modification will not prejudice the acquired rights of the United 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 ». See Exchange of Notes of 1991, *supra* note 53.

(58) See for instance the map reproduced in *International Maritime Boundaries*, *supra* note 43, p. 343. The third volume, which appeared in 1998, does not require any amendments or changes to this map published in 1993 as far as the North Sea proper is concerned, as defined for the purpose of the present study (see *supra* note 44).

(59) *Bul. Q.R. Sénat* No. 15, p. 613 and No. 17, pp. 703-704 (1991-1992).

(60) *Ibid.* See also *De Morgen*, August 2, 1992.

A) *Early bilateral negotiations (1960 onwards)*

The entry into force of the 1958 Geneva Convention on the Continental Shelf (61) not only triggered a first wave of delimitation agreements in the North Sea (62) trying to consolidate this multilateral agreement in the region (63), but also resulted in the fact that negotiations to that extent were started with a country like Belgium which, as it turned out later, did not even participate in this first wave.

The United Kingdom, for instance, proposed negotiations with all of its neighbors in 1964, including Belgium (64). Unsuccessful diplomatic exchanges took place in 1965 and the early 1970s (65). The former remained inconclusive because Belgium was still shaping its policy at the time (66), the latter was suspended despite the good progress made mainly because of new developments in international law (67) as well as the fact that the Belgian-French border should logically be settled first (68).

More important for this study is of course that similar talks were started between Belgium and the Netherlands in 1965, resulting in a draft agreement based on the principle of equidistance (69). Special about this draft agreement is that its substance, i.e. the list of coordinates relied upon by the parties in that document, was made public during the proceedings of the North Sea Continental Shelf Cases before the International Court of

(61) 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.

(62) ANDERSON, D., « Northern and Western European Maritime Boundaries », in *International Maritime Boundaries*, *supra* note 43, pp. 331, 333-334.

(63) OXMAN, B., « Political, Strategic, and Historical Considerations », in *International Maritime Boundaries*, *supra* note 43, p. 3, 10.

(64) ANDERSON, D., « Belgium-United Kingdom (Report Number 9-17) », in *International Maritime Boundaries*, *supra* note 43, p. 1900, 1902. See more generally by the same author « Maritime Delimitation : A View of British Practice », in 12 *Marine Policy* p. 231, 234 (1988).

(65) ANDERSON, D., « Belgium-United Kingdom (Report Number 9-17) », *supra* note 64, pp. 1901 and 1902.

(66) Belgium, which had no intention of ratifying the 1958 Continental Shelf Convention, only enacted proper legislation on the subject in 1969. See *infra* note 77.

(67) The 1969 decision of the International Court of Justice in the North Sea Continental Shelf Cases (see *supra* note 52) can be mentioned in this respect, together with the preparation of the most recent United Nations Conference on the Law of the Sea (hereinafter cited as UNCLOS) which opened its doors in 1973 and lasted until 1982. The latter, as it turned out, had a profound impact on the issue.

(68) Exposé des motifs, *Doc. parl.* Chambre No. 709/1, p. 2 (1992-1993).

(69) Hereinafter cited as 1965 Draft Agreement. See GAUTIER, Ph., « Le plateau continental de la Belgique et sa délimitation : Quelques réflexions sur la notion d'accord implicite », in *Colloque sur la Belgique et la nouvelle Convention des Nations Unies sur le droit de la mer* (SALMON, J. & FRANCKX, E., eds.), 30 Collection de droit international (Centre de droit international — Université Libre de Bruxelles & Centrum voor Internationaal Recht — Vrije Universiteit Brussel ; Actes de la journée du 25 novembre 1994), Bruxelles, Bruylant, p. 108, 110 (1995).

Justice (70). Since the Netherlands wanted to rely upon this draft agreement to strengthen their argument that the principle of equidistance, as incorporated in Art. 6 of the 1958 Continental Shelf Convention did reflect customary law, permission was requested to communicate the content of this agreement to the Court. The Belgian side replied that it had no objections, but stated that the draft agreement could only be signed after the Belgian Parliament would have given its consent (71).

Even though the municipal legislation on the continental shelf was enacted shortly afterwards, the agreement was never signed (72) and there came something of a lull in these negotiations caused by the same developments in international law which had stalled the Belgo-British diplomatic exchanges on the subject (73).

B) *Related law in force*

The following paragraphs intend to highlight those elements of municipal law that are relevant from a delimitation point of view. Especially the position of Belgium will be analyzed in some detail. Indications will also be provided with respect to the Dutch state practice in this respect. Finally, it will be demonstrated that despite these legislative attempts, on the field the greatest confusion continued to reign.

a) *Belgium (74)*

Three texts deserve special attention in this respect, namely the law fixing the breadth of the territorial sea of 1987 (75), the law relating to the

(70) 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 North Sea Continental Shelf Cases, 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.

(71) *Ibid.*

(72) The reservations concerning the Wielingen (about this issue see *infra* note 159 and accompanying text), which the government of the Netherlands had apparently attached to this draft agreement, proved unacceptable to Belgium. See *infra* note 222 and the further references to be found there.

(73) See *supra* note 67.

(74) Reference can first of all be made to a similar section concerning Belgium in a previous article by the present author: See FRANCKX, E., « Maritime Boundary Agreements: The Case of Belgium », *supra* note 51, pp. 406-415. For a more general, as well as more recent analysis of Belgian state practice with respect to the law of the sea, see FRANCKX, E., « Belgium and the Law of the Sea », *supra* note 51, pp. 37-96.

(75) Loi fixant la largeur de la mer territoriale belge, October 6, 1987, *Moniteur belge* du 22 octobre 1987, p. 15290. Hereinafter cited as 1987 Law on the Territorial Sea. For an analysis, see FRANCKX, E., « Belgium Extends its Territorial Sea up to 12 Nautical Miles », 20 *Revue Belge de Droit International* pp. 41-71 (1987/1) and by the same author « De Belgische wetgeving ter uitbreiding van de territoriale zee en de interne rechtsorde » (The Belgian Enactment Concerning the Extension of the Territorial Sea and the Municipal System of Law), 51 *Rechtskundig Weekblad* pp. 729-743 (1987-88). The original French text of this enactment can also be found

establishment of a fishing zone of 1978 (76) and the law on the Belgian continental shelf of 1969 (77). In view of respecting the chronological order, the continental shelf will be addressed first, followed by the fishing zone and subsequently the territorial sea.

Belgium never adhered to the 1958 Continental Shelf Convention because this country had fundamental objections to the open-ended definition contained in that document which could possibly have a negative impact on the Belgian fishing interests in sedentary species (78). Belgium rectified this shortcoming by including a very concrete delimitation article in its 1969 Law on the Continental Shelf :

« 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 » (79).

Some commentators have labeled this article as having been derived from the 1958 Continental Shelf Convention (80), a point of view totally in line with the obvious desire of the Belgian *Conseil d'État* at that time to

in 11 *Bulletin du Droit de la Mer* p. 13 (juillet 1988) and Nations Unies, *Droit de la mer : Evolution récente de la pratique des États N° 2*, New York, Nations Unies, Bureau des affaires maritimes et du droit de la mer (n° de vente F.89.V.7), p. 1 (1990).

(76) Loi portant établissement d'une zone de pêche de la Belgique, October 10, 1978, *Moniteur belge* du 28 décembre 1978, pp. 15992-15993. Hereinafter cited as 1978 Law on the Fishing Zone.

(77) Loi sur le plateau continental de la Belgique, June 13, 1969, *Moniteur belge* du 8 octobre 1969, pp. 9479-9480. Hereinafter cited as 1969 Law on the Continental Shelf. 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).

(78) As expressed by the government on different occasions : Exposé des motifs, *Doc. parl. Chambre* No. 471-1, pp. 1-2 (1966-1967), relating to the adoption of the 1969 Law on the Continental Shelf (*supra* note 77), and Exposé des motifs, *Doc. parl. Chambre* No. 750-1, pp. 1-2 (1969-1967), relating to the accession of Belgium to all of the 1958 Geneva conventions on the law of the sea with the exception, as just mentioned, of the 1958 Continental Shelf Convention. See 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, July 29, 1971, *Moniteur belge* du 2 février 1972, pp. 1246 et s.

(79) Art. 2 of the 1969 Law on the Continental Shelf, *supra* note 77, p. 9479.

(80) SMETS, P.-F., *supra* note 77, pp. 283-285.

have these two texts correspond as much as possible (81). Nevertheless, it cannot be denied that fundamental differences do remain, such as, first of all, the downgrading of the rule that delimitations are to be effected by agreement to a mere exception (82), and secondly the total absence of any reference to the special circumstances exception, resulting in an upgrading of the equidistance rule way beyond the conventional terms of 1958 (83).

This blind reliance on the principle of equidistance found its ultimate exposition in the 1978 Law on the Fishing Zone, which stated :

« 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 » (84).

This time even the possibility to deviate from the equidistance principle by means of concluding bilateral agreements on the subject disappeared, something which had already been downgraded to the rank of exception by the 1969 Law on the Continental Shelf (85). Moreover, an annex which accompanied the parliamentary documents relating to this law specified the outer limits of this Belgian fishery zone by means of coordinates. It stated :

« Le schéma ci-joint délimite la zone de pêche telle qu'elle est définie à l'article 1 (86) du projet de loi en fonction des points géographiques mentionnés ci-dessous ... » (87).

A close scrutiny of the eight coordinates listed with respect to the Dutch boundary, indicates that these coordinates are identical to the ones contained in the 1965 Draft Agreement on the delimitation of the continental shelf between Belgium and the Netherlands, which itself was based on the principle of equidistance (88).

When the negotiations leading up to the present agreements started during the middle of the 1990s, Belgium claimed a 12 n.m. territorial sea based on legislation adopted a few years earlier (89). This very brief 1987 law,

(81) Avis du Conseil d'État, *Doc. parl.* Chambre No. 471-1, pp. 4-7 (1966-1967). Concerning the remarks made by this body with respect to the delimitation provision, see more specifically p. 5.

(82) As remarked by VALLÉE, Ch., *Le plateau continental dans le droit positif actuel*, Paris, Pédone, p. 190 (1971), who, after having analyzed the 1969 Law on the Continental Shelf in some detail, draws attention to the fact that the specific hierarchy to be found in the Convention was not retained in the municipal law.

(83) FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, pp. 409-410. This strict interpretation was moreover explicitly endorsed by the Belgian government at different occasions later on. See *ibid.*, p. 410.

(84) Art. 1 of the 1978 Law on the Fishing Zone, *supra* note 76, p. 5992.

(85) See *supra* note 83 and accompanying text.

(86) This definition has been reproduced *supra* note 84 and accompanying text.

(87) Rapport fait au nom de la Commission des affaires étrangères et de la coopération au développement, *Doc. parl.* Chambre No. 263-2, p. 3 (1977-1978).

(88) See *supra* note 70, as well as the text following that note.

(89) 1987 Law on the Territorial Sea, *supra* note 75 and further references to be found there.

which counts only two articles, does not contain a delimitation provision. But it is interesting to note that the original draft proposed by the government did include such a clause (90). Indeed, the original Art. 2 stated that lateral delimitation agreements would be concluded to this effect. When compared with the respective provisions of the continental shelf (91) and fishery zone legislation (92), with their heavy emphasis on the equidistance principle, one cannot but mark the totally new course this territorial sea enactment intended to follow by simply stating that agreements would have to be concluded without making any reference whatsoever to the method to be followed when doing so.

The Belgian *Conseil d'État* was of the opinion that the clause, in its proposed form, was redundant because it lacked a clear legal content, unless the executive intended to request an anticipated approval from the legislator. If the latter had indeed been the intention of the government, the text, according to the *Conseil d'État*, should rather be drafted in the following manner :

« 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, produisent leur plein et entier effet à la date que le Roi fixe » (93).

Based on these suggestions, the government redrafted the article concerned to read :

« 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 (94) ».

The omission of « à la date que le Roi fixe » was the only instance where the comments of the *Conseil d'État* were not duly incorporated in the government draft presented to Parliament. This was explained by the fact that the government draft made use of a standard formula, normally relied upon in similar circumstances. Moreover, from an international legal perspective, the date of the entry into force of bilateral agreements is never determined by one of the parties alone (95).

These documents were then submitted to the House of Representatives. This time, however, it were the members of the Foreign Affairs Commission of the House of Representatives who raised fundamental objections to the article in question, changed according to the remarks suggested by the *Conseil d'État*, since the constitutional prerogatives of the legislator would be

(90) See FRANCKX, E., « Belgium Extends its Territorial Sea up to 12 Nautical Miles », *supra* note 75, pp. 55-56 where the full text of this original draft is reproduced.

