Agreement between Iceland and Norway on the Continental Shelf Between Iceland and Jan Mayen

Agla Margrét Egilsdóttir

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Author: Agla Margrét Egilsdóttir
ID number: 080885-2619
Instructor: Catherine Banet
Lagadeild
School of Law

Útdráttur

Samkomulag Íslands og Noregs um landgrunnið á svæðinu milli Íslands og Jan Mayen

Með samkomulagi Íslands og Noregs um landgrunnið á svæðinu milli Íslands og Jan Mayen frá 1981 var kveðið á um mörk landgrunnsins á svæðinu sem skyldu vera hin sömu og mörk efnahagslögsögu þeirra. Í samningnum var einnig skilgreint sameiginlegt nýtingarsvæði sem nær yfir beggja vegna landgrunnsmarka Íslands og Jan Mayen. Samkvæmt fyrirkomulaginu um sameiginlegt nýtingarsvæði á Ísland rétt á 25% þátttöku í olíustarfsemi á norska hluta svæðisins og einnig á Noregur rétt á 25% þátttöku í olíustarfsemi á íslenska hluta svæðisins sem er þekkt sem Drekasvæðið. Markmið þessarar ritgerðar er að rannsaka lagagrundvöll fyrirkomulagsins sem kveður á um sameiginlega nýtingasvæðið þar sem lagagrundvöllur þess hefur verið umdeildur innan þjóðaréttar og þá sérstaklega hvort það sé talin vera þjóðréttarleg skylda að ganga í slíkt fyrirkomulag um sameiginlegt nýtingarsvæði. Það verður gert með því að rannsaka samspil ákvæða Hafréttarsáttmálans og annarra reglna þjóðaréttar, venjuréttar meðal þjóða og úrskurða Alþjóðadómstólsins. Einnig var kannað hvernig aðilar samningsins hafa útfært og túlkað samninginn enn frekar, sérstaklega þar sem að síðustu misseri hefur þurft að reyna á samninginn vegna útgáfu sérleyfanna. Eftir ítarlega greiningu kom í ljós að slíkt fyrirkomulag er ekki sérstaklega krafist af þjóðarétti, heldur er það eitt af nokkrum mögulegum lögfræðilegum fyrirkomulögum. Hins vegar er skylda fyrir ríki til að ganga til samstarfs og fá fram friðsamlegar úrlausnar deilumála samkvæmt sáttmála Sameinuðu Þjóðanna. Þessi skylda hefur einnig verið staðfest sem skylda til að ganga í samstarf við ríki vegna vinnslu á kolvetnisauðlindum þar sem það hefur verið viðurkennt af venjurétti og starfsháttum þjóða.

Abstract

Agreement between Iceland and Norway on the Continental Shelf Between Iceland and Jan Mayen

The Agreement on the Continental Shelf in the Area Between Iceland and Jan Mayen, 1981 provided that the delimitation line between the Parties' parts of the continental shelf area should be the same as of their delimitation line of their economic zones. Also, the agreement defined the so called joint development zone that covers both sides of the boundaries of the continental shelf of Iceland and Jan Mayen. According to the arrangement of joint development, Norway and Iceland both have a 25% participation right in any hydrocarbon activities that take place in each other's area. The aim of this thesis is to examine the legal basis of the arrangement that provides for joint development on the defined area, where the legal basis has been controversial in international law, especially, whether it is considered to be obligatory by international law to establish such joint development arrangements or not. The analysis will study the interaction of the provisions of the United Nations Convention on the Law of the Sea and other treaty law, customary law and state practice. Furthermore, it was examined how the Parties have implemented and interpreted the agreement further, especially because of the issuance of the concessions in the Dreki Area in January 2013, which were issued by the NEA. A thorough analysis of the joint development arrangement shows that it is not required by international law to enter into such an arrangement, but it represents a possible legal regime. However, nations have an obligation to enter into cooperation for peaceful resolution of disputes under the United Nations Charter. This obligation has also been confirmed as a duty to co-operate regarding the exploitation of hydrocarbon resources by customary law and state practice.

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List of Abbreviations

CCS	Convention on the Continental Shelf
EEA	European Economic Area
EEZ	Exclusive Economic Zone
EFZ	Exclusive Fishery Zone
EU	European Union
ICJ	International Court of Justice
ITLOS	International Tribunal for the Law of the Sea
JDZ	Joint Development Zone
JMA	Agreement on the Continental Shelf between Iceland and Jan Mayen, 22 October 1981
JMFA	Agreement between Iceland and Norway on Fishery and Continental Shelf Questions, 28 May 1980
NEA	Icelandic National Energy Authority (Orkustofnun)
NM	Nautical Mile (1 NM = 1.85 km)
UN Charter	Charter of the United Nations
UNCLOS	United Nations Convention on the Law of the Sea

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Alþt. 2010-2011, A-deild, þskj. 1196 – 679. mál (Agreed Minutes concerning the Right of Participation pursuant to Articles 5 and 6 of the Agreement of 22 October 1981 between Iceland and Norway on the continental shelf in the area between Iceland and Jan Mayen) (translated by author).

Alþt. 2010-2011, A deild, þskj. 1221-702. mál, athugasemdir við lagafrumvarp um skattlagningu á kolvetnisvinnslu (translated by author).

Alþt. 1978-1979, B-deild, 2283, (Translated by author).

Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf (Official Translation).

Regulation on Prospecting, Exploration and Production of Hydrocarbons No. 884/2011 (Unofficial Translation October 3, 2011).

Regulation on the Hydrocarbon Research Fund No. 39/2009 (Unofficial Translation October 3, 2011).

Norway:
Innst. S. nr. 198 (2008-2009), St.prp. nr. 43 (2008-2009) Avtale mellom Norge og Island vedrørende grenseoverskridende hydrokarbonforekomster (translated by author).

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1 Introduction

The importance of maritime boundaries in current international relations has grown considerably in the last 60 years. An area of sea may be worth more than an acre of desolate land, particularly if there is oil or gas on the subsoil or on the seabed.[1] Therefore boundary delimitation is now an important issue for many coastal states, bearing in mind that quite a few of them have a full set of maritime boundaries. According to geographical experts the theoretical total of actual and potential maritime boundaries is above 400 compared to about 180 boundary settlements that were published between 1993 and 2005.[2]

The Jan Mayen dispute began in the autumn of 1978 when a discovery of economically significant capelin stocks was made in a marine space lying between Iceland and the Jan Mayen island. The discovery served as the driving force for a process in which a jurisdictional dispute led several years later to a pair of agreements between Norway and Iceland. [3]

On 28 May 1980, the governments of Iceland and Norway reached an agreement concerning fishery and continental shelf questions. It was stated in the preamble of the agreement that it had been recognized that Iceland should have an economic zone of 200 miles according to the Icelandic Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf. However, during the negotiations of the agreement the government of Iceland claimed that Iceland was entitled to a continental shelf area extending beyond the 200 nautical mile economic zone. There was no common conclusion reached on this issue during the negotiation process. Iceland and Norway agreed to refer the issue to a Conciliation Commission, which was appointed in accordance with Article 9 of the Agreement concerning fishery and continental shelf questions. Consequently, the Icelandic-Norwegian Conciliation Commission was established on August 16, 1980. The role of the Commission under Article 9.3 is to make recommendations with regard to the dividing line for the shelf area between Iceland and Jan Mayen. Further, in preparing such recommendations, the Commission should take into account Iceland´s strong economic interests in these sea areas, the existing geographical and geological factors and other special circumstances.

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[1] Chatham House. Independent thinking on international affairs, 'Methods of resolving maritime boundary disputes. A meeting of the International Law Discussion Group at Chatham House on 14 February, 2006', February 14, 2006 1.

[2] *Maritime delimitation* (Martinus Nijhoff 2006), Publications on ocean development v. 53 121–122.

[3] Oran R. Young, *International Governance: Protecting the Environment in a Stateless Society* (Cornell University Press 1994) 61–62.

In summary, the Conciliation Commission made certain recommendations and proposed a joint cooperation arrangement for the defined area which as a result became the source of the later agreement between the parties: Agreement on the Continental Shelf Between Iceland and Jan Mayen, 22 October 1981 (JMA).[4]

At the beginning of 2013, the NEA (Icelandic National Energy Authority or Orkustofnun) issued the first licenses for exploration and production of hydrocarbons in the Dreki Area. This has been met with optimism amongst many Icelandic political leaders who hope that petroleum resources will be discovered and that Iceland, as a small country, will be recognized as one of the oil-producing nations in the future.

Licenses are granted in accordance with the Agreement between Iceland and Norway on the Continental Shelf in the area between Iceland and Jan Mayen from 1981 and under the provisions of Act No. 13 of 2001 on prospecting, exploration and production of hydrocarbons.[5]

When the Icelandic government was preparing a tender for concessions for the prospecting, exploration and production of oil and gas in the Dreki area, negotiations with the government of Norway took place about interpretation and implementation of the Jan Mayen Agreement of 1981. On 3 November 2008 an agreement was signed between Iceland and Norway on hydrocarbon resources lying across boundaries. The agreement involves a framework agreement between the parties on the exploitation of any potential deposits as a unit.[6]

The aforementioned framework is a prerequisite for the licensing of prospecting, exploration and production of hydrocarbon resources in the Dreki area, the Icelandic part of the common exploitation of area between Iceland and Jan Mayen. These international agreements, which are now to be applied, lay down the core legal framework applicable to the topic of this thesis.

The legal sources that will be used in the analysis are mainly treaties where the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 is undoubtedly the most

[4] Elliot L. Richardson, Hans G. Andersen, and Jens Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981', May 1981, 20 ILM 797

[5] The National Energy Authority, 'Iceland issues the first licenses for exploration and production of hydrocarbons in the Dreki Area.', January 4, 2012 < http://www.nea.is/the-national-energy-authority/news/nr/1311> accessed February 3, 2013.

[6] Utanríkisráðuneytið, 'Framkvæmd Jan Mayen-samningsins og olíuleit á Drekasvæðinu | Framkvæmd Jan Mayen-samningsins og olíuleit á Drekasvæðinu | Hafréttarmál | Þjóðréttarmál | Alþjóða- og öryggismál | Verkefni | Utanríkisráðuneyti', <http://www.utanrikisraduneyti.is/verkefni/althjoda-og-oryggissvid/thjodaettarmal/hafrettarmal/framkvaemd-jan-mayen-samningsins-og-oliuleit-a-drekasvaedinu/ >, accessed February 12, 2013

important treaty in this field.[7] It contains many valuable solutions for international maritime matters. Furthermore, the customary law will be reviewed where it has continued to be the primary source in some parts of international law and Article 38.1 of the Statute of the International Court of Justice, which is generally recognized as the statement of legal sources of international law[8] will be considered, along with the Charter of the United Nations. Also, other material sources, such as judicial decisions and the writing of scholars will be considered.

The main topic of this thesis is to research the background and the key characteristics of the maritime boundary delimitation agreement between Iceland and Norway - the so-called Agreement on the Continental Shelf between Iceland and Jan Mayen of 22 October 1981 (JMA) and its consequences for the exploitation of hydrocarbon resources within the geographical area covered by the agreement on the Dreki Area. The Dreki area is an area on the Jan Mayen Ridge located in the seas between Iceland and Jan Mayen and it is believed to have potential hydrocarbon resources.

Also, in the thesis, the political, economic and legal aspects of the relations between Iceland and Norway are highlighted, which are primarily influenced by the fact that they are neighbouring countries. I will especially analyze the basis of the agreement between the two countries on the Continental Shelf in the area between Iceland and Jan Mayen of 1981 which is a maritime boundary delimitation agreement providing for a joint development arrangement between Iceland and Norway. The analysis will include considerations of the terms of the agreement, its background, and its consequences for the parties to the agreement. Furthermore, it will be examined how Iceland and Norway have interpreted and implemented the agreement.

The more targeted objective of this thesis is to explore the concept of the joint development zone and the legal status of joint development arrangements like the one between Norway and Iceland. Joint development arrangements have given grounds to a number of questions, for example whether international law requires their implementation or do states just implement them as a matter of practice only. With the specific discussion of the agreement I aim to provide more understanding into the legal basis of the agreement. I am furthermore questioning whether the joint development arrangement between Norway and Iceland can serve as a permanent solution to their maritime boundary dispute.

[7] Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press 2012) 12.
[8] Tanaka, *The International Law of the Sea* 8–9.

Finally, since the agreement was concluded the joint development arrangement has remained largely untried due to the fact that no commercially significant hydrocarbon resources have been discovered in the area. However, since recent research indicates a high probability that hydrocarbon resources can be found on the joint area of Jan Mayen Ridge[9] it is appropriate to explore if the arrangement will operate effectively.

In chapter two, I will briefly demonstrate some basic concepts of public international law. The general principles of the Law of the Sea as applied to the joint area between Iceland and Norway will be discussed, namely the 1982 UNCLOS, which specifies the rights and responsibilities of a nation's usage of the World´s Sea. Also, the concept of marine spaces, sovereignty, territory and boundaries will be reviewed, as they are instrumental to the analysis of the topic.

In chapter three, I intend to review the background for the maritime boundary agreement between Iceland and Norway on the area between Jan Mayen and Iceland, which is necessary to understand the premises for the agreement.

The agreements between Iceland and Norway concerning Jan Mayen are analyzed in chapter four, especially the joint development arrangement between the parties on the Jan Mayen area along with the concept of maritime boundary delimitation on the Jan Mayen Ridge.

In chapter five, the legal basis of joint development arrangements is studied carefully, and especially the legal status of the joint arrangement between Iceland and Norway. Also, the question whether the Jan Mayen Agreement providing for a joint development zone is a temporary solution or not, is debated along with the discussion of what is the actual significance of the agreement to the parties.

Chapter six deals with the implementation and interpretation of the Jan Mayen agreement today, which is divided into subsections, such as the discussion about petroleum resources on the Jan Mayen ridge today, the Dreki Area and the issuances of licenses for exploration and production of hydrocarbons on Dreki, the legal and regulatory framework for oil exploration in Iceland etc.

Finally, in the last section, chapter seven, conclusions and findings of the research are presented and explained.

[9] Ministry of Industry, 'Oil exploration in the Dreki area on the Jan Mayen Ridge. Proposal for a plan to offer exclusive exploration and production licences for oil and gas in the Dreki area (Dragon area) on the Jan Mayen Ridge, northeast of Iceland and a Strategic Environmental Assessment (SEA) of the proposed plan' (Ministry of Industry March 2007) 20.

2 Basic concepts

It can be said that political interests are believed to have greater weight than international law arguments in disputes between states. This is partly due to the nature of international law, which does not cover all aspects of disputes. Thus, even when the relevant rules of international law can be clearly recognized, it often remains uncertain how overlapping and inconsistent laws are to be reconciled and arranged. Furthermore, the problem with agreements is that they often lack an enforcement mechanism.[10] However, one main characteristic of the Jan Mayen dispute was how much it invoked rules of international law. As usual in these kinds of disputes, Iceland and Norway disagreed on the legal effect of the rules. However, since both countries were aware of the effects of rules of international law, it led to more willingness to negotiate.[11]

Before moving on to the discussion of the Jan Mayen Agreement, this brief section will review some basic concepts of public international law, as they play a key role in the analysis in the next sections, and also it will discuss briefly the main principles of the Law of the Sea.

2.1 Sources of International Law

Contrary to national legal systems, the international legal system has no authority to implement binding legislation that applies to the whole world or to make obligatory the jurisdiction of international courts and tribunals without an agreement of states.[12] The international legal system is dominated by essentially a decentralized, non-hierarchical scheme, in which the topics create the law under which they are bound. Therefore, the identification of the legal sources raises critical challenges.[13] Furthermore, as the Jan Mayen Agreement includes a joint development arrangement between Iceland and Norway it is important to explore the legal sources of this international agreement because the concept of a JDZ has given rise to a number of questions, especially, the legal status of the JDZ.

As concerns the Law of the Sea, it is an inseparable part of international law overall. The Law of the Sea is created from the same sources of international law as presented in Article 38.1 of the Statute of the International Court of Justice[14]. However, in fact, Article 38.1 involves only the Court (ICJ), but this provision is generally recognized as the statement of sources of

[10] Jack Goldsmith and Daryl Levinson, 'Law for States: International Law, Constitutional law, public law' (2009) 122 Harward Law Review, 1806–1807.
[11] Steingrímur Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið"*. (translated by author. Ísafoldarprentsmiðja 1983) 446–447.
[12] Goldsmith and Levinson, 'Law for States: International Law, Constitutional law, public law' 1817.
[13] Ana E. Bastida, Adaeze Iefesi-Okoye, Salim Mahmud, James Ross, and Thomas Walde, 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective' (2007) Vol. 29, No. 2 Houston Journal of International Law 35
[14] Tanaka, *The International Law of the Sea* 8–9.

international law. [15] Article 38.1 counts three official sources of law, i.e. legal methods by which a legal rule comes into existence. The legal schemes are as follows:

i international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
ii international custom, as evidence of a general practice accepted as law;
iii the general principles of law recognized by civilized nations.[16]

International customary law has traditionally been the main source of international law. Despite efforts of codification and creation of multilateral treaties on important topics, customary law continues to be the primary source in some parts of international law. According to Ana E. Bastida *et al.*, International customary law gets its force from two essential factors: the consent of uniform state practice and a general belief that adherence to these rules is compulsory (opinion juris). Primarily, actual State practice is the source for international customary law but the writings of learned international lawyers and judicial decisions of both national and international courts can also be sources for customary law. Furthermore, resolutions of the United Nations General Assembly can be a basis of customary law as they reflect the opinions of the majority of States. Their standardized value can be determined based on general acceptance.

In this context, it is important to note that the decisions of the ICJ are not obliged to respect the precedents established by prior decisions. Article 59 of the Statute of the ICJ provides that Court decisions are not binding except between the parties to a case and in relation to that particular case only. However, this does not mean that the Court should ignore precedent completely. The Court is able to use precedent as a convincing argument rather than a binding one. [17] Consequently, according to the above one can conclude that it is possible to use the precedents of the ICJ as arguments to a solution of the Jan Mayen dispute between Iceland and Norway.

2.2 The principles of the Law of the Sea applied to the common area between Iceland and Norway

In order to gain more understanding of maritime boundary delimitation treaties like the Agreement between Iceland and Norway on the Continental Shelf in the area between Iceland

[15] Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993 (ICJ statute).
[16] 'Statute of the International Court of Justice', Article 38.
[17] Bastida, Iefesi-Okoye, Mahmud, Ross, and Walde, 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective'

and Jan Mayen, it is important to discuss briefly the Law of the Sea which, among other things, describes rights and obligations of States in their use of the seas around the world.

