

# MARITIME BOUNDARIES IN THE BALTIC SEA: POST-1991 DEVELOPMENTS

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## I. INTRODUCTION

This article is based on a paper presented at the conference "International Legal Issues of the World Ocean" held in Moscow, Russia, in November 1998.<sup>1</sup> It may be viewed as an update of a contribution prepared by the author for a 1995 conference in Moscow held in recognition of the 50th anniversary of the United Nations Organization.<sup>2</sup> At the time of the 1995 conference only one new agreement had been achieved during the past half decade.<sup>3</sup> At the same time, however, it was predicted that the future would likely be characterized by the advent of a new series of maritime boundary delimitation agreements in the Baltic Sea region. This article confirms that prediction.

Three aspects of maritime delimitation will be addressed in this article. First, the article briefly outlines the conventional framework of the law of maritime delimitation. Second, the article distinguishes four chronological periods of state maritime boundary delimitation practice in the Baltic Sea region. Finally, the article provides an in-depth account of the fourth and most recent period: 1995-1999.

## II. CONVENTIONAL FRAMEWORK

The 1998 Moscow conference emphasized the importance of the 1982 United Nations Convention on the Law of the Sea.<sup>4</sup> This convention finally seems to have achieved the ultimate objective which its drafters had in mind when they embarked on this ambitious project—to create an "international

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<sup>1</sup> The conference was organized by the Russian Ministry of Foreign Affairs, the Russian Association of International Law, and the International Maritime Law Association.

<sup>2</sup> "Fiftieth Anniversary of the United Nations Organization and International Law," held October 1995. This conference was organized by the Russian National Committee on the United Nations Decade of International Law, the Committee for International Affairs of the Council of Federation of the Federal Assembly of the Russian Federation, the Russian Association of International Law, and the Association of International Maritime Law.

<sup>3</sup> See Agreement on the Delimitation in the Åland Sea and Northern Part of the Baltic Sea Covering the Finnish Continental Shelf and Fishing Zone and the Swedish Economic Zone, June 2, 1994, Fin.-Swed. (entered into force July 30, 1995) [hereinafter Finland-Sweden Agreement]. For an unofficial English translation, see Erik Franckx, *Baltic Sea: Finland-Sweden Delimitation Agreement*, 11 INT'L J. MARINE & COASTAL L. 394, 399-400 (1996); Erik Franckx, *Finland-Sweden (Bogskär Area)*, in 3 INTERNATIONAL MARITIME BOUNDARIES 2539, 2553-55 (Jonathan I. Charney et al. eds., 1998). For a commentary on the agreement, see *id.*; see also Erik Franckx, *Finland and Sweden Complete Their Maritime Boundary in the Baltic Sea*, 27 OCEAN DEV. & INT'L L. J. 291 (1996).

<sup>4</sup> United Nations Convention on the Law of the Sea, U.N. Doc. A/Conf. 62/122, 21 I.L.M. 1261 (1982) (entered into force Nov. 16, 1994) [hereinafter 1982 Convention].

treaty of a universal character, generally agreed upon.”<sup>5</sup> With 132 parties<sup>6</sup> representing the different regions of the world,<sup>7</sup> the 1982 Convention can reasonably be said to have approached its ultimate objective of becoming a constitution of the oceans.

It should be added, however, that the substantive law governing maritime delimitation is no longer found solely in conventions. The 1982 Convention represented a “decodification” of this branch of the law of the sea.<sup>8</sup> While the 1958 conventional system gave some guidance as to the method to be used beyond territorial waters,<sup>9</sup> the 1982 conventional provisions concerning the

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<sup>5</sup> G.A. Res. 2749, U.N. GAOR, 25th Sess., 1933d mtg. at 240.

<sup>6</sup> See *Oceans and the Law of the Sea Home Page* (visited Jan. 27, 2000) <<http://www.UN.org/Depts/los/los94st.htm#new>>. Since November, 1998, four more countries have become parties to the 1982 Convention, bringing the final objective of this document, to become a constitution of the oceans, again somewhat closer.

<sup>7</sup> The region that had previously been most reluctant to join, the so-called “Europe and North America” region, finally turned around recently. See *Law of the Sea: Report of the Secretary General*, 51 U.N. GAOR 51st Sess., Agenda Item 24(a), at par. 17, U.N. Doc. A/51/645 (1996).

<sup>8</sup> Tullio Treves, *Codification du droit international et pratique des états dans le droit de la mer*, 223 RECUEIL DES COURS 11, 104 (1991).

<sup>9</sup> See Convention on the Continental Shelf, Apr. 29, 1958, art. 6, 15 U.S.T. 471, 474, 499 U.N.T.S. 311 (entered into force June 10, 1964) [hereinafter 1958 Convention]. Appendix article 6 of the 1958 Convention states:

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each state is measured.
3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

*Id.*

The territorial sea has to be excluded in this respect for it received a similar treatment in 1958 and 1982, namely an equidistance-special circumstances rule that very much resembles the delimitation method codified in 1958 with respect to the continental shelf. See Convention

delimitation of the exclusive economic zone and the continental shelf specify the result to be achieved but fail to indicate any concrete means to achieve that goal.<sup>10</sup> Both article 74 and article 83 of the 1982 Convention are characterized by the complete absence of a practical method to achieve the required equitable solution.<sup>11</sup>

Indeed, according to the first paragraph of articles 74 and 83, an agreement must be arrived at on the basis of international law "in order to achieve an equitable solution."<sup>12</sup> Given the particular drafting history of these articles of the 1982 Convention,<sup>13</sup> one can state that these provisions represent "an agreement between the participants (of the Third United Nations Conference on the Law of the Sea) to further disagree."<sup>14</sup> The fundamental differences in approach remained between those who, on the one hand, supported the median line or equidistance principle coupled with an exception for special circumstances and those, on the other hand, favoring a more outspoken reliance on

on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, art. 12, 15 U.S.T. 1606, 516 U.N.T.S. 205 (entered into force Sept. 10, 1964); 1982 Convention, *supra* note 4, art. 15. Though the formulation is slightly different in the two conventions, the rule remained effectively the same. Article 15 of the 1982 Convention states:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

*Id.*

Given the limited extent of this zone, especially when compared with the newly created exclusive economic zone and the redefined continental shelf in the 1982 Convention, it is easily understood that the issue receives its full importance today in areas beyond the territorial sea.

