

Ems-Dollart estuary

Did Germany and the Netherlands really agree on the disputed boundary recently?

An article by THOMAS DEHLING

»Germany and the Netherlands settled a dispute regarding the border in the Ems estuary which endured for centuries. The Ministers of Foreign Affairs Frank-Walter Steinmeier and Bert Koenders signed the respective treaty.« This or similar headlines could be read in the newspapers in autumn 2014. It gives the impression that finally a border between the two countries has been agreed upon in that area. In fact, the treaty consolidates the contrary. But although both partners agree that they don't agree on that boundary, they found another pragmatic solution which fits in the line of treaties in the Ems-Dollart area and which fixes substantial and for practical matters particularly important aspects. This solution is yet another example of the excellent and pragmatic cooperation between the Netherlands and Germany.

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Ems-Dollart estuary | boundary delineation | UNCLOS | Law of the Sea | talweg | EEZ | Borkum Riffgat

Historical background

To understand the special case of the common boundaries between the Netherlands and Germany in the estuary of the river Ems, it is necessary to shortly explain the historical background first. The different positions about the boundary in that area go centuries back. The German position is that the low-water line at the western shore of the Ems estuary constitutes the border and refers mainly to a letter of enfeoffment (German: Lehnsbrief) from the year 1464. The Netherlands state that the border should be drawn according to the general rules in international law and refer to the principle of the talweg, which is defined as the line joining the lowest points of a valley throughout its length (*IHO Hydrographic Dictionary*, S-32).

Ems-Dollart Treaty

In the 20th century both countries agreed that they don't agree in this regard, and in the light of the traditionally good relationship both coun-

tries found a status-quo agreement that led to the Ems-Dollart Treaty in 1960. Several supplementary treaties have been signed and the Ems-Dollart-Commission has been constituted. This framework guarantees that all practical issues in the disputed area are being dealt with amicably. Thus, the unsolved case of the boundary became quite irrelevant.

Fig. 1 shows the area of the Ems-Dollart Treaty in red (attachment to the supplementary agreement from 14 May 1962). As can be seen on the chart, the area comprises the territorial sea in the estuary at the time the treaties were signed as well. The seaward limits of the territorial sea from both countries were drawn in a distance of three nautical miles from the normal baseline.

In 1964 both countries also agreed on the limits of the continental shelf adjacent to that area. Fig. 2 shows that line in blue. This treaty distinctly excluded the question of the common territorial border. The continental shelf comprises the sea-

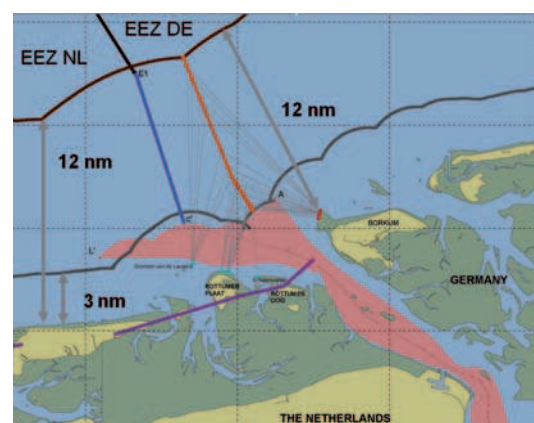


Fig. 2: Sketch showing the area between 3 and 12 nm

Fig. 1: Chart showing the area of the Ems-Dollart Treaty

bed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin. The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

UNCLOS

In 1982 the United Nations Convention on the Law of the Sea (UNCLOS) was concluded and replaced four treaties of 1958. UNCLOS came into force in 1994, a year after Guyana became the 60th nation to sign the treaty. One major development was the extension of the territorial sea beyond three nautical miles (nm) up to 12 nautical miles. Both the Netherlands (in 1985) and Germany (in 1994) extended their territorial waters to that limit.

In the sketch of Fig. 2 the area of the Ems-Dollart Treaty can be seen in red, the 3 nm in grey, the 12 nm in brown, the limit of the continental shelf in blue and the equidistance line in orange.

The limits of the Ems-Dollart Treaty were not adjusted to that extension accordingly. Both countries stated that the lateral limits of the territorial sea between 3 and 12 nm have to be defined by a later agreement. Thus, the extension in the Ems-Dollart estuary has led to an area of unclear legislation. Even the limits of that area were unclear.

One question discussed by lawyers is, whether through the extension to 12 nm and the former agreement on the limits of the continental shelf a »de facto« border of the territorial sea has been defined (cf. König and tho Pesch). At least it seems to be clear that continental shelf and territorial sea can't exist in the same area simultaneously and that the extension of the territorial sea from both sides were only possible to the limits of the continental shelf.

