The 1989 Maritime Boundary Delimitation Agreement Between the GDR and Poland

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On 22 May 1989 the German Democratic Republic and the People's Republic of Poland concluded a treaty “Concerning the Delimitation of Sea Areas in the Oder Bight”.\(^1\) Parties agreed to draw a single maritime boundary delimiting, besides the territorial sea itself, also their continental shelf and fishery zones beyond.

In view of the general practice of states in the Baltic concerning delimitation matters, which is characterized by a marked tendency of states to rely on previously agreed boundaries (territorial sea, continental shelf) when newly created zones needed to be delimited as well (fishery zones, exclusive economic zones), the title of this agreement might well have suggested further confirmation of this regional state practice. The text of the agreement, however, makes it clear that this is most certainly not the case. Indeed, this agreement radically breaks with that general practice by discarding formerly agreed boundary lines and drawing totally new ones. This particularity distinguishes the agreement from the many other delimitation agreements already concluded in the Baltic. A closer analysis of this newly signed agreement therefore appears to be more than justified.

This article will in essence focus on the distinction which exists between the old and new delimitation boundary lines. At the same time it will try to shed some light on the underlying reasons behind this totally new approach. In order to do so, five different sections will have to be distinguished. First of all the basic underlying problem will be elucidated which necessitated this totally new approach. Secondly, a continental shelf treaty signed by the same parties in 1968 will briefly be explained.\(^2\) Thirdly, municipal legislation enacted by parties in the time period between both bilateral agreements will be mentioned. Fourthly, the new agreement

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\(^1\) Treaty Between the German Democratic Republic and the People's Republic of Poland Concerning the Delimitation of the Sea Areas in the Oder Bight (hereinafter cited as 1989 Treaty). Signed 22 May 1989, this treaty has not yet entered into force (summer 1989) and the present elections in Poland make it difficult to predict that date with any certainty. An English translation can be found in the Annex (below, pp. 249-251).

\(^2\) Hereinafter cited as 1968 Treaty. For complete references see below n. 9.
will be analysed in some detail, accentuating its relationship with the 1968 Treaty as well as with the different pieces of municipal legislation. Finally, a few concluding remarks will be made.

I. Fundamental Issues at Stake

The geographical area here under consideration is important for the bordering states for a number of reasons. One of them is certainly the sea-bed and subsoil of this region. No significant sea-bed features exist in the area, except that it is very shallow (10–15 metres) and moreover crosses the Oder Bank at even lesser depths. But the continental shelf in front of the coasts of the German Democratic Republic and Poland, together with the area in front of the Soviet coast, is the exception to the commonly held notion that the Baltic looks very unpromising from a geologist's perspective. The potential economic importance of this area, therefore, is not to be neglected.

This was not, however, the crux of the problem, for the parties agreed at a very early stage on the question of how to delimit this continental shelf. It was not the sea-bed and its subsoil, but the superjacent waters which proved to constitute the major cause for strained relations between the parties in the area. Crucial factors here were the navigational approaches to the Polish ports of Szczecin and Swinoujscie. The former port, although not itself located close to the terminal point of the land frontier, needs an access route close to that boundary. Together with the port of Gdansk, situated in the vicinity of the Polish–Soviet boundary, Szczecin forms part of those Baltic ports handling the most cargo in the region.

These ports, as a consequence, constitute a vital interest for Poland. For a long time, this country did not spare time, effort, nor money in trying to keep these navigational approaches in good condition. There are two such major approaches in front of the coast of the German Democratic Republic: the so-called western approach and the northern approach. These approaches both merge at about 10.5 nautical miles (hereinafter cited as n.m.) from the common land boundary. At three different locations along this route anchorage places are provided for. Anchorages numbered 1 and 2 are situated south of the merging of both approaches, number 3 lies to the north of it.

As long as the parties claimed a territorial sea of 3 n.m. no insurmountable difficulties presented themselves. This period ended theoretically in 1977 when Poland decided to extend its territorial sea up to 12 n.m. The practical consequences of this Polish law remained minimal, however, for Article 2 stated that the lateral boundary with the German Democratic Republic had to be arrived at by agreement. The situation changed in 1984 when the German Democratic Republic also

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4 See below, n. 9 and accompanying text.
5 For a visual perception see Fig. 2.