
ВИЗНАЧНІ РІШЕННЯ МІЖНАРОДНОГО СУДУ ООН У СФЕРІ МОРСЬКОГО ПРАВА¹

44. NORTH SEA CONTINENTAL SHELF CASES *Judgment of 20 February 1969*

The Court delivered judgment, by 11 votes to 6, in the North Sea Continental Shelf cases².

The dispute, which was submitted to the Court on 20 February 1967, related to the delimitation of the continental shelf between the Federal Republic of Germany and Denmark on the one hand, and between the Federal Republic of Germany and the Netherlands on the other. The Parties asked the Court to state the principles and rules of international law applicable, and undertook thereafter to carry out the delimitations on that basis.

The Court rejected the contention of Denmark and the Netherlands to the effect that the delimitations in question had to be carried out in accordance with the principle of equidistance as defined in Article 6 of the 1958 Geneva Convention on the Continental Shelf, holding:

- that the Federal Republic, which had not ratified the Convention, was not legally bound by the provisions of Article 6;
- that the equidistance principle was not a necessary consequence of the general concept of continental shelf rights, and was not a rule of customary international law.

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² Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice. 1948-1991. – United Nations : New York, 1992. – P. 72–75. United Nations publication; Sales No. E.92.V.5. (ST/LEG/SER.F/1).

The Court also rejected the contentions of the Federal Republic in so far as these sought acceptance of the principle of an apportionment of the continental shelf into just and equitable shares. It held that each Party had an original right to those areas of the continental shelf which constituted the natural prolongation of its land territory into and under the sea. It was not a question of apportioning or sharing out those areas, but of delimiting them.

The Court found that the boundary lines in question were to be drawn by agreement between the Parties and in accordance with equitable principles, and it indicated certain factors to be taken into consideration for that purpose. It was now for the Parties to negotiate on the basis of such principles, as they have agreed to do.

The proceedings, relating to the delimitation as between the Parties of the areas of the North Sea continental shelf appertaining to each of them, were instituted on 20 February 1967 by the communication to the Registry of the Court of two Special Agreements, between Denmark and the Federal Republic and the Federal Republic and the Netherlands respectively. By an Order of 26 April 1968, the Court joined the proceedings in the two cases.

The Court decided the two cases in a single Judgment, which it adopted by eleven votes to six. Amongst the Members of the Court concurring in the Judgment, Judge Sir Muhammad Zafrulla Khan appended a declaration; and President Bustamante y Rivero and Judges Jessup, Padilla Nervo and Ammoun appended separate opinions. In the case of the non-concurring Judges, a declaration of his dissent was appended by Judge Bengzon; and Vice-President Koretsky, together with Judges Tanaka, Morelli and Lachs, and Judge *ad hoc* Sørensen, appended dissenting opinions.

In its Judgment, the Court examined in the context of the delimitations concerned the problems relating to the legal regime of the continental shelf raised by the contentions of the Parties.

The Facts and the Contentions of the Parties

(paras. 1–17 of the Judgment)

The two Special Agreements had asked the Court to declare the principles and roles of international law applicable to the delimitation as between the Parties of the areas of the North Sea continental shelf appertaining to each of them beyond the partial boundaries in the immediate vicinity of the coast already determined between the Federal Republic and the Netherlands by an agreement of 1 December 1964 and between the Federal Republic and Denmark by an agreement of 9 June 1965. The Court was not asked actually to delimit the further boundaries involved, the Parties undertaking in their respective Special Agreements to effect such delimitation by agreement in pursuance of the Court's decision.

The waters of the North Sea were shallow, the whole seabed, except for the Norwegian Trough, consisting of continental shelf at a depth of less than 200 metres. Most of it had already been delimited between the coastal States concerned.

The Federal Republic and Denmark and the Netherlands, respectively, had, however, been unable to agree on the prolongation of the partial boundaries referred to above, mainly because Denmark and the Netherlands had wished this prolongation to be effected on the basis of the equidistance principle, whereas the Federal Republic had considered that it would unduly curtail what the Federal Republic believed should be its proper share of continental shelf area, on the basis of proportionality to the length of its North Sea coastline. Neither of the boundaries in question would by itself produce this effect, but only both of them together an element regarded by Denmark and the Netherlands as irrelevant to what they viewed as being two separate delimitations, to be carried out without reference to the other.

A boundary based on the equidistance principle, i.e., an "equidistance line", left to each of the Parties concerned all those portions of the continental shelf that were nearer to a point on its own coast than they were to any point on the coast of the other Party.

