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international boundary consulting

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Grisbadarna (Nor./Swed.), Hague Ct. Rep. (Scott) 121 (Perm. Ct. Arb. Oct. 23, 1909).

THE GRISBADARNA CASE

between

NORWAY and SWEDEN

Decided October 23, 1909

Syllabus

By a *compromis* signed on March 14, 1908,¹ Norway and Sweden agreed to arbitrate the question of the maritime boundary between the two countries in so far as it had not been regulated by the Royal Resolution of March 15, 1904.² The arbitral tribunal was called upon to decide whether the boundary was fixed either in whole or in part by the boundary treaty of 1661, and, if not, to fix the boundary or parts thereof in accordance with the principles of international law. The tribunal consisted of a national from each of the two Governments and an umpire chosen from a neutral Power. As finally agreed upon, it was composed as follows: J. A. Loeff of Holland, F. V. N. Beichmann of Norway, and K. Hj. L. Hammarskjöld of Sweden. Only the last-named was a member of the Permanent Court of Arbitration at The Hague. The tribunal held sessions from August 28 to October 18, 1909, in the course of which it visited the disputed zone. The decision was rendered on October 23, 1909.

The tribunal found that the boundary line had not been fixed by the treaty of 1661 beyond a certain point, and that a portion of the line within that point was uncertain. The tribunal therefore fixed the boundary according to the principles in force and applied by Norway and Sweden when the original boundary treaty was made. The application of these principles resulted in a line which gave the Grisbadarna fishing banks to Sweden and the Skjöttegrunde to Norway. Such a division was also supported by the state of things which the tribunal found had actually existed for a long time, especially the use made of the banks by the fishermen of the two countries and the acts of possession and ownership exercised by the two Governments.

¹*Post*, p. 133.

²*Post*, p. 136.

AWARD OF THE TRIBUNAL

*Arbitral award in the question of the delimitation of a certain part of the maritime boundary between Norway and Sweden.—The Hague, October 23, 1909.*¹

Whereas, by convention dated March 14, 1908,² Norway and Sweden agreed to submit to the final decision of a tribunal of arbitration, comprised of a president who shall neither be a subject of either of the contracting parties nor domiciled in either of the two countries, and of two other members of whom one shall be a Norwegian and the other a Swede, the question of the maritime boundary between Norway and Sweden as far as this boundary has not been determined by the Royal Resolution of March 15, 1904;³

Whereas, in pursuance to said convention, the two Governments have appointed respectively as president and arbitrators:

Mr. J. A. Loeff, Doctor of Law and Political Sciences, former Minister of Justice, member of the Second Chamber of the States-General of the Netherlands;

Mr. F. V. N. Beichmann, President of the Court of Appeals of Trondhjem, and

Mr. K. Hj. L. Hammarskjöld, Doctor of Law, former Minister of Justice, former Minister of Public Worship and Public Construction, former Envoy Extraordinary and Minister Plenipotentiary to Copenhagen, former President of the Court of Appeals of Jönköping, former professor in the Faculty of Law of Upsal, Governor of the Province of Upsal, member of the Permanent Court of Arbitration;

Whereas, in accordance with the provisions of the convention, the memorials, counter-memorials, and replies have been duly exchanged between the parties and communicated to the arbitrators within the periods fixed by the president of the tribunal;

Whereas, the two Governments have respectively appointed as agents, to wit:

The Government of Norway, Mr. Kristen Johanssen, attorney at the Supreme Court of Norway; and the Government of Sweden, Mr. C. O. Montan, former member of the Court of Appeals of Svea, judge in the Mixed Court of Alexandria;

¹*American Journal of International Law*, vol. 4, p. 226. For the original French text, see Appendix, p. 487.

²*Post*, p. 133.

³*Post*, p. 136.

Whereas, it has been agreed by Article 2 of the convention :

1. That the tribunal of arbitration shall determine the boundary line in the waters from point 18 on the chart¹ annexed to the proposal of the Norwegian and Swedish commissioners of August 18, 1897, into the sea up to the limit of the territorial waters ;

2. That the lines limiting the zone which is the subject of litigation in consequence of the conclusions of the parties and within which the boundary-line shall consequently be established, must not be traced in such a way as to comprise either islands, islets, or reefs which are not constantly under water ;

Whereas, it has likewise been agreed by Article 3 of the said convention :

1. That the tribunal of arbitration shall determine whether the boundary line is to be considered, either wholly or in part, as being fixed by the boundary treaty of 1661 together with the chart thereto annexed, and in what manner the line thus established should be traced.

