

# **THE ROLE OF THE TERRITORIAL WATERS OFFICER AND THE PROBLEMS ASSOCIATED WITH THE DELIMITATION OF THE UK CONTINENTAL SHELF**

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## **INTRODUCTION**

The role of the United Kingdom's Territorial Waters Officer (TWO) is both varied and absorbing and, for those Royal Naval Hydrographic Surveyors lucky enough to be appointed to the post, the fascinating world of international maritime law and maritime zones and boundary delineation is opened, albeit by just a fraction.

The paper deals briefly with the historical role of the Hydrographer, in maritime zone issues prior to the establishment of the TWO post in 1917, and continuing to the Second World War. The three decades following World War II are then discussed including the increasing internationalization of TWO's work and finally the task today covering the varied type of assistance and advice given, the present state of the delimitation of the UK's continental shelf highlighting the most recent developments and the impact of the 12-nm territorial sea limit.

## **BRIEF HISTORY — PRE-1945**

The traditional role of the Royal Naval Hydrographic Surveyor was the surveying and depiction of the coastal waters around the United Kingdom and her colonies for the British Navy. This commitment is still fundamentally the same today.

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It is evident that advice on 'maritime zones' was offered from as early as 1864. Vice Admiral Sir Archibald DAY states in his book 'The Admiralty Hydrographic Service 1795-1919' that the Hydrographer at that time, Rear Admiral G.H. RICHARDS, CB, FRS, remarked on a Foreign Office Reference, 'the difficulties of interpreting the international rules on territorial waters'. He suggested that one league might be altered to two under the then altered conditions of projectiles of war, and he mentioned the historic use of King's Chambers for estuaries or bays [Ref. 1]. These are early references to the cannon shot rule for territorial sea limits and an early indication to bay closing lines.

This early advice was obviously not accepted because the Territorial Waters Jurisdiction Act 1878 [Ref. 2] still referred to 'any part of the open sea within one marine league of the coast measured from the low water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominion'. This Act brought into focus the importance of the drying line (low water mark) in the determination of the UK's territorial water limits.

Some difficulties arose in the early twentieth century when the Norwegians and Danes claimed four-mile territorial sea limits. Hydrographer continued to advise the Foreign Office and Colonial Office on matters of sovereignty, particularly in the Antarctic and Pacific.

Towards the end of the First World War the business and organisation of the Hydrographic Department was fully set out in September 1917. Under 'business' there was a section on 'Territorial Waters and Rights' appearing for the first time as a separate entity reflecting the growing demand for Hydrographer's advice in this area. The result of this report was the formation of the post of Territorial Waters Officer and Personal Assistant to the Hydrographer the first incumbent being Lt. Cmdr. R.T. GOULD, RN [Ref. 3].

From this period to the end of the Second World War, the Territorial Waters Officer was dealing mainly with matters concerning the breadth of the territorial sea, fishing rights both within the territorial sea belt and up to 12 nm from the baselines, and the definitions of 'territorial sea limits' which appear to have covered rivers, estuaries and bays and whether there was any justification in enclosing them within the baseline by drawing closing lines greater than 6 nm or later 10 nm. These rules were primarily concerned with exclusive fishing rights and throughout the period difficulties were found with the Norwegian claim to a 4 nm territorial sea limit and more particularly the baselines from which it was drawn.

Work of a technical nature, was also undertaken on behalf of the Foreign Office and Colonial Office in the lead up to the 1930 The Hague Conference. The Assembly of the League of Nations requested the League Council to convene a committee of experts that would carefully determine those rubrics of international law which should be considered for codification [Ref. 4]. A sub-committee was formed in 1925 to deal with the territorial sea and directed 'to examine whether there are problems connected with the law of the territorial sea ... which might find their solution by way of conventions ...'. Although the United Kingdom was not represented on this committee, its work was closely followed in this country and some regret was expressed that no agreement on the extent of the territorial sea had been reached by the sub-committee. Further work continued

leading to the Fifth Assembly of the League of Nations' Resolution of 22 September 1924, up to the formation of the Preparatory Committee in 1928 and a 'Schedule of Points' was circulated to Governments requesting comments. Point III requested each State's view on the 'breadth of territorial waters subject to the Sovereignty of the State (three miles, six miles, range of cannon, etc.)' and its claims, if any, to jurisdiction beyond territorial waters [Ref. 5].

The actual conference assembled at The Hague in March 1930. The Territorial Waters Officer, Lieutenant Commander R.M. SOUTHERN, RN (later to be promoted Captain) was a member of the UK delegation as a technical expert and a considerable amount of work would have been undertaken in support. In territorial waters matters, the British position was stated very clearly by the leader of the delegation, Sir Maurice GWYER as follows:

'The British Delegation firmly supports Basis No. 3 that is to say, a territorial belt of three miles without the exercise, as of right, of any powers by the Coastal State in the contiguous zone, and they do that on three grounds. First, because in their view the three mile limit is a rule of international law already existing adopted by maritime nations which possess nearly 80% of the effective tonnage of the world; secondly, because we have already, in this committee, adopted the principle of sovereignty over territorial waters; and thirdly, because the three-mile limit is the limit which is most in favour of freedom of navigation [Ref. 6].

Many publicists regarded the conference as disappointing; for example SWARZTRAUBER states 'The utter failure of the conference surprised many of the participants' [Ref. 7]. I think it is true to say that the conference did not produce the desired results, but it did air many international maritime matters in a conference forum for the first time and did achieve some positive advances in this field if only to concentrate the minds of national experts on such matters as territorial sea limits and the concept of the contiguous zone.

The period leading up to the Second World War continued to see developments from The Hague conference and several states declared contiguous zones of varying breadths. The UK continued to maintain its traditional stance and as war approached was more concerned with neutrality and security zones than the more mundane law of the sea questions.

The Hydrographic Department, including the Territorial Waters Officer, was fully stretched during the war, but nevertheless the first continental shelf boundary agreement was ratified on 22 September 1942 between the UK and Venezuela dividing the submarine areas between Trinidad and Tobago and Venezuela in the Gulf of Paria [Ref. 8].

## 1945-1982

Since the war, nine senior Hydrographic Surveyors have held the post of Territorial Waters Officer, including the author. However, two stand out for their outstanding contributions in the technical field of boundary delimitation and the

rapidly developing areas of maritime zones in general. Commander R.H. KENNEDY, OBE, RN, served in the post from 1948 to 1961 and Commander P.B. BEAZLEY, OBE, FRICS, RN, from 1963 to 1983.

The entire period saw intense activity for the incumbent TWO starting with the Anglo/Norwegian Fisheries Case [Ref. 9], which the UK submitted to the International Court in 1949 after a protracted dispute lasting since the turn of the century. The case and its outcome are well known and many publicists have commented upon the court's findings [Ref. 10, 11].

Commander KENNEDY was an expert adviser for the UK during the period and was required to produce special charts and diagrams to help present the UK case. Similarly detailed analysis of the basepoints used in the Norwegian Royal Decree of 12 July 1935 were required.

Following the case accepting the Norwegian claim for straight baselines north of 66°28'N, Commander KENNEDY wrote a note to Mr. D.H.N. JOHNSON, an Assistant Legal Adviser in the Foreign Office, listing some 10 technical points, which he considered were factually wrong in the court's judgement. He was a disappointed man to put it mildly to the point that he considered the verdict to have been in Norway's favour and the judgement then written around it.

The next few years were largely taken up by preparations for the forthcoming Geneva Conventions on the law of the sea. New questions regarding the judgement of the UK/Norwegian case and the use of straight baselines had to be addressed and the Territorial Waters Officer was involved in several studies on the feasibility of similar systems being employed in UK waters. Thought had been given to the UK's response to the International Law Commission's Report on the numerous subjects to be raised during the forthcoming Conventions, covering a far larger range of subjects than had been discussed during The Hague Convention nearly three decades earlier.

The actual Convention was quite short, lasting only about two months from 24 February to 29 April 1958, but the final outcome of four Conventions opened for signature in Geneva was a considerable advance on The Hague Conference.

Once again Commander KENNEDY was a member of the UK's delegation at this conference and played a key role in the many and varied technical issues that were discussed. The final outcome of four Conventions, namely the Territorial Sea and the Contiguous Zone, the High Seas, Fishing and Conservation of the Living Resources of the High Seas and the Continental Shelf, were considered acceptable by the United Kingdom and the Conventions and Optional Protocol were duly signed on 9 September 1958. This enabled the Foreign Secretary to lay a favourable report of the Conference [Ref. 12] before Parliament detailing the salient points of prime importance to the United Kingdom and recommending its ratification. The Conventions were ratified on 14 March 1960 and came into force in the United Kingdom on 10 September 1964.

