

have occurred in such a way as to show a general recognition that a rule of law was involved. Some 15 cases had been cited in which the States concerned had agreed to draw or had drawn the boundaries concerned according to the principle of equidistance, but there was no evidence that they had so acted because they had felt legally compelled to draw them in that way by reason of a rule of customary law. The cases cited were inconclusive and insufficient evidence of a settled practice.

The Court consequently concluded that the Geneva Convention was not in its origins or inception declaratory of a mandatory rule of customary international law enjoining the use of the equidistance principle, its subsequent effect had not been constitutive of such a rule, and State practice up to date had equally been insufficient for the purpose.

### **The Principles and Rules of Law Applicable** *(paras. 83—101 of the Judgment)*

The legal situation was that the Parties were under no obligation to apply the equidistance principle either under the 1958 Convention or as a rule of general or customary international law. It consequently became unnecessary for the Court to consider whether or not the configuration of the German North Sea coast constituted a «special circumstance». It remained for the Court, however, to indicate to the Parties the principles and rules of law in the light of which delimitation was to be effected.

The basic principles in the matter of delimitation, deriving from the Truman Proclamation, were that it must be the object of agreement between the States concerned and that such agreement must be arrived at in accordance with equitable principles. The Parties were under an obligation to enter into negotiations with a view to arriving at an agreement and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they were so to conduct themselves that the negotiations were meaningful, which would not be the case when one of them insisted upon its own position without contemplating any modification of it. This obligation was merely a special application of a principle underlying all international relations, which was moreover

recognized in Article 33 of the Charter of the United Nations as one of the methods for the peaceful settlement of international disputes.

The Parties were under an obligation to act in such a way that in the particular case, and taking all the circumstances into account, equitable principles were applied. There was no question of the Court's decision being *ex aequo et bono*.

It was precisely a rule of law that called for the application of equitable principles, and in such cases as the present ones the equidistance method could unquestionably lead to inequity.

Other methods existed and might be employed, alone or in combination, according to the areas involved. Although the Parties intended themselves to apply the principles and rules laid down by the Court some indication was called for of the possible ways in which they might apply them.

For all the foregoing reasons, the Court found in each case that the use of the equidistance method of delimitation was not obligatory as between the Parties; that no other single method of delimitation was in all circumstances obligatory; that delimitation was to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constituted a natural prolongation of its land territory, without encroachment on the natural prolongation of the land territory of the other, and that, if such delimitation produced overlaying areas, they were to be divided between the Parties in agreed proportions, or, failing agreement, equally, unless they decided on a regime of joint jurisdiction, user, or exploitation.

In the course of negotiations, the factors to be taken into account were to include: the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features; so far as known or readily ascertainable, the physical and geological structure and natural resources of the continental shelf areas involved; the element of a reasonable degree of proportionality between the extent of the continental shelf areas appertaining to each State and the length of its coast measured in the general direction of the coastline, taking into account the effects, actual or prospective, of any other continental shelf delimitations in the same region.