2.2.1 The Law of the Sea

In a historical context, the oceans have been and will continue to be crucial to human civilization on account of their rich resources. The ever-growing use of the oceans calls for further international rules governing the different human actions in the sea. The body of international rules that bind nations and other matters of international law in their marine issues are called the international Law of the Sea or more precisely, The United Nations Convention on the Law of the Sea (UNCLOS). The Law of the Sea is, like the international Law of Armed Conflict and the law of diplomacy, among the oldest types of public international law. Further, like international environmental and human rights law, the Law of the Sea is a powerful field of international law.[18]

The Law of the Sea has a dual mission in international relations. This mission is to facilitate international cooperation, and to define jurisdiction in the seas. In international law, the Law of the Sea plays the primary role in providing the local distribution of jurisdiction of states in marine areas. Under the contemporary international Law of the Sea the ocean is separated into numerous jurisdictional zones, such as internal waters, territorial seas, the contiguous zone, the exclusive economic zone (EEZ), archipelagic waters, the continental shelf, the high seas and the Area.[19] The Law of the Sea stipulates the rights and obligations of a coastal state and third states, which are considered under these jurisdictional zones. As observed by Tanaka, this approach is often called the zonal management approach. The second part of the mission addresses the necessity of international cooperation between states as the world ocean is considered one unit in a physical sense. Further, international cooperation is a precondition for protecting and maintaining living marine resources as well as biological diversity.[20]

2.2.2 International Principles of the Law of the Sea

Traditionally, the Law of the Sea was determined by principles of customary law, the basic principle of freedom of the seas, which was put forth in the seventeenth century.[21] More specifically, for hundreds of years coastal states claimed sovereignty over a narrow belt of

[18] Tanaka, *The International Law of the Sea* 3.
[19] 'United Nations Convention on the Law of the Sea, 1982' [no date] (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).
[20] Tanaka, *The International Law of the Sea* 4.
[21] United Nations. Division for Ocean Affairs and The Law of the Sea, 'The United Nations Convention on the Law of the Sea (A historical perspective)', 1998, <http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Third%20Conference > accessed February 5, 2013.

territorial sea and the basic principle of freedom of the seas applied to the rest of the sea.[22] Although this situation continued into the twentieth century, by mid-century it became the catalyst for extending national claims over marine resources. Consequently, there was a real need for change after the Second World War.[23]

Today, the international Law of the Sea depends on three important principles, namely the principle of freedom, the principle of sovereignty and the principle of the common heritage of mankind.

The principle of freedom focuses on ensuring the freedom of different uses of the sea, like navigation, fishing, transportation, laying down submarine cables and pipelines, building an artificial island, marine and fishing exploration etc. This principle may be thought of as focusing to ensure the freedom of navigation in order to advance international business and trade across the sea.

The principle of sovereignty, on the other hand, aims to protect the interests of coastal states. It contributes to the extension of national jurisdiction into offshore areas and supports the concept of dividing the sea into sovereign territories.

The third principle, the common heritage of mankind, is preserved in Part XI of the 1982 UNCLOS. This principle is different from the other two traditional principles. Firstly, the principle of the common heritage of mankind aims to promote the common interest of mankind as a whole, while the other two principles focus on protecting the interests of individual States. Secondly, the principle denotes mankind as a novel actor in the Law of the Sea. Under chapter V of 1982 UNCLOS the term "mankind" has an operational organ, namely, the International Seabed Authority, acting under the auspices of mankind as a whole. In this context, Tanaka says that it could be argued that mankind is emerging as a new actor in the Law of the Sea. Further, Tanaka considers that the principle of common heritage of mankind presents a new viewpoint, which goes beyond the state-to-state system, under the Law of the Sea. [24]

2.2.3 The 1982 UNCLOS

The United Nations Convention on the Law of the Sea of 1982 is considered to be one of the most critical, complex and extensive treaties ever made. Also, from the point of view of the law of treaties it contains many valuable solutions all of which have been adopted by the

[22] Emily F. Carasco, 'Law of the Sea - The Canadian Encyclopedia', March 18, 2013
[23] United Nations. Division for Ocean Affairs and The Law of the Sea, 'The United Nations Convention on the Law of the Sea (A historical perspective)' .
[24] United Nations. Division for Ocean Affairs and The Law of the Sea, 'The United Nations Convention on the Law of the Sea (A historical perspective)', 1998.

participating countries in the interest of achieving a successful result at the Conference - UNCLOS III.[25] The results were incorporated into two legal instruments: The 1982 UNCLOS Convention and the Final Act of UNCLOS III. The first one was passed on 30 April 1982 and the second on 24 September 1982 and both were opened for signature on 10 December 1982. There were 144 parties that signed the Final Act and were entitled to become party to the Convention under its article 305, and five parties that had observer status at the Conference. For two years the Convention was open for signature, and during that time 159 States signed it.[26] As of January 2013, 164 States and the European Union have joined in the Convention.[27] Regarding the States of Iceland and Norway, Iceland ratified the 1982 UNCLOS on 21 June 1985, which made Iceland number twenty on the Chronological list of ratifications. On the other hand, Norway was number ninety-eight on the Chronological list of ratifications since it ratified the Convention on 24 June 1996.[28]

Budislav Vukas, a former vice-president of the International Tribunal for the Law of the Sea (ITLOS), explained in his book, that it was understandable that an extensive treaty like the 1982 UNCLOS cannot satisfy all states. The treaty encompassed the codification and progressive development of an enormous and complex area. The legislative technique at international conferences does not permit the elaboration of international instruments as legislative masterpieces.[29] Still, 164 States have signed it today and therefore confirmed their opinion that the 1982 UNCLOS is an appropriate instrument to serve as a foundation of the international legal order for the seas and oceans.[30]

Among the most important features of the 1982 UNCLOS are: territorial sea limits, navigational rights, economic jurisdiction, passage of ships through narrow straits, legal status of resources on the seabed beyond the limits of national jurisdiction, conservation and management of living marine resources, protection of the marine environment, a marine

[25] Tanaka, *The International Law of the Sea* 24
[26] Budislaw Vukas, *The Law of the Sea, Selected Writings*, vol. 45 (Martinus Nijhoff Publishers 2004) 51.
[27] Vukas, *The Law of the Sea, Selected Writings* 58.
<http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm> accessed 7 February 2013.
[28] United Nations. Division for Ocean Affairs and the Law of the Sea, 'Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements'
<http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The United Nations Convention on the Law of the Sea> accessed on 23 January, 2013.
[29] Vukas, *The Law of the Sea, Selected Writings* 83.
[30] United Nations. Division for Ocean Affairs and the Law of the Sea, 'Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements'

research regime, and a binding procedure for settlement of disputes between States.[31] According to Tanaka, his beliefs are that four principal features characterize 1982 UNCLOS. Firstly, the treaty, which consists of 320 Articles and nine Annexes, keeps matters of marine resources completely and therefore it is often called "the constitution for the oceans".

The second feature, according to Tanaka, is that the 1982 UNCLOS finally resolved the essential question concerning the width of territorial seas. States agreed that a maximum seaward limit of the territorial sea is twelve nautical miles (NM), as provided in Article 3 of the 1982 UNCLOS.

Thirdly, contrary to the 1958 Geneva Convention on the Law of the Sea (CCS), the UNCLOS accomplished the establishment of compulsory procedures of dispute settlement. Article 286 stipulates that any dispute concerning the interpretation or application of the 1982 UNCLOS that has not been settled, must be submitted to the international courts and tribunals having jurisdiction under section two of Part XV. However there are several exceptions set out in section three relating to this obligation. Despite some limitations, the compulsory process that entails binding decisions seems to have a valuable function in the peaceful settlement of international disputes of the implementation of the 1982 UNCLOS.[32]

The fourth and final feature concerning the 1982 UNCLOS was its creation of three new institutions: The International Seabed Authority which is an international organization controlling activities in the Area. The ITLOS, which is the everlasting international tribunal for law of the sea disputes, and finally, The Commission on the Limits of the Continental Shelf which plays an essential part in making recommendations with regard to the outer limits of the continental shelf beyond 200 nautical miles.

Regarding the integrity of the Convention, as the 1982 UNCLOS consists of a series of compromises; it is not possible for a State to join the Convention without fully implementing it. This is called the package-deal approach.[33] Of consequence of this is the prohibition, by Article 309 of the Convention, to make reservations or exceptions to the Convention. This is for the purpose to secure the integrity of the Convention. However, Article 310 of the Convention acknowledges the right of states to make declarations or statements with a view to harmonize national laws and regulations with the provisions of the 1982 UNCLOS. As a

[31] Vukas, *The Law of the Sea, Selected Writings* 83.
[32] United Nations. Division for Ocean Affairs and The Law of the Sea, 'The United Nations Convention on the Law of the Sea (A historical perspective)' .
[33] *Extraterritorial immigration control: legal challenges* (Martinus Nijhoff Publishers 2010), Immigration and asylum law and policy in Europe v. 21 109.

matter of fact, many States have made declarations and statements regarding the UNCLOS following Article 310. [34]

It can be said that the third UN Conference adopted a comprehensive constitution for seas, after a challenging nine years of negotiations. In summary, for the first time in history there was a consensus in favour of an agreed limit to the territorial sea of 12 NM, 24 NM of the contiguous zone, a new zone – the exclusive economic zone (EEZ) extending up to 200 NM and a legal continental shelf extending to the end of the continental margin up to a depth of 2,500 meters or even beyond.

The effect of the approval of a coastal state jurisdiction over a 200 NM EEZ can almost be described as revolutionary. It has essentially resulted in the elimination of the freedom of fishing and the establishment of coastal state sovereign rights over the exploration, exploitation, and management of the living resources of the sea.

Lastly, the seabed beyond the limits of national jurisdiction was confirmed and established as *the common heritage of mankind*. Although the meaning of the word – common heritage of mankind – is not clear, the international mechanism for the exploitation of the resources in the sea has come to be formulated and approved by an overwhelming majority of states.[35]

2.2.4 Marine spaces, Sovereignty, Territory, and Boundaries

The Jan Mayen dispute is based on marine resource rights and sovereignty issues around Jan Mayen. It is thus important to discuss the marine spaces and its sovereignty and territory rights in this section.

Under contemporary international Law of the Sea, marine spaces are classified into different types, then divided into several jurisdictional zones in the contemporary international Law of the Sea. Within the national jurisdiction of the coastal state, these marine spaces are classified into two main groups: marine spaces *under* national jurisdiction and marine spaces *beyond* national jurisdiction. The former group contains marine spaces governed by territorial sovereignty: internal waters, territorial seas, archipelagic waters, international straits, the contiguous zone, the EEZ and the continental shelf. The latter group contains marine zones beyond the national jurisdiction of coastal states: the high seas and the Area, more specifically the seabed and sea floor and subsoil thereof. These maritime spaces, except the high seas and the Area, are measured from the baseline determined in accordance with customary international law as revealed in the 1982 UNCLOS.

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[34] Tanaka, *The International Law of the Sea* 31

[35] Tanaka, *The International Law of the Sea* 32.

Marine spaces under national jurisdiction can be divided into two categories. The first category is called territorial sovereignty and contains marine spaces under territorial sovereignty; the other category is called sovereign rights and contains marine spaces under the national jurisdiction of the state that are beyond territorial sovereignty. In both cases sovereignty can be exercised solely within the space and thus is spatial by nature. Such jurisdiction, which can only be exercised in a certain space, can be called 'spatial jurisdiction'.

Territorial sovereignty is defined by completes and exclusiveness which means that the coastal state has complete jurisdiction, both legislative and enforcement jurisdiction, over the state´s territory. The state can exercise its jurisdiction over all matters within its territory (no limit ratione materiae) and over all people regardless of their nationalities (no limit ratione personae). Territorial sovereignty may be called the complete spatial jurisdiction.

Sovereign rights jurisdiction is limited to matters defined by international law. This kind of jurisdiction applies to the EEZ and the continental shelf. Coastal states can exercise legislative and enforcement jurisdiction related to matters defined by international law. The jurisdiction applies to all people regardless of nationality within the area. Thus there is no limit ratione personae. No one can undertake the exploration and the exploitation of natural resources without the consent of the coastal state because sovereign rights are exclusive in that sense. Sovereign rights, unlike territorial rights, are limited and may be called limited spatial jurisdiction.[36]

There are four marine spaces under the 1982 UNCLOS, which Shi Jiuyong, a former judge at the International Court of Justice (ICJ), has defined well and precisely as follows:

I. *The territorial sea* that consists of a belt of sea of 12 NM in breadth adjacent to the territory of a coastal State, including internal waters and land territory. Regarding archipelagic states, it includes archipelagic waters. The sovereignty of a coastal state extends to its territorial sea (Articles 2 and 3 of the 1982 UNCLOS).

II. *The contiguous zone* contains an area extending up to 34 NM from the territorial sea baseline, where a coastal State is entitled to exercise the control necessary to stop and punish violations of its customs, fiscal, immigration or hygienic laws and regulations within its territory or territorial sea. It is not provided for delimitation of contiguous zone in the 1982 UNCLOS (Article 33).

[36] Tanaka, *The International Law of the Sea* 6–7.

III. *The continental shelf,* which includes the seabed and subsoil of the undersea areas that extend beyond the territorial sea to a distance of up to 350 NM where the natural prolongation of the land territory extends up to or beyond that distance, or to 200 NM where the natural prolongation of the land territory does not extend that distance. A coastal state has sovereign rights over the continental shelf in order to explore it and exploit its natural resources. A state´s entitlements or rights over its continental shelf is *ipso facto* and has been from the beginning, so there is no question whether it needs to make a claim in the areas concerned (Articles 76 and 77). However, claims to a continental shelf beyond 200 NM shall be submitted to, and be considered by, the Commission on the Limits of the Continental Shelf established under Article 76.8 of 1982 UNCLOS.

IV. *The Exclusive Economic Zone* (EEZ), contains an area that is beyond and adjacent to the territorial sea but cannot extend beyond 200 NM from the territorial sea baselines. Within the EEZ, the State has sovereign rights to explore, exploit, preserve and control the marine resources of the sea superjacent to the seabed and of the seabed and its subsoil. Furthermore, a state has sovereign rights relating to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and jurisdiction over man-made islands, structures and stations (Article 56 of the 1982 UNCLOS). [37]

3 The Background for the Agreement

This section will explore the background of the Agreement between Iceland and Norway on Jan Mayen. The issue in question is known as "the Jan Mayen dispute" and was solved peacefully by agreement between the two parties under the Contemporary Law of the Sea, particularly under 1982 UNCLOS.

3.1 Jan Mayen and Iceland

The original positions of both Iceland and Jan Mayen gave ground for conflicts. Jan Mayen is a volcanic island and a part of the Kingdom of Norway. The island is located in the North Atlantic Ocean, 950 km west of Norway, 600 km north of Iceland [38] and, 500 km east of central Greenland. The island is 55 km long and 373 km^2 in area, and is partly covered by

[37] J. Shi, 'Maritime Delimitation in the Jurisprudence of the International Court of Justice' (2010) 9 Chinese Journal of International Law 271, 272–273

[38] *The Nordic peace* (Ashgate 2003) 117.

glaciers (an area of 114.2 km) around the Beerenberg (a stratovolcano).[39] Jan Mayen was found in the early 17th century, and was *terra nullius* until it was claimed by Norwegians and subjected to the sovereignty of Norway in 1929. The island has no indigenous inhabitants but there are people living on the island due to the operation of the Long-Range Navigation base[40] and the transmission of meteorological observations to the mainland. The meteorological station was one of the main reasons why the Norwegian authority took over the island and made it belong to its kingdom. [41]

Iceland is an island that is located between the Greenland Sea and the North Atlantic Ocean, just south of the Arctic Circle. The island is about 103.000 km^2 and the coastline is 4.970 km.[42] The shortest distance between Iceland and Jan Mayen is about 290 NM. [43]

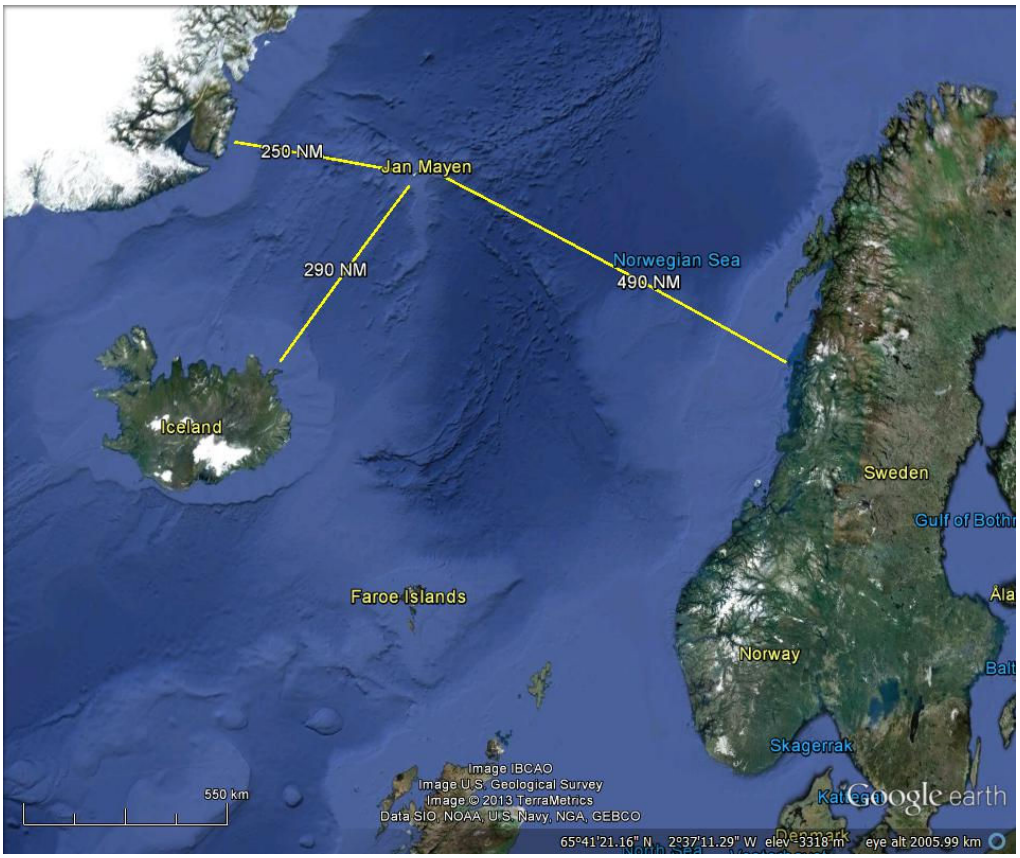

Figure 1. Jan Mayen and the surrounding region. The yellow lines depict the distance from Jan Mayen to neighbouring countries. Source: „Jan Mayen“ 65°41’21.16“N and 2°37’11.29°W. Google Earth. Accessed 10 May 2013.

[39] Jan Mayen, Norway - 71°N 8°30’W, ‘Jan Mayen’, February 20, 2013
[40] *The Nordic peace* (Ashgate 2003) 113.
[41] Willy Østreng, ‘Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)’ (1985) 10 Energy 555, 556.
[42] ‘Iceland Worldwide, General Statistics’, < http://www.iww.is/pages/generalinfo/chap/generalstats.html> accessed February 21, 2013.
[43] Amanda Briney, ‘Geography of Iceland. Information about the Scandinavian Country of Iceland’, December 29, 2010; Central Intelligence Agency, ‘The World Fact Book - Iceland.’, accessed February 21, 2013

3.2 The Jan Mayen dispute

During the autumn of 1978 a discovery of economically significant capelin stocks was made in a marine area lying between Iceland and the island Jan Mayen. The discovery served as the catalyst for a process in which a jurisdictional dispute led several years later to a pair of agreements between Norway and Iceland.

