

## Maritime Delimitation in the Baltic Sea: An Update

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**ABSTRACT:** The present contribution is a follow-up to an article published in the same journal about a decade ago on the accomplishments by coastal States in the restricted area of the Baltic Sea with respect to the delimitation of their different maritime zones [6]. The research ofn which both contributions are based is related to the work accomplished by the present author in the framework of a world-wide project initiated by the American Society of International Law during the late 1980s, which intended to provide an in-depth analysis of the State practice arising from the more than 100 existing maritime boundary delimitation agreements already concluded at that time. That project is still on-going and finds its reflection in the publication “International Maritime Boundaries”, of which eight volumes have seen the light of day so far, the latest one in 2020.<sup>1</sup>

In this follow-up article three new agreements have to be mentioned. It concerns, in chronological order of signature, the tripoint agreement concluded between Lithuania, Russia and Sweden of 2005,<sup>2</sup> the agreement between Lithuania and Sweden of 2014,<sup>3</sup> and the Denmark-Poland agreement of 2018.<sup>4</sup> All of these agreements have in the meantime entered into force<sup>5</sup> and will form the central part of the present contribution (Part II). But in order to be able to understand the exact place of these agreements in the overall maritime delimitation picture of the Baltic Sea, a very broad sketch will first be provided of what preceded these recent three additions (Part I). Both these parts, unless otherwise indicated, rely on previously published material listed in the bibliography either at the end of the article that is being updated concerning Part I, or the more recent works listed at the end of the present contribution concerning Part II. Finally, some conclusions will be drawn (Part III).

### 1 WHAT PRECEDED

Maritime boundary delimitation in the Baltic Sea is characterized by a clear historic caesura, to wit the disappearance of the Soviet Union from the political map of the world on December 25, 1991. Up till that time the maritime boundary delimitation practice in the Baltic Sea had in general witnessed a development similar to that in other regions. Being a confined area where opposite coasts are never more than 400 nautical miles apart, this required coastal States not only to delimit their lateral maritime boundaries, but

also each time their maritime boundary with the country or countries lying opposite. This intense delimitation effort moreover occurred in an area where the East and West met after the second World War, *i.e.* at a time that maritime delimitation really started to gain in importance with the creation of the continental shelf notion. But these political divergencies did not particularly seem to burden the countries when trying to reach practical delimitation arrangements. Indeed, when compared to the North Sea, where this ideological division was totally absent, it is remarkable to notice that the construction of

maritime boundaries had reached a higher degree of completion in the Baltic Sea by the early 1990s, dispelling the widely held misconception that countries with similar political and economic systems agree more easily on a particular maritime boundary.

Nevertheless, the disintegration of the Soviet Union, alluded to above, and the related reunification of Germany and regained independence of Estonia, Latvia and Lithuania, thoroughly reshuffled the delimitation cards in the Baltic Sea. With one country disappearing, to wit the German Democratic Republic, and three new countries emerging once again, namely the Estonia, Latvia and Lithuania, some maritime boundaries simply disappeared,<sup>6</sup> while others had to be either simply reaffirmed,<sup>7</sup> created where none had existed before,<sup>8</sup> or drafted "anew", while in practice relying heavily on already previously concluded agreements in the area.<sup>9</sup> These political changes introduced the contemporary period in the maritime delimitation effort of the Baltic Sea that is still continuing today. [2, 3]

If one tries to somewhat group these agreements for didactical purposes, four distinct chronological periods can be discerned.

#### 1.1 *Period 1945-1972*

Up to 1991, three different periods can be distinguished in the drive towards delimitation of this regional sea, the first of which is characterized by the fundamental East-West divide that characterized the area after the end of World War II. This period lasted from 1945 until 1972 and proved mostly an opportunity for East bloc countries to try to consolidate their maritime claims in international law, like an early 12 nautical miles territorial sea claim<sup>10</sup> or a continental shelf claim for the German Democratic Republic.<sup>11</sup>

#### 1.2 *Period 1973-1985*

A second period covers the period 1973-1985 and is characterized by the normalization of relations between the two Germanies, as evidenced by their joint admittance to United Nations membership on 18 September 1973. This not only opened the door for maritime boundaries to be concluded between themselves, but also between countries on either side of the Iron Curtain more generally.<sup>12</sup> No matter how important these early agreements between countries belonging to different blocs might have been from a political point of view, their importance from a maritime delimitation point of view remained marginal as the boundaries concluded were short in distance and moreover concerned areas that were rather devoid of circumstances usually complicating the conclusion of maritime boundary agreements.

