

1969

Decisions of International and Foreign Tribunals

Rene H. Himel Jr.

Recommended Citation

Rene H. Himel, *Decisions of International and Foreign Tribunals*, 3 INT'L L. 920 (1969)
<https://scholar.smu.edu/til/vol3/iss4/14>

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Decisions of International and Foreign Tribunals

RENÉ H. HIMEL, JR., DEPARTMENTAL EDITOR

International Court of Justice

On February 20, 1969, the International Court of Justice rendered its judgment in the North Sea Continental Shelf cases, by a vote of eleven to six. Of the concurring judges, Sir Muhammad Zafrulla Hahn appended a declaration to the judgment, and President Bustamante y Rivero and Judges Jessup, Padilla Nervo and Ammon delivered separate opinions. Dissenting opinions were delivered by Vice President Koretsky, and Judges Tanaka, Morelli and Lachs and Judge *ad hoc* Sorensen (appointed by Denmark and the Netherlands). Judge Bengzon noted his dissent also.

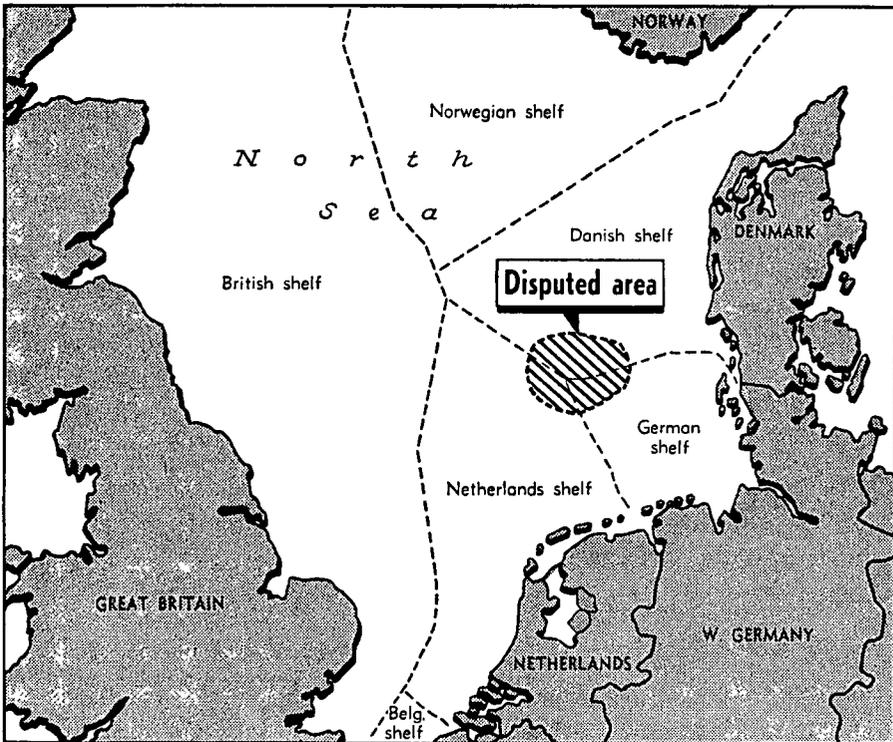
The North Sea being shallow, practically its entire bed is shelf area easily exploitable for hydrocarbon deposits. Efforts at delimitation of boundaries by agreement have been continuing since 1963. In the period 1963-1966, the United Kingdom, Norway, Denmark and the Netherlands worked out boundaries among themselves based on the equidistance principle described below. Discussions among Denmark, the Netherlands and West Germany resulted in agreement only on lines running seaward 25 miles on the Dutch side and 30 miles on the Danish side. In February 1967, these countries, by agreement, submitted the matter to the International Court of Justice, for a declaration of the principles and rules of international law applicable to the delimitation of the shelf area beyond the partial boundaries already determined by agreement; and the parties undertook to effect the actual delimitation by agreement pursuant to the Court's decision.

