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Case Analysis: The North Sea Continental Shelf Cases

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TITLE:

The North Sea Continental Shelf Cases (Germany/Denmark; Germany/Netherlands) ICJ Rep 3, ICGJ 150 (ICJ 1969)

BENCH & QUORUM:

There were 17 Judges in these cases

Jose Bustamante y Rivero (President), Vladimir Koretsky (Vice President), Sir Gerald Fitzmaurice, Kotaro Tanaka, Philip Jessup, Gaetano Morelli, Muhammad Zafrulla Khan, Luis Padilla Nervo, Isaac Forster, Andre Gros, Fouad Ammoun, Cesar Bengzon, Petren Sture Petren, Manfred Lachs, Mosler (ad hoc for Germany), Max Sorensen (ad hoc for The Netherlands) JJ.

Keywords: *Continental Shelf, Customary International Law, International Court of Justice (ICJ), Equitable Principles, Maritime Boundaries*

PROCEDURAL HISTORY OF THE CASE:

Previously the traditional rule was managing the law of the sea, it provides freedom of the seas for 3 miles and international law also identified state sovereignty over 3 miles exterior from the boundaries of the shoreline of coastal states. Later coastal states became interested in acquiring authority over vast sea areas and their resources as the value of those resources is huge and they wanted to get authority on such resources. In the 1945 Truman Proclamation US President Truman expressed that the continental shelf adjacent to the US coast was subject to their jurisdiction and authority and proposed the Equitable principles method for delimitation of the continental shelf¹.

The 1958 Geneva Convention on the Continental Shelf raised opposing approaches to coastal states' delimitation of continental shelf by proposing Equidistance principle. Even though disputes use to continue and a major dispute took place between Denmark, the Netherlands, and the Germany in the 1960s for the delimitation of continental shelf between these countries.

FACTS OF THE CASE:

There was a conflict between Germany, Netherlands, Denmark regarding the delimitation of continental shelf. In 1964 and 1965 Germany have decided some separate negotiations with its neighbouring Coastal states that is Netherlands and Denmark regarding the delimitation of continental shelf but at the end Germany, Netherlands, Denmark could not decide anything upon the delimitation either by making a separate negotiation or in a tripartite negotiation. So, Germany, Denmark and Netherlands entered into a side agreement of a mid-tripartite negotiation. Further delimitation of the continental shelf between themselves. The Netherlands and Denmark have used Equidistance principle and pointed particular shape of separate coastal lines in a map but Germany have refused to use this method because by using Equidistance principal Germany is getting smaller area of continental shelf then as compared to its coastal line. In that map A-B and C-D were pointed according to the separate negotiations which were made in 1964 and 1965 between Germany and Netherlands. B-E and D-E Points were extension of A-B and C-D, These points were formed according to the equidistance principle Which marked the position of Denmark in Netherlands in the continental shelf. But Germany couldn't agree with that and it have given 2 points B-F and D-F, which describes the position of Germany in continental shelf. Has the agreement have stated that Germany's continental shelf line will be till point E, Germany have refused to agree. So as these three states were unable to get into an agreement for the delimitation of the continental shelf, they have proposed this dispute international Court of Justice. The International Court of Justice Observed that Federal Republic of Germany v/s

¹ Haley S Anderson, *North Sea Continental Shelf Cases* (University of California, Berkeley School of Law 2021) 2.

the Kingdom of Denmark, and the Federal Republic of Germany v/s the Kingdom of the Netherlands these two cases were identical and circumstances were similar, it made both cases into single case.

ISSUES :

The main issue raised in the dispute is how to divide the continental shelf between the 2 countries

1. Is the Geneva Convention enforceable against a state that has not part of it?
2. Is the equidistance rule recognized by international law?

ARGUMENTS OF NETHERLANDS AND DENMARK:

Denmark and the Netherlands argued for delimitation according to the equidistance principle as governed by the Geneva Convention's Article 6(2), they argued that West Germany should however follow Article 6 of the Geneva Convention as it was bound itself through its conduct and also that Article applicable to all North Sea Continental Shelf Cases.