#### 1.3 *Period 1985-1990*

The third period, running from 1985 until 1990, represented the return to normality in the area as far as maritime boundary agreements are concerned. This short period of only five years, proved to be most

productive as more delimitation agreements were concluded than during all the previous periods combined. During this period, moreover, more difficult cases from a maritime boundary settlement perspective needed to be addressed, such as those burdened by the presence of sizeable islands close to the middle of the area to be delimited. After this thorny issue had been settled between the Soviet Union and Sweden in 1988, after about 20 years of negotiations, by means of the division of the disputed zone calculated on the basis of the respective claims of the parties<sup>13</sup> according to a 25%-75% ratio,<sup>14</sup> this set the standard for another agreement to follow suit.<sup>15</sup> This is also the period that maritime boundary agreements in the Baltic Sea started to address the issue of the exclusive economic zone, a notion created during the third United Nations Conference on the Law of the Sea and reflected in the convention adopted at the end of that process.<sup>16</sup> And even though it took over a decade for the 1982 Convention to enter into force, the International Court of Justice had already clearly come to the conclusion by the beginning of this third chronological period that this newly created maritime zone formed part and parcel of customary international law.<sup>17</sup>

By the end of this third period the delimitation in the Baltic Sea had reached a rather high degree of completion. Apart from one short segment that still had to be delimited between Denmark and Poland, namely south and southeast of Bornholm, and a few remaining tripoints, all maritime boundaries had been settled. At that time it could convincingly be argued that the Baltic Sea stood out as a model region as far as maritime boundary delimitation was concerned.

#### 1.4 *Period 1991-present*

But this achievement was not set in stone, as it quickly started to unravel with the fundamental political changes taking place in early 1990s alluded to above, necessitating not only many new agreements to be concluded, but also the clarification of the exact legal status of some agreements that had already been concluded. The former East-West divide took on a totally new dimension because all Baltic Sea coastal States had joined the European Union by 2004, with the sole exception of the Russian Federation, whose coastal length in the region was substantially reduced and moreover restricted itself to the Kaliningrad enclave and the *cul-the-sac* at the eastern extremity of the Gulf of Finland. These developments characterize the fourth, and so far last period that can be discerned in the maritime delimitation effort in the Baltic Sea. This period thus runs from the end 1991 and still continues today.

During this fourth period most of the newly emerged maritime boundaries have been settled in the meantime. In chronological order of their conclusion, it concerns the boundaries between Estonia and Latvia (1996), Lithuania and the Russian Federation (1997), Latvia and Lithuania (1999), and finally Estonia and the Russian Federation (2005). Unfortunately, this does not mean that all these agreements are operational at present. The one between Latvia and Lithuania is still awaiting entry into force and the fate of the agreement between Estonia and the Russian

Federation became even more dubious after the latter country withdrew its signature on 6 September 2005 in reaction to the addition of an introductory declaration by the Estonian Parliament to the proposed law of ratification that made explicit reference to particular sensitive historical issues that had been carefully avoided in the text of the delimitation agreement itself by those who had negotiated it.<sup>18</sup> A second signing ceremony followed in 2014, but this slightly amended agreement has not yet entered into force either.

A far more delicate issue was the legal value to be attributed to previously concluded maritime boundaries by the Soviet Union when that country no longer constituted the coastal State on one side of the maritime boundary agreed upon. Latvia, Lithuania and Estonia claimed that their maritime boundary status should return to the situation *ante quo*, meaning before the claimed illegal annexation by the Soviet Union. But the countries on the opposite side of these already concluded boundaries, namely Finland and Sweden, were rather of the opinion that these existing agreements still governed the maritime delimitation in question, a position fully endorsed by the Russian Federation. In hindsight it can be stated that the way out for the countries involved has been to conclude new agreements arriving at the same delimitation line without explicitly making reference to the agreement first establishing this line. One of the agreements that will be discussed in Part II clearly illustrates how such a delicate balance can be achieved in practice.

Finally, during this fourth period the process of settling the remaining tripoints continued as illustrated, once again, by one of the agreements that will be discussed in Part II.