Denmark and the Netherlands contended for the equidistance principle, which would allot to each party all portions of the offshore area nearer to a point on its own coast than to any point on the coast of any other party. The concavity of the central West German coast and the convexity of the bordering Danish and Dutch coasts in the area involved would pull in, towards the concave German coast, the boundaries so determined, resulting in their meeting at a relatively short distance from the coast and severely limiting the West German offshore area. Denmark and the Netherlands argued that Article 6 of the 1958 Geneva Convention on the Continental Shelf requires application of the equidistance rule absent agreement to the contrary or

“special circumstances”, and that the configuration of the West German coast is not a special circumstance for this purpose.

The Federal Republic contended that the correct principle to be applied was one under which each of the parties would be allotted a “just and equitable share” of the continental shelf, in proportion to the length of its sea-frontage; that in a sea shaped like the North Sea, each coastal state’s continental shelf area should extend to the central point, or at least the median line, of the sea; and that, in any event, the configuration of the German North Sea coast is a special circumstance justifying departure from the equidistance rule.

The Court rejected the equitable-share argument, feeling that its task was to delimit (establish the boundaries of an area already



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existent in principle) not to apportion (determine the area *de novo*), and also that the equitable-share contention is inconsistent with the fundamental rule that a coastal state's rights in respect of the continental shelf constituting a natural prolongation of its land territory, exist *ipso facto* and *ab initio* by virtue of its sovereignty over the adjacent land.

As to the equidistance rule, the Court first pointed out that the Federal Republic, although a signatory of the 1958 Convention, has never ratified it formally, and has not engaged in any course of conduct relied on by Denmark and the Netherlands with respect thereto which could constitute a ratification by estoppel. While recognizing the logical force of the argument that seaward prolongation of territorial sovereignty should be based on proximity, the Court rejected this as the sole appropriate test, since its application might result in attribution to one country of an offshore area which is the natural prolongation of the territory of another. The Court then held that since the Geneva Convention permitted ratifying states to make reservations in respect of Article 6 embodying the equidistance principle, Article 6 could not be considered as reflecting or crystallizing the principle as an emerging rule of customary international law; and that, since Article 6, being so framed as to permit resort to the equidistance principle only after an attempt to effect delimitation by agreement, is not of a norm-creating character, it cannot be said that equidistance as a rule of international law has evolved from the adoption of Article 6 as part of the Convention.

Having rejected the contentions of the parties, the Court held that the boundary lines were to be drawn by agreements reached through good faith and meaningful negotiations, on the basis of equitable principles and taking into account the following particular factors; the general configuration of the parties' coastlines and any special or unusual features thereof; so far as known or readily ascertainable, the physical and geological structure and natural resources of the continental shelf area involved; and the element of a reasonable degree of proportionality between the extent of the continental shelf area appertaining to each party and the length of its coast measured in the general direction of the coastline, taking into account the actual or prospective effects of any other continental shelf delimitations in the same region.

The end result, stated the Court, should, as far as possible, leave to each party those parts of the continental shelf constituting a

natural prolongation of its land territory; and any resultant overlapping areas should be divided by agreement, or, failing agreement, equally, unless the parties should decide on a regime of joint jurisdiction, use or exploitation.

Jordan

After the Israeli occupation of the west bank of the Jordan, the Israeli commanding Officer issued an order authorizing Israeli advocates to practice before the civil and criminal courts, the Jordanian lawyers, being on strike. The Hebron magistrate, on February 5, 1968, disqualified an Israeli advocate from appearing before him, on the ground that the occupying power was entitled to legislate for the occupied territory only in military matters. On February 27, 1968, the Bethlehem magistrate admitted an Israel advocate to practice, on the ground that, by virtue of Article 43 of the Hague Regulations, 1907, and Article 64 of the Fourth Geneva Convention, 1949, an occupying power is responsible for public order and hence empowered to enact such laws as it deems necessary to that end, such determination being binding *ex necessitate* on the local courts. 17 *International and Comparative Law Quarterly* 1045.

