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Table of Cases	iii
Table of Statutes	iii
Table of Agreements, Conventions and Treaties	iv
Articles	
The International Convention for the Regulation of Whaling —Maria Clara Maffei	287
Are Twentieth Century Marine Conservation Conventions Adaptable to Twenty-First Century Goals and Principles?: Part I—Patricia Birnie	307
Updating the International Seafarers' Code: Recent Developments —George P. Politakis	341
Current Legal Developments	
Baltic—Two New Maritime Boundary Delimitation Agreements in the Eastern Baltic Sea—Erik Franckx	365
Appendix 1	372
Appendix 2	375
Convention on Biological Diversity—The Jakarta Mandate on Marine and Coastal Biological Diversity—Maas M. Goote	377
Appendix	390
London Convention—The 1996 Protocol to the 1972 London Convention —Erik Jaap Molenaar	396
New Zealand—UN Convention on the Law of the Sea Act —J. Scott Davidson	404
Book Reviews	
Droit de la Mer—Laurence Boisson de Chazournes	413
The Conservation of Whales and Dolphins—Patricia Birnie	414
Books Received	417
Bibliography	418
Index	425

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Current Legal Developments

Baltic

Two New Maritime Boundary Delimitation Agreements in the Eastern Baltic Sea

About half a decade after the re-emergence of Estonia, Latvia and Lithuania as coastal states in the Baltic Sea, a first set of maritime boundary agreements recently saw the light of day in this region. A first such agreement was concluded between Estonia and Latvia.¹ A second one was arrived at a few months later between Estonia and Finland.² The present note provides the reader with the texts of these agreements,³ as well as with a first succinct appraisal.⁴ Both agreements, it should be stressed, have to be distinguished from a theoretical point of view. Indeed, as will be seen, they both intend to settle inter-state disputes of a quite different nature. Taking into account their respective dates of signature, the Estonia–Latvia Agreement will be addressed first.

¹ Agreement between the Republic of Estonia and the Republic of Latvia on the Maritime Delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea, 12 July 1996. Text kindly received from Mrs. K. Malinovska, Ministry of Foreign Affairs of Latvia, and Mr. S. Roostar, Ministry of Foreign Affairs of Estonia. This agreement entered into force on 10 October 1996. Hereinafter cited as Estonia–Latvia Agreement.

² Agreement between the Republic of Estonia and the Republic of Finland on the Boundary of the Maritime Zones in the Gulf of Finland and the Northern Baltic Sea, 18 October 1996. Text kindly received from Mrs S. Mäkelä, Ministry of Foreign Affairs of Finland. This agreement entered into force on 7 January 1997. Hereinafter cited as Estonia–Finland Agreement.

³ If the Estonia–Latvia Agreement was drafted in the English language, and presents therefore no problem for reproduction, the Estonia–Finland Agreement is a little bit more problematic because it was drafted in the Estonian and Finnish languages. Since no official English text existed at the time of writing, an unofficial English translation by the author is attached.

⁴ For a more complete analysis, see E. Franckx, "Estonia–Latvia (Report Number 10-15)" in J. Charney and L. Alexander (eds.), *International Maritime Boundaries* Dordrecht (Martinus Nijhoff, 2nd supp., forthcoming) at vol. 3.; and by the same author in the same publication, "Estonia–Finland (Report Number 10-16)".