2. That, as far as the boundary-line shall not be considered as established by said treaty and said chart, the tribunal shall determine this boundary-line, taking into account the circumstances of fact and the principles of international law ;

Whereas, the agents of the parties have presented the following conclusions to the tribunal :

The agent of the Norwegian Government :

That the boundary between Norway and Sweden within the zone which constitutes the object of the arbitral decision, shall be determined in accordance with the line indicated on the chart annexed, under No. 35, to the memorial presented in behalf of the Norwegian Government.

And the agent of the Swedish Government :

I. As regards the preliminary questions :

May it please the tribunal of arbitration to declare that the boundary-line in dispute, as regards the space between point 18 as already fixed on the chart of the commissioners of 1897, and point A on the chart of the boundary treaty of 1661, is but incompletely established by the said treaty and the chart annexed thereto, for the reason that the exact situation of this point is not shown clearly therein, and, as regards the rest of the space, extending westward from the same

¹*Post*, opposite p. 140.

point A to the territorial boundary, that the boundary-line was not established at all by these documents.

II. As regards these main questions:

1. May it please the tribunal to be guided by the treaty and chart of 1661, to take into account the circumstances of fact and the principles of the law of nations, and to determine the maritime boundary-line in dispute between Sweden and Norway from point 18 as already fixed, in such a manner that in the first place the boundary-line shall be traced in a straight line to a point which constitutes the middle point of a straight line, connecting the northernmost reef of the Rösökären, belonging to the Koster Islands, that is to say, the reef indicated on table 5 of the report of 1906 as being surrounded with depths 9, 10 and 10 [*sic.*], and the southernmost reef of the Svatskjär, belonging to the Tisler Islands, and which is furnished with a beacon, which point is indicated on the same table 5 as the point 19.

2. May it please the tribunal further to take account of the circumstances of fact and the principles of the law of nations and establish the rest of the disputed boundary in such a manner that—

(a) Starting from the point fixed according to the conclusions of paragraph 1 and designated as point 19, the boundary-line shall be traced in a straight line to a point situated midway on a straight line connecting the northernmost of the reefs indicated under the name of Stora Drammen, on the Swedish side and the Hejeknub rock, situated to the southeast of Heja Island, on the Norwegian side, which point is indicated on the said table 5 as point 20; and

(b) Starting from the point last-mentioned, the boundary shall be traced in a straight line due west as far into the sea as the maritime territories of the two nations are supposed to extend;

Whereas, the line mentioned in the conclusions of the Norwegian agent is traced as follows:

From point 18 as indicated on the chart of the commissioners of 1897, in a straight line to point 19 situated midway on a line drawn between the southernmost reef of the Svatskjär (the reef which is furnished with a beacon) and the northernmost reef of the Rösökären;

From this point 19 in a straight line to point 20, situated midway on a line drawn between the southernmost reef of the Heiefluer

(söndre Heieflu) and the northernmost of the reefs comprised under the name of Stora Drammen;

From this point 20 to point 20a, following a perpendicular drawn from the middle of the last-mentioned line.

From this point 20a to point 20b, following a perpendicular drawn from the middle of the line connecting the said southernmost reef of the Heieflu with the southernmost of the reefs comprised under the name of Stora Drammen.

From this point 20b to point 20c, following a perpendicular drawn from the middle of a line connecting the Söndre Heieflu with the small reef situated to the north of Klöfningen islet near Mörholmen.

From this point 20c to point 20d, following a perpendicular drawn from the middle of a line connecting the Midtre Heieflu with the said reef to the north of Klöfningen islet.

From this point 20d, following a perpendicular drawn from the middle of the line connecting the Midtre Heieflu with a small reef situated west of the said Klöfningen to point 21, where the circles cross which are drawn around said reefs with a radius of 4 nautical miles (60 to a degree).

Whereas, after the tribunal had visited the disputed zone, examined the documents and maps which had been presented to it, and heard the pleas and replies as well as the explanations furnished it at its request, the discussion was declared terminated at the session of October 18, 1909;

Whereas, as regards the interpretation of certain expressions used in the convention and regarding which the two parties expressed different opinions during the course of the discussion,

In the first place, the tribunal is of opinion that the clause in accordance with which it is to determine the boundary-line in the sea *as far as the limit of the territorial waters* has no other purpose than to exclude the possibility of an incomplete determination, which might give rise to a new boundary dispute in future; and

It was obviously not the intention of the parties to fix in advance the terminal point of the boundary, so that the tribunal would have only to determine the direction between two given points;

In the second place, the clause in accordance with which the lines bounding the zone which may be the subject of dispute in consequence of the conclusions of the parties *must not be traced in such*

a manner as to comprise either islands, islets, or reefs which are not constantly under water can not be interpreted so as to imply that the islands, islets, and reefs aforementioned ought necessarily to be taken as points of departure in the determination of the boundary;