(91) See *supra* note 79 and accompanying text.

(92) See *supra* note 84 and accompanying text.

(93) Avis du Conseil d'État, *Doc. parl.* Chambre No. 653/1, p. 3 (1986-1987).

(94) Projet de loi, *Doc. parl.* Chambre No. 653/1, p. 5 (1986-1987).

(95) Exposé des motifs, *Doc. parl.* Chambre No. 653/1, p. 1, 2 (1986-1987).

impaired by it. Based upon Art. 68, para. 3 of the Constitution, which requires that all territorial boundaries be fixed by law, i.e., by Parliament (96), the argument was developed that the proposed article would empower the executive to do that all by itself (97).

Even though the cogency of such argumentation can be questioned (98), the government accepted this reasoning and withdrew the article concerned, making the draft even shorter than it already was (99).

b) *The Netherlands* (100)

If one tries to look for similar relevant legislative provisions in the Netherlands, a great similarity exists when compared with the Belgian situation just discussed. The present overview will therefore focus on three legislative enactments: The law extending the territorial sea from 3 to 12 nautical miles (n.m.) (101), the law relating to the establishment of a fishing zone (102) and the law on continental shelf mining (103). It will be noted that the timing of these enactments corresponds roughly with the respective Belgian legislation mentioned above. The chronological order, as a consequence, coincides as well.

Contrary to Belgium, the Dutch law on continental shelf mining does not include a delimitation provision. Also contrary to the Belgian position, the Netherlands did ratify the 1958 Continental Shelf Convention (104). In the context of the latter convention, the Dutch position with respect to the delimitation method was somewhat clarified since this country objected to all declarations and reservations made by countries elaborating on the

(96) This article is identical to the corresponding provision (Art. 167 §1 *in fine*) of the recently co-ordinated Constitution and reads: « Nulle cession, nul échange, nulle adjonction de territoire, ne peut avoir lieu qu'en vertu d'une loi ». Coordinated Constitution of February 17, 1994, *Moniteur belge* du 17 février 1994, p. 4054, 4107.

(97) Rapport fait au nom de la Commission des relations extérieures, *Doc. parl. Chambre* No. 635/2, p. 2 (1986-1987).

(98) FRANCKX, E., « Belgium Extends its Territorial Sea up to 12 Nautical Miles », *supra* note 75, pp. 61-63.

(99) *Ibid.* Art. 2 was deleted and the former, and final Art. 3 became the new Art. 2.

(100) For a recent analysis of Dutch state practice with respect to the law of the sea, see DOTINGA, H. & SOONS, A., « The Netherlands and the Law of the Sea », in *The Law of the Sea: The European Union and its Member States*, *supra* note 51, pp. 365-426.

(101) *Wet grenzen Nederlandse territoriale zee* (hereinafter cited as Netherlands Territorial Sea Demarcation Act), January 9, 1985, *Staatsblad (Moniteur)* No. 129 (1985).

(102) *Besluit instelling visserijzone* (hereinafter cited as Decree on the Establishment of a Fishing Zone), November 23, 1977, *Staatsblad (Moniteur)* No. 665 (1977). The enabling legislation had been passed a few months earlier. See *Machtigingswet instelling visserijzone* (hereinafter cited as Enabling Legislation for the Establishment of a Fishing Zone), June 8, 1977, *Staatsblad (Moniteur)* No. 345 (1977).

(103) *Mijnwet continentaal plat* (hereinafter cited as Continental Shelf Mining Act), September 23, 1965, *Staatsblad (Moniteur)* No. 428 (1965).

(104) Namely on February 18, 1966, i.e. a few months after the adoption of the Continental Shelf Mining Act.

« special circumstances » element included in its Art. 6 (105), while remaining silent on those stressing the equidistant aspect to be found in that same article (106).

The 1977 fisheries legislation, on the other hand, did include a delimitation provision according to which the outer limits of that zone should be established by agreement (107). With respect to the delimitation agreements already concluded by this country, the Decree itself added that outer limits of the Dutch fishery zone would coincide with these continental shelf boundaries (108).

Finally, the 1985 law extending the Dutch territorial sea to 12 n.m. relied on an identical provision as the fisheries legislation to determine the lateral boundaries of this extended zone, namely by agreement (109). Salient feature of this legislation (110) is the inclusion, besides a standard provision on the baselines from which the territorial sea is to be measured (111), of a special one demarcating for purposes of the application of Dutch law the boundary between the internal waters and the territorial sea of the Netherlands (112). If the former clearly has an international character, the field of operation of the latter, on the other hand, seems to be aimed primarily at the municipal level. But this interpretation, which would deny any effect to the Scheldt estuary closing line (113) from a delimitation point of view, is far from evident taking into account the con-

(105) This country thus objected to the French declaration, restricting the application of the principle of equidistance while at the same time indicating certain areas along its coast where, according to the French government, special circumstances were present. Neither could the Netherlands accept the Iranian reservation extending the application of the special circumstances rule to the possible application of the high water mark in delimitation disputes. It finally acted likewise with respect to the declaration made by Venezuela which also indicated certain areas where special circumstances had to be taken into consideration. As accessible on Internet at « <http://www.un.org/Depts/Treaty/final/ts2/newfiles/part-boo/xxi-boo/xxi-4.html> » on February 4, 1999.

(106) No objections were lodged with respect to the Chinese declaration which, *inter alia*, stated that exposed rocks and islets shall not be taken into consideration, i.e. shall not be considered as special circumstances. Also the reservation of former Yugoslavia, which outright stated that this country did not recognize any special circumstances was not objected. See *ibid.*

(107) Art. 3 of the Enabling Legislation for the Establishment of a Fishing Zone, *supra* note 102.

(108) Art. 1 of the Decree on the Establishment of a Fishing Zone, *supra* note 102.

(109) Art. 3 (1) of the Netherlands Territorial Sea Demarcation Act, *supra* note 101.

(110) On this point see also FRANCKX, E., « Belgium Extends its Territorial Sea up to 12 Nautical Miles », *supra* note 75, pp. 69-70.

(111) Art. 1 of the Netherlands Territorial Sea Demarcation Act, *supra* note 101.

(112) *Ibid.*, Art. 2.

(113) *Ibid.*, Art. 2 (2)(a). The line in question is drawn between a point where the eastern extremity of the land boundary reaches the low-water line along the coast on the one hand, and the Molenhoofd lighthouse on the isle of Walcheren on the other. For a visual perception, see map 1.

tradiictory signals given by the *travaux préparatoires* of this enactment (114) as well as Dutch doctrine (115). It is also interesting to note, for instance, that these straight lines found their way into an atlas compiling all straight baselines around the world deemed relevant for the external relations of that particular country (116). The Netherlands also submitted these same straight lines for inclusion in a similar United Nations publication (117).

c) *Evaluation*

When trying to generalize the respective positions of both states as based on municipal enactments, a superficial browsing of these national legislative acts could easily lead to the conclusion that both countries nowadays hold similar positions, since delimitation of their maritime zones has to be achieved by means of agreement. However, a closer analysis reveals that Belgium rather stresses the element of arriving at an equitable

(114) The Dutch *Conseil d'État* indicated that it would be desirable to clarify in the Explanatory Memorandum the relationship between these so-called municipal and international baselines (see Annex to the Proceedings of the Second Chamber, 1982-1983 — 17.654 B, p. 1). The Minister for Foreign Affairs, however, elucidated this point simply by implying that the municipal baseline was established according to the principles to be found in the 1958 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) which only confused the matter even further (see Annex to the Proceedings of the Second Chamber, 1982-1983 — 17.654 C, p. 4). Moreover the Dutch government inserted in an Explanatory Memorandum to an earlier bill regulating the title to the territorial seabed, and this in a paragraph dealing with the international baseline, that the Netherlands has always applied a bay regime to the Western Scheldt by means of a straight closing line across its mouth (see Annex to the Proceedings of the Second Chamber, 1979-1980 — 15.819, No. 3, p. 4).

(115) DE JONG, H., « Extension of the Territorial Sea of the Kingdom of the Netherlands », 30 *Netherlands International Law Review* p. 129, 142 (1983), who specifically refers to Art. (2)(a) when discussing the delimitation question with respect to Belgium. But see DOTINGA, H. & SOONS, A., *supra* note 100, p. 368, who state in general that these municipal straight lines « are not to be regarded as proper 'straight baselines', since they have no effect on the outer limit of the territorial sea because of the presence of low-tide elevations seaward of the straight lines. They merely intend to demarcate the boundary between the territorial sea and the internal waters of the Netherlands for the purpose of the application of national legislation ». This line of argument, which was already put forward by the government in its Explanatory Memorandum with respect to Art. 2 (see Annex to the Proceedings of the Second Chamber, 1982-1983 — 17.664 B, p. 9) is however a most curious one. With respect to the Scheldt closing line it should indeed be stressed that the low-tide elevation of Rassen does not totally cover the possible effects generated by this particular closing line. See *infra* note 172 and accompanying text.

(116) *Atlas of Straight Baselines* (SCOVAZZI, T., FRANCALANCI, G., ROMANO, D. & MONGARDINI, S., eds.), Milano, Giuffrè Editore, pp. 174-175 (2nd ed., 1989). About the choice of the states to be included see p. VI, where it is however also stated that the inclusion in the Atlas does not imply any conformity with the relevant rules of international law or the absence of protests from other states. As a consequence, no judgement as to their legality is implied.

(117) United Nations, *The Law of the Sea-Baselines : National Legislation With Illustrative Maps* (U.N. Pub. Sales No. E.89.V.10), New York, United Nations, Office for Ocean Affairs and the Law of the Sea, pp. 232-234 (1989). In the introduction (see p. v) one can read : « The publication of this legislation does not imply that it is necessarily consistent with the Convention nor does it imply recognition by the United Nations of the validity or otherwise of the actions and decisions in question ».

solution in this process (118), whereas the Netherlands places the emphasis on the principle of equidistance.

Striking about the contemporary Belgian position is of course that, as far as the continental shelf and the fishery zone is concerned, the latter is apparently contradicted by municipal legislation, still in force, which fixed the outer limit of these zones, based on strict equidistance, by means of providing the exact co-ordinates of eight turning or terminal points (119). Such a policy of sending out contradictory signals at one and the same time cannot but have created a rather confused picture for the outside world (120).

But also the Dutch legislative provisions on the subject proved to contain a considerable amount of ambiguity. As if willingly planned to clarify this particular situation, the *Attican Unity*, using the West Hinder traffic separation scheme in front of the Belgian coast to reach the entrance of the river Scheldt, ran aground in the immediate vicinity north of the terminal point of the land border on August 25, 1977. Crucial element in the civil case before the Dutch courts was to know whether the ship and the salvors had disregarded a definitive order from Vlissingen Radio to maintain position at a particular moment in time. This order had been given when the ship had already reached a position east of the Scheur-Wielingen buoy. The Dutch government was of the opinion that the ship was still outside the area over which the Netherlands exercises management competence with respect to shipping when the order was given. This point of view was contested by the defendant. The appeal court in the Hague rejected the claim

(118) The recently concluded continental shelf delimitations with France and the United Kingdom both contain a somewhat similar sentence in their preamble which refers to the achievement of an equitable solution. The former states : « 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 » (see 1990 Belgium-France CP Agreement, *supra* note 49). The latter uses the following words : « [T]aking full account of the current rules of international law on international boundaries in order to achieve an equitable solution » (see 1991 Belgium-United Kingdom Agreement, *supra* note 50). The agreement with France moreover repeats this fact in its Art. 2 which states : « Les points ci-dessus définis résultent de la recherche d'une solution équitable... » (See 1990 Belgium-France CP Agreement, *supra*).

(119) As already mentioned above (see *supra* notes 86-88 and accompanying text), it was by means of an annex to the 1978 Law on the Fishing Zone that these co-ordinates found their way, not into the law, but into the Belgian parliamentary documents. Because they appeared to be a mere copy of the co-ordinates contained in the 1965 Draft Agreement on the delimitation of the continental shelf, it could moreover possibly be considered an indication that these same points were also supposed to indicate the outer limit of the Belgian continental shelf.

(120) See for instance REYNAUD, A., *Le plateau continental de la France*, Paris, Librairie Générale de Droit et de Jurisprudence, pp. 231-232 (1984), who, writing at a moment in time when Belgium had already changed its position as demonstrated above, states : « La Belgique n'est pas partie à la Convention de Genève mais elle accepte le principe de l'équidistance en vertu de sa législation interne ».

of the Dutch government at the end of 1993 (121). Based on testimony by witnesses, including Dutch as well as Belgian officials, the court was confronted with no less than five different maritime boundary lines. Some were based on equidistance, one on the prolongation of the land boundary, and still others on the practical experience of the people in the field responsible for salvage operations who followed one particular line or another, sometimes based on technical correspondence between Dutch and Belgian officials. According to the court, if any boundary delimiting the area in which the Dutch government was responsible for the management of shipping had existed at all at the time of the incident, it would most probably have been the equidistance line, something which the Dutch government had tried to deny by all means during these proceedings.