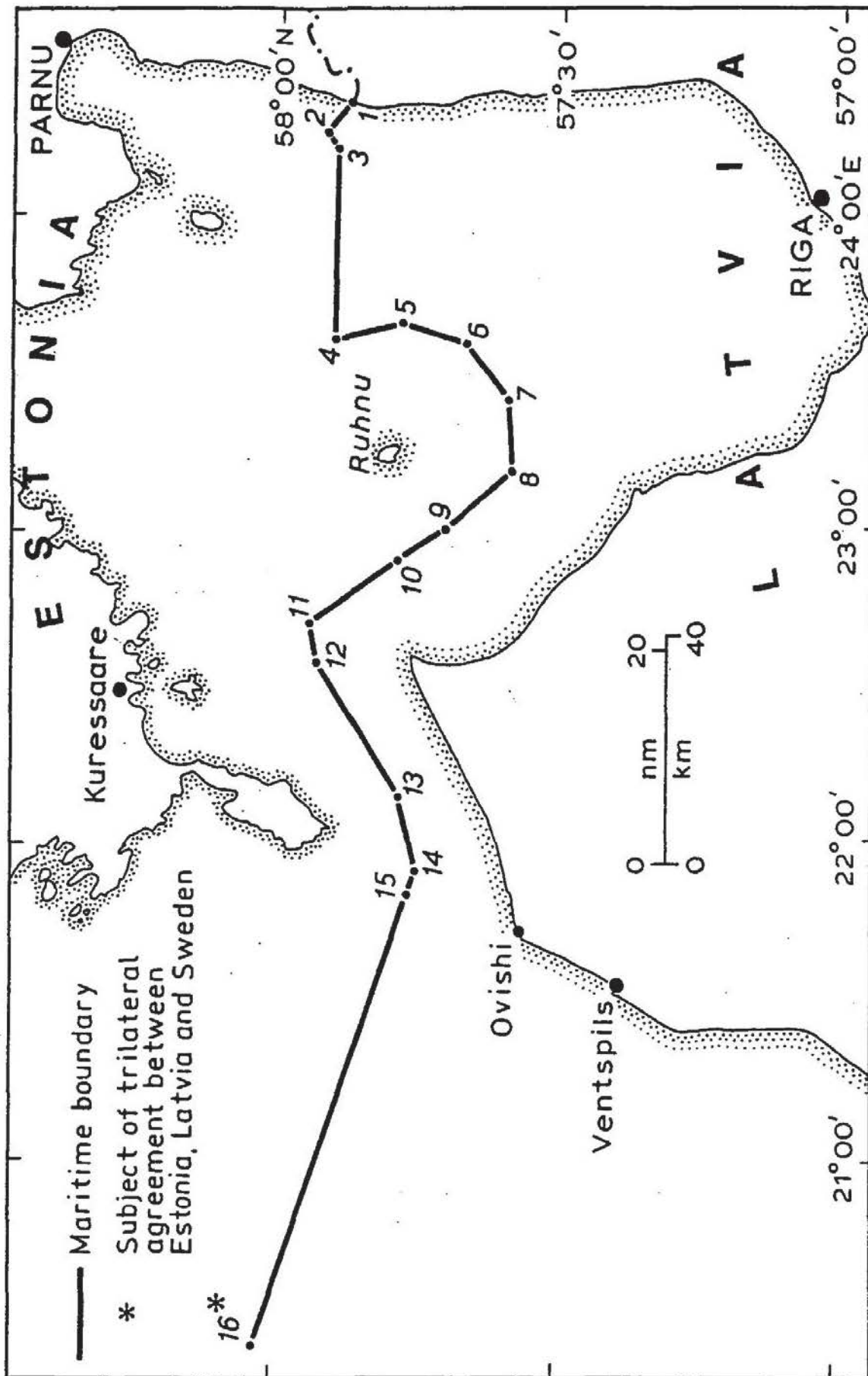


Figure 1 Estonia-Latvia Agreement
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Estonia-Latvia Agreement

The agreement between Estonia and Latvia creates a maritime boundary where no such boundary existed before, at least not during the Soviet era. It is true that both countries had already agreed on a boundary prior to World War II,⁵ but at that time these countries only claimed a 3-mile territorial sea and, therefore, the practical impact of this existing boundary on the present day situation should not be over-estimated.

At the centre of the problem lay the fishing activities in the Gulf of Riga, which escalated during the spring of 1995.⁶ With many ups and downs the parties finally arrived at the conclusion of the present agreement.⁷ From a delimitation point of view two issues deserve special attention. First, was the question of whether the Gulf of Riga had to be considered as an historic bay or not. Secondly, was the rather difficult issue of the exact weight to be attributed to the island of Ruhnu, belonging to Estonia but located closer to the Latvian than the Estonian coast in the Gulf of Riga. As it turned out, each party proved to have a quite different position on these issues. Both elements will be addressed in turn.