Whereas, therefore, in the two respects aforementioned, the tribunal preserves full freedom to pass on the boundary within the limits of the respective contentions;

Whereas, under the terms of the convention, the task of the tribunal consists in determining the boundary line in the water from the point indicated as 18 on the chart annexed to the project of the Norwegian and Swedish commissioners of August 18, 1897, in the sea as far as the limit of the territorial waters;

Whereas, as regards the question, "whether the boundary-line should be considered, either wholly or in part, as being fixed by the boundary treaty of 1661 and the map thereto annexed," the answer to this question should be negative, at least as regards the boundary-line beyond point A on the aforementioned map;

Whereas, the exact situation of point A on this chart can not be determined with absolute precision, but at all events it is a point situated between points 19 and 20, as these points will be determined hereinafter;

Whereas, the parties in litigation agree as regards the boundary-line from point 18 on the chart of August 18, 1897, to point 19 as indicated in the Swedish conclusions;

Whereas, as regards the boundary-line from the said point 19 to a point indicated by 20 on the charts annexed to the memorials, the parties likewise agree, except that they differ with regard to whether, in determining point 20, the Heiefluer or the Heiekneb should be taken as a starting point from the Norwegian side;

Whereas, in this connection, the parties have adopted, at least in practice, the rule of making the division along the median line drawn between the islands, islets, and reefs situated on both sides and not constantly submerged, as having been in their opinion the rule which was applied on this side of point A by the treaty of 1661;

The adoption of a rule on such grounds should, without regard to the question whether the rule invoked was really applied by said

treaty, have as a logical consequence, in applying it at the present time, that one should take into account at the same time the circumstances of fact which existed at the time of the treaty;

Whereas, the Heiefluer are reefs which, it may be asserted with sufficient certainty, did not immerge from the water at the time of the boundary treaty of 1661 and consequently they could not have served as a starting point in defining a boundary;

Whereas, therefore, from the above-mentioned standpoint the Heieknub should be preferred to the Heiefluer;

Whereas, point 20 being fixed, there remains to be determined the boundary from this point 20 to the limit of the territorial waters;

Whereas, point 20 is situated, without any doubt, beyond point A as indicated on the chart annexed to the boundary treaty of 1661;

Whereas, Norway has held the contention, which for that matter has not been rejected by Sweden, that from the sole fact of the Peace of Roskilde in 1658 the maritime territory in question was divided automatically between her and Sweden;

Whereas, the tribunal fully indorses this opinion;

Whereas, this opinion is in conformity with the fundamental principles of the law of nations, both ancient and modern, in accordance with which the maritime territory is an essential appurtenance of land territory, whence it follows that at the time when, in 1658, the land territory called the Bohuslan was ceded to Sweden, the radius of maritime territory constituting an inseparable appurtenance of this land territory must have automatically formed a part of this cession;

Whereas, it follows from this line of argument that in order to ascertain which may have been the automatic dividing line of 1658 we must have recourse to the principles of law in force at that time;

Whereas, Norway claims that, inside (on this side) of the Koster-Tisler line, the rule of the boundary documents of 1661 having been that the boundary ought to follow the median line between the islands, islets, and reefs on both sides, the same principle should be applied with regard to the boundary beyond this line;

Whereas, it is not demonstrated that the boundary-line fixed by the treaty and traced on the boundary chart was based on this rule.

and there are some details and peculiarities in the line traced which even give rise to serious doubts in this regard, and even if one admitted the existence of this rule in connection with the boundary-line fixed by the treaty, it would not necessarily follow that the same rule ought to have been applied in determining the boundary in the exterior territory;

Whereas, in this connection,

The boundary treaty of 1661 and the chart thereto annexed make the boundary-line *begin* between the Koster and Tisler Islands;

Whereas, in determining the boundary-line they went in a direction from the sea toward the coast and not from the coast toward the sea;

Whereas, it is out of the question to say that there might have been a continuation of this boundary-line in a seaward direction;

Whereas, consequently, the connecting link is lacking in order to enable us to presume, without decisive evidence, that the same rule was applied simultaneously to the territories situated this side and to those situated that side of the Koster-Tisler line;

Whereas, moreover, neither the boundary treaty nor the chart appertaining thereto mention any islands, islets, or reefs situated beyond the Koster-Tisler line, and therefore, in order to keep within the probable intent of these documents we must disregard such islands, islets, and reefs;

Whereas, again, the maritime territory belonging to a zone of a certain width presents numerous peculiarities which distinguish it from the land territory and from the maritime spaces more or less completely surrounded by these territories;

Whereas, furthermore, in the same connection, the rules regarding maritime territory can not serve as a guide in determining the boundary between two contiguous countries, especially as, in the present case, we have to determine a boundary which is said to have been automatically traced in 1658, whereas the rules invoked date from subsequent centuries;