ARGUMENTS OF GERMANY:

West Germany argued against the equidistance principle, instead of that principle Germany asked for delimitation to be handled by the principle that each coastal State is allowed to a just and equitable allocation as it was one of the known principles of law which was recognized by civilized nations which is a source of international law in the International Court of Justice's establishing document.²

LAWS APPLIED:

1. US Truman proclamation, 1945: It states that the delimitation of continental shelf should be done through the agreement between the concerned states of such delimitation and that should be according to the Equitable Principles³
2. Article 38(1)(b) of Statute of International Court of Justice 1945: It states that the court as its function when deciding in accordance to international law the disputes which are submitted will apply the international custom as the evidence of the general practice which is accepted as law by people.

JUDGEMENT:

² US, 'Proclamation on the Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf' (Truman Proclamation, 28 September 1945).

³ Statute of the International Court of Justice 1945, art 38(1)(b).

The majority of judges were 11 who agreed the decision out of 17 judges. 2 judges have given the declarations, 4 judges have given the separate opinions and 5 judges have given the dissenting opinions.

by its sovereignty over the land for its natural resources. So there is an inherent right and centred idea of natural prolongation and all parties agreed on this principle of natural prolongation as fundamental. The Court denied West Germany's request to give each coastal State a just and equitable allocation, realising this practice contradictory to coastal States. On treaty law, the Court decided that West Germany was not bound to Article 6(2)⁴ as it was not a party of the Geneva Convention because it never approved the Convention and also even if West Germany was a party, this would not mandatorily make Germany bound by Article 6 as parties were allowed to enter reservations to this Article. The court denied the argument of Denmark and the Netherlands that West Germany should be bound to Article 6(2) as it through its conduct made itself bound to the convention and it was the rule followed by North Sea Continental Shelf Cases.

The court followed the Truman Proclamation over Equidistance principle. The Court also denied Denmark and the Netherlands statement that the equidistance principle had a fundamental in international law, court stated the principle defined in Article 6(2), was neither an existing nor an emerging Customary International Law rule when the Geneva Convention was drawn, and there was no proof such members believed the equidistance principle is compulsorily applicable. The Court observed that both Denmark and Netherlands could not provide any sufficient evidence which proves that the Equidistance rule has become a compulsory law which is to be applied in North Sea Continental Shelf Cases.

Court also identified that the basic legal notion for making a rule as a customary international law is based upon opinion Juris and State practice in matter of delimitation the parties must have to be negotiating in good faith to arrive into an agreement.

The state through its own consent should practice some particular law then only it will be applicable for it so here has Germany did not approved the Geneva Convention it cannot be held that it is applicable for Germany to follow article 6(2) of the convention Court have given some conditions when the rule will become binding Generally from a conventional norm as The conventional provisions must be fundamental rule and they should be widespread of participation it should be excessive and uniform state practice by the state.

RATIONALE:

⁴ Geneva Convention on the Continental Shelf 1958, art 6(2).

1. In the applicability of Equitable Principles court considered the Truman Proclamation of 1945 pointed delimitation should be decided by agreement between the States by equitable principles.

2. The court have stated the Equidistance Principle is not applicable based on folowin reasonings:

(i) The 1958 Geneva Convention adopted a mechanical method to delimitation, Article 6(2) says in the absence of agreement, limitation shall be resolved by application of the principle of equidistance it is a line every point on which is the exact distance away from whatever point is closest to it on the coast of each of the states involved in dispute.

(ii) The Court have stated that the equi distance principle is not a customary law, It have expressed 3 methods by which the treaties can become a customary law as the treaty must be an existing rule of customary international law or treating must consolidate an emerging rule of the customary international law or treaty rule must evolve as rule in customary international law. So as the Netherlands and Denmark could not prove that Equidistance principle is mandatory court considered it is not a Customary International law.

(iii) The court sated when Geneva Convention was drafted only 38 countries were part in it and was not uniformly practiced by every state to become binding on all, as Germany did not agree to the Convention, rules of such Convention cannot be applicable for it.⁵

3. In case of rule becoming a Customary International Law, it also recognised 3 essential legal concepts as the opinion juris in the subject of delimitation. The parties must negotiate in good faith they should enter into negotiations with an initiation to agree and in this case they have to apply the equitable principles⁶.

4. Court have rejected Germany request regarding just an equitable share to every coastal state because it's under limited and contradictory to coastal states.