The historic bay concept, which can be traced back to Imperial Russian writings and was later taken over by the Soviet jurists,⁸ found its ultimate exposition in a 1947 governmental proclamation.⁹ This claim was sustained by Soviet writers until the eve of the disintegration of the former Soviet Union.¹⁰ This particular claim has, moreover, to be related to the establishment by the Soviet Council of Ministers of a list of geographic coordinates in 1985 establishing the Soviet baseline in the Baltic Sea,¹¹ which suggested that the

⁵ Based on the Convention between Estonia and Latvia Regarding the Delimitation on the Spot of the Frontier Between the Two States, and also Regarding the Rights of the Citizens in the Frontier Zone and the Status of Immovable Property Intersected by the Frontier Line, 19 October 1920, (1920) 17 LNTS 437.

⁶ *Moscow News* (No. 18) (12-18 May 1995), p. 8.

⁷ For a more detailed account of the tortuous road leading up to the present agreement, see E. Franckx, "Maritime Delimitation in the Eastern Baltic Sea: Internet and Scientific Research" (in Dutch) in P. De Meyere, E. Franckx, J. Henkaerts and K. Malfliet (eds.), *Oost-Europa in Europa* [Essays in Honour of Frits Gorlé] (Brussels, VUB Press, 1996), pp. 275, 281 and 296-301; and E. Franckx, "Maritime Boundaries in the Baltic" (to be published in 1997 in the proceedings of the conference "Boundaries and Energy: Problems and Prospects" organised by the International Boundaries Research Unit of the University of Durham, UK, on 18-19 July 1996).

⁸ P. Solodovnikoff, *La navigation maritime dans la doctrine et la pratique soviétiques* (Paris, Librairie Générale de Droit et de Jurisprudence, 1980), p. 299.

⁹ Decree of 10 April 1947, On the Proclamation of Bays and Islands Located in the Northern Arctic Ocean and Baltic Sea as Territory of the USSR, as noted by A. Reynolds, "Is Riga an Historic Bay?", (1987) 2 LJECL 20 and 22; note 11.

¹⁰ See, for instance, F. Volkov (ed.), *International Law* (K. Pilarski trans., Moscow, Progress Publishers, 1990), p. 223.

¹¹ Decree of 15 January 1985, On the Confirmation of a List of Geographic Coordinates Determining the Position of the Baseline in the Arctic Ocean, the Baltic Sea and Black Sea from which the Width of the Territorial Waters, Economic Zone and Continental Shelf of the USSR is Measured, in *Izveshcheniia Moreplavateliam* [Notices to Mariners] (1986), vol. 1, Annex, pp. 22-39 and 47.

Gulf of Riga had to be considered to form part of Soviet internal waters since it totally enclosed this area by a system of straight baselines.¹² The fundamental question therefore arose whether both parties were to continue this practice.¹³ An essential element in such a juridical construction appears to be the consent of all the parties involved.¹⁴ And even though Latvia definitely saw some merit in this particular approach,¹⁵ this line of thought was abandoned at an early stage because of fundamental Estonian objections.¹⁶ Estonia feared creating a precedent which the Russian Federation would be only too willing to apply to the disputed Narva River area.¹⁷

Also on the question of Ruhnu island, both parties proved not to be on the same wavelength. Estonia had incorporated this island into its system of straight baselines, as established in 1993,¹⁸ apparently implying that full weight had to be given to Ruhnu island. Latvia, on the other hand, stressing the fact that the inclusion of Ruhnu island in the system of straight baselines inside the Gulf of Riga is the main reason why this system does not follow the general direction of the coast, and as a consequence should be considered as clearly at variance with present day international law, took the position that the influence of this island on the delimitation should be substantially downgraded. The matter was further complicated by the actual location of the fishing grounds in the vicinity of this island. These had always been open to the fishermen of both countries, during the Soviet era¹⁹ as well as during the inter-war period.²⁰ The fact that it was Latvia which relied most heavily on these fishery resources only further

¹² Because of the continued exercise of complete sovereignty over these waters, certainly since 1947, the possible application to these enclosed water expanses of Art. 8(2) of the LOS Convention would appear rather problematical.