And it is the same way with the rules of Norwegian municipal law concerning the definition of boundaries between private properties or between administrative districts;

Whereas, for all these reasons, one can not adopt the method by which Norway has proposed to define the boundary from point 20 to the territorial limit;

Whereas, the rule of drawing a median line midway between the inhabited lands does not find sufficient support in the law of nations in force in the seventeenth century;

Whereas, it is the same way with the rule of the *thalweg* or the most important channel, inasmuch as the documents invoked for the purpose do not demonstrate that this rule was followed in the present case. And,

Whereas, we shall be acting much more in accord with the ideas of the seventeenth century and with the notions of law prevailing at that time if we admit that the automatic division of the territory in question must have taken place according to the general direction of the land territory of which the maritime territory constituted an appurtenance, and if we consequently apply this same rule at the present time in order to arrive at a just and lawful determination of the boundary;

Whereas, consequently, the automatic dividing line of 1658 should be determined (or, what is exactly the same thing expressed in other words), the delimitation should be made to-day by tracing a line perpendicularly to the general direction of the coast, while taking into account the necessity of indicating the boundary in a clear and unmistakable manner, thus facilitating its observation by the interested parties as far as possible;

Whereas, in order to ascertain what is this direction we must take equally into account the direction of the coast situated on both sides of the boundary;

Whereas, the general direction of the coast, according to the expert and conscientious survey of the tribunal, swerves about 20 degrees westward from due north, and therefore the perpendicular line should run toward the west to about 20 degrees to the south;

Whereas, the parties agree in admitting the great unsuitability of tracing the boundary-line across important bars; and

A boundary-line drawn from point 20 in a westerly direction to 19 degrees to the south would completely obviate this inconvenience, since it would pass just to the north of the Grisbadarna and to the south of Skjöttegrunde and would also not cut through any other important bank; and

Consequently, the boundary-line ought to be traced from point 20 westward to 19 degrees south, so that it would pass midway between

the Grisbadarna banks on the one side and Skjöttegrunde on the other;

Whereas, although the parties have not indicated any marks of alignment for a boundary-line thus traced there is reason to believe that it will not be impossible to find such marks;

Whereas, on the other hand, we could, if necessary, avail ourselves of other known methods of marking the boundary;

Whereas, a demarkation which would assign the Grisbadarna to Sweden is supported by all of several circumstances of fact which were pointed out during the discussion and of which the following are the principal ones:

(a) The circumstance that lobster fishing in the shoals of Grisbadarna has been carried on for a much longer time, to a much larger extent, and by a much larger number of fishermen by the subjects of Sweden than by the subjects of Norway.

(b) The circumstance that Sweden has performed various acts in the Grisbadarna region, especially of late, owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty; whereas Norway, according to her own admission, showed much less solicitude in this region in these various regards;

Whereas, as regards the circumstance of fact mentioned in paragraph a above, it is a settled principle of the law of nations that a state of things which actually exists and has existed for a long time should be changed as little as possible; and

This rule is specially applicable in a case of private interests which, if once neglected, can not be effectively safeguarded by any manner of sacrifice on the part of the Government of which the interested parties are subjects; and

Lobster fishing is much the most important fishing on the Grisbadarna banks, this fishing being the very thing that gives the banks their value as fisheries; and

Without doubt the Swedes were the first to fish lobsters by means of the tackle and craft necessary to engage in fishing as far out at sea as the banks in question are situated; and

Fishing is, generally speaking, of more importance to the inhabitants of Koster than to those of Hvaler, the latter having, at least until comparatively recent times, engaged rather in navigation than fishing; and

From these various circumstances it appears so probable as to be almost certain that the Swedes utilized the banks in question much earlier and much more effectively than the Norwegians; and

The depositions and declarations of the witnesses are, generally speaking, in perfect harmony with this conclusion; and

The arbitration convention is likewise in full accord with the same conclusion; and

According to this convention there is a certain connection between the enjoyment of the fisheries of the Grisbadarna and the keeping up of the light-boat, and, as Sweden will be obliged to keep up the light-boat as long as the present state of affairs continues, this shows that, according to the arguments of this clause, the principal enjoyment thereof is now due to Sweden;

Whereas, as regards the circumstances of fact as mentioned under *b*:

As regards the placing of beacons and of a light-boat—

The stationing of a light-boat, which is necessary to the safety of navigation in the regions of Grisbadarna, was done by Sweden without meeting any protest and even at the initiative of Norway, and likewise a large number of beacons were established there without giving rise to any protests; and

This light-boat and these beacons are always maintained by Sweden at her own expense; and

Norway has never taken any measures which are in any way equivalent except by placing a bell-buoy there at a time subsequent to the placing of the beacons and for a short period of time, it being impossible to even compare the expenses of setting out and keeping up this buoy with those connected with the beacons and the light-boat; and

It is shown by the foregoing that Sweden had no doubt as to her rights over the Grisbadarna and that she did not hesitate to incur the expenses incumbent on the owner and possessor of these banks even to the extent of a considerable sum of money.