For the Territorial Waters Officer, the Territorial Sea and Contiguous Zone Convention had the greatest significance. It is a pity that the issue of the breadth of the territorial sea could not be resolved. The United Kingdom Delegation's proposal for a 6-nm territorial waters limit with certain reservations in favour of innocent passage, particularly for aircraft in the 3-nm to 6-nm belt, was with-

drawn in favour of a United States proposal for a 6-nm territorial sea limit with a further 6-nm zone in which the coastal State would have exclusive fishing rights, subject to the right of other States to fish in the outer zone without limit of time if they had fished there during the last five years. Several other States had suggested a 12-nm territorial sea limit. Other ideas were also put forward, but even the closest to success, the United States proposal, failed to gain the necessary two thirds majority in Plenary. So the limit, as far as the United Kingdom was concerned, remained at 3 nm. Indeed the UK Delegation made a statement at the end of the Conference that Her Majesty's Government would continue to regard the three mile limit as the only breadth recognised under international law, a situation which was to remain in place for many years.

The normal rule of using the low water line as the baseline for the measurement of the breadth of the territorial sea was maintained, however, provision was made for the introduction of straight baselines in certain circumstances following the court judgement in the *Anglo/Norwegian* case and a detailed study by the International Law Commission. Unfortunately, the United Kingdom's proposal that each leg of the straight baseline system should not exceed 10 nm was not accepted and even the revised limit of 15 nm, put forward by the Committee, failed to gain the necessary two thirds majority in a separate vote during the Plenary Session. This meant that although straight baselines could be used if the coastal configuration met the special circumstances contained in Article 4 of the Convention, no limit on length was imposed. This has caused much debate and argument and indeed continues to this day.

The question of bays was covered by Article 7 in the Convention and was of particular importance to the UK, because of the configuration of its coastline and the preponderance of judicial bays. Several technical resolutions were put forward, both by the International Law Committee and delegations at the Conference itself. Two important matters were resolved. The semi-circle rule was adopted for determining whether a geographical bay met the requirements of a judicial bay and therefore could be enclosed with a bay closing line, and secondly a limit of 24 nm was set for these closing lines. One point that was not agreed upon was a technical definition of what constitutes a natural entrance point to a bay. Commander KENNEDY gave a great deal of thought to the semi-circle rule, first envisaged by the American Delegation to The Hague Codification Conference of 1930, and it was indeed he who suggested its adoption, in a more simplified form, at the Conference.

Another subject, covered by this Convention, was the question of innocent passage, and it was gratifying to note that the traditional right of all vessels to conduct innocent passage through a coastal State's territorial sea was upheld after some lively debate. Another principle of great importance to the UK which was confirmed was that no coastal State could suspend innocent passage through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial seas of a foreign State.

The Convention on the Continental Shelf was also important for the Territorial Waters Officer, particularly Article 6 dealing with delimitation. Commander KENNEDY stated the UK's position as follows [Ref. 13]:

1. Mr. KENNEDY (United Kingdom) said that sea boundaries established by projection of a parallel of latitude or meridian, or by intersection of the radii of two fixed points on the coastlines of States which were adjacent or opposite to each other were not satisfactory in many cases; such boundaries often did not result in a fair apportionment of the sea area between the two States concerned, and might indeed, cut across land territory. Similarly, the line of deepest water was not, he thought, a satisfactory criteria for establishing a boundary; in the presence of a number of pools of varying depth it would be difficult to establish the exact position of such a line.

2. The fairest method of establishing a sea boundary was that of the median line every point of which was equidistant from the nearest points of the baselines from which the breadth of the territorial sea was measured, as stated in the United Kingdom proposal (A/CONF.13/C.4L.28).

This proposal was as follows:

1. Where the submarine areas referred to in Article 67 are adjacent to the territory of two or more States whose coasts are opposite to each other, the boundary of such areas appertaining to such States shall, in the absence of agreement on any other boundary, be the median line of every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea is measured.'

A similar formula was advanced for adjacent States. The main point was to omit the International Law Commission's proposed reference to 'special circumstances'. Commander KENNEDY's statement explained the proposal as follows:

'When properly drawn, the median line was a precise line consisting of a series of short straight lines. In agreeing upon a boundary, adjacent or opposite States might well decide to straighten that series of lines so as to avoid an excessive number of angles, giving an equal area to each State and also taking into account any special circumstances. Among the special circumstances which might exist there was, for example the presence of a small or large island in the area to be apportioned; he suggested that, for the purposes of drawing a boundary, islands should be treated on their merits, very small islands and sand cays on a continuous continental shelf and outside the belts of territorial sea being neglected as base points for measurement and having only their own appropriate territorial sea. Other types of special circumstances were the possession by one of the two States concerned of special mineral exploitation rights or fishery rights, or the presence of a navigable channel; in all such cases, a deviation from the median line would be justified, but the median line would still provide the best starting point for negotiations.'

Commander KENNEDY prepared a brief entitled 'Brief Remarks on Median Lines and Lines of Equidistance and on the Methods Used in their Construction', in support of the UK's position, which was distributed to all delegates. However this formula was criticized until the restoration of the reference to 'special circumstances', and the resulting Article 6 in the Convention accepted the original elements of (i) agreement; (ii) equidistance unless there are (iii) special circumstances.

The other two Conventions were equally important to the United Kingdom, but had less immediate impact on the work of the Territorial Waters Officer.

Following the signing of the four Conventions and the Optional Protocol by the United Kingdom, work began immediately on redefining the baseline to bring it into line with the new provisions set out in the Convention on the Territorial sea and the Contiguous Zone. This necessitated the re-drawing of several bay closing lines, which had previously been restricted to 10 nm and could now be drawn out to a maximum of 24 nm. Work was also put in hand on drawing a straight baseline system around the west coast of Scotland. The four Geneva Conventions were ratified in October 1964 and, very shortly afterwards, the United Kingdom issued the Territorial Waters Order in Council 1964 [Ref. 14]. This Order redefined the United Kingdom's baseline in accordance with the provisions laid down in the Geneva Convention on the Territorial Sea and Contiguous Zone and put in places straight baseline system from the Mull of Kintyre around the Outer Hebrides to Cape Wrath in western Scotland.

Also during 1964, the Continental Shelf Act [Ref. 15] was passed, providing enabling legislation for the exploration and exploitation of the continental shelf. This heralded a new departure for the Territorial Waters Officer, with matters concerning exploitation and exploration coming under his expert eye. Designated areas and licensing blocks had to be determined with some accuracy, particularly as the North Sea hydrocarbon bonanza was beginning. The natural progression of this activity was of course the Continental Shelf Boundaries in the North Sea.

The first UK boundary agreement in the North Sea was concluded with Norway in March 1965 [Ref. 16] (see Fig. 1). The bilateral negotiations had only taken about twelve months. Peter BEAZLEY had taken up the appointment of Territorial Waters Officer by this time, and was a member of the small UK negotiating team. The agreement was important in that it became the model for subsequent UK boundaries in the North Sea. Equidistance was still the prime principle for delimitation at this time and this agreement was no different. It was agreed at a very early stage that the northern limit of the boundary would terminate at or near the 100 fathom isobath, and the Norwegian Trench would be ignored. This latter point caused a few eyebrows to be raised in the United Kingdom, but was based on the principles of the 1958 Geneva Convention on the Continental Shelf, Article 1, which states:

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.

The British Delegation at Geneva had also publicly accepted a scientific assessment by UNESCO to the effect that this depression in the bed of the North Sea formed part of the continental shelf for legal purposes on account of the existence of a sill at its northern end. This view was shared and acted upon by Norway, Sweden and Denmark. Indeed since boundary agreements have been