¹³ Leaving aside the difficulties to justify such position with respect to the fact that these three Baltic republics, as a matter of principle, did not consider themselves to be the successor states of the former Soviet Union, the International Court of Justice sustained this point of view during the early 1990s by stating in one of its judgments: "[T]here seems no reason in principle why a secession should not create a joint sovereignty where a single and undivided maritime area passes to two or more new States." See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* [1992] ICJ Rep 351 at para. 399.

¹⁴ J. Charney, "Maritime Jurisdiction and Secession of States: The Case of Québec", (1992) 25 *Vanderbilt Journal of Transnational Law* 343, 368. See also *Land, Island and Maritime Frontier Dispute*, note 13 above at para. 394.

¹⁵ See *Baltic News Service* (3 July 1995), via Internet.

¹⁶ As stressed for instance in *Baltic News Service* (22 May 1995), via Internet.

¹⁷ For a succinct account of the boundary dispute between both countries, see I. Jääts, "East of Narva and Petserimaa" in T. Forsberg (ed.), *Contested Territory: Border Disputes at the Edge of the Former Soviet Empire* (Aldershot, Edward Elgar Publishing Ltd., 1995), pp. 188–201.

¹⁸ Law on the Boundaries of the Maritime Tract, 10 March 1993, Appendix 1 (The Baseline of the Territorial Sea of the Republic of Estonia), Points 28–34, as reprinted in *UN Law of the Sea Bulletin*, 25 (1994) 55–64.

¹⁹ When the Gulf of Riga was considered to be internal waters. See notes 8 to 12 above and accompanying text.

²⁰ With both parties claiming a 3-mile territorial sea, the fishery issue inside the Gulf of Riga never really created a problem.

complicated the matter.²¹ The problem was finally solved by enclaving Ruhnu island by means of a 12 n.m. zone. The fishery question, on the other hand, was completely dissociated from the boundary agreement.²²

Outside the Gulf of Riga, the delimitation is based on the construction of a line perpendicular to the eastern closing line of the Gulf of Riga. This line will continue to a point to be agreed upon with Sweden by means of a trilateral agreement.

Estonia-Finland Agreement

The dispute between Estonia and Finland was of a totally different nature. In principle, the main aim of the negotiations was not to try to establish a maritime boundary in areas where no such boundary existed before. In fact, only a very minor part of this agreement could fit such a description. What the Estonia-Finland Agreement did rather was to provide an answer to the much more subtle question about the exact legal value to be attributed under international law to the previously concluded maritime boundary agreements, *in casu* by the former Soviet Union.²³

For several years the parties side-stepped the crux of the issue on a provisional basis. Indeed, in 1992 Estonia and Finland started out by concluding an interim agreement.²⁴ Since no final agreement had yet been reached between the parties

²¹ Roughly speaking, about two-thirds of the fishery effort in the Gulf of Riga during the last decade is to be attributed to Latvia, the remaining one-third to Estonia. The regained independence of both countries did not change this ratio.

²² It should be noted that the fishery issue, which formed the crux of the whole problem, is totally left out of the operative part of the Agreement. A preliminary agreement reached between the two prime ministers in the Latvian border town of Rujiena on 12 May, which made the conclusion of the present delimitation agreement possible, explicitly provided that a fishery agreement would have to be concluded before 1 September 1996. See Franckx, note 7 above. By the end of 1996, no such agreement had seen the light of day.