As to the measurements of the sea—

Sweden took the first steps, about thirty years before the beginning of any dispute, toward making exact, laborious, and expensive measurements of the regions of Grisbadarna, while the measurements made some years later by Norway did not even attain the limits of the Swedish measurements. And

Whereas, therefore, there is no doubt whatever that the assignment of the Grisbadarna banks to Sweden is in perfect accord with the most important circumstances of fact;

Whereas, a demarkation assigning the Skjöttegrunde (which are the least important parts of the disputed territory) to Norway is sufficiently warranted by the serious circumstance of fact that, although one must infer from the various documents and testimony that the Swedish fishermen, as was stated above, have carried on fishing in the regions in question for a longer period, to a greater extent, and in greater numbers, it is certain on the other hand that the Norwegian fishermen have never been excluded from fishing there;

Whereas, moreover, it is averred that the Norwegian fishermen have almost always participated in the lobster fishing on the Skjöttegrunde in a comparatively more effective manner than at the Grisbadarna:

Therefore

The tribunal decides and pronounces:

That the maritime boundary between Norway and Sweden, as far as it was not determined by the Royal Resolution of March 15, 1904, is fixed as follows:

From point 18 situated as indicated on the chart annexed to the project of the Norwegian and Swedish commissioners of August 18, 1897, a straight line is traced to point 19, constituting the middle point of a straight line drawn from the northernmost reef of the Röskären to the southernmost reef of the Svartskjär, the one which is provided with a beacon;

From point 19 thus fixed, a straight line is traced to point 20, which constitutes the middle point of a straight line drawn from the northernmost reef of the group of reefs called Stora Drammen to the Hejeknub situated to the southeast of Heja Islands; from point 20 a straight line is drawn in a direction of west 19 degrees south, which line passes midway between the Grisbadarna

and the Skjöttegrunde south and extends in the same direction until it reaches the high sea.

Done at The Hague, October 23, 1909, in the Palace of the Permanent Court of Arbitration.

J. A. LOEFF, *President*

MICHIELS VAN VERDUYNEN, *Secretary General*

RÖELL, *Secretary*

AGREEMENT FOR ARBITRATION

Convention between Norway and Sweden for the reference to arbitration of the question of a certain portion of the sea-limit between the two countries in connection with the Grisbadarna rocks.—Signed at Stockholm, March 14, 1908.¹

His Majesty the King of Sweden and His Majesty the King of Norway, having found it desirable that the question of the sea-limit between Sweden and Norway, in so far as it was not determined by the Resolution of the 15th March, 1904,² should be referred to arbitration, have for this purpose appointed as their representatives:

His Majesty the King of Sweden: His Minister for Foreign Affairs, Eric Birger Trolle;

His Majesty the King of Norway: His Envoy Extraordinary and Minister Plenipotentiary, Paul Benjamin Vogt;

Who, after exchanging full powers, have agreed to the following conditions:

ARTICLE 1

The parties pledge themselves to the extent stated below to leave the settling of the question of the sea-limit between Sweden and Norway to a tribunal of arbitration, consisting of a president who is neither a subject of nor domiciled in either of the two countries, and of two other members: one Swede and one Norwegian. The president shall be appointed by Her Majesty the Queen of the Netherlands, the other members one each by the parties concerned. The parties, however, retain the right, should they agree, to appoint by special arrangement either the president only or the collective members of the tribunal.

¹*British and Foreign State Papers*, vol. 102, p. 731. For the original Swedish and Norwegian texts, see Appendix, p. 496.

²*Post*, p. 136.

Representation to Her Majesty the Queen of the Netherlands, or the arbitrator who may be appointed by agreement, shall be made by both parties together.

ARTICLE 2

The tribunal of arbitration shall, after having examined the case of each of the parties and their respective reasons and proofs, determine the boundary-line in the waters from point 18 on the chart¹ annexed to the Swede-Norwegian proposal of the 18th August, 1897, into the sea up to the limit of the territorial waters. It is agreed that the boundary-line of the zone which the parties maintain to be under discussion, and for which, consequently, the limit is to be defined, may not be so drawn as to include islands, islets, or reefs which are not perpetually covered with water.

