



PERMANENT COURT OF ARBITRATION

THE GRISBÅDARNA CASE

NORWAY

v.

SWEDEN

AWARD OF THE TRIBUNAL

Unofficial English Translation

Arbitrators

J.A. Loeff

F.V.N. Beichmann

K. Hj. L. Hammarskjöld

The Hague, 23 October 1909

**ARBITRAL AWARD RENDERED ON OCTOBER 23, 1909,
IN THE MATTER OF THE DELIMITATION
OF A CERTAIN PART OF THE MARITIME BOUNDARY
BETWEEN NORWAY AND SWEDEN^[1]**

Whereas, by a Convention of March 14, 1908, Norway and Sweden agreed to submit to the final decision of an arbitral tribunal, composed 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 Norwegian and the other Swedish, the question of the maritime boundary between Norway and Sweden, in so far as this boundary has not been determined by the Royal Resolution of March 15, 1904;

Whereas, pursuant to this Convention, the two Governments have appointed respectively as President and Arbitrators:

Mr. J. A. LOEFF, Doctor of Laws 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 Appeal, Trondhjem, and

Mr. K. Hj. L. DE HAMMARSKJÖLD, Doctor of Laws, former Minister of Justice, former Minister of Worship and Public Instruction, former Envoy Extraordinary and Minister Plenipotentiary to Copenhagen, former President of the Court of Appeals of Jönköping, former Professor in the Faculty of Law, 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 transmitted to the Arbitrators within the periods fixed by the President of the Tribunal;

Whereas, the two Governments have respectively designated as Agents
the Government of Norway: Mr. Kristen JOHANSEN, attorney of the Supreme Court of Norway,

the Government of Sweden: Mr. C.O. MONTAN, former Minister of the Court of Appeals, Svea, Judge of the Mixed Tribunal of Alexandria;

Whereas it has been agreed by Article II of the Convention:

1. that the Arbitral Tribunal shall determine the boundary line in the waters starting from the point indicated as XVIII on the map annexed to the project of the Norwegian and Swedish Commissioners of August 18, 1897, in the sea to the limit of the territorial waters;

2. that the line bounding the region which, in consequence of the claims of the Parties, may be the subject of dispute, and within which the boundary line will therefore be established, should not be drawn so as to include islands, islets, or reefs which are not always under water;

Whereas it has likewise been agreed in Article III of the said Convention:

¹ Translated from French into English, based on the version in GEORGE GRAFTON WILSON, THE HAGUE ARBITRATION CASES (1915).

1. that the Arbitral Tribunal shall decide whether the boundary line should be considered, either wholly or in part, as fixed by the Boundary Treaty of 1661 with the map annexed thereto, and in what manner the line thus established should be drawn;

2. that in so far as the boundary line shall not be considered as fixed by that Treaty and map, the Tribunal shall determine the boundary line, having regard to the circumstances of fact and the principles of international law;

Whereas the Agents of the Parties have presented to the Tribunal the following conclusions,

the Agent of the Government of Norway:

that the boundary between Norway and Sweden, in the region which is the subject of the arbitral award, should be determined in accordance with the line indicated on the map annexed as number 35 to the memorial presented on behalf of the Government of Norway;

and the Agent of the Government of Sweden:

I. as regards the preliminary question:

May it please the Tribunal to declare that the line of the disputed boundary, as regards the territory between point XVIII already fixed on the map of the Commissioners of 1897 and point A on the map of the Treaty of 1661, was incompletely established by the said Treaty and the map annexed thereto, as the exact location of the point itself was not clearly set forth, and, as regards the remainder of the territory, extending westward from the same point A to the territorial boundary, that the boundary line was not established at all by these documents;

II. as regards the principal question:

1. May it please the Tribunal to be guided by the Treaty and map of 1661, to take into account the circumstances of fact and the principles of the law of nations, and to determine that the line of the disputed maritime boundary between Norway and Sweden starts from point XVIII as already fixed, in such a manner that first, the boundary line shall be drawn in a straight line to a point which constitutes the middle point of a straight line, connecting the northernmost reef of Rösökären, belonging to the Koster Islands, that is to say, the reef indicated on table 5 of the Report of 1906 as showing depths of 9, 10 and 10, and the southernmost reef of the Svartskjär, belonging to the Tisler Islands, and which is equipped with a beacon, which point is indicated on the same table 5 as point XIX;