During the period between 1979 and 1981, Iceland and Norway had a diplomatic dispute about marine resource rights and sovereignty issues around Jan Mayen.[44] The government of Norway did not consider the waters around Jan Mayen to be of interest until the late 1970s. When Norway established an exclusive fishery zone (EFZ) in 1963 in the waters off the mainland and a 200 NM exclusive economic zone (EEZ) in 1977 it did not establish such zones around the island. However, in the summer and autumn of 1978 when the Norwegian fishing vessels caught large amounts of a capelin fish stock in an area to the southwest of the island, the situation changed. Norwegian fishermen petitioned their government to establish an EEZ around the island in order to protect their fishing rights.

Icelandic fishermen had conducted commercial fishing of the capelin stock since the mid–1960s, and felt that their position was threatened.[45] There were substantial economic interests involved, especially potential seabed resources and fishing rights. Furthermore, unless fishing around Jan Mayen was regulated, overfishing would ruin the valuable fish stocks there.[46]

The Norwegian government demanded the right to establish a 200 NM EEZ around Jan Mayen in the autumn of 1978. However, it wanted to have an understanding with the Icelandic government first, because it did not want to establish the zone unilaterally.

In the spring of 1979 the Icelandic government made some amendments and transformed the Icelandic EFZ into a 200 NM EEZ. The distance between Iceland and Jan Mayen is less than 400 NM, which meant that it claimed a full EEZ, extending to within 200 NM of Jan Mayen. Iceland refused to recognize Jan Mayen as an island as defined under the 1982 UNCLOS, and therefore it could not claim its own EEZ and continental shelf. Furthermore, the Icelandic government claimed that the continental shelf of Jan Mayen was part of the Icelandic continental shelf.

The Icelandic government proposed to enter into an agreement with Norway for the joint management of the capelin stock. These claims were refused by the government of Norway

[44] Young, *International Governance: Protecting the Environment in a Stateless Society* 61.
[45] *The Nordic peace* 113.
[46] Guðni Jóhannesson, 'The Jan Mayen dispute between Iceland and Norway, 1979-1981. A study in successful diplomacy.' (presented at the Artic Frontiers 2013, Geopolitics and Marine Production in a Changing Artic Artic Frontiers January 20, 2013)

because an agreement with Iceland on fisheries control would not be binding for third parties, along with the fact that the waters would continue to be a part of the high seas. The government of Norway demanded the establishment of an EEZ that would apply to vessels of all states.[47]

Furthermore, geological research indicated that there could possibly be found hydrocarbon resources under the seabed below. However, the big question was which state should have the entitlement of enjoying these resources or how they should divide them. Consequently, the need for a settlement was clear and after many discussions a solution was found in 1980 after the second round of negotiations in Oslo. On 28 May 1980, Iceland and Norway signed an agreement on Jan Mayen, namely, The Agreement between Iceland and Norway Concerning Fishery and Continental Shelf Questions (JMFA), which settled most of the outstanding questions.[48] Following the decision of the Icelandic government to sign the agreement, the Norwegian authorities established the fishery jurisdiction of Jan Mayen as of May 29 1980. The outer limit of the EEZ was determined 200 NM from the baseline of Jan Mayen but not beyond the centreline with Greenland or the outer limit of the Icelandic EEZ as it was determined under Icelandic law. [49]

However, there was no common conclusion reached on the delimitation line of the continental shelf during this negotiation process. As a result, the parties agreed to refer the issue to a Conciliation Commission, which was ordered to recommend a solution for the continental shelf questions. Consequently, the Agreement on the Continental Shelf between Iceland and Jan Mayen, 22 October 1981(JMA) was reached. The two agreements established a joint development arrangement covering the exploitation of both fish and hydrocarbons in the affected area. This governance system has often been mentioned as a successful model and precedent for other states. The joint development arrangement helped resolve the dispute of the maritime boundary in the area between Jan Mayen and Iceland in a way that is in accordance with the system of exclusive economic zones recognized under the 1982 UNCLOS.[50]

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[47] *The Nordic peace* 113–114.

[48] Guðni Jóhannesson, 'The Jan Mayen dispute between Iceland and Norway, 1979-1981. A study in successful diplomacy.' (presented at the Artic Frontiers 2013, Geopolitics and Marine Production in a Changing Artic Artic Frontiers January 20, 2013) 31. < http://gudnith.is/efni/jan_mayen_dispute_24_jan_2013>accessed February 21, 2013.

[49] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið"*. 458.

[50] Oran R. Young, *International Governance: Protecting the Environment in a Stateless Society* (Cornell University Press 1994) 61-62.

3.3 The legal status of Jan Mayen as an island

Whether Jan Mayen could be classified as an island was vital with regards to determining if it had an independent right to the continental shelf and the fishery zone. The Geneva Convention on the Continental shelf from 1958 (CCS)[51] makes no distinction between the continental shelf of the mainland and an island. Since Iceland did not ratify the Convention on the Continental shelf, they had to demonstrate that the relevant provisions were generally effective under customary law.

The work of the UNCLOS III influenced the development of international Law of the Sea in this matter. During the Jan Mayen dispute, a draft of the 1982 UNCLOS, which was laid out in 1975, contained provisions giving costal states extensive rights to an EEZ and a continental shelf. In addition, the UNCLOS also took into account the wishes of many countries, with regard to limiting these rights for small islands.[52]

The provision on the status of islands is found in Article 121 of 1982 UNCLOS[53] and states:

> An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
> Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the EEZ and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
> Rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.

According to the Icelandic- Norwegian Conciliation Commission, which was established by both countries in 1981, this article reflected the status of international law on this subject at that time.[54] The Commission based its opinion on paragraph 3 of this article, along with the actual size of Jan Mayen, which provided a basis for the statement that Jan Mayen was an island from the point of view of international law, and therefore it was entitled to a territorial sea, an economic zone and a continental shelf under article 121. [55]

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[51] United Nations, 1958 Convention on the Continental Shelf (adopted 29 April 1958, entered into force 10 June 1964) 499 UNTS 311.

[52] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið“*. 448.

[53] 'United Nations Convention on the Law of the Sea, 1982' (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).

[54] Elliot L. Richardson, Hans G. Andersen, and Jens Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981', May 1981, 20 ILM No. 4, 10.

[55] Guðni Th. Jóhannesson, 'The Jan Mayen dispute between Iceland and Norway, 1979-1981.' < http://gudnith.is/efni/jan_mayen_dispute_24_jan_2013> accessed February 21, 2013.

4 The Agreements between Iceland and Norway on Jan Mayen

After the Jan Mayen dispute, Iceland and Norway reached a compromise with two agreements concerning maritime boundary delimitation in 1980 and 1981. The first agreement created a maritime boundary for fishing zones and the second agreement covers the continental shelf boundary. In this section these agreements will be discussed further.

4.1 The Agreement between Iceland and Norway concerning Fishery and Continental Shelf Questions

After one year of negotiations Iceland and Norway reached an agreement on Jan Mayen, namely, the Agreement between Iceland and Norway concerning Fishery and Continental Shelf Questions on 28 May 1980 (JMFA).[56] An Icelandic historian and writer, Guðni Th. Jóhannesson, has stated that with the agreement the Icelanders got almost everything they wanted.[57]

Broadly speaking, the JMFA contained three issues: First, it confirmed the boundary between the EEZs of Iceland and Jan Mayen. Actually, the provisions do not provide for this statement, however, it can be concluded from the preamble of the JMFA. The establishment of the boundary agreement meant that Norway agreed to recognize the full Icelandic 200 NM EEZ, even though it extended to within 200 NM of Jan Mayen. In turn, Iceland agreed that Jan Mayen would be defined as island (and thus it would be entitled to a continental shelf and EEZ of its own) and they also approved that the EEZ would be expanded up to 200 NM.

Second, the agreement established a plan for joint management of the fish stocks occurring in both parties´ EEZ, shared by the two parties (Arts. 1-8). The JMFA contains comprehensive provisions on the management of the capelin stock.

Third, the agreement stipulates that a Conciliatory Commission (Arts. 9-10) of three-members would be set up and they ordered to submit a recommendation on the delimitation of the continental shelf between Iceland and Jan Mayen. The day after settling the JMFA, Norway established a 200 NM EFZ around Jan Mayen. Archer and Joenniemi assert that the reason that Norway did not create an EEZ is most likely due to the fact that the delimitation of the continental shelf remained unresolved.[58]

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[56] 'Agreement between Iceland and Norway Concerning Fishery and Continental Shelf Questions (JMFA)' [Delimitation Treaties Infobase, UN] adopted 28 May 1980, entered into force 13 June 1980; registration #: 37025; registration date: 8 November 2000,

[57] Guðni Th. Jóhannesson, 'The Jan Mayen dispute between Iceland and Norway, 1979-1981.'

[58] *The Nordic peace* 114.

4.2 Continental shelf of Iceland and Jan Mayen and their sovereign rights

The Convention on the Continental shelf (CCS)[59] entered into force on 10 June 1964. Norway became a state party to the convention on 9 September 1971[60]. Thus, the continental shelf of Jan Mayen is up to 200 metres deep or to the depth of exploitation, as provided under Article 1 of the CCS.[61]

As mentioned before Iceland has not ratified the CCS but it is a state party to the 1982 UNCLOS since 1985. However, according to the Icelandic Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf, the Icelandic continental shelf is 200 NM or to the edge of the continental margin, as Article 5 provides:

> The continental shelf of Iceland comprises the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance, subject, however, to the provisions of article 7.

After defining the size of the continental shelf area as has been done in Iceland and Jan Mayen, it is important to describe the rights which the States are entitled to in that area. Regarding sovereign rights of a coastal State like Iceland and Norway, then it follows under the CCS, Articles 1-3 and Articles 77.1, and 77.2 of the 1982 UNCLOS, that Iceland and Norway are entitled to exercise sovereign rights for the purpose of exploring the shelf and exploiting its natural resources. These rights are exclusive to the coastal state; no other state may carry out such activities without its express consent. The sovereign rights attaching to the coastal state cover all the natural resources of the shelf. The ICJ has confirmed this continental shelf right in many cases, for example in *the North Sea Continental Shelf cases* [62] it was referred to.[63]

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[59] Convention on the Continental Shelf (adopted 29 April 1958, entered into force 10 June 1964) United Nations, Treaty Series , vol. 499, p. 311 (CCS).

[60] United Nations Treaty Collection, 'Status at the Convention on the Continental shelf, Geneva, 29 April 1958', < http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=XXI-4&chapter=21&lang=en#Participants > accessed April 15, 2013.

[61] Convention on the Continental Shelf (CCS)

[62] 'North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)', p. , International Court of Justice (ICJ) 1969

[63] United Nations. Division for Ocean Affairs and The Law of the Sea, 'The United Nations Convention on the Law of the Sea (A historical perspective)'

4.3 Recommendations to the governments of Iceland and Norway by the Conciliation Commission

In 1979 Iceland had established a 200 NM EEZ around its country and proclaimed that it was entitled to a continental shelf area extending beyond the EEZ. Between Iceland and Jan Mayen lies the Jan Mayen Ridge, the northern portion of which may contain hydrocarbon resources. Iceland and Norway were debating the delimitation of their continental shelf between Jan Mayen and Iceland. [64]

During that time Article 1 of the CCS, which states as following, defined the continental shelf:

> For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.[65]

The Norwegian continental shelf and the continental shelf of Iceland, according to the Law No. 17 of 1 April 1969 concerning the continental shelf of Iceland (which was repealed by the Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf)[66] were determined in accordance with the definition of the Geneva Convention. However, according to a draft of the 1982 UNCLOS there was a new version of the definition of the continental shelf as a natural prolongation of the land territory. The Icelandic claims had to be based on the question of, to what extent the Jan Mayen area was a "natural prolongation" of Iceland. However, under the 1982 UNCLOS, the coastal state cannot determine the outer limits beyond 200 NM, but it will have to bring the matter before the Commission on the Limits of the Continental Shelf, set up under the agreement.[67]

While no solution was reached on this dispute, both parties agreed to refer it to a Conciliation Commission under Article 9 [68] of the JMFA. Article 9 is consistent with Article 33 of the Charter of the United Nations (UN Charter)[69], which provides the following:

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[64] S. P. Jagota, *Maritime boundary* (M. Nijhoff 1985), Publications on ocean development v. 9 166.
[65] Convention on the Continental Shelf (CCS)
[66] Law No. 41 of 1 June 1979 concerning the Territorial Sea, the Economic Zone and the Continental Shelf, Article 12.
[67] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið",* 449.
[68] Jagota, *Maritime boundary* 165.; J. Tanga Biang, 'The Joint Development Zone between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in the Gulf of Guinea. International Law, State Practice and Prospects for Regional INtegration.' (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations 2010) 60.

> The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
> The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

As Article 33 of the UN Charter provides for a solution based on, among others, conciliation, Article 9 of the JMFA is therefore consistent with the UN Charter as it states as following:

> The question of the dividing line for the shelf in the area between Iceland and Jan Mayen shall be the subject of continued negotiations.
> For this purpose the Parties agree to appoint at the earliest opportunity a Conciliation Commission composed of three members, of which each Party appoints one national member. The chairman of the Commission shall be appointed by the Parties jointly.

Hans G. Andersen was appointed to the commission by Iceland and Jens Evensen was chosen by Norway. Elliot L. Richardson, former Ambassador-at-Large and Special Representative of the President to the Law of the Sea Conference was appointed as chairman.[70] The Icelandic-Norwegian Conciliation Commission was established on August 16, 1980 and its main task was to make unanimous recommendations to the parties that were not be legally binding. The Commission was to:

> [Take] into account Iceland's strong economic interests in these seas areas, the existing geographical and geological factors and other special circumstances.[71]

Richardson, the chairman of the Commission pointed out that all three commission members were aware that customary international law (where the UNCLOS III Conference was still ongoing) was far from completely formed with respect to the principles governing continental shelf delimitation between coastal states. Thus, to prevent becoming stuck in that issue, they decided instead to explore the possibility of a special JDZ for exploration covering the most promising resource potential of the disputed zone.[72]

The recommendations were submitted almost one year later in June 1981. The Conciliation Commission had consulted a group of specialists on the morphology and geology of Jan

[69] United Nations, Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter).
[70] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið"*. 459.
[71] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' 7.
[72] Elliot L. Richardson, 'Jan Mayen in Perspective' (1988) 82 American Journal of International Law 443, 445.

Mayen Ridge as well as the potential prospective areas for hydrocarbons in that region. Furthermore, the Commission explored the stages of petroleum exploration and exploitation and types of joint collaboration agreements. They also explored the legal aspects of maritime delimitation, including judicial decisions, state practice and provisions of the Draft of 1982 UNCLOS on the entitlement of islands to sea areas and on maritime delimitation.[73] Specialists who made the report for the Commission found that:

> Geologically [the] Jan Mayen Ridge is a microcontinent that predates both Jan Mayen and Iceland, which are composed of younger volcanic [rock]; therefore the ridge is not considered a natural geological prolongation of either Jan Mayen or Iceland.[74]

This meant that Jan Mayen had its own origin. In light of the results of the report made by a group of experts, the Commission concluded that Iceland could not claim any area of the Jan Mayen Ridge beyond the 200 NM line based on the natural prolongation of its land. Taking into account Iceland´s strong economic interests in these marine zones, and the fact that Iceland was totally dependent on imports of hydrocarbon products, the Commission proposed that a joint development arrangement for the defined area should be established. This meant that no new boundary line might be established between Iceland and Jan Mayen as the continental shelf boundary beyond the 200-mile economic zone limit of Iceland in the area.[75]
The Commission made a proposal for a joint development area on the part of Jan Mayen Ridge, which was believed to possibly contain hydrocarbon resources. The Commission proposed research and allocation of resources in the JDZ.[76]
This conclusion is considered to be based on considerations that fairness and the obligation to resolve conflict with a negotiated settlement has become a rule in international law.[77]
The area recommended by the Commission consists of 45,475 square kilometres, out of which the part north of the Icelandic 200 NM economic zone line compromises 32,750 square kilometres and the area south of the line consist of 12,725 square kilometres.[78] The

[73] Jagota, *Maritime boundary* 165–166.
[74] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' 13.
[75] Jagota, *Maritime boundary* 166.
[76] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið"*. 460.
[77] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið"*. 450.
[78] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' ; Biang, 'The Joint Development Zone between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in the Gulf of Guinea. International Law, State Practice and Prospects for Regional INtegration.' 60.

recommendations of the Icelandic- Norwegian Conciliation Commission were presented in May 1981 and were accepted by the two governments. Subsequently, the second agreement between Iceland and Norway was signed on 22 October 1981– the Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA).[79]

4.4 The Agreement on the Continental Shelf between Iceland and Jan Mayen

After the recommendations of the Conciliation Commission on the continental shelf and establishment of the JDZ the second maritime delimitation agreement between Iceland and Norway was established, namely the Agreement on the Continental Shelf between Iceland and Jan Mayen of 22 October 1981(JMA). This type of agreement is classified as a maritime boundary agreement so this section will review some basic concepts of maritime delimitation, as they are instrumental to the analysis of the JMA and its legal basis.

According to the Proceedings of the Althing (Alþingistíðindi/Alþt.), the JMA is based on recommendations of the Conciliation Commission, which had taken into account the basic objectives of the UNCLOS III conference. The conference focused on solving coastal states' disputes peacefully and that states should conclude an agreement if a risk of disagreement exists. Moreover, these agreements should be based on equitable considerations having regard to all circumstances. [80]

4.4.1 Maritime boundary delimitation

Regarding the situation of Jan Mayen it was clear that both Norway and Iceland could make a claim to the same marine space. The rights of Iceland and Jan Mayen to their continental shelves gave rise to overlapping claims because of the disputed area of Jan Mayen. These claims are legally valid as the distance between Iceland and Jan Mayen is less than 400 NM. Thus, the rules of maritime boundary delimitation apply to that particular situation.[81]

The concept of maritime boundary delimitation has been recognized for a long time under the Law of the Sea. Principles and legal rules concerning the establishment of maritime boundaries have been laid down in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone[82], in the 1958 Geneva Convention on the Continental Shelf and in the 1982 UNCLOS. In the same way, the ICJ and other arbitral tribunals have established principles

[79] Jagota, *Maritime boundary* 166.
[80] 'Alþt. 1978-1979, B-deild, 2283, 2285.', (Translated by author).
[81] Bastida, Iefesi-Okoye, Mahmud, Ross, and Walde, 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective'
[82] Convention on the Territorial Sea and the Contiguous Zone (adopted 29 April 1958, entered into force 10 September 1964) United Nations, Treaty Series, vol. 516, p.205.

and rules of delimitation through their decisions. The concept of the continental shelf in the 1982 UNCLOS has its origins in the Truman Proclamation.[83] The so-called Truman Proclamation of 1945 was the first claim by a coastal state, the United States, made claiming that a continental shelf should belong to it. The United States claimed through the Truman Proclamation the following:

> natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.