<sup>10</sup> See 1982 Convention, *supra* note 4, arts. 74(1), 83(1); see also 2 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 814 (Satya N. Nandan et al. eds., 1993) [hereinafter U.N. CONVENTION COMMENTARY] ("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."). For a similar conclusion with respect to article 83, see *id.* at 983.

<sup>11</sup> See 2 LAURENT LUCCHINI & MICHAEL VOELCKEL, DROIT DE LA MER [LAW OF THE SEA] 89 (1996).

<sup>12</sup> 1982 Convention, *supra* note 4, arts. 74(1), 83(1).

<sup>13</sup> For a discussion of exclusive economic zone delimitation as per article 74, see U.N. CONVENTION COMMENTARY, *supra* note 10, at 796-816. For a discussion of continental shelf delimitation as per article 83, see *id.* at 948-85.

<sup>14</sup> Erik Franckx, *Coastal State Jurisdiction with Respect to Marine Pollution—Some Recent Developments and Future Challenges*, 10 INT'L J. MARINE & COASTAL L. 253, 254 (1995).

equitable principles. The relevant articles of the 1982 Convention circumvented the crucial issue of fixing the exact method of delimitation to be applied by instead emphasizing the final objective to be achieved. As a consequence, according to articles 74(1) and 83(1), states appear to be free to choose any method they want as long as it leads to an equitable solution.<sup>15</sup> This teleological approach of articles 74(1) and 83(1) has been emphasized on more than one occasion by the International Court of Justice.<sup>16</sup>

If this sub-branch of the law of the sea is not of conventional nature, is it governed by customary international law? Once again, the answer appears to be no. In the field of maritime delimitation, there is hardly any discernable customary law regarding the directly relevant applicable principles.<sup>17</sup> To use the words of the International Court of Justice:

A body of detailed rules is not to be looked for in customary international law. . . . It is therefore unrewarding, especially in a new and still unconsolidated field like that involving the quite recent extension of the claims of States to areas which were until yesterday zones of the high seas, to look to general international law to provide a ready-made set of rules that can be used for solving any delimitation problems that arise.<sup>18</sup>

Consequently, the international law of maritime delimitation is not to be found in treaty law, nor in customary law, but is rather found in judicial

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<sup>15</sup> See Eero J. Manner, *Settlement of Sea Boundary Delimitation Disputes According to the Provisions of the 1982 Law of the Sea Convention*, in *ESSAYS IN INTERNATIONAL LAW IN HONOUR OF JUDGE MANFRED LACHS* 625, 633 (Jerzy Makarczyk ed., 1984).

<sup>16</sup> See *Case Concerning the Continental Shelf (Libya v. Tunisia)*, 1982 I.C.J. 49 (Feb. 24) (“[A]ny indication of a specific criterion which could give guidance to the interested States in their effort to achieve an equitable solution has been excluded. Emphasis is placed on the equitable solution which has to be achieved.”); see also *Case Concerning the Continental Shelf (Libya v. Malta)*, 1985 I.C.J. 30-31 (June 3). The court, referring to the 1982 opinion above, stated: “The Convention sets a goal to be achieved, but is silent as to the method to be followed to achieve it. It restricts itself to setting a standard, and it is left to the States themselves, or to the courts, to endow this standard with specific content.” *Id.*

<sup>17</sup> Despite the fact that information regarding state practice in this field is readily available and has been carefully analyzed, it is almost impossible to draw generally applicable conclusions. See 1 *INTERNATIONAL MARITIME BOUNDARIES* xxiii, xlii (Jonathan I. Charney & Lewis M. Alexander eds., 1992); see also Jonathan I. Charney, *International Lawmaking in the Context of the Law of the Sea and the Global Environment*, in *TRILATERAL PERSPECTIVES ON INTERNATIONAL LEGAL ISSUES: RELEVANCE OF DOMESTIC LAW AND POLICY* 13, 18 (Michael K. Young & Yugi Iwasawa eds., 1996).

<sup>18</sup> *Gulf of Maine (Can. v. U.S.)*, 1984 I.C.J. 299 (Oct. 12).

decisions.<sup>19</sup> The latter constitutes what Charney has called a kind of judge-made common law in the classic sense, even though the rule of *stare decisis* is not applicable on the international level.<sup>20</sup> As of now, the decisions of the International Court of Justice and the awards of arbitral tribunals have foremost significance.<sup>21</sup> The future will tell whether the International Tribunal for the Law of the Sea will have to be added to this list.

### III. MARITIME DELIMITATION IN THE BALTIC: THE PAST

Three main periods can be distinguished when trying to classify the pre-1995 Baltic Sea delimitation agreements in a chronological manner. It is not the intention of this author to dwell on the different periods, nor on the individual agreements concluded during them. Such analysis has been done in a detailed manner elsewhere.<sup>22</sup> The present article will only highlight the salient features that distinguish these periods *inter se*. These periods will provide the reader with the general background against which the present-day agreements discussed in the third part should be understood.