## 2 THREE NEW AGREEMENTS

As already mentioned above, three new agreements saw the light of day<sup>19</sup> and entered into force after 16 June 2011,<sup>20</sup> day of the presentation of the first paper which the present one updates. These agreements, even though limited in number, nevertheless give a good overview of the different types of agreement that remained to be settled during this fourth chronological period that characterizes the delimitation process in the Baltic Sea.

### 2.1 2005 Tripoint Agreement

Tripoint agreements in the Baltic Sea are characterized by the fact that States, when reaching an agreement on their bilateral maritime boundary, always stop short of the tripoints, leaving the latter to be settled by later negotiations between all the parties involved. This trilateral process, as a rule, is only started after all the relevant bi-lateral agreements have been concluded, making it the last step in the process. It should consequently not surprise that the first such agreement inside the Baltic Sea proper, *i.e.* excluding Skagerrak, Kattegat and the Sound, was only concluded in 1989.<sup>21</sup>

The two tripoint agreements that followed the one concluded in 1989 just mentioned, on the other hand, were all concluded after the political changes in the early 1990s and were directly related to the dissolution of the Soviet Union.<sup>22</sup> Such agreement normally only add short segments making the connection to the tripoint, but these two agreements also had to tackle the issue of the legal validity of the maritime boundary agreements previously concluded by the Soviet Union to which their respective tripoints had to be connected. Both agreements addressed the issue in a somewhat different manner.

Estonia had been able to minimize the impact of the latter issue on the tripoint agreement itself by concluding new bilateral agreements with Finland and Sweden first, namely in 1996 and 1998 respectively, which had already addressed that delicate issue. The 1996 agreement with Finland was the first time the opposing views in principle, alluded to above,<sup>23</sup> had to be reconciled in practice.<sup>24</sup> Estonia had already indicated the way when establishing its economic zone in 1993:<sup>25</sup> Without explicitly mentioning any of the previously concluded delimitation agreements with the Soviet Union, this national piece of legislation of Estonia nevertheless implicitly relied on the latter as exactly the same coordinates were used when determining the outer limit of its economic zone in the areas covered by those agreements.<sup>26</sup> The bilateral agreement of 1996 followed the same approach as the majority<sup>27</sup> of the coordinates used can be brought back to the delimitation line agreed upon between Finland and the Soviet Union, but without making any reference to the agreements that had constructed this line over time. Besides, the fact that the 1998 bilateral delimitation agreement between Estonia and Sweden was totally determined by the issue of the legal validity of a previously concluded delimitation agreement with the Soviet Union, it tackled this issue by using exactly the same technique, as had already been applied by Estonia unilaterally when this country determined the outer limits of its economic zone facing Sweden in 1993, namely to take over the coordinates of the agreement concluded by the Soviet Union and Sweden in 1988 without making any specific reference to that agreement, but this time on a bilateral basis. With this issue out of the way, the tripoint agreement between Estonia, Finland and Sweden of 2001 needed only six months to be concluded after the entry into force of the last bilateral agreement involved<sup>28</sup> and entered into force itself a couple of month later.<sup>29</sup>

Estonia and Latvia took a different approach in their relation with Sweden as their tripoint was established at a moment (1997) when only one of the three bilateral agreements had been concluded that would connect to that tripoint, namely the one between Estonia and Latvia (1996).<sup>30</sup> Indeed, a provision of this latter agreement determined the last segment outside the Gulf of Riga by means of a an azimuth perpendicular to the closing line of that bay and stipulated that this line would continue until it would meet the maritime boundary of Sweden, to be determined by trilateral agreement.<sup>31</sup> Sweden had already fixed the outer limit of its own economic zone in 1992<sup>32</sup> in an similar manner as Estonia would do a year later.<sup>33</sup> By using the same coordinates as those to

be found in the 1988 Soviet-Swedish agreement, but without making any reference to this document, and by indicating at the same time that no further negotiations with opposite countries would be necessary, Sweden drove home its firmly held position that the maritime boundary agreed upon with the Soviet Union remained in force. Sweden, in other words, only had to accept the offer made by the Estonia and Latvia in their bilateral agreement, while the latter two countries for the first time officially accepted in a delimitation agreement a point which in fact can be traced back to the 1988 Soviet-Swedish agreement. It should therefore not surprise that this tripoint agreement needed only one meeting of technical experts to be concluded.