This claim by the United States was accountable for the acceptance, during the negotiation of the CCS, that coastal States should have particular entitlements over their continental shelves. The Truman Proclamation encouraged other states to make similar claims. [84]

According to Tanaka, the term maritime delimitation is defined as: "the process of establishing lines separating the spatial ambit of coastal State jurisdiction over maritime space where the legal title overlaps with that of another State." [85]

The ICJ defined maritime delimitation in *the North Sea Continental Shelf cases,* which is the first delimitation case under customary international law, as following:

> [Maritime delimitation] is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination de novo of such an area.[86]

Furthermore, a maritime delimitation is a bilateral act and must be effected by agreement between relevant States. This was confirmed by the Chamber of the ICJ who stated in the *Gulf of Maine* case[87]: "No maritime delimitation between States with opposite or adjacent coasts may be affected unilaterally by one of those States". Hence, it can be said rightly that maritime delimitation is international by nature.[88]

In terms of the Jan Mayen issue, it can be concluded from both definitions of maritime delimitation above, that the concept of maritime delimitation between Jan Mayen and Iceland includes a certain process of delimitation of the continental shelf, which determines the spatial

[83] Yusuf Mohammad Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?' (2009) Issue 4, International Energy Law Review 130.
[84] Yusuf Mohammad Yusuf, 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' (2011) Issue 7, International Energy Law Review 285–292
[85] Tanaka, *The International Law of the Sea* 187.
[86] Yusuf, 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes'
[87] 'Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)', para.112, p. 57., International Court of Justice 1984
[88] Tanaka, *The International Law of the Sea* 187.

extent of Iceland´s and Norway´s jurisdiction. And, this was implemented by a bilateral act between the States, which was concluded on October 22, 1981, the JMA.

It is worth mentioning that there is high value in establishing maritime boundaries where there is a risk of border conflicts. Unresolved boundary disputes can hamper economic activities, such as fishing or exploration due to the affect of fear of an act by other countries. Furthermore, activity around the boundaries might cause conflicts. Examples of this include fishing too close to the border or if oil is discovered in a sea area of overlapping claims. In such conflict situations, it may be practical and valuable to have an agreement that helps to resolve the dispute. When States have an agreement, a legal certainty, then they can start economic activities. It means that oil exploration can be licensed to work right up to the line. The same applies to the implementation of a fishery act, it can licence the right to fish up to the line. [89] In this respect it is appropriate to quote the famous American poet Robert Frost – *"Good fences make good neighbours"*[90] which in this context could well apply to cross-border disputes and, consequently, it is in the best interest for everyone to establish a maritime boundary agreement in order to make good neighbours. Regarding the maritime dispute of Iceland and Norway, the previously mentioned agreements keep Norway and Iceland as good neighbours.

4.4.2 Delimitation of the Continental shelf of the area between Iceland and Jan Mayen

There are normally two different models of implementing international maritime boundary delimitation: by negotiated agreement between the countries concerned that leads to a bilateral treaty or, alternatively, by the decision of a third judicial or arbitral body[91] which also includes conciliation. Maritime boundary settlements resulting from negotiations that lead to a bilateral treaty are by far the most common method.[92]

Regarding negotiations leading to agreement on a maritime boundary, Article 74.1 and 83.1 of 1982 UNCLOS provides that a delimitation of a maritime boundary has to be "effected by agreement on the basis of international law …". The Governments of Iceland and Norway wished to determine the delimitation line on the continental shelf in the area between Iceland and Jan Mayen[93] with the JMA. Article 83 of 1982 UNCLOS deals particularly with the

[89] Yusuf, 'International Energy Law Review 2011 The role of the 1982 UNCLOS in the resolution of maritime boundary disputes'

[90] Robert Frost, *The Mending Wall* (1914).

[91] Yusuf, 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' .

[92] Jonathan I Charney, Lewis M Alexander, Robert W Smith, and American Society of International Law, *International maritime boundaries* (M. Nijhoff 1993) 3495.

[93] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)' [Iceland-Norway] (adopted 22 October 1981, entered into force 2 June 1982) (1982) 21 ILM 1222.

delimitation of the continental shelf between states with opposite or adjacent coasts. More specifically, Article 83.1 of 1982 UNCLOS states as follows:

> The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

And Article 74.1 of the 1982 UNCLOS provides delimitation of the exclusive economic zone:

> The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.[94]

In accordance with these provisions, maritime delimitation *shall* be affected *by agreement* between Iceland and Norway (the parties) in conformity with international law. In the case of Iceland and Norway, the parties have concluded such agreements, the JMFA, which recognizes indirectly that Iceland shall have a full economic zone of 200 NM in areas where the distance between Iceland and Jan Mayen is less than 400 miles [95] and the JMA determining the delimitation line between the parties' parts of the continental shelf in the area between Iceland and Jan Mayen.

Furthermore, Articles 74.2 and 83.2 of the 1982 UNCLOS provide that if no agreement can be concluded within a reasonable period of time, the parties concerned shall resort to the procedures according to part XV of the Convention, which provides settlements of disputes, including *Conciliation* under Article 284. [96] In consistence with these provisions explained above, the parties involved, Iceland and Norway, agreed to refer the matter to conciliation.

According to Article 1 of the JMA, which is based on the Conciliation Commission´s recommendations, the parties have agreed that, "the delimitation line between the Parties' parts of the continental shelf in the area between Iceland and Jan Mayen shall coincide with the delimitation line for the Parties' economic zones".[97]

Regarding delimitation of continental shelves, the CCS provides for the application of a median line except in special circumstances. Article 6 of the CCS[98] provides the following:

> Where the same continental shelf is adjacent to the territories of two or more

[94] 'United Nations Convention on the Law of the Sea, 1982' Articles 83 and 74.
[95] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' 11.
[96] 'United Nations Convention on the Law of the Sea, 1982'
[97] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)'
[98] Convention on the Continental Shelf (CCS)

> 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.
> 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.

There are two groups of states that take different positions on boundary delimitation issues. On the one hand, those states supporting the median line – principle (equidistance), and on the other hand, states that believe that it should take into account equitable considerations. At the UNCLOS conference this dispute also reached to the concept of "special circumstances", which was thought to refer primarily to geographical conditions, considering the term "relevant circumstances" as it was believed that it encompassed more factors, including location and size comparison.[99] However, The JMA was based on equitable considerations and the Conciliation Commission proposed not to determine other boundaries for the continental shelf than those governing the economic zone of Iceland and fisheries jurisdiction of Norway as stated in Article 1 of the JMA.

In this context, in the first delimitation case under customary international law, *North Sea Continental Shelf cases*, the ICJ concluded that there was no one right method of delimitation that was compulsory to use under international law but continued by stating that under customary international law:

> Delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.[100]

[99] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið"*. 450.

[100] 'North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)' , paras 83–101.

In consideration of this, all following judicial and arbitral decisions have reaffirmed the opinion above of the ICJ as the correct statement of general international law. [101]

In addition to these provisions, legal principles of negotiation apply, such as good faith, listening to the other party and being prepared to move from an opening position. It is worth mentioning that Articles 74 and 83 of the 1982 UNCLOS have been criticized for lack of substantive content. According to the International Law Discussion Group at Chatham House, there is truth to this, because these articles were a compromise between groups in favour of and against the principle of equidistance. Nevertheless, thanks to Article 15, 74 and 83 of the 1982 UNCLOS and a series of recent decisions of courts and tribunals applying these articles, the law on boundary limits and baselines is now more resolved. [102]

It could be said about the JMA that the agreement was established in accordance with equitable principles, and taking into account all relevant circumstances. The Conciliation Commission stated that in "preparing such recommendations, the Commission shall take into account Iceland's strong economic interests in these sea areas, the existing geographical and geological factors and other special circumstances".[103] However it is not always clear what criteria should be considered, and to what extent.

4.4.2.1 Consideration of relevant circumstances of Iceland and Jan Mayen

Regarding consideration of relevant circumstances, it is divided into two categories, geographical factors and non-geographical factors. As observed by Tanaka, geographical factors play a significant role in maritime delimitation. Thus, it is a fact that every international judgement concerning maritime delimitation has taken them into account. The concept of proportionality holds an essential position in these judgments. According to this concept, establishment of maritime delimitation should take into account the ratio between the marine spaces traced to each party and the lengths of their coastlines.[104] It can be concluded from the report of the Conciliation Commission that it took both of these factors into account where it followed the decisions of the geological report, which took into account all circumstances prevailing in the area concerned. [105]

The Report of Geologists of 16 December 1980 had the purpose of examining the existing

[101] Yusuf, 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes'
[102] Chatham House. Independent thinking on international affairs, 'Methods of resolving maritime boundary disputes. A meeting of the International Law Discussion Group at Chatham House on 14th February, 2006'
[103] Agreement between Norway and Iceland on Fishery And Continental Shelf Questions, Article 9.
[104] Tanaka, *The International Law of the Sea* 198-199.
[105] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' 11.

geological and geophysical data. It evaluated the conditions for possible prospective areas for hydrocarbons in the region lying between Jan Mayen and eastern Iceland. The report also surveyed how the Jan Mayen Ridge was "related morphologically and geologically to the island of Jan Mayen and to Iceland". [106] As stated before, the geological experts concluded in their geological report that the Jan Mayen ridge could not be considered as a natural geological prolongation of either Jan Mayen or Iceland.[107]

Regarding other relevant special circumstances, economic factors also play an important role. As stated by Tanaka, economic factors can include the existence of natural resources, such as fish stocks, oil and gas, and socio-economic factors, for example a state´s economic dependency on natural resources and national economic wealth. In international resolution and judgements, states frequently invoke these two types of factors together, because they are interrelated.[108] In the *Cameroon/Nigeria case,* the ICJ specified that:

> [It] follows from the jurisprudence that, although the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled, oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account.[109]

In this context, the Conciliation Commission took into account "Iceland´s strong economic interests in these marine zones and the fact that Iceland was totally dependent on imports of hydrocarbon products"[110] which is classified as a non-geographical factor. However, the influence of economic factors remains limited in jurisprudence concerning maritime delimitation. Further, it is an alternative, that in some delimitation agreements, parties have resolved economic questions by adding common deposit clauses or by establishing rules of joint development[111], as is the case with the JMA.

As has been mentioned, the Conciliation Commission proposed to determine no other boundaries for the continental shelf than those governing the economic zone of Iceland and

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[106] Dr. Manik Talwani, Dr. Karl Hinz, Dr. Lucien Montadert, Dr. Olav Eldholm, E. Bergsager, and Dr. Gudmundur Palmason, 'The Area between Jan Mayen and Eastern Iceland - A Geological Report' (Lamont-Doherty Geological Observatory December 8, 1980)

[107] Talwani, Hinz, Montadert, Eldholm, Bergsager, and Palmason, 'The Area between Jan Mayen and Eastern Iceland - A Geological Report' 17.

[108] Tanaka, *The International Law of the Sea* 208.

[109] The *Cameroon/Nigeria case (Cameroon v. Nigeria: Equatorial Guinea intervening)*, ICJ Reports 2002, p 447, para. 304.

[110] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' 24.

[111] Tanaka, *The International Law of the Sea* 209.

fisheries jurisdiction of Norway, which was confirmed later by the JMA. Furthermore, based on the results of the group of scientists, the Commission proposed a joint exploitation area on the part of the Jan Mayen Ridge, which was believed to have potential oil resources as was explained in the previous section. [112]

4.5 The Iceland – Norway joint development arrangement

Briefly, the main objective of the JMA was to define the joint development zone (JDZ) on Jan Mayen where exploration and exploitation should take place along with the determination of the boundary of the continental shelf.

In order to achieve a better understanding of the JDZ, this chapter will provide further clarification of the JDZ between Iceland and Norway but first will briefly examine the concept of a JDZ.

The conditions of paragraph 3 of Article 74 and 83 of 1982 UNCLOS provide for the negotiation of "provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement". One of the most usual results to this obligation is the establishment of a JDZ along sections of a boundary so that disputed areas are avoided and an overall boundary agreement can be concluded.[113] The International Law Discussion Group at Chatham House categorized these provisional arrangements in three different forms: a) provisional boundaries, b) special areas, and c) joint development. [114]

4.5.1 The concept of joint development

Since the JMA between Iceland and Norway provides a joint development of potential offshore hydrocarbons, it is appropriate to discuss further the concept of joint development agreements.

According to Bastida *et al.*, the joint petroleum development agreement is an arrangement between two states to develop and share together in agreed proportions the petroleum found within a designated area of seabed and subsoil of the continental shelf or EEZ, to which both parties are entitled under international law. Furthermore, the JDZ agreement is normally founded as a provisional solution for a certain time, without prejudice to later delimitation. However, it can be a lasting solution in place of a delimited boundary. There are various

[112] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið"*. 459-460.
[113] Clifford E. Griffin and UWI-CARICOM Project, *The race for fisheries and hydrocarbons in the Caribbean Basin: the Barbados-Trinidad and Tobago dispute, regional delimitation implications* (Ian Randle 2007) 53.
[114] Chatham House. Independent thinking on international affairs, 'Methods of resolving maritime boundary disputes. A meeting of the International Law Discussion Group at Chatham House on 14th February, 2006'

aspects that states need to consider before this zone is established. States must accept sharing together sovereign rights over the zone, parties must have a mutual comprehension on all the major policy matters from start, and the states may never lose sight of the supreme objective: exploring for and exploiting oil and gas. [115]

Miyoshi sees it as: "an inter-governmental arrangement of a provisional nature, designed for functional purposes of joint exploration for and/or exploitation of hydrocarbon resources of the sea-bed beyond the territorial sea."[116]

In the same way, the British Institute of International and Comparative Law´s research group on joint development has described the arrangement as the following:

> an agreement between two States to develop so as to share jointly in agreed proportions by inter-State co-operation and national measures the offshore oil and gas in a designated zone of the sea-bed and subsoil of the continental shelf to which both or either of the participating States are entitled in international law. [117]

There exist other scholar definitions of this joint development concept, but the aforementioned definition is consistent with how the concept is portrayed in the JMA. However, it can be concluded from those mentioned definitions above that there is a distinction between arrangements made for the purpose of developing petroleum resources laying across delimited boundaries (transboundary unitization agreements) with those located within the un-delimited zones dependent on competing claims (joint development).[118] As observed by Arinaitwe, transboundary unitization agreements include established boundaries and involve states defining an area as a JDZ. However, when petroleum deposits are found in the disputed area, state practice is to enter into a JDZ agreement to exploit jointly the deposits in the designed JDZ. Although these two arrangements serve the same purpose, there is one major difference that separates them. A JDZ agreement is normally established before exploration occurs while a transboundary unitization agreement is only needed once the states have discovered the petroleum reserves.[119] According to these definitions above, it can be

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[115] Bastida, Iefesi-Okoye, Mahmud, Ross, and Walde, 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective'

[116] Masahiro Miyoshi, *Maritime Briefing. The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation*, vol. 2, No. 5 (International Boundaries Research Unit (IBRU) 1999) 3.

[117] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?'

[118] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?'

[119] Patson Wilbroad Arinaitwe, 'Exploitation of Offshore Transboundary Oil and Gas Reservoirs; An International Law Perspective.',
<http://www.academia.edu/2650750/Exploitation_of_Offshore_Transboundary_Oil_and_Gas_Reservoirs_An_International_Law_Perspective> accessed April 21, 2013.

concluded that the arrangement of JMA is classified as a joint development arrangement because, inter alia, it was formed before exploration occurred.

Furthermore, Tanaka explains that joint development arrangements can be divided into two types. The first type includes areas where maritime delimitation lines are being established. In this case the JDZ is to be created spanning a delimitation line. The other type of JDZ concerns areas where delimitation was not or could not be implemented. [120] The JMA is a typical example of JDZ under the former type, where it created the JDZ straddling the single maritime boundary between the parties on the basis of the recommendation of the Conciliation Commission. The delimitation line between the Parties' parts of the continental shelf on the Jan Mayen ridge is determined in Article 1 of the JMA. An example of the second type of JDZ is the established in the 1974 Agreement between Japan and South Korea. [121]

4.5.2 The Iceland – Norway joint development zone for hydrocarbon development

The treaty covers a designated area of 45,470 square kilometres that is managed jointly by Iceland and Norway with regards to exploration and exploitation of hydrocarbon resources.[122]

This joint development arrangement between the parties is governed under articles 74.3 and 83.3 of the 1982 UNCLOS that oblige States to consider "provisional arrangements" of "a practical nature" when they have reach deadlocks in negotiations over maritime delimitation. This means that if States do not agree about their maritime delimitation they have a duty to consider collaboration on the disputed maritime zones, for a temporary period, while continuing the duty of carrying negotiations on. [123]

Regarding the JDZ, article 2 of the JMA[124] delineates exactly the JDZ between the two Parties. It is defined under Article 2 by the following co-ordinates:

70° 35' N
68° 00' N
10° 30' W
6° 30' W

This means, as described by Østreng, that Iceland and Norway should start cooperation in the exploration and exploitation of petroleum resources in an area located between 68° and 70°

[120] Tanaka, *The International Law of the Sea* 209–210.
[121] Same source.
[122] Clive Archer, David Scrivener, and Royal Institute of International Affairs, *Northern waters: security and resource issues* (Croom Helm for the Royal Institute of International Affairs 1986) 157.
[123] Biang, 'The Joint Development Zone between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in the Gulf of Guinea. International Law, State Practice and Prospects for Regional INtegration.' viii.
[124] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)'

35' N and 6° 30' and 10° 30' W, a zone of 45,470 km2, equivalent to about 44% of Iceland´s and 14% of Norway's total land region. Further, of this, about 70% (32,750 km^2) is located on the Norwegian side of the dividing line, the remaining area 30% (12,720 km^2) is on the Icelandic part. [125]

Article 3 of the JMA[126] covers research and measurements that have to be made at the first stage of the exploration process.

Article 4 focuses on what to do if there is a need to perform advanced research and to begin drilling in certain areas. This joint arrangement is to be based on joint ventures, except when the parties agree on some other form of contract.

Article 5 of the JMA stipulates that Iceland is potentially entitled to obtain a 25% interest in joint development in the area north of the 200-mile economic zone line. Iceland's interests will be protected and approved even though if it does not contribute in such arrangements at the survey and exploration stage. If a profitable discovery will be found, Iceland could still acquire its share of participation in the development phase, after paying its fair share of exploration and drilling costs incurred before that stage (Article 5.2). This ability is not authorized for Norway in that part of the joint development area that falls south of the 200-mile economic zone line of Iceland, although Norway could also obtain a 25% interest in such joint development arrangements[127] in the area south of the delimitation line between the two parties' economic zones as provided in Article 6 of the JMA. [128]

In this context, Thomas A. Mensah points out that there can be different forms of joint development zones, which are implemented through a variety of managerial arrangements. One approach is that one of the states has formal sovereignty over the area while the other state receives a share of the income (Bahrain – Saudi Arabia agreement of 1958). The approach that Iceland and Norway chose was to divide the joint zone between the countries[129] as Articles 5 and 6 provide, i.e. the zone is divided into northern and southern areas and each party is entitled to 25% in petroleum activities that take place in the other party´s area as been explained above.

