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## Estonia-Latvia

*Report Number 10-15*

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

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### I SUMMARY

This is the first agreement,<sup>1</sup> concluded after the disintegration of the Soviet Union in 1991, between two states regaining their independence at that time. It establishes a maritime boundary in the southeastern Baltic Sea where none had existed before.<sup>2</sup> It only slightly touches on a second, and clearly distinguishable, category of maritime delimitation problems created by this disintegration issue in the Baltic Sea, namely the latter's impact on existing maritime boundaries concluded by the former Soviet Union.<sup>3</sup>

The agreement establishes a single maritime boundary, dividing not only the territorial sea, Exclusive Economic Zone (EEZ), and the continental shelf, but also

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- 1 This agreement was already alluded to in Erik Franckx, *Baltic Sea Update* (Report Number 10-14), at 2557 n. 1 (hereinafter 1996 Agreement). An unofficial English translation can also be found in Erik Franckx, *Two New Maritime Boundary Agreements in the Eastern Baltic Sea*, 12 INT'L J. MAR. & COASTAL L. 365, 375-376 (1997) (text of the agreement kindly provided by the Estonian and Latvian Ministry of Foreign Affairs).
  - 2 An exception is made for a partial territorial sea boundary which existed between these two countries shortly after World War I. See *infra* notes 10-11 and accompanying text.
  - 3 This distinction is already indicated in Volume 1 of this series. See Franckx, *Baltic Sea Maritime Boundaries* (Region X), *supra* at 365.

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any other zone still to be established in accordance with international law by Estonia or Latvia. The boundary extends for a distance of more than 100 nautical miles (n.m.) from the land boundary terminus through the Gulf of Riga<sup>4</sup> and consists of fifteen turning or terminal points. The last segment starts from the closing line of the Gulf of Riga between the southern rock at Cape Loode (Estonia) and Ovisi lighthouse (Latvia) (at point 15) and ends at the tripoint with Sweden (*see* Estonia-Latvia-Sweden (1997), No. 10-17). It should extend the existing line by about roughly half of the distance covered inside the Gulf of Riga.

The boundary line starts in the east at the terminal point of the land border, divides the Gulf of Riga and the Strait of Irbe, and is supposed to terminate in the west at the outer limit of Sweden's economic zone.

The geographical configuration of the coasts in the area to be delimited is complex. It starts out as a delimitation between adjacent coasts in the area surrounding the terminal point of the land boundary, but quickly turns into a situation of opposite coasts inside the Gulf of Riga area. Outside the Gulf of Riga the coasts once again become adjacent.

The line is not an equidistant line, but has rather to be described as a combination of different methods. It starts out by giving effect to a series of post-World War I boundary documents agreed between Estonia and Latvia, securing access to the Latvian port of Ainazi. Because of present-day circumstances involving navigation, this boundary was extended somewhat further at sea following the same direction.<sup>5</sup> The next part of the boundary line (until point 4) is still influenced by this historical boundary, because the line is first brought back to the latitude of that historical point, before being extended in a due westerly direction. Southeast of Ruhnu Island (points 4-7), the line is determined by a 12 n.m. limit around that island. The rest of the boundary inside the Gulf of Riga is close to being an equidistant line, except for a short segment at its entrance, i.e., in the Strait of Irbe (points 13-14). Outside the Gulf of Riga the line is a perpendicular to the closing line drawn between the southern rock at Cape Loode and Ovisi lighthouse.

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4 For the purpose of this Report, the Gulf of Riga is defined as all waters enclosed in the west by a straight line connecting the southern rock at Cape Loode on Saaremaa Island and Ovisi lighthouse on the Latvian coast, in the north by the southern coasts of the Estonian islands of Saaremaa and Muhu, in the east by the mainlands of Estonia and Latvia and in the south by the Latvian mainland. As such it comprises the Strait of Irbe.

5 Because of the increase in water depth required by modern vessels, the access route to the port was extended further seawards following the same general direction as the line agreed in 1923. In the immediate vicinity of this line the bathymetric charts indicate the greatest depths in the area surrounding the port of Ainazi. For further details, *see infra* sub II (1).

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## II CONSIDERATIONS

### *I Political, Strategic, and Historical Considerations*

The initial part of this boundary cannot be properly understood without reference to certain documents agreed between Estonia and Latvia during the 1920s. Based on two Conventions of 1920,<sup>6</sup> as later amended,<sup>7</sup> the border between the two countries became definitively settled as from 1 April 1927.<sup>8</sup> None of these texts directly addressed the topic of the international maritime boundary. The only concrete conventional provision having an implication for that boundary is found in the Protocol attached to the 1923 Supplementary Convention,<sup>9</sup> where it was stated:

The Hainash (Ainazi) harbour remains entirely in Latvia, whereas the boundary line shall be drawn parallel with the mole (dam) at such a distance as is required for the passage of ships, this will be settled by the Technical Commission on its plan; in the same way Latvia is granted the entrance into the harbour and exit to the sea. The further direction of the sea boundary is, however, not determined herewith.<sup>10</sup>