The 2005 Tripoint Agreement, concluded between Lithuania, Russia and Sweden takes yet another approach. It is special in that it establishes a tripoint at a moment when only two of the three bilateral agreements had been agreed upon, namely the ones between the Soviet Union and Sweden in 1988 and Lithuania and Russia in 1997.<sup>34</sup> It is moreover not clear whether the latter agreement indicated the direction to be followed beyond its terminal point to the tripoint.<sup>35</sup> In this case it seems consequently to have been Lithuania that unilaterally fixed the tripoint when it declared the limits of its exclusive economic zone in 2004.<sup>36</sup> It relied thereby, without specifically mentioned it, clearly on the previously established maritime boundary between the Soviet Union and Sweden. It moreover considered these points in its national legislation to constitute the maritime boundary with Sweden. The newly created southern terminal point of the outer limit of the Lithuanian maritime zones, located on a segment of the boundary created in 1988 between the Soviet Union and Sweden, proved acceptable to both Russia and Sweden as both countries strongly believed that this maritime boundary had survived the dissolution of the Soviet Union in 1991. [4]

The latter probably also explains why the 2005 Tripoint Agreement is the first maritime boundary agreement concluded by Estonia, Latvia or Lithuania that explicitly mentions the 1988 Soviet-Swedish agreement in its text.<sup>37</sup> After having fought this semantic battle since the early 1990s to keep up appearances by refusing any direct references to that 1988 agreement while in fact adopting turning points of that same agreement or located on the segments in between, this constituted a clear break with previous practice in this respect. Moreover, this proved such a sensitive issue that it took Lithuania until 2011 to ratify this treaty by law in the Seimas, as the exact formulation of statement proposed by the Minister of Foreign Affairs took some time to be finalized and was moreover adopted as a separate statement by the Seimas that did not need to accompany the notification process that the agreement required for its entry into force. The latter happened soon afterwards.<sup>38</sup>

## 2.2 2014 Lithuania-Sweden Agreement

This agreement was only the second one concluded after the dissolution of the Soviet Union that did not add any new segment to a maritime boundary in the

area. The other had been the agreement concluded between Estonia and Sweden in 1988. The main issue that needed to be tackled was once again the validity of the 1988 Soviet-Swedish agreement, a legal issue on which both parties had diverging positions. But unlike the one concluded between Estonia and Sweden in 1988, the present one had already one of tripoints settled beforehand.<sup>39</sup> The underlying problem had in other words already had ample time to be sorted out, not only on the respective national levels,<sup>40</sup> but also by means of the 2005 Tripoint Agreement, where it manifested itself in a rather special manner because of the explicit reference to the 1988 Soviet-Swedish agreement in that tripoint agreement.<sup>41</sup> Both parties consequently had no fundamental difficulties to rely on the delimitation line to be found in the 1988 Soviet-Swedish agreement, but this time, once again, without making any explicit reference to it.<sup>42</sup> The bilateral process made the latter apparently possible again, contrary to the trilateral negotiations including the Russian Federation that had seemingly disturbed a constant practice until then.<sup>43</sup> [5]

## 2.3 2018 Denmark-Poland Agreement

The third agreement to be addressed is the only one not really directly related to the dissolution of the Soviet Union in 1991, for the area covered by this agreement already constituted the only remaining blind spot in the overall Baltic maritime delimitation process at that moment in time. Negotiations leading up to this agreement already started during the 1970s and consequently span a period of more than 40 years. Of course the political situation in Poland substantially changed and as long as this country formed part of the East bloc this might have influenced the way in which maritime boundaries were settled between allies,<sup>44</sup> but this probably had less influence on the manner in which these countries started to address maritime boundaries with the Western countries in the Baltic Sea since the 1970s,<sup>45</sup> besides maybe the fact that they were able to rely on each other's experiences with third countries, as illustrated next. [1]

The crux of the dispute between the parties was to be found in the fact that the delimitation in question operates between an island and a mainland coast. This by itself was not that exceptional in the Baltic Sea and in fact, Poland had already addressed this issue in its maritime boundary delimitation with Sweden in 1989 where the exact effect to be given to the island of Gotland, belonging to Sweden and influencing the northern part of that boundary, needed to be solved. The parties had diametrically opposed opinions as Poland was of the opinion that the delimitation should be operated between mainland coasts, whereas Sweden was of the opinion that Gotland should be given full effect. The latter country had already been squarely confronted with this issue in its relation with the Soviet Union where the final compromise in 1988 had taken the form of a 75% effect to be attributed to the island. Poland and Sweden agreed to a similar solution the year afterward.