C) *International fora*

Since Belgium and the Netherlands have clarified their positions on the delimitation issue at different international fora, the following paragraphs briefly look at these expressions of state practice. More particularly the 1930 Hague codification conference organized under the auspices of the League of Nations and the two conferences on the law of the sea organized by the United Nations which dealt with this particular issue (122), will be focused upon.

a) *Belgium* (123)

The least one can say about the Belgian official position on the subject when viewed in retrospect, is that it was not really rectilinear. At the time of the 1930 Hague codification conference, for instance, this country spoke out in favor of the method of constructing perpendiculars : (124)

« 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

(121) Case of December 21, 1993, between the State of the Netherlands on the one hand, and B.V. Bergings- en Transportbedrijf Van den Akker and Union de Remorquage et de Sauvetage, on the other, and between the State of the Netherlands and Dissotis Shipping Corporation. Copy kindly obtained from Mr. Herbert Tombeur, Director, Ministry of Flanders, Coordination Department, Administration of Foreign Affairs.

(122) Namely UNCLOS I (1958) and UNCLOS III. UNCLOS II (1960) which was only convened to try to solve some specific problems left open by UNCLOS I, did not touch upon the delimitation issue.

(123) For more details, see FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, pp. 407-415.

(124) It should be remembered that this conference limited itself, as far as the law of the sea was concerned, to a codification attempt with respect to the rules governing the territorial sea. Besides the contiguous zones, no other maritime zones had surfaced yet in the practice of states at that time.

terrestre, ce tracé donnant seul aux États une mer territoriale correspondant aux besoins de la défense de leurs côtes respectives » (125).

The issue became more important when maritime zones were being created that extended further seaward from the coast. UNCLOS I, which codified the newly emerged practice of states since the 1940s with respect to the continental shelf, was the first conference to do so. Even though Belgium objected to the 1958 Continental Shelf Convention, a position which put this country on the same line with the Federal Republic of Germany (126), the reasons underlying the respective positions of these countries were totally different. If Germany mainly objected because it could not accept the content of Art. 6 (delimitation) of that convention (127), Belgium on the other hand rejected the absence in Art. 1 of a clear outer limit (128). The latter country never objected to the content of Art. 6. On the contrary, municipal legislation (129) as well as later state practice (130) indicate that Belgium not only accepted the rule contained that particular article of the 1958 Continental Shelf Convention, but even interpreted it in a way which placed the principle of equidistance on a pedestal.

During the UNCLOS III negotiations, where the discussion on the maritime zones over which coastal states could exercise sovereign rights soon started to crystalize around outer limits of 200 n.m. and beyond, the delimitation issue further gained in importance. During these negotiations, the Belgian position underwent one more fundamental change. It started out by accepting, almost fatalistically, that the delimitation of the Belgian

(125) 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), p. 120 (1929). Hereinafter cited as *Bases de discussions 1930*.

(126) Only three countries voted against this convention, namely Belgium, Japan and the Federal Republic of Germany.

(127) This was the crucial factor which allowed the International Court of Justice to decide that this country should have a continental shelf reaching the middle of the North Sea. See North Sea Continental Shelf Cases, *supra* note 52, §§ 25-33. Even when Germany enacted municipal continental shelf legislation in 1964 out of necessity, this enactment did not contain a delimitation provision. As stressed by WOLFRUM, R., « Germany and the Law of the Sea », in *The Law of the Sea : The European Union and its Member States*, *supra* note 51, p. 199, 216. For a detailed analysis of this German state practice with respect to the delimitation clause of the 1958 Continental Shelf Convention, see REYNAUD, A., *Les différends du plateau continental de la Mer du Nord devant la Cour Internationale de Justice*, Paris, Librairie Générale de Droit et de Jurisprudence, pp. 67-89 (1975).

(128) As already mentioned *supra* note 78 and accompanying text. Together with the absence of any compulsory procedures for dispute settlement, entailing binding decisions, the absence of a clearly defined outer limit justified the Belgian negative vote. See VAN DER ESSEN, A., « La Belgique et la convention de 1982 : La III^e conférence des Nations Unies sur le droit de la mer (1973-1982) », in *Colloque sur la Belgique et la nouvelle Convention des Nations Unies sur le droit de la mer* (SALMON, J. & FRANCKX, E., eds.), *supra* note 69, p. 46, 47.

(129) See *supra* notes 79-83 and accompanying text.

(130) For a more detailed analysis of the so-called Belgian « equidistance-period », see FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, pp. 408-411 as well as the further references to be found there.

maritime zones beyond the territorial sea was a lost cause. Or as stated by the Head of the Belgian delegation in a scholarly article :

« Son plateau continental, enserré entre ceux de la France, du Royaume-Uni et des Pays-Bas, est fort réduit : il s'étend sur 800 milles marins carrés seulement et n'est pas susceptible d'extension, quels que soient les critères de délimitation qui pourraient être retenus à l'avenir » (131).

This country nevertheless ended up by making a strong statement in favor of the equitable solution-formula which finally found its way into the 1982 United Nations Convention on the Law of the Sea with respect to the exclusive economic zone and the continental shelf (132) :

« 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 » (133).

That not much of this initial fatalistic attitude remained when UNCLOS III finally closed its doors, can be demonstrated by the later initiative of the Netherlands' government to establish jointly exclusive economic zones in the North Sea (134). It was reportedly at Belgium's request (135) that a sentence was finally added to the respective provision of the Ministerial Declaration of the Third International Conference on the Protection of the North Sea of March 1990 which tried to set this process in motion. It read :

« This, without prejudice to the completion of the delimitation of the continental shelves of all riparian states of the North Sea and to the rights to be derived therefrom » (136).

Having adhered first to the method of the perpendicular line, later to the principle of equidistance, and finally to the equitable solution-rule, Belgium

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

(132) United Nations Convention on the Law of the Sea, 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). This convention entered into force on November 16, 1994. Hereinafter cited as 1982 Convention.

(133) Declaration made at the time of signature, as reprinted in the original language in Nations Unies, *Droit de la mer : État de la Convention des Nations Unies sur la droit de la mer*, New York, Nations Unies, Bureau du Représentant spécial du Secrétaire général pour le droit de la mer, p. 8 (1986).

(134) About this initiative, see IJLSTRA, T. & YMKERS, P., « The Netherlands and the Establishment of the Exclusive Economic Zone », 4 *International Journal of Estuarine and Coastal Law* p. 224, 226 (1989).

(135) IJLSTRA, T., « North Sea Pollution : Vessel-source Pollution, Environmental Management and the Establishment of EEZs », 17 *Marine Policy* p. 130, 131 (1993).

(136) Point 36 of the Ministerial Declaration of the Third International Conference on the Protection of the North Sea, March 8, 1990, as reprinted in *The North Sea : Basic Legal Documents on Regional Environmental Co-operation* (FREESTONE, D. & IJLSTRA, T., eds.), *supra* note 44, p. 3, 17.

has covered somewhat the entire spectrum of possibilities relied upon by states when having to delimit their maritime zones in practice (137).

b) *The Netherlands* (138)

Unlike Belgium, the Netherlands did not address in a direct manner the issue of delimitation of opposite or adjacent territorial seas in its reply to the questionnaire in preparation of the 1930 Hague Conference (139). It only touched upon it indirectly when addressing the nature and content of the rights possessed by a state over its territorial sea :

« La souveraineté de l'État riverain dans une partie de la bande de mer baignant ses côtes peut être limitée ou exclue par les droit spéciaux d'un autre État. Ce cas peut se présenter dans les régions limitrophes. De pareils droits ont été invoqués par les Pays-Bas sur les passes des Wielingen, sur la double base de droit historiques et du fait qu'il s'agit ici de la principale embouchure de l'Escaut... Dans le cas des Wielingen, ces droits sont contestés par la Belgique... » (140).

As will be seen, this statement continued to characterize the respective positions of the parties with respect to the so-called Wielingen dispute at the time the negotiations started in 1996 (141).

During UNCLOS I negotiations the Netherlands supported equidistance as general principle in cases of oppositeness, if no agreement or special circumstances proved to be present (142). This strong reliance on the principle of equidistance can also be inferred from the position taken by this country concerning the respective delimitation provisions when it subscribed to the 1958 Territorial Sea Convention (143) and the 1958 Continental Shelf Convention (144).

(137) As enumerated by LEGAULT, L. & HANKEY, B., « Method, Oppositeness and Adjacency, and Proportionality in Maritime Boundary Delimitation », in *International Maritime Boundaries*, *supra* note 43, pp. 203, 206-214. Two other methods listed there have to be ruled out because of their inapplicability to the North Sea. The using of parallels of latitude and meridians of longitude in this semi-enclosed sea would indeed produce the result this method is meant to avoid, namely the inequitable cut-off of the maritime extension of some states, since the surrounding coasts do not all run in a similar direction. Moreover, also the method of enclaving has to be ruled out as a theoretical possibility because of the absence of islands in the vicinity of the Belgian coast.

(138) With respect to position of the Dutch government during UNCLOS I and III, see also DOTINGA, H. & SOONS, A., *supra* note 100, pp. 399-400.

(139) Lettre du 7 décembre 1928, *Bases de discussions 1930*, *supra* note 125, pp. 176-181.

(140) *Ibid.*, p. 176.

(141) See *infra* notes 159-162 and accompanying text.

(142) DOTINGA, H. & SOONS, A., *supra* note 100, p. 399 and further references to be found there.

(143) The Netherlands, which ratified this convention on February 18, 1966, reacted *inter alia* to the only country having made a reservation to its Art. 12 (delimitation), namely Venezuela. This country had indicated certain areas where special circumstances had to be taken into account. As accessible on Internet at « <http://www.un.org/Depts/Treaty/final/ts2/newfiles/part-boo/xxi-boo/xxi-1.html> » on February 4, 1999.

(144) As already mentioned *supra* notes 105-106 and accompanying text.

During UNCLOS III the Netherlands introduced a specific proposal concerning the delimitation of the territorial sea, continental shelf and the exclusive economic zone all by itself, which incorporated the principle of equidistance as well as the notion of equitable principles.

« 1. Where the determination of sea areas under articles... (territorial sea, continental shelf, economic zone) by adjacent or opposite States up to the maximum limit would result in overlapping areas, the marine boundaries between those States shall be determined, by agreement between them, in accordance with equitable principles, taking into account all relevant circumstances.

2. Pending such agreement, neither of the States is entitled to establish its marine boundaries beyond the line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each State is measured.

[3 & 4 : These paragraphs relate to the settlement of disputes] » (145).

The first paragraph, which did not include any specific reference to the principle of equidistance, was further clarified by an explanatory note where it was stated :

« Among the 'equitable principles' mentioned therein [i.e. paragraph 1] figures the principle of equidistance, which, in many situations, will result in an equitable delimitation. There are, however, circumstances in which this would not be the case, and paragraph 1 accordingly prescribes the taking into account of all circumstances relevant for reaching an equitable solution » (146).

In other words, even though not always explicitly mentioned in the text, the equidistance principle remained in fact omnipresent and even received some kind of preference (147).

With respect to the delimitation issue, the Dutch government had to take the interests of the Netherlands Antilles duly into account (148). The agreement finally concluded in 1978 between the Netherlands and Venezuela in this respect clearly indicates that this country accepted that in cases of adjacency the equidistance principle easily leads to distortions especially if applied at considerable distances from the respective

(145) Netherlands : draft article on delimitation between States with opposite or adjacent coasts, U.N. Doc. A/CONF.62/C.2/L.14 (July 19, 1974), 3 UNCLOS III pp. 190, 190-191 (1975).

(146) *Ibid.*, p. 191.

(147) TANJA, G., *The Legal Determination of International Maritime Boundaries*, Deventer, Kluwer Law and Taxation Publishers, p. 97 (1990).

(148) *De Derde Zeerechtconferentie van de Verenigde Naties : 3 december 1973 — 10 december 1982* (Ministry for Foreign Affairs No. 132), The Hague, Staatsuitgeverij, p. 57 (1984). Hereinafter cited as *Publication 132*.

coasts (149). It is interesting to note that the Dutch governmental publication relating the proceedings of UNCLOS III, explicitly states that no delimitation questions remained with respect to the European part of the country (150).