²³ Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Concerning the Boundaries of Sea Areas and of the Continental Shelf in the Gulf of Finland, 20 May 1965, 566 UNTS 37; Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Concerning the Boundaries of the Continental Shelf between Finland and the Soviet Union in the North-Eastern Part of the Baltic Sea, 5 May 1967, 640 UNTS 37; Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Regarding the Delimitation of the Areas of Finnish and Soviet Jurisdiction in the Field of Fishing in the Gulf of Finland and the North-Eastern Part of the Baltic Sea, 25 February 1980; and Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics Regarding the Delimitation of the Economic Zone, the Fishery Zone and the Continental Shelf in the Gulf of Finland and the North-Eastern Part of the Baltic Sea, 5 February 1985. English translations of the latter two texts can be found in E. Franckx, "'New' Soviet Delimitation Agreements with its Neighbors in the Baltic Sea", (1988) 19 *Ocean Development and International Law* 143, 157-8 and 154-5 respectively. English texts of all four agreements can also be found in Charney and Alexander, note 4 above at vol. 2, pp. 1966-9, 1977-8, 1986-7 and 1995-6 respectively.

²⁴ Agreement on the Provisional Application of Some Treaties between Finland and the Soviet Union in the Relations between Finland and Estonia, 20 March 1992. Swedish translation kindly provided by Mr. M. Koskenniemi, at that time forming part of the Ministry of Foreign Affairs of Finland. All four treaties mentioned in note 23 above were included in this list.