But what makes the present delimitation stand out from these precedents just mentioned is that

Bornholm is not located in front of the Danish, but a foreign coast.<sup>46</sup> The initial positions of Denmark and Poland where again that either full or no effect should be given to the Danish islands, resulting in a gray area of about 3,600 square kilometers. As the negotiations to solve this underlying dispute could not be solved during negotiations held between the parties in 1991, the dispute over the gray zone lingered on. When Poland became a member country of the European Union on 1 May 2004, the fishery issue became moot between the parties as that area would be regulated by the European Common Fisheries Policy. Moreover, after the Danish Energy Agency concluded that commercial oil and gas discoveries were unlikely to be found in the area and in 2018 that government moreover decided that it would not grant any permissions any longer in the Baltic Sea, also the importance of exploration and exploitation of hydrocarbon resources in the gray area drastically diminished. In fact, during the decade prior to the signature the gray area had been characterized by the absence of any concrete disturbances between the parties because of living or non-living resources.

A new, and as it turned out final round of negotiations started on 1 March 2018, leading to a final breakthrough whereby Denmark was awarded 80% of the gray area, and Poland 20%. It can be described as an adjusted median line, since roughly the same part of the line finally agreed upon is based on the original Danish and Polish claims,<sup>47</sup> with the remaining turning points chosen in such a manner as to attribute 80% of the gray area to Denmark and the remaining part to Poland.

This compromise received the full support of the Danish parliament covering the entire political spectrum, but the same can hardly be said with respect to Poland where the opposition voted against it because it was simply considered to be a bad deal after so many years of negotiations. And indeed, neither the agreement itself, nor the official documents that accompanied it in either parliament, explain how this 20%-80% ratio was arrived at. It is only when reading through the parliamentary discussions that took place in both parliaments and reports that appeared in the press, that one is able to lift a tip of the veil and comes to understand that the 2018 Denmark-Poland Agreement needs apparently to be linked to another agreement concluded between the same two parties about a month later on the Baltic Pipe project.<sup>48</sup> This pipeline, considered essential for Poland's energy security, runs through the gray area when connecting Zealand and the Polish coast. The agreement moreover provided that the operation of the last segment of the pipeline would remain in Polish hands. The link between the two agreements would at least help to explain why after over 40 years of stalemate, a solution was finally found in 2018 according to a ratio moreover, which defies another generally accepted ratio influencing maritime boundary delimitation, namely the ratio between the length of the relevant coastlines, which in this particular case clearly pointed to the advantage of Poland.

The agreement remains silent on the tripoint issue on both sides, but given the general practice in the Baltic Sea of bilateral maritime boundary agreements

always stopping short of tripoints, I can be presumed that the starting and terminal points of the 2018 Denmark-Poland Agreement still have to be connected to their respective tripoints.

A final observation about this agreement that may not pass unnoticed, is that the 2018 Denmark-Poland Agreement is the first maritime boundary agreement ever concluded in the Baltic Sea that was not signed in a city located in one of the participating States, but rather in Brussels, the capital of Europe, apparently out of convenience.

### 3 CONCLUSIONS

The Baltic Sea has reached, once again, a stage of completeness in maritime boundary delimitation that not only resembles the situation at the beginning of the 1990s, just before the disappearance of one coastal State in the area, the reemergence of three others and the lessening of the fundamental divide between East and West, but even surpasses it, as all areas requiring bilateral action have now been covered. The great majority of these bilateral boundaries have been settled by agreements that have entered into force, even though in two cases the exchange of the instruments of ratification has not yet occurred. It concerns first of all the boundary agreement concluded between Latvia and Lithuania in 1999, and secondly the agreement between Estonia and the Russian Federation that has even been signed twice by now, in 2005 and 2014, but nevertheless has still not yet entered into force.

What remains in essence, therefore, are tripoint agreements. Those areas where all related bilateral agreements are already in place are most promising. It concerns foremost the two tripoints relating to the 2018 Denmark-Poland Agreement. But also between Denmark, Germany and Sweden, on the one hand, and Denmark (Bornholm), Germany and Sweden, on the other hand, both located in the southwestern Baltic Sea, belong to this category. Those tripoints that concern the rare boundaries that have been signed but have not yet entered into force, alluded to in the previous paragraph, will probably take some more time, awaiting the resolution of the respective underlying problems. Finally, whether Latvia and Sweden will still consider it useful to conclude a "new" maritime boundary, remains at present an open question.