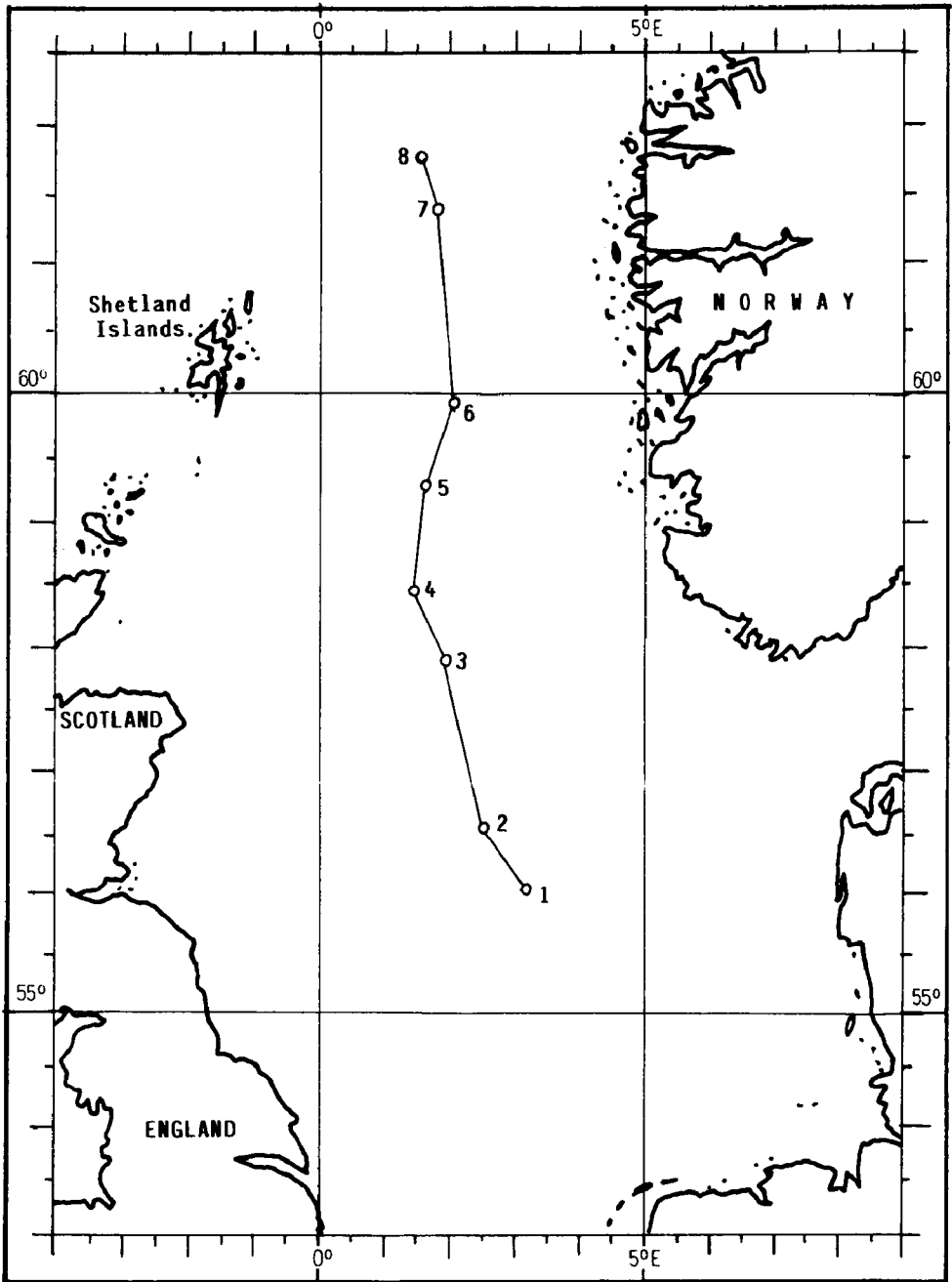


FIG. 1.— Delimitation of the Continental Shelf between the United Kingdom and Norway (1945).



agreed in the area, ignoring the Trough, Norway has successfully exploited the region.

Having decided that an equidistance line produced a satisfactory division of the continental shelf, a number of technical decisions had to be made, including the simplification of the median line, the use of a common datum (European datum) and the definition of the lines joining the turning points on the boundary. The median line was determined using graphical methods and an accuracy of  $\pm 100$  feet was the best that could be achieved. The arc of a great circle was used to define the boundary between the turning points. All these factors were subsequently used in the later agreements in this area until the advent of computers in the early seventies, which enabled equidistance lines to be calculated on the sphere with great precision.

Whilst the negotiations with Norway were continuing, bilateral talks began with the Netherlands on the UK/Dutch continental shelf boundary. As discussed earlier, the principles used were the same, and the only new problem to be solved, was whether uncompleted harbour works should form part of the baseline. In the event, those at Ijmuiden which had been completed, were counted, but the proposed extension of Europoort was not. No administrative simplification was made and the agreed line remained a true equidistance line. The Agreement [Ref. 17] was signed on 6 October 1965. However, it was never ratified, as the result of a case brought before the International Court of Justice by the Federal Republic of Germany.

The case brought by the Federal Republic of Germany against the Kingdoms of Denmark and the Netherlands, on 20 February 1967, did not directly involve the United Kingdom's Territorial Waters Officer, although the court proceedings and judgement were of the utmost importance and were followed very closely. The judgement [Ref. 18] was delivered on 20 February 1969. The Court rejected the contention of Denmark and the Netherlands to the effect that the delimitations in question had to be carried out in accordance with the principle of equidistance as defined in Article 6 of the 1958 Geneva Convention on the Continental Shelf [Ref. 12], holding: that the Federal Republic, which had not ratified the Convention, was not legally bound by the provisions of Article 6; and that the equidistance principle was not a necessary consequence of the general concept of continental shelf rights, and was not a rule of customary international law. The Court also rejected the contentions of the Federal Republic in so far as these sought acceptance of the principle of an apportionment of the continental shelf into just and equitable shares. It held that each Party had an origin right to these areas of the continental shelf which constituted the natural prolongation of its land territory into and under the sea. It was not a question of apportioning or sharing out these areas, but of delimiting them. The court found that the boundary lines in question were to be drawn by agreement between the Parties and in accordance with equitable principles, and it indicated certain factors to be taken into consideration for that purpose. The Parties agreed to negotiate on this basis.

Clearly, whilst this case was being conducted and before the decision was reached, which required the parties to delimit their boundaries, the United Kingdom could not settle any more of its own North Sea boundaries. However, the Territorial Waters Officer was heavily involved in a court case at

home concerning the boundaries in the Thames estuary.

The case, *Post Office —v— Estuary Radio Limited*, went through the full process of United Kingdom law ending in the Appeal Court (Civil Division) [Ref. 19] in the Summer of 1967. The case was brought against the defendants under the Wireless Telegraphy Act, 1949, for broadcasting without a licence from the Red Sand Tower in the Thames Estuary, which the Plaintiff considered was in United Kingdom international waters. In the event, the case hinged on the interpretation of the 1964 Territorial Waters Order in Council [Ref. 14] and the use of bay closing lines in Article 4 of the Order. Both Commander BEAZLEY and Commander KENNEDY were called as witnesses on behalf of the Plaintiff. Both were subjected to long and detailed examination in the witness box and it is to their credit, that their clear and undoubted expert evidence on the interpretation of the 1964 Order, particularly concerning the natural entrance points to a bay, helped to a considerable degree, the successful outcome of the case.

Returning to the North Sea, a very busy period ensued following the ICJ continental shelf case. The Federal Republic of Germany entered into bilateral negotiations with both Denmark and the Netherlands and all three countries held talks with the United Kingdom. The outcome was three boundary agreements for the continental shelf with the Federal Republic of Germany [Ref. 20] (see Fig. 2) Denmark [Ref. 21] (see Fig. 3) and a Protocol with the Netherlands [Ref. 22] (see Fig. 4) altering the boundary agreed in 1965. These boundaries were ratified in 1972.

There then followed a period of intense activity for the Territorial Waters Officer lasting for a decade. Talks were already taking place with the French concerning the continental shelf boundary in the Channel and the South West Approaches. The United Nations had formed a Sea Bed Committee to look into the entire subject matter concerning the international regime for the sea bed and the ocean floor beyond national jurisdiction following a submission by Malta in 1967 that the exploration and exploitation of the sea bed beyond national jurisdiction should be controlled by an international authority for the benefit of all mankind. The Territorial Waters Officer was an important member of the United Kingdom Delegation of that Committee. By 1975, bilateral negotiations were being conducted with Norway, to complete the UK/Norway continental shelf boundary to the UK/Norway/Faeroes tripoint, and with the Republic of Ireland concerning our continental shelf boundaries in the Irish Sea, South West Approaches and the North West. As Commander BEAZLEY was spending more and more time on the work required for the UN Sea Bed Committee and subsequently as a key member of the UK Delegation to the Third United Nations Conference on the Law of the Sea, it was decided to appoint an Assistant Territorial Waters Officer during this period and Lieutenant Commander Richard GREEN duly joined the team until he retired in the early 1980's.