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- 6 On the one hand is the Convention between Estonia and Latvia on Delimitation, 22 March 1920, Estonia-Latvia, 2 L.N.T.S. 187. By means of this convention both parties agreed to settle their boundary dispute on the basis of the findings by an arbitrator, Colonel Tallent, who rendered his awards on 1 and 3 July 1920 (*see infra*). On the other hand is 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, Estonia-Latvia, 17 L.N.T.S. 189. This convention provided in its Article 1: "Without definitely deciding the question of the frontier line between the two Republics, both Parties agree to recognise as the frontier line between Estonia and Latvia the line established by the Arbitrator, Colonel Tallent, on July 1[-3], 1920."
  - 7 Supplementary Convention Between Estonia and Latvia on Frontier Questions, Estonia-Latvia, 1 November 1923, 25 L.N.T.S. 345 [hereinafter cited as 1923 Supplementary Convention] and Protocol Amending the Convention Regarding the State Frontier and the Rights of Citizens of the Frontier Zone, Concluded Between Estonia and Latvia at Riga, 19 October 1920 and the Additional Convention Regarding Frontier Questions, Concluded at Tallinn, 1 November 1923, 23 February 1927, Estonia-Latvia, 61 L.N.T.S. 315. This protocol entered into force on 30 March 1927.
  - 8 The boundary was declared by means of a Protocol Constituting a Declaration with Regard to the Final Delimitation of the Frontier Between the Two Countries, Estonia-Latvia, 31 March 1927, 61 L.N.T.S. 323. Certain supplementary documents later completed this complex conventional framework. *See* Protocol Concerning the Prolongation of the Period Allowed for the Liquidation of Immovable Property Divided by the Frontier Line, 4 May 1931, Estonia-Latvia, 107 L.N.T.S. 469. This protocol entered into force on 23 July 1931 and ceased to have effect on 1 October 1931.
  - 9 *See supra* note 7.
  - 10 Protocol to the Supplementary Convention Between Estonia and Latvia on Frontier Questions, Concluded Between Estonia and Latvia at Tallinn, November 1, 1923, Estonia-Latvia, Art. 1 (a). This protocol did not find its way into the L.N.T.S., but an English translation was kindly provided by the Latvian Ministry of Foreign Affairs (text on file with author).

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The practical implications of this provision for the maritime boundary were rather limited since it only resulted in a seaward boundary of about 2.5 n.m. At a time that both countries claimed a 3 n.m. territorial sea,<sup>11</sup> this line was thus not even related to the latter notion, as clearly indicated in the above-mentioned provision.

Nevertheless, the ultimate effect of this provision on the Protocol on the maritime boundary finally agreed by both parties in 1996 is significant, in that it extends about 24 n.m. seaward,<sup>12</sup> i.e., about half the distance of an imaginary closing line of the Gulf of Riga proper between Cape Kolka in the west and the terminal point of the land boundary in the east. Indeed, points 1-4 are all determined on the basis of this historical boundary.<sup>13</sup> As such, it does not really reflect the much more limited original purpose of the above-mentioned 1923 provision.

This can probably be explained by the fact that both countries believe the Soviet annexation to have been illegal.<sup>14</sup> They both consequently adhere to the theory of continuation of the situation *ante quo*.<sup>15</sup> This was clearly reflected in the agreement both parties concluded in 1992<sup>16</sup> in order to adjust their common boundary to the situation as it had existed in between the two World Wars.<sup>17</sup> Even though the maritime boundary was left outside the scope of this agreement, since a separate agreement on that topic would have to be concluded afterwards,<sup>18</sup> the general principles put forward in this agreement apparently also influenced the maritime boundary.<sup>19</sup>

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11 See 3 G. GIDEL, *LE DROIT INTERNATIONAL PUBLIC DE LA MER* 99 and 110 (1934), respectively, with respect to Estonia and Latvia.

12 This is the approximate distance between point 4 and the terminal point of the land boundary.

13 The parties, when agreeing on the principles which would govern the location of their maritime boundary about two months before the signature of the final agreement, expressly stated that turning point number 2' (which was later to become turning point number 3) represented a "return to the parallel of the historical border point at sea." The latter was determined as a point with the following coordinates: 57° 53' 57" N and 24° 18' 06" E. The parallel of the historical boundary was subsequently also used to determine point 3 (which was later to become turning point number 4). See Annex 2 to the Preliminary Agreement between the Prime Minister of the Republic of Estonia and the Minister President of the Republic of Latvia, 12 May 1996, Estonia-Latvia. Text kindly provided by the Latvian Ministry of Foreign Affairs (text on file with author) (hereinafter 1996 Preliminary Agreement).

14 This annexation was based on the Secret Additional Protocol to the so-called Molotov-Ribbentrop Pact, 23 August 1939, Germany-USSR, Art. 1, available at <<http://www.historyplace.com/worldwar2/timeline/pact.htm>>. Article 4 of that Protocol obliged the parties to treat its contents as strictly secret.

15 See, e.g., Brigitte Stern, *Aspects of the Law of State Succession*, in *THE INTERNATIONAL LAW ASSOCIATION: REPORT OF THE SIXTY-EIGHTH CONFERENCE* 616, 625 (1998).

16 Agreement on the Reestablishment of the State Border, 20 March 1992, Estonia-Latvia, reprinted in *II RIIGI TEATAJA* (Estonian Official Bulletin of Legal Acts, Part II, International Agreements), 27, 104 (1994).

17 This was already mentioned earlier. See Franckx, *supra* note 1, at 2559.

18 Agreement on the Reestablishment of the State Border, *supra* note 16, at Art. 13.

19 The Preamble of the 1996 Agreement, *supra* note 1, moreover explicitly refers to this 1992 Agreement.

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Another historical factor initially complicating negotiations between the two parties proved to be the question of whether or not the Gulf of Riga was characterized as an historic bay. This claim, whose origins can be traced back to Imperial Russian writings, and which was later taken over by Soviet jurists,<sup>20</sup> finally found its way into the Soviet legal arsenal by means of a governmental proclamation.<sup>21</sup> On this factual basis some Western authors tended to accept the historic nature of the Gulf of Riga.<sup>22</sup>

The system of straight baselines established by this country in the Baltic Sea in 1985 further confirmed the content of this proclamation.<sup>23</sup> The most southern segment of this line was precisely the closing line between Ovisi lighthouse and Cape Loode on Saaremaa Island.<sup>24</sup> The system then continued towards the islands of Hiiumaa and Osmussao before reaching the Soviet mainland once again at the entrance of the Gulf of Finland, enclosing each and every possible access to the Gulf of Riga and implying internal water status of all the water areas so enclosed.<sup>25</sup>

The objection could be raised that this 1985 Decree in its final paragraph explicitly listed the water expanses which were considered to be "internal waters of the U.S.S.R., historically belonging to the U.S.S.R."<sup>26</sup> Since the Gulf of Riga did not figure in this list, one interpretation could be that the Soviet Union no longer maintained this claim.<sup>27</sup> Another one, however, is that the only bays which were explicitly mentioned were those whose historic bay closing lines formed the baseline for the measurement of the territorial sea. Since the Gulf of Riga was located in

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20 As mentioned by PIERRE SOLODOVNIKOFF, *LA NAVIGATION MARITIME DANS LA DOCTRINE ET LA PRATIQUE SOVIÉTIQUES* 299 (1980).