In the territories of the parties, their national legislation applies, including provisions relating to management and control, security and environmental protection. This means that Norwegian regulations are applicable in the northern sector and Icelandic regulations

[125] Østreng, 'Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)' 560.
[126] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)'
[127] Jagota, *Maritime boundary* 166.
[128] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)'
[129] *Maritime delimitation* 148.

applicable in the southern sector (Articles 5.3 and 6.2). The JMA provides in Article 7 that if a find is considered commercially viable, each party shall carry its costs in the further development of the field pursuant to the proportion to its share under the agreement concerned.[130] Furthermore, if an oil field extends beyond the JDZ into the Norwegian zone (northern part), the entire field will be considered as part of the JDZ. However, if an oil field extends into Iceland´s 200-mile zone, Icelandic jurisdiction for the distribution and exploitation of the field will apply[131] as Article 8 of the JMA[132] states:

> If a hydrocarbon deposit lies on both sides of the delimitation line between the two Parties' economic zones, or lies in its entirety south of the delimitation line, but extends beyond the co-ordinates stated in Article 2, the usual unitization principles for the distribution and exploitation of the deposit shall apply. The more detailed rules to be applied in such cases shall be agreed between the Parties. If a hydrocarbon deposit lies in its entirety north of the delimitation line, but extends beyond the co-ordinates stated in Article 2, the deposit shall in its entirety be considered to lie within the co-ordinates, cf. Articles 5, 6 and 7.

This means that on the basis of the first paragraph of the Article, Iceland is guaranteed access to petroleum resources that may be found in the northern part of the JDZ and even beyond the region in the north, without the need to take any other measures. In this context, it is noteworthy that Norway has no equivalent insurance if the petroleum resources are found in the Icelandic part of the JDZ.

Regarding the regulations on safety measures and environmental protection, if the parties fail to provide adequate protection when exploration or production operations are carried out in the defined area, then article 10 of the JMFA applies for the joint development area, cf. Article 9 of the JMA. Article 9 of the JMA provides that the parties shall consult each other under Article 10 of the JMFA in such situations.[133] Article 10 of the JMFA provides that:

> In the event of activities taking place on the shelf areas between Iceland and Jan Mayen in connection with the exploration for or exploitation of the natural resources on or in the shelf, the Parties undertake to initiate close mutual consultations and close cooperation with regard to the adoption and enforcement of the necessary safety regulations in order to avoid any pollution which might endanger the living resources in these sea areas or otherwise have a harmful effect on the marine environment.

[130] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)' Article 7.
[131] Archer, Scrivener, and Royal Institute of International Affairs, *Northern waters* 157.
[132] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)' Article 8.
[133] Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA) Article 9.

> The Parties undertake to submit to each other specific plans for such activities in connection with the exploration for or exploitation of the shelf resources in ample time prior to the commencement of such activities.[134]

Further, if the parties fail to agree on this matter, the dispute shall be referred to a Conciliation Commission, cf. Article 9.2 of the JMA. In exceptional circumstances the offending party may be allowed to keep the operations going, but then it must be clearly necessary. The recommendations of the Conciliation Commission are not binding for the parties, but they need to take them into account anyway, cf. Article 9.2.[135] This means, that according to Article 9 of the JMA, the governments have the authority to stop construction work in the area if they find that the marine environment is at risk. Furthermore, as stated in the Icelandic parliamentary resolution from 1981 (Alþingistíðindi, Alþt.), in friendly relations between neighbouring states, then such an insurance provision is a testimony that neither party will conduct activities, which the other party is against.[136]

In the first exploration phase, Norway shall bear all expenses on seismic and magnetic tests on both nations´ shelves.[137] Article 3 of the JMA provides for this as well as the practical implementation of these surveys shall be the task of the Norwegian Petroleum Directorate. Furthermore, experts of both nations shall have the opportunity to participate equally in the study and in the assessment of the resulting data. All possible profit from the sale of seismic or magnetic data to companies or organizations shall be shared by the two nations under an agreement (Article 3.2).[138]

The commission had several types of joint cooperation agreements to consider in structuring the control of licensing. The eligible models included concession contracts with joint venture arrangements, service contracts, production-distribution contracts, and entrepreneur contracts. The model that was selected was concession contracts with joint venture arrangements due to the extensive experience of Norway´s national petroleum company, Statoil, with such types of arrangements. [139]On 18 December 1981 the agreement was adopted in the Parliament of Iceland (Alþingi) with 45 unanimous votes. The Parliament of Norway (Stortinget) adopted on 19 May 1982 the proposal from the Norwegian government´s acceptance of the agreement.

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[134] Agreement between Iceland and Norway Concerning Fishery and Continental Shelf Questions (JMFA) Article 10.
[135] Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA) Article 9.
[136] Alþt. 1981-1982, A-deild, þskj. 235 – 115. mál (Nefndarálit um till. til þál. um heimild fyrir ríkisstjórnina að staðfesta samkomulag milli Íslands og Noregs um landgrunnið á svæðinu milli Íslands og Jan Mayen, translated by author).
[137] Archer, Scrivener, and Royal Institute of International Affairs, *Northern waters* 157.
[138] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)' Article 3.
[139] Richardson, 'Jan Mayen in Perspective' 447.

Then the agreement came into force on 2 June 1982 by exchange of notifications of this fact in Reykjavik.[140]

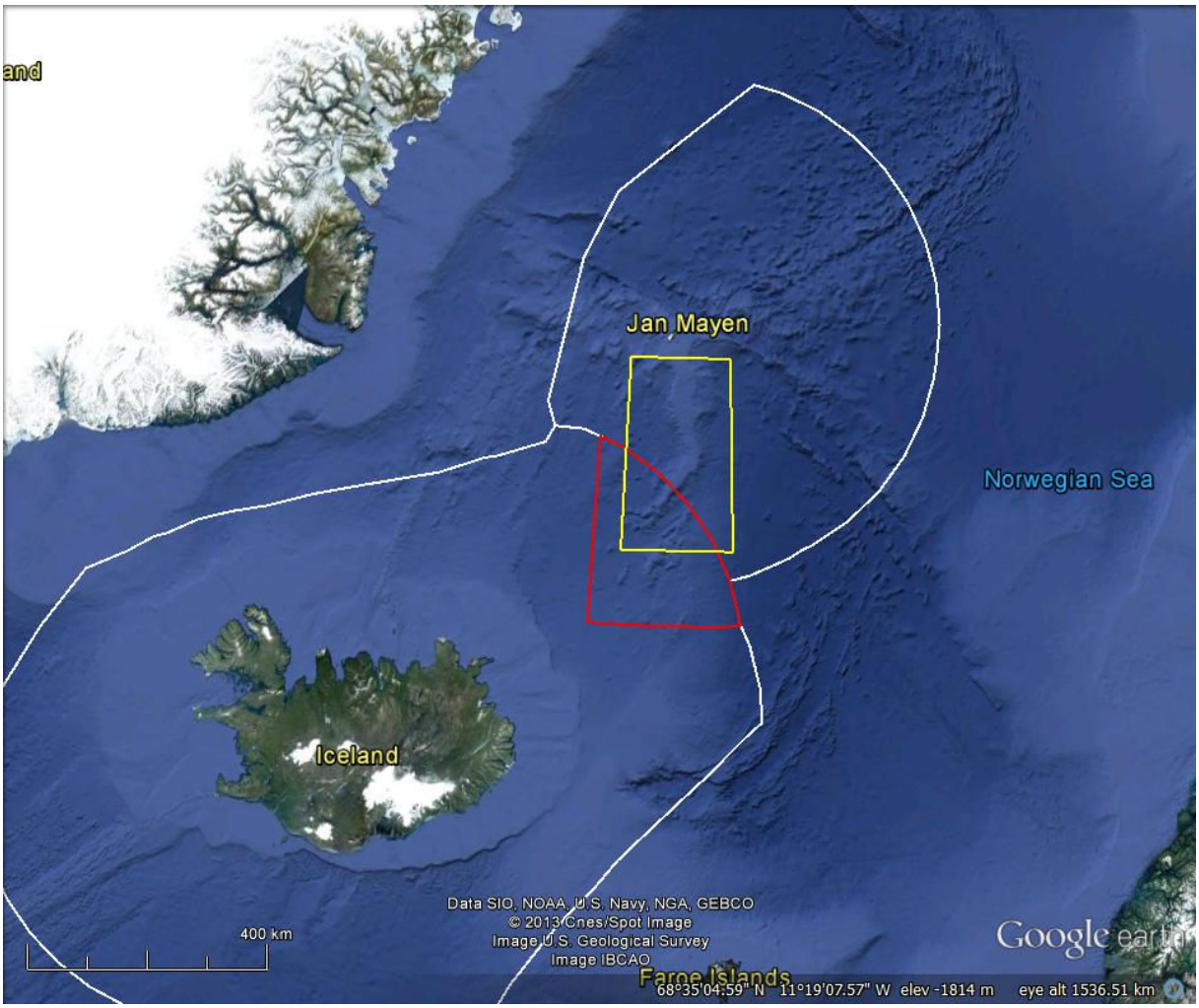

Figure 2. The Icelandic and Norwegian EEZ (White lines), the northern Dreki area (Red) and the joint development zone (Yellow). Source: „Jan Mayen EEZ“ 68°35’04.59N and 11°19’07.57“W. Google Earth. Accessed 10 May 2013.

[140] Jónsson, *Ólafsbók. Afmælisrit helgað Ólafi Jóhannessyni sjötugum. Guðmundur Eiríksson: „Jan Mayen-málið“*. 462.

5 What is the legal basis for joint development arrangements?

In order to determine the legal basis of the reason why states, like Iceland and Norway, enter into joint development agreements, the position of customary international law must be examined.[141] This has been done in this research where the provisions of the 1982 UNCLOS, the UN Charter and other treaties have been studied.

As was explained in chapter 2.2.3, under these international treaties there are international obligations for states to cooperate in the settlements of disputes peacefully under the UN Charter, Chapter VI. However, there is still some uncertainty about the legal status of the concept of joint development arrangements, even though states establish these arrangements on the basis of this obligation. Yusuf argues, that because of this doubt, some academics assert that joint development is not just a regime that only relies on political suitability. They argue that with political interests then it is also about legal obligation. However, not everyone agrees with this as they assert that no such legal duty exists anymore, which forces states to enter into joint development arrangements, like the one Iceland and Norway made.[142]

5.1 The legal status of the Joint development arrangement between Iceland and Norway

The JMA between Iceland and Norway providing the joint development zone of hydrocarbon deposits on the Jan Mayen area is concluded under international law as the Conciliation Commission stated in their report:

> Delimitation–to be effected by agreement between the Parties in conformity with international law: in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned ... [143]

The relevant provision under treaty law is Article 33 of the UN Charter[144] that stipulates for the peaceful settlement of disputes but by means of the parties' own choice. This means that the states are obliged to choose which method they should use in order to find a solution. This almost always involves some kind of negotiation. Should negotiation not work out for the parties then recourse may be had to conciliation, good offices (the UN Secretary General) or arbitration (ad hoc or judicial settlement (ICJ/ITLOS)). Strategies to resolve conflicts and

[141] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?'
[142] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?'
[143] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' 3.
[144] United Nations, Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter).

differences about overlapping entitlements include settling any sovereign differences, a partial boundary or joint area, the establishment of a complete boundary, or combining some of those strategies. Establishment of maritime boundaries in agreements must be in conformity with international law. [145]

Again, in accordance with international law, and in particular the above rules of the UN Charter, Iceland and Norway had a successful maritime delimitation negotiation by concluding the aforementioned agreement by seeking an amicable settlement of that dispute by recourse to conciliation. In this context, it is worth mentioning that this is the first marine boundary dispute case that was settled by recourse to conciliation.[146]

The legal basis for joint development is provided under international case law, namely by the ICJ[147] in the *North Sea Continental Shelf cases,* where it was affirmed that:

> If ... the delimitation leaves to the Parties areas that overlap, there are to be divided between them in agreed proportions or failing agreement, equally, unless they decide on a regime of joint jurisdiction, use, or exploitation for the zone of overlap or any part of them.[148]

Similarly, some arbitral decisions have affirmed the concept of joint development. The Arbitral Tribunal in its Award, phase II, in the arbitration between Eritrea and Yemen (*the Eritrea/Yemen case*)[149] in confirming the concept of joint development, it also referred to the decision of the ICJ in *the North Sea Continental Shelf cases* where the court recommended the parties to think through the possibility of entering into joint development agreements for exploitation of hydrocarbon resources. The Tribunal stated that the practice of entering into agreements for joint development of hydrocarbon resources had specific relevance in the case before it[150], since both Eritrea and Yemen "face one another across a relatively narrow compass". Also, their people have benefited historically from a culture of free movement of fishermen, a wide-ranging trade, and a common rule as well as a common religion.[151] As a result, the Tribunal added:

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[145] Chatham House. Independent thinking on international affairs, 'Methods of resolving maritime boundary disputes. A meeting of the International Law Discussion Group at Chatham House on 14th February, 2006'.
[146] Charney, Alexander, Smith, and American Society of International Law, *International maritime boundaries* 3495.
[147] Nguyen Hong Thao, 'Joint Development in the Gulf of Thailand' [1999] International Boundaries Research Unit (IBRU) 79, 84.
[148] North Sea Continental Shelf, Judgment of 20 February 1969, I.C.J Reports 1969, :3.
[149] Eritrea-Yemen Arbitration (Award, Phase II: Maritime Delimitation), Arbitral Tribunal, 17 December 1999. Obtainable from < http://www.pca-cpa.org> accessed April 9, 2013.
[150] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?' 135.
[151] Eritrea-Yemen Arbitration (Award, Phase II: Maritime Delimitation), Arbitral Tribunal, 17 December 1999, Para. 85.

> together with the body of State practice in the exploitation of resources that straddle maritime boundaries, import that Eritrea and Yemen should give every consideration to the shared or joint or unitised exploitation of any such resources.[152]

Furthermore, in addition to the legal basis for joint development, it is also appropriate to study the relevant provisions, those of Articles 74 and 83 of 1982 UNCLOS that address the delimitation of the EEZ and the Continental shelf. They have been explained above, but since they are important provisions under international treaty law, it is important to discuss them further under this section.

As stated before, these articles are corresponding, stipulating that states that have not agreed their maritime boundaries should make every effort to decide on a provisional arrangement that will not stop them from concluding a final agreement on their maritime boundaries.[153] To be exact, Article 83.3 of 1982 UNCLOS[154], which deals with the continental shelf, provides:

> Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

Even though joint development arrangements are not specified particularly in this provision, or indicate precisely under what form "*provisional arrangements of a practical nature"* should be, then nevertheless it can be concluded by closer examination of these articles and the relevant practice that the joint development arrangements like those made between Iceland and Norway are considered under the term provisional arrangements.

According to this provision, Iceland and Norway are free to select any type of arrangement for the overlapping zones in conformity with international law.

Nguyen Hong Thao, professor of International Law, asserts that in practice, the concept of a JDZ constitutes an effective provisional arrangement authorizing states to solve territorial disputes and facilitate the exploitation of natural resources for a temporary period. In order to prevent any harmful exploitation and avoid any waste by non-utilisation of natural resources, the use of a joint development arrangement for all or a part of an overlapping area is an appealing measure, which postpones the final delimitation. In Thao´s article about the "Joint Development in the Gulf of Thailand", the author raises the question whether the MoUs,

[152] Eritrea-Yemen Arbitration (Award, Phase II: Maritime Delimitation), Arbitral Tribunal, 17 December 1999, Para. 86.
[153] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?' .
[154] 'United Nations Convention on the Law of the Sea, 1982'

which is an agreement, concluded in the Gulf of Thailand and was decided before 1982 UNCLOS entered into force (on 16 November 1994), has a legal basis in customary international law.[155]

Similarly, one can ask this question in the case of the JDZ arrangement that was made between Norway and Iceland on the Jan Mayen area, because it was also concluded before 1982 UNCLOS entered into force (2 June 1982). Thus, the question arises whether this JMA agreement has a legal basis in customary international law?

According to Onorato the joint development arrangement might constitute a rule of customary international law, based on three arguments: first, a relevant state cannot unilaterally exploit the common hydrocarbon resources over the timely objection by another motivated state; second, the states involved must agree on the method of exploitation of such resources; and third, these relevant states should enter into negotiations in good faith in order to conclude an agreement but if it cannot be achieved, at least settle by a provisional arrangement until a final agreement is decided.[156]

It is possible to agree with Onorato´s argument, that even though JMA was concluded before the 1982 UNCLOS entered into force, the agreement has its legal basis under these three arguments above. As stated before, under international case law in the *North Sea Continental Shelf cases*, which was decided in 1969, and general practice, that if neighbouring states cannot agree on delimitation of areas that overlap then they should "decide on a regime of joint jurisdiction, use, or exploitation for the zone of overlap or any part of them".[157] This is a further argument supporting this conclusion about the legal basis of the joint development provided in the JMA.

First, Iceland and Norway were aware of this principle under international law that states cannot decide unilaterally to exploit these common resources. Thus they knew that the need for negotiation was evident. Second, Iceland and Norway agreed to the Conciliation Committee´s recommendations to cooperate within that zone consistent with a mutually agreed regime.

And third, with this solution, the parties postpone the determination of an artificial line, promote cooperation in the management of common resources, and inspire their rational use. Furthermore it protects against likely conflict over future petroleum discoveries in their

[155] Thao, 'Joint Development in the Gulf of Thailand' 85.
[156] William T. Onorato, 'Apportionment of an International Common Petroleum Deposit' (1977) Vol. 26 International and Comparative Law Quarterly 324, 324.
[157] North Sea Continental Shelf, Judgment of 20 February 1969, I.C.J Reports 1969, :3.

border area[158], which is in accordance with the judgement´s view in the specified *North Sea Continental Shelf cases.*

Zhiguo Goa, has a similar opinion about the concept of joint development: "Joint development is an emerging rule of customary international law, or at least a principle of soft law, under which unconsented, unilateral, and arbitrary development of shared resources in a disputed area between states is prohibited and unacceptable".[159]

However, Thao disagrees and states that caution should be taken in determining that joint development is a binding rule of international law. He points out that under international law states are obliged to negotiate in good faith to conclude an agreement or at least a provisional arrangement of a practical nature, which postpones a final agreement. It indicates that a joint development regime is only obligatory for provisional arrangements. Thus, it does not have a binding nature. Furthermore, Thao notes that the idea of joint development can be found in state practice, in international law, or in conventional international law. Nevertheless, the definition of joint development is not harmonized in conventional international law as scholars and jurists have many descriptions. Additionally, there is no existing *opinio juris* on that matter because there are insufficient numbers of cases of joint development arrangements. Consequently, as the joint development is only a temporary solution, it seems that this arrangement is not required as a binding rule of international law.[160]

Summing up present analysis about whether the concept of joint development arrangement might constitute a rule of customary international law, which is a binding rule, the following conclusion can be made.

