

North Sea Continental Shelf Cases

(Federal Republic of Germany/Denmark, Federal Republic of Germany/Netherlands)

I.C.J. Reports 1969

Facts

- a. The International Court of Justice delivered judgment, by 11 votes to 6.
- b. Both Denmark and the Netherlands submitted an individual dispute with Germany to the ICJ involving claims to the North Sea Continental Shelf. These two separate claims were joined by the ICJ, and decided as one case. The parties sought a method by which the Continental Shelf could be fairly delimited. All parties agreed the Court was not to physically apportion claims, but merely prescribe a method of delimitation for the parties to follow.
- c. Denmark and the Netherlands argued that the method of equidistance should be implemented. This is that each State claimed all areas that are closer to itself than any other state. They claimed that the Geneva Convention supported this method. Moreover, it was alleged to have been an *a priori* rule of law, a rule of customary international law, and a general rule of conventional practicality.
- d. Germany, who had not ratified the Geneva Convention, claimed that the rule of equidistance was unfair. The State also argued for an apportionment of the shelf that was proportional to the size of each state's adjacent land.

Questions

- a. Is the Geneva Convention binding on a State that has not ratified it?
- b. Is the equidistance rule international law?

Decisions

- a. The Court found that the Geneva Convention is not binding on German, as it did not ratify it.
- b. While the Geneva Convention does call for the rule of equidistance, the Court found that the Geneva Convention was not binding upon Germany. Moreover, the stipulations outlined in the Geneva Convention would have allowed Germany to opt out in this area, so its membership in the treaty is a moot point.

Upon inspection of the language of both the Geneva Convention and the Truman Proclamation, equidistance was found to be a last resort rather than an *a priori* rule. Also looking to these sources, the Court rejected claims which included equidistance in customary international law. These texts which originally included the rule of equidistance only did so for secondary purposes, and the utilization of it was

insufficient to prove it to be either customary international law, or a general law of practicality. The Court also pointed out mathematical problems of contradiction under the rule.

The Court rejected Germany's claim of proportional apportionment because doing so would intrude upon the natural claims due to States based on natural prolongations of land. Also, the Court's role was to outline a mechanism of delimitation only.

The Court found, therefore, that the two parties must draw up an agreement taking both the maximization of area and proportionality into account. These were to be based upon "equitable principles." The holding here is somewhat inconclusive, but the opinion is significant to international law, regardless.

Principles

- a. The international law elements of the case are the power of treaties, customary international law, and the principle of equidistance in claims to sea territory.
- b. The rule of law upheld in this case is the Geneva Convention.
- c. There are several principles in this case manifested in the Geneva Convention. The court rejected the principle of equidistance. It upheld, rather, the **idea of "equitable principles," which is only defined as those which maximizes land claims based on several cooperative factors.** The Court also upholds the principle of customary international law by using the text of the Geneva Convention and its purpose to exclude the mechanism of equidistance.

Conclusions

The Court's ruling has a terminal impact on the principle of equidistance and its utilization through the Geneva Convention. The Court does not proscribe its use, but eliminates its legal credibility. This, of course, has no impact on the rest of the Geneva Convention. As the holding does not prescribe any specific remedy, this case does not significantly aid in any future decisions, other than for the purpose of denying the equidistance principle legal weight. If this case were used as precedent otherwise, it would merely direct the disputing states to look to customary international law and cooperative action.

Bibliography

North Sea Continental Shelf, Judgment, I.C.J. Reports 1969

Submitted

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