EEC Commission

In response to written questions submitted by Members of Parliament, the EEC Commission has stated: (1) on October 4, 1968, that it considers Article 85 and 86 of the EEC Treaty equally applicable to both private and public enterprises (subject to Article 90(2)'s limited exemption of enterprises entrusted with special tasks in the public interest), except that in the case of a State enterprise acting at State direction, the Commission's directive or decision would issue to the State (CCH Common Market Reporter ¶9260); (2) on January 22, 1969, with reference to the French Government's statement that it would not approve Fiat's acquisition of shares of Citroen, that Article 221 of the Treaty of Rome and the implementing regulations issued by the Council preclude a member State from imposing restrictions within the EEC that do not apply to its own nationals, the effect of which is to interfere with investments (Official

Journal No. C6, pp. 3, 4, CCH ¶9283); (3) also on January 22, 1969, that it is aware that several European firms have been indicted in the United States for violation of the latter's antitrust laws by conspiring to fix the price of the drug quinidine, and that the Commission is investigating the possibility of a violation of Article 85(1) of the EEC Treaty in this connection Official Journal No. C6, p. 9, CCH ¶9285).

On November 14, 1968, the Commission issued negative clearances as to two Belgian sales cooperatives whose activities were restricted to Belgium and non-EEC countries, the members having in fact developed strong independent sales activities in other EEC countries, each member having retained its discretion as to the quantity of its products to be sold through the cooperative, and there being no equalization of cooperative prices in Belgium with those in non-EEC countries. Cobelaz-Synthetic Products Manufacturers (IV/565), Official Journal No. L276, p. 13, CCH ¶9265; Cobelaz-Cokeries (IV/507), Official Journal No. L276, p. 19, CCH ¶9266. A similar clearance was granted in C. F. A. (IV/666), Official Journal No. L276, p. 29, CCH ¶9268.

On the same date, a negative clearance was issued as to an exclusive distributorship agreement for Japan. Limitation of the distributor's product sales to Japan, the prohibition of his handling competing products there, and the prohibition of the manufacturer's product exports to Japan directly or indirectly except through the distributor, were not considered likely to have any substantial effects on Common Market competitive activity in the actual circumstances involved. Rieckermann/AEG-Elotherm (IV/23077), Official Journal No. L276, p. 25, CCH ¶9267.

Malaysia

During the 1965 confrontation between Indonesia and Malaysia, two members of the Indonesian armed forces, while wearing civilian clothing, set off an explosive charge in an office building in Singapore, resulting in the deaths of three civilians. They were subsequently convicted of murder and sentenced to death. Their appeals were dismissed by the Privy Council which held, following *Ex parte Quirims*, 317 US 1 (1942) (the case of the German saboteurs in World War II), that members of the armed forces of a party to an armed conflict are not entitled to treatment as prisoners of war, under the

Hague Regulations and the Geneva Convention, if they disguise their status (as by wearing civilian clothes) to pass behind the other party's lines to engage in sabotage. *Mohamed Ali vs Public Prosecutor*, [1968] 3 All ER 488.

England

In *Corocraft vs Pan American Airways*, [1969] 1 All ER 82, the Court of Appeal held, on November 7, 1968, that the French text of the Warsaw Convention controls in England. The holding was based on the fact that the copy of the Convention annexed to the implementing Act of 1932 refers to the Convention as "drawn up in French in a single copy which shall remain deposited in the archives of the Ministry of Foreign Affairs of Poland"; on the fact that the Carriage of Goods by Air Act, 1961, expressly provides that the French text of the Convention, as amended at The Hague, 1955, shall control; and on the fact, coupled with the desirability of uniform international enforcement of the Convention, that it has been held in the United States [*Block vs Compagnie Nationale Air France*, 386 F2d 323 (CA 5-1967)] that the French text controls.

At issue were the provisions [articles 8 (i) and 9] depriving the carrier of limited liability if goods are accepted on an air consignment note failing to specify "le nombre, le mode d'emballage, les marques particulières ou les numéros des colis." The quoted phrase is translated in the English text as "the number of the packages, the method of packing and the particular marks or numbers upon them", the "and" making conjunctive what in the French text is at least arguably disjunctive. The Court of Appeal took the modified approach of holding that either the French or the English text would have to be construed in the common-sense way of requiring a statement of the weight and of only such of the other details specified as might be applicable in the circumstances of a particular shipment.