The talks with France were not progressing well and both sides agreed that the delimitation question should be submitted to an ad hoc Court of Arbitration and agreement was reached on this procedure in July 1975. The proceedings consisted of three sets of written pleadings, followed by oral hearings in Geneva in January, February and May 1977, all of which required a considerable input

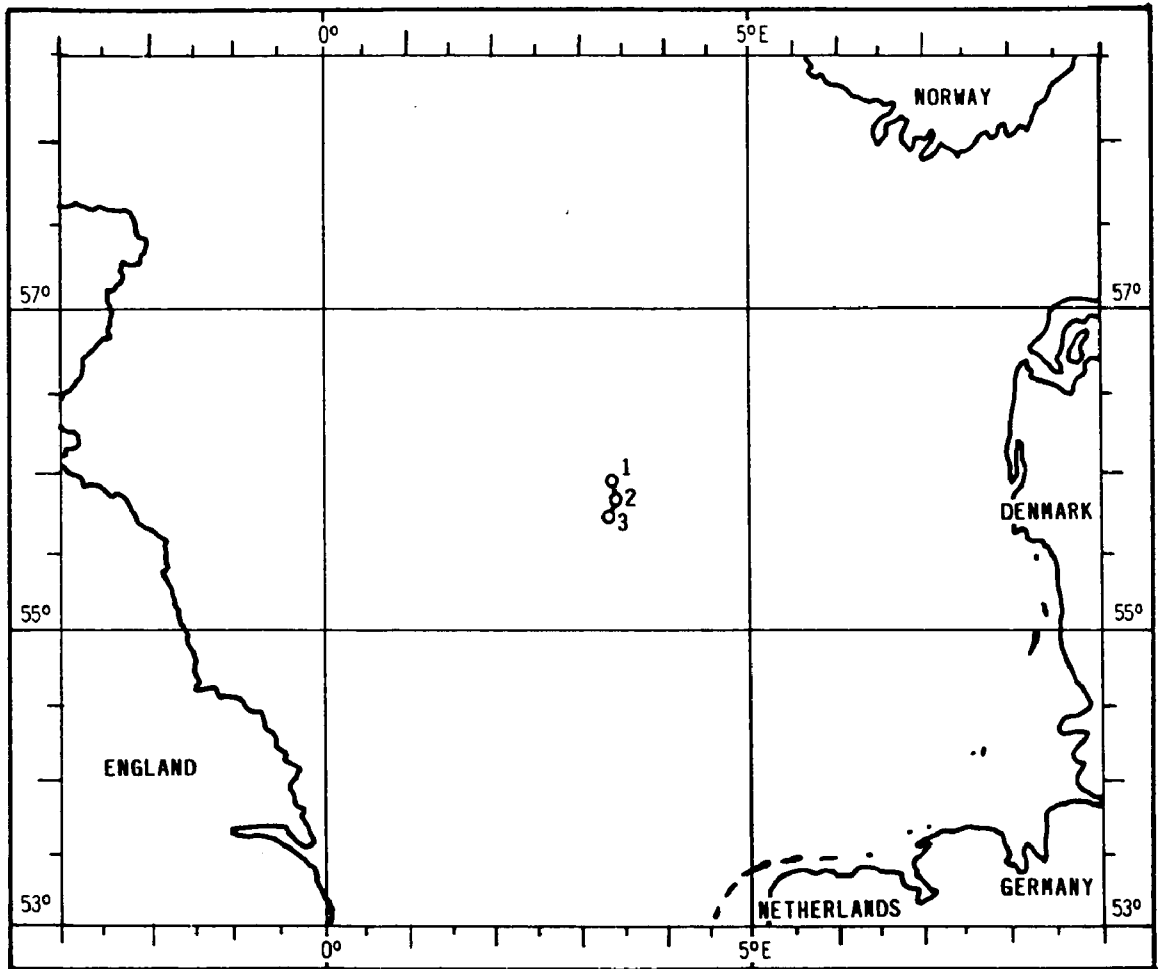


FIG. 2.— Delimitation of the Continental Shelf between the United Kingdom and the Federal Republic of Germany (1972).

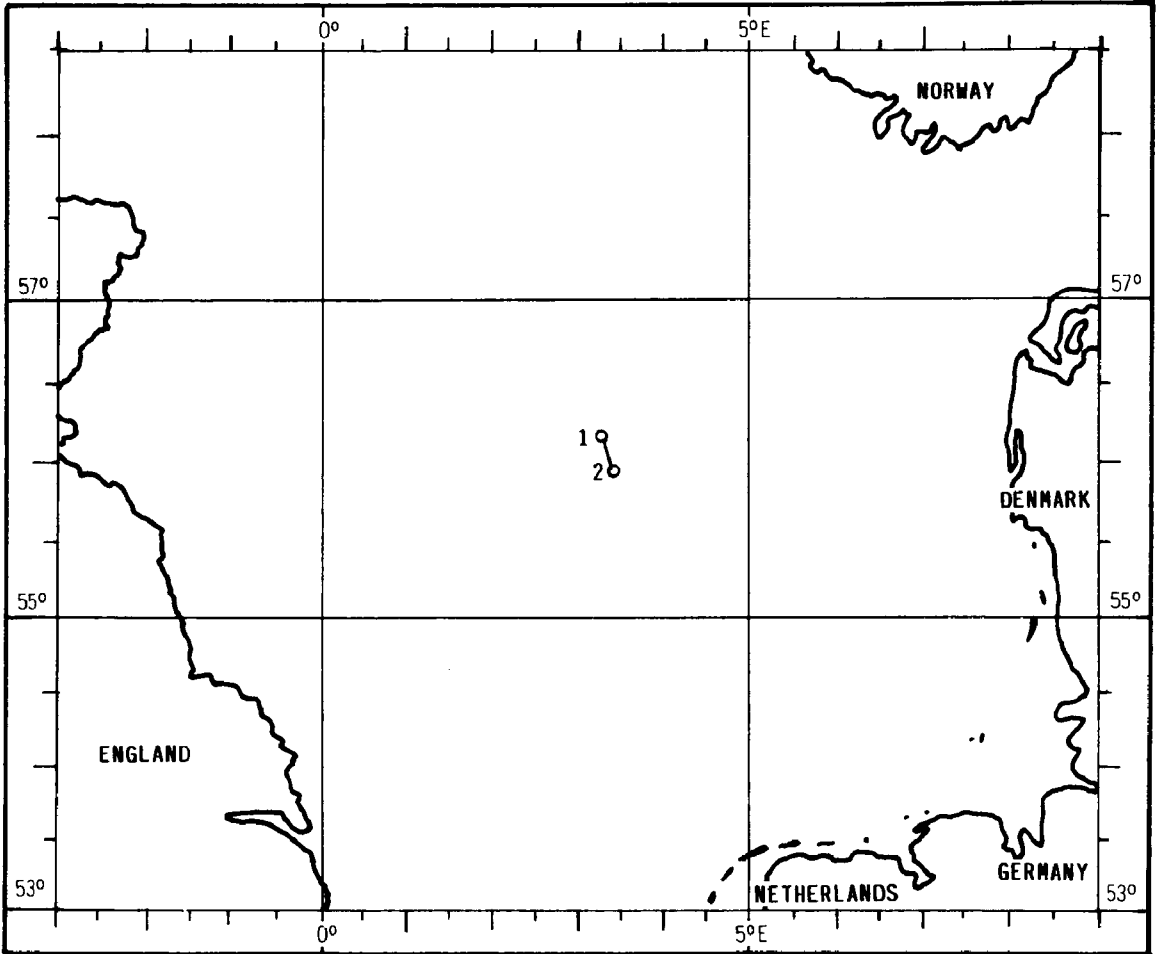


FIG. 3. — Delimitation of the Continental Shelf between the United Kingdom and Denmark (1972).