2. May it please the Tribunal further to take account of the circumstances of fact and the principles of the law of nations and to establish the remainder 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 XIX, the boundary line shall be drawn in a straight line to a point situated midway on a straight line connecting the northernmost of the reefs shown by the name Stora Drammen, off the Swedish coast, and the Hejeknub rock, situated to the southeast of Heja Island, off the Norwegian coast, which point is indicated on the said table 5 as point XX, and

b. starting from the point last mentioned, the boundary shall be drawn in a straight line due west as far out to sea as the maritime territories of the two States are supposed to extend;

Whereas the line mentioned in the conclusions of the Norwegian Agent is drawn as follows:

from point XVIII indicated on the map of the Commissioners of 1897, in a straight line to point XIX situated midway on a line drawn between the southernmost reef of the Svartskjær – the reef that is equipped with a beacon – and the northernmost reef of the Röskären,

from this point XIX in a straight line to a point XX located in the middle of a line drawn between the southernmost reef of Heiefluer (söndre Heiefleu) and the northernmost reef included under the name of Stora Drammen,

from this point XX to a point XXa, following a perpendicular drawn from the middle of the last mentioned line,

from this point XXa to a point XXb, following a perpendicular drawn from the middle of a line connecting the said southernmost reef of the Heiefleur with the southernmost reef included under the name of Stora Drammen,

from this point XXb to a point XXc, following a perpendicular drawn from the middle of a line connecting the Söndre Heiefleu to the small reef situated to the north of the island Klöfningen near Mörholmen,

from this point XXc to a point XXd, following a perpendicular connecting the Midtre Heieflu to the said reef to the north of the island Klöfningen,

from this point XXd, following a perpendicular drawn from the middle of the line connecting Midtre Heiefleu with a small reef situated west of the said Klöfningen to point XXI where the circles which are drawn around the said reefs with a radius of four marine miles (60 to a degree) cross,

Whereas, after the Tribunal had visited the disputed region, examined the documents and maps submitted to it, and heard the pleas and the replies as well as the explanations provided at its request, the arguments were declared closed at the session of October 18, 1909;

Whereas, as regards the interpretation of certain terms used in the Convention and upon which the two Parties, in the course of argument, expressed different opinions,

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

from the evidence, it was obviously not the intention of the Parties to fix in advance the terminal point of the boundary, so that the Tribunal would only have to determine the direction between the two given points;

in the second place – the clause in accordance with which the lines bounding the zone which, in consequence of the claims of the Parties, may be the subject of dispute, *shall not be drawn so as to include islands, islets, or reefs which are not always under water*, should not be interpreted in a manner so as to imply that the islands, islets, and reefs mentioned above ought necessarily to be taken as starting points for the determination of the boundary;

Whereas, therefore, in the two respects aforementioned, the Tribunal reserves complete freedom to determine the boundary within the limits of the respective claims;

Whereas, under the terms of the Convention, the Tribunal's task is to determine the boundary line in the waters starting from the point indicated as XVIII on the map annexed to the project of the Norwegian and Swedish Commissioners of August 18, 1897, in the sea to 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 annexed thereto", the answer to this question should be negative, at least as regards the boundary line beyond point A on the afore-mentioned map;

Whereas the exact situation of point A on this map cannot be determined with absolute precision, but in any event it is a point situated between points XIX and XX, as these two points will be determined hereafter;

Whereas the Parties to the dispute agree as regards the boundary line from point XVIII on the map of August 18, 1897, to point XIX as indicated in the Swedish conclusions;

Whereas, as regards the boundary line from the said point XIX to a point indicated by XX on the maps annexed to the memorials, the Parties likewise agree, except that they differ with regard to whether, in determining point XX, the Heiefleur or the Hejeknub should be taken as the starting point from the Norwegian coast;

Whereas, on that subject,

the Parties have adopted, at least in practice, the principle of making the division along the median line drawn between the islands, islets, and reefs situated off the two coasts and that are not always under water, that having been in their opinion the principle which was applied on this side of point A by the Treaty of 1661;