21 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 U.S.S.R., as mentioned by Anne E. Reynolds, *Is Riga an Historic Bay?* 2 *INT'L J. ESTUARINE & COASTAL L.* 20, 22 n. 11 (1987).

22 See LEO J. BOUCHEZ, *THE REGIME OF BAYS IN INTERNATIONAL LAW* 219-20 (1964) and ELMAR RAUCH, *DIE SOWJETUNION UND DIE ENTWICKLUNG DES SEEVÖLKERRECHTS* 67 (1982) (listing the Gulf of Riga as an historic bay).

23 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 U.S.S.R. is Measured, 1 (Annex) *IZVESHCHENIIA MOREPLAVATELIAM* 22-39 and 47 (1986) (hereinafter 1985 Decree).

24 The description of points 31 and 32 in *IZVESHCHENIIA MOREPLAVATELIAM*, *supra* note 23, at 37, namely "southern rock at cape Loode" and "Cape Ovisi" are identical to the ones relied upon in the 1996 Preliminary Agreement, *supra* note 13, to construct the perpendicular to the closing line of the Gulf of Riga namely "Southern rock at cape Loode" on the one hand and "Ovisi lighthouse" on the other. These terms were later taken over by the 1996 Agreement, *supra* note 1, Art. 3.

25 *ATLAS OF THE STRAIGHT BASELINES* 200 (Tullio Scovazzi, Giampiero Francalanci, Daniela Romano & Sergio Mongardini eds., 1989).

26 1985 Decree, *supra* note 23, at 47.

27 Tullio Scovazzi, *New Developments Concerning Soviet Straight Baselines*, 3 *INT'L J. ESTUARINE & COASTAL L.* 37, 38 (1988).

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an area already totally enclosed by a system of straight baselines, inclusion of this bay in the decree was not necessary. Consistent with this view, Soviet writers continued to claim the Gulf of Riga as an historic bay through the last days of the U.S.S.R.<sup>28</sup>

Sufficient elements seemed therefore to be present to construct an argument along these lines.<sup>29</sup> The disintegration of the Soviet Union in 1991 did not necessarily undermine such a line of argument, since this historic title, if proven, could have easily passed to the two new coastal states in the area.<sup>30</sup> The element which did conclusively remove this argument from the negotiation table, however, was the fact that, even though Latvia sustained this claim,<sup>31</sup> Estonia strongly objected to it.<sup>32</sup> The Estonian position placed an effective bar to the continuing historic bay status after 1991, since the latter necessarily requires the consent of all the littoral states concerned.<sup>33</sup> As a consequence, the historic bay claim was abandoned by the parties somewhere during the middle of 1995.<sup>34</sup>

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- 28 See, e.g., INTERNATIONAL LAW 223 (F. Volkov ed., translated from Russian by K. Pilarski 1990).
- 29 It was argued that the water area in question was adjacent to the Soviet coast, that the Soviet Union effectively exercised full sovereignty over these waters, that there had been a continuous display of these rights over a long period of time, going back to Imperial Russia (ELMAR RAUCH, *supra* note 22, at 66 citing F.F. Martens's handbook on international law of 1904 which already contained such a claim), and most important, that foreign states do not seem to have protested (LEO J. BOUCHEZ, *supra* note 22, at 220). These western authors moreover appear to sustain this submission (*see supra* note 22 and accompanying text).
- 30 Or as stated by the International Court of Justice in the Gulf of Fonseca judgement: "A State succession is one of the ways in which territorial sovereignty passes from one State to another; and there 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." Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), 1992 ICJ REP. 351, para. 399 (11 Sept.).
- 31 BALTIC NEWS SERVICE, 3 July 1995, available at <<http://bnsnews.bns.lv>>.
- 32 This was stressed for instance in BALTIC NEWS SERVICE, 22 May 1995, available at <<http://bnsnews.bns.lv>>. Leaving aside the inappropriateness of relying on such a position, given the fact that these countries strongly emphasized that they did not consider themselves to be the successor states of the former Soviet Union, Estonia feared creating a precedent which would certainly have interested the Russian Federation in the Narva River area. See Franckx, *supra* note 1, at 368.
- 33 As stressed in the Gulf of Fonseca Case, *supra* note 30, at para. 394. See also Jonathan I. Charney, *Maritime Jurisdiction and Secession of States: The Case of Québec*, 25 VAND. J. TRANSNAT'L L. 343, 368 (1992).
- 34 Erik Franckx, *Maritieme afbakening in de oostelijke Baltische Zee: Internet en het wetenschappelijk onderzoek* (Maritime Delimitation in the Eastern Baltic Sea: Internet and Scientific Research), in OOST-EUROPA IN EUROPA: EENHEID EN VERSCHIEDENHEID 275 [Huldeboek aangeboden aan Frits Gorlé] (Pieter De Meyere, Erik Franckx, Jean-Marie Henckaerts & Katlija Malfliet eds., 1996).