A last element which can be mentioned here is that the Netherlands have recently submitted a declaration upon ratification of the 1982 Convention in which this country stated with respect to the baseline and delimitation issue :

« A claim that the drawing of baselines or the delimitation of maritime zones is in accordance with the Convention will only be acceptable if such lines and zones have been established in accordance with the Convention » (151).

Taking into account the absence of any concrete guidelines in the delimitation articles concerning the exclusive economic zone and the continental shelf (152), where because of mere distance the delimitation issue receives its full importance, the practical effect of such declaration under the 1982 Convention (153) may be questioned in this respect.

(149) Explanatory Memorandum and Reply Memorandum of the Dutch government with respect to the draft law requesting Parliamentary approval of the delimitation agreement between the Netherlands and Venezuela, Annex to the Proceedings of the Second Chamber, 1977-1978 — 15.117, No. 3, p. 6 and No. 5, p. 3 respectively. For charts indicating the growing divergence between the line agreed upon between the parties and the hypothetical equidistant line, see *International Maritime Boundaries*, *supra* note 43, p. 630 and LUCCHINI, L. & VOELCKEL, M., *Droit de la Mer*, Tome 2, Vol. 1, Paris, Pédone, maps *in fine* (1996). The latter authors even stress this particular point in their commentary of this agreement (*ibid.*, p. 168).

(150) *Publication 132*, *supra* note 148, p. 111. Only the maritime boundaries with Germany and the United Kingdom are discussed. Without explicitly mentioning Belgium, this sentence nevertheless implies that also with respect to Belgium the issue was settled.

(151) As accessible on Internet at « <http://www.un.org/Depts/los/los-decl.htm#Netherlands> » on February 4, 1999.

(152) Certain authors use rather diplomatic language to stress this point. See ANON, « Art. 74 : Delimitation of the exclusive economic zone between States with opposite or adjacent coasts », in *United Nations Convention on the Law of the Sea 1982 : A Commentary* (NANDAN, S. & ROSENNE, S., eds.), Vol. 2, Dordrecht, Martinus Nijhoff, p. 796, 814 (1993) and ANON, « Art. 83 : Delimitation of the continental shelf between States with opposite or adjacent coasts », *ibid.*, p. 948, 983, where one can read the following similar comment : « The requirement that the delimitation is to achieve an equitable solution places emphasis on the objective of the delimitation instead of on the method of delimitation ». Others prefer a stronger wording. See for instance LUCCHINI, L. & VOELCKEL, M., *supra* note 149, p. 89 : « [L]a formule-escrime du paragraphe 1 des articles 74 et 83 est dépourvue d'utilité. Elle a d'ailleurs donné lieu à des appréciations fortement critiques, que celles-ci émanent de la doctrine ou de juges exprimant des opinions individuelles ou dissidentes. L'absence de tout caractère obligatoire d'une disposition qui ne contient aucune règle de droit, aucune méthode pratique de délimitation est judicieusement soulignée ». See also 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), who qualifies the delimitation provisions of the 1982 Convention relating to the continental shelf and the exclusive economic zone as a « décodification de la matière ».

(153) As demonstrated above, the Dutch government acted in a similar manner under the 1958 conventions (see *supra* notes 105 and 143) where the delimitation provisions at least contained some more precise substantive rules.

3. — *Areas of disagreement*

Before addressing the content of the two recently concluded maritime boundary agreements between Belgium and the Netherlands, and thus providing the answers to the lingering points of disagreement which for so long had prevented the two parties in question, as last coastal states in the North Sea, from settling any maritime boundary between them, it appears appropriate to first briefly recall the main areas of conflict. At the time Belgium extended its territorial sea to 12 n.m., the government was already urged to give an overview of these remaining problems during the discussions in the framework of the Commission for External Relations of the Senate (154).

First of all the issue of the baseline was mentioned, more particularly the Scheldt estuary closing line. This line, drawn between a point where the eastern terminal point of the land boundary meets the low-water line at the Zwin and the lighthouse Molenhoofd at Westkapelle, measures about 9,6 n.m (155). If the international legal implications of this line remain uncertain (156), the Belgian government made it clear that, were the Dutch government to insist (157), it would refuse to accept any such effect of this line on the maritime delimitation between the two countries (158).

Secondly, the Minister of Foreign Relations mentioned the Wielingen question (159). The latter constitutes the main access route to the river Scheldt. Although located off the Belgian coast, the Netherlands claim the Wielingen based on an historic title (160). This particular issue, which has been dormant for some time now, nevertheless remained on the political agenda as indicated by the explicit reference to it by the Dutch Explanatory Memorandum accompanying the draft law extending the

(154) Rapport fait au nom de la Commission des relations extérieures, *Doc. Parl. Sénat* No. 451/2, pp. 2, 4-5 (1986-1987). Hereinafter cited as Rapport Laverge.

(155) See map 1.

(156) See *supra* notes 110-115 and accompanying text.

(157) It is striking in this respect that the Dutch government already envisaged this possibility at the time of the 1930 Hague Codification Conference, when it stated: « Pour une embouchure d'un fleuve formant baie, on pourrait, en général, adopter les règles énoncées sous b) [i.e. closing line of not more than 10 n.m.], étant entendu qu'une configuration géographique spéciale peut justifier des exceptions à cette règle ». See *Bases de discussions 1930, supra* note 125, p. 63. Belgium on the other hand simply mentioned the « mouth of rivers » issue, without explicitly addressing the « mouth of river forming bay » hypothesis. See *ibid.*, p. 61.

(158) « A notre estime le tracé de cette ligne de base, est, à plus d'un titre, contraire aux dispositions pertinentes de la convention des Nations Unies sur le droit de la mer de 1982 ». Rapport Laverge, *supra* note 154, p. 4.

(159) For recent literature on this dispute, which finds its roots well into the previous century and is in fact as old as the Belgian state itself, 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 Wielingen-kwestie in historisch perspectief », 4 *Zeeuws Tijdschrift* pp. 124-132 (1985). For a visual perception, see map 1.

(160) See the Dutch reply to a questionnaire sent out in preparation of the 1930 Hague Codification Conference of 1930, *supra* note 140 and accompanying text.

territorial sea from 3 to 12 n.m. during the early 1980s (161). The insistence of the government of the Netherlands on this point would further burden the upcoming negotiations according to the Belgian side (162).

Thirdly, the low-tide elevation of Rassen was put forward (163). Not that Belgium contested its use as basepoint for the territorial sea delimitation, but the wording used by the Minister of Foreign Relations implied that Belgium would not accept this point as influencing the continental shelf delimitation (164).

In last instance, the extension of the port of Zeebrugge was mentioned. According to the Belgian position, this extension must be taken into account when determining the outer limit of the territorial sea of this country :

« Ceci n'est pas contesté et est conforme aux dispositions des conventions internationales de 1958 et de 1982 » (165).

It could even be remarked that both countries already sustained a similar point of view at the time of the Hague 1930 Codification Conference (166).

Even though these issues mainly related to the territorial sea given the context in which they were elaborated, the Minister of Foreign Relations already indicated that the upcoming negotiations with the Netherlands :

« ... s'inscriront peut-être dans un contexte plus large, à savoir celui de la délimitation de tous les espaces maritimes sous nos juridictions » (167).

This very careful language conceals in fact a last major point of disagreement. The Dutch government has always defended the point of view that no more negotiations on the continental shelf delimitation were necessary, or for that matter possible, since that issue had already been totally exhausted. The delimitation of the continental shelf had been settled in principle during the 1960s (168) and confirmed by state practice later on, an argument not readily accepted by Belgium (169). It is therefore certainly no coincidence that the Dutch government only mentioned the

(161) Annex to the Proceedings of the Second Chamber, 1982-1983 — 17.654, No. 3, p. 10.

(162) « [I]l est certain que ces prétentions ne faciliteront pas les négociations ». Rapport Laverge, *supra* note 154, p. 4.

(163) See map 1.

(164) « Le haut-fond découvrant de Rassen devant Walcheren peut par contre effectivement être pris en compte par les Pays-Bas, mais exclusivement pour délimiter les eaux territoriales ». *Ibid.*

(165) *Ibid.*

(166) Belgium stated : « Pour les ports, cette démarcation doit être constituée par la limite extrême de ceux-ci ». The Netherlands replied the following to the questionnaire : « Pour les ports proprement dits, la limite intérieure des eaux territoriales devra suivre l'extrémité des jetées ». See *Bases de discussions 1930*, *supra* note 125, pp. 61 and 62-63 respectively.

(167) Rapport Laverge, *supra* note 154, p. 4.

(168) See *supra* notes 61-73 and accompanying text.

(169) GAUTIER, Ph., *supra* note 69, pp. 110-122.

future settlement of the territorial sea when addressing this point in the Explanatory Memorandum of the Dutch law extending the territorial sea (170), contrary to the above-mentioned Belgian point of view (171).

4. — *Agreements of 1996*

This part will try to clarify the manner in which the parties have been able to solve the just-mentioned lingering points of disagreement between them.

A) *Scheldt closing line*

First of all, it should be stressed that this line does have an influence on the drawing of an equidistance line, notwithstanding the fact that the low-tide elevation of Rassen is located in front of it (172). The influence of this closing line reaches out to about 9 n.m. measured from the land boundary terminal point. This has to be explained by the northern position of the low-tide elevation of Rassen. As a consequence, if the closing line would have been taken into account, a territorial sea area of approximately 22,5 km² would have been gained by the Netherlands.

The 1996 Territorial Sea Agreement, by means of an explanatory Art. 2, makes it clear that this did not happen. Indeed, only the normal low-water line along the coasts of both countries is mentioned as having served as basis for the drawing of an equidistant line.

It is therefore only with respect to the continental shelf delimitation that the Scheldt closing line becomes totally irrelevant because of the location of Rassen.

B) *The Wielingen question*

The Netherlands did raise the Wielingen question at the time of the negotiations (173). Since the text of the 1996 Territorial Sea Agreement does not refer to the Wielingen-issue explicitly, and taking into account that the Dutch delegation did raise the issue during the negotiations, the assumption could be made that this country has implicitly abandoned its historic title (174).

(170) Annex to the Proceedings of the Second Chamber, 1982-1983 — 17.654, No. 3, p. 10.

(171) See *supra* note 167 and accompanying text.

(172) But see the contrary position taken by the Dutch government, as reflected in the literature, *supra* note 115.

(173) As remarked by the Belgian Ministers for Foreign Affairs and Transport in the Explanatory Memorandum, *Doc. parl. Sénat* No. 1-843/1, p. 2, 5 (1997-1998). Hereinafter cited as 1997 Explanatory Memorandum.

(174) ELFERINK, A., « Belgium/The Netherlands : Delimitation of Maritime Zones », 12 *International Journal of Marine and Coastal Law* p. 548, 551 (1997).

This is also the impression that remains after reading the Dutch parliamentary documents. In the Explanatory Memorandum attached to the draft legislation this is the first issue raised by the Minister for Foreign Affairs (175). In a spirit of good-neighborliness, the Minister then continues, both countries agreed to solve the differences of opinion which for so many years had thwarted all efforts to reach agreement on the issue (176). The report of the Commission for Foreign Relations comes back to this particular issue. It states that the members of the Commission were satisfied that a solution had finally been found for the delimitation of the territorial sea, but remarked nevertheless that they missed the proper historic context. The question was also raised which concessions had been made by the Dutch government when negotiating both agreements (177).

In his reply, the Minister for Foreign Affairs first of all gave a short historic account of the Wielingen question (178). In his enumeration of the concessions made, however, the Wielingen does not appear (179). Nevertheless, when clarifying an ambiguity in the Explanatory Memorandum concerning the western entrance route to the river Scheldt, he put on record :

« Deze vaargeul [i.e. the Wielingen] komt ten dele in de Belgische territoriale zee te liggen » (180).

One should however be careful. Did not the U.S. Department of State testify before the American Senate at the occasion of the hearings concerning the maritime boundary agreement concluded by that country with the former Soviet Union (181) that, being a maritime boundary agreement, the latter did not recognize Soviet sovereignty over five disputed islands in the Arctic (182) and one in the Aleutian chain (183), all located on the Soviet side of the boundary line, in an implicit manner ? (184)

The categorical statement of the Belgian ministers for Foreign Affairs and Transport in the Explanatory Memorandum, therefore, stating that the Netherlands have renounced their sovereignty claim with respect to the

(175) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 3, p. 1.

(176) *Ibid.*

(177) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 4, p. 1.

(178) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 5, pp. 1-2.

(179) *Ibid.*, p. 2.