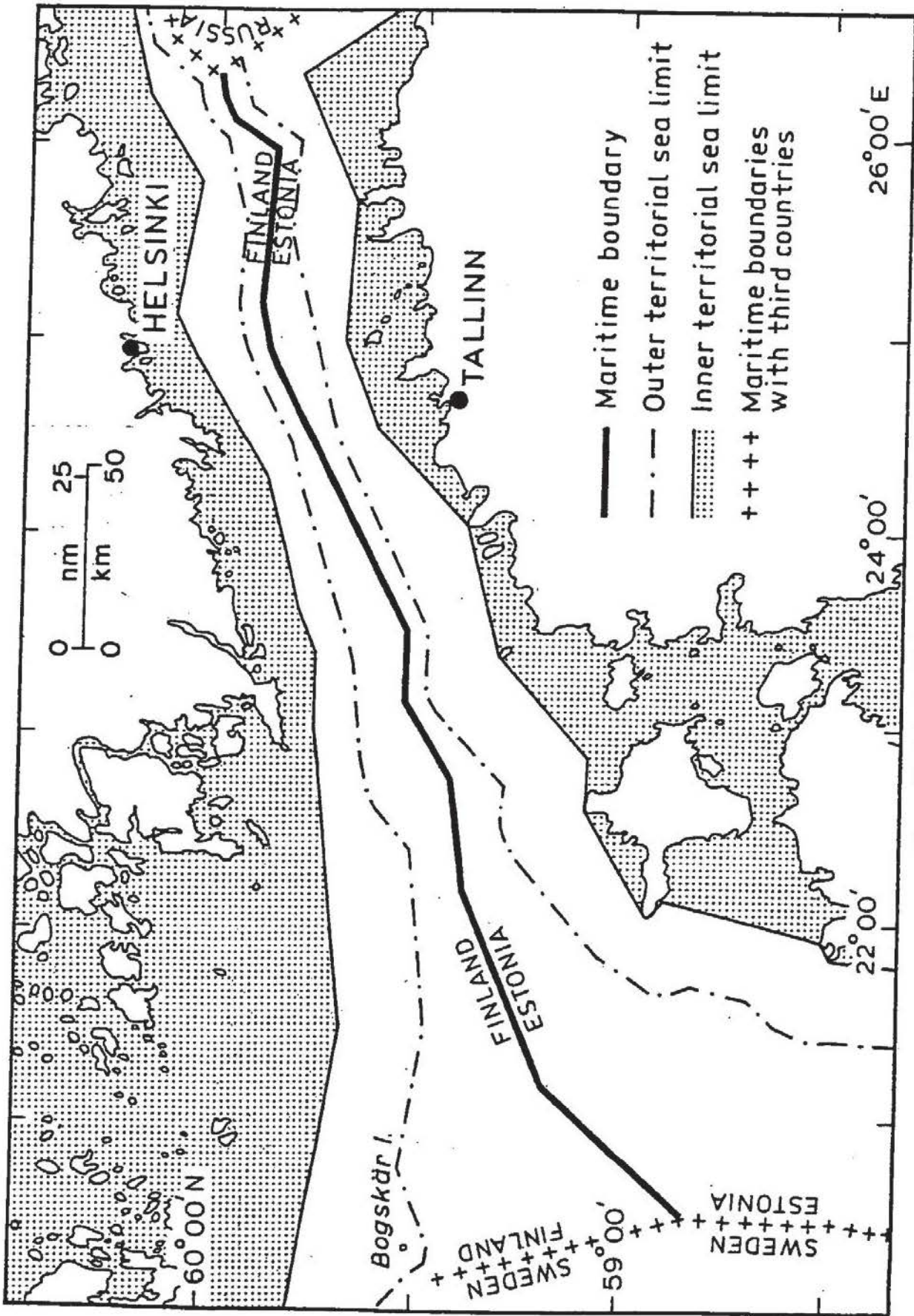


Figure 2 Estonia-Finland Agreement
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at the end of this first period,²⁵ the latter was extended for another two years.²⁶ It was clearly stressed that the agreements themselves had not entered into force between the parties, but that the latter had only agreed that the content of these agreements would be applied *ad interim*.²⁷ Both countries now have recently terminated the interim agreement by concluding a definite agreement on the subject.

The final outcome seems to indicate that the whole operation can be characterised as a storm in a teacup. Out of the 17 points listed in the agreement, 16 correspond to turning points already established by the former Soviet Union in its relations with Finland. Only the last point is totally new. But this segment of the line is special, for it covers a maritime area in which the former Soviet Union and Finland had never been able to arrive at a delimitation. In other words, in as far as a maritime boundary line existed at the time of the dissolution of the Soviet Union, that line has now been taken over, point by point, by Estonia and Finland to form the basis of the new agreement.

The only real novelty introduced by the Estonia–Finland Agreement therefore concerns the last point listed in Article 2. This turning point touches upon the most difficult problem of the exact effect to be attributed to the Bogskär island group belonging to Finland. The latter, which consists primarily of two uninhabited rocks with a total area of approximately 4–5 sq. km., is located close to the hypothetical tri-junction point with Sweden. In its relationship with Sweden, Finland had just arrived at a political compromise in this respect.²⁸ The present agreement allowed the parties to close the remaining gap around this tri-junction somewhat further from the east.²⁹ Totally in line with a well-established practice in the Baltic Sea, the agreement finally leaves the two tri-junction points open for later determination with the interested parties.³⁰

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²⁵ This period ran until 9 January 1995.

²⁶ Information kindly obtained from Mrs M. Letho, Ministry of Foreign Affairs of Finland on 31 May 1995.

²⁷ M. Koskenniemi and M. Letho, "La succession d'états dans l'ex-URSS, en ce qui concerne particulièrement les relations avec la Finlande", (1992) 38 *Annuaire français de droit international* 179 and 217.

²⁸ On the Bogskär issue, see E. Franckx, "Baltic Sea: Finland–Sweden Delimitation Agreement", (1996) 11 *IJMCL* 394, 397–8 For a more exhaustive elaboration of this specific issue, see by the same author, "Finland and Sweden Complete Their Maritime Boundary in the Baltic Sea", (1996) 27 *Ocean Development and International Law* 291, 295 and 299–303.

²⁹ The new segment agreed upon measures about 30 n.m.

³⁰ Art. 2, paras. 1 and 3.