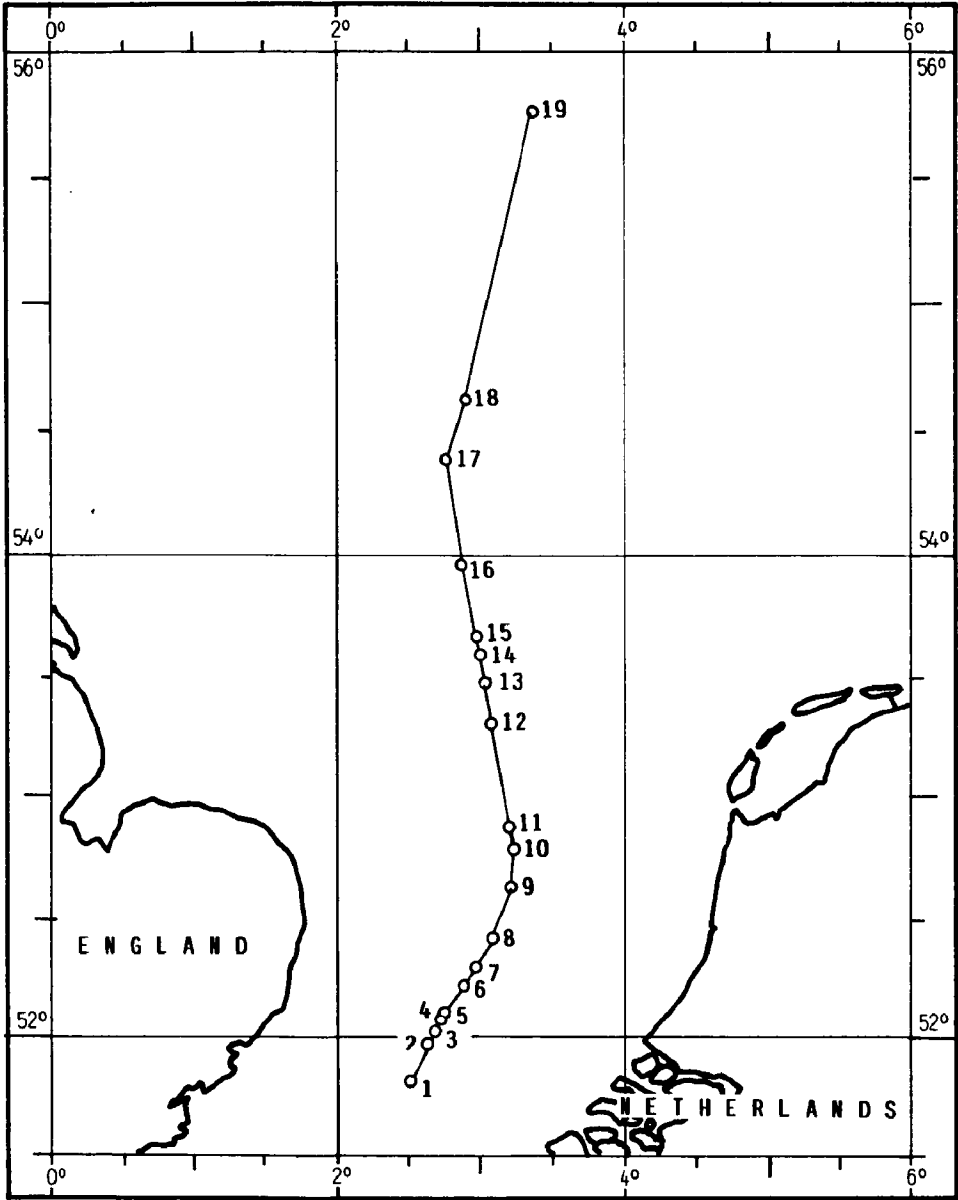


FIG. 4.— Delimitation of the Continental Shelf between the United Kingdom and the Netherlands (1972).

from the Territorial Waters Officer. The Court's decision was delivered in July 1977 [Ref. 23] (see Fig. 5). The Court delimited the continental shelf in the Channel by a median line giving full effect for all islands, including the Eddystone, which the French had accepted for fisheries purposes, in the South West Approaches, a median line giving half effect to the Scilly Islands; and in the area to the north and north west of the Channel Islands, a 12-nm enclave boundary. The Court declared that it was not competent under the Arbitration Agreement to delimit the boundary in the narrow belt east and south of the Channel Islands, where questions affecting the territorial sea were involved. The United Kingdom was not happy on two technical points concerning the boundary to the north of the Channel Islands, which showed some discrepancies in the basepoints used, and the line in the South West Approaches, which the UK contended should have been a geodesic and not a loxodrome as drawn. Further oral hearings were heard in 1978 and the final decision was delivered in March of that year, upholding the United Kingdom's query on the Channel Islands, but rejecting the request for a change in the South West. This was not a unanimous decision.

Meanwhile the bilateral talks with Norway were progressing apace. The boundary was calculated on the same parameters as had been used in 1965, but was computed rather than derived graphically and a difference of 331 metres was found between the northern limit of the 1965 agreement and the computed position of the same point. This caused much discussion and resulted in a linking line 331 metres in length along the parallel  $61^{\circ}44'12''.00$  N joining the two boundary lines. The Protocol supplementary to the Agreement of 1965 was signed in December 1978 [Ref. 24] (see Fig. 6).

The negotiations with the Irish Republic had produced no agreement on boundaries and it was agreed by both sides that the dispute should go to arbitration in 1976. The difficulties were numerous. The topic of delimitation was under discussion in the LOS Conference where opposed positions were adopted. The British position was that a true median line should stand as a starting point and that all designated areas to date, including the 1974 designation to the west of Rockall, should stand. The Irish contended that islands further than three nautical miles from the mainland coast should have no effect. Talks on the setting up of a Court of Arbitration continued through 1976 and intermittently thereafter. International law on delimitation issues was especially unsettled during this period and it was felt by both sides that the developments in the United Nations Law of the Sea Conference, together with the UK/France Arbitration, should run their course before further efforts were made to reach agreement on simplifying the arguments to be arbitrated.

Following the UK/France Arbitration, talks very rapidly began on the remaining UK/France continental shelf boundary to the east of  $0^{\circ}30'$  W towards the UK/France/Belgium tripoint. The French agreed at a very early stage to accept United Kingdom basepoints as if we already had a 12-nm territorial sea and were happy that we should use basepoints on the Goodwin Sands. Technical data was exchanged in 1979 and a simplified median line, agreed entirely by correspondence, was achieved by early 1982. The Agreement was signed in June 1982 [Ref. 25] (see Fig. 7). This Agreement does not go as far as the UK/France/Belgium tripoint as the position has yet to be delimited by France and Belgium.

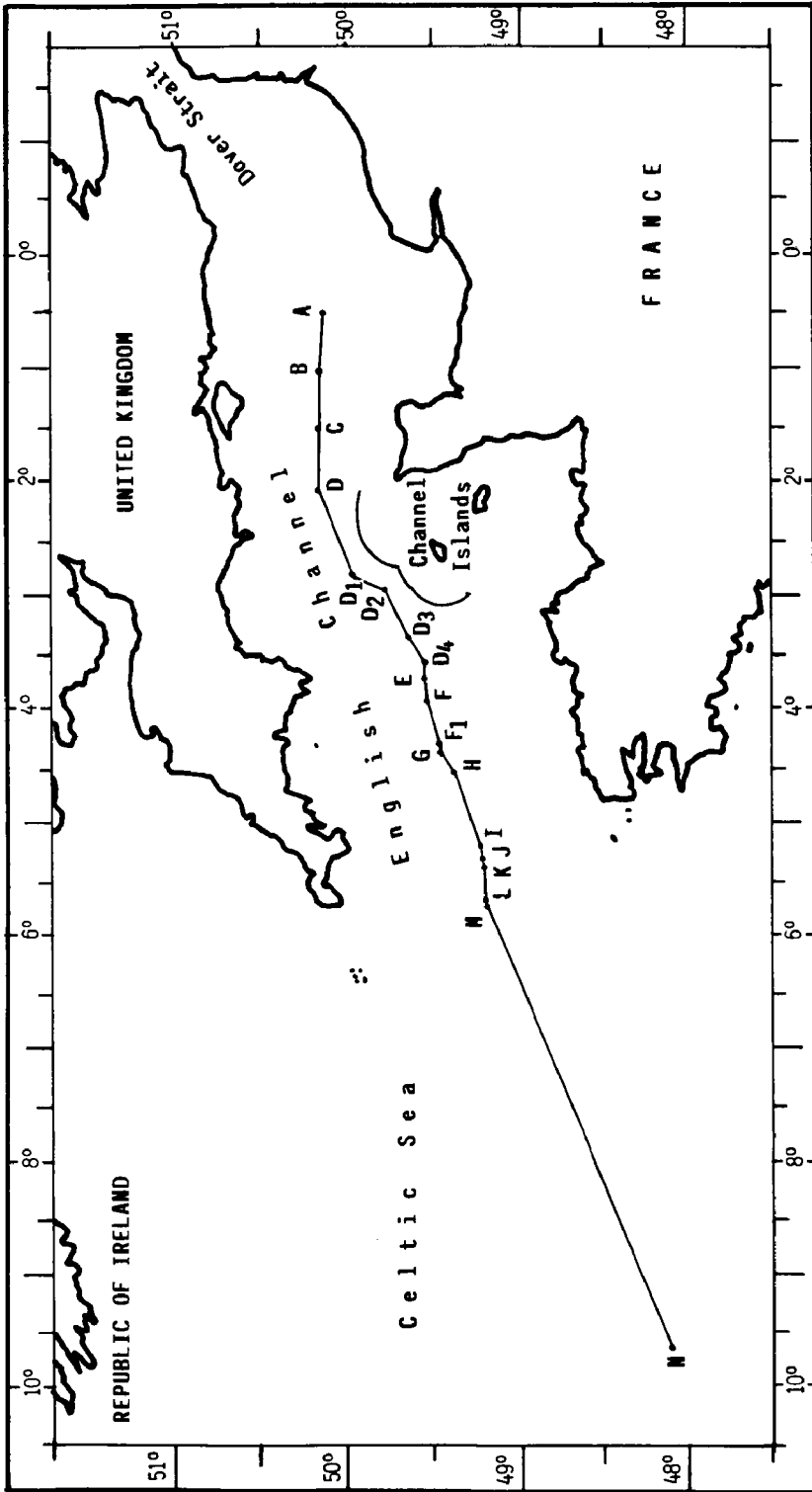


FIG. 5.— Delimitation of the Continental Shelf in the English Channel (1977).