Agreements in the first period (1945-1972) were concluded almost exclusively between former Eastern bloc countries. Finland was the sole non-socialist country to participate.

A second period (1973-1985), which lasted only half as long as the first, was profoundly influenced by a partial normalization in the relations between Eastern and Western Europe in the wake of the conclusion of the Treaty on the

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<sup>19</sup> See PROSPER WEIL, *THE LAW OF MARITIME DELIMITATION: REFLECTIONS* 143-56 (1989).

<sup>20</sup> See Jonathan I. Charney, *Progress in International Maritime Boundary Delimitation*, 88 AM. J. INT'L L. 227, 228 (1994).

<sup>21</sup> Sometimes national court decisions can have an impact on the development of international law. In the area of law under consideration here, one can refer to the decisions of courts in the United States that have applied international norms to federal-state maritime boundary dispute issues. See generally GAYL S. WESTERMAN, *THE JURIDICAL BAY* 201-57 (1987).

<sup>22</sup> In chronological order, see Erik Franckx, *International Cooperation in Respect of the Baltic Sea*, in *THE CHANGING POLITICAL STRUCTURE OF EUROPE: ASPECTS OF INTERNATIONAL LAW* 245 (Rene Lefeber et al. eds., 1991); Erik Franckx, *Baltic Sea Maritime Boundaries*, in *1 INTERNATIONAL MARITIME BOUNDARIES*, supra note 17, at 345, 347-48; *Frontières maritimes dans la mer Baltique: passé, présent et futur*, 9 ESPACES ET RESSOURCES MARITIMES 92, 97-103 (1995); *Maritime Boundary Delimitation in the Baltic*, in *THE BALTIC SEA: NEW DEVELOPMENTS IN NATIONAL POLICIES AND INTERNATIONAL COOPERATION* 167, 169-73 (Renate Platzöder & Philomène Verlaan eds., 1996); *Maritime Boundaries in the Baltic Sea: Past, Present and Future*, 2 MARITIME BRIEFING 6, 6-10 (1996); *Les délimitations maritimes en mer Baltique*, 5 REVUE DE L'INDEMER 32, 50-58 (1997).

Basis of Intra-German Relations.<sup>23</sup> The treaty allowed both East and West Germany to become members of the United Nations in 1973. This, in turn, paved the way for a new, second period of agreements between countries belonging to different blocs.

The third and most productive period so far occurred between 1985 and the disintegration of the former Soviet Union in early 1990. Almost as many agreements were concluded during this half decade as during the forty preceding years. This progress was made despite the fact that the areas to be delimited were generally thought of as problematic from a delimitation point of view.<sup>24</sup>

By the time the Soviet Union had disappeared from the political map, maritime delimitation in the Baltic Sea had reached a very advanced stage, even when compared with geographic areas where many of the complicating factors present in the Baltic were totally absent.<sup>25</sup> Indeed, the only remaining boundary to be settled in the Baltic Sea was the area south and southeast of the island of Bornholm between Denmark and Poland, at least if one left aside the remaining tri-points in the area.

Following these political events, the delimitation picture became much more complicated, particularly with the emergence of three new state entities: Estonia, Latvia, and Lithuania. This emergence resulted in a sudden increase of new areas in need of delimitation. It also raised the question of state succession with respect to the maritime delimitation treaties concluded before the regained independence of Estonia, Latvia, and Lithuania. These two aspects formed the crux of the agreements concluded during the fourth period.

Before addressing the fourth period, another agreement concluded during the first half of the 1990s should be mentioned. It is discussed separately because it was not directly related to the disintegration of the former Soviet

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<sup>23</sup> See Treaty on the Basis of Intra-German Relations, Dec. 21, 1972, 12 I.L.M. 16-17 (entered into force June 21, 1973).

<sup>24</sup> Many complicating factors, such as the presence of islands, had to be tackled by these agreements. See Umberto Leanza, *The Influence of Islands on Delimitation in the Baltic Sea*, in *THE BALTIC SEA: NEW DEVELOPMENTS IN NATIONAL POLICIES AND INTERNATIONAL COOPERATION*, *supra* note 22, at 178-88.

<sup>25</sup> For instance, when compared with the North Sea, where the East-West confrontation did not exist and where islands were almost totally absent, the situation changed drastically after the third period mentioned above. Beforehand, it could be argued that the construction of maritime boundaries in the North Sea had reached a more advanced stage than in the Baltic. See J.R.V. PRESCOTT, *THE MARITIME BOUNDARIES OF THE WORLD* 291 (1985). This situation completely reversed itself afterwards. See Erik Franckx, *Maritime Boundaries and Regional Co-operation*, in *THE NORTH SEA: PERSPECTIVES ON REGIONAL ENVIRONMENTAL CO-OPERATION* 215, 225-27 (David Freestone & Tom Ijlstra eds., 1990).

Union. This agreement is between Finland and Sweden.<sup>26</sup> Its main feature is that it remedied the only instance in the Baltic Sea where the continental shelf boundary line did not correspond to the outer boundaries of the fishing zones that the parties had established.

#### IV. MARITIME DELIMITATION IN THE BALTIC: THE PRESENT

Within the framework of this article, "the present" is defined as the period between 1995 and today. This period covers all agreements directly related to the disappearance of the former Soviet Union. The agreements so far have been concluded in the southeastern part of the Baltic Sea, and as such, they appear to form a fourth distinguishable group in the overall Baltic Sea delimitation effort.