ARTICLE 3

The tribunal of arbitration shall have power to determine how far the boundary-line shall be considered to be, either wholly or in part, determined by the boundary treaty of 1661, together with the chart appertaining to the same, and how such boundary-line is to be traced, and also, in so far as the boundary-line can not be considered as established by the treaty and chart in question, shall have power to determine the same, taking into account the circumstances of fact and the principles of international law.

ARTICLE 4

Until the expiry of the third calendar year after the announcement of the decision of the tribunal of arbitration, irrespective of the boundary line fixed by that decision, fishing may be carried on within the waters which, according to Article 2, are the subject of dispute by the subjects of both countries to the same extent as during the five-year period 1901–1905. In considering the extent to which fishing is carried on, regard shall be had to the number of fishermen, the kind of fish, and the manner of catching.

ARTICLE 5

It is agreed that that country on whose side of the eventual boundary-line the Grisbadarna fishing grounds are situated shall have no claim against the other country for contribution towards the expense of lightships or other arrangements on or in the neighborhood of such grounds.

¹Post, opposite p. 140.

Sweden undertakes to maintain the present light-ship situated outside the territorial limit until the expiration of the time mentioned in Article 4.

ARTICLE 6

The president of the tribunal of arbitration shall appoint the time and place for the first meeting of the tribunal and shall summon the other members to it.

Time and place for further meetings shall be decided by the tribunal of arbitration.

ARTICLE 7

The official language to be used by the tribunal shall be English, French, or German, as may be decided in consultation with the other members.

For petitions, evidence, and directions the parties may use the language of either country, the tribunal retaining the right to have translations made.

ARTICLE 8

With respect to procedure and expenses, there shall apply such portions of the regulations contained in Articles 62 to 85 of the revised Convention adopted at the Second Hague Conference of 1907 for the pacific settlement of international disputes as may be applicable.

Petitions, rejoinders, and evidence referred to in Article 63 paragraph 2, of the above-mentioned Convention, shall be filed within a period to be determined by the president of the tribunal of arbitration, but before the 1st March, 1909. No change is hereby entailed in the rules of procedure for the second part, especially as regards the regulations in Articles 68, 72, and 74 of the said Convention.

The tribunal of arbitration has the right, when it is found necessary for the elucidation of the case, to arrange for the hearing of witnesses or experts in the presence of both parties and to order the undertaking in common of a hydrographical survey of the waters under dispute.

ARTICLE 9

This Convention shall be ratified, and the ratifications exchanged as soon as possible in Stockholm.

In respect whereof the respective plenipotentiaries have signed this Convention and affixed thereto their seals.

Done in duplicate, in Swedish and Norwegian, at Stockholm, on the 14th March, 1908.

(L. S.) ERIC TROLLE

(L. S.) BENJAMIN VOGT

ADDITIONAL DOCUMENTS

*His Royal Majesty's gracious resolution of March 26, 1904, with accompanying Protocol of March 15, 1904, concerning the determination of the extent of a certain part of the maritime boundary between Sweden and Norway.*¹

In reference to the accompanying protocol of the joint Norwegian and Swedish Council of State of March 15, 1904, as well as the extract from the protocol of the State Council regarding civil matters for this day, His Royal Majesty herewith authorizes the Riksdag to propose that the question of the extent of the maritime boundary between Sweden and Norway, from point 18 mentioned in the said protocol, and to the sea, as far as the territorial boundary extends, be referred to the decision of a special arbitral tribunal, in accordance with the text of the protocols.

The authorities of the Riksdag shall appoint a committee to conduct the examination of the acts; and with all Royal grace and favor His Royal Majesty remains ever well disposed to the Riksdag.

In the absence of His Majesty my Most gracious King and Lord,

GUSTAF

HJALMAR WESTRING

PROTOCOL CONSIDERED IN THE JOINT NORWEGIAN AND SWEDISH STATE COUNCIL BEFORE HIS ROYAL HIGHNESS THE CROWN PRINCE REGENT AT THE CASTLE OF CHRISTIANIA, MARCH 15, 1904.

Present: His Excellency the Minister of State Hagerup, his Excellency the Minister of State Ibsen, his Excellency the Minister of State Boström, his Excellency the Minister for Foreign Affairs Lagerheim, State Councilors: Kildal, Strugstad, Hauge, Schöning, Vogt, Mathiesen, and the Swedish State Councilor, Westring.

The Chief of the Department of Commerce and Industry, State Councilor Schöning submitted the following:

The Department takes the liberty of presenting considerations concerning measures anent the more definite fixation of national boundaries in the waters between Norway and Sweden.

Maritime boundaries between the two countries running from the interior of Idefjord and out to the sea were fixed in a boundary regulation of October 26, 1661, carried out in accord with the peace treaty of Roskilde of February 26/March 9, 1658, and of Copenhagen of March 27/June 6, 1660.