(180) *Ibid.* This passage can be translated as : « This navigational channel (namely the Wielingen) will partially fall within the Belgian territorial sea ».

(181) Maritime Boundary Agreement Between the United States of America and the Union of the Soviet Socialist Republics, June 1, 1990, as reproduced in *29 International Legal Materials* pp. 941-945 (1990). This agreement entered provisionally into force on June 15, 1990.

(182) Namely Bennett, Henrietta, Herald, Jeannette and Wrangell island.

(183) Namely Copper island.

(184) As referred to by OLSON, C., SEIDENBERG, M. & SELLE, R., « U.S.-Russia Maritime Boundary Giveaway », 42 *Orbis* p. 74, 86 (1998).

Wielingen (185), should be understood with a pinch of salt. No such clear statement is to be found in the agreement nor in the exchange of notes accompanying it. Indeed, the word « Wielingen » does not even appear in these documents. Moreover, the Dutch parliamentary papers, which devote quite some attention to this issue, do not contain such a categorical statement either. In order to avoid any future misunderstandings on the issue, it would have been preferable to insist on this point.

C) *Rassen*

The low-tide elevation of Rassen played a central role in the territorial sea delimitation but even more so in the continental shelf settlement where it provided the parties a pretext to deviate from the strict application of the equidistance criterion.

Being by definition a naturally formed area of land which is surrounded by and above water at low tide, international law allows the low-water line on such elevations to be used as baseline for measuring the breadth of the territorial sea (186). Belgium and the Netherlands are not only bound by treaties incorporating this particular rule (187), they moreover also explicitly incorporated this possibility in municipal law (188).

If in theory therefore no problem did arise, Belgium had already experienced major difficulties when trying to apply this provision in practice in its bilateral relations with France where, because of the presence of the Flemish Banks, both parties had low-tide elevations along their coasts. Taking into account the different methods of calculating the low-water line, this influenced the assessment of whether certain geographical features were still surrounded by and above water at low tide (189).

(185) « Les Pays-Bas renoncent à leurs revendications de souveraineté sur les Wielingen ». See 1997 Explanatory Memorandum, *supra* note 173, p. 6.

(186) As defined in Art. 13 (para. 1) of the 1982 Convention. See also Art. 11 of the 1958 Territorial Sea Convention.

(187) Belgium (see *supra* note 78) and the Netherlands (see *supra* note 143) are both party to the 1958 Territorial Sea Convention. The same holds true with respect to the 1982 Convention (the Netherlands ratified on June 28, 1996, and Belgium on November 13, 1998; as accessible on Internet at « <http://www.un.org/Depts/los/los94st.htm> » on February 4, 1999). At the time of writing, therefore, Belgium apparently already informed the Secretary-General about its ratification, even though the *Moniteur belge* did not so far publish the act of approval of the federal parliament, nor the text of the convention itself. For more details, see the article in the present issue of DE BONDT, T., « De ratificatie van een gemengd internationaal verdrag in België: De lijdensweg van het Zeerechtverdrag van 1982 ».

(188) For Belgium, see Art. 1 of the 1987 Law on the Territorial Sea, *supra* note 75, p. 15290. With respect to the Netherlands, see Art. 1 of the Netherlands Territorial Sea Demarcation Act, *supra* note 101.

(189) ANDERSON, D., « Belgium-France (Report Number 9-16) », in *International Maritime Boundaries*, *supra* note 43, p. 1891, 1893. See also FRANCKX, E., « Maritime Boundary Agreements: The Case of Belgium », *supra* note 51, pp. 422-425.

In relation to the Netherlands, the situation was slightly different mainly because such geographical features are only present in front of the Dutch coast. Between Oostgat and Deurloo located off the coast of Walcheren, which besides the Wielingen constitute the three natural entrance routes to the river Scheldt (190), two low-tide elevations are present on the Bankje van Zoutelande. On the sandbanks located just west of Deurloo, three other low-tide elevations are present, namely two in the southern area of the Nollenplaat Bank and one at its entrance in the north, namely Rassen. Because of the geography of the coasts, only the latter can potentially influence the Belgo-Dutch maritime boundary line. On the other hand, it should be stressed that the particular location of the latter attributes a crucial significance to this specific low-tide elevation in the Belgo-Dutch relations, since it serves as the only basepoint on the Netherlands' side on which the determination of most of the maritime boundary is to be based (191).

The low-tide elevation of Rassen, therefore, received extra attention from the Belgian side. An in-depth study of historical materials demonstrated that Rassen had not surfaced on maritime charts during certain periods in time, indicating that the low-tide elevation no longer dried at low water (192). Since these periods were however limited in time, Belgium apparently did not object in principle to the use of Rassen as basepoint. What Belgium did however object to, was that the Netherlands had initially based the location of the low-tide elevation of Rassen on the 2 meter isobath. Because Rassen is bounded in the east by the Geul van Rassen, the northern entrance route to Deurloo, the shallow area surrounding this low-tide elevation is located in a general western direction. If one takes the most recent maritime charts as point of reference, the 2 meter isobath is located about 1,8 n.m. to the west of the low-water line of Rassen. Belgium, on the other hand, was prepared to accept the western extremity of the low-water line as basepoint (193). This compromise apparently proved acceptable to both parties (194).

With these preliminary questions out of the way, the parties were then able to apply this basepoint, in the above-specified manner, to the delimita-

(190) Because of their rather shallow nature, however, they cannot compete with the Wielingen as main access route.

(191) Only part of the territorial sea boundary is determined by the normal low-water line along the coast of both countries. See *supra* note 172 and accompanying text.

(192) Study undertaken by C. Van Cauwenberghe, Chief of the Hydrographic Department, Ministry of Flanders. This study, which was kindly received from C. Van Cauwenberghe, is on file with the present author.

(193) The area of Rassen which surfaces at low tide is about 600 m east to west. This point is located at some 1,3 n.m. from the Dutch coast.

(194) As confirmed by the Dutch Minister for Foreign Affairs. See Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 5, p. 2.

tion dispute. However, a clear distinction should be made between the two agreements in this respect.

As far as the 1996 Territorial Sea Agreement is concerned, this issue did not cause too much difficulty since Art. 2 states that the construction of the equidistance line took the low-tide elevation of Rassen fully into account. The terminal point of the territorial sea boundary is for instance exactly located at 12 n.m. from the western extremity of the 0 meter isobath around Rassen.

With respect to the 1996 Continental Shelf Agreement the situation is much more complex. The mere fact that this agreement, contrary to the territorial sea one, is silent on the method used to arrive at the delimitation line finally agreed upon, is already a sign on the wall. And indeed, this issue apparently formed a major bone of contention between the parties, even though it is not formally listed in the points of divergence which existed at the start of the negotiations (195). This can nevertheless be inferred from the explanation of the results in the Belgian parliamentary documents where it is stated that this low-tide elevation has only been given 1/4th effect (196). As already mentioned above, it was by means of this issue that the parties were able to include the equitable-solution aspect on which the Belgian side had so much insisted.

One can only assume therefore that, based on the discussions held at the time of the Belgo-French continental shelf negotiations (197), Belgium was of the opinion that, in opposition to the territorial sea delimitation, low-tide elevations should be totally discounted for the delimitation of the continental shelf (198). Like France, the Netherlands undoubtedly held an opposite point of view. If this reference to the Belgo-French continental shelf negotiations can explain part of the underlying reasoning, simply concluding that the rule of the 1/4th effect used there was reapplied in the Belgo-Dutch continental shelf negotiations would appear to be stretching the analogy too far. Indeed, the same underlying reasons on the basis of which the parties arrived at this particular division in the Belgo-French case (199), are not present here. It is therefore submitted that the applica-

(195) See 1997 Explanatory Memorandum, *supra* note 173, pp. 4-5.

(196) *Ibid.*, p. 6.

(197) For an analysis of these discussions, see FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, pp. 428-430.

(198) See also *supra* 164 note and accompanying text.

(199) Namely the relative weight attributed to two decisive low-tide elevations, one in front of the French coast and one in front of the Belgian coast, based on their different elevation above water at low tide. If the former was only 10 cm above chart datum at low tide, the latter surfaced 40 cm. See FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, p. 429.

tion of this particular analogy in the first place served the parties to prevent losing face with respect to their initial positions (200).

D) *The port of Zeebrugge*

The extension of the port of Zeebrugge took place in two stages. The first phase was completed during the early 1970's, the second during the late 1990s. The latter relocated the outermost point of the port construction at more than 3 km from shore increasing the area located on the landward side of the baseline by 1083 ha 94 a. At both occasions, the government clearly expressed the view that the outermost permanent harbor works were to be taken into account as basepoint for determining the outer limit of the territorial sea (201). This was reaffirmed in a general way in the extremely short 1987 Law on the Territorial Sea (202).

In its relations with the United Kingdom, the extension of the port of Zeebrugge as it existed at the time of the negotiations (203), and not the works in progress were taken into account (204). This policy was also taken into account in the relations between the Netherlands and the United Kingdom, where the Dutch outermost harbor works at IJmuiden were duly taken into account, even though the maritime charts of the time of negotiation still labeled them as « under construction », whereas those of Europoort which had not yet been completed were not considered as basepoints (205).

Since the construction of the port of Zeebrugge was totally completed when the negotiations started with the Netherlands in November 1994, Belgium was of the opinion that full effect should be given to this extension. This point was nevertheless contested by the Netherlands at the time of the negotiations (206).

The 1996 Territorial Sea Agreement leaves no doubt that extension of the port of Zeebrugge was given full effect (207). The terminal point of the territorial sea is therefore located exactly at 12 n.m. from the outermost

(200) As such it fits under the notion of « pragmatic solution » as advanced by the Dutch Minister for Foreign Affairs. See Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 3, p. 2.

(201) See *Doc. parl.* Chambre No. 750-1, p. 3 (1969-1970) and Question n° 199 de M. VAN IN, *Bull. Q.R. Sénat* No. 46 du 27 août 1985 (1984-1985) respectively.

(202) Art. 1 of the 1987 Law on the Territorial Sea, *supra* note 75, p. 15290.

(203) These negotiations started during the summer of 1989. See FRANCKX, E., « Maritime Boundary Agreements : The Case of Belgium », *supra* note 51, p. 430.

(204) ANDERSON, D., « Belgium-United Kingdom (Report Number 9-17) », *supra* note 64, p. 1904.

(205) ANDERSON, D., « The Netherlands-United Kingdom (Report Number 9-13) », *International Maritime Boundaries*, *supra* note 43, pp. 1859, 1862-1863. See also 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, 101 (1992).

(206) 1997 Explanatory Memorandum, *supra* note 173, p. 5.

(207) See Art. 2.

point on the western breakwater. The Dutch Explanatory Memorandum implicitly presents this as a concession to the Belgian side (208).

E) *Relation between territorial sea and continental shelf agreement*

Of all disputed elements, this one certainly must have worried the Belgian side the most when negotiations started with the Netherlands. The latter country was of the opinion that since the continental shelf boundary had already been settled in a definitive manner, only the territorial sea boundary remained open for discussion (209). The only exception to this rule was the possible adjustment of the initial part of this continental shelf boundary because of the extension of the territorial sea from 3 to 12 n.m. which both parties had proclaimed in the mean time (210). The Belgian side replied that both issues were strictly linked and that no agreement could be reached on the territorial sea unless an agreement was also forthcoming with respect to the continental shelf delimitation (211).

The Netherlands had good arguments to sustain their point of view (212). First of all, the relevant provisions of the basic Belgian legal enactments on the continental shelf and the fishery zone, which rely on the 1965 Draft Agreement, have not yet been adapted to reflect the contemporary position of this country (213). The same can be said about later implementing legislation, defining the zones in which continental shelf concessions can be granted. This 1977 Royal Decree (214) list the coordinates of the eastern limit of the so-called Zone 1 (215) which once again coincide with the 1965 draft line (216).

Secondly, there was the correspondence between the Presidents of the delegations for the delimitation of the continental shelf during the 1960s,

(208) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 3, p. 1. Reference is made to the 1965 Draft Agreement (see *supra* note 69 and accompanying text). At that time the extension of the port of Zeebrugge was still on the drawing table.

(209) As already mentioned *supra* notes 168-170 and accompanying text.

(210) For Belgium see *supra* note 75. With respect to the Netherlands, see *supra* note 101.

(211) 1997 Explanatory Memorandum, *supra* note 173, p. 5.

(212) As enumerated in the 1997 Explanatory Memorandum, *supra* note 173, pp. 4-5.

(213) See *supra* note 119 and accompanying text.

(214) Arrêté royal 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, May 16, 1977, *Moniteur belge* du 21 juillet 1977, pp. 9442-9445.