In total, five such agreements have been concluded thus far, of which three have already entered into force. This article discusses four.<sup>27</sup> In chronological order,<sup>28</sup> these agreements are between:

1. Estonia and Latvia;<sup>29</sup>
2. Estonia and Finland;<sup>30</sup>
3. Estonia, Latvia, and Sweden;<sup>31</sup> and

<sup>26</sup> See Finland-Sweden Agreement, *supra* note 3.

<sup>27</sup> The fifth is an agreement between Estonia and Sweden and was signed on the day of the 1998 conference where this author presented this article. See Agreement on the Delimitation of the Maritime Zones in the Baltic Sea, Nov. 2, 1998, Est.-Swed. (not yet entered into force). For commentary, see Erik Franckx, 31 OCEAN DEV. & INT'L L. J., forthcoming; see also Alex G. Oude Elferink, *Delimitation of Maritime Zones between Estonia and Sweden*, 14 INT'L J. MARINE & COASTAL L. 299 (1999).

<sup>28</sup> No discrepancies exist between the chronology of the signature dates and the dates of entry into force.

<sup>29</sup> See Agreement on the Maritime Delimitation in the Gulf of Riga, the strait of Irbe and the Baltic Sea, July 12, 1996, Est.-Lat. (entered into force Oct. 10, 1996), reprinted in Erik Franckx, *Two New Maritime Boundary Delimitation Agreements in the Eastern Baltic Sea*, 12 INT'L J. MARINE & COASTAL L. 365, 372-74 (1997) [hereinafter Estonia-Latvia Agreement].

<sup>30</sup> See Agreement on the Boundary of the Maritime Zones in the Gulf of Finland and the Northern Baltic Sea, Oct. 18, 1996, Est.-Fin. (entered into force Jan. 7, 1997), reprinted in Franckx, *supra* note 29, 365, 375-76 [hereinafter Estonia-Finland Agreement].

<sup>31</sup> See Agreement on the Common Maritime Boundary Point in the Baltic Sea, Apr. 30, 1997, Est.-Lat.-Swed. (entered into force Feb. 20, 1998), reprinted in Erik Franckx, *Two More Maritime Boundary Agreements Concluded in the Eastern Baltic Sea in 1997*, 13 INT'L J. MARINE & COASTAL L. 274, 281 (1998) [hereinafter Estonia-Latvia-Sweden Agreement].



#### 4. Lithuania and Russia.<sup>32</sup>

##### A. Classification

As previously stated, there are two distinct categories of agreements in the fourth period. First are those agreements relating to the delimitation of maritime areas where no boundary existed before. Second are those agreements that provide an answer to the more subtle question about the legal status of previously concluded maritime boundary agreements, i.e., those entered into by the former Soviet Union. So far, two agreements of the first category, the Estonia-Latvia Agreement and the Lithuania-Russia Agreement, and one agreement falling mainly under the second category, the Estonia-Finland Agreement, have been concluded.<sup>33</sup>

One should add a hybrid agreement to this list, the Estonia-Latvia-Sweden Agreement. It is much more difficult to classify than the aforementioned three. This agreement actually touches upon both aspects discussed above, even though the agreement itself is careful to avoid any direct reference to the second category, namely agreements previously concluded by the former Soviet Union. As a rule, tri-point agreements in the Baltic Sea are settled through direct negotiations between all the parties involved after the bilateral process has been completed.<sup>34</sup> The process of settling the tri-point mainly consists of the three parties taking the terminal points of the three existing bilateral agreements and connecting these three points to a commonly agreed upon point somewhere in the middle.<sup>35</sup> The present agreement is different in that it simply appears to give legal force to a provision contained in the

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<sup>32</sup> See Treaty on the Delimitation of the Exclusive Economic Zone and the Continental Shelf in the Baltic Sea, Oct. 24, 1997, Lith-Russ. (not yet entered into force), reprinted in Franckx, *supra* note 31, at 374, 282-83 (1998) [hereinafter Lithuania-Russia Treaty].

<sup>33</sup> It must indeed be noted that this latter agreement did add a new segment of about 30 nautical miles to an already existing boundary. But because this new segment only represents a small percentage of the overall boundary, measuring more than 210 nautical miles in total, it seems justifiable to classify this agreement under the second category.

<sup>34</sup> See Franckx, *Baltic Sea Maritime Boundaries*, *supra* note 22, at 363.

<sup>35</sup> See Agreement Concerning the Junction Point of the Maritime Boundaries in the Baltic, June 30, 1989, Pol.-Swed.-U.S.S.R. (entered into force May 10, 1990), reprinted in Erik Franckx, *First Trijunction Point Agreed upon in the Baltic between Poland, Sweden and the U.S.S.R.*, 5 INT'L J. ESTUARINE & COASTAL L. 394, 396-97 (1990) and Erik Franckx, *Poland-Sweden-Soviet Union*, in 2 INTERNATIONAL MARITIME BOUNDARIES 2097, 2103-104 (Jonathan I. Charney & L.M. Alexander eds., 1998) (detailing the procedure followed by the only existing tri-point agreement in the Baltic Sea proper, excluding Kattegat and Skagerrak, prior to the Estonia-Latvia-Sweden Agreement).

bilateral agreement reached the preceding year between Estonia and Latvia. Article 3 of that agreement states:

The maritime boundary between the Republic of Estonia and the Republic of Latvia continuing into the Baltic Sea form point #15<sup>36</sup> defined in Article 2 as a straight geodetic line in the azimuth of 289°19,35' up to the boundary of the exclusive economic zone and the continental shelf of the Kingdom of Sweden. The azimuth is defined by adding 90° to the azimuth at the median point of the straight geodetic line between the point at the Southern Rock of Cape Loode with geographical coordinates 57°57,4760' N; 21°58, 2789' E and the point at Ovisi Lighthouse with geographical coordinates 57°34,1234' N; 21°42,9574' E.