## 2 Legal Regime Considerations

Latvia is a party to the 1958 Convention on the Territorial Sea and the Contiguous Zone, but neither country is a party acceded to the 1958 Convention on the Continental Shelf or to the 1982 United Nations Convention on the Law of the Sea. Nevertheless, the Preamble of the agreement refers explicitly to the 1982 LOS Convention and to general principles of international law. It should be noted that inside the Gulf of Riga depending on the precise manner in which the Estonian territorial sea is measured, between 75 and 90 percent of the water involved is territorial sea.

The agreement establishes a single maritime boundary, comprising the delimitation of the territorial sea, the EEZ and the continental shelf, as well as "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."<sup>35</sup>

This phraseology proved necessary because even though Estonia had clearly proclaimed an EEZ in 1993,<sup>36</sup> the Latvian position appeared less certain at that time.<sup>37</sup>

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<sup>35</sup> 1996 Agreement, *supra* note 1, Art. 1.

<sup>36</sup> As reported by Barbara Kwiatkowska, *200-Mile Exclusive/Fishery Zone and Continental Shelf - An Inventory of Recent State Practice: Part 1*, 9 INT'L J. MAR. & COASTAL L. 199, 225 (1994). This author refers to an *Economic Zone Act* of 28 January 1993. This act was published in I Riigi Teataja, 7, 105 (1993).

<sup>37</sup> See for instance the listing of the different maritime zones claimed by coastal states (30 LOS BULL. 68, 73 (1996)), where a 12 n.m. territorial sea is listed for Latvia, but no mention is made of either a fishery zone or EEZ. The same information was contained in an updated list one year later (34 LOS BULL. 47, 58 (1997)). *But see* Barbara Kwiatkowska, *200-Mile Exclusive/Fishery Zone and Continental Shelf - An Inventory of Recent State Practice: Part 2*, 9 INT'L J. MARINE & COASTAL L. 337, 367 (1994), where this country is attributed an EEZ by reference to an *Act on the Continental Shelf and Economic Zone* of 23 February 1993. This act was published in ZINOTAJIS (Latvian Official Gazette), 7 (18 February 1993). In a list obtained from the geographer of the Office of Ocean Affairs of the U.S. Department of State on 9 December 1996 (describing the situation as it existed on 30 October 1996), Latvia is listed as possessing an EEZ. See also the list based solely on information as made available to the United Nations Secretariat, *National Claims to Maritime Zones* (19 November 1999), available at <[http://srch0.un.org/plweb/cgi/fastweb?state\\_id=956659273&view=los&docrank=11&numhitsfound](http://srch0.un.org/plweb/cgi/fastweb?state_id=956659273&view=los&docrank=11&numhitsfound)>.



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### 3 Economic and Environmental Considerations

The very heart of the dispute between the two countries leading to the need for delimiting a maritime boundary concerned fisheries. In the past,<sup>38</sup> the administration of fisheries was centralized in Moscow, namely in the U.S.S.R. Ministry of Fisheries. Operations of distant-water fisheries were managed by Zapryba<sup>39</sup> with headquarters in Riga, the capital of the former Latvian S.S.R. Fishermen of both countries, as a consequence, either formed part of the mighty Soviet distant-water fishing fleet, roaming the high seas or exclusive economic or fishing zones of other countries, or were fishing in the Baltic in an area extending from the Gulf of Finland in the North, to the Kaliningrad area in the South, or finally were involved in internal water fisheries and aquaculture, again within the broader Soviet state planning system. Also the market was totally oriented towards the U.S.S.R. After independence, this situation changed drastically, giving rise rather quickly to an acute fishing problem between Estonia and Latvia.

In the Gulf of Riga, tensions rose dramatically, finally resulting in an outright fish war during the spring of 1995.<sup>40</sup> This dispute focused on the location of the rich fishing grounds in the immediate vicinity of the Estonian island of Ruhnu,<sup>41</sup> which in the past had always been open to the fishermen from both sides.<sup>42</sup> The fact that during the last decade about two-thirds of the fishing effort in the Gulf of Riga could be attributed to Latvia<sup>43</sup> only further exacerbated the issue.

Despite vacillation between efforts to reach a negotiated settlement and threats to send in warships to protect national fishing vessels,<sup>44</sup> the parties ultimately arrived at the final agreement in July 1996.

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38 This historical part is based on Erik Franckx, *Maritime Boundaries in the Baltic: Post-1991 Developments*, 28 GA J. INT'L & COMP. L. 249, 261-62 (2000).

39 This is a Russian acronym for "Western Fisheries."

40 See, e.g., MOSCOW NEWS, No. 18, 12-18 May 1995, at 8.

41 About the influence of this island on the delimitation, see *infra sub II* (5).

42 This had been the case in the inter-war period, since both countries at that time claimed a 3 n.m. territorial sea (see *supra* note 11 and accompanying text). During the Soviet era, as already mentioned above (see *supra*, at II (1)), these waters were held to be historical in nature, and thus exclusively reserved for Soviet fishermen.

43 The regained independence of both countries did not change this ratio.

44 For a detailed account of the period January 1995 until March 1996, see Franckx, *supra* note 34, at 281 and 296-301. For the period April 1996 until July 1996, see Erik Franckx, *Maritime Boundaries in the Baltic*, in BOUNDARIES AND ENERGY: PROBLEMS AND PROSPECTS 275, 279-83 (Gerald Blake, Martin Pratt, Clive Schofield & Janet Allison Brown eds., 1998).