¹Translation. For the original Swedish text, see Appendix, p. 500.

In the meantime much uncertainty has arisen regarding several points of this boundary line in view of the fact that during the long interval between 1661 and 1897 nothing was done in the matter by joint survey and investigation. In 1897 the Norwegian Department of the Interior and the Swedish Department for Civil Affairs took action whereby they might ascertain the exact course of that section of the boundary; and in the month of August of the same year two Norwegian and two Swedish commissioners met for the purpose of making a thorough search of the records and an investigation on the spot, etc., and of their presenting a proposition for the fixation and tracing upon charts of the boundary line between Norway and Sweden, from the interior of Idefjord and out into the sea.

Bureau Secretary Hroar Olsen and Commander A. Rieck were the Norwegian commissioners; Commander E. Oldberg and Judge H. Westring were the Swedish commissioners.

As the result of their labors and investigations, the commissioners presented on August 18, 1897, the "proposition of the Royal Swedish and Norwegian Commission for and description of the maritime boundary between Norway and Sweden from the interior of Idefjord to the sea."

From this it appears, as witnessed by all four commissioners, that they had reached a unanimous conclusion regarding the boundary line from the interior of Idefjord to a point between the Jyete buoy (Norwegian) and a small Island, northwest of Narro Hellsö (Swedish), which point is numbered 18 on a draft chart accompanying the proposition, so that Helleholmen is transferred to Sweden, and Knivsöarna to Norway.

Regarding the extent of the boundary line from the said point 18 even to the sea, no agreement was arrived at by the commission. The Norwegian and the Swedish members each submitted their respective proposition in reference to that part, and according to which Grisbadarna together with some shallows and ground to the north of Koster should go respectively to Norway or to Sweden.

The commissioners' propositions¹ together with two charts in reference thereto are subjoined.²

The Department is of opinion that the line proposed by the Norwegian and Swedish commission, from the interior of Idefjord to point 18, as indicated on the accompanying map, should be regarded as the correct boundary line.

Inasmuch as with regard to the more detailed description of this line, reference is made to the proposition of the commissioners, the Department permits itself to recommend that Your Majesty approve that line as the correct boundary between the two kingdoms.

Provided that Your Majesty be pleased to decide according to this recommendation, the Department assumes that subsequently

¹Post, p. 138.

²Post, opposite p. 140.

the royal proclamation with regard to the boundary line agreed upon, will be issued by the State Council of each of the two kingdoms.

It is furthermore to be observed that it would be of importance to demarkate as soon as possible this part of the boundary line. It seems most expedient that a commissioner of each kingdom be appointed to undertake this demarkation, and the Department recommends therefore that Your Majesty approve this proposal to the effect that the State Council of each of the two kingdoms shall designate respectively one Norwegian and one Swedish commissioner.

As hereinbefore stated, the Norwegian and Swedish commissioners have not been able to agree upon the matter regarding the rectification of the extent of the boundary from the said point 18 to the sea.

The following is a more detailed presentation of the views held by the Norwegian and Swedish parties with regard to the disputed boundary line.

NORWEGIAN VIEW

From point 18, between the buoy Jyete and a small island northwest of Narra Hellsö, the line should run straight to the open sea through the center of a straight line from the southern extremity of the southernmost Norwegian Tislarön, Klöveren, to the northern extremity of the northern Koster island (Swedish), so that the boundary line run by Båtshake, and all islands situated to the north of this line, including Grisbadarna, remain Norwegian.

This line is traced in red color on the chart of the commissioners, and said point between Klöveren and Koster island is indicated as point 19.

SWEDISH VIEW

From point 18, the boundary line should be drawn in a straight line to the open sea, through a point about 300 meters north of Rödkärs Nordgrund and therefore about midway between Grisbadarna and Skättegrund, so that all islands to the south outside of this line, water and land, including Grisbadarna, remain Swedish.

Upon the chart of the commissioners this line is traced in yellow color, and the said point north of Rödkärs Nordgrund marked point 19.

This Department permits itself respectfully to propose that the question of the disputed boundary line to the arbitral decision of a special tribunal, after the consent thereto shall have been given by the representatives of both kingdoms, and that the following procedure be observed:

In each of the two kingdoms, the respective State Council shall appoint two judges.

The judges thus designated shall mutually agree upon a fifth judge who shall at the same time act as president of the tribunal. In case of a tie, the designation of the fifth member shall be referred to such foreign chief of State as Your Majesty might request to that end.

The rules of procedure of the tribunal, the deliberations as well as the place where the tribunal shall sit to be adopted by the judges themselves.

The duly announced judicial decision regarding the disputed boundary line shall be binding upon both parties.