Despite these few outstanding issues, one can already now predict with a degree of certainty that the Baltic Sea will at the end stand out as a region where all maritime boundary delimitations will have been carried out by the coastal States themselves, without any reliance on binding third party dispute settlement procedures.

### REFERENCES

1. Franckx, E.: Denmark-Poland (Report Number 10-25). In: Lathrop, C.G. (ed.) *International Maritime Boundaries*. Brill Nijhoff (2021).

2. Franckx, E.: Estonia-Russia (Report Number 10-22). In: Colson, D.A. and Smith, R.W. (eds.) *International Maritime Boundaries*. pp. 4567–4584 Leiden, Martinus Nijhoff (2011).
3. Franckx, E.: Gaps in Baltic Sea Maritime Boundaries. In: Ringbom, H. (ed.) *Regulatory Gaps in Baltic Sea Governance: Selected Issues*. Springer International Publishing (2018). <https://doi.org/10.1007/978-3-319-75070-5>.
4. Franckx, E.: Lithuania-Russia-Sweden [Report Number 10-23]. In: Lathrop, C.G. (ed.) *International Maritime Boundaries*. p. 5731–5741 Brill Nijhoff (2020).
5. Franckx, E.: Lithuania-Sweden (Report Number 10-24). In: Lathrop, C.G. (ed.) *International Maritime Boundaries*. p. 5743–5760 Brill Nijhoff (2020).
6. Franckx, E.: Maritime Delimitation in the Baltic Sea: What Has Already Been Accomplished? *TransNav, the International Journal on Marine Navigation and Safety of Sea Transportation*. 6, 3, 437–442 (2012).

<sup>1</sup> *Coalter G. Lathrop* (ed.), *International Maritime Boundaries*, vol. 8, Leiden, Brill Nijhoff, 2020, pp. 5337–5813.

<sup>2</sup> Agreement between the Government of the Republic of Lithuania, the Government of the Russian Federation and the Government of the Kingdom of Sweden on the Common Point of Boundaries of the Exclusive Economic Zones and the Continental Shelf in the Baltic Sea. Lithuania; Russian Federation; Sweden, 30 November 2005, United Nations Treaty Series (UNTS), registration number 53411 (no UNTS volume number has yet been determined). Hereinafter 2005 Tripoint Agreement.

<sup>3</sup> Agreement between the Government of the Republic of Lithuania and the Government of the Kingdom of Sweden on the Delimitation of the Exclusive Economic Zones and the Continental Shelf in the Baltic Sea. Lithuania; Sweden, 10 April 2014, UNTS, registration number 53412 (no UNTS volume number has yet been determined). Hereinafter 2014 Lithuania-Sweden Agreement.

<sup>4</sup> Agreement between the Republic of Poland and the Kingdom of Denmark Concerning the Delimitation of Maritime Zones in the Baltic Sea. Denmark; Poland, 19 November 2018. Not yet registered with the Secretariat of the United Nations. Reference can be made to the official journals of Denmark and Poland, as English is one of the authentic texts of the agreement: *Folketinget, Folketingstidende Tillaeg A, Beslutningsforslag nr. B69, Folketinget 2018-19*, pp. 4-7; *Dziennik Ustaw*, 4 July 2019, Item 1240, pp. 1-12. Hereinafter 2018 Denmark-Poland Agreement.

<sup>5</sup> Namely on 17 June 2011, 23 December 2014 and 28 June 2019 respectively. All these agreements entered into force after the presentation by the present author of his first report on the issue at the occasion of the 9<sup>th</sup> International Symposium *TransNav 2011*, on 16 June 2011.

<sup>6</sup> As for instance the Protocol Note between the Federal Republic of Germany and the German Democratic Republic Concerning the Boundary in Lübeck Bay. Federal Republic of Germany; German Democratic Republic, 29 June 1974, *Limits in the Seas*, No. 74, 1974, p. 1. This Protocol entered into force on 1 October 1974.

<sup>7</sup> See for instance the Treaty between the Federal Republic of Germany and the Republic of Poland Concerning the Confirmation of the Frontier Existing between Them. Federal Republic of Germany; Poland, 14 November 1990, *International Legal Materials*, vol. 31, issue 6, 1992, pp. 1292-1294. This treaty entered into force on 16 January 1992.