Extended use of the area beyond 3 nm – »Windpark Borkum Riffgat«

The practical impact of that unclear legal status was marginal in the beginning and could generally be solved by the Ems-Dollart-Commission. But with the growing importance of that area for economic use and environmental protection the need for a new regulation became more and more obvious.

The excerpt of the nautical chart (Fig. 3) shows the wind farm »Riffgat« in green, the continental shelf limit in red and the equidistance line in blue.

The plans for the wind farm »Riffgat« put even more pressure on the legal questions. As can be seen on the chart the wind farm is intersected by the equidistance line. The equidistance line is composed of points that have the same distance from the baseline of neighbouring countries. The Netherlands state that this line should be the basis for the border between 3 and 12 nm. From the German point of view the whole wind farm is without doubt completely inside their territorial

sea and that view was supported by an expertise from Prof. Rainer Lagoni (Lagoni 2012). The legal process of approving the construction of the wind farm was accomplished according to German law in 2011. But still the legal situation remained unclear and there will surely be more cases to come in practice, where approvals will be requested and second »approval chains« need to be avoided. Thus, it became evident that this uncertainty had to be eliminated.

Consultations and negotiations

Already in the 1980s consultations offered a solution. There were proposals for a definition of the boundary of the territorial sea itself and various ideas for an extension of the Ems-Dollart Treaty area. One general question was how far seawards the basic dispute can be legally extended and whether or not an equidistance line could be applicable.

There were different views of both countries regarding formal negotiations. Especially the question whether negotiations could be started without the necessity of reaching a solution of a border as such. In 2012 this question was answered positively from both countries and the formal process started in 2013. Already in the same year the general outline of a treaty was settled. The agreement was reached in June 2014 and the formal signing of the treaty was done in October 2014.

Signing of the treaty

The treaty was signed on board the vessel »Neuwerk« on its passage from Emden in Germany to Delfzijl in the Netherlands on the 24 October 2014 by the Ministers of Foreign Affairs of the Federal Republic of Germany, Frank-Walter Steinmeier, and of the Netherlands, Bert Koenders (Fig. 4). The »Neuwerk« is a multi-purpose vessel, operated by the German Water and Shipping Administration and is part of the German Coast Guard.

References

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Fig. 3: Excerpt of the nautical chart showing the wind farm »Riffgat« (green), the continental shelf limit (red) and the equidistance line (blue)



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Fig. 4: The Ministers of Foreign Affairs of the Federal Republic of Germany, Frank-Walter Steinmeier (right), and of the Netherlands, Bert Koenders

Result

»Vertrag zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande über die Nutzung und Verwaltung des Küstenmeeres zwischen 3 und 12 Seemeilen«

»Verdrag tussen de Bondsrepubliek Duitsland en het Koninkrijk der Nederlanden betreffende het gebruik en beheer van de territoriale zee van 3 tot 12 zeemijlen«

The treaty »on the use and administration of the territorial sea between 3 and 12 nautical miles« fixes the substantial and for practice particularly important aspects:

- The construction of the wind farm »Riffgat« is being based on an assured basis of international law;
- The delimitation of responsibilities for marine cables, pipelines, wind farms, rights for exploitation and uses is being done along the line of the German-Dutch treaty of the continental shelf from 1964;
- The access to the high sea from the harbours of Emden, Delfzijl and Eemshaven remains without hindrance;

- The whole marine traffic management in that area will be concentrated in one joint vessel traffic service centre.

Although stated in the media repeatedly, this treaty is not an agreement about the boundary in the Ems-Dollart estuary. It explicitly does not include a border between the two countries, but it provides legal certainty on both sides with a pragmatic solution. This is important for further investments and the administration of the Ems-Dollart estuary, which becomes more and more important due to the growing importance of the coastal seas economically and ecologically.

Role of hydrography

The international law, especially the Law of Sea, is not only a legal issue where lawyers and politicians are engaged in. The example described above shows many tasks that are closely related to hydrography. One prerequisite is of course the provision of a topography of the sea-floor and the wadden sea. Decisions have to be based as well on up-to-date and quality assured information of the coastline, the 0 m contour line and the talweg. Description of estuaries and their limits have to be based on scientific research. Calculations have to be accomplished regarding coordinates and transformations, equidistance lines and other delimitations. And all these calculations and results have to be presented in digital and analogue cartographic products and in presentations which are understandable for non-hydrographers.

The hydrographers probably still can do more to make their contributions in all marine fields and aspects known to the public and to other professions. They should be more self-confident and more visible. [↕](#)

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