The precise coordinates of point #16 where this maritime boundary meets the boundary of the exclusive economic zone and the continental shelf of the Kingdom of Sweden shall be determined by a trilateral agreement between the Republic of Estonia, the Republic of Latvia and the Kingdom of Sweden.<sup>37</sup>

The Estonia-Latvia-Sweden Agreement did exactly that. But in doing so, it started from the premise that the existing maritime boundary agreed upon by the former Soviet-Union and Sweden in 1988<sup>38</sup> was acceptable to Estonia and Latvia as their present-day maritime boundary with Sweden, at least in the area surrounding the tri-point. Indeed, the Estonia-Latvia-Sweden Agreement does not even make the slightest reference to the 1988 Agreement. However, the 1988 Agreement together with all other existing maritime boundary agreements concluded by Sweden so far, was clearly relied upon when Sweden determined the outer limit of its economic zone, created in 1992 by means of

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<sup>36</sup> This point is a turning point located on the closing line of the Gulf of Riga between the westernmost point of the Estonian island of Saaremaa and Cape Ovisi on the Latvian coast.

<sup>37</sup> Estonia-Latvia Agreement, *supra* note 29, art. 3.

<sup>38</sup> See Agreement between the Government of the Kingdom of Sweden and the Government of the Soviet Socialist Republics concerning the Delimitation of the Continental Shelf and of the Swedish Fishing Zone and the Soviet Economic Zone in the Baltic Sea, Apr. 18, 1988, Swed.-U.S.S.R. (entered into force June 22, 1988), *reprinted in* Erik Franckx, *Soviet Union-Sweden, in 2 INTERNATIONAL MARITIME BOUNDARIES, supra* note 35, 2057, 2073-75 [hereinafter 1988 Agreement].

an ordinance promulgated later that year.<sup>39</sup> In short, this municipal enactment implicitly confirmed the 1988 Agreement.<sup>40</sup>

The reference to the "border of the exclusive economic zone and continental shelf of the Kingdom of Sweden" in article 1 of the Estonia-Latvia-Sweden Agreement refers maybe not in form, but certainly in substance, to the 1988 Agreement. This implies acceptance by Estonia and Latvia of the delimitation line established by the 1988 Agreement. Estonia and Latvia had not yet concluded bilateral delimitation agreements with Sweden at the time this tri-point agreement was signed.

As to the question whether this Estonia-Latvia-Sweden Agreement draws a maritime boundary where none had existed before, the answer, once again, is not as straightforward as it might seem at first glance. In fact, the location of the boundary line already existed before the conclusion of the tri-point agreement. Sweden did not gain any territory and therefore did not have to draw any new boundary line in the maritime areas under its jurisdiction because the tri-point was located on the segment of the 1988 Agreement between points A3 and A4. Furthermore, because its course had already been determined in principle by the Estonia-Latvia Agreement,<sup>41</sup> neither Estonia nor Latvia established new boundaries.

Essentially, the tri-point agreement confirmed three things: Swedish acceptance of the method proposed by Estonia and Latvia, the correct coordinates of the tri-point, and the official acceptance by Estonia and Latvia that the outer limit of Sweden's economic zone corresponds in the area of the tri-point with the line established by the 1988 Agreement.

Until then, Estonia and Latvia had never taken a clear position on the third point. When the fishery issue needed prompt solutions during the first years after Estonian independence, the issue was carefully avoided.<sup>42</sup> This left room for a double interpretation.<sup>43</sup> Even though Latvia has not officially established

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<sup>39</sup> See Ordinance on Sweden's Economic Zone, *reprinted in* 26 LAW OF THE SEA BULLETIN 24, 31-33 (Oct. 1994) (adopted on Dec. 3, 1992). The coordinates listed in art. 1(6) are identical to points A17-A1 of the 1988 Agreement, *supra* note 38. For a comment on the act on which this ordinance was based, see Said Mahmoudi, *Sweden's Economic Zone Act*, 8 INT'L J. ESTUARINE & COASTAL L. 524 (1993). For text of the legislation, see 23 *Law of the Sea Bulletin* 24, 24-28 (June 1993).

<sup>40</sup> See Erik Franckx, *Baltic Sea Update*, in 3 INTERNATIONAL MARITIME BOUNDARIES, *supra* note 3, at 2557, 2569.

<sup>41</sup> See Estonia-Latvia Agreement, *supra* note 37.

<sup>42</sup> See Franckx, *supra* note 40, at 2569.

<sup>43</sup> See Alex G. Oude Elferink, *Bilateral Agreements on Fisheries between Sweden and Estonia, Latvia and the Russian Federation*, 9 INT'L J. MARINE & COASTAL L. 101, 104 (1994).

an exclusive economic zone, Estonia established one in 1993.<sup>44</sup> Moreover, Estonia clearly distinguished the outer boundaries of the exclusive economic zone by means of a law enacted in March of 1993.<sup>45</sup> This law, insofar as it relates to the area facing the Swedish coast,<sup>46</sup> used the same turning points as those mentioned in the 1988 Agreement.<sup>47</sup> As is the case with its Swedish counterpart,<sup>48</sup> the Estonian legislation appeared to consider this particular stretch to represent the maritime boundary with Sweden.<sup>49</sup> This can be subsumed by implication. Of all the countries establishing exclusive economic zones in the Baltic during the 1990s, the municipal enactments of Estonia and Sweden were the only ones not explicitly mentioning any previously concluded delimitation agreement by name.<sup>50</sup>

<sup>44</sup> See Barbara Kwiatkowska, *200-Mile Exclusive/Fishery Zone and the Continental Shelf—An Inventory of Recent State Practice: Part 1*, 9 INT'L J. MARINE & COASTAL L. 199, 225 (1994). This author mentions an Economic Zone Act of Jan. 28, 1993.