Each kingdom shall meet the expenses of its own representatives, and the expenses of the fifth member, etc., shall be met in equal shares by the two kingdoms.

In accordance with the foregoing, the Department takes the liberty of submitting most respectfully:

That Your Majesty may most graciously resolve:

(1) That the boundary line between Norway and Sweden as proposed by the joint Norwegian and Swedish commission of 1897, from the upper end of Idefjard to point 18 as shown on the two accompanying charts¹ be approved according to the proposal of the commissioners;

(2) That the demarkation of the said boundary line shall be undertaken by commissioners chosen for the purpose, one from each kingdom;

(3) That questions concerning boundary lines between Norway and Sweden, from the aforesaid point 18 to the sea, as far as the territorial boundary extends shall be referred to the decision of a special arbitral tribunal, in accordance with what is hereinbefore stated, provided the representatives of the two kingdoms consent thereto.

The Swedish members of the State Council have concurred in what the present reporter has hereinbefore submitted as to the approval of the boundary lines proposed by the Swedish and Norwegian commissioners, from the upper end of Idefjard to the said point 18, including the demarkation of the boundary line.

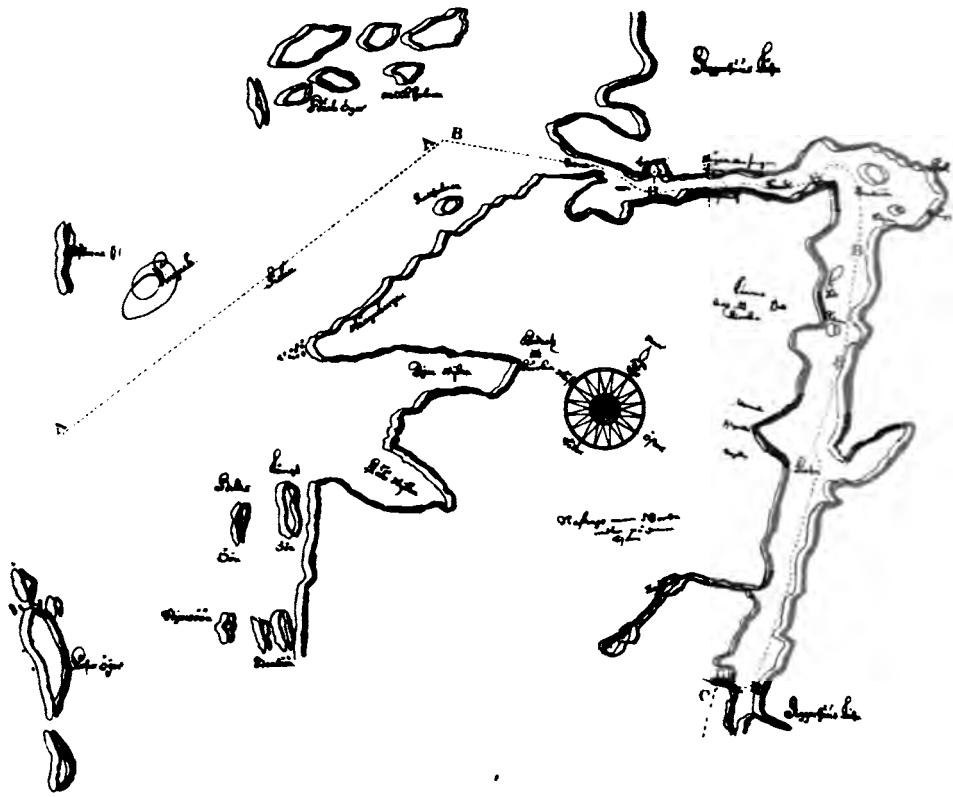
Regarding the section of the boundary line from point 18 to the sea as far as the territorial boundary, those members declare that in several statements that have been sent in regarding this matter, suggestions have been made regarding the boundary according to which this line would in part be moved still further north than proposed by the Swedish commissioners. Expressing in regard to this the opinion that the proposal to submit to a special arbitral tribunal the decision as to

¹Post, opposite p. 140.

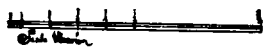
the question of the position of the boundary line in this part, that this implied that both parties should have the opportunity to submit to the tribunal the demands in regard thereto which they might find necessary, these members agree to the proposition of the reporter even as to this part of the question.

The Norwegian members had no objection to make to the foregoing statement, which corresponded to what had been already taken for granted by the Norwegian side.

In accordance with what the members of the Council of State thus advise, may it please Your Royal Majesty the Crown Prince Regent to approve the proposal set forth by the chief of the Norwegian Department of Commerce and Industry.



This drawing is a plan view of the
 engine and is intended to show the
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 and the relative positions of the
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W. H. PETERSON
 Engineer