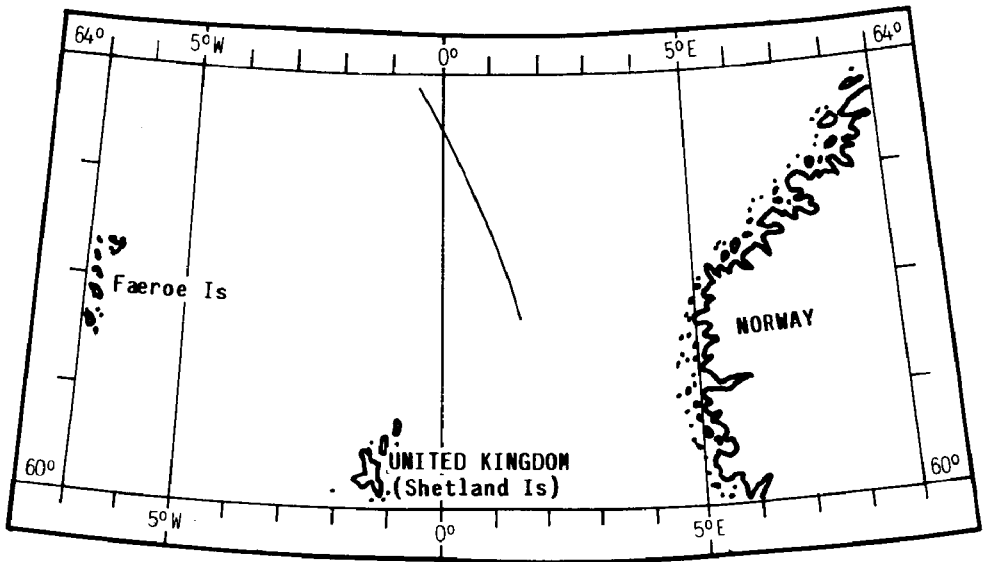


FIG. 6.— Delimitation of the Continental Shelf between the United Kingdom and Norway (1978).

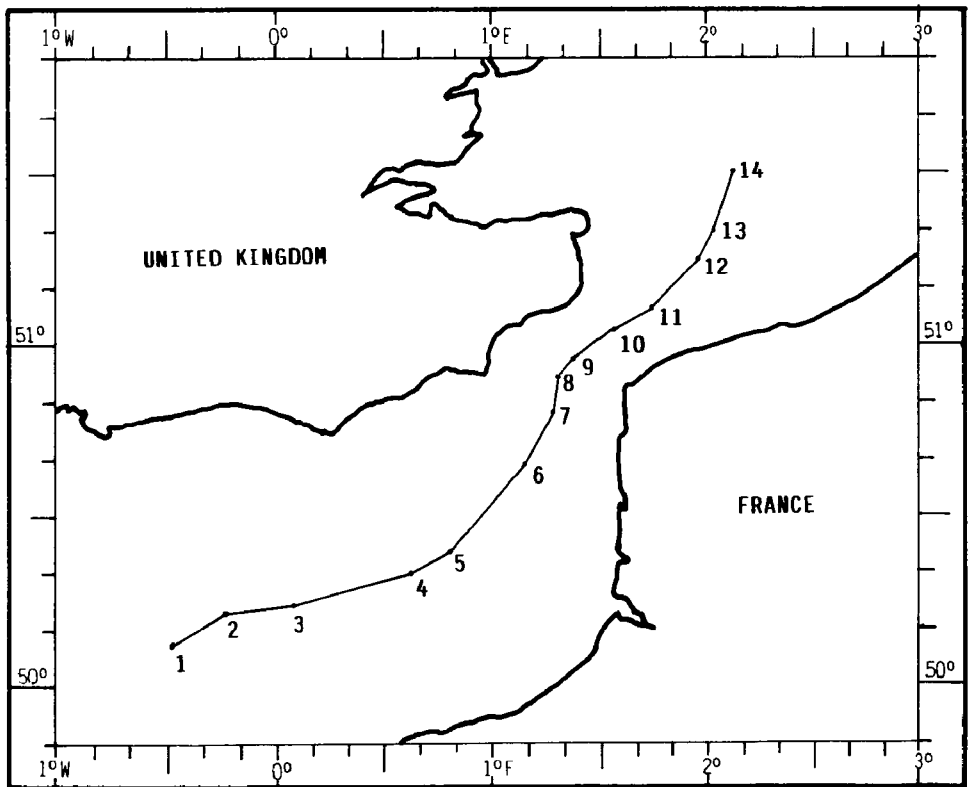


FIG. 7.— Delimitation of the Continental Shelf between the United Kingdom and France (1982).



The United Nations Conference on the Law of the Sea [Ref. 26] finally concluded following the final session in Montego Bay in December 1982 with the Convention opened for signature. Although the United Kingdom felt unable to sign it, I think it is fair to say that the United Kingdom Delegation played an important role in the shape and content of parts of the final document and Peter BEAZLEY can be justly proud of his own contribution, especially on Part II (Territorial Sea).

## PRESENT DAY

Following the completion of UNCLOS, both Peter BEAZLEY and Richard GREEN retired fairly closely to each other, the latter without relief. Commander Bob HALLIDAY held the post for two years until 1985 followed briefly by Commander Mike BARRITT before the author took up the appointment in 1986. At that time, two questions were of immediate importance: the extension of the United Kingdom's territorial waters from 3 nm to 12 nm and the continental boundary with the Republic of Ireland.

The extension to 12 nm had been discussed for many years, but had been resisted by the United Kingdom on the grounds of perceived difficulties in the freedoms of navigation and overflight through straits used for international navigation. By the early 1980's State practice based on the outcome of the Conference was deemed to have made the 12-nm territorial seas limit customary international law and the United Kingdom no longer protested at such action. However, the problems associated with straits passage were still present. The desirability to extend to 12 nm was finally brought to a head once the Channel Tunnel project had been approved. France had territorial sea jurisdiction in the Dover Strait to the UK/France continental shelf boundary, but the United Kingdom had only a 3-nm limit and only continental shelf jurisdiction beyond that to the boundary. In 1987, the British Government introduced into Parliament proposals to extend the territorial sea to 12 nm subject to a boundary with France in the Dover Strait. When introducing the Bill in the House of Lords, the Minister of State issued the following statement:

'... it has been recognised in State practice, international negotiations and the case law of the International Court that a special regime for navigation is appropriate in straits.

International law and practice have now developed to the point where, if the United Kingdom extends to 12 miles, we should afford to others the essential rights in some internationally important straits for which there is no alternative route; namely the Straits of Dover, the North Channel lying between Scotland and Northern Ireland, and the passage between Shetland and Orkney. These rights, which are widely recognised as necessary, include: a right of unimpeded passage through such straits for merchant vessels and warships; a right of overflight; the right of submarines to pass through the straits submerged; and appropriate safeguards for the security and other interests of the coastal State.

In other straits used for international navigation, such as the Pentland Firth south of Orkney and the passage between the Scilly Isles and the mainland of Cornwall, as in other parts of the territorial sea, a right of innocent passage will continue to exist in accordance with the practice of States.' [Ref. 27].

The Bill was duly passed and the Territorial Sea Act 1987 [Ref. 28] came into force on 1 October of that year.

Once the United Kingdom had extended her territorial sea limits to 12 nm, a revised boundary agreement was required in the Straits of Dover from, what had previously been a territorial sea/continental shelf boundary between France and the United Kingdom, into a pure territorial sea boundary between the two countries. Negotiations began in 1988, in what was basically a technical matter to decide on the two end points of this boundary as the boundary already in place was not to be altered. Negotiations were straight forward and the new Agreement was duly signed on 2 November 1988 and came into force on 6 April 1989 [Ref. 29]. Of more significance was the joint declaration by the two countries concerning the right of transit passage through the Straits. The terms of the Declaration were as follows:

'On the occasion of the signature of the Agreement relating to the Delimitation of the territorial sea in the Straits of Dover, the two Governments agreed on the following declaration:

The existence of a specific regime of navigation in straits is generally accepted in the current state of international law. The need for such a regime is particularly clear in straits, such as the Straits of Dover, used for international navigation and linking two parts of the high seas or economic zones in the absence of any other route of similar convenience with respect to navigation.

In consequence, the two Governments recognise rights of unimpeded transit passage for merchant vessels, state vessels, in particular, warships following their normal mode of navigation, as well as the right of overflight or aircraft, in the Straits of Dover. It is understood that, in accordance with the principles governing this regime under the rules of international law, such passage will be exercised in a continuous and expeditious manner. The two Governments will continue to co-operate closely, both bilaterally and through the International Maritime Organisation in the interests of ensuring the safety of navigation in the Straits of Dover, as well as in the southern North Sea and the Channel. In particular, the traffic separation scheme in the Straits of Dover will not be affected by the entry into force of the Agreement. With due regard to the interests of the coastal States, the two Governments will also take, in accordance with international agreements in force and generally accepted rules and regulations, measures necessary in order to prevent, reduce and contain pollution of the marine environment by vessels.'