The adoption of a principle on such grounds – without regard to the question of whether the principle relied upon has been actually applied by the said Treaty – should have the logical consequence that in applying it to the present time, one should at the same time take account of the circumstances of fact that existed at the time of the Treaty;

Whereas the Heiefleur are reefs which, it may be asserted with a sufficient degree of certainty, had not emerged from the water at the time of the Boundary Treaty of 1661 and consequently, they could not at that time have served as a starting point for the delimitation of a boundary;

Whereas, therefore, from the above-mentioned standpoint, the Hejeknub should be preferred to the Heiefleur;

Whereas point XX being fixed, it remains to determine the boundary line starting from this point XX to the limit of the territorial waters;

Whereas point XX is situated, without any doubt, beyond point A as indicated on the map annexed to the Boundary Treaty of 1661;

Whereas Norway has maintained the position, 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 partitioned automatically between Norway and Sweden;

Whereas the Tribunal completely endorses this opinion;

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

Whereas it follows from this line of argument that in order to ascertain what may have automatically been the line of division of 1658, it is necessary to have recourse to the principles of law in operation at that time;

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

Whereas it is not established that the boundary line determined by the Treaty and drawn on the delimitation map has been based on this principle;

there are some details and peculiarities in the line drawn which give rise to serious doubts in this regard;

even if one admitted the existence of that principle in connection with the boundary line determined by the Treaty, it would not necessarily follow that the same principle should have been applied for the determination of the boundary of the external territory;

Whereas, in this connection,

the Boundary Treaty of 1661 and the map annexed thereto show the boundary line beginning between the Koster and Tisler Islands;

in determining the boundary line, the direction followed was from the sea toward the coast and not from the coast toward the sea;

it is out of the question to speak of a possible continuation of the boundary line in a seaward direction;

consequently, the connecting link that would enable us to presume, without decisive proof, that the same principle was applied simultaneously to the territories situated this side and to the territories situated that side the Koster-Tisler line, is lacking;

Whereas, moreover,

neither the Boundary Treaty nor the map annexed thereto make mention of islands, islets, or reefs situated beyond the Koster-Tisler line;

therefore, in order to keep within the probable intentions of these documents, it is necessary to disregard such islands, islets, and reefs;

Whereas, further,

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

Whereas, furthermore, in the same connection,

the rules regarding maritime territory cannot serve as a guide for the determination of the boundary line between two neighboring countries, especially as, in the present case, we have to determine a boundary which is said to have been automatically drawn in 1658, whereas the rules invoked date from subsequent centuries;

it is the same in regard to the rules of Norwegian municipal law concerning the drawing of boundaries between private properties or between administrative districts;

Whereas, for all these reasons, one cannot adopt the method by which Norway has proposed to determine the boundary from point XX to the territorial limit;

Whereas the principle of drawing a median line midway between inhabited lands did not find sufficient support in the law of nations in force in the 17th century;

Whereas it is the same as regards the principle of the thalweg or of the most important channel, a principle of which the application to the present case is not any more established by the documents cited for that purpose;

Whereas it is much more in accord with the ideas of the 17th century and with the concepts of law prevailing at that time if we admit that the automatic division of the territory in question ought to have been made 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 reach a just and lawful determination of the boundary;

Whereas, consequently, the automatic dividing line of 1658 should be determined, or (what in other words is exactly the same thing) the delimitation should be made today by drawing a line perpendicular to the general direction of the coast, taking careful account of the need to indicate the boundary in a clear and unequivocal manner, and of making its observation as easy as possible for the interested parties;

Whereas, in order to ascertain what this direction is, we must equally take 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;

therefore the perpendicular line should run toward the west to about 20 degrees to the south;

Whereas the Parties are in agreement in recognizing the great inconvenience there would be in drawing the boundary line across the important banks;

a boundary line drawn from point XX in a westerly direction to 19 degrees to the south would completely avoid that inconvenience since it would pass just to the north of the Grisbådarna and to the south of the Skjöttegrunde and would also not cut across any other important bank;

consequently, the boundary line ought to be drawn from point XX in a westerly direction, 19 degrees south, in such manner as to pass midway between the banks of Grisbådarna on one side, and the banks of Skjöttegrunde on the other;