Appendix 1

Agreement between the Republic of Estonia and the Republic of Latvia on the Maritime Delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea

THE REPUBLIC OF ESTONIA AND THE REPUBLIC OF LATVIA, hereinafter referred to as the Parties, DESIRING to establish the maritime boundary between the two States in the Gulf of Riga, the Strait of Irbe and the Baltic Sea,

ACKNOWLEDGING the provisions of the 1982 United Nations Convention on the Law of the Sea and the general principles of international law as a basis for such a maritime delimitation,

RECALLING the importance of ensuring freedom of navigation and overflight for each other's vessels and aircraft in accordance with international law,

WISHING to contribute to stability in the Baltic Sea region in general, and in particular to stability in the area being delimited,

RECALLING the traditional cooperation between the Parties in the Gulf of Riga, the Strait of Irbe and the Baltic Sea,

RECOGNIZING the obligation under international law of protecting the marine environment,

DESIRING to cooperate with each other in the Gulf of Riga, the Strait of Irbe and the Baltic Sea with regard to the conservation, exploration and exploitation of living resources in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea,

NOTING the Agreement between the Republic of Estonia and the Republic of Latvia on the Reestablishment of the State Border of 20 March, 1992,

HAVE AGREED AS FOLLOWS:

Article 1

The maritime boundary between the Republic of Estonia and the Republic of Latvia in the Gulf of Riga, the Strait of Irbe and in the Baltic Sea referred to in this Agreement is the maritime boundary with respect to the territorial seas, the exclusive economic zones, the continental shelf, and any other maritime zones which might be established by the contracting Parties in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea and principles of international law.

Article 2

The maritime boundary between the Republic of Estonia and the Republic of Latvia in the Gulf of Riga and the Strait of Irbe consists of straight geodetic lines connecting the points with the following geographical coordinates:

#1	57° 52.471' N	24° 21.406' E
#2	57° 55.033' N	24° 15.667' E
#3	57° 53.950' N	24° 12.567' E
#4	57° 53.950' N	23° 36.067' E
#5	57° 46.974' N	23° 38.910' E
#6	57° 40.173' N	23° 34.940' E
#7	57° 35.630' N	23° 24.361' E
#8	57° 35.183' N	23° 10.850' E

#9	57° 42.133' N	22° 59.950' E
#10	57° 46.831' N	22° 54.461' E
#11	57° 56.450' N	22° 42.450' E
#12	57° 55.644' N	22° 35.016' E
#13	57° 46.750' N	22° 08.600' E
#14	57° 44.967' N	21° 54.967' E
#15	57° 45.783' N	21° 50.567' E

All positions in the Agreement and the azimuth referred to in Article 3 are defined in the World Geodetic System 1984 (WGS-84).

The location of the maritime boundary between the Republic of Estonia and the Republic of Latvia is illustrated on the map annexed to the present Agreement.

Article 3

The maritime boundary between the Republic of Estonia and the Republic of Latvia continuing into the Baltic Sea from point #15 defined in Article 2 as a straight geodetic line in the azimuth of 289°19.35' up to the boundary of the exclusive economic zone and the continental shelf of the Kingdom of Sweden. The azimuth is defined by adding 90 to the azimuth at the median point of the straight geodetic line between the point at the Southern Rock of Cape Loode with geographical coordinates 57°57.4760' N; 21°58.2789' E and the point at Ovisi Lighthouse with geographical coordinates 57°34.1234' N; 21°42.9574' E.

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

Article 4

The parties shall notify each other of changes to their baselines and the limits of their territorial seas and their exclusive economic zones in the Strait of Irbe, the Gulf of Riga and the Baltic Sea.

Each Party shall give due publicity to the charts and lists of geographical coordinates specifying the geodetic data and shall deposit a copy of such charts and lists with the Secretary General of the United Nations.

Article 5

Any dispute between the Parties arising out of the interpretation or implementation of the present agreement shall in the first instance be settled by consultations or negotiations, or using other means of peaceful settlement of disputes provided for by international law.

Article 6

This Agreement shall be subject to ratification.

This Agreement shall enter into force on the date of exchange of the instruments of ratification.