<sup>45</sup> See Law on the Boundaries of the Maritime Tract, Mar. 10, 1993, *reprinted in* 25 LAW OF THE SEA BULLETIN 55, 62-64 (June 1994).

<sup>46</sup> Only points 86 to 88 are mentioned here, corresponding to points A1 to A3 of the 1988 Agreement. See 1988 Agreement, *supra* note 38, at 2074. Point A4 of the latter document is not relevant because the location of this point is determined by Cape Ovisi, which is located on Latvian territory. See *supra* text accompanying note 36.

<sup>47</sup> Points A1, A2, and A3 of the 1988 Agreement, see 1988 Agreement, *supra* note 38, at 2074, correspond to points 86, 87, and 88 of the Law on the Boundaries of the Maritime Tract, see Law on the Boundaries of the Maritime Tract, *supra* note 45, at 63, respectively. It is not clear whether the Swedish or Soviet system of coordinates, both used by the 1988 Agreement, was relied upon here. Because the coordinates used in the 1988 Agreement are more precise, the municipal act could fit under either system with one coordinate of longitude taken from the other system (the coordinate of longitude of point 86 fits the Swedish system; the one of point 88, the Soviet system).

<sup>48</sup> See *supra* text accompanying note 40.

<sup>49</sup> See Law on the Boundaries of the Maritime Tract, *supra* note 45, at 55, 62-63. Article 7 states: "The exclusive economic zone is a maritime tract beyond and adjacent to the territorial sea whose outer limit is determined in coordination with neighboring States. The coordinates of the boundary of the exclusive economic zone are established in appendix 3." *Id.* at 55. Appendix 3, entitled "The Boundary of the Exclusive Economic Zone and Continental Shelf of the Republic of Estonia," lists the different coordinates, including points 86-88. *Id.* at 62. Appendix 3 makes it clear that in areas where negotiations did not determine a boundary, the points listed in the municipal enactment are subject to change. Only two countries appear in the list, namely Latvia (Strait of Irbe and Gulf of Riga) and the Russian Federation (Vaindlo Island area). Sweden is not mentioned, and it thus appears that Estonia considers the maritime boundary with Sweden to be settled.

<sup>50</sup> See Act Concerning the Maritime Areas of the Polish Republic and the Maritime Administration, Mar. 21, 1991, art. 67 (entered into force July 1, 1991), *reprinted in* 21 LAW OF THE SEA BULLETIN 66, 85 (1992) [hereinafter Polish Act]. The German and Danish enactments both mention one previously concluded agreement by name—Proclamation Concerning the Establishment of an Exclusive Economic Zone of the Federal Republic of Germany in the North

In light of the fishery question, these municipal enactments indicate that the boundary line agreed upon between the former Soviet Union and Sweden in 1988 indirectly found its way into the state practice of Estonia and Sweden, despite the theoretical point of departure.

## *B. Salient Features*

### *1. Estonia-Latvia Agreement*<sup>51</sup>

The issue of fisheries prompted Estonia and Latvia to negotiate the first maritime boundary agreement following the disintegration of the former Soviet Union. In the past, the Soviet Ministry of Fisheries conducted the administration of fisheries in the context of a larger Soviet whole. *Zapryba*,<sup>52</sup> headquartered in Riga, managed operations of distant-water fisheries in the west.

Fishermen of both countries either (1) formed part of the mighty Soviet distant-water fishing fleet that roamed the high seas or exclusive economic or fishing zones of other countries; (2) were fishing in the Baltic in an area extending from the Gulf of Finland in the North to the Kaliningrad area in the South; or (3) were involved in inland fisheries and aquaculture within the broader Soviet state planning system. The market was totally oriented towards the U.S.S.R.

This situation drastically changed after independence, giving rise to an acute fishing problem between Estonia and Latvia. Inside the Gulf of Riga tensions rose dramatically. This tension finally erupted into an outright fish-war,<sup>53</sup> with Estonian coastguard vessels inspecting and seizing Latvian fishing boats and Latvia threatening to send in naval vessels to protect its fishing boats. The issue was further complicated by the Soviet claim that the

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Sea and in the Baltic Sea, Nov. 25, 1994, art. 4 (entered into force Jan. 1, 1995), *reprinted in* 27 LAW OF THE SEA BULLETIN 57-59 (1995) and the Danish Act No. 411 on Exclusive Economic Zone, May 22, 1996, art. 5(2) (entered into force July 1, 1996), *reprinted in* 33 LAW OF THE SEA BULLETIN 32 (1997). The Danish implementing legislation, Executive Order No. 584 Concerning Denmark's Exclusive Economic Zone, June 24, 1996 (entered into force July 1, 1996), *reprinted in* 33 LAW OF THE SEA BULLETIN 32-35 (1997), did not explicitly mention any agreement by name.

<sup>51</sup> See generally Erik Franckx, *Two New Maritime Boundary Delimitation Agreements in the Eastern Baltic Sea*, *supra* note 29, at 367-69.

<sup>52</sup> *Zapryba* is a Russian acronym for "Western Fisheries."

