ВИЗНАЧНІ РІШЕННЯ МІЖНАРОДНОГО СУДУ ООН У СФЕРІ МОРСЬКОГО ПРАВА[1]

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

The Equidistance Principle Not Inherent in the Basic Doctrine of the Continental Shelf[2]

(paras. 37—59 of the Judgment)

It had been maintained by Denmark and the Netherlands that the Federal Republic was in any event, and quite apart from the Geneva Convention, bound to accept delimitation on an equidistance basis, since the use of that method was a rule of general or customary international law, automatically binding on the Federal Republic.

One argument advanced by them in support of this contention, which might be termed the a priori argument, started from the position that the rights of the coastal State to its continental shelf areas were based on its sovereignty over the land domain, of which the shelf area was the natural prolongation under the sea. From this notion of appurtenance was derived the view, which the Court accepted, that the coastal State's rights existed ipso facto and ab initio. Denmark and the Netherlands claimed that the test of appurtenance must be «proximity»: all those

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[2] Продовження матеріалів, опублікованих у № 1 за 2017.

parts of the shelf being considered as appurtenant to a particular coastal State which were closer to it than they were to any point on the coast of another State. Hence, delimitation had to be effected by a method which would leave to each one of the States concerned all those areas that were nearest to its own coast. As only an equidistance line would do this, only such a line could be valid, it was contended.

This view had much force; the greater pan of a State's continental shelf areas would normally in fact be nearer to its coasts than to any other. But the real issue was whether it followed that every part of the area concerned must be placed in that way. The Court did not consider this to follow from the notion of proximity, which was a somewhat fluid one. More fundamental was the concept of the continental shelf as being the natural prolongation of the land domain. Even if proximity might afford one of the tests to be applied, and an important one in the right conditions, it might not necessarily be the only, nor in all circumstances the most appropriate, one.

Submarine areas did not appertain to the coastal State merely because they were near it, nor did their appurtenance depend on any certainty of delimitation as to their boundaries. What conferred the ipso jure title was the fact that the submarine areas concerned might be deemed to be actually pan of its territory in the sense that they were a prolongation of its land territory under the sea. Equidistance clearly could not be identified with the notion of natural prolongation, since the use of the equidistance method would frequently cause areas which were the natural prolongation of the territory of one State to be attributed to another. Hence, the notion of equidistance was not an inescapable a priori accompaniment of basic continental shelf doctrine.

A review of the genesis of file equidistance method of delimitation confirmed the foregoing conclusion. The «Truman Proclamation» issued by the Government of the United States on 28 September 1945 could be regarded as a starting-point of the positive law on the subject, and the chief doctrine it enunciated, that the coastal State had an original, natural and exclusive right to the continental shelf off its shores, had come to prevail over all others and was now reflected in the 1958 Geneva Convention. With regard to the delimitation of boundaries between the continental shelves of adjacent States, the Truman Proclamation had stated that

such boundaries «shall be determined by the United States and the State concerned in accordance with equitable principles». These two concepts, of delimitation by mutual agreement and delimitation in accordance with equitable principles, had underlain all the subsequent history of the subject. It had been largely on the recommendation of a committee of experts that the principle of equidistance for the delimitation of continental shelf boundaries had been accepted by the United Nations International Law Commission in the text it had laid before the Geneva Conference of 1958 on the Law of the Sea which had adopted the Continental Shelf Convention. It could legitimately be assumed that the experts had been actuated by considerations not of legal theory but of practical convenience and cartography. Moreover, the article adopted by the Commission had given priority to delimitation by agreement and had contained an exception in favour of «special circumstances».

The Court consequently considered that Denmark and the Netherlands inverted the true order of things and that, far from an equidistance rule having been generated by an antecedent principle of proximity inherent in the whole concept of continental shelf appurtenance, the latter was rather a rationalization of the former.

The Equidistance Principle
Not a Rule of Customary International Law
(paras. 60—82 of the Judgment)

The question remained whether through positive law processes the equidistance principle must now be regarded as a rule of customary international law.

Rejecting the contentions of Denmark and the Netherlands, the Court considered that the principle of equidistance, as it figured in Article 6 of the Geneva Convention, had not been proposed by the International Law Commission as an emerging rule of customary international law. This Article could not be said to have reflected or crystallized such a rule. This was confirmed by the fact that any State might make reservations in respect of Article 6, unlike Articles 1, 2 and 3, on signing, ratifying or acceding to the Convention.