In the case of a concave or recessing coast such as that of the Federal Republic on the North Sea, the effect of the equidistance

method was to pull the line of the boundary inwards, in the direction of the concavity. Consequently, where two equidistance lines were drawn, they would, if the curvature were pronounced, inevitably meet at a relatively short distance from the coast, thus “cutting off” the coastal State from the area of the continental shelf outside. In contrast, the effect of convex or outwardly curving coasts, such as were, to a moderate extent, those of Denmark and the Netherlands, was to cause the equidistance lines to leave the coasts on divergent courses, thus having a widening tendency on the area of continental shelf off that coast.

It had been contended on behalf of Denmark and the Netherlands that the whole matter was governed by a mandatory rule of law which, reflecting the language of Article 6 of the Geneva Convention on the Continental Shelf of 29 April 1958, was designated by them as the “equidistance-special circumstances” rule. That rule was to the effect that in the absence of agreement by the parties to employ another method, all continental shelf boundaries had to be drawn by means of an equidistance line, unless “special circumstances” were recognized to exist. According to Denmark and the Netherlands, the configuration of the German North Sea coast did not of itself constitute, for either of the two boundary lines concerned, a special circumstance.

The Federal Republic, for its part, had contended that the correct rule, at any rate in such circumstances as those of the North Sea, was one according to which each of the States concerned should have a “just and equitable share” of the available continental shelf, in proportion to the length of its sea-frontage. It had also contended that in a sea shaped as is the North Sea, each of the States concerned was entitled to a continental shelf area extending up to the central point of that sea, or at least extending to its median line. Alternatively, the Federal Republic had claimed that if the equidistance method were held to be applicable, the configuration of the German North Sea coast constituted a special circumstance such as to justify a departure from that method of delimitation in this particular case.

The Apportionment Theory Rejected

(paras. 18–20 of the Judgment)

The Court felt unable to accept, in the particular form it had taken, the first contention put forward on behalf of the Federal Republic. Its task was to delimit, not to apportion the areas concerned. The process of delimitation involved establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination *de novo* of such an area. The doctrine of the just and equitable share was wholly at variance with the most fundamental of all the rules of law relating to the continental shelf, namely, that the rights of the coastal State in respect of the area of continental shelf constituting a natural prolongation of its land territory under the sea existed *ipso facto* and *ab initio*, by virtue of its sovereignty over the land. That right was inherent. In order to exercise it, no special legal acts had to be performed. It followed that the notion of apportioning an as yet undelimited area considered as a whole (which underlay the doctrine of the just and equitable share) was inconsistent with the basic concept of continental shelf entitlement.

Non-Applicability of Article 6 of the 1958 Continental Shelf Convention

(paras. 21–36 of the Judgment)

The Court then turned to the question whether in delimiting those areas the Federal Republic was under a legal obligation to accept the application of the equidistance principle. While it was probably true that no other method of delimitation had the same combination of practical convenience and certainty of application, those factors did not suffice of themselves to convert what was a method into a rule of law. Such a method would have to draw its legal force from other factors than the existence of those advantages.

The first question to be considered was whether the 1958 Geneva Convention on the Continental Shelf was binding for all the Parties in the case. Under the formal provisions of the Convention, it was in force for any individual State that had signed it within the time-limit provided, only if that State had also subsequently ratified it. Denmark

and the Netherlands had both signed and ratified the Convention and were parties to it, but the Federal Republic, although one of the signatories of the Convention, had never ratified it, and was consequently not a party. It was admitted on behalf of Denmark and the Netherlands that in the circumstances the Convention could not, as such, be binding on the Federal Republic. But it was contended that the regime of Article 6 of the Convention had become binding on the Federal Republic, because, by conduct, by public statements and proclamations, and in other ways, the Republic had assumed the obligations of the Convention.

It was clear that only a very definite, very consistent course of conduct on the part of a State in the situation of the Federal Republic could justify upholding those contentions. When a number of States drew up a convention specifically providing for a particular method by which the intention to become bound by the regime of the convention was to be manifested, it was not lightly to be presumed that a State which had not carried out those formalities had nevertheless somehow become bound in another way. Furthermore, had the Federal Republic ratified the Geneva Convention, it could have entered a reservation to Article 6, by reason of the faculty to do so conferred by Article 12 of the Convention.

Only the existence of a situation of estoppel could lend substance to the contention of Denmark and the Netherlands – i.e., if the Federal Republic were now precluded from denying the applicability of the conventional regime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that regime, but also had caused Denmark or the Netherlands, in reliance on such conduct, detrimentally to change position or suffer some prejudice. Of this there was no evidence. Accordingly, Article 6 of the Geneva Convention was not, as such applicable to the delimitations involved in the present proceedings.