(215) *Ibid.*, p. 9444. Two such zones have been created. One reserved for the public sector (Zone 1), located east of the Westhinder access route to the river Scheldt, and one reserved for the private sector (Zone 2) located west of that same route bordering the French maritime zones. For a visual perception, see map 1.

(216) The two turning points which make out the eastern limit of this zone are identical to Points 4 and 5 of the 1965 Draft Agreement (see *supra* note 70) as well as the eastern limit of the Belgian Fishery Zone (see *supra* note 87).

which reached the public domain through the 1969 North Sea Continental Shelf Cases (217).

Thirdly, the tri-junction point between Belgium, the Netherlands and the United Kingdom, determined in a bilateral manner between the latter two countries in 1965 (218), had supposedly been accepted by Belgium. This was not only done implicitly, since this tri-junction point formed the terminal point of the 1965 Draft Agreement and as such found its way into Belgian municipal legislation (219), but apparently also explicitly (220).

Finally, the responses by the government to parliamentary questions also sustained this point of view (221).

When combined together, these arguments sustained the conclusion, according to the Netherlands, that the 1965 Draft Agreement had become binding upon the parties based on the principle of estoppel.

Belgium's main arguments against such a finding concerned the fact that the 1965 Draft Agreement never officially entered into force between the parties, because Belgium never even signed that document (222), as well as the changed content of the rules concerning maritime delimitation incorporated in the 1958 Territorial Sea Convention and the 1958 Continental Shelf Convention, on the one hand, and the 1982 Convention on the other (223). The argument of estoppel proved much more difficult to counter, as can be inferred from the very careful wording used by a member of the Belgium delegation who addressed this specific topic at the occasion of

(217) See *supra* note 70 and accompanying text.

(218) See *supra* note 55.

(219) See *supra* note 119 and accompanying text. See also the additional references to be found there. Namely Point 1, common to the 1965 Draft Agreement (see *supra* note 70) as well as the terminal point at sea of the eastern limit of the Belgian Fishery Zone (see *supra* note 87).

(220) With respect to the Netherlands, the content of the Belgian diplomatic correspondence became once more (see *supra* note 70) part of the public domain by means of the proceedings of the International Court of Justice. See Note from the Embassy of Belgium at the Hague of September 15, 1965, as reprinted in North Sea Continental Shelf Cases, 1968 *I.C.J. Pleadings*, Oral Arguments, Documents, Vol. 1, pp. 385-387. Besides the authentic text in Dutch, an English translation was provided. In this diplomatic note, it was stated that, awaiting the enactment of a municipal law on the continental shelf, Belgium could not officially express its approval of the coordinates in question. In the mean time, Belgium would not raise objections with respect to this tri-point which had been deemed acceptable by the Belgian experts. With respect to the United Kingdom, a similar demarche must have occurred. According to Carleton, hydrographic surveyor of the British Royal Navy who provided technical advice for his government in numerous maritime boundary negotiations, Belgium accepted this tri-junction point as technically correct by means of a note dated November 5, 1965. See CARLETON, C., *supra* note 205, p. 109.

(221) See *supra* note 83 and the further references to be found there.

(222) Apparently, the outstanding Wielingen dispute played a crucial role in this Belgian refusal to sign. See 1997 Explanatory Memorandum, *supra* note 173, p. 2. About the absence of signature, see *supra* note 71 and accompanying text.

(223) See 1997 Explanatory Memorandum, *supra*, note 173, p. 5.

a conference held only a few days after the maritime boundary negotiations had started with the Netherlands (224).

The final outcome illustrates that the line established by the 1965 Draft Agreement was not followed. The Dutch parliamentary papers indicate that the draft boundary line of 1965 was not retained in full. Not with respect to the continental shelf, where in order to reach a « pragmatic solution » the Netherlands did not strictly rely on the 1965 line (225), nor with respect to the line between 3 and 12 n.m., where « some changes » to the same 1965 line were made to the advantage of Belgium (226). These indications of the Dutch Minister for Foreign Affairs should be qualified as understatements for in reality, not much remains of the original 1965 line. In fact, only the first segment of the territorial sea boundary line still coincides with it. This line, however, only measures slightly more than 0,5 n.m. As a consequence, it represents only some 1,2 % of the total boundary length finally agreed upon.

With respect to the territorial sea, the line diverges substantially because equidistance was measured from totally different basepoints (227), resulting in a gain for Belgium of 54,72 km² (228). As far as the continental shelf is concerned, the specific method relied upon in 1996 (229) is clearly at variance with the application of the strict method of equidistance which determined the 1965 line (230). It is moreover interesting to note that the Belgian parliamentary papers indicate that the equitable line was obtained through application of the equidistance method (231) whereas the Dutch parliamentary documents state that this part of the delimitation did not start out from that same principle (232). No matter what explanation is given to it, the result is that once again (233) Belgium gained 331,44 km² of continental shelf when both lines are compared with one another (234). This obliged the parties to address the issue of rights acquired by

(224) See GAUTIER, Ph., *supra* note 69, pp. 110-122. In a comment to this article, E. SOMERS, goes one step further and concludes that the continental shelf delimitation remained an open issue based on arguments of Belgian constitutional law (absence of the necessary parliamentary approval) in junction with Art. 46 of the Vienna Convention on the Law of Treaties. See SOMERS, E., « Comments on the Contributions of Jansoone, R., The Belgian State Practice in the Law of the Sea : The Exclusive Economic Zone and Gautier, Ph., Le plateau continental de la Belgique et sa délimitation. Quelques réflexions sur la notion d'accord implicite », in *Colloque sur la Belgique et la nouvelle Convention des Nations Unies sur le droit de la mer* (SALMON, J. & FRANCKX, E., eds.), *supra* note 69, pp. 123, 125-126.

(225) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 3, p. 2.

(226) *Ibid.*, p. 1.

(227) Zeebrugge first without and later with fully completed extension. Rassen measured first at the 2 meter isobath, later at the normal low-water line.

(228) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 5, p. 2.

(229) See *supra* notes 195-200 and accompanying text.

(230) See *supra* note 69 and accompanying text.

(231) 1997 Explanatory Memorandum, *supra* note 173, p. 6.

(232) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 3, p. 2.

(233) With respect to the gain of territorial sea, see *supra* note 228 and accompanying text.

(234) Proceedings of the Second Chamber, 1997-1998 — 25.684, No. 5, p. 2.

individual or public organs in this particular area, once the 1996 Continental Shelf Agreement entered into force (235).

IV. — CONCLUSIONS

If the substantive rules governing the settlement of land frontiers and the delimitation of sea areas may, at first sight, not really have that much in common (236), the Belgo-Dutch relationship analyzed above nevertheless wholeheartedly sustains the common submission that the delimitation of borders, be they located on land or at sea, always remains an extremely difficult task, even between states having lived on friendly terms for quite some time now. This is exemplified by the long negotiation periods which were required in both cases before the parties could reach a final settlement, as well as the need sometimes to involve third party dispute settlement mechanisms (237).

It should therefore not come as a surprise that in other regions of the world, where the relations between states are of a totally different nature than the general attitude of good-neighborliness existing between Belgium and the Netherlands, the settlement of land frontiers and sea boundaries may even take much longer. If we take the maritime area as an example, it is submitted that the more than 250 maritime boundaries still awaiting a final settlement (238), will remain on the international agenda for quite some time, certainly if one starts from the logical premiss that parties are inclined to leave the more difficult boundaries for the end.

A perfect illustration of the latter situation, totally in line with the Latin adage : « In cauda venenum », is the final settlement of the last outstanding land frontier dispute between Belgium and the Netherlands. The acts of Henry I of Brabant, accomplished at the end of the 12th century, had indeed sown the seeds for the emergence, little by little, of an extremely complex territorial division scheme in an area, which finally turned out to be located in the vicinity of a contemporary international land frontier. The present day complexity of this situation, as a consequence, is unique in its kind. But the parties have illustrated that even situations charac-

(235) This particular issue was settled by means of an Exchange of Notes of the same day. See annex 4.

(236) If the former is based in the first place on the past behavior of states, the latter is rather determined by the particular geography of their respective coastal fronts.

(237) But this normally remains a last resort option. Even though contemplated in the maritime field at certain moments in time, it was only with respect to the land boundary that the parties did actually involve a third party for solving the sovereignty over a clearly defined plot of land. And even in this case, one should remember the particular facts which finally brought the case before the International Court of Justice. See *supra* note 5.

(238) According to the estimates of Pratt, M., of the International Boundaries Research Unit of the University of Durham, 256 maritime boundaries remained to be agreed by the end of 1998, whereas 164 already had been agreed. E-mail on file with the author.

terized by this kind of utmost complexity can be resolved in a peaceful manner according to the normal principles of boundary settlement, be it sometimes with minor adaptations (239).

As far as the maritime boundaries are concerned, the conclusion can be reached that, with these two 1996 agreements having entered into force, the entire North Sea (240) has now been divided by maritime boundaries between the coastal states. In the past, these limits in the seas related exclusively to the territorial sea and the continental shelf (241). Today, a first exclusive economic zone boundary is in the making. Indeed, even though neither Belgium nor the Netherlands at present possess an exclusive economic zone (242), the 1996 Continental Shelf Agreement already states that the same boundary line will be applied to it (243).

How to qualify the method of delimitation relied upon by these two maritime boundary agreements? No problem arises with respect to the 1996 Territorial Sea Agreement since the agreement itself clarifies the issue by stating that the delimitation line is based on the principle of equidistance (244). It is however not a strict equidistant line (245), but should rather be qualified as a simplified equidistant line since a close analysis of the charts reveals that intermediate turning points have been omitted. As a consequence, parties applied the principle of area compensation (246), which entails that some strict equidistance turning points had to be deleted and a new one inserted to achieve the area compensation (247). Apparently, the final outcome was a compromise between the Belgian side wanting to simplify even further, and the Dutch side preferring to stick closer to the equidistant line. The line finally agreed upon retains enough detail for a layman to easily recognize the influence the port of Zeebrugge has on its actual course.

(239) See *supra*, notes 28-30 and accompanying text.

(240) Abstraction made of some lingering territorial sea delimitation disputes between the Netherlands and Germany (Ems estuary) and between the Germany and Denmark (change in location of navigable waters), which are however limited in nature. For an update on these disputes see WOLFRUM, R., *supra* note 127, pp. 205-210.

(241) ANDERSON, D., *supra* note 62, p. 336.

(242) In Belgium the Parliamentary process was set in motion medio 1998. Also in the Netherlands, the government has indicated its intention to do so. See *NILOS Newsletter*, No. 8, July 1992.

(243) Art. 2 of the 1996 Continental Shelf Agreement. As was already suggested by the present author in a commentary relating to the 1990 Belgium-France CP Agreement (*supra* note 49). See FRANCKX, E., *supra* note 47, p. 245.

(244) Art. 2 of the 1996 Territorial Sea Agreement.

(245) Notion which has been defined in the Glossary of Terms to the book *International Maritime Boundaries* (*supra* note 43, p. xx) as: « A line, often of relatively short segments, connecting points that are equidistant from the baselines from which the territorial seas of two opposite or adjacent states are measured. It may be determined by graphical or computational means, but generally only the latter will provide accuracies suitable for modern requirements ».

(246) Which is a typical feature of the notion of simplified equidistant line. See *ibid.* See also LUCCHINI, L. & VOELCKEL, M., *supra* note 149, p. 156.

(247) Namely Point 3 as defined in Art. 1 of the 1996 Territorial Sea Agreement.

With respect to the continental shelf, this question is somewhat more difficult to answer, first of all because the agreement itself remains silent on the issue, contrary to the 1990 Belgium-France CP Agreement concluded a few years earlier (248). Secondly, the parliamentary papers reveal that both parties had a quite different opinion on the principal role played by equidistance in the determination of this boundary (249). Nevertheless, the conclusion appears to be justified, based on the special link which, according to the parliamentary documents, exists between this boundary and the 1990 Belgium-France CP Agreement (250), that « pragmatic equidistance » was relied upon (251). As such, it fits nicely in the category of so-called second generation agreements concluded in the North Sea after 1969 in which equitable principles played a prominent role (252).

This article has certainly not exhausted all the issues of interest related to these two maritime boundary agreements with the Netherlands. Since the research was mainly conducted before the entry into force of these agreements, the present article almost exclusively relied on sources to be found in the public domain (253). But even when looked upon from a strictly Belgian point of view, other interesting issues remain. The Belgian federal state structure raises peculiar questions, such as the association of the Flemish Region in maritime delimitation negotiations (254) and the exploitation of the continental shelf (255), to name but a few. Too much, however, for all of them to be covered by the present article.