Under 1982 UNCLOS, states are obliged to "make every effort to cooperate" (Articles 74 and 83). Even though states have not signed 1982 UNCLOS, there is adequate evidence to support the view that this obligation is considered to be a custom.[161] This general obligation to cooperate is recognized under international customary law, comprising an obligation to cooperate in establishing agreement on the exploration and exploitation of petroleum resources, and the obligation to not use its common resources unilaterally without cooperation from the other neighbouring state and in case when an agreement is not reached.[162] A joint

[158] Richardson, 'Jan Mayen in Perspective' 449.
[159] Zhiguo Gao, 'The Legal Concept and Aspects of Joint Development in International Law' (1998) 13 Ocean Yearbook Online 107, 123.
[160] Thao, 'Joint Development in the Gulf of Thailand' 85.
[161] Patson Wilbroad Arinaitwe, 'Exploitation of Offshore Transboundary Oil and Gas Reservoirs; An International Law Perspective.'
[162] Peter D Cameron, 'The Rules of Engagement: Developing Cross-Border Petroleum Deposits in the North Sea and the Caribbean' (2006) 55 International and Comparative Law Quarterly 559, 562.

development arrangement, however, is not specifically required by international law and represents a possible legal regime.

5.2 Is the Jan Mayen Agreement a temporary solution to the delimitation problem?

As mentioned in the previous section, Thao asserts that a joint development regime is only obligatory for provisional arrangements. This section will therefore study if the JMA is a provisional arrangement and if it is required to be a binding rule under international law.

As we have seen by closer examination of Articles 74 and 83 of the 1982 UNCLOS, that even though they do not mention specific solutions such as joint development zones which is a method pending boundary delimitation, for the purpose of developing offshore petroleum resources, it could be recognized as a "provisional agreement". Further, Yusuf has pointed out that most of these JDZ agreements have a fixed or pre-determined expiration date that indicates that the final intention of the states is to have defined maritime boundaries in the future. Some examples of JDZ agreements that have a pre-determined expiration date are the Agreement between Nigeria and Sao Tome and Principe, which states that parties should review the treaty in the 30th year and that the agreement shall remain in force for 45 years, although the parties decide that the contract should continue to apply after the first 45 years. Another example is the Timor Sea Treaty, which provides that the agreement shall remain in force "until there is permanent seabed delimitation between the two countries or for 30 years from the date of its entry into force; whichever is". [163] As stated before, Article 83.3 of the UNCLOS provides that, pending an agreement on delimitation, "the states concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements ... without prejudice to the final agreement".[164] This means that the obligation to cooperate arises in the gap between the acknowledgement that a dispute exists and final determination.[165]

The JMA does not, however, provide a fixed or pre-determined duration of the agreement. Then the question is whether joint development arrangements, like the JMA, can be considered permanent solutions?

In this context, Richardson has observed that parties should be aware that the provisional arrangement can have a "norm-creating" role. It follows that the terms and conditions they

[163] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?' 142.
[164] 'United Nations Convention on the Law of the Sea, 1982'
[165] Richardson, 'Jan Mayen in Perspective' 453.

agree on for such an arrangement should not deviate meaningfully from what they would think acceptable on a permanent basis. [166]

According to the above statement, then the terms of the JMA, namely of the JDZ, whether they are supposed to be a provisional or permanent solution, will not change significantly since the parties have already agreed about the main disputes on the Jan Mayen Ridge.

The Additional Protocol of 11 November 1997 to the Agreement of 28 May 1980 (JMFA) and the Agreement of 22 October 1981 (JMA)[167] concerns the final delimitation of the maritime waters between Jan Mayen, Iceland and Greenland. Article 1 of the protocol provides agreement on the determination of point 1 as described in the following:

> The delimitation line between the Parties' parts of the continental shelf and between the fishery zones in the area shall include a straight geodetic line between the following points:
>
> Point 1: 69° 35'00" N 13° 16'00" W
> Point 2: 69° 34'42" N 12° 09'24" W

According to the Additional Protocol, Iceland and Norway have delimited the border and therefore met the requirements of article 83 of the 1982 UNCLOS. They created a joint development arrangement, which led to this additional protocol providing for the final delimitation. Therefore, it can be concluded that the joint development arrangement between Iceland and Norway is a part of the delimitation settlement and thus serves to be the final solution.

In order to provide further support to this argument Bastida et al. maintains that even though a JDZ is normally established as a temporary solution for a specified period of time, without prejudice to subsequent delimitation, then it can serve as a permanent solution instead of a delimited boundary. However, even where the border has been delimited, as in this case, a JDZ can be established as part of the boundary settlement, but state practice has shown that this is a less common alternative. In addition, supporting the argument that the JDZ arrangement between Iceland and Norway is a permanent solution is that before the JDZ was created on the Jan Mayen area, the parties accepted to combine the sovereign rights over the

[166] Richardson, 'Jan Mayen in Perspective' 453

[167] 'Additional Protocol to the Agreement of 28 May 1980 between Norway and Iceland concerning Fishery and Continental Shelf Questions and the Agreement derived therefrom of 22 October 1981 on the Continental Shelf between Jan Mayen and Iceland, 11 November 1997', UN Delimitation Treaties Infobase (entry into force: 27 May 1998; registration #s: 37025; 37026).

area with the same paramount objective, the exploration and production of petroleum resources in the Jan Mayen area.[168]

According to all the above, it is possible to assume that this joint development arrangement between Norway and Iceland is not a temporary solution but rather a permanent one which is a part of the boundary settlement of the area between Jan Mayen and Iceland.

5.3 Actual significance of the Agreement between Norway and Iceland on the continental shelf between Iceland and Jan Mayen

It can be said that this agreement closed the circle in the disputes between the two parties on jurisdiction of the Jan Mayen area. The Agreement removed the need to draw a line defining the right to explore and exploit the non-living resources in the disputed area.[169] However, what is the actual significance of the agreement for Iceland and Norway? As can be seen with regard to all aspects of the agreement, it can be argued that this contract is more advantageous for Iceland, but the question is, what the reasons are for that. It is worth pointing out several factors that probably led to this outcome.

As previously mentioned the Conciliation Commission was assigned to taking into account "Iceland´s strong economic interests in these sea areas, the existing geographical and geological factors and other special circumstances". The scientific advisory committee found out that the ridge could not be considered a natural geological prolongation of either Iceland or Jan Mayen.[170] According to Elliot L. Richardson, the chairman of the Conciliation Commission, the commission took into account both the fact that Iceland had previously decided a 200-mile EEZ, which embraced a substantial area beyond the median line and the uncertainty as to the area´s hydrocarbon resource potential. In light of this the Commission decided not to suggest a delimitation line for the continental shelf other than the EEZ line, which was established in the JMFA. Further, the Conciliation Commission gave special consideration to four other aspects:

i. Iceland´s total dependence on imports of hydrocarbon;
ii. The low hydrocarbon potential of the continental shelf around Iceland, putting it in a shelf-locked, poor status;

[168] Bastida, Iefesi-Okoye, Mahmud, Ross, and Walde, 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective'
[169] Richardson, 'Jan Mayen in Perspective' 443.
[170] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981'

iii. The fact that the Jan Mayen Ridge area was the only area between Jan Mayen and Iceland with any such opportunities;

iv. The unreachability of the hydrocarbon resources due to the limitations of present technology and its distance from the market, which meant that only a huge discovery would make it commercially usable.

Richardson argues that this was the path by which the commission came to its recommendation of a joint development zone covering most of the area offering any meaningful prospect of hydrocarbon manufacture.[171] Concerning the special considerations, Østreng asserted that because of the Icelandic economy's strong dependence on fishery, it was agreed that Iceland should be given special treatment in the oil industry to help expand the economy.[172]

Also, knowing that Iceland had less extensive knowledge in joint ventures than Norway, the Conciliation Commission recommended slightly different conditions for each of the two parts of the special zone, as has been explained previously. But briefly, that meant that in Norway´s area, if the private oil companies would not be ready to carry the Governments' share of exploration costs, Iceland would have the opportunity of not joining the joint venture until a commercial discovery was made. However, if Iceland then decided to contribute, it would repay Norway for its share of the cost incurred. On the other hand, In Iceland´s area, Norway would not have a corresponding right to withhold the determination to contribute until a discovery was made. Furthermore, as a small concession to Iceland, any transboundary hydrocarbon deposit lying to the north on Norwegian zone would be covered entirely within the special zone. This means that in effect it would expand the zone into Norwegian jurisdiction. [173]

As can be imagined after these considerations, the JMA was favourably received in Iceland. The Icelandic government and some leaders of Iceland found that the agreement was particularly favourable and they considered Norway´s behaviour to be cooperative. Furthermore, some of them praised Norwegian behaviour as generous for showing great sensitivity to Icelandic needs, particularly the Icelandic general economic situation.[174]

Michael C. Wood maintains that, the agreement can be seen as primarily determined by political considerations, namely the Norwegian government view of it as "a political

[171] Richardson, 'Jan Mayen in Perspective' 446.
[172] Østreng, 'Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)' 567.
[173] Richardson, 'Jan Mayen in Perspective' 447–448
[174] Østreng, 'Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)' 562.

concession to an island State heavily dependent on its fisheries and moreover enjoying special relations with Norway".[175]

Regarding the concessions made by Norway to Iceland, Østreng believes that two factors; overriding political concerns and negotiating factors caused them. Norway´s main political aim is to maintain peace and stability in the northern areas, and Jan Mayen is included in this concept.[176] Knut Frydenlund was the foreign minister at the time, and he asserted that "Iceland played an important role in connection with the northern areas" and further, it was "a dominant consideration to avoid a protracted conflict (with Iceland) in our northern areas". Regarding the establishment of the special development zone, Frydenlund stated that equitable interests of Iceland should be kept in mind regarding the areas. [177] The first consideration of the Norwegian government during this period was the desire to avoid a battle with a state, which Norway had such close and long relations with.[178] Regarding the negotiating factors, it was also the government´s aim to preserve good relations with Iceland and thus it was taken into account in drafting the Norwegian negotiating framework. The Norwegian ambassador stated that the close relation between the two nations was based on historic and ethnic grounds, which formed special circumstances that governed the development of these negotiations.[179]

Miyoshi has the similar opinion where he has stated that this advantageous position of Iceland in this arrangement is not only because of the before mentioned "special considerations" as the Conciliation Commission gave an account of, but also might be traced to some underlying, "although essentially extraneous, political relationships between the two countries".[180]

According to the above, it can be inferred that most scholars agree that special political interests played a major role in the negotiations between the Iceland and Norway along with historical and ethnic grounds.

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[175] Charney, Alexander, Smith, and American Society of International Law, *International maritime boundaries* 3498.

[176] Østreng, 'Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)' 563.

[177] Knut Frydenlund, *Lille land--hva nå?: refleksjoner om Norges utenrikspolitiske situasjon* (Universitetsforlaget 1982) 59.

[178] Østreng, 'Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)' 563.

[179] Østreng, 'Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)' 566.

[180] Miyoshi, *Maritime Briefing. The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation* 34.

6 Implementation and Interpretation of the Jan Mayen Agreement today

As explained before the JMA is an agreement comprising a joint development arrangement of petroleum resources on the Jan Mayen Ridge but when it was drafted it was being negotiated for possible future petroleum resources. However, where there are strong indications that oil resources can be found on the Jan Mayen Ridge, the question arises how the parties have interpreted the JMA. In the next section it will be explored how the authorities of Iceland and Norway have been interpreting and implementing the JMA?

6.1 Agreement between Iceland and Norway concerning transboundary hydrocarbon deposits

The Conciliation Commission provided for unitization if a cross-border petroleum deposit was found either across the delimitation line or across the boundary of the southern part of the JDZ. It can be concluded that the Commission along with the ICJ in the North Sea Continental Shelf cases, acknowledged the importance of unitization for the most effective economic recovery. Bastida et al. maintains that cross-border unitization agreements will be in the future: "a practical implementation of an existing obligation of the two states to cooperate in the exploitation of a common deposit that is incorporated in the relevant delimitation treaty." [181] This statement applies in the case of Jan Mayen agreement where the states have already concluded the agreement on the obligation to cooperate in the exploitation of common deposits in the Jan Mayen area, which is incorporated in the delimitation treaty, namely the JMA.

Article 8 of the JMA provides that if a hydrocarbon deposit is situated both north and south of the Icelandic 200-mile economic zone line, the usual unitization, exploitation and distribution procedures for the petroleum deposits should be agreed upon. The more detailed rules in such cases should be agreed between the parties.[182]

When the Icelandic government was preparing a tender for concessions for the prospecting, exploration and production of oil and gas in the Dreki area, negotiations with the government of Norway took place. The area in question was on the Jan Mayen ridge within the Icelandic EEZ, which overlaps the JDZ. The two governments held negotiations on the interpretation and implementation of the JMA. As a result, an agreement was concluded on 3 November 2008 between Iceland and Norway, namely, the Agreement between Iceland and Norway concerning transboundary hydrocarbon deposits.[183] The agreement was ratified by Iceland on

[181] Bastida, Iefesi-Okoye, Mahmud, Ross, and Walde, 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective'

[182] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)' Article 8.

[183] Utanríkisráðuneytið, 'Framkvæmd Jan Mayen-samningsins og olíuleit á Drekasvæðinu (translated by author),

29 June 2011 and entered into force on 3 October 2011.[184] Norway addressed the matter in the Stortinget on 7 May 2009.[185]

The agreement between the two countries is a framework agreement of a unitization of hydrocarbon resources that can be found on both sides of the borders of the continental shelf of Iceland and Norway.[186] The problem of transboundary resources is that given the fact that it is possible to exploit such deposit from either side, it can lead to prejudicial or wasteful exploitation by one or the other of the interested states.[187] In such a situation it is advantageous to create a transboundary unitization agreement akin to the one made by Iceland and Norway. According to Griffin, unitization "is the term of art used in the industry to describe an arrangement for the joint development of an oil or gas resource that straddles an agreed boundary".[188]

This transboundary unitization agreement contains principles for the exploitation of hydrocarbon resources as a unit. According to the agreement, in cases where an oil or gas resource covers the continental shelf of the two countries, they shall make an agreement on the sharing of resources between the two countries and its use as a unit.[189] For further clarification, unitization procedures generally let each party maintain jurisdiction on its side of the boundary line while the petroleum resource is exploited as a single unit subject to well-described installations and distribution of reserves.[190]

In the preamble of the agreement it states that the governments of Iceland and Norway, desire to maintain and strengthen the "good neighbourly relations between Iceland and Norway". This statement is presumably a reference to the international obligation for states to cooperate in the settlements of disputes peacefully under international law. Furthermore, reference is made to " the Agreement of 22 October 1981 between Iceland and Norway on the Continental Shelf in the Area between Iceland and Jan Mayen, the Additional Protocol of 11 November 1997 to the Agreement between the Governments of Iceland and Norway on Fisheries and

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<http://www.utanrikisraduneyti.is/verkefni/althjoda-og-oryggissvid/thjodaettarmal/hafrettarmal/framkvaemd-jan-mayen-samningsins-og-oliuleit-a-drekasvaedinu/> accessed 12 February, 2013.

[184] Alþt. 2012-2013, A-deild, þskj. 409 – 360. mál (Skýrsla forsætisráðherra um meðferð og framkvæmd ályktana Alþingis 2011, translated by author), Þál. 36/139, mgr. 2.

[185] Innst. S. nr. 198 (2008-2009), St.prp. nr. 43 (2008-2009) Avtale mellom Norge og Island vedrørende grenseoverskridende hydrokarbonforekomster (translated by author).

[186] Utanríkisráðuneytið, 'Framkvæmd Jan Mayen-samningsins og olíuleit á Drekasvæðinu | Framkvæmd Jan Mayen-samningsins og olíuleit á Drekasvæðinu | Hafréttarmál | Þjóðréttarmál | Alþjóða- og öryggismál | Verkefni | Utanríkisráðuneyti'

[187] North Sea Continental Shelf cases , ICJ Reports 1969, p. 3. para. 97.

[188] Griffin and UWI-CARICOM Project, *The race for fisheries and hydrocarbons in the Caribbean Basin* 54.

[189] Alþt. 2010-2011, A-deild, þskj. 1196 – 679. mál, athugasemdir við þingsályktunartillögu þessa, 2.mgr. (translated by author).

[190] Richardson, 'Jan Mayen in Perspective' 458.

Continental Shelf Issues and the Agreement between the Governments of Iceland and Norway on the Continental Shelf between Iceland and Jan Mayen, and the Agreement between Iceland and Norway concerning the delimitation of the continental shelf beyond 200 nautical miles to be concluded on the basis of the Agreed Minutes of 20 September 2006 on the Delimitation of the Continental Shelf beyond 200 Nautical Miles between the Faroe Islands, Iceland and Norway in the Southern Part of the Banana Hole of the Northeast Atlantic have agreed as follows:"

> *Article 1*
>
> Neither Party can begin exploitation of any hydrocarbon deposit which extends to the continental shelf of the other Party until agreement on the exploitation of the deposit as a unit is reached between the Parties. [191]

This means that neither Iceland nor Norway can start to exploit oil resources, which extend to the continental shelf of the other State until agreement of a unitization of hydrocarbon resources is reached.

Further, concerning the 25 percent right of participation under Articles 5 and 6 of the JMA, the two parties approved the Agreed Minutes on 3 November 2008. According to these Minutes, the states have the right to participate with a share of 25 percent in hydrocarbon activities on the other state's continental shelf, in conformity with the conditions of the said agreement. Because of that agreement the parties have agreed to follow some procedures that shall apply relating to these rights of participation. The procedural rules consist of 10 rules concerning detailed instructions on how to comply with the implementation of the right to participate with a share of 25 percent in hydrocarbon activities on the other party's continental shelf. [192]

As can been seen by the Agreement between Iceland and Norway on a unitization of hydrocarbon resources that can be found on both sides of borders, the continental shelf of Iceland and Norway and the following Agreed Minutes, clear procedures have been established in order to exploit offshore transboundary hydrocarbon resources situated in the area of the competing claims of Iceland and Norway. It can be concluded that these procedural rules are sufficient so the arrangement will in all likelihood operate effectively as

[191] Alþt. 2010-2011, A-deild, þskj. 1196 – 679. mál (Agreement between Iceland and Norway concerning transboundary hydrocarbon deposits).

[192] 'Alþt. 2010-2011, A-deild, þskj. 1196 – 679. mál (Agreed Minutes concerning the Right of Participation pursuant to Articles 5 and 6 of the Agreement of 22 October 1981 between Iceland and Norway on the continental shelf in the area between Iceland and Jan Mayen)' (translated by author).

planned and as a result implement the JMA more effectively. Where the procedural rules have been set, I will explore in the next chapter how these principles are used in practice today.