It is remarkable that the fishing issue, which formed the crux of the whole problem, is totally absent from the operative part of the agreement.<sup>45</sup> A close analysis of the various methods relied upon by the parties to delimit this international maritime boundary reveals moreover that living resources were not a factor that influenced the location of this line.<sup>46</sup> This conclusion is consistent with the larger Baltic Sea regional practice of ignoring living resource issues when delimiting such boundaries. Indeed, no dislocations of the boundary line can so far be attributed directly to fisheries in the Baltic Sea. In this region fishing interests are normally accommodated by means of special agreements, leaving the international maritime boundary line as such untouched. The present agreement further confirms this practice.<sup>47</sup>

The exact link between the delimitation and the fishing issue was clarified in the 1996 Preliminary Agreement, concluded two months before the signature of the 1996 agreement. In that document both Prime Ministers agreed that negotiations on the fishing issue, "covering mutual exchange of fishing possibilities, including fishing in the territorial waters," were to continue and result in an agreement by not later than 1 September 1996.<sup>48</sup> Nevertheless, even by the end of that year no agreement had been reached on the issue.<sup>49</sup> It was not until February of the next year that the framework convention on fisheries between the two parties was signed.<sup>50</sup> In this agreement the parties agreed to grant each other "appropriate access to fishing vessels of the other Party to fish within the areas of their fisheries jurisdiction."<sup>51</sup> They would moreover apply the legal regime of the EEZ to such vessels.<sup>52</sup> Vessels fishing on the other state's side of the boundary line are to comply with the respective provisions of the legal acts of the state in whose waters they are located in regard to fisheries.<sup>53</sup> As far as other activities performed by fishing vessels in the territorial seas across the maritime boundary were concerned, the

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45 The separation of the question of fishing rights from that of the maritime boundary was only decided by the parties at a very late stage of the negotiations, which already started in late 1994, namely two months before the signing of the maritime boundary agreement. See *The Estonian-Latvian Sea Border Agreement: A Success of Regional Co-operation*, ESTONIA TODAY (10 February 1997), available at <<http://www.vn.ee/eng/estoday/1997/02latpiir.html>>. See also *infra* note 48 and accompanying text.

46 See *infra* sub II (8).

47 Franckx, *supra* note 3, at 355-56.

48 1996 Preliminary Agreement, *supra* note 13, under para. 3 of the agreement.

49 Franckx, *supra* note 1, at 369 note 22.

50 Agreement Between the Government of the Republic of Estonia and the Government of the Republic of Latvia on Mutual Relations in the Field of Fisheries, 6 February 1997, Estonia-Latvia (text kindly provided by the Latvian Ministry of Foreign Affairs) (text on file with author).

51 *Id.*, Art. 2 (1).

52 *Id.*, Art. 2 (2).

53 *Id.*, Art. 3 (1).

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agreement further provides that they shall be subject to the laws of that state relating to "navigation, border and customs control, public order, environment protection and other matters."<sup>54</sup> Coastal state enforcement authority includes an obligation to inform the other party forthwith of seizures or arrests of any of its fishing vessels.<sup>55</sup>

The actual exchange of fishing rights, however, was not incorporated in this agreement, but rather delegated to later protocols to be agreed through annual meetings provided for by the agreement.<sup>56</sup> By the end of 1997, no such exchanges had yet been agreed.

In addition to fisheries, navigational interests proved to be an important issue during the negotiations.<sup>57</sup> Considerations relating to these interests are believed to have influenced the exact location of the boundary line in three different places. First, at the terminal point of the land boundary, the historic maritime boundary<sup>58</sup> was extended to 4 n.m. seaward in order to secure access by present-day Latvian vessels to the port of Ainazi.<sup>59</sup> Second, west of Ruhnu, turning point 9 was agreed, not by relying on a Latvian basepoint on land, but rather on a straight line connecting two capes in the area.<sup>60</sup> This might well have been influenced by the fact that the thalweg in the area runs closer to Ruhnu than to the Latvian coast. Finally, a similar consideration seems to have inspired the parties not to use equidistant points in the Strait of Irbe,<sup>61</sup> where the navigational channel identified as number 26 runs closer to the Latvian coast than to the Estonian island of Saaremaa.

#### 4 Geographic Considerations

The geographical configuration of the coast is rather complex in the area to be delimited. First, there is the change in the geographic relationship between the coasts. Inside the Gulf of Riga both coasts start out as being adjacent but later on become opposite. Outside the closing line between Cape Loode and Cape Ovisi, the coasts once again.

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*, Art. 4.

<sup>56</sup> *Id.*, Arts. 2 (4) and 6 (1 & 4).

<sup>57</sup> As emphasized in the Preamble, para. 3 of the 1996 Agreement, *supra* note 1.

<sup>58</sup> See *supra* note 10 and accompanying text.

<sup>59</sup> This takes into account the development of the port to be able to accommodate ships with drafts of up to 7 m.

<sup>60</sup> See *infra* sub II (6) *in fine*.

<sup>61</sup> It concerns points 13 and 14.

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Second, many differences have to be noted from a geographical point of view between the coastlines of both countries. If, on the one hand, the entire relevant coastline of Latvia is formed by its mainland, on the other hand Estonia's relevant coastline is primarily generated through the presence of many islands, some of which are sizeable while others are rather small. Furthermore, the Latvian coast is generally smooth, without major indentations. The Estonian mainland coast in the area facing the Gulf of Riga at the land boundary terminus is also quite smooth, but from the Bay of Piarnu westwards, the coastal front tends to become more and more irregular. The coast of Saaremaa Island is more irregular.

If one tries to determine the relevant Estonian and Latvian coastlines in the Gulf of Riga based on the general direction of their respective coasts, a ratio of approximately 1.5 to 1 is obtained at.<sup>62</sup> Even though this ratio was never directly relied upon by the parties, either to determine the boundary line or as an *ex post facto* corrective, it seems apparent that it helped parties to scale down some excessive initial claims.