(248) Here both parties clarified the general manner in which the continental shelf boundary was arrived at. See Art. 2 of the 1990 Belgium-France CP Agreement, *supra* note 49.

(249) See *supra* notes 231-232 and accompanying text.

(250) See *supra* notes 196-200 and accompanying text.

(251) To use Anderson's qualification when typifying the 1990 Belgium-France CP Agreement. See ANDERSON, D., « The Strait of Dover and the Southern North Sea : Some Recent Legal Developments », 7 *International Journal of Estuarine and Coastal Law* p. 85, 95 (1992). This qualification moreover appears to hold the middle between the Belgian clarification stating that the principle of equidistance governed the delimitation (see *supra* note 231 and accompanying text) and the Dutch statement according to which a « pragmatic solution » was aimed at by the parties (see *supra* note 225 and accompanying text).

(252) ANDERSON, D., *supra* note 62, p. 336. See also *supra* note 52.

(253) Fortunately, the combined reading of the relevant Belgian and Dutch parliamentary papers proved to contain a vast source of information in this respect.

(254) The present day division of competence between the federal state and the Flemish Region is such that some form of cooperation is needed. Even though the former has exclusive competence for maritime delimitation issues, some of the administrations indispensable to effectuate such a competence had in the mean time been transferred to the Flemish Region in the framework of the recent state reform.

(255) The delimitation negotiations clearly touched upon this aspect. The recent statements in the Flemish parliament concerning extended competence in this particular field (Flemish Parliament, Session 1997-1998, February 1998, Note for Discussion concerning a further step in the reform of the state, p. 38 ; see also *De Standaard*, March 14-15, 1998, under the heading « Flemish foot on the continental shelf unstable ») coupled with the particular drafting of the Exchange of Notes concerning the continental shelf (see annex 4) provides sufficient elements for further reflection, especially in view of the significant increase in sand and gravel extraction during 1997. If for instance for the years 1986-1992 the average extraction reached a level of approximately 1.000.000 m² on a yearly basis (LAUWAERT, B., *Management Unit of the North Sea*

A last general comment concerns the belated publication in Belgium of the texts of these three international documents which formed the focal point of the present article. The *procès-verbal* of 1995, for instance, took more than half a year to find its way into the Belgian official gazette (256).

A more fundamental issue in this respect, however, is raised by the maritime boundary agreements. If the Dutch «*Traktatenblad van het Koninkrijk der Nederlanden*» already published the official text of these agreements on January 17, 1997 (257), i.e. less than one month after their signature, one had to wait one more year in Belgium before the content of these documents was finally divulged in the parliamentary papers (258). Different scholarly publications had therefore already been published by Dutch scholars analyzing this agreement (259), at a time that their Belgian colleagues had to settle for two press releases: One of November 1996 indicating that the Belgian Council of Ministers had approved the content of the negotiations (260), and another one of July 1997 stating that the same Council of Ministers had approved a draft law on the subject (261). This is not a new phenomenon, and has already been criticized by the present author with respect to the delimitation agreements concluded by Belgium during the early 1990s (262). It is only to be hoped, therefore, that the federal authorities in Belgium will follow the brave initiative of the Flemish Administration External Relations of the Ministry of the Flemish

Mathematical Models, Royal Belgian Institute of Natural Sciences, personal communication, April 13, 1993, for the period 1993-1996 this yearly average increased to about 1.500.000 m². In 1997, however, the latest year for which figures are available, this figured suddenly more than doubled to about 3.900.000 m² (personal communication received from the same person, July 1, 1998. Fax on file with the author).

(256) See *supra* note 23.

(257) *Traktatenblad van het Koninkrijk der Nederlanden*, No. 14, 1997 (territorial sea) and No. 15, 1997 (continental shelf) as accessible on Internet at «<http://www.overheid.nl.op/>».

(258) Until January 15, 1998 to be precise. On that day, the exact content of these agreements was for the first time divulged in Belgium, by means of an annex to the draft law submitted to the Senate (Chronologie du dossier 1-843, Sénat, as accessible on Internet at «<http://www.senate.be/senwwwcgi/sa?id=1-843&l=f>» on February 4, 1999). For the official publication in the *Moniteur belge* one even had to wait until June 19, 1999.

(259) See for instance ELFERINK, A., *supra* note 174, pp. 543-553, including English translations of both agreements. See also *NILOS Newsletter*, No. 14, June 1997.

(260) Communiqué de presse, Conseil des Ministres du 8 novembre 1996: «*Délimitation latérale de la Mer territoriale et du Plateau continental*».

(261) Communiqué de presse, Conseil des Ministres du 4 juillet 1997: «*Délimitation latérale de la Mer territoriale et du Plateau continental*». It should be added that the latter listed the bare coordinates, but nothing more.

(262) FRANCKX, E., «*Maritime Boundary Agreements: The Case of Belgium*», *supra* note 51, pp. 436-437.

Community which recently put into operation « NADIA » (263), a document archive system which will ultimately make all international acts entered into by the Flemish Ministers available on Internet at the time of their signature. This last phase is expected to be completed by the end of 1999 (264).

If such a policy would be adhered to — and this brings us to the third and most serious shortcoming in this respect — the federal government would probably no longer be confronted with the present-day difficulty of publishing the text of international agreements on the day of their entry into force in the *Moniteur belge* (265). The proposal to publish the text of the international agreements at the time of deposition of the Belgian instrument of ratification, i.e. before the date of their entry into force, proved not acceptable to the Ministry of Foreign Affairs (266). This attitude does not bode well for the immediate future.

The peculiar situation of the 1982 Convention at the time of writing (267), painfully illustrates this fear. The fact that this convention binds the Belgian state at present on the international level, but apparently is not binding on the internal level since it has not yet been published in the *Moniteur belge*, clearly demonstrates that good intentions alone (268) do not suffice. The recent redundant publication of a set of maritime boundary agreements which had already been published five years ago, does not

(263) This acronym stands for : « Network Archivering van documenten in verband met Internationale Akten » (Network Document Archive System Concerning International Acts). At present, about 35 persons belonging to the different departments and ministerial cabinets of the Flemish government have access. The next phase of this project is scheduled to open up the system to other public bodies, such as the Flemish parliament as well as the federal Ministry of Foreign Affairs. Information kindly obtained from Mr. Herbert Tombeur, Director, Ministry of Flanders, Coordination Department, Administration of Foreign Affairs on February 8, 1999.

(264) *Ibid.* According to the same source, only very few documents would be withheld from the access of the database through Internet.

(265) The Minister for Foreign Affairs had to admit recently, in reply to a parliamentary question, that it sometimes happens that Belgium publishes its international treaties in the *Moniteur belge* belatedly, i.e. well after their entry into force for Belgium on the international level, because of the time lapse of five to six weeks normally necessary to correct the proofs. Question n° 829 de M. Olivier, *Bull. Q.R. Sénat* No. 68 du 17 mars 1998 (1997-1998). The minister responded that certain measures had been taken to try to shorten this delay as much as possible, including the use of diskettes to ease the correction process of proofs and the sending of the text of the agreement to the *Moniteur belge* at the time of promulgation of the law of approval, in the understanding that the order to publish will only be given at the time the treaty effectively enters into force.

(266) Reply of the Minister for Foreign Affairs to Question n° 984 de M. Olivier, *Bull. Q.R. Sénat* No. 73 du 19 mai 1998 (1997-1998).

(267) See *supra* note 187 and the further references to be found there.

(268) See *supra* note 265.

really alleviate this fear (269). It is to be hoped that the positive sign given by the Flemish community, a constituent subpart of the Belgian federal state structure, will have more effect on the federal level than the good example given by foreign states, such as the Netherlands.

(269) Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation de la mer territoriale, October 8, 1990, as reprinted in the *Moniteur belge* du 18 décembre 1998, pp. 40184 and 40186-40187 (this agreement had already been published in 1993, see *supra* note 48) and Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République française relatif à la délimitation du plateau continental, October 8, 1990, as reprinted in the *Moniteur belge* du 18 décembre 1998, pp. 40185 and 40188-40189 (this agreement had also already been published in 1993, see *supra* note 49). A corrigendum was later on published indicating that this second publication had been caused by an administrative error and should consequently be considered to be null and void. See *Moniteur belge* du 5 juin 1999, p. 20873.

ANNEX 1

**Accord entre le Royaume de Belgique et le Royaume des Pays-Bas
relatif à la délimitation de la mer territoriale**

LE ROYAUME DE BELGIQUE

ET

LE ROYAUME DES PAYS-BAS

Désireux de fixer la limite latérale de la mer territoriale entre le Royaume de Belgique et le Royaume des Pays-Bas,

Sont convenus de ce qui suit :

Article 1

1. La limite entre la mer territoriale du Royaume de Belgique et la mer territoriale du Royaume des Pays-Bas est formée par les arcs de grands cercles joignant les points suivants, exprimés en coordonnées, dans l'ordre où ils sont énumérés ci-dessous :

Point 1 : 51° 22' 25" N ; 03° 21' 52,5" E

Point 2 : 51° 22' 46" N ; 03° 21' 14" E

Point 3 : 51° 27' 00" N ; 03° 17' 47" E

Point 4 : 51° 29' 05" N ; 03° 12' 44" E

Point 5 : 51° 33' 06" N ; 03° 04' 53" E

2. La position des points énumérés dans le présent article est exprimée en longitude et latitude selon le système géodésique européen (1^{re} mise à jour, 1950).

3. La ligne de délimitation, définie au paragraphe 1^{er}, est représentée à titre indicatif sur la carte annexée au présent Accord.

Article 2

La limite, constituée par les points énoncés à l'article 1^{er}, est basée sur le principe de l'équidistance à partir d'une ligne de base [maximale] (*), à savoir la laisse de basse mer le long de la côte. Il a été tenu compte de l'extension vers la mer du port de Zeebrugge en Belgique ainsi que du haut fond découvrant « Rassen » face à la côte des Pays-Bas.

(*) A marked discrepancy exists between the two authentic language texts in this respect. The French text uses the term « maximal baseline », whereas the Dutch text refers in this respect to the « normal baseline ». Given the fact that the Dutch official publication also uses the latter concept (see *Tractaten blad van het Koninkrijk der Nederlanden*, n° 14, 1997, p. 2), which also seems the most logical alternative from a law of the sea perspective, the French word « maximale » is most probably a mistake.

Article 3

Cet accord entrera en vigueur le premier jour du deuxième mois qui suit la date à laquelle les parties contractantes se seront notifiées mutuellement par écrit l'accomplissement des procédures requises par leur législation interne pour l'entrée en vigueur du présent accord.

EN FOI DE QUOI les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé le présent accord.

FAIT à Bruxelles, le 18 décembre 1996 en double exemplaire, en langues française et néerlandaise, les deux textes faisant également foi.

Pour le Royaume de Belgique :
Le ministre des Affaires étrangères,
Erik DERYCKE.

Pour le Royaume des Pays-Bas :
Le ministre des Affaires étrangères,
H.A.F.M.O. van MIERLO.

ANNEX 2

**Accord entre le Royaume de Belgique et le Royaume des Pays-Bas
relatif à la délimitation du plateau continental**

LE ROYAUME DE BELGIQUE

ET

LE ROYAUME DES PAYS-BAS

Désireux dans le cadre de relations de bon voisinage, de parvenir à une solution acceptable pour les deux Parties contractantes, concernant la délimitation latérale du plateau continental,

Sont convenus de ce qui suit :

Article 1

1. La limite entre le plateau continental du Royaume de Belgique et le plateau continental du Royaume des Pays-Bas est formée par l'arc de grand cercle joignant les points suivants, exprimés en coordonnées, dans l'ordre où ils sont énumérés ci-dessous :

Point 5 : 51° 33' 06" N ; 03° 04' 53" E

Point 6 : 51° 52' 34,012" N ; 02° 32' 21,599" E

2. La position des points énumérés dans le présent article est exprimée en longitude et latitude selon le système géodésique européen (1^{re} mise à jour, 1950).

3. La ligne de délimitation, définie au paragraphe 1^{er}, est représentée à titre indicatif sur la carte annexée au présent Accord.

Article 2

Dans le cas où une des Parties contractantes déciderait de créer une zone économique exclusive, les coordonnées énoncées à l'article 1 seront utilisées pour la délimitation latérale d'une telle zone.

Article 3

Cet accord entrera en vigueur le premier jour du deuxième mois qui suit la date à laquelle les parties contractantes se seront notifié mutuellement par écrit l'accomplissement des procédures requises par leur législation interne pour l'entrée en vigueur du présent accord.

EN FOI DE QUOI les soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé le présent accord.