<sup>8</sup> As between Russia (Kaliningrad Region) and Lithuania; Lithuania and Latvia; Latvia and Estonia; and Estonia and Russia. The Soviet Union had not delimited the offshore maritime spaces between its former republics because their legal regime remained Union competence. Moreover, as Estonia, Latvia and Lithuania were all incorporated into the Soviet Union during the month of August 1940, these countries had only sporadically addressed the delimitation of their adjacent territorial seas, but not of their continental shelves or extended fishery zones/exclusive economic zones, as these notions had not yet emerged in international law.

<sup>9</sup> The very intricate issue of how to deal with pre-existing agreements concluded by the Soviet Union, especially when viewed from the perspective of the three Baltic republics that had regained their independence and did not consider themselves bound by these pre-existing boundary agreements because of the alleged illegality of their annexation into the Soviet

Union, proved a difficult issue to tackle in practice for the parties involved.

<sup>10</sup> The agreement signed between Poland and the Soviet Union in 1958 (Protocol between the Government of the Polish People's Republic and the Government of the Union of Soviet Socialist Republics Concerning the Delimitation of Polish and Soviet Territorial Waters in the Gulf of Gdansk of the Baltic Sea. Poland; Soviet Union, 18 March 1958, UNTS, vol. 340, 89, 94-96 (1959)), about a month before the signature of the Geneva convention on the same topic (Convention on the Territorial Sea and the Contiguous Zone. Multilateral convention, 29 April 1958, UNTS, vol. 516, pp. 205, 206-224 (1966). This convention entered into force on 10 September 1964), is indicative. Even though the latter convention did not settle the matter in a definitive manner (Art. 3), at least the territorial sea and contiguous zone together could not extend beyond 12 nautical miles (Art. 24). It is moreover interesting to note that the delimitation line agreed upon concerns the adjacent territorial seas of the parties up to 3 nautical miles and subsequently continues in the same direction to the outer limit of the Soviet territorial waters, located at 12 nautical miles from the terminal point of their State frontier.

<sup>11</sup> By concluding a continental shelf agreements with a neighboring East bloc country, the German Democratic Republic affirmed its right to claim such a zone in its own right, something which was very much contested at that time by its western neighbour. The conclusion of this agreement itself was furthermore founded on the conclusion six days before of the so-called Moscow declaration, signed by the German Democratic Republic, Poland and the Soviet Union (Declaration on the Continental Shelf of the Baltic Sea, 23 October 1968, *International Legal Materials*, vol. 7, issue 6, 1968, pp. 1393-1394).

<sup>12</sup> Up till that time only neutral Finland had been participating in such an exercise.

<sup>13</sup> The Soviet Union was of the opinion that the median line should be measured between the mainland of both countries, while Sweden rather considered that full effect should be given to the Swedish islands of Gotland and Gotska Sandön.

<sup>14</sup> This was linked to the fishery issue by means of the introduction of an identical 25%-75% ratio, but this time the country receiving the lesser part of the disputed area would receive 75% of the fishing rights in the other country's part of the disputed zone.

<sup>15</sup> As the northern part of the boundary agreed upon between Poland and Sweden ten months later also depended on the weight to be given to the Swedish Island of Gotland, Poland had initially taken the same position as the Soviet Union, meaning that the median line should be measured between mainland coasts whereas Sweden once again was rather of the opinion that full effect should be given to Gotland. The parties finally settled for a 25%-75% ratio to the advantage of Sweden.

<sup>16</sup> United Nations Convention on the Law of the Sea. Multilateral convention, 10 December 1982, UNTS, vol. 1833, 1988, pp. 3, 397-581, Part V (Arts 55-75). This convention entered into force on 16 November 1994. Hereinafter 1982 Convention.

<sup>17</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13, 33 (para. 34).

<sup>18</sup> It concerned the assertion of legal continuity of the Estonian Republic proclaimed in 1918, on the one hand, and a reference to the Tartu Peace Treaty (Peace Treaty. Estonia and Russia, 2 February 1920, League of Nations Treaty Series, vol. 11, pp. 50-70. This treaty entered into force on 30 March 1920), on the other hand.

<sup>19</sup> See *supra* notes 2-4, respectively.

<sup>20</sup> See *supra* note 5.

<sup>21</sup> It concerned a tripoint between Poland, the Soviet Union and Sweden.