#### *5 Islands, Rocks, Reefs, and Low-Tide Elevations Considerations*

Many islands are present in the area to be delimited. All of them belong to Estonia. Inside the Gulf of Riga, special attention needs to be given to the smaller islands. Almost all of them are located close to the coast of Estonia, e.g. Kihnu (about 2.8 n.m. from the mainland coast, measuring 16.4 square kilometers (sq. km.) and having a population of 518) and Abruca (a little bit more than 1 n.m. from Saaremaa Island, measuring 8.78 sq. km. and having a population of 40). From a delimitation point of view, also the smaller islets of Allirahu, on which a beacon can be found, are to be mentioned. The latter is located about 3 n.m. from the Viaetta peninsula, which forms almost the middle of the southern shore of Saaremaa.

One major exception to this general rule is Ruhnu Island, which is located much closer to the shores of Latvia (20 n.m.) than to the Estonian mainland (37 n.m.) or Saaremaa (29 n.m.). The territory of Ruhnu Island is 11.36 sq. km. The island had a population which varied between 28 and 213 during the 20th century and reached 56 in early 1990. Today it has a population of about 60.

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<sup>62</sup> For Latvia the general direction, as determined by the author, is a line starting at Cape Ovisi to Cape Kolka, then to Mersrags, Ragaciems, Bulli, Daugavgriva, and Saulkrasti up to the land boundary with Estonia (approximately 153 n.m.). For Estonia the general direction, as determined by the author, is a line starting at the common land frontier to Häädemeeste, then to the southern extremity of the Someri peninsula, the most southern points of the Kõbassaar and Viaetta peninsulas, up to the most southern point of Saaremaa, Cape Loode, in the west (approximately 103 n.m.).

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Together with the fishery problem, to which it is closely tied,<sup>63</sup> the exact weight to be attributed to this island, precisely because of its particular location just described and its possible impact on the maritime boundary, proved to be a major bone of contention between the two parties.

Estonia had established a system of straight baselines inside this area (*see infra at Baseline Considerations*) which included Ruhnu Island as a turning point,<sup>64</sup> apparently implying that full weight had to be attributed to it. This point of view was very much contested by Latvia, which was of the opinion that it was precisely the inclusion of Ruhnu Island in this system of straight baselines which made the latter contrary to international law.<sup>65</sup>

The solution finally arrived at by the parties was that this island would only be entitled to a 12 n.m. zone.<sup>66</sup>

Outside the Gulf of Riga, Saaremaa (measuring about 2,670 sq. km. in surface area and having a population of approximately 40,000) and Hiiumaa (measuring about 1,000 sq. km. in surface area and having a population of approximately 11,900), both sizeable islands belonging to Estonia, need to be mentioned. It is apparent that the equidistant line was not used for the last segment, but rather it is the perpendicular to the closing line between the southern rock at Cape Loode and Ovisi lighthouse. Therefore, there is no need to address the effect not given to a particular feature, as this assertion implies some sort of modified equidistant line, which it is not.

## 6 Baseline Considerations

Only one of the two countries claimed a system of straight baselines in the area. In 1993, Estonia enacted national legislation on the subject,<sup>67</sup> which covered the whole area relevant to the maritime delimitation with Latvia. The straight baseline

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63 Rich fishing grounds were located in its immediate vicinity. *See supra* note 42 and accompanying text.

64 Law on the Boundaries of the Maritime Tract, 10 March 1993, I RIIGI TEATAJA 1993, 14, 217. As reprinted in 25 LOS BULL. 55-64 (June 1994).

65 Despite the complicated geographical setting, it is hard to imagine how this segment of the Estonian baseline system can, for instance, be said to follow the general direction of the coast. *See infra* note 72 and accompanying text.

66 Points 4, 5, 6 and 7 are all located at 12 n.m. from Ruhnu Island. The latter three points being located at equal distances from one another, this implies that between points 4 and 8 the outer limit of Ruhnu's territorial sea is divided into four equal parts.

67 Law on the Boundaries of the Maritime Tract, *supra* note 64.

segments surrounding Ruhnu Island created a serious disagreement between the parties. They did not, however, influence the location of the boundary line.<sup>68</sup>

The disagreement concerns more specifically the segment connecting the islands of Allirahu, Ruhnu and Kihnu.<sup>69</sup> First of all, it is difficult to imagine how three small islands, measuring together certainly not more than 30 sq. km., can constitute a fringe of islands in front of the Estonian coast which, measured in very simplified form, is 103 n.m. long.<sup>70</sup> Allirahu, moreover, is located about 24.4 n.m. from Ruhnu and the latter about 28.4 n.m. from Kihnu. Second, it may well be that Allirahu and Kihnu are located in the immediate vicinity of the coast,<sup>71</sup> but, taking into account the actual size of the Gulf of Riga this can be questioned with respect to Ruhnu, which is located at 37 n.m. from the Estonian mainland and 29 n.m. from Saaremaa. Third, instead of following the general direction of the coast, each of the three islands bends the line by approximately 90 degrees. This clear departure from the general direction of the coast is exactly caused by the forced inclusion of Ruhnu in this system of straight baselines. Even if Ruhnu were excluded, it is hard to consider that the line follows the general direction of the coast.<sup>72</sup>

The segment of the system of straight baselines between Kihnu and Ruhnu was totally disregarded by the parties when delimiting the maritime boundary, since this part of the boundary was based on historical considerations instead.<sup>73</sup> The segment linking Allirahu and Ruhnu did not have any direct influence either, even though these two islands themselves served as Estonian basepoints for determining points 8 to 11. Thus, the Estonian system of straight baselines did not serve as a basis for locating the international maritime boundary line in this area.

It should be noted in this respect that Latvia was allowed to rely on a straight baseline segment in the delimitation process despite the fact that it did not officially claim any such baselines. Point 9 is located equidistant from Ruhnu Island on the Estonian side and a construction line connecting Cape Kolka and Mersrags on the Latvian side.<sup>74</sup>

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68 See, for instance, the conclusion reached by Alex G. Oude Elferink, *Law on the Boundaries of the Maritime Tract*, 9 INT'L J. MAR. & COASTAL L. 235, 235 and 237 (1994).