<sup>53</sup> See *Old Borders Lead to Fishing Conflicts in Baltics*, MOSCOW NEWS WEEKLY, May 12, 1995, available in 1995 WL 15895263.

waters of the Gulf of Riga were historical in nature.<sup>54</sup> Latvia favored this argument,<sup>55</sup> but Estonia rejected it.<sup>56</sup>

The Island of Ruhnu posed another difficult problem. With an area of 11.36 square kilometers, this Estonian island is located much closer to the shores of Latvia (20 nautical miles) than the Estonian mainland (37 nautical miles) or the Estonian Island of Saaremaa (29 nautical miles). Even though located approximately in the middle of the Gulf of Riga, Estonia had incorporated it into its system of straight baselines when the latter was established in 1993.<sup>57</sup> To complicate matters further, there are rich fishing grounds in its immediate vicinity.

The solution has been to enclave the Island of Ruhnu by a 12 nautical miles territorial sea. Yet, the essence of the dispute that arose between the parties, the fishery problem, has not been addressed by the agreement and is still outstanding between the parties.

## 2. Estonia-Finland Agreement<sup>58</sup>

Contrary to the heated situation between Estonia and Latvia, Estonia and Finland have managed to prevent incidents by concluding an interim agreement. This agreement was reached almost immediately after Estonia regained independence. By means of this legal instrument, both parties agreed to apply, *ad interim*, the boundary line that had been in force between Finland and the former Soviet Union.<sup>59</sup> At the time when this agreement lapsed,<sup>60</sup> no

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<sup>54</sup> See Anne E. Reynolds, *Is Riga an Historic Bay?*, 2 INT'L J. ESTUARINE & COASTAL L. 20, 22 n.11 (1987). This claim had its origins in Imperial Russia, see PIÈRE SOLODOVNIKOFF, *LA NAVIGATION MARITIME DANS LA DOCTRINE ET LA PRATIQUE SOVIÉTIQUES* 299 (1980), and had been continuously sustained by Soviet jurists until the dissolution of the Soviet Union. See INTERNATIONAL LAW 223 (F. M. Volkov ed. & Kim Pilorski trans., 1990).

<sup>55</sup> See *Baltic News Service*, July 3, 1995, <<http://www.bnsews.bns.ee>>.

<sup>56</sup> See *Baltic News Service*, May 22, 1995, <<http://www.bnsews.bns.ee>>.

<sup>57</sup> See *Law on the Boundaries of the Maritime Tract*, *supra* note 45, app. 1 (The Baseline of the Territorial Sea of the Republic of Estonia), points 28-34.

<sup>58</sup> See generally Franckx, *supra* note 29, at 369-71.

<sup>59</sup> See Agreement on the Provisional Application of Some Treaties between Finland and the Soviet Union in the Relations between Finland and Estonia, Mar. 20, 1992. Swedish translation kindly provided by Mr. M. Koskeniemi, at that time forming part of the Ministry of Foreign Affairs of Finland. All four existing maritime delimitation agreements concluded by the former Soviet Union and Finland were included in the list enumerating the documents to which this agreement would apply. See Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Concerning the Boundaries of Sea Areas and of the Continental Shelf in the Gulf of Finland, May 20, 1965, U.S.S.R.-Fin., 566 U.N.T.S. 31, 37; Agreement between the Republic of Finland and the Government of the Union

final delimitation agreement had been reached. For that reason, it was prolonged for two more years.<sup>61</sup> This proved sufficient for the parties to conclude the present agreement, which in essence took over the coordinates of the previously accepted turning and terminal points.<sup>62</sup>

Secondly, this agreement also moved the western terminal point of the boundary line somewhat closer to the hypothetical tri-point with Sweden.<sup>63</sup> By doing so, a solution was found for the difficult issue of the Finnish island group of Bogskär, consisting of primarily two uninhabited rocks with a total area of approximately 4-5 square kilometers.<sup>64</sup>

### 3. *Estonia-Latvia-Sweden Agreement*<sup>65</sup>

Not much needs to be added with respect to this agreement to what has already been stated above. Because this agreement constituted, in fact, the confirmation by three states of what had previously been agreed upon by two

of Soviet Socialist Republics Concerning the Boundaries of the Continental Shelf between Finland and the Soviet Union in the North Eastern Part of the Baltic Sea, May 5, 1967, U.S.S.R.-Fin., 640 U.N.T.S. 111; Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Regarding the Delimitation of the Areas of Finnish and Soviet Jurisdiction in the Field of Fishing in the Gulf of Finland and the North-Eastern Part of the Baltic Sea, Feb. 25, 1980, U.S.S.R.-Fin.; Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Regarding the Delimitation of the Economic Zone, the Fishery Zone and the Continental Shelf in the Gulf of Finland and the North-Eastern Part of the Baltic Sea, Feb. 5, 1985, U.S.S.R.-Fin. For English translations of all four agreements, see 2 INTERNATIONAL MARITIME BOUNDARIES, *supra* note 35, at 1966-69, 1977-78, 1986-87, and 1995-96 (respectively).

<sup>60</sup> The provisional application was to end on January 9, 1995.

<sup>61</sup> Information kindly obtained from Ms. Marja Lehto, Ministry of Foreign Affairs of Finland on May 31, 1995, as later confirmed by Martti Koskenniemi & Marja Lehto, *Finland and the Law of the Sea*, in THE LAW OF THE SEA: THE EUROPEAN UNION AND ITS MEMBER STATES 127, 135 (Tullio Treves & Laura Pineschi eds., 1997) (speaking of an exchange of notes of Jan. 3, 1995).

<sup>62</sup> Sixteen out of a total of seventeen points included in the Estonia-Finland Agreement are identical to those found in the previously concluded agreements by Finland and the former Soviet Union.

<sup>63</sup> See *supra* text accompanying note 33.

<sup>64</sup> Both parties disagreed on the exact weight to be attributed to these geographical features. This divergence of opinion already existed during the Soviet period and explains the western terminal point of the maritime boundary agreed upon at that time. Any point further west would have involved an appreciation of the influence generated by the Bogskär island group on the boundary line.