Article 7

This Agreement has been concluded for an indefinite period of time.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at Tallinn, 12 July 1996 in duplicate in Estonian, Latvian and English languages, each text being equally authentic. In case of any divergence of interpretation the English text shall prevail.

For the Republic of Estonia
Tiit VAHI

For the Republic of Latvia
Andris SKELE

Protocol between the Prime Minister of the Republic of Estonia and the Minister President of the Republic of Latvia

The Prime Minister of the Republic of Estonia Mr. Tiit Vahi and the Minister President of Latvia Mr. Andris Skele,

TAKING INTO ACCOUNT that the Agreement between the Republic of Estonia and the Republic of Latvia on the maritime delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea was signed on July 12, 1996,

REALIZING that due to the delimitation the two buoys on the farwater at the entrance into the Strait of Irbe which are the property of the Republic of Latvia now are situated in the waters of the Republic of Estonia,

DESIRING to settle the issue of ownership, maintenance and the service of the buoys mentioned above,
HAVE AGREED AS FOLLOWS:

1. Not later than one year after the Agreement between the Republic of Estonia and the Republic of Latvia on the delimitation of the maritime boundary in the Gulf of Riga, the Strait of Irbe and the Baltic Sea has entered into force the Republic of Estonia shall undertake all duties relating to the maintenance of the buoys, the geographical coordinates of which are:

#1	57° 51' 02.32" N	21° 37' 04.47" E
#2	57° 47' 29.31" N	21° 42' 07.48" E

2. The transfer of ownership of the buoys mentioned above shall be settled by the relevant authorities of the Republic of Estonia and the Republic of Latvia.

3. Until the transfer of ownership and duties will take place, the maintenance of the buoys mentioned above shall be performed by the Republic of Latvia.

DONE at Tallinn, 12 July 1996.

Tiit VAHI
The Prime Minister
of the Republic of Estonia

Andris SKELE
The Minister President
of the Republic of Latvia

Appendix 2

Agreement between the Republic of Finland and the Republic of Estonia on the Boundary of the Maritime Zones in the Gulf of Finland and the Northern Baltic Sea

THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE REPUBLIC OF ESTONIA, HAVING DECIDED to agree on the delimitation between the continental shelf and the fishing zone of the Republic of Finland and the economic zone of the Republic of Estonia in the Gulf of Finland and the Northern Baltic Sea, CONSIDERING the United Nations Convention on the Law of the Sea of 10 December 1982,

HAVE AGREED ON THE FOLLOWING:

Article 1

The boundary of the continental shelf and the fishing zone of the Republic of Finland and the economic zone of the Republic of Estonia is constituted by straight lines (geodetic lines), connecting the points indicated in Article 2.

The location of the points has been described by geographical longitude and latitude according to the "World Geodetic System 1984".

The course of the boundary has been designated on the map attached to the present Agreement.

Article 2

The starting point of the boundary is that point in the east on which agreement will be reached with the third state concerned.

From this point the boundary intersects the following points in the given order:

Latitude	Longitude
59°59.678'	26°20.147'
59°59.095'	26°12.666'
59°58.095'	26°07.966'
59°51.694'	25°58.067'
59°52.594'	25°27.566'
59°53.294'	25°10.166'
59°52.093'	24°57.166'
59°50.493'	24°49.266'
59°44.193'	24°24.367'
59°37.092'	23°54.367'
59°31.591'	23°29.667'
59°31.691'	23°09.567'
59°24.891'	22°45.068'
59°22.790'	22°09.868'
59°18.689'	21°46.568'
59°11.489'	21°11.168'
58°50.677'	20°28.902'

From the last point in the list the boundary runs to the point on which agreement will be reached with the third state concerned.

Article 3

The present Agreement shall come into force 15 days upon that day when the parties to the present Agreement have notified each other through diplomatic means that they have carried out the internal procedures required for the entry into force.

DRAWN UP at Helsinki on 18 October 1996 in two copies, one in Finnish and one in Estonian, both texts being equally authoritative.

On behalf of the Government of
the Republic of Finland

On behalf of the Government of
the Republic of Estonia