69 *Law on the Boundaries of the Maritime Tract*, *supra* note 64, points 27-35.

70 This measurement is based on a line already described above. See *supra* note 62.

71 See *supra*, at section II (5).

72 In fact, the system of straight baselines would follow the general direction of the coast if, instead of Ruhnu Island, a point were to be chosen making up the fourth corner of an imaginary diamond-shaped figure of which Allirahu, Ruhnu, and Kihnu form the other corners. It means, in fact, that Ruhnu was not only located in such a manner as not to follow the general direction of the coast, but rather to depart from it in the totally opposite direction.

73 See *supra*, at section II (1).

74 As explained in Annex 2 to the 1996 Preliminary Agreement, *supra* note 13.

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Finally, reference should also be made to a particular segment of baseline, not claimed by any of the parties, but which nevertheless exercised a substantial influence on the actual direction of the maritime boundary. This is the most southern segment of the former Soviet system of straight baselines in the Baltic Sea, between the southern rock at Cape Loode on Saaremaa Island, and Ovisi lighthouse on the Latvian coast (*see supra*, at *Political, Strategic, and Historical Considerations*). Both parties relied on exactly the same description of the natural entrance point for the western access to the Gulf of Riga as that used by the former Soviet Union.<sup>75</sup> Given the particular importance of this segment for the determination of the boundary line outside the Gulf of Riga (*see supra*, at *Method of Delimitation Considerations*), it seems important to note that the parties apparently accepted this particular old Soviet segment as an acceptable point of departure.

#### 7 *Geological and Geomorphological Considerations*

The Gulf of Riga is underlain by a uniform continental shelf with water depths which do not exceed 50 meters (m.) Outside the Gulf of Riga, where water depths along the Estonian and Latvian coast never reach 200 m., a similar basic observation applies.

As a consequence, these considerations did not influence the boundary line.

#### 8 *Method of Delimitation Considerations*

Taking into account the complexity of the area to be delimited, the parties relied on a number of different methods to be applied.

Between points 1 to 4, historical considerations prevailed as explained above.<sup>76</sup>

Points 4-8 are all located at 12 n.m. from Ruhnu Island, meaning that the latter, located as it is in the center of the Gulf of Riga was only granted a territorial sea in the area.

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<sup>75</sup> See *supra* note 24.

<sup>76</sup> See *supra*, at section II (1).

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West of Ruhnu, where the territorial seas of the parties overlap, equidistance was used to determine points 8 to 12.<sup>77</sup> On the Estonian side the basepoints used were all islands, whereas on the Latvian side the mainland served this purpose.<sup>78</sup>

Points 13 and 14, on the other hand, are not equidistant points. Here the parties were probably influenced by navigational interests when drawing the boundary line.<sup>79</sup>

Outside the Gulf of Riga, finally, the agreement explicitly specifies that the parties utilized the method of drawing a perpendicular to the hypothetical closing line between the southern rock at Cape Loode and Ovisi lighthouse. The equidistant point of this closing line was used as a starting point to construct the perpendicular line.<sup>80</sup> The precise coordinates of the terminal point where this segment intersects with Sweden's economic zone have not been fixed in the agreement. The latter provided that this terminal point would be defined by means of a trilateral agreement.<sup>81</sup> This occurred less than a year later (see Estonia-Latvia-Sweden (1997), No. 10-17).

#### 9 *Technical Considerations*

For the location of the geographical coordinates of the turning and terminal points, use is made of the World Geodetic System 1984. A chart is attached to the agreement for illustrative purposes only. The straight lines drawn between these turning and terminal points are geodetic lines.

#### 10 *Other Considerations*

It is noteworthy that this agreement was drawn up in three official languages each being equally authentic, namely Estonian, Latvian, and English. In case of divergence of interpretation, moreover, this agreement provides that the latter shall prevail.

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<sup>77</sup> Point 8 is the equidistant point between Ruhnu Island and Mersrags; point 10 between Ruhnu Island and Cape Kolka; point 11 between Allirahu Island and Cape Kolka (with adjustment because of different methods of calculation), point 12 between Kirjusaar Island and Cape Kolka. Also point 9 is a median point, but of a special nature as explained *infra* note 78 and accompanying text as well as further references found there.

<sup>78</sup> This is with the exception of point 9 as mentioned above. See *supra*, at section II (6).

<sup>79</sup> See *supra*, at section II (3).

<sup>80</sup> 1996 Agreement, *supra* note 1, Art. 3.

<sup>81</sup> *Id.*



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On the same day as the 1996 agreement was signed, both Prime Ministers also signed a Protocol regulating the ownership, maintenance and service of two buoys in the Strait of Irbe.<sup>82</sup> These buoys were the property of Latvia at the time of signature, but because of the agreement they became located on the Estonian side of the maritime boundary. By 10 October 1997, at the latest, the transfer of the ownership had to be settled. Until then, Latvia was allowed to continue to service these buoys.

A quite unusual feature of the present agreement is moreover that a dispute settlement provision has been included in a Baltic Sea maritime delimitation agreement.

### III CONCLUSIONS

This agreement establishes a single maritime boundary between the parties. This became necessary after fishing in the Gulf of Riga became an issue of direct confrontation by 1995. Nevertheless, considerations relating to the living resources in the area did not influence the maritime boundary. Rather they were left for later solution by means of separate negotiations between the parties. The actual granting of access by fishing vessels of one party to the waters of the other, however, proved to be extremely difficult to realize in practice.

On the other hand, the present agreement was influenced by other considerations. Even though the parties discarded the idea of considering the Gulf of Riga as a historic bay, the agreement did rely on other historic factors in determining the course of the boundary. Navigational interests also influenced the boundary line in more than one area.