6.2 Hydrocarbon resources on the Jan Mayen Ridge today

According to the geological report made for the Conciliation Commission in 1981, the experts concluded that there were potential hydrocarbon deposits on the Jan Mayen Ridge. However, the northern part of the Jan Mayen Ridge, situated north of the oblique depression, was considered as more promising, mainly because it has a larger extent than the Southern part. The southern part was less understood because it appeared to be more complex than the northern part in experts' opinion.[193]

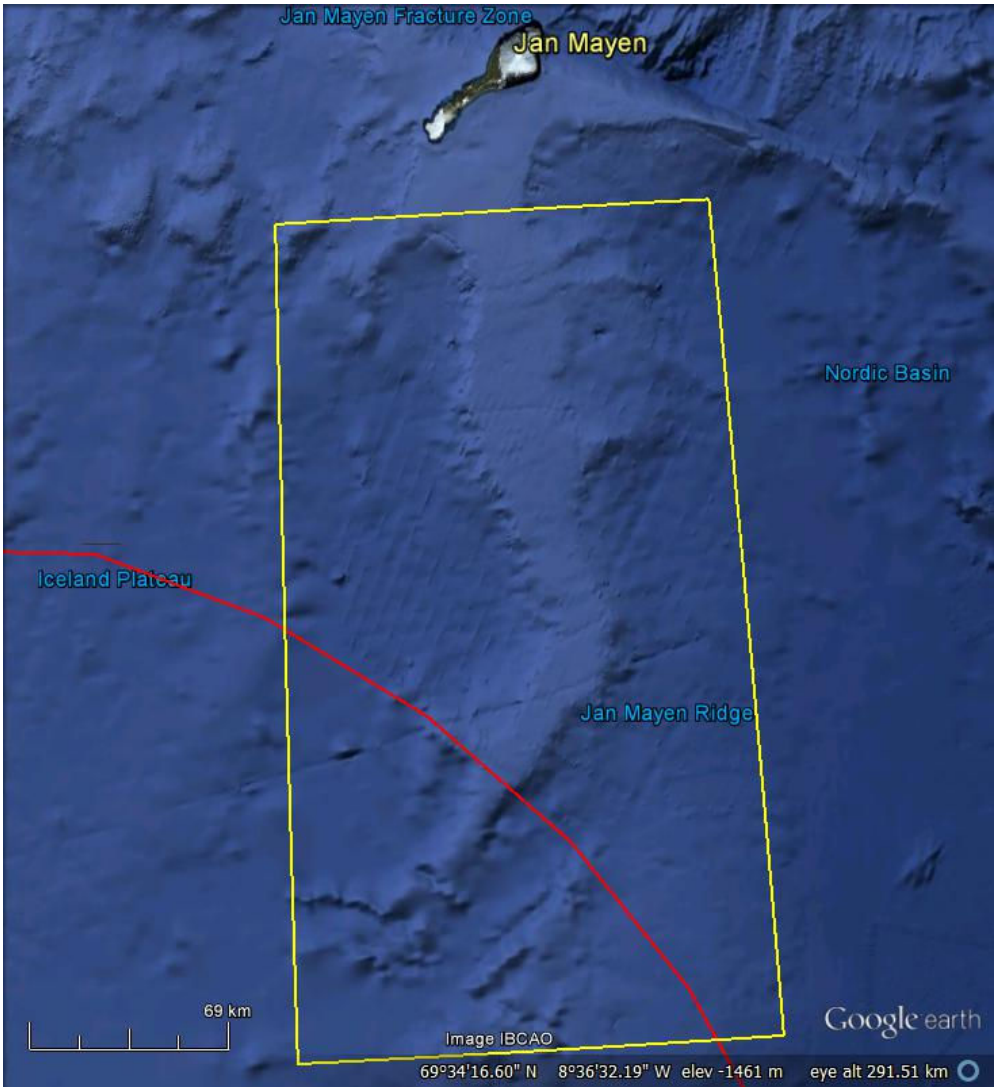

Figure 3. The Jan Mayen Ridge. The EEZ boundary is marked red, and the JDZ is the yellow box. Source: „The Jan Mayen Ridge" 69°34'16.60" N 8°36'32.19 W. Google Earth. Accessed 10 May 2013.

[193] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981' 22.

However, in recent years, the Jan Mayen Ridge, including the southern part, known as the Northern Dreki Area, is thought to have potential for hydrocarbon deposits. This opinion is held because of its similarity to geological hydrocarbon activities basins, which lay next-door to their neighbours prior to the opening of the northeast Atlantic Ocean basin. The basins in question are the Jameson Land Basin of the onshore East Greenland, where the oil is known for being made and conserved in sandstone bodies. On the other hand, in the basins of offshore Western Norway, Shetland and the North Sea, oil and gas has been found in commercial quantities.[194]

Reports from the Norwegian Ministry of Petroleum and Energy predict that the Jan Mayen region can expect to find from 90-240 million cubic meters of oil. In them the government of Norway indicates various cooperation opportunities that may arise between the States (Iceland and Norway) for service at the Jan Mayen area as stated in the report from the Ministry of Petroleum and Energy since October 2012.[195]

6.3 The Dreki Area and licenses for exploration and production of hydrocarbons

As explained in previous sections, it is believed that petroleum resources can be discovered on the Jan Mayen Ridge, namely in the Dreki Area. The Dreki area, or more precisely the northern part of the Dreki area is located in the northernmost and easternmost part of the Icelandic exclusive economic zone. The area lies "north of the 67th parallel N and east of 10° 30'W, up to the 200 NM boundary of Iceland's exclusive economic zone to the north and east". The northern part of the Dreki area consists of 42,700 km^2 and JMA applies to part of the zone of approximately 12,720 km^2, or nearly 30% if the zone.[196]

Both the JMA and the Agreed Minutes on the decision on the participation is a prerequisite for being able to provide a license for prospecting, exploration and production of hydrocarbon resources in the Dreki area.[197]

Because of Iceland´s approval and confirmation of these agreements, the NEA issued the first licenses for exploration and production of hydrocarbons in the Dreki Area on 4 January 2013.

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[194] Orkustofnun National Energy Authority, 'Geology and Hydrocarbon Potential of the Dreki Area' <http://www.nea.is/oil-and-gas-exploration/exploration-areas/dreki-hp/> accessed March 9, 2013.

[195] 'Össur átti fund með olíumálaráðherra: Gera má ráð fyrir að finna frá 90 – 240 milljónir rúmmetra af olíu (translated by author)', March 22, 2013, http://eyjan.pressan.is/frettir/2013/03/22/ossur-atti-fund-med-oliumalaradherra-gera-ma-rad-fyrir-ad-finna-fra-90-240-milljonir-rummetra-af-oliu/ accessed April 25, 2013.

[196] Ministry of Industry, 'Oil exploration in the Dreki area on the Jan Mayen Ridge. Proposal for a plan to offer exclusive exploration and production licences for oil and gas in the Dreki area (Dragon area) on the Jan Mayen Ridge, northeast of Iceland and a Strategic Environmental Assessment (SEA) of the proposed plan' 20–21.

[197] Utanríkisráðuneytið, 'Framkvæmd Jan Mayen-samningsins og olíuleit á Drekasvæðinu, <http://www.utanrikisraduneyti.is/verkefni/althjoda-og-oryggissvid/thjodaettarmal/hafrettarmal/framkvaemd-jan-mayen-samningsins-og-oliuleit-a-drekasvaedinu/> sótt 12. Febrúar, 2013 (þýðing höfundar).

These licenses were given in accordance with the JMA and further under the provisions of Act No. 13/2001 on prospecting, exploration and production of hydrocarbons (Hydrocarbons Act), with later amendments, Regulation No. 884/2011(the Hydrocarbons Regulation), and info in the licence applications and other information from the candidates.

The NEA granted one license to Faroe Petroleum Norge AS as an operator with 67,5% share, Iceland Petroleum with 7,5% share and Petoro Iceland with 25% share. Also, they granted a license to Valiant Petroleum ehf. as an operator with 56,25% share, Kolvetni ehf. with 18,75% share and Petoro Iceland AS with 25% share.[198]

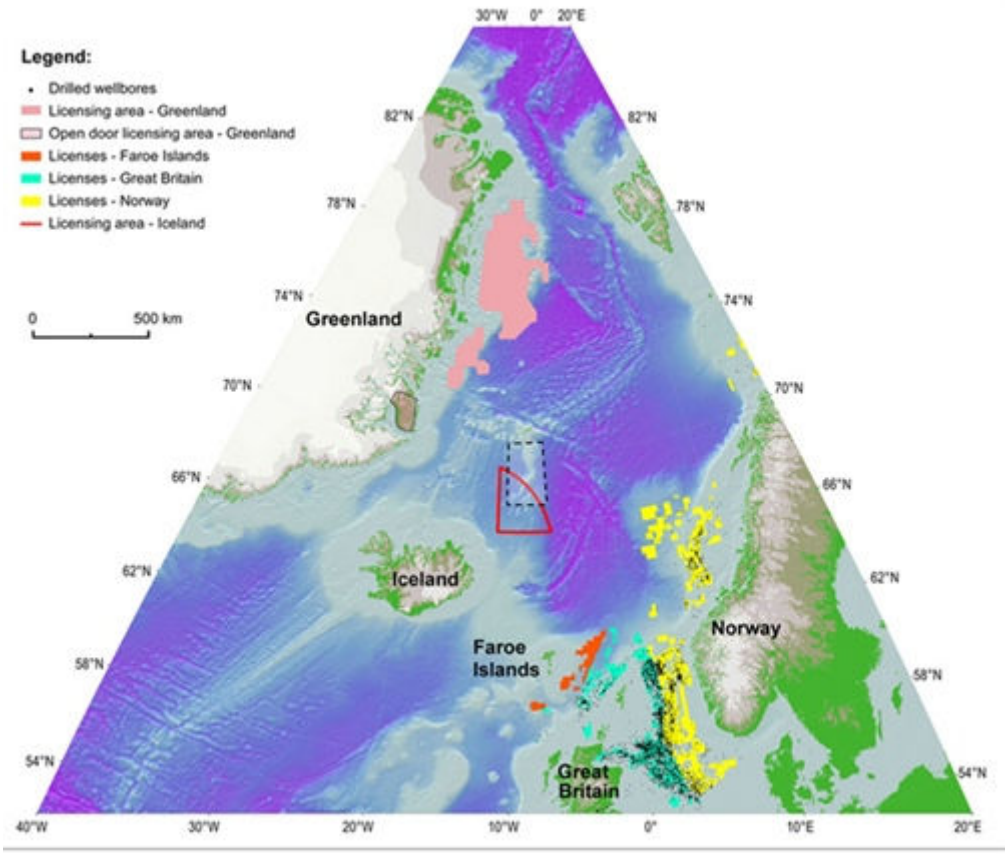

Figure 4. The Dreki-licensed area is marked in red at the centre of the map. The black box marks the area covered by the 1981 JMA. The island of Jan Mayen is located north of this area. The map shows petroleum provinces surrounding Dreki/ Jan Mayen: Norway, UK, the Faroe Islands and Greenland Grønland. (Source: Petoro AS <.http://www.petoro.no/home/1700673037/-04-01-13-> accessed 10 May 2013)

[198] The National Energy Authority, 'Iceland issues the first licenses for exploration and production of hydrocarbons in the Dreki Area.'

6.3.1 The Participation rights of Norway on the Dreki Area

The Norwegian Parliament has confirmed 25% participation, as provided for under the terms of the JMA (Article 6), of the national oil company Petoro AS in the oil licenses that were allocated on the Dreki Area in January.[199] The JMA provides that if Norway intends to participate with their share of 25 percent in hydrocarbon activities on the Icelandic continental shelf (Dreki Area), they must report it no later than one month after the allocation of licenses for prospecting and exploration on hydrocarbons. The Norwegian state oil company exercised this right regarding the two licenses that were issued last summer on Dreki Area. Consequently, this means that Norway carries from the start a quarter of the costs to bring the area to a acceptable condition to work.[200]

Faroe Petroleum (an independent oil and gas company) will be the operator of these allocated Dreki Area licences with a 67.5% interest in Blocks IS6708/8,9,10,11,12 together with Petoro AS (25%) and Iceland Petroleum (7.5%) and a 90% interest in Blocks IS6708/1,2 together with Iceland Petroleum (10%), which are located outside the Norway-Icelandic JDZ.[201] According to Kjell Pedersen, chief executive of Petoro, the activities on the Dreki Area will be controlled by Petoro Iceland AS (subsidiary company of Petoro AS). Further, Pedersen stated that the company will have no employees, and all the work will be done by Petoro AS according to a management agreement with the subsidiary company.[202]

6.4 Implementation of the Agreement by Norway today

The Minister for Foreign Affairs of Iceland (Ossur Skarphedinsson) and the Minister for Foreign Affairs of Norway (Espen Barth Eide) signed an agreement on 21 March 2013, for cooperation in the Arctic, including oil cooperation. So this is still at an early stage in Norway, but they have as of May 2013 not decided if they plan to start exploring for oil in their part of the area. Regarding the future cooperation on the JDZ, the Minister of Petroleum and Energy in Norway (Ole Borten Moe) expressed on 22 March 2013 interest in cooperation with Iceland in these areas in the future, but stressed that Norway had yet to take a formal

[199] 'Össur átti fund með olíumálaráðherra' , <http://eyjan.pressan.is/frettir/2013/03/22/ossur-atti-fund-med-oliumalaradherra-gera-ma-rad-fyrir-ad-finna-fra-90-240-milljonir-rummetra-af-oliu/>, accessed 25 April 2013.
[200] Össur Skarphéðinsson, 'Ísland þarf ríkisolíufyrirtæki', March 4, 2013, ((Minister for Foreign Affairs) translated by author), 12.
[201] Faroe Petroleum, 'Faroe Petroleum provisionally awarded new licences on the Icelandic Continental Shelf', December 4, 2012 < http://www.fp.fo/Default.aspx?pageid=1031&NewsItemID=15403> accessed April 25, 2013.
[202] Iceland Petroleum, 'Petoro to participate in exploration on the Icelandic continental shelf', January 10, 2013, < http://www.icelandpetroleum.com/petoro-to-participate-in-exploration-on-the-icelandic-continental-shelf/> accessed April 24, 2013.

decision on the prospecting and development of the Jan Mayen region.[203] They planned to use a year to analyze and collect additional data, including sampling to further explore the strata on their side of the area. He informed that it would be completed on 1 March 2014, until that time further analysis of data and research will be performed.[204]

Regarding the Norwegian Area of the Jan Mayen Ridge, the Oil and Energy Ministry of Norway published in October 2012 an environmental impact assessment, which is a part of the opening process for the Norwegian ocean area around Jan Mayen. In addition a geological mapping was made. Assuming that the impact assessment provides a basis for it, the Government will submit a report, which recommends opening for petroleum operations.[205]

6.5 Legal and Regulatory framework for Oil Exploration in Iceland

As mentioned before, the JMA provides that in the territories of the Parties, their national legislation applies, including provisions relating to management and control, security and environmental protection. This means that Norwegian regulations are applicable in the northern sector and Icelandic regulations applicable in the southern sector (Articles 5.3 and 6.2).[206] As things stand in 2013 with regards to the Dreki Area, it is appropriate to explore further the Icelandic legal and regulatory framework on exploration for hydrocarbon resources where it is applicable on the Dreki Area.

As can been seen from this study, the primary legal source for Icelandic exploration for hydrocarbons resources on the Dreki Area is from the JMA, the Agreement between Norway and Iceland concerning transboundary hydrocarbon deposits and the Agreed Minutes of 3 November 2008 (concerning the Right of Participation under Articles 5 and 6 of the JMA). These agreements apply to the relevant areas of the Continental Shelf between Iceland and Jan Mayen (Norway).

In 2009, Iceland issued the first but unsuccessful licensing round for exploration and production of hydrocarbons. It was followed by the adoption of petroleum legislation, including an act on the taxation of hydrocarbon extraction.[207] The Icelandic law that regulates exploration for oil and gas in Icelandic waters is provided in Act No. 13/2001 on prospecting,

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[203] 'Össur átti fund með olíumálaráðherra'.
[204] Same source.
[205] Olje- og energidepartementet, 'Åpningsprosess ved Jan Mayen - konsekvensutredning sendes på høring(translated by author)', October 16, 2012, <http://www.regjeringen.no/nb/dep/oed/pressesenter/pressemeldinger/2012/apningsprosess-ved-jan-mayen---konsekven.html?id=705121>, accessed March 15, 2013.
[206] 'Agreement on the Continental Shelf between Iceland and Jan Mayen (JMA)' Articles 5 and 6.
[207] International Monetary Fund, 'Iceland: Advancing Tax Reform and the Taxation of Natural Resources', June 2011 15.

exploration and production of hydrocarbons (Hydrocarbons Act)[208]. The scope of the Hydrocarbons Act is found in Article 1, which is following:

> This Act applies to prospecting, exploration and production of hydrocarbons and transport of hydrocarbons through piping systems outside 115 meters from the shore and within Icelandic territorial waters and economic zone and on the Icelandic continental shelf. The Act also applies to offshore installations unless otherwise determined in legislation or rules based on this Act.

Since the Dreki area is in the northernmost and easternmost part of the Icelandic exclusive economic zone, the area is covered under the scope of the Hydrocarbons Act pursuant to this article.[209]

Article 4 of the Hydrocarbons Act states that The NEA grants licenses for prospecting for hydrocarbons for the purpose of exploration and production. The rights of licensees are provided under paragraph 1 of Article 7 of the Hydrocarbon Act. It provides that the license grants the licensee exclusive rights to explore and produce hydrocarbons within the licence area. The license period is granted for a period up to 12 years, as provided under Article 10. Further, the NEA may extend the exploration period for up to two years at a time. However, the maximum duration of a licence shall not exceed 16 years. Application for the extension of the license has to be sent to the NEA at the latest 90 days before the end of the exploration period. Furthermore, the licensee, having satisfied the conditions of the license, shall have a priority right to an extension of the license for the purpose of production of hydrocarbons for up to 30 years, cf. paragraph 2 of Article 10 of the Hydrocarbon Act. A description of the content of an exploration and production license is under Article 11 of the Hydrocarbon Act. According to the provision an exploration and production license shall state i.e. the duration of the license, the geographical limits of the exploration or production area that the license applies to and the licensee´s obligation with regard to the production of hydrocarbons, i.e. provisions on the location and depth of boreholes for production and recharge an on production rates. The license shall also stipulate the licensee´s obligation of reporting and notification to the NEA, including the obligation to deliver samples and data and how this delivery is to take place, and provisions for safety and environmental protection, as

[208] Act on Prospecting, Exploration and Production of Hydrocarbons No. 13, 13 March 2001 (Hydrocarbon Act), Amended by Act No. 49, 27 March 2007, Act No. 166, 20 December 2008, Act No. 8, 3 March 2009 and Act No. 105, 7 September 2011, (Unofficial Translation).

[209] Ministry of Industry, 'Oil exploration in the Dreki area on the Jan Mayen Ridge. Proposal for a plan to offer exclusive exploration and production licences for oil and gas in the Dreki area (Dragon area) on the Jan Mayen Ridge, northeast of Iceland and a Strategic Environmental Assessment (SEA) of the proposed plan' 20.

appropriate. [210] Moreover, the license shall also specify the licensee´s purchase of insurance at a well-known insurance firm, banker´s insurance or other collateral that the NEA considers adequate, to cover possible accountability for damages caused by action of the licensee. Lastly, the license has to contain provisions concerning the disposal of production systems and equipment at the end of the license term, and on the closure of offshore installations and bases that have been utilized for exploration or production actions.[211]

The Hydrocarbons Regulation No. 884/2011 and Regulation No. 39/2009 also apply for petroleum activities on the Icelandic territorial sea and the exclusive economic zone and on the Icelandic continental shelf.