David ANDERSON, Deputy Legal Adviser at the Foreign and Commonwealth Office, expanded on this theme in his excellent paper 'The Right of Transit Passage and the Straits of Dover', presented to a conference on 30 March-1 April 1989 at the Centre for Oceans Law and Policy in Washington.

Meanwhile on the continental boundaries front, the stalled talks between the United Kingdom and the Republic of Ireland began again in earnest in the spring of 1986. Both sides began by reviewing their positions as they had been ten years earlier in the light of State practice, the outcome of the United Nations Conference on the Law of the Sea and the various International Court cases that had occurred during the intervening period. One factor was immediately apparent, neither side could hope to sustain its previous position in the light of developments in International Law and State practice. Going to arbitration was still an option, but concern was expressed both about the probable cost of such action and the fear that the court would not be prepared to delimit a line, when third parties could be involved. This point was prompted by the judgement in the Malta/Lybia case [Ref. 30]. It was considered that the best way forward would be an attempt to negotiate a bilateral agreement (or possibly a partial agreement) keeping arbitration as the ultimate fall back position. The area to be delimited naturally falls into three sections, the Irish Sea, South West Approaches and the North West and they were tackled in that order, but as part of an overall settlement.

Meetings took place alternately between London and Dublin approximately every six weeks for two and a half years. It was agreed at a very early stage that Admiralty charts would be used by both sides during the negotiations. These were supplemented from time to time by specially prepared computer drawn maps by both Departments of Energy. It was also agreed fairly early on that the boundary would be stepped, complementing the designated area blocks of both countries. Towards the end of the negotiations it was decided to refer the final boundary to World Geodetic System 1984 (WGS 84) reflecting a growing desire by the oil industry for reference to a modern world wide datum. I think it is fair to say that at some stage, during these long and complex negotiations, every method or device that has been used in delimitations and some that have not, were discussed and studied at length. A substantial percentage of the author's work as the Territorial Waters Officer was dedicated to this task for the entire period of the negotiations. However, the time spent on this task was rewarded with a successful Agreement signed in Dublin on 7 November 1988 [Ref. 31] (see Figs. 8 and 9). It is expected that the Agreement will be ratified by the two Governments in the near future.

This Agreement is the one of the longest continental shelf boundary delimitation to date. The boundary through the Irish Sea into the south west Approaches is some 502 nm in length and in the North West 634 nm, a total of approximately 1,136 nautical miles. It will allow both countries to extend their designated areas and enable the oil industries on both sides opportunities to exploit new acreage.

Once this Agreement has been ratified a large proportion of the United Kingdom's continental shelf will have been delimited as shown on Figure 10. As can be seen the only outstanding continental boundaries to be agreed are those with Belgium, which should pose few problems once they have agreed their lateral boundary with France; Denmark (Faeroes), which is the longest remaining line to be settled; Iceland, a relatively short boundary all in deep water; and France, a tidying up operation in the Southern North Sea to the UK/France/Belgium tri-point, and a slightly longer boundary in the south west Approaches beyond the terminal point of the arbitration agreement to the limit of national continental shelf

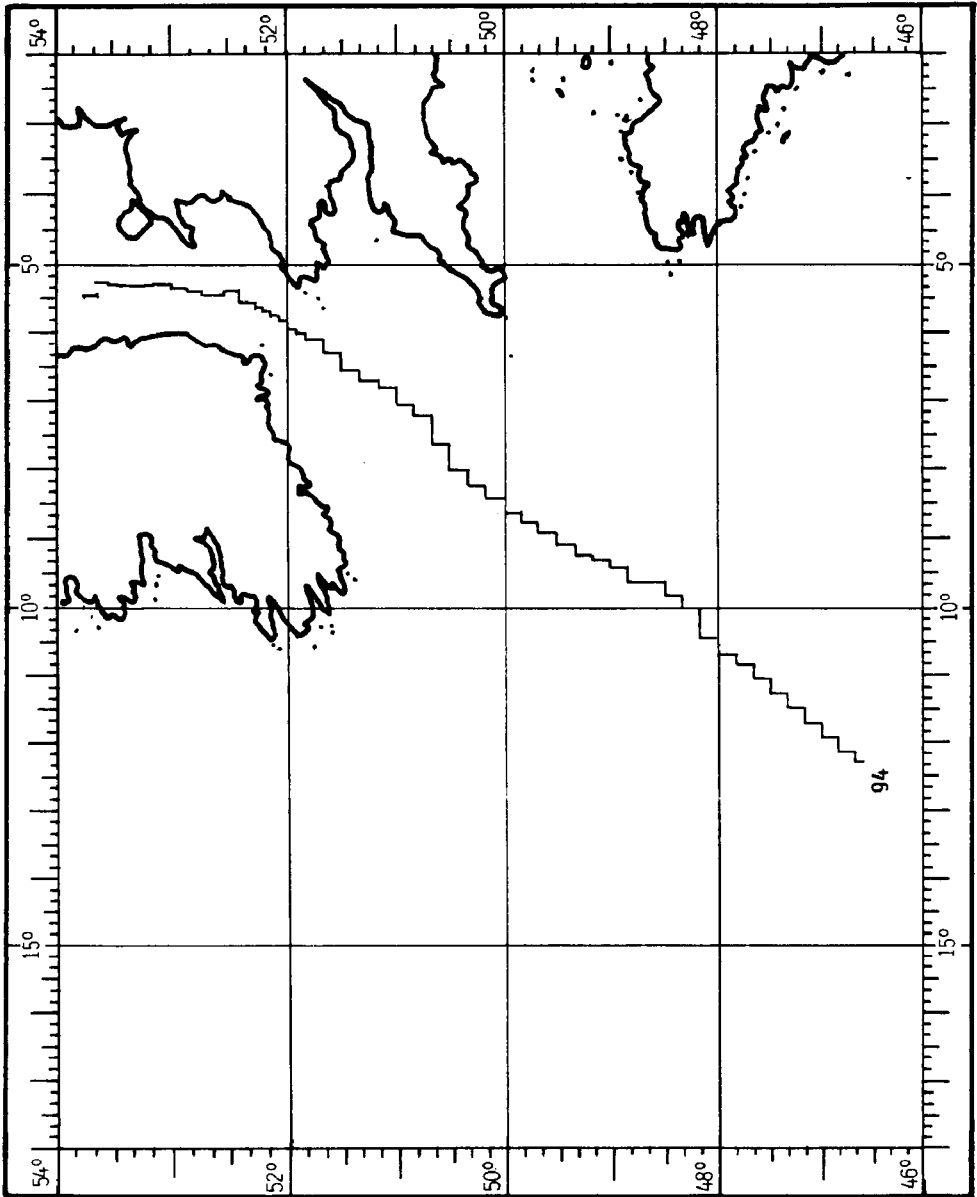


FIG. 8. — Delimitation of the Continental Shelf between the United Kingdom and the Republic of Ireland (1988).