<sup>22</sup> Namely the agreements concluded in 1997 between Estonia, Latvia and Sweden and in 2001 between Estonia, Finland and Sweden.

<sup>23</sup> See *supra* under Part I (4).

<sup>24</sup> Both parties had initially addressed the issue by concluding an agreement in 1992 by means of which they accepted the provisional application until 9 January 1995 of a number of treaties, including all the maritime delimitation agreements that Finland had already concluded with the Soviet Union. When it was realized that the conclusion of the new boundary agreement would require more time, that period was prolonged for another two years. That proved just long enough for the 1996 agreement to enter into force.

<sup>25</sup> Estonia, Economic Zone Act, 28 January 1993, *Law of the Sea Bulletin*, issue 25, 1994, pp. 55-64.

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<sup>26</sup> This long stretch of maritime boundary between Finland and the Soviet Union was arrived at by means of three agreements adding new segments, concluded between 1965 and 1980, and one later agreement of 1985 stipulating that all these segments arrived at, which delimited different types of jurisdiction, are now said to be delimiting simultaneously the economic zone, fishery zone and continental shelf of the parties. It is noteworthy to stress in this respect that these three agreements adding new segments did not all use the same coordinate system. Nevertheless, the Estonian Economic Zone Act of 1993, by simply taking over these coordinates, produces in fact a list that mixes coordinate system without any indication how to avoid the cartographical confusion so created.

<sup>27</sup> As this agreement added a new stretch of 30 nautical miles towards the tripoint in the west, this new segment is unrelated to the former agreements concluded with the Soviet Union.

<sup>28</sup> The bilateral delimitation agreement between Estonia and Sweden entered into force on 26 July 2000.

<sup>29</sup> Namely on 12 August 2001.

<sup>30</sup> This agreement entered into force about three months after signature, namely on 10 October 1996.

<sup>31</sup> Art. 3.

<sup>32</sup> Ordinance on Sweden's Exclusive Economic Zone, 3 December 1992, Law of the Sea Bulletin, issue 26, 1994, pp. 31-33.

<sup>33</sup> See *supra* note 25 and accompanying text.

<sup>34</sup> It is interesting to note that this agreement, signed in 1997, only entered into force many years later, namely on 12 August 2003, because of reticence in the Russian Duma related to the status of Klaipeda.

<sup>35</sup> It makes explicit reference to the tripoint while at the same time providing that the latter will be fixed by means of trilateral negotiations. Art. 1 (1) *juncto* Art. 2 (4). The agreement between Estonia and Latvia, on the other hand, did clearly indicate how the connection with the tripoint was to be established in a bilateral manner. See *supra* note 31 and accompanying text.

<sup>36</sup> Resolution No. 1597 on the Approval of the Limits of the Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Continental Shelf of the Republic of Lithuania and the Assignment to Ministries and Government Institutions to Prepare the Required Legal Acts, Law of the Sea Bulletin, issue 61, 2006, pp. 17-21.

<sup>37</sup> Art. 1 *in fine*.

<sup>38</sup> On 17 June 2011.

<sup>39</sup> Namely the 2005 Tripoint Agreement, as just discussed.

<sup>40</sup> Concerning Lithuania, see *supra* note 36 and accompanying text. With respect to Sweden, see *supra* note 32 and accompanying text.

<sup>41</sup> See *supra* note 37 and accompanying text.

<sup>42</sup> The agreement entered into force on 23 December 2014.

<sup>43</sup> See *supra* note 37 and accompanying text.

<sup>44</sup> See for instance *Natalia Jackowska*, The Border Controversy Between the Polish People's Republic and the German Democratic Republic in the Pomeranian Bay, *Przegląd Zachodni*, issue 3, 2008, pp. 103-117, discussing how the façade of internationalist fraternity in fact covered a much more complex reality.

<sup>45</sup> See *supra* note 12 and accompanying text.

<sup>46</sup> Besides Bornholm, to the east, a smaller Danish island group of Ertholmene has moreover to be taken into account, of which the most eastern skerry, Østerskær, constitutes Denmark's easternmost point, far away from the Danish mainland facing the North Sea.

<sup>47</sup> Both segments on the extremity of the delimitation line reflect rather the original Polish claim, whereas the middle part represents the median line between Bornholm and the Polish coast, which represents the Danish initial position.

<sup>48</sup> For more information on this project, see <https://www.baltic-pipe.eu/>. This pipeline links the Norwegian North Sea gas deposits with Poland.