Petroleum actions are subject to general Icelandic laws and regulations on taxation, health and safety, and environmental protection. In addition to the company income tax of 20%, the Act on taxation of hydrocarbon production No. 109/2011 shall apply to the taxation of hydrocarbon production.[212] The aim of the legislation on taxation was threefold, or as stated in the notes accompanying the bill for Act No. 109/2011:

"(1) The state will be guaranteed acceptable share of the profits arising the exercise of a limited resource owned by the nation, (2) that Iceland will be competitive in terms of taxation with our neighbouring countries (Norway, Faroe Islands, Canada, Ireland and Greenland), and (3) the taxation of hydrocarbon production in Iceland will be simple and effective."[213]

The ownership of hydrocarbons accumulations is by the Icelandic State pursuant to Article 3 of the Hydrocarbon Act[214], and as mentioned before, a license from NEA is required for prospecting, exploration and production of hydrocarbons. The National Energy Authority is also accountable for monitoring hydrocarbon searching, exploration and production actions and file the statistics created by such activities.

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[210] Act on Prospecting, Exploration and Production of Hydrocarbons No. 13, 13 March 2001 (Hydrocarbon Act), Amended by Act No. 49, 27 March 2007, Act No. 166, 20 December 2008, Act No. 8, 3 March 2009 and Act No. 105, 7 September 2011, (Unofficial Translation).

[211] Ministry of Industry, 'Oil exploration in the Dreki area on the Jan Mayen Ridge. Proposal for a plan to offer exclusive exploration and production licences for oil and gas in the Dreki area (Dragon area) on the Jan Mayen Ridge, northeast of Iceland and a Strategic Environmental Assessment (SEA) of the proposed plan' 32.

[212] National Energy Authority, 'Oil & Gas Exploration. Legal and Regulatory Framework', <http://www.nea.is/oil-and-gas-exploration/legal-and-regulatory-framework/> accessed April 27, 2013.

[213] Alþt. 2010-2011, A deild, þskj. 1221-702. mál, athugasemdir við lagafrumvarp um skattlagningu á kolvetnisvinnslu, (translated by author).

[214] 'Act on Prospecting, Exploration and Production of Hydrocarbons No. 13, 13 March 2001 as Amended by Act No. 49, 27 March 2007, Act No. 166, 20 December 2008, Act No. 8, 3 March 2009 and Act No. 105, 7 September 2011' (Unofficial Translation October 3, 2011)

Finally, as a member state of the European Economic Area (EEA), the following therefore applies to petroleum exploration and exploitation in Icelandic waters. The European Union (EU) directive on the conditions for granting and using authorizations for prospection, exploration and production of hydrocarbons (Directive 94/22/EC),[215] along with other relevant EU legislation that applies to hydrocarbon activities in Iceland.[216] Iceland as a member state of the EEA shall ensure that the conditions and requirements are fulfilled under the directive and take necessary measures to ensure these obligations.

7 CONCLUSION

In this thesis the Jan Mayen dispute has been reviewed and the boundary delimitation agreement between Iceland and Norway on the area between Jan Mayen and Iceland analyzed, which also provides for the joint development arrangement. The analysis primarily researched the legal basis of the joint development and how the parties have implemented the agreement. The following question has been considered in the present thesis: (1) what is the legal status of joint development arrangements like the arrangement between Norway and Iceland? This question can be divided into two issues:

a. Does customary international law require the joint development arrangement´s implementation or do states implement them as a matter of practice?
b. Can the joint development arrangement between Norway and Iceland serve as a permanent solution to their maritime boundary dispute?

The negotiations that took place between Iceland and Norway regarding their claims around the island of Jan Mayen were influenced by international law resource interests.[217] Searching for an answer to the question, legal sources of international law according to Article 38 of the Statute of the ICJ were considered. It stipulates that the highest level of legal sources are international conventions, then international custom and the general principles of law recognized by civilized nations etc.[218] Thus, the provisions of the 1982 UNCLOS and the UN Charter were also considered since they are the main conventions on this matter.

[215] Council Directive 1994/22/EC of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons, OJ L 164 /0003 – 0008.
[216] National Energy Authority, 'Oil & Gas Exploration. Legal and Regulatory Framework' .
[217] Østreng, 'Reaching agreement on international exploitation of ocean mineral resources (with special reference to the joint development area between Jan Mayen and Iceland)' 555.
[218] 'Statute of the International Court of Justice'

Regarding the maritime boundary dispute between Iceland and Norway, it is important to mention Article 33 of the UN Charter[219] that provides for the peaceful settlement of disputes but by means of the parties' own choice. This means that the states are obliged to choose what method they should use in order to find a solution. This almost always involves some kind of negotiation, where, mediation, conciliation, arbitration, judicial settlement etc. are included. Should negotiation not work out for the parties then recourse may be had to conciliation, good offices (the UN Secretary General) or arbitration (ad hoc or judicial settlement (ICJ/ITLOS)). [220] As is known, Iceland and Norway had a successful negotiation by creating the JMA based on the recommendations of the Commission, which resolved the maritime dispute in conformity with international law, including the above rules of the UN Charter.

(a) Does customary international law require the joint development arrangement's implementation or do States implement them as a matter of practice?

Articles 74 and 83 of 1982 UNCLOS[221], which are the key provisions for maritime delimitation, were examined regarding the legal status of the joint development arrangement between Iceland and Norway on the Jan Mayen area, which is provided in the JMA. These provisions are corresponding, addressing the delimitation of the EEZ and the Continental shelf along with the establishment of provisional arrangement in cases where it was not possible to reach a settlement in maritime boundary delimitation. Furthermore, Articles 74 and 83 provide that states are obliged to "make every effort to cooperate". Even though joint development arrangements are not specified particularly in this provision, or indicated precisely under what form "provisional arrangements of a practical nature" should be, then nevertheless has bilateral state practice been more successful in indicating that. Also, several international judicial decisions support the application of the concept of joint development. For example, in *the North Sea Continental Shelf cases,*[222] which is the first delimitation case under customary international law, the joint development was affirmed for areas of overlapping claims.

However, regarding the binding nature of joint development arrangements is another question where there is still some uncertainty about the legal status of the concept, even though the concept of joint development is now recognised universally.

[219] 'Charter of the United Nations' (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter).
[220] Chatham House. Independent thinking on international affairs, 'Methods of resolving maritime boundary disputes. A meeting of the International Law Discussion Group at Chatham House on 14th February, 2006'.
[221] 'United Nations Convention on the Law of the Sea, 1982' Articles 74 and 83.
[222] North Sea Continental Shelf, Judgment of 20 February 1969, I.C.J Reports 1969, :3.

Although some states have not signed 1982 UNCLOS, there is adequate evidence to support the view that obligation is considered to be a custom.[223] This general obligation to cooperate is recognized under international customary law, comprising an obligation to cooperate in establishing agreement on the exploration and exploitation of petroleum resources, and the obligation not to use its common resources unilaterally without cooperation from the other neighbouring state and in case when agreement is not reached.[224]

A thorough analysis of the joint development arrangement shows that it is not required by international law to enter into such an arrangement, but it can be concluded that it represents a possible legal regime.

On the other hand, it can be firmly stated now that cooperation in the regime of joint development of hydrocarbon resources is well established and is a widely recognized state practice.

(b) Can the joint development arrangement between Norway and Iceland serve as a permanent solution to their maritime boundary dispute?

Usually, joint development agreements have a certain expiration date specified in the contract itself where the aim of such agreements is to suspend temporarily the final agreement establishing the boundary. However, the JMA does not specify any expiration date.

According to Richardson, provisional arrangements can have a "norm-creating" role. It follows that the terms and conditions the parties agree on for such an arrangement should not deviate meaningfully from what they would think acceptable on a permanent basis. [225]

Thus, it means that the terms of the JMA, whether they are supposed to be provisional or permanent solution, will not change significantly where the parties have already agreed upon the main disputes on the Jan Mayen Ridge. As explained before, the parties established delimitation under international law, namely under Articles 74 and 83 of the 1982 UNCLOS, as provided under their agreement on May 28, 1980, JMFA.[226] The Additional Protocol of 11 November 1997 to the Agreement of 28 May 1980 (JMFA) and the Agreement of 22 October

[223] Patson Wilbroad Arinaitwe, 'Exploitation of Offshore Transboundary Oil and Gas Reservoirs; An International Law Perspective.'

[224] Cameron, 'The Rules of Engagement: Developing Cross-Border Petroleum Deposits in the North Sea and the Caribbean' 562.

[225] Richardson, 'Jan Mayen in Perspective' 453

[226] Richardson, Andersen, and Evensen, 'Conciliation Commission on the Continental Shelf area between Iceland and Jan Mayen: Report and recommendations to the governments of Iceland and Norway, decision of June 1981'

1981 (JMA)[227] concerns the final delimitation of the maritime waters between Jan Mayen, Iceland and Greenland. According to this Additional Protocol Iceland and Norway have delimited the border and therefore met the requirements of article 83 of the 1982 UNCLOS. They created a joint development arrangement, which led to this additional protocol providing for the final delimitation. Therefore, it can be concluded that the joint development arrangement between Iceland and Norway is a part of the delimitation settlement and thus serves to be the final solution.

For further reasoning, according to Bastida et al., joint development arrangements can serve as a permanent solution instead of a delimited boundary. However, even where the border has been delimited, as in this case, a JDZ can be established as part of the boundary settlement.[228]

What can be stated at this point with reasonable certainty is that this joint development arrangement between Norway and Iceland is a permanent one which is a part of the boundary settlement of the area between Jan Mayen and Iceland.

Regarding the interpretation and implementation of the JMA, then the states have taken various measures to implement the agreement further in terms of its interpretation. Iceland and Norway concluded on 3 November 2008 the Agreement concerning transboundary hydrocarbon deposits, which is a framework agreement on a unitization of hydrocarbon resources that can be found on both sides of borders. Regarding the interpretation of the 25 percent right of participation provided in Articles 5 and 6 of the JMA, Iceland and Norway approved Agreed Minutes also on 3 November 2008, which comprises procedural rules. Both the Agreement between Iceland and Norway on a unitization of hydrocarbon resources that can be found on both sides of borders, the continental shelf of Iceland and Norway and the following Agreed Minutes have set out more clearly procedures in order to explore and exploit offshore transboundary oil resources situated in the area of the competing claims of Iceland and Norway. Thus, it can be concluded that these procedural rules are sufficient so the arrangement will operate effectively as planned and as a result implemented the JMA more effectively. The JMA and the Agreed Minutes on the decision on the participation is a prerequisite for being able to provide a license for prospecting, exploration and production of hydrocarbon resources in the Dreki area. Because of Iceland´s approval and confirmation of these agreements, the National Energy Authority, (NEA/ Orkustofnun) issued the first

[227] 'Additional Protocol to the Agreement of 28 May 1980 between Norway and Iceland concerning Fishery and Continental Shelf Questions and the Agreement derived therefrom of 22 October 1981 on the Continental Shelf between Jan Mayen and Iceland, 11 November 1997', UN Delimitation Treaties Infobase (entry into force: 27 May 1998; registration #s: 37025; 37026).

[228] Bastida, Iefesi-Okoye, Mahmud, Ross, and Walde, 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective'

licenses for exploration and production of hydrocarbons in the Dreki Area on 4 January 2013. These licenses were given in accordance with the JMA and further under the provisions of Act No. 13/2001 on prospecting, exploration and production of hydrocarbons (Hydrocarbons Act), with later amendments, Regulation No. 884/2011(the Hydrocarbons Regulation), and info in the licence applications and other information from the candidates.[229]

This thesis, based on treaty provisions, customary international law, judicial decisions, has examined the legal bases for Iceland and Norway of entering into joint development arrangement and the role the arrangement plays in their maritime boundary dispute and in the presentation of the exploitation of transboundary petroleum resources. Even though the concept of joint development arrangements are now acknowledged generally, there is still some uncertainty whether there is a obligation for states to enter into such arrangement and whether such a rule has crystallised into customary international law. However, as observed by Yusuf:

> [The] general opinion now is that based on state practice, treaty provisions and judicial pronouncements, it is apparent that a rule of customary international law seems to be emerging which requires states to co-operate in order to develop common petroleum deposits. [230]

With these words, it can be concluded that Iceland and Norway have truly fulfilled their obligations as coastal states to cooperate by creating a JDZ in order to resolve their maritime dispute peacefully. Furthermore, it can be said that the effectiveness of the JMA originates from the careful assessment of the parties´interests by the Conciliation Commission, its practical approach to determining the disputed area, its design of a framework for joint cooperation, and last but not least because of a common Nordic heritage. Therefore, JMA is known to be an exemplary model for future resolution of other maritime disputes.

[229] Utanríkisráðuneytið, 'Framkvæmd Jan Mayen-samningsins og olíuleit á Drekasvæðinu.
[230] Yusuf, 'Is joint development a panacea for maritime boundary disputes and for the exploitation of offshore transboundary petroleum deposits?' 136-137.

Annex I : Agreement on the Continental Shelf Between Iceland and Jan Mayen

Agreement on the Continental Shelf Between Iceland and Jan Mayen, 22 October 1981[231]

The Governments of Iceland and of Norway,

Desiring to determine the delimitation line on the continental shelf in the area between Iceland and Jan Mayen,

Having agreed, by entering into the Agreement of May 28, 1980 on fishery and continental shelf questions, on the extension of the economic zone of Iceland to 200 nautical miles also in those areas between Iceland and Jan Mayen where the distance between the baselines is less than 400 nautical miles,

Having agreed in Article 9 of the above-mentioned Agreement that the Parties should jointly appoint a Conciliation Commission to submit recommendations with regard to the dividing line for the shelf area between Iceland and Jan Mayen and having jointly appointed such a Commission,

Having in May 1981 received the Conciliation Commission's unanimous recommendations to the effect that the delimitation line between the two Parties' parts of the continental shelf in the area between Iceland and Jan Mayen shall coincide with the delimitation line for the economic zones, and that co-operation between the two Parties be established in connection with the exploration for and exploitation of hydrocarbon resources in a specified area between Iceland and Jan Mayen on both sides of the delimitation line, and

Finding it possible to proceed on the basis of the Commission's recommendations,

Have agreed as follows:

Article 1

The delimitation line between the Parties' parts of the continental shelf in the area between Iceland and Jan Mayen shall coincide with the delimitation line for the Parties' economic zones.

[231] <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/ISL-NOR1981CS.PDF> accessed 10 May 2013

Article 2

The provisions in Articles 3 to 9 apply in an area defined by the following co-ordinates:

70° 35' N

68° 00' N

10° 30' W

6° 30' W

Article 3

In the first exploration phase, aimed at a systematic geological mapping of the area defined in Article 2, the Parties shall jointly carry out seismic and, if necessary, magnetic surveys. The practical implementation of these surveys shall be the task of the Norwegian Petroleum Directorate on the basis of plans elaborated by the two Parties' experts jointly. The costs of the surveys shall be borne by the Petroleum Directorate/The Norwegian State, unless the Parties otherwise agree. Norwegian and Icelandic experts shall have the opportunity to participate in the surveys and in the assessment of the resulting data on an equal footing. The data and their assessment shall be submitted to the authorities of the two Parties. They shall be treated as confidential, unless the Parties otherwise agree.

If there is any net profit from the sale of seismic or magnetic data to companies or organizations, such net profit shall be shared by the two Parties on a basis agreed between them.

Article 4

If the surveys mentioned in Article 3 indicate that it is desirable to carry out more detailed surveys of special fields in the area, including more detailed seismic work and the commencement of drilling, any exclusive exploration and production licences in respect of such special fields shall be based on joint venture contracts, unless the Parties agree on some other form of contract. The Parties may agree to allow governmental or non-governmental petroleum companies to participate in such contracts.

Article 5

In the part of the area defined in Article 2 north of the delimitation line between the two Parties' economic zones (approximately 32 750 sq. km.), Iceland shall be entitled to participate with a share of 25 per cent in such petroleum activities as are referred to in Article

4. In negotiations with outside governmental or non-governmental petroleum companies, Norway shall seek to arrive at an arrangement whereby both the Norwegian and the Icelandic percentage of the costs of such petroleum activities are carried by the company (or companies) concerned up to the stage where commercial finds have been declared.

If it is not possible to obtain an arrangement whereby the two Parties' costs are carried by the company (or companies) concerned, the Parties shall initiate negotiations on the possibility of conducting the operations as a joint venture where each of them carries its own costs, or where they share the costs. If Iceland does not wish to participate on this basis, Norway may proceed on its own. If commercial finds are declared, Iceland shall be entitled, at this stage, to enter into participation with its share in return for reimbursing Norway for that share of the costs incurred up to this juncture which would correspond to Iceland's share if Iceland had participated from the outset.

Norwegian legislation, Norwegian petroleum policy and Norwegian regulations relating to the control of such activities, safety measures and environmental protection shall apply to the activities in the area referred to in the first paragraph. The Norwegian authorities shall also be responsible for enforcement and administration in the said area.

Article 6

In the part of the area defined in Article 2 south of the delimitation line between the two Parties' economic zones (approximately 12 720 sq. km.), Norway shall be entitled to participate with a share of 25 per cent in such petroleum activities as are referred to in Article 4. In negotiations with outside governmental or non-governmental petroleum companies, Iceland shall not be bound to seek to arrive at an arrangement whereby the Norwegian percentage of the costs of such petroleum activities are carried by the company (or companies) concerned.

Icelandic legislation, Icelandic petroleum policy and Icelandic regulations relating to the control of such activities, safety measures and environmental protection shall apply to the activities in the area referred to in the first paragraph. The Icelandic authorities shall also be responsible for enforcement and administration in the said area.

Article 7

After a find has been declared commercial, each of the Parties shall carry its costs in the further development of the field in proportion to its share under the contract concerned.

Article 8

If a hydrocarbon deposit lies on both sides of the delimitation line between the two Parties' economic zones, or lies in its entirety south of the delimitation line, but extends beyond the co-ordinates stated in Article 2, the usual unitization principles for the distribution and exploitation of the deposit shall apply. The more detailed rules to be applied in such cases shall be agreed between the Parties.

If a hydrocarbon deposit lies in its entirety north of the delimitation line, but extends beyond the co-ordinates stated in Article 2, the deposit shall in its entirety be considered to lie within the co-ordinates, cf. Articles 5, 6 and 7.

Article 9

If one of the Parties considers that the regulations relating to safety measures and environmental protection referred to in Articles 5 and 6 fail to provide adequate protection when exploration or production operations are carried out in the area defined in Article 2, the Parties shall consult each other, cf. Article 10 in the Agreement of 28 May 1980 on fishery and continental shelf questions. If, during such consultations, the Parties fail to agree, the question shall be referred to a Conciliation Commission consisting of three members. The Parties shall not commence or continue such operations before the Conciliation Commission's recommendation is available, unless there are weighty grounds for so doing.

Each of the Parties shall appoint one member of the Commission. The chairman of the Commission shall be appointed by the Parties jointly.

The Commission's recommendations shall be submitted to the two Governments at the earliest opportunity. The recommendations are not binding on the Parties, but during their further discussions the Parties shall pay reasonable regard to them.

Article 10

This Agreement shall enter into force when the Parties, by an exchange of notes, have notified each other that the necessary constitutional procedures have been completed.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed this Agreement.

DONE at Oslo on October 22, 1981, in duplicate in the Icelandic and Norwegian languages, both texts being equally authoritative.

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