The rather complex geographical setting in which this particular maritime boundary delimitation had to take place, helps to explain the fact that a multitude of different methods was relied upon in order to arrive at an equitable result. Besides equidistance, therefore, the historic boundary between Estonia and Latvia established during the 1920s, the theory of restricted maritime zones for islands straddling the median line, and that of drawing a perpendicular were all methods used in the present agreement.

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<sup>82</sup> Protocol between the Prime Minister of the Republic of Estonia and the Minister President of the Republic of Latvia, 12 July 1996, 39 LOS BULL. 32 (1999).

#### IV RELATED LAW IN FORCE

##### *A. Law of the Sea Conventions*

Estonia: Not a party to any of the four 1958 Geneva Conventions, or to the 1982 LOS Convention.

Latvia: Acceded to the 1958 Geneva Convention on the Territorial Sea and to the Contiguous Zone on 17 November 1992 and the 1958 Geneva Convention on the Continental Shelf on 2 December 1992.

##### *B. Maritime Jurisdiction Claimed at the Time of Signature*

Estonia: 12 n.m. territorial sea; 200 n.m. EEZ.

Latvia: 12 n.m. territorial sea; 200 n.m. EEZ (implicit in the delimitation agreement).

##### *C. Maritime Jurisdiction Claimed Subsequent to Signature*

Estonia: No change.

Latvia: No change.

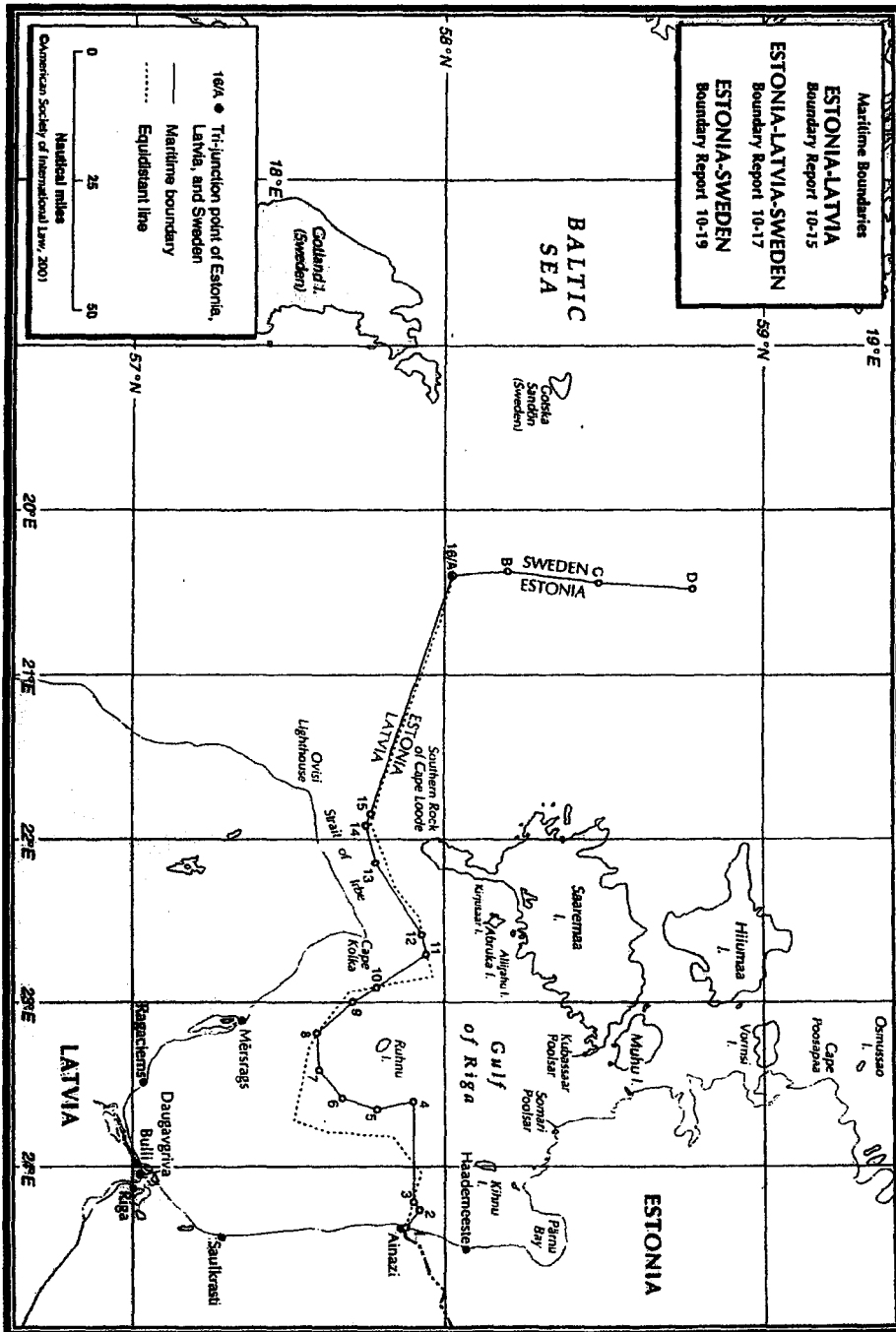
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*Prepared by Erik Franckx*



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**Agreement Between the Government of the Republic of Estonia and the  
Government of 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 Re-establishment of the State Border of 20 March 1992,

*Have agreed as follows:*

*Estonia-Latvia 3015*

*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.

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*Article 3*

The maritime boundary between the Republic of Estonia and The Republic of Latvia continuing into the Baltic Sea forms point 15 defined in article 2 as a straight geodetic line in the azimuth of 298° 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.

*Estonia-Latvia 3017*

*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 the 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

For the Republic of Latvia