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

Whereas on the other hand, if the case should arise, recourse could be had to other known methods of marking the boundary;

Whereas a demarcation which assigns the Grisbådarna to Sweden is supported by all of several circumstances of fact which were disclosed in the course of argument, and of which the following are the principle ones:

- a.* the fact that lobster fishing in the shoals of Grisbådarna has been carried on for a much longer time, to a much greater extent, and by a much greater number of fishermen on the part of the subjects of Sweden than on the part of those of Norway;
- b.* the fact that Sweden has performed in the Grisbådarna region, particularly in recent times, many acts based on the conviction that these regions were Swedish, as, for example, the placing of beacons, the survey of the sea and the installation of a lightship, which acts involved considerable expense and by which she not only thought she was exercising a right but even more that she was performing a duty; while Norway, by her own admission, showed much less concern in this region in these various regards;

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

this principle is especially applicable in the case of private interests which, once disregarded, cannot be effectively preserved by any manner of sacrifice on the part of the Government of which the interested parties are subjects;

lobster fishing is by far the most important fishing on the banks of Grisbådarna, and this fishing is the very thing that gives the banks their value as a fishing area;

without doubt, the Swedes were the first to fish for lobsters by means of the tackle and craft that are necessary to fish as far out at sea as the banks in question are situated;

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

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

the depositions and declarations of the witnesses are in general in full accord with this conclusion;

likewise, the arbitration Convention is in full accord with the same conclusion;

according to that Convention there is a certain connection between the enjoyment of the fishing grounds of the Grisbådarna and the maintenance of the lightship and, as Sweden will be obliged to maintain the lightship as long as the present state of affairs continues, this shows that, according to the reasoning of this clause, the chief enjoyment thereof now reverts to Sweden;

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

As regards the placing of beacons and a lightship,

the stationing of a lightship, which is necessary for the safety of navigation in the regions of Grisbådarna, has been carried out by Sweden without meeting any protest and even at the initiative of Norway, and likewise a large number of beacons have been put in service there without giving rise to any protest;

the lightship and the beacons are always maintained by Sweden at her own expense;

Norway has never taken any measures which are in any way equivalent, save for placing a bell buoy there after the placement of the beacons and for a short period of time, it being impossible to even compare the expense of setting up and maintaining the bell buoy with the expenses associated with the beacons and lightship;

It is shown from the foregoing that Sweden had no doubt as to her rights over Grisbådarna, and that she did not hesitate to incur the expenses incumbent on an owner or possessor of these banks even to a very considerable sum of money;

With regard to the surveys of the sea,

Sweden took the first steps, about thirty years before the beginning of any dispute, toward making exact, laborious and expensive surveys of the regions of Grisbådarna, while the surveys made some years later by Norway did not even reach the limits of the Swedish survey;

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

Whereas a demarcation assigning the Skjöttegrunde (the least important parts of the disputed territory) to Norway is sufficiently warranted, on the one hand, by the serious circumstance of fact that, although one should conclude from the various documents and testimony that the Swedish fishermen, as was stated above, have engaged in fishing in the regions in dispute 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 shown that the Norwegian fishermen have almost always participated in lobster fishing on the Skjöttegrunde in a comparatively more effective manner than at Grisbådarna.

FOR THESE REASONS

The Tribunal decides and declares:

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

from point XVIII, situated as it is indicated on the map annexed to the project of the Norwegian and Swedish Commissioners of August 18, 1897, a straight line is drawn to point XIX, forming the middle point of a straight line drawn from the northernmost reef of the Rösökären to the southernmost reef of the Svartskjär, that which is equipped with a beacon,

from point XIX thus fixed, a straight line is drawn to point XX, forming the middle point of a straight line drawn from the northernmost reef of the group of reefs called Stora Drammen to the reef Hejeknub situated to the southeast of Heja Island,

from point XX, a straight line is drawn in a westerly direction 19 degrees south, which line passes midway between the Grisbådarna and the Skjöttegrunde South and continues in the same direction until it reaches the open sea.

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

President: J. A. LOEFF

Secretary General: MICHIELS VAN VERDUYNEN

Secretary: RÖELL