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Pour le Royaume de Belgique :
Le ministre des Affaires étrangères,
Erik DERYCKE.

Pour le Royaume des Pays-Bas :
Le ministre des Affaires étrangères,
H.A.F.M.O. van MIERLO.

ANNEX 3 (*)

No. I

MINISTERIE VAN BUITENLANDSE ZAKEN,
BUITENLANDSE HANDEL EN ONTWIKKELINGSSAMENWERKING
De Minister van Buitenlandse Zaken

1000 Brussel, 18 december 1996
Quatre Brasstraat 2

Mijnheer de Minister,

Naar aanleiding van de ondertekening van het Verdrag tussen het Koninkrijk België en het Koninkrijk der Nederlanden inzake de zijwaartse afbakening van de territoriale zee, heb ik de eer U, namens het Koninkrijk België, het volgende voor te stellen :

De respectieve nationale overheidsinstanties van beide Verdragsluitende Partijen zullen de maatregelen, die noodzakelijk zijn voor de uitvoering van bovenvermeld Verdrag en daarmee samenhangende aangelegenheden, in gemeenschappelijk overleg treffen.

Indien U met dit voorstel kunt instemmen, zullen deze brief en Uw antwoord een integrerend deel uitmaken van het bovenvermelde Verdrag.

Erik Derycke

No. II

MINISTER VAN BUITENLANDSE ZAKEN,

Brussel, 18 december 1996

(*) Official Dutch text as it appeared in the *Tractatenblad van het Koninkrijk der Nederlanden*, No. 14, 1997. This text did not appear in the parliamentary documents of the Belgian Senate, even though the *Conseil d'État* remarked on August 5, 1997, that the law of approval should refer explicitly to the annex and the Exchange of Notes accompanying each of the agreements in question since they formed an integral part of them. See *Avis du Conseil d'État, Doc. parl., Sénat* No. 1-843, p. 17, 17 (1997-1998). With respect to the territorial sea, this suggestion was not taken into account. See *Loi portant assentiment à l'Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation du Plateau continental, et Annexe, et échange de lettres ; et à l'Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation de la Mer territoriale, signés à Bruxelles le 18 décembre 1996, Moniteur belge* du 19 juin 1999, p. 23149. The title as well as the content of this law of approval clearly distinguish between the agreement on the continental shelf, where the Annex (i.e. the map) and the Exchange of Notes are clearly mentioned, and the agreement on the territorial sea, where this is not done. Maybe this helps to explain why the map concerning the territorial sea only found its way into the *Moniteur belge* by means of an erratum (see *supra*, note 39). The French language version of the Belgian note, accompanying the law of approval, served as basis for the French text reproduced here (see *Moniteur belge* du 19 juin 1999, p. 23151).

Mijnheer de Minister,

Hiermede heb ik de eer de ontvangst te bevestigen van Uw brief van heden, die als volgt luidt :

(Zoals in *No. I*)

In antwoord op Uw brief heb ik de eer U mede te delen, dat ik met het voorgaande kan instemmen, zodat Uw brief en dit antwoord een integrerend deel uitmaken van het bovenvermelde Verdrag.

H.A.M.F.O. Van Mierlo
Minister van Buitenlandse Zaken
Van het Koninkrijk der Nederlanden

Aan de Minister van Buitenlandse Zaken
van het Koninkrijk België

French translation

No. I

MINISTÈRE DES AFFAIRES ÉTRANGÈRES,
DU COMMERCE EXTÉRIEUR ET DE LA COOPÉRATION AU DÉVELOP-
PEMENT

Le ministre des Affaires étrangères

1000 Bruxelles, 18 décembre 1996
2, rue Quatre Bras

Monsieur le Ministre,

A l'occasion de la signature de l'Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation latérale de la mer territoriale, j'ai l'honneur de vous proposer, au nom du Royaume de Belgique, ce qui suit :

Les autorités publiques nationales des deux Parties Contractantes adopteront de commun accord les mesures qui sont nécessaires à l'exécution de l'accord précité et des questions qui s'y rapportent.

Si cette proposition rencontre votre assentiment, cette lettre et votre réponse constitueront une partie intégrante de l'Accord précité.

Erik Derycke

No. II

MINISTRE DES AFFAIRES ÉTRANGÈRES

Bruxelles, le 18 décembre 1996

Monsieur le Ministre,

J'ai l'honneur de confirmer la réception de votre lettre au jour d'aujourd'hui aux termes suivants :

(Comme sous *No. I*)

En réponse à votre lettre j'ai l'honneur de vous informer que je peux consentir à votre proposition ci-dessus, de sorte que votre lettre et cette réponse constituent une partie intégrante de l'accord précité.

H.A.M.F.O. Van Mierlo

Ministre des Affaires étrangères
du Royaume des Pays-Bas

Monsieur le Ministre des Affaires étrangères
du Royaume de Belgique

ANNEX 4 (*)

No. I

MINISTERIE VAN BUITENLANDSE ZAKEN,
BUITENLANDSE HANDEL EN ONTWIKKELINGSSAMENWERKING

De Minister van Buitenlandse Zaken

1000 Brussel, 18 december 1996

Quatre Brasstraat 2

Mijnheer de Minister,

Naar aanleiding van de ondertekening van het Verdrag tussen het Koninkrijk België en het Koninkrijk der Nederlanden inzake de zijwaartse afbakening van het continentaal plat, heb ik de eer U, namens het Koninkrijk België, het volgende voor te stellen :

1. De twee verdragsluitende partijen komen overeen dat in de mate waarin de bevoegde overheid van één van de twee staten vóór de datum van inwerkingtreding van het bovenvermelde verdrag vergunningen onder welke vorm en benaming ook heeft verleend aan particulieren en overheidsinstanties voor het uitvoeren van activiteiten in het gebied van het continentaal plat die als gevolg van bovenvermeld verdrag onder de rechtsmacht van de andere staat komt, die laatstgenoemde staat de aldus door particulieren en overheidsinstanties verworven rechten zal erkennen gedurende een overgangperiode van 5 jaar en zich er toe verbindt deze vergunning in de loop van de overgangperiode te regulariseren overeenkomstig de eigen rechtsregels.

2. De respectieve nationale overheidsinstanties van beide verdragsluitende partijen zullen de maatregelen, die noodzakelijk zijn voor de uitvoering van bovenvermeld verdrag en daarmee samenhangende aangelegenheden, in gemeenschappelijk overleg treffen.

Indien U met dit voorstel kunt instemmen, zullen deze brief en Uw antwoord een integrerend deel uitmaken van het bovenvermelde verdrag.

Erik Derycke

(*) Since only the Dutch text appeared in the *Projet de loi, Doc. parl., Sénat* No. 1-843, pp. 7, 14-15 (1997-1998) this language version has been reproduced, as it also partly to be found in the *Moniteur belge* du 19 juin 1999, p. 23150. The French translation accompanying this latter publication served as basis for the French text reproduced here.

No. II

MINISTERIE VAN BUITENLANDSE ZAKEN,

Brussel, 18 december 1996

Mijnheer de Minister,

Hiermede heb ik de eer de ontvangst te bevestigen van Uw brief van heden, die als volgt luidt :

(Zoals in *No. I*)

In antwoord op Uw brief heb ik de eer U mede te delen, dat ik met het bovenstaande voorstel kan instemmen, zodat Uw brief en dit antwoord een integreerend deel uitmaken van het bovenvermelde verdrag.

H.A.M.F.O. Van Mierlo

Minister van Buitenlandse Zaken
Van het Koninkrijk der Nederlanden

Aan de Minister van Buitenlandse Zaken
van het Koninkrijk België

French translation*No. I*

MINISTÈRE DES AFFAIRES ÉTRANGÈRES,
DU COMMERCE EXTÉRIEUR ET DE LA COOPÉRATION AU DÉVELOP-
PEMENT

Le ministre des Affaires étrangères

1000 Bruxelles, 18 décembre 1996
2, rue Quatre Bras

Monsieur le Ministre,

A l'occasion de la signature de l'Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation latérale du plateau continental, j'ai l'honneur de vous proposer, au nom du Royaume de Belgique, ce qui suit :

1. Les deux Parties contractantes conviennent que, dans la mesure où l'autorité compétente d'un des deux États a accordé, avant la date d'entrée en vigueur de l'accord précité, des concessions sous quelque forme et dénomination, à des particuliers ou à des autorités publiques pour l'exercice d'activités dans la zone du plateau continental qui, à la suite de l'accord précité, se trouve sous la juridiction de l'autre État, ce dernier reconnaîtra les droits ainsi acquis par des particuliers ou des autorités publiques pendant une période de transition de 5 ans et s'engage à régulariser ces concessions au cours de cette période conformément à sa propre législation.

2. Les autorités publiques nationales des deux Parties Contractantes adopteront de commun accord les mesures qui sont nécessaires à l'exécution de l'accord précité et des questions qui s'y rapportent.

Si cette proposition rencontre votre assentiment, cette lettre et votre réponse constitueront une partie intégrante de l'accord précité.

Erik Derycke

No. II

MINISTRE DES AFFAIRES ÉTRANGÈRES

Bruxelles, le 18 décembre 1996

Monsieur le Ministre,

J'ai l'honneur de confirmer la réception de votre lettre au jour d'aujourd'hui aux termes suivants :

(Comme sous *No. I*)

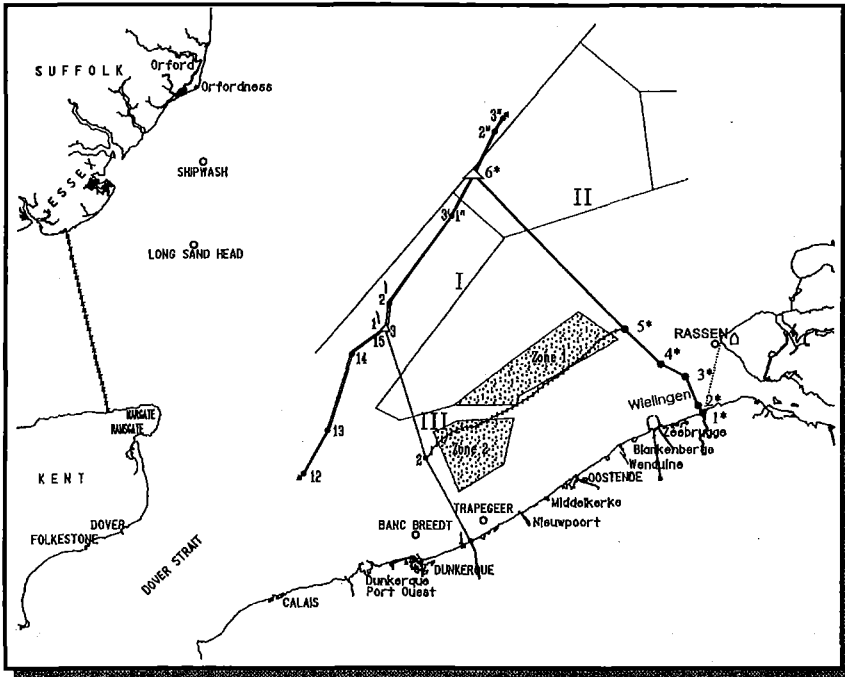
En réponse à votre lettre j'ai l'honneur de vous informer que je peux consentir à votre proposition ci-dessus, de sorte que votre lettre et cette réponse constituent une partie intégrante de l'accord précité.

H.A.M.F.O. Van Mierlo

Ministre des Affaires étrangères
du Royaume des Pays-Bas

Monsieur le Ministre des Affaires étrangères
du Royaume de Belgique

MAP 1





I. DELIMITATION

B-N	Territorial Sea Agreement (1996)	Lighthouse Molenhoofd	△
B-N	Continental Shelf Agreement (1996)	Agreed tripoint	△
B-N	Points 1*-5*		
B-N	Points 5*-6*		
B-UK	Continental Shelf Agreement (1991)	Low-tide elevation	○
B-UK	Points 1'-3'		
B-F	Territorial Sea Agreement (1990)	Belgian territorial sea	+++++
B-F	Points 1-2		
B-F	Continental Shelf Agreement (1990)	Scheldt closing line
B-F	Points 2-3		
F-UK	Continental Shelf Agreement (1982/1991)	Thames closing line	XXXXXX
F-UK	Points 12-15		
N-UK	Continental Shelf Agreement (1965)		
N-UK	Points 1"-3"		

II. NAVIGATION

—	Traffic separation schemes
I	Noord Hinder.South
II	Noord Hinder Junction Precautionary Area
III	West Hinder

III. EXPLOITATION

	Zone 1: Public Sector
	Zone 2: Private Sector