<sup>65</sup> See Franckx, *supra* note 31, at 277-78.

of them, not much discussion was necessary in order to arrive at this agreement.<sup>66</sup>

Notwithstanding this rather special procedure, the agreement is believed to confirm the practice in the Baltic Sea according to which tri-points are always agreed upon through direct negotiations between all the parties concerned.<sup>67</sup>

#### 4. *Lithuania-Russia Treaty*<sup>68</sup>

This is the only treaty of the four concluded during this fourth period that has not yet entered into force. Being the latest of the four agreements under consideration to have been signed,<sup>69</sup> this might appear quite normal. However, if one considers the time it took for the other three agreements to enter into force, the Lithuania-Russia treaty does not really fit the general picture.<sup>70</sup> Furthermore, the question whether this agreement will ever enter into force seems far from being merely rhetorical, as the Russian Duma has adopted a negative attitude towards this agreement.<sup>71</sup>

The exact content of this agreement was moreover kept silent for a rather long time because the parties had agreed that its text would only be made public at the time of ratification. Nevertheless, through a leak in the Lithuanian newspaper *Dienrastis Respublika*, the text reached the public domain on December 13, 1997. It is interesting to note that the agreement establishes a delimitation line that runs into a zone, which is at present disputed between Lithuania and Latvia.

<sup>66</sup> Only one meeting of technical experts and one meeting of diplomats was needed. Information kindly received from Niklas Hedman, Swedish Ministry of Foreign Affairs, on February 16, 1998.

<sup>67</sup> See *supra* text accompanying note 34. Even though only two such agreements have been concluded so far in the Baltic Sea proper (see *supra* note 35, for the other) this submission seems justified taking into account the fact that all existing bilateral agreements stop short of the outstanding tri-junction points.

<sup>68</sup> See Franckx, *supra* note 31, at 278-80.

<sup>69</sup> See *supra* text accompanying notes 28-32.

<sup>70</sup> The bilateral agreements took about three months each to enter into force, see *supra* notes 29-30, and the trilateral one about ten months, see *supra* note 31. At the time of writing, already more than a year had passed since the signing of the Lithuania-Russia Agreement.

<sup>71</sup> For a more thorough examination of this particular question, see Erik Franckx & Ann Pauwels, *Lithuanian-Russian Boundary Agreement of October 1997: To Be or not To Be?*, in *LIBER AMICORUM GÜNTHER JAENICKE—ZUM 85. GEBURTSTAG 63-95* (Volkmär Götz et al. eds., 1998).



## V. CONCLUSIONS

This analysis provides evidence that a distinct new, fourth period of conclusion of delimitation agreements has recently been set in motion in the Baltic Sea. The common denominator linking the agreements in this fourth period is that they attempt to cope, in one way or another, with the fundamental political changes that took place in this region during the early 1990s. That it took half a decade for this movement to be set in motion should not be surprising given the more urgent problems that needed to be tackled first.

This new period is expected to continue for some time. While some agreements can be expected to see the light of day in the very near future, others may take somewhat longer. The former category certainly includes a series of outstanding agreements, of which the legal difficulties have to some extent already been defused by the content of the agreements discussed in the present paper. It is believed that the trilateral agreement between Estonia, Finland, and Sweden is in the pipeline.

The second category of agreements may take somewhat longer. They relate primarily to areas where overlapping national claims exist. The maritime boundary between Estonia and Russia is an example. In that situation, a theoretical territorial sovereignty dispute in the border area facing the Gulf of Finland has placed the settlement of the maritime frontier between these two countries on hold, as well as the settlement of their tri-point with Finland. Even more complex is the maritime area between Latvia, Lithuania, Russia, and Sweden. The conclusion of a bilateral agreement may indeed encroach on the rights of others in the area.<sup>72</sup> Therefore, it will be very interesting to follow the lot that will fall to the Lithuania-Russia Treaty.

The solution of disputes of the second category may sometimes take many years, even between friendly nations. This fact may best be illustrated by the recent developments between Belgium and the Netherlands. A final settlement of the land and maritime boundary after Belgium's independence in 1830 remained unresolved for many years. The last stretch of the land boundary only received a definitive solution in October 1995.<sup>73</sup> The territorial sea and

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<sup>72</sup> In the supposition that the maritime zones of all the eastern states touch upon Sweden's economic zone, six agreements remain outstanding in this area, two of which are tri-point agreements.

<sup>73</sup> See *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 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*, Oct. 31, 1995, *Moniteur belge* June 26, 1996,

continental shelf boundaries, the last such lines to be settled in the North Sea, were agreed upon only on December 18, 1996, by means of two separate agreements.<sup>74</sup> It appears therefore safer, as far as the Baltic Sea is concerned, not to venture any predictions in this respect.

*Status iuris:* November 1998

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17565-17594.

<sup>74</sup> They only entered into force very recently. Regarding the territorial sea, see *Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation de la Mer territoriale*, Dec. 18, 1996, B. - N. (entered into force Jan. 1, 1999), reprinted in *Moniteur belge* du 19 juin 1999, 23151 and *Moniteur belge* due 3 septembre 1999, 32843, 32843-45 (containing two charts on the territorial sea boundary that were apparently omitted from the earlier publication). Regarding the continental shelf, see *Accord entre le Royaume de Belgique et le Royaume des Pays-Bas relatif à la délimitation du plateau continental*, Dec. 18, 1996, B. - N. (entered into force Jan. 1, 1999), reprinted in *Moniteur belge* du 19 juin 1999, 23150, 23152-53.