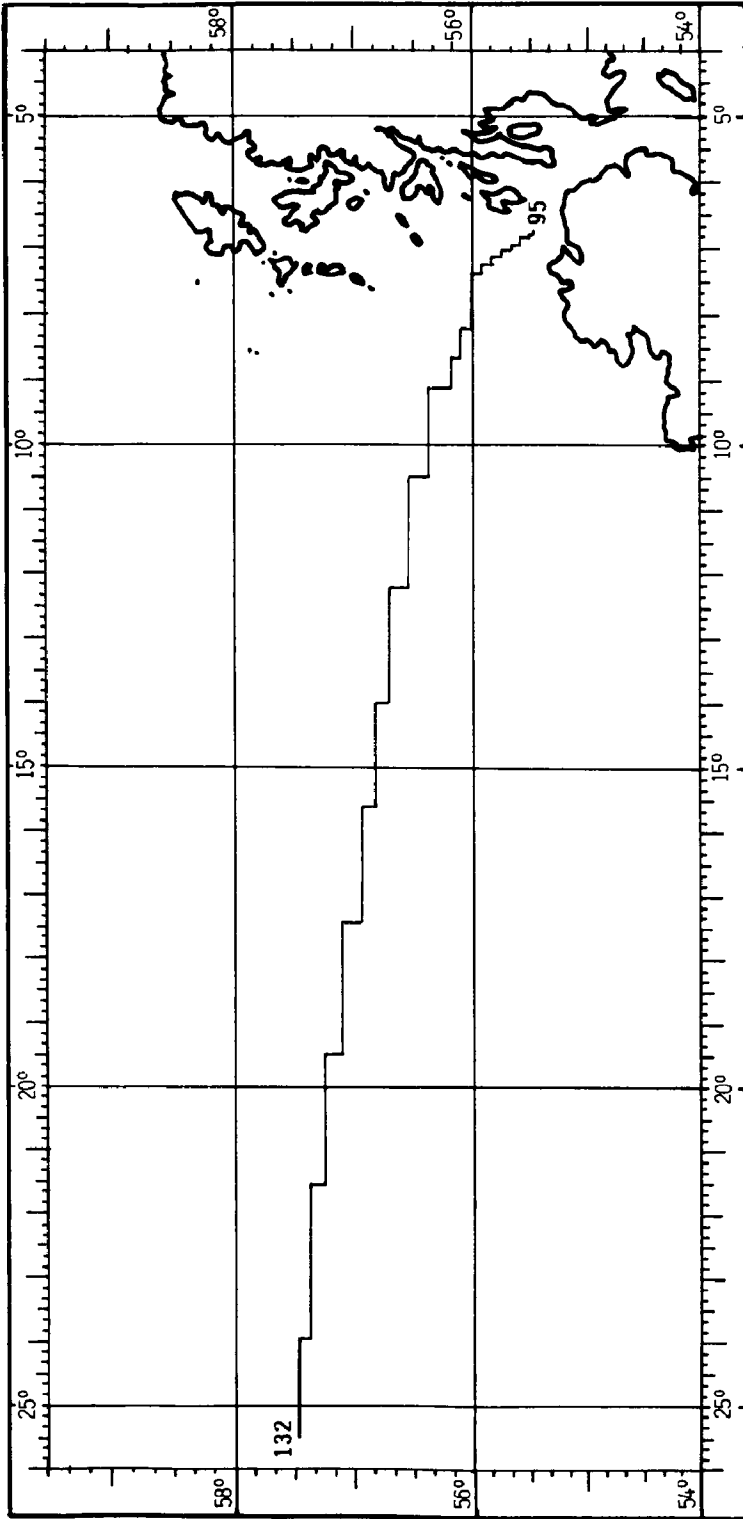


FIG. 9.— Delimitation of the Continental Shelf between the United Kingdom and the Republic of Ireland (1988).

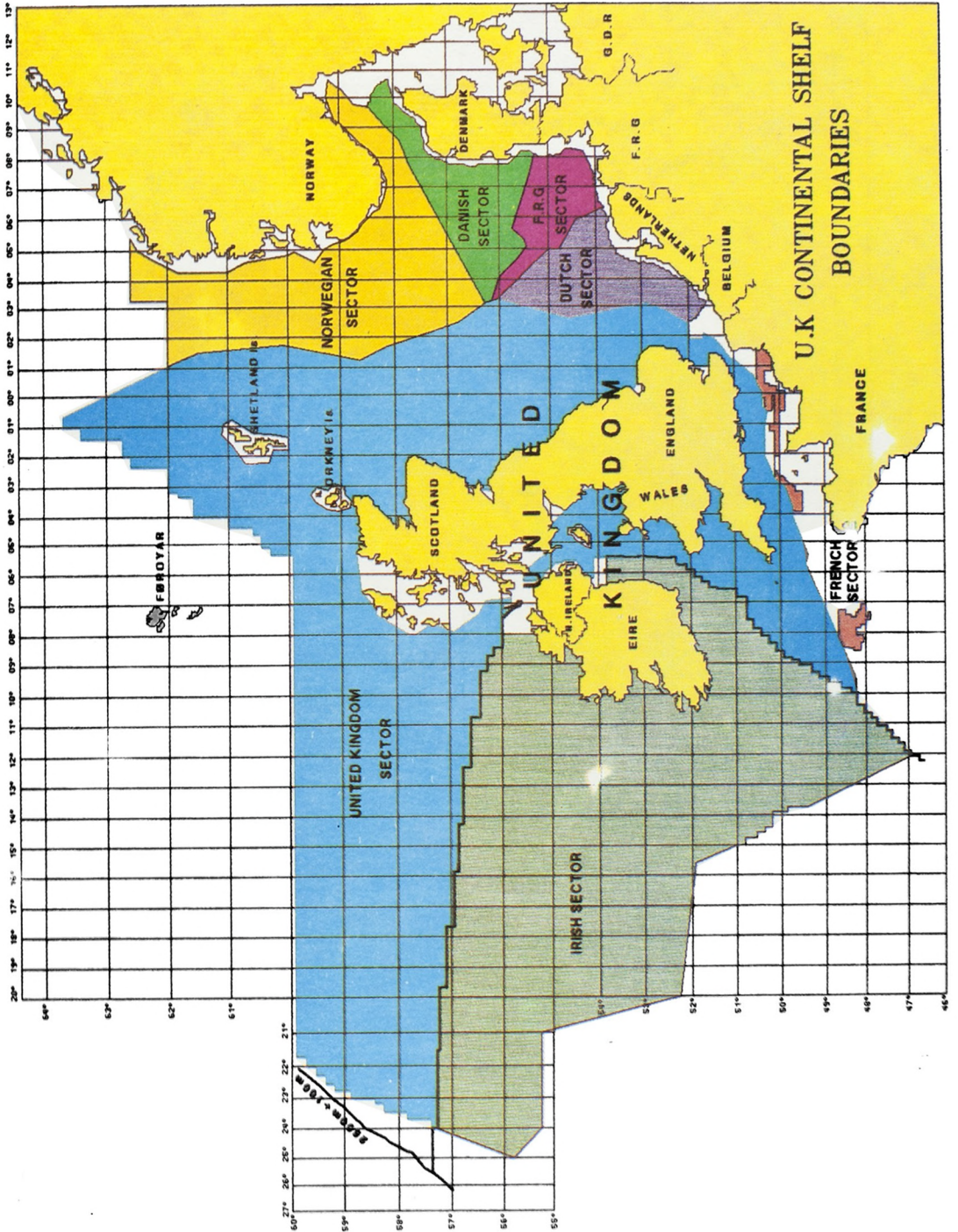


FIG. 10. — United Kingdom Continental Shelf Boundaries.

jurisdiction. Clearly the area to the north is potentially the most difficult, with large counter-claims covering huge expanses of ocean. However following the UK/Republic of Ireland agreement the author is optimistic that the remainder will follow in due course.

Territorial sea boundaries still have to be delimited between the Channel Islands and France and between Northern Ireland and the Republic of Ireland, the latter involving other issues outside the realm of delimitation.

Apart from delimitation and boundary problems, the task of the Territorial Waters Officer is both varied and rewarding. The author advise the Ministry of Defence, Foreign and Commonwealth Office and other Government Departments on a wide range of issues concerning the limits of sovereignty over, and laws relating to, territorial waters, economic zones, pollution zones, fishery zones, continental shelves and the high seas throughout the world. The Territorial Waters Officer is tasked to ensure that information published by the Hydrographer on charts, sailing directions, etc. is correct and where applicable is supported by legislation. He is required to keep the master copy of the United Kingdom's base-line co-ordinates controlling a 3-nm Territorial Sea and Fishery Limit and 200-nm Fishery Limit. Up to date lists are also maintained for all bay closing lines and harbour limits. Any changes to the base points, which affect the published limits, have to be promulgated, normally by Notices to Mariners.

Requests for selected details of the baseline come from a variety of sources, not least HM Customs and Excise. The TWO is regularly called as an expert witness for the Crown in court cases, where the position of the baseline and the maritime zones measured from it, are in doubt.

The TWO is also required to keep a watching-brief on the legality of proposed restrictions to navigation in UK waters such as: prohibited anchorage and fishing areas, safety zones around offshore structures, offshore development areas and marine nature reserves.

Foreign maritime claims and restrictions are also analyzed and advice forward on possible diplomatic action.

Apart from the United Kingdom, the same tasks are performed for the remaining Dependent Territories. Territorial sea issues are currently the most active area, with Bermuda already having a territorial sea limit of 12 nautical miles [Ref. 32]. The question of extension for some other Dependent Territories is under consideration.

Boundary delimitation around the Dependent Territories is in its infancy. The only agreement to date concerns the economic zone around the French Tuamotou Archipelago and the fisheries zone around the United Kingdom Dependent Territories in the Pitcairn Islands [Ref. 33]. This boundary is based on equidistance between equally small islands on both sides. Many territorial sea and continental shelf boundaries have still to be delimited as illustrated in Limits in the Seas No. 108 [Ref. 34].

## CONCLUSION

The role of the Territorial Waters Officer has fundamentally remained unchanged since its inception 72 years ago. However, the scope of the task has expanded in line with the developments in the law of the sea, although the geographical responsibilities have reduced with the demise of the British Empire.

Advances in the delimitation of maritime boundaries have posed the greatest challenge from pure equidistance principles derived by graphic skills, to computer derived equidistance lines, still considered a legitimate starting point for most boundary negotiations. Added to these skills, basic knowledge of many more disciplines is now required, including international maritime law, state practice, geophysics, geology, geography, etc. All these subjects and more can be used in the determination of a maritime boundary to achieve an equitable result. The work of the Territorial Waters Officer will pose a fascinating challenge for many years to come.

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