CONCURRING AND DISSRNT:

Declaration was made by 2 judges

1. Justice Muhammad Zafrulla Khan: Stated Article 6(2) of Geneva Convention is not applied in this case by applying rationale

2. Justice Cesar Bengzon: -Stated Article 6(2) of Geneva convention is not applicable between parties as the equidistance rule for delimitation cannot be considered as general principles by applying

⁵ Alex Marsh, 'North Continental Shelf Case' (IMA Research Team, Tarrytown, New York, 2 July 2020).

⁶ *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* [1969] ICJ Rep 3, 55–57 (ICJ, 20 February 1969, Peace Palace, The Hague).

rationale.

Remaining 11 Judges have accepted the declaration given by the above JJ **Separate**

Opinion given by 4 judges:

- **Justice Philip Jessup:** -Stated no equidistance method established as obligatory in international law, so there should be special agreements that have to be made between countries. The principles of equity, cooperation and also amicable settlements have to be followed for the delimitation of the continental shelf.
- **Justice President Jose Bustamante y Rivero:** The distance principle may create irregularities of coastal line.
- **Justice Luis Padilla Nervo:** The distance principle may create irregularities of coastal line.
- **Justice Fouad Ammoun:** Stated Article 6(2) of Geneva Convention is not applied in this case.

Dissenting Opinion given by 5 judges:

1. **Justice Vice President Vladimir Koretsky:** Stated equal distance principles must be applied in this case when there are no agreements in some special circumstances the boundaries of territories have to be determined by application of Article 6(2) of Geneva Convention.
2. **Justice Kotaro Tanaka:** -Stated equidistance principle contribute to the progressive development of the international law.
3. **Justice Gaetano Morelli:** Stated equidistance principle must be applied in this case.
4. **Justice Manfred Lachs:** Stated basis of equal distance and Article 6(2) of Geneva Convention have to be applied there cannot be any special circumstances which justify any departure from this rule.
5. **Justice Max Sorensen (ad hoc for The Netherlands):** Stated Article 6 (2) Of Geneva Convention is applicable in this case.

CRITICAL ANALYSIS:

The judgment given in this North Sea continental shelf case by the international court of justice have a great impact on Delimitation of sea area. The delimitation of continental shelf means the division of the continental shelf by the coastal areas which are closer to it for using those resources and to get an authority on that particular area of sea. The judgment given in This case have become foundational contribution for the customary international law. The term natural prolongation has been introduced

into international law of sea through this case where it was stated that Coastal areas have an inherent right for extension of their land into the sea area. In this case the court have rejected the equidistance principle which was proposed in Geneva Convention and upheld the equitable principle which was proposed by Truman proclamation here I agree with a part of judgment. In my opinion it is correct to reject the equidistance principle because it was neither binding on Germany nor a customer international law to make Germany bound to it. Has the tutus stated that the customary international law should be practiced universally but here in this case When the Geneva Convention have been drafted there were only 38 countries who have agreed for the concept of equidistance principle, so as it was not universally practiced by every state it cannot be considered as customary international law . The court have denied the just and equal share concept , in my opinion it is valid to deny Germanys' request to give each coastal state a just and equitable allocation of continental shelf because it is contradictory to Other coastal states. The court have stated Germany is not bound to follow the Equidistance Principle, in my opinion it is valid to decide that Article 6(2) of Geneva Convention which says about the applicability of Equidistance principle for delimitation of continental shelf in case of no prior agreement was entered by parties of dispute, it is not applicable to Germany because it did not ratify the convention, as it was not a part of convention , the rules which were followed by other parties who were part of convention cannot be applicable for Germany and also has Article 6 (2) was not rule under customary international law so it cannot be applicable for Germany , it was explained by court that the Geneva Convention was a treaty which was not an existing rule of customary international law or consolidate an emergency rule of customary international law Or evolving rule of customer international law so it cannot be applicable Germany in both ways.

The part I could not agree in judgement was, the Court have stated to consider Equitable principles for delimitation of continental shelf that should be done by considering multiple factors so that states can ensure that each state which is under dispute can get a fair portion of continental shelf that they actually get, by this judgement, the Denmark and Germany in 1971 entered into an agreement for the resolving the dispute by which United Kingdom adjusted its endpoints with Denmark and Netherlands through which Germany got a new border of its continental shelf. So, in my opinion instead of leaving the dispute without resolving court could have given a specific concept to follow, because in later situations due to lack of defined solution the powerful and wealthy interested States in case delimitation of continental shelf may abuse the justice and weaker states may get lesser area, so court could have given a particular concept to resolve the dispute in a justified manner.

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